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17 *GSA Network*

18 **UNITED STATES DISTRICT COURT**
19 **EASTERN DISTRICT OF CALIFORNIA**

20 AURORA REGINO,

21 Plaintiff,

22 v.

23 SUPERINTENDENT KELLY STALEY,
24 in her official capacity; CAITLIN DALBY,
in her official capacity; REBECCA
25 KONKIN, in her official capacity; TOM
LANDO, in his official capacity; EILEEN
26 ROBINSON, in her official capacity; and
27 MATT TENNIS, in his official capacity,

28 Defendants.

Case No. 2:23-cv-00032-JAM-DMC

**PROPOSED DEFENDANT-
INTERVENOR GSA NETWORK'S
MOTION TO INTERVENE**

Judge: Judge John A. Mendez
Date: March 28, 2023
Time: 1:30 p.m.
Courtroom: 6

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES, THEIR COUNSEL OF RECORD, AND THE CLERK OF THE COURT:

PLEASE TAKE NOTICE that at 1:30 p.m. on March 28, 2023, or as soon thereafter as the matter may be heard in Courtroom 6 of the above-entitled court, located at 501 I Street, Sacramento, CA 95814, Proposed Defendant-Intervenor GSA Network, by and through its undersigned counsel, will, and hereby does, move the Honorable John A. Mendez for an order granting GSA Network leave to intervene in this action.

This motion is made under Federal Rule of Civil Procedure 24(a) and (b) and the authorities cited herein. This motion is based on this Notice of Motion and Motion, the following Memorandum of Points and Authorities, the Declaration of Ginna Brelsford, the arguments of counsel, and all other material that may properly come before the Court at or before the hearing on this Motion. Attached to this motion is GSA Network’s Proposed Opposition to Plaintiff’s Motion for Preliminary Injunction, which is supported by the Declaration of Dr. Jack Turban.

This motion is made following the conference of counsel pursuant to the Court’s standing order which took place on February 3, 9, and 13, 2023.

Dated: February 14, 2023

Respectfully submitted,

By /s/ Adam Shearer

Adam Shearer
CLARENCE DYER & COHEN LLP

Elizabeth Gill
ACLU Foundation of Northern California

Amanda Goad
ACLU Foundation of Southern California

*Attorneys for Proposed Defendant-Intervenor
GSA Network*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This case challenges as unconstitutional a California school district’s policy that, in
4 accordance with California law, requires that the district affirm and support LGBTQ+ students
5 by recognizing their sexual orientations and gender identities and protecting their privacy. By
6 this motion, Genders & Sexualities Alliance Network (“GSA Network”)—a youth-driven
7 organization that provides resources and support for clubs for LGBTQ+ students and their allies
8 across California and the country—seeks to intervene on the side of Defendants Superintendent
9 Kelly Staley, Caitlin Dalby, Rebecca Konkin, Tom Lando, Eileen Robinson, and Matt Tennis, in
10 their official capacities, to assert the interest of LGBTQ+ students in the continuation of the
11 policy, particularly with respect to transgender students and their privacy interests.

12 As an organization dedicated to empowering LGBTQ+ youth, GSA Network believes
13 that school policies must affirm and support LGBTQ+ students, including by: recognizing and
14 affirming students’ sexual orientations and gender identities; using names and pronouns that
15 accord with students’ gender identities; and protecting the privacy of LGBTQ+ students,
16 including from their parents, where necessary. Without the protections for transgender students
17 in Chico Unified School District’s (the “District”) current policy—and similar policies of other
18 school districts throughout California and the nation—transgender students would be denied full
19 recognition and affirmation of their authentic selves at school, with resulting adverse impacts on
20 their wellbeing. In addition, GSA Network’s interest in defending the policy cannot be
21 adequately represented by the Defendants, who are government officials subject to conflicting
22 pressures from different constituencies that may lead them to take positions and advance
23 arguments that differ from the interests of LGBTQ+ students, as would be asserted by GSA
24 Network.

25 For these reasons, and those articulated below, the Court should grant GSA Network
26 leave to intervene—either as of right or permissively—and become a party to this case as
27 Defendant-Intervenor.

28

BACKGROUND

I. California Law Requires Schools to Affirm LGBTQ+ Students

California law requires schools to affirm LGBTQ+ students' identities. Both the state constitution and statutory law require public schools to proactively protect students from unlawful discrimination and harassment, including on the basis of gender, gender identity, gender expression, and sexual orientation, and to create an inclusive and welcoming school learning environment. Cal. Const. art. I, § 7; Cal. Educ. Code §§ 200, 201, 220; *see also* Cal. Educ. Code §§ 221.5(f), 234-234.5. The state has developed significant resources to support schools in fulfilling this mandate. *See* California Department of Education (CDE), *Supporting LGBTQ+ Students*, <https://www.cde.ca.gov/pd/ee/supportlgbtq.asp> (last visited February 11, 2023), including specific guidance on supporting transgender and gender nonconforming student, *see* California Department of Education, *Frequently Asked Questions: School Success and Opportunity Act*, <https://www.cde.ca.gov/re/di/eo/faqs.asp> (last visited February 11, 2023) (“CDE Guidance”).

Undermining these laws, and the policies that implement them, would critically undermine support and safety for LGBTQ+ students. It is imperative that LGBTQ+ and specifically transgender youth receive acknowledgement and respect for who they are within their own school environment, which may be the only space in which they feel comfortable expressing their authentic selves. Research shows that when transgender students are not supported they face significantly higher risks of violence, victimization, and suicide than non-transgender students.¹ By providing a safe and welcoming environment for LGBTQ+ students, schools not only improve overall student well-being, but enable young people to thrive.

¹ *See e.g.*, Michele M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students—19 States and Large Urban School Districts, 2017*, *Morbidity and Mortality Wkly. Rep.* 2019 68:67–71 (January 25, 2019), <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf> (finding that transgender youth are at higher risk of violence, victimization, and suicide, and that coordinated intervention efforts such as implementing anti-bullying policies and providing training to create more supportive school staff improve health outcomes among transgender youth); Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and*

1 **II. Factual Background**

2 A. GSA Network.

3 GSA Network is a non-profit organization, founded in California in 1998, that connects
4 lesbian, gay, bisexual, transgender, and queer youth and school-based clubs through peer
5 support, leadership development, and community organizing and advocacy. *See* Declaration of
6 Ginna Brelsford, ¶ 3 (“Brelsford Decl.”). These clubs, sometimes known as Genders &
7 Sexualities Alliances, or GSAs for short, are student-initiated, student-run clubs that unite
8 LGBTQ+ and allied youth to build community and organize around issues impacting them in
9 their schools and communities. *Id.* Two GSA clubs within the District are registered with GSA
10 Network—one at Chico High School and the other at Pleasant Valley High School. *Id.* at ¶ 8.

11 GSA Network has always been a youth-driven organization. *Id.* at ¶ 3. It offers
12 resources, training, and networking opportunities for youth who wish to start or lead a GSA in
13 their school or in their community. *Id.* at ¶ 6. GSAs can register their clubs with GSA Network
14 in order to receive additional news and information about its programs, but doing so is not a
15 prerequisite for accessing the organization’s resources. *Id.* For clubs in California, GSA
16 Network is available to provide more targeted support on an as-requested basis; for example,
17 helping students understand what their rights are, or serving as a thought partner as they
18 navigate a challenging district or school policy. *Id.* at ¶ 7. In addition to working directly with
19 student-led clubs, GSA Network led the creation of the National Association of GSA Networks,
20 and it now serves as a connector for this network of 40 statewide organizations representing
21 more than 4,000 GSA clubs across the country. *Id.* at ¶ 3.

22 For over twenty years, GSA Network has also invested significant time and resources to
23 ensure the adoption of inclusive and affirming statewide school laws and policies that enable
24 California’s LGBTQ+ young people to be their authentic selves at school. *Id.* at ¶ 4. For
25 example, in 2000 GSA Network co-sponsored AB 537, which amended California’s Education
26 Code to add “actual or perceived sexual orientation and gender identity” to the existing

27
28 *Suicidal Behavior Among Transgender Youth*, *Journal of Adolescent Health* 63: 503 (October
2018), [https://www.jahonline.org/article/S1054-139X\(18\)30085-5/pdf](https://www.jahonline.org/article/S1054-139X(18)30085-5/pdf).

1 nondiscrimination law. *Id.* In 2012, in response to a string of suicides by LGBTQ+ young
2 people, including 13-year old Seth Walsh in California, GSA Network supported AB 9 to
3 prevent and address school bullying, as well as SB 48, prohibiting bias in school instruction and
4 activities and requiring curricula to acknowledge the roles and contributions of LGBTQ+
5 individuals in history and social science. *Id.* In 2013, GSA Network also co-sponsored AB
6 1266A, which ensured students have the right to participate in school programs and activities
7 and use school facilities in accordance with their gender identity. *Id.* The passage and
8 implementation of these and other similar student protections have positively transformed
9 California students’ ability to safely explore and express their LGBTQ+ identities and benefit
10 from a supportive learning environment while at school. *Id.*

11 Given GSA Network’s focus on supporting LGBTQ+ youth, the organization has been
12 closely following the developments at the District connected to this lawsuit. *Id.* at ¶ 9. In fact,
13 GSA Network is also seeking to intervene in a similar case that originated in Monterey County.
14 *Id.* at ¶ 9. In GSA Network’s experience working with students, there is a risk to student safety
15 when a young person is “outed” as LGBTQ+ without their consent. *Id.* at ¶ 10. If California
16 law were to change to require schools to notify parents and guardians of a student’s gender
17 identity—and obtain the parent’s or guardian’s permission before affirming the student’s gender
18 identity—GSA Network expects the consequences for student safety would be immense. *Id.* at
19 ¶¶ 10, 12. In addition, GSA Network leadership knows that in states that lack policies
20 protecting student privacy, there has been a chilling effect on club participation by both students
21 and advisors. *Id.* at ¶ 11. Even though GSAs are open to allies as well as LGBTQ+ students,
22 students may fear that simply joining a club would be enough to trigger a notification to their
23 parents, even if they in fact do not identify as LGBTQ+ or are still exploring their identity. *Id.*
24 at ¶ 11. Moreover, GSA advisors may not want to put themselves in the position of having to
25 “out” students or may not want to put their own privacy and safety at risk. *Id.* at ¶ 11. For
26 example, after Florida passed its “Don’t Say Gay” law, a club advisor informed GSA Network
27 that an outside group had asked their school district to produce a list of all GSA advisors in the
28

1 district. *Id.* GSA Network partners in Florida have also reported a loss of in-school supports for
2 LGBTQ students as a result of the change in Florida law. *Id.*

3 B. This Lawsuit.

4 On January 6, 2023, Plaintiff filed her Complaint alleging that the District violated her
5 parental rights under the U.S. Constitution. *See* Dkt. No. 1. The Complaint alleges that the
6 District’s violation stems from a District policy as “set forth” by the CDE Guidance directing
7 schools to recognize students’ sexual orientations and gender identities and protect their privacy.
8 *See id.* at ¶ 53. This guidance, which Plaintiff characterizes as the “Parental Secrecy Policy,”
9 was issued to “foster an educational environment that is safe and free from discrimination for all
10 students, regardless of sex, sexual orientation, gender identity, or gender expression, and . . .
11 assist school districts with understanding and implementing policy changes related to AB 1266
12 and transgender student privacy, facility use, and participation in school athletic competitions.”
13 Dkt. No. 1-6. Plaintiff alleges Defendants violated her constitutional rights because the policy
14 “authorizes” students to make decisions regarding their own names and pronouns and use
15 facilities consistent with their gender without “parental knowledge or consent.” Dkt. No. 1 at
16 ¶¶ 21, 59.

17 **LEGAL STANDARD**

18 Federal Rule of Civil Procedure 24(a)(2) provides for intervention as a matter of right
19 where the potential intervenor “claims an interest relating to the property or transaction that is
20 the subject of the action, and is so situated that disposing of the action may as a practical matter
21 impair or impede the movant’s ability to protect its interest, unless existing parties adequately
22 represent that interest.” The Ninth Circuit has summarized the requirements for intervention as
23 of right under Rule 24(a)(2) as follows:

- 24 (1) [T]he [applicant’s] motion must be timely; (2) the applicant must have
25 a “significantly protectable” interest relating to the property or transaction
26 which is the subject of the action; (3) the applicant must be so situated
27 that the disposition of the action may as a practical matter impair or
28 impede its ability to protect that interest; and (4) the applicant’s interest
must be inadequately represented by the parties to the action.

1 on January 6, 2023. Because GSA Network has filed its motion while this suit is still in its
2 infancy, the motion is timely and the parties will not be prejudiced.

3 B. GSA Network Has a Direct Interest Relating to the Subject of this Action, and
4 an Unfavorable Disposition Will Impair and Impede Its Ability to Protect That
5 Interest.

6 For intervention as of right, the interest prong is generally satisfied if the “interest
7 [asserted] is protectable under some law, and there is a relationship between the legally
8 protected interest and the claims at issue.” *Sw. Ctr.*, 268 F.3d at 818. Such a relationship exists
9 “if the resolution of the plaintiff’s claims actually will affect the applicant” for intervention.
10 *Donnelly*, 159 F.3d at 410; *see also Sw. Ctr.*, 268 F.3d at 818 (finding that the relief sought must
11 “have direct, immediate, and harmful effects upon the proposed intervenor’s legally protectable
12 interest”). When an organization’s mission or activities—including legislative action—are
13 directly related to the specific issues being litigated, courts have found the interest prong
14 satisfied. *See Sw. Ctr.*, 268 F.3d at 818 (construction company has interest in planning and
15 implementation of ongoing projects begun in reliance on challenged environmental plans);
16 *Washington State Bldg. & Constr. Trades Council v. Spellman*, 684 F.2d 627, 630 (9th Cir.
17 1982) (public interest organization has interest in case challenging legislation it sponsored);
18 *Idaho v. Freeman*, 625 F.2d 886, 887 (9th Cir. 1980) (National Organization for Women has
19 interest in the “continued vitality” of the Equal Rights Amendment in case concerning
20 ratification procedures); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983)
21 (Audubon Society has interest in preservation of birds and their habitats in case concerning
22 Interior Secretary’s withdrawal of land from conservation area).

23 Consistent with these decisions, GSA Network plainly has a direct and immediate
24 interest in Plaintiff’s challenge to the District’s anti-discrimination policy. The District’s policy
25 implements law that GSA Network helped to enact and that is essential to GSA Network’s
26 bedrock purpose of supporting and empowering LGBTQ+ youth. Specifically, GSA Network
27 cosponsored AB 1266 of 2013, providing students with the right to participate in school
28 programs and activities and use school facilities in accordance with their gender identity. *See*
Brelsford Decl. ¶ 4. Plaintiff’s Complaint explicitly identifies AB 1266 as the state law directly

1 related to the District’s adoption of the policy. Dkt. No. 1 ¶¶ 44-47. That history alone warrants
2 GSA Network’s participation as a party to this case. *See, e.g., Idaho Farm Bureau Fed’n v.*
3 *Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (a “public interest group is entitled as a matter of
4 right to intervene in an action challenging the legality of a measure it has supported.”).

5 In addition, two GSA clubs within the District are registered with GSA Network—one
6 at Chico High School and the other at Pleasant Valley High School. The policy challenged here
7 allows students to express their LGBTQ+ identity at school and seek support without fear that
8 school staff will out them to their parents or guardians, and this framework fosters GSA
9 Network youth participants’ ability to do their organizing work and GSA Network’s own ability
10 to provide them support upon request. Thus, GSA Network’s mission directly aligns with the
11 District’s current policy, which is intended to promote the well-being and safety of LGBTQ+
12 students, including through the existence of GSA clubs available to all students. An
13 unfavorable disposition in this case would impede that mission because it would directly
14 undermine transgender students’ ability to be their authentic selves at school, to talk freely with
15 counselors or teachers, and to seek community or support from their peers—such as in a GSA
16 club.

17 GSA Network is already experiencing a preview of such a world. In addition to its work
18 in California, GSA Network also provides support to school-based clubs in other states,
19 including states like Florida that have enacted laws forcing school staff to out students to their
20 parents and guardians and placed a target on school staff who work to create a safe and
21 welcoming environment for LGBTQ+ students. In these states that have moved away from
22 protecting student privacy, there has been a chilling effect on GSA club participation by both
23 students and advisors. *See Brelsford Decl.* ¶ 11.

24 A similar change in California law to require schools to violate a student’s privacy and
25 seek permission from the student’s parent or guardian before affirming their gender identity
26 would likely result in the same chilling effect. GSA Network’s trainings emphasize the
27 importance of safety planning when making decisions about when, how, and to whom students
28 communicate about their gender and sexual orientation. *See id.* at ¶ 10. Without the option to

1 come out selectively at school, and without an adequate support system at home, transgender
 2 students—and other LGBTQ+ students who reasonably fear their protections may not endure—
 3 would increasingly seek safety and support outside of school, and GSA Network would have to
 4 expend significant capacity and resources to shift its model to meet their needs. *See id.* at ¶ 13.

5 C. Defendants Cannot Adequately Represent GSA Network’s Interests.

6 The final requirement for intervention as of right—that the existing parties may not
 7 adequately represent the applicant’s interests—is satisfied here. “The burden of showing
 8 inadequacy of representation is ‘minimal’ and satisfied if the applicant can demonstrate that
 9 representation of its interests ‘may be’ inadequate.” *W. Watersheds Project*, 22 F.4th at 840
 10 (9th Cir. 2022) (quoting *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893,
 11 898 (9th Cir. 2011)); *see also Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10
 12 (1972) (holding that an applicant need only show that representation of their interest “may be”
 13 inadequate). To evaluate adequacy of representation, courts consider three factors: “(1) whether
 14 the interest of a present party is such that it will undoubtedly make all of a proposed intervenor’s
 15 arguments; (2) whether the present party is capable and willing to make such arguments; and (3)
 16 whether a proposed intervenor would offer any necessary elements to the proceeding that other
 17 parties would neglect.” *Id.* at 840-41. The “most important factor” in assessing adequacy of
 18 representation is “how the interest compares with the interests of existing parties.” *Citizens for*
 19 *Balanced Use*, 647 F.3d at 898 (internal quotation marks omitted).

20 GSA Network has a clear and distinct interest in this case: To assert the importance for
 21 LGBTQ+ students—particularly transgender students—without regard for any other
 22 constituency in upholding the constitutionality of District policy and California law. It is not
 23 clear that Defendants share this goal, nor is it clear that they would make the same arguments as
 24 GSA Network. While GSA Network expects Defendants to assert that they were complying
 25 with California law, it is less clear that they have the desire or means to present a full-throated
 26 defense of its validity. In fact, during the January 18, 2023 Chico Unified school board
 27 meeting, Defendant Tennis publicly disavowed the District’s policy, stating:

28 I would like the public to know that I have never been asked about such a policy
 or practice by district staff. I have never voted on this. Nor would I ever condone

1 such a policy or practice. . . . [G]oing forward, Chico parents will be able to rest
2 assured that Chico Unified will not infringe on their sovereign right to direct the
raising of their own children.

3 CUSD Board of Education, *Chico Unified School District Board of Education Meeting*

4 *1/18/2023* [1:41:25], YouTube (Jan. 18, 2023),

5 <https://www.youtube.com/watch?v=59t5X3K1V58> (last visited February 12, 2023); *see also*

6 Chico Unified School District Board of Education, *Communication Process Related to Board*

7 *Policy No 5145.3 – Non-Discrimination/Harassment* [Agenda Item 9.2.2], (Feb. 15, 2023),

8 https://simbli.eboardsolutions.com/SB_Meetings/ViewMeeting.aspx?S=36030732&MID=1879

9 7 (last visited February 12, 2023) (describing the CDE Guidance as “[n]ot yet tested in the

10 courts” and that “either implementing or failing to implement [it] can lead to controversy and

11 legal challenges”).

12 Indeed, Defendants must be responsive to multiple constituencies, which make them

13 inadequate representatives for GSA Network’s unique interest. As members of the District’s

14 board, Defendants Dalby, Konkin, Lando, Robinson, and Tennis are elected officials and

15 therefore subject to conflicting and shifting constituent pressures and obligations. The Ninth

16 Circuit has held on multiple occasions, including just last year, that an existing defendant is an

17 inadequate representative where it is required to represent a view broader than a proposed

18 intervenor’s narrow interest. *See W. Watersheds Project*, 22 F.4th at 842 (9th Cir. 2022)

19 (holding that trade association was not an adequate representative of an oil and gas production

20 company because the trade association was “obligated to represent the more general interests of

21 the oil and gas industry as a whole”); *see also Forest Conservation Council v. U.S. Forest Serv.*,

22 66 F.3d 1489, 1499 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc. v. U.S.*

23 *Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011) (en banc) (finding government representation

24 inadequate where existing defendant was “required to represent a broader view than the more

25 narrow, parochial interests” of the intervenors).

26 GSA Network also adds a necessary element to the proceeding that is otherwise lacking

27 given its ability to speak directly to the needs of the transgender youth it serves. GSA Network

28

1 offers a wealth of knowledge and expertise regarding the support frameworks that are most
2 effective for transgender students—expertise directly informed by GSA Network’s youth
3 leadership. Moreover, GSA Network has already seen in other states the impact that comes with
4 a loss of in-school supports for LGBTQ+ students, and can therefore meaningfully add to the
5 record in this case regarding the negative effects associated with disrupting LGBTQ+-affirming
6 policies and support systems within schools.

7 **II. GSA Network Also Meets the Requirements for Permissive Intervention**

8 Upon a timely motion, a court may allow permissive intervention by anyone who “has a
9 claim or defense that shares with the main action a common question of law or fact.” Fed. R.
10 Civ. P. 24(b)(1)(B). Specifically, permissive intervention is warranted where the proposed
11 intervenor’s defense shares a common question of law or fact with the main action, its motion is
12 timely, and the court has an independent basis for jurisdiction over the proposed intervenor’s
13 claims. *Donnelly*, 159 F.3d at 412. In addition, the court must consider whether the
14 intervention will unduly delay or prejudice the adjudication of the original parties’ rights. Fed.
15 R. Civ. P. 24(b)(3).

16 GSA Network easily satisfies these requirements. As noted above, the motion is timely,
17 having been filed prior to even the initial case management conference. In addition, GSA
18 Network’s defense—that student non-discrimination policies like the District’s do not abrogate
19 parental constitutional rights and are necessary to protect transgender students’ constitutional
20 rights of—is directly responsive to Plaintiff’s claims. *See* Complaint ¶¶ 72-75. Therefore,
21 intervention will not enlarge the issues in the litigation because GSA Network is seeking only to
22 defend the District’s student non-discrimination policy that Plaintiff has alleged is
23 unconstitutional. As is evident from its proposed answer in intervention, GSA Network neither
24 seeks additional relief nor intends to raise any issue that will enlarge the scope of the case.
25 Moreover, no party will be able to demonstrate any prejudice as a result of intervention.
26 Finally, because GSA Network is raising no new claims, the independent jurisdictional grounds
27 requirement does not apply to this federal-question case. *Freedom from Religion Found.*, 644
28

1 F.3d at 844 (“[T]he independent jurisdictional grounds requirement does not apply to proposed
2 intervenors in federal-question cases when the proposed intervenor is not raising new claims.”).

3 **CONCLUSION**

4 For the foregoing reasons, GSA Network respectfully requests that the Court grant leave
5 for it to participate in the above-captioned matter as Defendant-Intervenor.

6
7 Dated: February 14, 2023

Respectfully submitted,

8 By /s/ Adam Shearer
9 Adam Shearer
CLARENCE DYER & COHEN

10 Elizabeth Gill
11 ACLU Foundation of Northern California

12 Amanda Goad
13 ACLU Foundation of Southern California

14 *Attorneys for Proposed Defendant-Intervenor*
15 *GSA Network*

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15 *Attorneys for Proposed Defendant-Intervenor*
16 *GSA Network*

17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF CALIFORNIA**
19

20 AURORA REGINO,

21 Plaintiff,

22 v.

23 SUPERINTENDENT KELLY STALEY, in her official
24 capacity; CAITLIN DALBY, in her official capacity;
25 REBECCA KONKIN, in her official capacity; TOM
26 LANDO, in his official capacity; EILEEN
ROBINSON, in her official capacity; and MATT
27 TENNIS, in his official capacity,

28 Defendants.

Case No. 2:23-cv-00032-JAM-DMC

**DECLARATION OF GINNA
BRELSFORD IN SUPPORT OF
PROPOSED DEFENDANT-
INTERVENOR GSA NETWORK'S
MOTION TO INTERVENE**

Judge: Judge John A. Mendez
Date: March 28, 2023
Time: 1:30 p.m.
Courtroom: 6

1 I, Ginna Brelsford, hereby declare:

2 1. I make this declaration based on my own personal knowledge and if called to testify
3 could and would do so competently.

4 2. I am one of the Co-Executive Directors of Genders & Sexualities Alliance (GSA) Network,
5 a nonprofit organization based in California whose mission is to empower and support queer, trans and
6 allied youth leaders to advocate, organize, and mobilize an intersectional movement for safer schools
7 and healthier communities. I have been employed at GSA Network since 2011, and have served in my current
8 role since 2015. Prior to that, I was GSA Network's Finance and Administrative Director.

9 3. GSA Network was founded in 1998 as a youth-driven organization that connects lesbian,
10 gay, bisexual, transgender, and queer (LGBTQ+) youth and school-based clubs through peer support,
11 leadership development, and community organizing and advocacy. These clubs, sometimes known as
12 Genders & Sexualities Alliances, or GSAs for short, are student-run, student-initiated clubs that unite
13 LGBTQ+ and allied youth to build community and organize around issues impacting them in their
14 schools and communities. In addition to working directly with student-led clubs, GSA Network has
15 evolved to support a national youth organizing movement at the intersection of racial and gender
16 justice. For example, in 2005, we led the creation of the National Association of GSA Networks, and
17 now serve as a connector for this network of 40 statewide organizations representing more than 4,000
18 GSA clubs across the country.

19 4. For over twenty years, GSA Network has also invested significant time and resources to
20 ensure California's adoption of inclusive and affirming statewide school policies that enable LGBTQ+
21 young people to be their authentic selves on campus and reduce harm. In 2000, GSA Network co-
22 sponsored its first bill, AB 537 of 2000, which amended California's Education Code to include "actual
23 or perceived sexual orientation and gender identity" to the existing nondiscrimination policy. In 2012,
24 in response to a string of suicides by LGBTQ+ young people, including 13-year-old Seth Walsh in
25 California, GSA Network supported AB 9 of 2012 to prevent and address school bullying, as well as
26 SB 48 of 2012, prohibiting bias in school instruction and activities and requiring the inclusion of the
27 roles and contributions of LGBTQ+ individuals in history and social science curricula. In 2013, GSA
28 Network cosponsored AB 1266 of 2013, providing students with the right to participate in school
programs and activities and use school facilities in accordance with their gender identity. *See* June 18,

1 2013 Senate Floor Analysis, A.B. 1266 (2013-2014 Cal. Leg. Sess.), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB1266#. The passage and implementation of these
2 and other similar student protections GSA Network has supported have positively transformed
3 California students' ability to feel safe to explore their LGBTQ+ identities and be supported while at
4 school.

5
6 5. GSA Network continues to be a youth-led organization to this day. Youth sit on the
7 governing board, and it is their vision, as well as the vision of our youth participants, that drives our
8 priorities and approach. We see our role as an organization as simply being the holders of a constantly
9 evolving movement of young people. As such, GSA Network's strategy focuses on empowering young
10 people to advocate for their schools and communities and articulate a vision for justice that prioritizes
11 building alliances not only across lines drawn by sexual orientation and gender identity, but also across
12 differences of race, ethnicity, and class.

13 6. GSA Network offers resources, training, and networking opportunities for youth who
14 wish to start or lead a GSA in their school or in their community. The resources we develop are
15 available to students in any part of the country who wish to access them. GSAs can register their clubs
16 with our network in order to receive additional news and information about our programs, but it is not a
17 prerequisite for accessing our resources. If an out-of-state GSA registers with our network, we also
18 connect them to the appropriate regional partner from the National Association of GSA Networks.

19 7. For clubs in California, GSA Network is able to provide more in-depth support and
20 training as needed; however, it is up to individual clubs to determine how much engagement or support
21 they would like to have from GSA Network. In most cases, clubs will register with our network and
22 access our resources, but do not choose to participate in GSA Network programming opportunities,
23 such as our statewide membership meeting. For those clubs who do reach out for assistance, we provide
24 support on an as requested basis; for example, helping students understand what their rights are or
25 serving as a thought partner as they navigate a challenging district or school policy. To the extent that
26 GSA Network provides support or training to GSA advisors or to school administrators, this guidance
27 is focused on how to facilitate youth leadership.

1 8. Since 2020, there have been approximately 1043 registered GSAs in California. Of these,
2 most are in high schools, but in recent years, we have also seen an increase in GSAs in middle schools.
3 GSA Network’s youth programming participants include LGBTQ+ youth, including trans and
4 nonbinary youth, and their allies attending public schools all over the state. Within Chico Unified
5 School District, our records show that at least two clubs have registered with GSA Network—one at
6 Chico High School and another at Pleasant Valley High School.

7 9. Given GSA Network’s focus on supporting LGBTQ+ youth, my staff and I have been
8 closely following the developments happening in local school districts impacting the rights of
9 LGBTQ+ students, including events at Chico Unified School District. We are also seeking to intervene
10 as defendants in a similar lawsuit against Spreckels Union School District. Based on my knowledge
11 and experience working with LGBTQ+ youth, I am sure that a change in policy at Chico Unified
12 School District and in California overall that prevented school officials from affirming the identities of
13 LGBTQ+ students and instead required them to notify parents of a student’s LGBTQ+ status would
14 result in devastating consequences for those students.

15 10. In GSA Network’s trainings, we emphasize that each person has the right to determine
16 when, how, and to whom they share their gender identity or sexual orientation. However, we also share
17 with them the importance of safety planning. Even in a school with the best of intentions, sometimes
18 people can mess up and accidentally share that information with someone they are not supposed to—in
19 other words, “out” you. And when that happens, you cannot take it back. We know from our experience
20 working with students that any time an LGBTQ+ student comes out at school, there is a risk—that’s
21 why safety planning is so important. If California law were to change to require schools to notify
22 parents and guardians of a student’s LGBTQ+ identity, the consequences for student safety would be
23 immense.

24 11. For school-based GSAs, such a change in the law would produce a chilling effect on club
25 participation by both students and advisors. Even though GSAs are open to allies as well as LGBTQ+
26 students, students may fear that simply joining a club would be enough to trigger a notification to their
27 parents, even if they in fact may not identify as LGBTQ+ or are still exploring their identity. Advisors
28 may not want to put themselves in the position of having to “out” students or may not want to put their

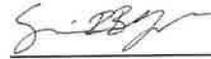
1 own privacy and safety at risk. We have heard such concerns in states where policies protecting student
2 privacy do not exist. For example, right after Florida passed its “Don’t Say Gay” bill, a club advisor
3 reached out to us at GSA Network to let us know that a group had asked their school district to produce
4 a list of all GSA advisors in the district. GSA Network partners in Florida have also reported a loss of
5 in-school supports for LGBTQ+ students as a result.

6 12. Many studies show the benefits of safe and supportive schools for LGBTQ+ students,
7 including the benefits of having a GSA on campus. *See* GLSEN, The GSA Study: Results of National
8 Surveys About Students’ and Advisors’ Experiences in Gender and Sexuality Alliance Clubs,
9 [https://www.glsen.org/sites/default/files/2021-12/GLSEN_ResearchInstitute_GSAStudy_](https://www.glsen.org/sites/default/files/2021-12/GLSEN_ResearchInstitute_GSAStudy_12012021.pdf)
10 [12012021.pdf](https://www.glsen.org/sites/default/files/2021-12/GLSEN_ResearchInstitute_GSAStudy_12012021.pdf). Studies also show that LGBTQ+ students are more likely to thrive when they have at
11 least one parent at home that is supportive, *see* The Trevor Project, Accepting Adults Reduce Suicide
12 Attempts Among LGBTQ Youth (June 27, 2019), [https://www.thetrevorproject.org/research-](https://www.thetrevorproject.org/research-briefs/accepting-adults-reduce-suicide-attempts-among-lgbtq-youth/)
13 [briefs/accepting-adults-reduce-suicide-attempts-among-lgbtq-youth/](https://www.thetrevorproject.org/research-briefs/accepting-adults-reduce-suicide-attempts-among-lgbtq-youth/). However, we also know that not
14 all students are ready to come out to their families yet, and school and GSA are an important place for
15 them to find safety and support until they are.

16 13. If schools were prevented from affirming and supporting LGBTQ+ students and instead
17 required to report them to their parents and guardians, we would lose GSAs, but more urgently and
18 more importantly, we would lose young people. Surveys show that the rise in anti-LGBTQ+ policies
19 over the last few years has led to an increase in suicidality among LGBTQ+ students, particularly
20 transgender and non-binary students. *See* The Trevor Project, New Poll Illustrates Impacts of Social &
21 Political Issues on LGBTQ Youth (Jan. 10, 2022), [https://www.thetrevorproject.org/blog/new-poll-](https://www.thetrevorproject.org/blog/new-poll-illustrates-the-impacts-of-social-political-issues-on-lgbtq-youth/)
22 [illustrates-the-impacts-of-social-political-issues-on-lgbtq-youth/](https://www.thetrevorproject.org/blog/new-poll-illustrates-the-impacts-of-social-political-issues-on-lgbtq-youth/). Young people would start to seek
23 safety and support outside of school, and GSA Network would have to expend significant capacity and
24 resources to shift our model to meet their needs.

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I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct to the best of my knowledge and belief. Executed this 13th day of February, 2022 in Oakland, California.



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18 **UNITED STATES DISTRICT COURT**
19 **EASTERN DISTRICT OF CALIFORNIA**

20 AURORA REGINO,

21 Plaintiff,

22 v.

23 SUPERINTENDENT KELLY STALEY, in her official
24 capacity; CAITLIN DALBY, in her official capacity;
REBECCA KONKIN, in her official capacity; TOM
25 LANDO, in his official capacity; EILEEN
26 ROBINSON, in her official capacity; and MATT
TENNIS, in his official capacity,

27 Defendants.
28

Case No. 2:23-cv-00032-JAM-DMC

**PROPOSED DEFENDANT-
INTERVENOR GSA NETWORK'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Judge: Judge John A. Mendez

Date: February 28, 2023

Time: 1:30 p.m.

Courtroom: Courtroom 6

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INTRODUCTION

California has long recognized that schools can only provide an environment conducive to learning if students feel safe, supported, and welcomed. When students face discrimination at school and when their identity and sense of self are undermined, their ability to learn is compromised. For that reason, California has enacted laws that prohibit discrimination in public schools based on gender identity, and the California Department of Education has issued guidance that seeks to affirm transgender and gender nonconforming students’ gender identities in school while also keeping them safe and respecting their privacy.

Plaintiff, a parent of students at the Chico Unified School District (“the District”), claims these protective laws and policies—which she refers to as the “Parental Secrecy Policy”—violate her federal constitutional due process rights. Plaintiff contends that the Constitution requires public schools to seek parental consent for using the name and pronouns students ask to go by during the school day, regardless of the harmful impact on the student’s educational opportunities and well-being. The Constitution does not require this. Parents do not have a right to require public schools to (1) discriminate against transgender students by using names and pronouns that do not accord with the students’ gender identity, and (2) “out” transgender students to their parents, in violation of the students’ privacy rights. Indeed, the case law is clear that while public school parents have a right to choose whether to send their child to public school, they do not have a right to control their child’s public school education.

In an attempt to evade this clear precedent, Plaintiff relies on the oft-rejected opinion of a purported expert who falsely contends that a school’s decision to refer to students by the names and pronouns that reflect who they are is “medical treatment.” It is not. Using the names and pronouns that reflect how students identify while they are at school is simply respecting and affirming the students. School policies that affirm student gender identity therefore do not violate parental rights. Even if they did, however, they are narrowly tailored to further the compelling state interests in affirming student gender identity and protecting student privacy, which foster an educational environment that is safe and free from discrimination for all students.

1 Because Plaintiff is not likely to succeed on the merits of her claims, and she cannot demonstrate
2 that she is likely to suffer irreparable harm, that the balance of equities tilts in her favor, or that an
3 injunction would be in the public interest, the motion for preliminary injunction should be denied.

4 **BACKGROUND**

5 **I. California Law Requires Schools to Affirm LGBTQ+ Students.**

6 California law unequivocally requires schools to affirm LGBTQ+ students' identities. Both the
7 state Constitution and statutory law affirmatively require public schools to protect students from
8 unlawful discrimination and harassment, including on the basis of gender, gender identity, gender
9 expression, and sexual orientation, and to create an inclusive and welcoming school learning
10 environment. Cal. Const. art. I, § 7; Cal. Educ. Code §§ 200, 201, 220; *see also* Cal. Educ. Code §§
11 221.5(f), 234-234.5 (providing additional statutory protections for LGBTQ+ youth). To this end, the
12 State has issued clear guidance to schools on supporting and affirming LGBTQ+ and specifically
13 transgender and gender nonconforming students, including on the use of names and pronouns in the
14 classroom, incorporating inclusive curricula, ensuring student access to school facilities, programs, and
15 activities according to their gender identity, and supporting students as they navigate sharing their
16 LGBTQ+ status at school and/or home. *See* California Department of Education (CDE), Supporting
17 LGBTQ+ Students, <https://www.cde.ca.gov/pd/ee/supportlgbtq.asp> (last visited February 13, 2023).
18 Together, these laws and policies create a comprehensive network of supports for LGBTQ+ students in
19 schools.

20 **II. The District's Non-discrimination Policies.**

21 The District has adopted a school board policy governing non-discrimination and harassment for
22 students. *See* Chico Unified School District, Board Policy #5145.3 *Non-Discrimination/Harassment*,
23 [http://www.chicousd.org/documents/Board%20Policies%20and%20Administrative%20Regulations/Boa](http://www.chicousd.org/documents/Board%20Policies%20and%20Administrative%20Regulations/Board%20Policies/BP%205000/BP-5145.3-Nondiscrimination-Harassment.pdf)
24 [rd%20Policies/BP%205000/BP-5145.3-Nondiscrimination-Harassment.pdf](http://www.chicousd.org/documents/Board%20Policies%20and%20Administrative%20Regulations/Board%20Policies/BP%205000/BP-5145.3-Nondiscrimination-Harassment.pdf) (last visited February 13,
25 2023), which broadly prohibits discrimination against LGBTQ+ students:

26 The Governing Board desires to provide a safe school environment that allows all students
27 equal access and opportunities in the district's academic, extracurricular, and other
28 educational support programs, services, and activities. The Board prohibits, at any district
school or school activity, unlawful discrimination, including discriminatory harassment,
intimidation, and bullying, targeted at any student by anyone, based on the student's actual

1 or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic
2 group identification, ethnicity, age, religion, marital status, pregnancy, parental status,
3 color, physical or mental disability, medical condition, sex, sexual orientation, gender,
4 gender identity, gender expression, or genetic information, or association with a person or
5 group with one or more of these actual or perceived characteristics.

6 This policy is based on a model policy published by the California School Boards Association, whose
7 members include 96.4 percent of all California local education agencies, including school districts and
8 county offices of education. *See* California School Boards Association, *2021-22 CSBA Membership*,
9 <https://www.csba.org/en/About/AboutCSBA/CSBAFactsandFigures> (last visited February 13, 2023).¹

10 According to the Plaintiff, the District further relies on guidance issued by the California
11 Department of Education “to promote the goals of reducing the stigmatization of and improving the
12 educational integration of transgender and gender nonconforming students, maintaining the privacy of
13 all students, and supporting healthy communication between educators, students, and parents to further
14 the successful educational development and well-being of every student.” CDE, *Frequently Asked*
15 *Questions: School Success and Opportunity Act (AB 1266)* (September 16, 2021),
16 <https://www.cde.ca.gov/re/di/eo/faqs.asp> (last visited February 13, 2023) (“CDE Guidance”); *see* Dkt. 1
17 (“Complaint”) ¶ 53. In relevant part, the guidance provides:

18 A transgender or gender nonconforming student may not express their gender identity
19 openly in all contexts, including at home. Revealing a student’s gender identity or
20 expression to others may compromise the student’s safety. Thus, preserving a student’s
21 privacy is of the utmost importance. The right of transgender students to keep their
22 transgender status private is grounded in California’s antidiscrimination laws as well as
23 federal and state laws. Disclosing that a student is transgender without the student’s
24 permission may violate California’s antidiscrimination law by increasing the student’s
25 vulnerability to harassment and may violate the student’s right to privacy.

26 ...
27 [S]chools must consult with a transgender student to determine who can or will be informed
28 of the student’s transgender status, if anyone, including the student’s family. With rare
exceptions, schools are required to respect the limitations that a student places on the
disclosure of their transgender status, including not sharing that information with the
student’s parents. In those very rare circumstances where a school believes there is a
specific and compelling “need to know,” the school should inform the student that the
school intends to disclose the student’s transgender status, giving the student the
opportunity to make that disclosure her or himself. Additionally, schools must take
measures to ensure that any disclosure is made in a way that reduces or eliminates the risk
of re-disclosure and protects the transgender student from harassment and discrimination.

¹ On information and belief, the District also adopted a similar Administrative Regulation based on a model published by the California School Boards Association.

1 Those measures could include providing counseling to the student and the student's family
2 to facilitate the family's acceptance and support of the student's transgender status. Schools
3 are not permitted to disclose private student information to other students or the parents of
4 those students.

5 CDE Guidance. To the extent the District's policies affirm LGBTQ+ students' identities and protect
6 their safety and privacy, they align with the above state law. To uproot these policies would be to
7 critically undermine the support and the safety of LGBTQ+ youth. Pursuant to California law and
8 policy, it is imperative that LGBTQ+ youth receive acknowledgment and respect within their own
9 school environment, which may be the only space in which they feel comfortable expressing their
10 authentic selves. Research shows that when LGBTQ+ students are not supported they face significantly
11 higher risks of violence, victimization, and suicide than non-LGBTQ students.² By providing a safe and
12 welcoming environment for LGBTQ+ students, schools not only improve overall student well-being, but
13 enable young people to thrive.

14 **III. "Social Transition".**

15 The term "social transition" refers to non-medical steps an individual can take to adopt a gender
16 expression that aligns with their gender identity. It can encompass changing everything from one's name
17 and/or pronouns to one's style of dress. The District's policies accommodate social transition by those
18 students who choose to pursue it; they do not impose social transition on anyone. The accompanying
19 Declaration of Dr. Jack Turban, a psychiatrist with experience and expertise in the diagnosis and
20 treatment of gender dysphoria in children and adolescents, clarifies that affirming a young person's
21 stated gender identity benefits their well-being and does not constitute a medical intervention. *See*
22 Turban Decl. ¶¶ 32-35. In addition, Dr. Turban examines current research showing that social transition

23 ² *See, e.g.,* Michele M. Johns et al., *Transgender Identity and Experiences of Violence Victimization,*
24 *Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students—19 States and*
25 *Large Urban School Districts, 2017, Morbidity and Mortality Wkly. Rep.* 2019 68:67–71 (January 25,
26 2019), <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf> (finding that transgender
27 youth are at higher risk of violence, victimization, and suicide, and that coordinated intervention efforts
28 such as implementing anti-bullying policies and training to create more supportive school staff on
support strategies improve health outcomes among transgender youth); Stephen T. Russell et al., *Chosen*
Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among
Transgender Youth, Journal of Adolescent Health 63:503 (October 2018),
[https://www.jahonline.org/article/S1054-139X\(18\)30085-5/pdf](https://www.jahonline.org/article/S1054-139X(18)30085-5/pdf).

1 itself does not make a child identify more strongly as transgender and thus more likely to persist as
2 transgender or to proceed to gender-affirming medical interventions. *See id.* at ¶¶ 23-24.

3 **IV. This Lawsuit.**

4 On January 6, 2023, Plaintiff filed her Complaint alleging that the District violated her parental
5 rights under the U.S. Constitution. *See* Dkt. No. 1. The Complaint alleges that Defendants, individual
6 school administrators, violated Plaintiff’s constitutional rights because the District “authorizes” students
7 to make decisions regarding their own name and pronouns and use facilities consistent with their gender,
8 without “parental knowledge or consent.” Dkt. No. 1 at ¶ 21, 59.

9 **ARGUMENT**

10 A preliminary injunction is “an extraordinary and drastic remedy, one that should not be granted
11 unless the movant, by a clear showing, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d
12 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)). “A
13 plaintiff seeking a preliminary injunction must establish that [they are] likely to succeed on the merits,
14 that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
15 equities tips in [their] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def.*
16 *Council, Inc.*, 555 U.S. 7, 20 (2008). Because Plaintiff in this case is unable to demonstrate a likelihood
17 of success on the merits of her claims, her motion for a preliminary injunction must fail.

18 **I. Plaintiff Is Unlikely to Succeed on the Merits of Her Claims**

19 **A. Parents do not have an absolute right to control their children’s public education.**

20 The Due Process Clause of the Fourteenth Amendment does not encompass a fundamental right
21 for parents to control the name or pronouns their children go by at school. Though parents possess broad
22 rights as to the care of their minor children, those rights are not absolute and do not govern the types of
23 school policies or practices at issue here.

24 Parents have a fundamental right “to make decisions concerning the care, custody, and control of
25 their children,” *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion), but that liberty interest is
26 subject to regulation “in the public interest.” *Parents for Privacy v. Barr*, 949 F.3d 1210, 1231 (9th Cir.
27 2020), *cert. denied*, 141 S. Ct. 894 (2020); *see also Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)

1 (parents’ liberty interest in their children’s upbringing is neither exclusive nor “beyond regulation in the
2 public interest.”)

3 When considering the relationship between the fundamental right to parent and public schools,
4 courts have consistently held that parents possess “the right to choose the educational forum, but not
5 what takes place inside the school.” *Cal. Parents for the Equalization of Educ. Materials v. Torlakson*,
6 973 F.3d 1010, 1020 (9th Cir. 2020), *cert. denied sub nom.*, 141 S. Ct. 2583 (2021). Parental rights are
7 “substantially diminished” once a family elects to send their children to public school, and parents “do
8 not have a due process right to interfere with the curriculum, discipline, hours of instruction, or the
9 nature of any other curricular or extracurricular activities” within public schools. *Id.* Parents who
10 disagree with school policies “have the right to remove their children” from public schools, but do not
11 have the right to dictate different policies within those schools. *Parents for Priv.*, 949 F.3d at 1230 n.16.

12 *In Parents for Privacy v. Barr*, the Ninth Circuit considered a challenge, brought by a group of
13 parents and students, to an Oregon school district’s policy allowing transgender students to use
14 restrooms and other facilities consistent with their gender identity. It affirmed dismissal of the group’s
15 substantive due process claim, noting that “the fundamental right to control the upbringing of one’s
16 children does not extend so far as Plaintiffs’ [sic] hypothesize” and that otherwise “accommodating the
17 different ‘personal, moral, or religious concerns of every parent’” on a “controversial” issue like
18 transgender inclusion “would be ‘impossible’ for public schools.” *Id.* at 1233, *citing Fields v. Palmdale*
19 *Sch. Dist.*, 427 F.3d 1197, 1206-07 (9th Cir. 2005), *amended on denial of reh’g* by 447 F.3d 1187 (9th
20 Cir. 2006) (per curiam).³ For the same reasons, Plaintiff’s attack on the District’s practices of affirming
21 student gender identity and privacy must fail.

22 **B. Schools are not providing “medical treatment” in affirming student gender identity.**

23 Plaintiff attempts to evade the caselaw making clear that parents do not have a fundamental right
24 to dictate the details of school policy by relying heavily on claims made by purported medical expert
25 Dr. Stephen Levine in a lengthy declaration attached to the complaint. *See* Dkt. No. 1, Ex. A. As an

26 ³ Similarly, in a case analogous to this one, a Maryland district court recently considered “whether the
27 Plaintiffs’ constitutional rights as parents encompasses [sic] a fundamental right to be promptly
28 informed of their child’s gender identity, when it differs from that usually associated with their sex
assigned at birth...” *John and Jane Parents I v. Montgomery Cnty. Bd. of Educ.*, 2022 WL 3544256, *7
(D. Md. Aug. 18, 2022), (appeal pending). The Maryland court concluded “there is no such fundamental
right under the Due Process Clause of the Fourteenth Amendment.” *Id.*

1 initial matter, Dr. Levine’s habitual mischaracterization of medical science while arguing vociferously
2 against affirmation of transgender identities has led several courts to question and/or reject Dr. Levine’s
3 “expert” medical opinions. *Hecox v. Little*, 479 F. Supp. 3d 930, 977 n.33 (D. Idaho 2020) (declining to
4 credit “expert opinion from Dr. Stephen Levine claiming gender-affirming policies...are instead harmful
5 to transgender individuals” and citing prior district court opinions that found Levine to be “an outlier” in
6 the field of gender dysphoria research and that he has relied on generalizations, “illogical inferences,”
7 inaccuracies, and fabrication in prior expert testimony) (citing *Edmo v. Idaho Dep’t of Corr.*, 358 F.
8 Supp. 3d 1103, 1125 (D. Idaho 2018) (*vacated in part on other grounds in Edmo v. Corizon*, 935 F.3d
9 757 (9th Cir. 2019)); *see also Norsworthy v. Beard*, 87 F. Supp. 3d 1164, 1188–89 (N.D. Cal.
10 2015)), *aff’d in relevant part, Hecox v. Little*, No. 20-35813, 2023 WL 1097255 (9th Cir. Jan. 30, 2023).
11 Here, Dr. Levine asserts that affirming a child’s gender identity by honoring their request for a change
12 of name and/or pronoun at school constitutes “medical treatment,” and that such “treatment” harms
13 young people. As detailed in the accompanying Declaration of Dr. Jack Turban, these contentions are
14 both false.

15 As Dr. Turban explains, “social transition” refers to steps an individual takes to adopt a gender
16 expression that aligns with their gender identity. *See* Turban Decl., ¶ 19. It can encompass everything
17 from changing one’s name to changing one’s style of dress. *Id.* These changes in gender expression are
18 available for an individual to take without interfacing with a medical or mental health professional, and
19 are not “medical interventions.”⁴ *Id.* Neither the fact that social transition steps can help alleviate the
20 clinical distress known as “gender dysphoria,” nor the fact that many individuals seek help from a health
21 care provider in navigating social transition steps, renders the steps themselves medical treatment. *See*
22 *id.* at ¶¶ 32-34.

23 Further, in the context of social gender transition for young people, a health care provider’s
24 involvement often consists of helping the young person anticipate and navigate bullying or other
25 potential negative responses to steps like changes of name or hairstyle. *Id.* at ¶¶ 19, 32. Such

26 ⁴ Indeed, this understanding of transition and being transgender is reflected in the CDE Guidance:
27 “‘Transgender’ describes people whose gender identity is different from that traditionally associated
28 with their assigned sex at birth. . . . An individual can express or assert a transgender gender identity in a
variety of ways, which may but do not always include specific medical treatments or procedures.
Medical treatments or procedures are not considered a prerequisite for one’s recognition as transgender.”

1 professional support may not be necessary, however, in communities where transgender people are
2 receiving support and respect. *Id.* at ¶ 19. Dr. Turban also observes that it is not coercive for school
3 personnel to communicate with a student about the student’s gender-related preferences and honor their
4 stated preferences, nor is it fairly characterized as forcing a social transition upon the student. *Id.* at ¶ 19.
5 And changes in gender expression do not represent “medical” and/or “psychological treatment.” *See*
6 Dkt. 2-1 at 17-20. Young people commonly pursue elements of social transition like a change of name
7 and/or pronoun prior to any communication with a health care provider about their gender. Turban
8 Decl., ¶ 32. The prevailing medical standards of care note that a professional provider “may” assist
9 young people and their families in exploring the potential benefits and challenges of social transition,
10 but they do not posit that professional involvement is a necessary component of youth social transition,
11 nor do they construe steps in the social transition process as medical interventions. *Id.*

12 To be sure, socially affirming an individual’s gender can in some cases play an important role in
13 alleviating the medical problem of gender dysphoria; however, this does not transform social and
14 administrative steps, like the use of a particular name in the classroom, into medical treatment subject to
15 more intense legal scrutiny. It would be absurd to accuse school personnel of providing or imposing
16 medical treatment when they seat a student with known vision challenges closer to the front of a
17 classroom or provide fidget toys for a student with hyperactive behavior patterns; by the same token, it
18 is absurd to construe school staff’s respect for a student’s stated name and pronoun preferences as
19 medical treatment.

20 **C. School policies affirming student gender identity and privacy meet any level of**
21 **constitutional scrutiny.**

22 Because Plaintiff’s fundamental rights are not infringed by the District’s policies affirming
23 student gender identity and privacy, these policies should only be subjected to rational basis review. *See*
24 *Fields*, 427 F.3d at 1209-10; *see also Parents for Priv.*, 949 F.3d at 1238. Nonetheless, schools have
25 compelling interests in affirming student gender identity and privacy.

26 **1. Schools have a compelling interest in affirming student gender identity.**

27 As the CDE Guidance explains, affirming students’ names, gender pronouns, and privacy
28 “promote[s] the goals of reducing the stigmatization of and improving the educational integration of

1 transgender and gender nonconforming students.” CDE Guidance. Reducing the stigmatization of and
 2 improving the educational integration of transgender students is not an abstract interest. “Transgender
 3 students face unique challenges in the school setting,” *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d
 4 586, 597 (4th Cir. 2020) and “[w]hen transgender students face discrimination in schools, the risk to
 5 their wellbeing cannot be overstated—indeed, it can be life threatening,” *Doe by and through Doe v.*
 6 *Boyertown Area Sch. Dist.*, 897 F.3d 518, 529 (3d Cir. 2018).

7 Recent research confirms that transgender students are uniquely vulnerable to bullying and
 8 harassment in California schools. An analysis of 2017-2019 California school data found that
 9 transgender students were more than twice as likely as their non-transgender peers to report experiences
 10 of bullying and harassment, fear of physical violence, and chronic sadness, as well as significantly less
 11 likely to report feeling safe at school or having an adult at school who cares about them.⁵ The same
 12 report also found that transgender students were at least three times as likely to report having seriously
 13 considered committing suicide in the past year when compared to their non-transgender peers.⁶ Overall,
 14 research has consistently shown that LGBTQ+ youth report having less meaningful school participation,
 15 lower expectations from adults, fewer caring adult relationships at school, and a lower level of school
 16 connection than non-LGBTQ+ youth.⁷ LGBTQ+ youth in rural areas report experiencing even harsher
 17 negative school environments than LGBTQ+ youth in urban areas.⁸

18 Yet transgender students perform as well as their cisgender peers when their gender identity is
 19 affirmed with appropriate pronouns and names. *See Boyertown*, 897 F.3d at 523 (“[W]hen transgender
 20 students are addressed with gender appropriate pronouns and permitted to use facilities that conform to
 21 their gender identity, those students reflect the same, healthy psychological profile as their peers.”)
 22 (internal quotation marks and footnote omitted). While rejection and harassment at school are correlated
 23

24 ⁵ Thomas Hanson et al., *Understanding the Experiences of LGBTQ Students in California*, WestEd
 25 (2019), <https://www.wested.org/resources/lgbtq-students-in-california/>; *see also supra* note 1.

26 ⁶ *Id.*

27 ⁷ *See e.g.*, Soon Kyu Choi et al., *LGBTQ Youth in California’s Public Schools: Differences Across the*
 28 *State*, The Williams Institute (October 2017), [https://williamsinstitute.law.ucla.edu/wp-](https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Youth-CA-Public-Schools-Oct-2017.pdf)
 content/uploads/LGBTQ-Youth-CA-Public-Schools-Oct-2017.pdf; GLSEN, *School Climate for LGBTQ*
Students in California, (2019), [https://www.glsen.org/sites/default/files/2021-01/California-Snapshot-](https://www.glsen.org/sites/default/files/2021-01/California-Snapshot-2019.pdf)
 2019.pdf.

⁸ *Id.*

1 with negative mental health outcomes, the “opposite is also true []: transgender students have better
2 mental health outcomes when their gender identity is affirmed.” *Grimm*, 972 F.3d at 597.

3 School policies affirming students’ gender identities—*i.e.*, refusing to discriminate against
4 them—therefore serve a compelling state interest. *See Boyertown*, 897 F.3d at 528 (school policy served
5 a compelling state interest in not discriminating against transgender students); *see also Goehring v.*
6 *Brophy*, 94 F.3d 1294, 1300 (9th Cir. 1996) (holding that a university had a compelling interest in the
7 “health and well-being of its students”).

8 **2. Schools have a compelling interest in student privacy.**

9 Contrary to Plaintiff’s contentions, Courts have recognized that young people have privacy
10 interests, even with respect to their parents. *See Nguon v. Wolf*, 517 F. Supp. 2d 1177, 1191 (C.D. Cal.
11 2007) (holding that student has “constitutionally protected privacy right with respect to disclosure of her
12 sexual orientation” by school administrators to her parents, under both federal and state constitutions)
13 (referencing reasoning set forth in *C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005)); *see also*
14 *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir. 2000) (finding police officer’s threatened
15 disclosure of an arrested teenager’s sexual orientation to the teenager’s grandfather—which resulted in
16 the teenager committing suicide—violated the teenager’s constitutionally protected privacy interests).
17 Further, the student’s expectation of privacy may be reasonable vis-à-vis their parent, even if the student
18 shares the information at school. In *C.N. v. Wolf*, for example, the school district argued that the student
19 could not have a reasonable expectation of privacy regarding her sexual orientation because she was
20 “openly gay at school.” *C.N.*, 410 F. Supp. 2d at 903. The court rejected this reasoning “because “[t]he
21 fact that an event is not wholly private does not mean that an individual has no interest in limiting
22 disclosure or dissemination of information.” *Id.* (quoting *U.S. Dep’t of Just. v. Repts. Comm. for*
23 *Freedom of Press*, 489 U.S. 749, 770 (1989)).

24 As the CDE Guidance also recognizes, “[r]evealing a student’s gender identity or expression to
25 others may compromise the student’s safety.” CDE Guidance. Transgender young people frequently
26 experience family rejection, and LGBT youth represent as much as 40% of the unhoused youth
27 population.⁹ For that reason, the Guidance specifically recommends that school staff take particular

28 ⁹ *See, e.g.,* Sabra Katz-Wise et al., *LGBT Youth and Family Acceptance* (author manuscript),
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5127283/> (last visited February 13, 2023); Nat’l

1 precautions if they believe they must share a student’s gender identity or expression with the student’s
 2 parents against the student’s wishes. CDE Guidance (“In those very rare circumstances where a school
 3 believes there is a specific and compelling ‘need to know,’ the school should inform the student that the
 4 school intends to disclose the student’s transgender status, giving the student the opportunity to make
 5 that disclosure her or himself. Additionally, schools must take measures to ensure that any disclosure is
 6 made in a way that reduces or eliminates the risk of re-disclosure and protects the transgender student
 7 from harassment and discrimination.”).

8 In addition to those very real safety concerns, transgender students should not be required to
 9 exchange their privacy for affirmation of their gender identity in school. *See, e.g., Boyertown*, 897 F.3d
 10 at 530 (rejecting position that would “very publicly brand all transgender students with a scarlet “T,”
 11 because transgender students “should not have to endure that as the price of attending their public
 12 school”); *John and Jane Parents I*, 2022 WL 3544256 at *14 (analogous policy in Maryland school
 13 district subject to rational basis review but would have satisfied strict scrutiny, in part because a
 14 “transgender child could hardly feel safe in an environment where expressing their gender identity
 15 resulted in . . . automatic disclosure to their parents, regardless of their own wishes or the consequences
 16 of the disclosure.”). Respecting students’ autonomy to decide when and to whom they disclose their
 17 gender identity or transgender status is part of a school’s compelling interest in recognizing student
 18 privacy interests. *See, e.g., Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 333 (D.P.R.
 19 2018) (holding that forced disclosure of plaintiffs’ transgender status violated their constitutional rights
 20 to decisional privacy).

21 **3. Schools have a compelling interest in fostering inclusive educational**
 22 **environments.**

23 Policies that protect transgender students also “foster[] an environment of inclusivity,
 24 acceptance, and tolerance,” which “not only serves the compelling interest of protecting transgender
 25 students, but it benefits all students by promoting acceptance.” *Boyertown*, 897 F.3d at 529. Given the
 26 “importance of education to our democratic society” as “the very foundation of good citizenship,”

27 _____
 28 Coalition to End Homelessness, *LGBT Homelessness*, <https://nationalhomeless.org/issues/lgbt/> (last visited February 13, 2023).

1 including “awakening the child to cultural values, in preparing him for later professional training, and in
2 helping him to adjust normally to his environment,” *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 493
3 (1954), it is well within schools’ purview to foster an environment of inclusivity, acceptance, and
4 tolerance for transgender students, for the benefit not only of those particular students, but all students.

5 **4. School policies affirming student gender identity and privacy are narrowly**
6 **tailored to further compelling state interests.**

7 School policies like the CDE Guidance are narrowly tailored to ensure that schools can generally
8 provide for the safety and well-being of students, while affording flexibility to school staff in terms of
9 their communication with parents. Narrow tailoring requires “serious, good faith consideration of
10 workable [] alternatives,” even if the state need not “exhaust . . . every conceivable [] alternative.”
11 *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003); *see also Smith v. Univ. of Washington*, 392 F.3d 367,
12 372 (9th Cir. 2004) (“In assessing whether the Law School has met this burden [of showing a policy is
13 narrowly tailored], however, we must assume that it acted in good faith in the absence of a showing to
14 the contrary and defer to its educational judgments.”).

15 The CDE Guidance is narrowly tailored because it is the only workable option to protect the
16 state’s interests in affirming student gender identity and privacy. Plaintiff’s proposed re-writing of the
17 policy—to require parental notification or consent before allowing students to use the name and
18 pronouns that reflect who they know themselves to be—invites discrimination against transgender
19 students by, among other things, conditioning the student’s request to affirm their gender identity on
20 their parent’s approval. In addition, Plaintiff’s proposed policy would require disclosing students’
21 gender identity to parents, in possible violation of the student’s privacy rights and at risk to their safety
22 and wellbeing. Instead, the CDE Guidance recognizes that schools may share a student’s gender identity
23 with parents in some limited circumstances, and it requires that in those circumstances, schools take
24 measures to protect student safety.

25 Finally, school policies that affirm student gender identity and privacy at school by their own
26 terms are limited in scope: they extend no further than the schoolhouse door. These policies do not
27 require that parents address their child in any particular way or prevent parents from inculcating their
28 child with their own views about gender identity generally or their child’s gender identity specifically.

1 **D. Plaintiff was not entitled to individualized notice and hearing.**

2 Plaintiff argues in the alternative that her procedural due process rights were violated because
 3 she did not get individualized notice and an opportunity to be heard. Dkt. 2-1 at 23-24. Yet
 4 “governmental decisions which affect large areas and are not directed at one or a few individuals do not
 5 give rise to the constitutional procedural due process requirements of individual notice and hearing;
 6 general notice as provided by law is sufficient.” *Halverson v. Skagit Cnty.*, 42 F.3d 1257, 1261 (9th Cir.
 7 1994). And in the context of school-board decisions, even a failure to comply with procedural
 8 regulations in setting policy does not give rise to a procedural due process violation. *See Jacobs v. Clark*
 9 *Cnty. Sch. Dist.*, 526 F.3d 419, 441 (9th Cir. 2008) (“[A]lthough it might be preferable for schools to
 10 seek parental approval before instituting controversial school policies, and it might be a violation of state
 11 law for schools not to do so if a local statute or regulation so dictates, the Due Process Clause in no way
 12 requires this.”). Recently, for example, courts have rejected procedural due process challenges to school
 13 mask policies. *See, e.g., Gunter v. N. Wasco Cnty. Sch. Dist. Bd. of Educ.*, 577 F. Supp. 3d 1141, 1160-
 14 61 (D. Or. 2021).

15 **II. Plaintiff Cannot Satisfy the Other Requirements for a Preliminary Injunction**

16 Plaintiff has failed to demonstrate irreparable harm absent injunctive relief, and the balance of
 17 equities tilts in Defendants’ favor. Although Plaintiff and her purported expert seek to paint affirmation
 18 of students’ name and pronoun preferences at school as risking irreparable harm, evidence abounds that
 19 affirming young people’s expressed gender identity tends to improve, not harm, their health.

20 Honoring a young person’s wishes regarding the name and pronouns used for them at school is a
 21 matter of basic respect and consistent with the fostering of a supportive learning community, whether or
 22 not the young person’s preferences change over time. In his declaration, Dr. Turban explains that use of
 23 the name chosen by a transgender young person helps them avert depressive symptoms, suicidal
 24 ideation, and suicidal behavior. Turban Decl., ¶ 33. Research specifically confirms a statistically
 25 significant mental health benefit for transgender young people for each additional life context (e.g.,
 26 school, work, home, social settings) in which they can go by the name best fitting their gender identity.
 27 *Id.* School officials who affirm a student’s expressed gender identity and establish policies to ensure that
 28 other school personnel do so are not only complying with applicable California law and guidance to

1 school districts, but also acting in the best interests of their students. *See, e.g., Fields*, 427 F.3d at 1211
2 (deeming school district’s administration to students of survey, to which some parents objected because
3 it covered matters relating to sex and mental health, a “reasonable state action pursuant to legitimate
4 educational as well as health and welfare interests of the state”). For this reason, GSA Network
5 sponsored and supported the enactment of many of these laws and has supported its youth leaders in
6 ensuring their implementation across California’s public schools. *See* Decl. of Ginna Brelsford, ¶ 4.

7 Plaintiff and Dr. Levine seek to portray the affirmation of a young person’s name and pronouns
8 at school as a step likely to *cause* that young person to undergo subsequent gender-affirming medical
9 interventions, which in turn they portray as harmful. *See* Dkt. 2-1 at 16-17 (citing Levine Decl. ¶ 110).
10 However, these characterizations are false. As Dr. Turban explains, the hypothesis that social transition
11 intensifies a young person’s transgender identity has been specifically studied and rejected. Turban
12 Decl., ¶ 24. To the extent there exists a statistical correlation between social transition in childhood and
13 subsequent “persistence” of a transgender identity, this is because those who pursue social transition at a
14 young age tend to have experienced strong discordance between their gender identity and their sex
15 assigned at birth. *Id.* Social transition itself does not intensify a child’s gender identity or impact their
16 likelihood of pursuing other transition steps later in life. *See id.*

17 Even if gender-affirming medical interventions were relevant to the issues before the Court (they
18 are not), Dr. Levine’s fearmongering about medical transition as harmful to transgender people’s
19 physical and mental health relies on outdated research and distortions of the scientific record. *See id.* at
20 ¶¶ 25-31. The latest medical science indicates a strong correlation between accessing desired gender-
21 affirming medical care and improved well-being for transgender people. *See, e.g.,* Diane Chen et al.,
22 *Psychosocial Functioning in Transgender Youth After 2 Years of Hormones*, *New England Journal of*
23 *Medicine* 388:240-250 (January 19, 2023) (finding that gender-affirming hormone therapy improved
24 psychosocial functioning among transgender and nonbinary adolescents). Thus, Dr. Levine’s effort to
25 construe social transition at school as causing further transition steps that are medical and harmful in
26 nature is unavailing. Given the substantial risk of harm to transgender students across the District if its
27 affirming policies were enjoined, the balance of equities here tilts decidedly in Defendants’ favor, and
28 granting a preliminary injunction would not serve the public interest.

CONCLUSION

For the foregoing reasons, GSA Network respectfully requests that the Court deny Plaintiff's motion for a preliminary injunction.

Dated: February 14, 2023

Respectfully submitted,

/s/ Elizabeth O. Gill

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17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF CALIFORNIA**

20 AURORA REGINO,

21 Plaintiff,

22 v.

23 SUPERINTENDENT KELLY STALEY, in her official
24 capacity; CAITLIN DALBY, in her official capacity;
REBECCA KONKIN, in her official capacity; TOM
25 LANDO, in his official capacity; EILEEN
ROBINSON, in her official capacity; and MATT
26 TENNIS, in his official capacity,

27 Defendants.
28

Case No. 2:23-cv-00032-JAM-DMC

**DECLARATION OF JACK
TURBAN IN SUPPORT OF
PROPOSED DEFENDANT-
INTERVENOR GSA NETWORK'S
OPPOSITION TO DEFENDANT'S
MOTION FOR PRELIMINARY
INJUNCTION**

Judge: Judge John A. Mendez
Date: February 28, 2023
Time: 1:30 P.M.

1 6. My research focuses on the mental health of transgender youth and gender dysphoria.
2 While at Yale, I was awarded the Ferris Prize for my thesis entitled “Evolving Treatment Paradigms for
3 Transgender Youth.” In 2017, I received the United States Preventative Health Services Award for
4 Excellence in Public Health based on my work related to the mental health of transgender youth. I have
5 lectured on the mental health of transgender youth at Yale School of Medicine, UCSF, Stanford, and The
6 Massachusetts General Hospital (a teaching hospital of Harvard Medical School). I have given grand
7 rounds presentations around the country and have presented nationally and internationally on the topic.
8

9 7. I have served as a manuscript reviewer for numerous professional publications, including
10 *The Journal of The American Medical Association (JAMA)*, *JAMA Pediatrics*, *JAMA Psychiatry*, *The*
11 *Journal of The American Academy of Child & Adolescent Psychiatry*, *Pediatrics*, *The Journal of*
12 *Adolescent Health*, and *The American Journal of Public Health*. I have served as lead author for textbook
13 chapters on the mental health of transgender youth, including for *Lewis’s Child & Adolescent Psychiatry:*
14 *A Comprehensive Textbook* and the textbook of The International Academy for Child & Adolescent
15 Psychiatry and Allied Professionals. I am co-editor of the textbook *Pediatric Gender Identity: Gender-*
16 *Affirming Care for Transgender and Gender Diverse Youth*.
17

18 8. I have published extensively on the topic of transgender youth, including ten articles in
19 peer-reviewed journals within the past two years.

20 9. I was deposed and testified at trial in *Brandt et al. v. Rutledge, et al.*, No. 21-CV-450 (D.
21 Ark. 2021).

22 10. I am being compensated at an hourly rate of \$250 per hour for preparation of expert
23 declarations and reports, and \$400 per hour for time spent preparing for or giving deposition or trial
24 testimony. My compensation does not depend on the outcome of this litigation, the opinions I express, or
25 the testimony I provide.
26
27
28

SUMMARY OF OPINIONS

1
2 11. In this declaration, I cite relevant literature to support my opinions that: (1) existing
3 evidence suggests a strong biological basis for gender identity; (2) the latest available research indicates
4 that social transitions do not make “persistence” of a transgender identity any more or less likely, (3) the
5 notion of “rapid onset gender dysphoria” is not supported by existing evidence, (4) older studies with
6 substantial methodological flaws should not be used to predict “desistence” rates among children
7 diagnosed with gender dysphoria and have no bearing on rates of “desistence” among adolescents; (5)
8 the mere act of using a transgender youth’s affirmed name and pronouns does not constitute medical
9 treatment; and (6) research has consistently linked social gender affirmation to better mental health
10 outcomes for transgender youth.
11

12 **SEX, GENDER, GENDER DYSPHORIA, & TRANSGENDER IDENTITIES**

13 12. “Sex assigned at birth” refers to the sex assigned to a person at the time of their birth,
14 typically based on the appearance of external genital characteristics, and is subsequently recorded on their
15 birth certificate. In contrast, the term “biological sex” refers to a complex multidimensional trait and can
16 have heterogenous definitions. Biological sex may be defined in terms of external genitalia (e.g., penis or
17 vulva), internal sex organs (e.g., uterus), sex chromosomes (e.g., XX or XY), or variations in brain
18 structure and function. Because these various domains of sex may not always be in “perfect alignment”
19 with the general societal expectations based on one’s sex assigned at birth, The Endocrine Society has
20 highlighted that, “the terms biological sex and biological male or female are imprecise and should be
21 avoided.”¹
22

23
24 13. “Gender identity,” in contrast to sex assigned at birth, is “a category of social identity and
25 refers to an individual’s identification as male, female, [or] some category in between.”² “Gender
26

27 ¹ Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., ... & T’Sjoen, G. G.
28 (2017). Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice
guideline. *The Journal of Clinical Endocrinology & Metabolism*, 102(11), 3869-3903.

² American Psychiatric Association. (2022). Diagnostic and Statistical Manual of Mental Disorders Fifth Edition Text
Revision—DSM-5-TR. *American Psychiatric Association: Washington, DC, USA.*

1 expression” refers to ways in which people present their gender identity to the outside world through
2 names, pronouns, haircuts, clothing, etc.³

3 14. The term “transgender” refers to people whose gender identity does not strictly align with
4 their sex assigned at birth. This term is inclusive of both binary transgender identities (e.g., transgender
5 women) and non-binary transgender identities (*i.e.*, those that are neither solely male nor solely female).
6 The term “cisgender” refers to people whose gender identity does align with their sex assigned at birth.
7 As documented by The American Medical Association,⁴ The American Psychiatric Association,⁵ The
8 American Academy of Pediatrics,⁶ and The American Academy of Child & Adolescent Psychiatry,⁷
9 efforts to change a person’s gender identity are ineffective, dangerous, and unethical.
10

11 15. “Gender dysphoria in children” is a diagnosis applied *only to pre-pubertal children* in the
12 Diagnostic and Statistical Manual Fifth Edition, Text Revision (DSM-5-TR), published in 2022.⁸ The
13 criteria are:

- 14 A. A marked incongruence between one’s experienced/expressed gender and assigned
15 gender, of at least 6 months’ duration, as manifested by at least six of the following
16 (one of which must be Criterion A1):
- 17 1. A strong desire to be of the other gender or insistence that one is the other
18 gender (or some alternative gender different from one’s assigned gender)
 - 19 2. In boys (assigned gender), a strong preference for cross-dressing or simulating
20 female attire; or in girls (assigned gender), a strong preference for wearing
21 only typical masculine clothing and a strong resistance to the wearing of
22 typical feminine clothing.

23 ³ Turban, J. L., King, D., Li, J. J., & Keuroghlian, A. S. (2021). Timing of social transition for transgender and gender diverse
youth, K-12 harassment, and adult mental health outcomes. *Journal of Adolescent Health, 69*(6), 991-998.

24 ⁴ American Medical Association. Health care needs of lesbian, gay, bisexual and transgender populations. H-160.991. 2017.
<https://policysearch.amaassn.org/policyfinder/detail/gender%20identity?uri=%2FAMADoc%2FHOD.xml-0-805.xml>

25 ⁵ Byne W, Bradley SJ, Coleman E, et al; American Psychiatric Association Task Force on Treatment of Gender Identity
Disorder. Report of the American Psychiatric Association Task Force on treatment of gender identity disorder. *Arch Sex
Behav.* 2012;41 (4):759-796.

26 ⁶ Rafferty J; Committee on Psychosocial Aspects of Child and Family Health; Committee on Adolescence; Section on
Lesbian, Gay, Bisexual, and Transgender Health and Wellness. Ensuring comprehensive care and support for transgender and
27 gender-diverse children and adolescents. *Pediatrics.* 2018;142(4):e20182162.

28 ⁷ The American Academy of Child & Adolescent Psychiatry. Conversion Therapy. 2018.
https://www.aacap.org/AACAP/Policy_Statements/2018/Conversion_Therapy.aspx.

⁸ American Psychiatric Association. (2022). Diagnostic and Statistical Manual of Mental Disorders Fifth Edition Text
Revision—DSM-5-TR. *American Psychiatric Association: Washington, DC, USA.*

- 1 3. A strong preference for cross-gender roles in make-believe play or fantasy
2 play.
- 3 4. A strong preference for the toys, games, or activities stereotypically used or
4 engaged in by the other gender.
- 5 5. A strong preference for playmates of the other gender.
- 6 6. In boys (assigned gender), a strong rejection of typically masculine toys,
7 games, and activities and a strong avoidance of rough-and-tumble play; or in
8 girls (assigned gender), a strong rejection of typically feminine toys, games,
9 and activities.
- 10 7. A strong dislike of one's sexual anatomy.
- 11 8. A strong desire for the primary and/or secondary sex characteristics that
12 match one's experienced gender.

13 B. The condition is associated with clinically significant distress or impairment in social
14 circles, school, or other important areas of functioning.

15 16. The DSM-5-TR has a separate diagnosis of "gender dysphoria in adolescents and adults".⁹

16 This diagnosis can only be applied to people who have reached adolescence (*i.e.*, the early stages of
17 puberty). The criteria are:

- 18 A. A marked incongruence between experienced/expressed gender and assigned
19 gender, of at least 6 months' duration, as manifested by at least two of the following:
 - 20 1. A marked incongruence between one's experienced/expressed gender and primary
21 or secondary sex characteristics (or in young adolescents, the anticipated
22 secondary sex characteristics).
 - 23 2. A strong desire to be rid of one's primary and/or secondary sex characteristics
24 because of a marked incongruence with one's experienced/expressed gender (or in
25 young adolescents, a desire to prevent the development of the anticipated
26 secondary sex characteristics).
 - 27 3. A strong desire for the primary and/or secondary sex characteristics of the other
28 gender.
 1. A strong desire to be of the other gender (or some alternative gender different
from one's assigned gender).
 2. A strong desire to be treated as the other gender (or some alternative gender
different from one's assigned gender).

⁹ American Psychiatric Association. (2022). Diagnostic and Statistical Manual of Mental Disorders Fifth Edition Text Revision—DSM-5-TR. *American Psychiatric Association: Washington, DC, USA.*

1 19. “Social transition” refers to a person adopting a gender expression that aligns with their
2 gender identity. Such a social transition may look different for different people. It can involve changing
3 various forms of gender expression (e.g., names, pronouns, haircuts, clothing, jewelry). It can also involve
4 pursuing such changes in only certain or in all environments (e.g., only at work, only at school, only at
5 home, any combination of these, or in all contexts). These changes in gender expression are easily made
6 without interfacing with a medical or mental health professional, and are, in and of themselves, not
7 medical interventions. However, because transgender youth may face harassment or discrimination in
8 their schools or communities when pursuing various forms of social transition, it may be recommended
9 that a transgender young person and their family collaborate with a mental health professional who is able
10 to work with the school and community to reduce things like bullying that could adversely impact a young
11 person’s mental health.¹¹ Such a mental health professional can also work with a child or adolescent to
12 make sure if any such bullying does occur, that the child is adequately supported from a mental health
13 perspective. Such mental health support may not be necessary, however, in communities where
14 transgender people are respected and supported.
15
16

17 20. It is important to highlight that a social transition is not something that is forced upon
18 someone. I have noticed that in some filings in this case, the plaintiffs have used “socially transition” as
19 an active verb, with a person as the direct object, as if the social transition were being forced upon a person
20 against their will. Plaintiffs have repeatedly added the word “active” to their definition of social transition.
21 This does not represent the reality of social transition for transgender youth. Transgender people
22 experience strong pressure from society to *not* socially transition. The vast majority of transgender people
23 are socially sanctioned, harassed, and discriminated against, when they pursue various forms of social
24 transition. In a study of over 9,000 transgender adults that we recently published in the *Journal of*
25 *Adolescent Health*, we found that 52.7% of transgender people who socially transitioned during childhood
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¹¹ Turban, J. L., King, D., Li, J. J., & Keuroghlian, A. S. (2021). Timing of social transition for transgender and gender diverse youth, K-12 harassment, and adult mental health outcomes. *Journal of Adolescent Health, 69*(6), 991-998.

1 were harassed in school, with 26.7% being physically attacked for being transgender. Similarly, among
2 those who socially transitioned during adolescence, 62% had been harassed in school, with 26.1% being
3 physically attacked. Rather than a school or family “socially transitioning a youth,” they generally are
4 simply allowing the child to use the name and pronouns they already wish to use. A school forcing a social
5 transition upon a child would be inappropriate, and it would also be an extraordinarily rare situation.
6 Asking a child if they would like to change their gender expression in some way is neither coercive nor
7 synonymous with forcing a social transition upon a child.
8

9 **EXISTING EVIDENCE SUGGESTS A STRONG BIOLOGICAL BASIS FOR GENDER**
10 **IDENTITY**

11 21. Plaintiffs have asserted, in reference to transgender identities, that “there is strong evidence
12 they are not biologically based.”¹² This is categorically false. There is a substantial body of literature
13 showing that transgender identity has a strong innate biological basis. Researchers have examined
14 identical twins (with the same DNA) and fraternal twins (with different DNA) and found that identical
15 twins of transgender people are far more likely to be transgender than fraternal twins of transgender people
16 and, thus, concluded that gender identity has a strong genetic component.¹³ Functional neuroimaging
17 studies have shown that transgender adolescents have patterns of brain activation more similar to those of
18 other people who share their gender identity than people of the same sex assigned at birth.¹⁴ Sophisticated
19 gene sequencing studies have suggested that genes involved in estrogen processing play a role in the
20 development of gender identity among transgender people.¹⁵ Though the precise etiology of gender
21 identity has yet to be identified, these studies together establish that there is a strong innate biological
22 basis for transgender identity.
23

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25
26 ¹² See Plaintiffs’ Memorandum in Support of Motion for Preliminary Injunction at 2.

27 ¹³ See, for example, Coolidge, F. L., Thede, L. L., & Young, S. E. (2002). The heritability of gender identity disorder in a
28 child and adolescent twin sample. *Behavior Genetics*, 32(4), 251-257.

¹⁴ Burke, S. M., Cohen-Kettenis, P. T., Veltman, D. J., Klink, D. T., & Bakker, J. (2014). Hypothalamic response to the
chemo-signal androstadienone in gender dysphoric children and adolescents. *Frontiers in Endocrinology*, 5, 60.

¹⁵ Theisen, J. G., Sundaram, V., Filchak, M. S., Chorich, L. P., Sullivan, M. E., Knight, J., ... & Layman, L. C. (2019). The
use of whole exome sequencing in a cohort of transgender individuals to identify rare genetic variants. *Scientific
Reports*, 9(1), 1-11.

**THE LATEST RESEARCH INDICATES THAT SOCIAL TRANSITION DOES NOT MAKE
“PERSISTENCE” MORE LIKELY**

1
2 22. Dr. Levine’s assertion that a social transition makes a person transgender or increases the
3 likelihood of persistence is not accurate. Dr. Levine claims that “[s]ocial transition has a critical effect
4 on the persistence of gender dysphoria” and “engaging in social transition starts a juvenile on a
5 ‘conveyor belt’ path that leads in the vast majority of cases to puberty blockers, which in turn leads in
6 the vast majority of cases to the administration of cross-sex hormones.” (Lev. Decl. ¶¶ 106, 110). This
7 assertion is premised on the presumption that a social transition will make a child identify more strongly
8 as transgender.
9

10 23. To Dr. Levine’s credit, he appears to be relying on text from the 2017 Endocrine Society
11 Guidelines, which could easily be misconstrued.¹⁶ The guidelines state, “Social transition is associated
12 with the persistence of [gender dysphoria]/gender incongruence as a child progresses into adolescence. It
13 may be that the presence of [gender dysphoria]/gender incongruence in prepubertal children is the
14 earliest sign that a child is destined to be transgender as an adolescent/adult. However, social transition
15 (in addition to [gender dysphoria]/gender incongruence has been found to contribute to the likelihood of
16 persistence.” Dr. Levine focuses in on this last sentence; however, one can see that this full section was
17 actually noting an *association* between social transition and persistence that was not fully understood at
18 the time. The guidelines raised two possibilities: (1) social transition increases transgender identification
19 and thus increases likelihood of persistence, or (2) children who socially transition already have very
20 strong cross-gender identification to begin with, which is why they pursue a social transition, and the
21 social transition does not impact their transgender identity / likelihood of persistence. More recent
22 research has shown the latter phenomenon is the one that is occurring.
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28 ¹⁶ Hembree, W. C., Cohen-Kettenis, P. T., Gooren, L., Hannema, S. E., Meyer, W. J., Murad, M. H., ... & T’Sjoen, G. G. (2017). Endocrine treatment of gender-dysphoric/gender-incongruent persons: an endocrine society clinical practice guideline. *The Journal of Clinical Endocrinology & Metabolism*, 102(11), 3869-3903

24. In 2019, Rae et al. examined the question of whether a social transition intensifies transgender identification in a study they published in the journal *Psychological Science*.¹⁷ They examined a cohort of gender-nonconforming children over two years, during which time 36 socially transitioned. They measured degree of gender incongruence before and after social transition and found that social transition did not increase gender incongruence. Their study made it clear that the association between social transition and “persistence” is because those who undergo a pre-pubertal social transition have stronger discordance between their sex assigned at birth and their gender identity to begin with, prior to the social transition. Social transition itself does not intensify their transgender identity and thus would not impact the likelihood of “persistence” or “desistence” of their transgender identity. In other words, a social transition doesn’t make a child identify more strongly as transgender and thus likely to persist. Rather, kids with strong transgender identification are more likely to pursue a social transition to begin with. This is consistent with the findings of Steensma et al. 2013, that Dr. Levine cites, which also observed that individuals who socially transitioned had more intense gender incongruence.¹⁸

THE NOTION OF “RAPID ONSET GENDER DYSPHORIA” IS NOT SUPPORTED BY EXISTING EVIDENCE

25. The term “rapid-onset gender dysphoria” entered the literature in 2018 through a publication by Dr. Lisa Littman.¹⁹ A correction was later published on this article,²⁰ which noted, “Rapid-onset gender dysphoria (ROGD) is not a formal mental health diagnosis at this time.”²¹ This report did not

¹⁷ Rae, J. R., Gülgöz, S., Durwood, L., DeMeules, M., Lowe, R., Lindquist, G., & Olson, K. R. (2019). Predicting early-childhood gender transitions. *Psychological Science*, 30(5), 669-681

¹⁸ Steensma, T. D., McGuire, J. K., Kreukels, B. P., Beekman, A. J., & Cohen-Kettenis, P. T. (2013). Factors associated with desistence and persistence of childhood gender dysphoria: a quantitative follow-up study. *Journal of the American Academy of Child & Adolescent Psychiatry*, 52(6), 582-590.

¹⁹ Littman, L. (2018). Rapid-onset gender dysphoria in adolescents and young adults: A study of parental reports. *PLoS One*, 13(8).

²⁰ Littman, L. (2019). Correction: Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria. *PLoS One*, 14(3), e0214157.

²¹ A recent study by Bauer et al. in *The Journal of Pediatrics* examined some of the associations that would be consistent with the existence of “rapid-onset gender dysphoria” and concluded that their results “did not support the rapid onset gender dysphoria hypothesis.” Bauer, G. R., Lawson, M. L., Metzger, D. L., & Trans Youth CAN! Research Team. Do Clinical Data from Transgender Adolescents Support the Phenomenon of “Rapid Onset Gender Dysphoria”? *The Journal of Pediatrics*, S0022-3476—

1 collect data from the adolescents and young adults (AYAs) or clinicians and therefore does not validate
2 the phenomenon.” The correction goes on to say “the term should not be used in any way to imply that it
3 explains the experiences of all gender dysphoric youth” The Littman study was an anonymous online
4 survey of the parents of transgender youth, recruited from websites where this notion of “social contagion”
5 leading to transgender identity is popular. The anonymous survey participants were asked what they
6 thought was the etiology of their children’s transgender identity. Some of these parents believed that their
7 children became transgender as a result of watching transgender-related content on websites like *YouTube*
8 and having LGBTQ friends. The alternative interpretation, and in my opinion more likely interpretation,
9 is that these youth sought out transgender-related media and LGBTQ friends because they wanted to find
10 other people who understood their experiences and could offer support. The parent respondents also noted
11 that, from their perspective, their children became transgender “all of a sudden,” hence the term “rapid-
12 onset.” Once again, the problem here is that the study did not interview the adolescents themselves, nor
13 their healthcare providers. It is common for transgender (as with gay, lesbian, and bisexual) children and
14 adolescents to conceal their identity from their parents for long periods of time, out of fear of negative
15 repercussions were their parents to find out (rejection, being kicked out of the house, or even physical
16 assault). Children often learn this early, when their parents have strong negative reactions to them
17 exhibiting gender non-confirming behavior.
18
19

20 26. It is not the case that increase in referrals to gender clinics over the past few decades
21 supports a “social contagion” theory. The increase in referrals has coincided with increased visibility of
22 transgender people in society and greater awareness of gender dysphoria and access to medical care to
23 treat it. Whereas parents in the past may have had limited literacy regarding gender diversity in
24 adolescents, today most Americans, as well as people abroad, have greater understanding of the
25 experiences of transgender youth. This has undoubtedly dramatically increased the number of parents
26 bringing their adolescents to gender clinics for evaluation. Additionally, insurance coverage of gender-
27 affirming medical interventions has improved drastically, meaning that more families are able to afford
28

1 care, which results in an increase in referrals for evaluation. Of note, not all adolescents who present for
2 treatment ultimately go on to receive gender-affirming medical interventions.²² In fact, in a large study
3 from The Netherlands, the percentage of transgender people presenting for evaluation who actually started
4 any kind of gender-affirming treatment has decreased over time.²³ The authors of that study note, “this
5 finding may be explained by the fact that in the past it was harder to find information about [gender
6 dysphoria] and its treatment, and only people with extreme types of [gender dysphoria] managed to visit
7 our gender identity clinic for treatment. Currently, owing to media attention and the internet, it is easier
8 to access information about our gender identity clinic, making the threshold lower to search for help.”
9 This shows that while more people may be coming in for evaluation, the criteria for evaluation remain
10 stringent and a smaller percentage of patients are actually being diagnosed with gender dysphoria and
11 referred on for medical treatment.
12

13 27. We are not seeing the same increases in number of adults as we have adolescents because
14 transgender middle-aged adults have endured decades of stigma for their transgender identities that,
15 despite improvements in contemporary social attitudes, make them far less likely to come out as
16 transgender. The “gender minority stress” model explains that these decades of exposure to unaccepting
17 environments leads to expectations of future rejection and internalized transphobia (*i.e.*, internalization of
18 society’s negative messages about transgender people leading to self-hate of oneself for being
19 transgender), as well as identity concealment.²⁴ These factors make it less likely for middle-aged
20 transgender adults to come out, despite the recently seen increase in societal acceptance for transgender
21 people in the United States. Many transgender youth are, for the first time, growing up in environments
22 where transgender identity is not as stigmatized, making it easier for them to come out when compared to
23
24

25 _____
26 ²² Wiepjes, C. M., Nota, N. M., de Blok, C. J., Klaver, M., de Vries, A. L., Wensing-Kruger, S. A., ... &
27 den Heijer, M. (2018). The Amsterdam cohort of gender dysphoria study (1972–2015): trends in
prevalence, treatment, and regrets. *The Journal of Sexual Medicine*, 15(4), 582-590.

28 ²³ Id.

²⁴ Hendricks, M. L., & Testa, R. J. (2012). A conceptual framework for clinical work with transgender
and gender nonconforming clients: An adaptation of the Minority Stress Model. *Professional
Psychology: Research and Practice*, 43(5), 460.

1 transgender adults plagued by anxiety due to decades of living in societies where being transgender was
2 not recognized or accepted.

3 28. Changes in sex ratios of patients at some clinics (where birth-assigned females are
4 appearing in greater numbers relative to birth-assigned males than in the past) also does not support a
5 “social contagion” theory. There are many potential explanations for a change in sex ratio that do not
6 involve social contagion. One likely possibility is that more birth-assigned females are being referred to
7 gender clinics by their pediatricians due to greater understanding among pediatricians that birth-assigned
8 females can have gender dysphoria. In the past, physicians thought of gender dysphoria as something that
9 primarily impacted birth-assigned males. This likely led to many cases of gender dysphoria among birth-
10 assigned females being undiagnosed or “missed.” In recent years, literacy regarding gender dysphoria
11 among birth-assigned females has increased among physicians. As fewer birth-assigned females go
12 undiagnosed, the sex ratio in gender clinics has shifted away from predominantly birth-assigned males.
13 This is similar to what has been seen in autism spectrum disorder. For example, a large study found that
14 with increasing awareness that autism spectrum disorder can impact birth-assigned females as well as
15 birth-assigned males, the sex ratio shifted more toward birth-assigned females, from 5.1:1 (birth-assigned
16 males to females) to 3.1:1.²⁵ The same study saw the sex ratio for the related diagnosis of “Asperger’s
17 syndrome” similarly shift from 8.4:1 to 3.0:1.
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19
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21 **OLDER STUDIES WITH SUBSTANTIAL METHODOLOGICAL FLAWS SHOULD NOT BE**
22 **USED TO PREDICT “DESISTENCE” RATES AMONG CHILDREN DIAGNOSED WITH**
23 **GENDER DYSPHORIA AND HAVE NO BEARING ON RATES OF “DESISTENCE” AMONG**
24 **ADOLESCENTS**

25 29. Though the terms “children” and “adolescents” are sometimes used synonymously in
26 common parlance, these terms have specific and distinct meanings in the context of child and adolescent
27

28 ²⁵ Jensen, C. M., Steinhausen, H. C., & Lauritsen, M. B. (2014). Time trends over 16 years in incidence-
rates of autism spectrum disorders across the lifespan based on nationwide Danish register data. *Journal*
of Autism and Developmental Disorders, 44(8), 1808-1818.

1 psychiatric research. In this field, “child” and “children” refer to minors who have not yet reached the
 2 earliest stages of puberty (*i.e.*, Tanner 2). Though there can be substantial variability in the timing of
 3 pubertal onset, it tends to begin around age 10.²⁶ The terms “adolescent” and “adolescents” refer to minors
 4 who have begun puberty. Studies of prepubertal children cannot be conflated with studies of adolescents.

5 30. This distinction is vital in the realm of “desistence” studies (*i.e.*, studies that aim to assess
 6 how many young people who identify as transgender will later identify as cisgender). First of all, the
 7 suggestion that a majority of minors with gender dysphoria will come to identify with their assigned sex
 8 at birth inappropriately relies on studies of gender diverse *prepubertal* children, which have, in the past,
 9 shown that many of these children will not grow up to be transgender. These studies do not apply to
 10 minors who have reached puberty (*i.e.*, “adolescents”). Once a an adolescent with gender dysphoria
 11 begins puberty, it is rare for them to later identify as cisgender.²⁷

13 31. The utility of “desistence” studies even for assessing the likelihood that prepubertal
 14 children will persist in a transgender identity has been questioned due to their reliance on an outdated
 15 diagnosis of “gender identity disorder in children,” which did not require a child to identify as a sex
 16 different than their sex assigned at birth. This diagnosis likely captured many cisgender “tomboys” or
 17 cisgender boys with feminine interests like dresses or dolls who never identified as transgender and, thus,
 18 unsurprisingly did not identify as transgender when followed up with later in life. In contrast, the
 19 diagnosis of “gender dysphoria in children” requires one to not merely have gender-atypical interests and
 20 behaviors; one must identify as a gender different than one’s sex assigned at birth. This is a vital
 21 distinction. While the diagnostic category of “gender identity disorder” would capture many cisgender
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24
 25 ²⁶ Herman-Giddens, M.E., Steffes, J., Harris, D., Slora, E., *et al.* (2012). Secondary sexual characteristics in boys: data
 26 from the Pediatric Research in Office Settings Network. *Pediatrics*, 130(5), e1058-e1068. and Eckert-Lind, E., Busch, A.S.,
 Petersen, J.H., Biro, F.M. *et al.* (2020). Worldwide secular trends in age at pubertal onset assessed by breast development
 among girls: a systematic review and meta-analysis. *JAMA Pediatrics*, 174(4), e195881-e195881.

27 ²⁷ See, for example, de Vries, A.L., McGuire, J.K., Steensma, T.D., *et al.* (2014). Young Adult Psychological Outcome
 28 After Puberty Suppression and Gender Reassignment. *Pediatrics*, 134(4), 696-704., Turban, J.L., de Vries, A.L.C.,
 & Zucker, K. (2018). Gender Incongruence & Gender Dysphoria. In Martin A., Bloch M.H., & Volkmar F.R.
 (Editors): *Lewis’s Child and Adolescent Psychiatry: A Comprehensive Textbook, Fifth Edition*. Philadelphia: Wolters
 Kluwer.

1 children, the diagnostic category of “gender dysphoria,” by definition, does not.²⁸ Of note, a recent study
2 by Kristina Olson et al. found that the vast majority of prepubertal transgender children continued to
3 identify as transgender over a five-year follow-up period.²⁹

4 **THE MERE ACT OF USING A TRANSGENDER YOUTH’S AFFIRMED NAME AND**
5 **PRONOUNS DOES NOT CONSTITUTE MEDICAL TREATMENT**

6 32. As outlined above, “social transition” refers to an individual changing their gender
7 expression, and such social transitions can be broadly heterogeneous both in terms of what types of gender
8 expression the person is changing (name, pronouns, hairstyle, clothing, etc.) and the settings in which they
9 are doing so. These changes in gender expression are, in and of themselves, not medical interventions. In
10 fact, it’s quite common for youth to have already pursued elements of social transition like adopting new
11 names or pronouns prior to ever interfacing with a medical or mental health provider about their gender.
12 While medical guidelines note that mental health providers can be helpful in providing families support
13 as they navigate potentially unaccepting or stigmatizing environment, they also highlight that such
14 involvement “is not necessary for all gender diverse children.”³⁰ Guidelines note that “a [health care
15 provider] *may* assist exploring advantages/benefits, plus potential challenges of social transition]” but do
16 not establish health care provider involvement as a necessary component of social transition, nor label
17 domains of social transition as medical interventions.
18

19 **RESEARCH HAS CONSISTENTLY LINKED SOCIAL GENDER AFFIRMATION TO**
20 **BETTER MENTAL HEALTH OUTCOMES FOR TRANSGENDER YOUTH**

21 33. Use of a transgender young person’s affirmed name has been linked to reduced odds of
22 depressive symptoms, suicidal ideation, and suicidal behavior. In 2018, Russell et al. published a study of
23 129 transgender youth in *The Journal of Adolescent Health*, looking at the use of a transgender youth’s
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26 ²⁸ The desistence studies have also been criticized for a range of methodological limitations. Olson, K.R. (2016).
Prepubescent Transgender Children: What We Do and Do Not Know. *Journal of the American Academy of Child &*
Adolescent Psychiatry, 3(55), 155-156.

27 ²⁹ Olson, K. R., Durwood, L., Horton, R., Gallagher, N. M., & Devor, A. (2022). Gender identity 5 years after social
transition. *Pediatrics*.

28 ³⁰ Coleman, E., Radix, A. E., Bouman, W. P., Brown, G. R., De Vries, A. L. C., Deutsch, M. B., ... & Arcelus, J. (2022).
Standards of care for the health of transgender and gender diverse people, version 8. *International Journal of Transgender*
Health, 23(sup1), S1-S259.

1 chosen name in various contexts (at home, at school, at work, with friends).³¹ They found that an increase
2 of one context using a youth's affirmed name was associated with a 56% decrease in suicidal behavior.

3 34. Policies that allow transgender youth to utilize school facilities that align with their gender
4 identity have also been linked to superior outcomes. For example, Murchison et al. published a study of
5 3,673 transgender adolescents, examining associations between going to a school that allowed them to use
6 facilities (e.g., bathrooms) that aligned with their sex assigned at birth, and rates of sexual assault
7 victimization.³² Adolescents at schools that did not allow them to use the bathroom that aligned with their
8 gender identity had an increased risk of sexual assault victimization. Complementary studies have shown
9 that such policies do not increase risk of sexual assault victimization against cisgender people.³³
10

11 35. In summary, the term "social transition" encompasses a diverse set of ways in which
12 transgender youth may choose to shift their gender expression to align with their gender identity,
13 through non-medical interventions like changing one's name, use of pronouns, clothing, hairstyles, etc.
14 Though these changes in gender expression are not medical interventions, research has shown that they
15 are linked to improved mental health outcomes, have minimal risk outside of a young person being
16 harassed or bullied due to their gender expression (schools are responsible for mitigating this risk), and
17 do not impact a child's degree of transgender identification, likelihood of "persistence" in their
18 transgender identity, or thus subsequent need for any kind of gender-affirming medical or surgical
19 intervention.
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26 ³¹ Russell, S. T., Pollitt, A. M., Li, G., & Grossman, A. H. (2018). Chosen name use is linked to reduced depressive
27 symptoms, suicidal ideation, and suicidal behavior among transgender youth. *Journal of adolescent Health, 63*(4), 503-505

28 ³² Murchison, G. R., Agénor, M., Reisner, S. L., & Watson, R. J. (2019). School restroom and locker room restrictions and
sexual assault risk among transgender youth. *Pediatrics, 143*(6).

³³ Hasenbush, A., Flores, A. R., & Herman, J. L. (2019). Gender identity nondiscrimination laws in public accommodations:
A review of evidence regarding safety and privacy in public restrooms, locker rooms, and changing rooms. *Sexuality
Research and Social Policy, 16*(1), 70-83.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3
4 *Jack L. Turban*

5
6 Executed on: February 10, 2023

JACK L. TURBAN, MD, MHS

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16 *Attorneys for Proposed Defendant-Intervenor*
17 *GSA Network*

18 **UNITED STATES DISTRICT COURT**
19 **EASTERN DISTRICT OF CALIFORNIA**

20 AURORA REGINO,

21
22 Plaintiff,

23 v.

24 SUPERINTENDENT KELLY STALEY, in her official
25 capacity; CAITLIN DALBY, in her official capacity;
26 REBECCA KONKIN, in her official capacity; TOM
27 LANDO, in his official capacity; EILEEN
ROBINSON, in her official capacity; and MATT
TENNIS, in his official capacity,

28 Defendants.

Case No. 2:23-cv-00032-JAM-DMC

**[CONDITIONAL] ANSWER BY
PROPOSED DEFENDANT-
INTERVENOR GSA NETWORK TO
PLAINTIFF'S COMPLAINT**

Judge: Judge John A. Mendez
Date: March 28, 2023
Time: 1:30 p.m.
Courtroom: 6

1 Proposed Defendant-Intervenor Genders & Sexualities Alliance Network (“GSA Network”), as
2 required by Federal Rule of Civil Procedure 24(c) and in order to satisfy its obligations thereunder, and
3 without prejudice to its ability to assert any motion under Federal Rule of Civil Procedure 12(b), by and
4 through its undersigned counsel, hereby responds to the Complaint of Plaintiff Aurora Regino. Proposed
5 Intervenor denies each and every allegation, averment, statement, and/or assertion of the Complaint not
6 specifically admitted.

7 INTRODUCTION

8 1. Some of the allegations in Paragraph 1 state legal arguments and conclusions, to which no
9 response is required. Proposed Defendant-Intervenor denies that Plaintiff’s fundamental rights under the
10 Fourteenth Amendment to the United States Constitution were violated. Proposed Defendant-Intervenor
11 further denies the implied allegations that affirming a student’s stated preference as to the name and/or
12 pronouns at school constitutes medical treatment or a decision by the school to “socially transition” that
13 student. Proposed Defendant-Intervenor further denies the implied allegation that Defendants or other school
14 officials have imposed or intend to impose “social transition” on any student.

15 2. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
16 to the truth or falsity of the allegations in paragraph 2 and on that basis denies those allegations.¹

17 3. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
18 to the truth or falsity of the allegations in paragraph 3 and on that basis denies those allegations.

19 4. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
20 to the truth or falsity of the allegations in paragraph 4 and on that basis denies those allegations.

21 5. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
22 to the truth or falsity of the allegations in paragraph 5 and on that basis denies those allegations.

23
24 ¹ Plaintiff uses the term “biological sex” in her complaint, but she does not define this term and it is not a
25 medical term of art. *See, e.g.*, American Academy of Pediatrics, Policy Statement: Ensuring Comprehensive
26 Care and Support for Transgender and Gender-Diverse Children and Adolescents (Oct. 2018) (“Sex,” or
27 “natal gender,” is a label, generally “male” or “female,” that is typically assigned at birth on the basis of
28 genetic and anatomic characteristics, such as genital anatomy, chromosomes, and sex hormone levels.
Meanwhile, “gender identity” is one’s internal sense of who one is, which results from a multifaceted
interaction of biological traits, developmental influences, and environmental conditions. It may be male,
female, somewhere in between, a combination of both, or neither (i.e., not conforming to a binary
conceptualization of gender).”), .

1 15. Proposed Defendant-Intervenor admits that Rebecca Konkin is a member of the Chico
2 Unified Board of Education. Proposed Defendant-Intervenor lacks sufficient knowledge or information to
3 form a belief as to the truth or falsity of the remaining allegations in paragraph 15 and on that basis denies
4 those allegations.

5 16. Proposed Defendant-Intervenor admits that Tom Lando is a member of the Chico Unified
6 Board of Education. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a
7 belief as to the truth or falsity of the remaining allegations in paragraph 16 and on that basis denies those
8 allegations.

9 17. Proposed Defendant-Intervenor admits that Eileen Robinson is a member of the Chico
10 Unified Board of Education. Proposed Defendant-Intervenor lacks sufficient knowledge or information to
11 form a belief as to the truth or falsity of the remaining allegations in paragraph 17 and on that basis denies
12 those allegations.

13 18. Proposed Defendant-Intervenor admits that Matt Tennis is a member of the Chico Unified
14 Board of Education. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a
15 belief as to the truth or falsity of the remaining allegations in paragraph 18 and on that basis denies those
16 allegations.

17 19. Proposed Defendant-Intervenor admits that Kelly Staley is the Superintendent of Chico
18 Unified School District. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a
19 belief as to the truth or falsity of the remaining allegations in paragraph 19 and on that basis denies those
20 allegations.

21 20. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
22 to the truth or falsity of the allegations in paragraph 20 and on that basis denies those allegations.

23 21. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
24 to the truth or falsity of the allegations in paragraph 21 and on that basis denies those allegations.

25 22. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
26 to the truth or falsity of the allegations in paragraph 22 and on that basis denies those allegations.

27 23. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
28 to the truth or falsity of the allegations in paragraph 23 and on that basis denies those allegations.

1 24. Proposed Defendant-Intervenor admits that Mandi Robertson was a school counselor at
2 Sierra View. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as to
3 the truth or falsity of the remaining allegations in paragraph 24 and on that basis denies those allegations.

4 25. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
5 to the truth or falsity of the allegations in paragraph 25 and on that basis denies those allegations.

6 26. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
7 to the truth or falsity of the allegations in paragraph 26 and on that basis denies those allegations.

8 27. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
9 to the truth or falsity of the allegations in paragraph 27 and on that basis denies those allegations.

10 28. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
11 to the truth or falsity of the allegations in paragraph 28 and on that basis denies those allegations.

12 29. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
13 to the truth or falsity of the allegations in paragraph 29 and on that basis denies those allegations.

14 30. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
15 to the truth or falsity of the allegations in paragraph 30 and on that basis denies those allegations.

16 31. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
17 to the truth or falsity of the allegations in paragraph 31 and on that basis denies those allegations.

18 32. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
19 to the truth or falsity of the allegations in paragraph 32 and on that basis denies those allegations.

20 33. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
21 to the truth or falsity of the allegations in paragraph 33 and on that basis denies those allegations.

22 34. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
23 to the truth or falsity of the allegations in paragraph 34 and on that basis denies those allegations.

24 35. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
25 to the truth or falsity of the allegations in paragraph 35 and on that basis denies those allegations.

26 36. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
27 to the truth or falsity of the allegations in paragraph 36 and on that basis denies those allegations.
28

1 37. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
2 to the truth or falsity of the allegations in paragraph 37 and on that basis denies those allegations.

3 38. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
4 to the truth or falsity of the allegations in paragraph 38 and on that basis denies those allegations.

5 39. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
6 to the truth or falsity of the allegations in paragraph 39 and on that basis denies those allegations.

7 40. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
8 to the truth or falsity of the allegations in paragraph 40 and on that basis denies those allegations.

9 41. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
10 to the truth or falsity of the allegations in paragraph 41 and on that basis denies those allegations.

11 42. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
12 to the truth or falsity of the allegations in paragraph 42 and on that basis denies those allegations.

13 43. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
14 to the truth or falsity of the allegations in paragraph 43 and on that basis denies those allegations.

15 44. Proposed Defendant-Intervenor admits that AB 1266 of 2013 was legislation intended to,
16 among other things, prohibit discrimination in California public schools based on gender identity. The text
17 of AB 1266 of 2013, now codified at Cal. Ed. Code § 221.5(f), speaks for itself. As for the remaining
18 allegations in paragraph 44, Proposed Defendant-Intervenor lacks sufficient knowledge or information to
19 form a belief as to their truth or falsity and on that basis denies those allegations.

20 45. Proposed Defendant-Intervenor admits that the California Department of Education has
21 issued guidance relating to implementation of AB 1266. Proposed Defendant-Intervenor lacks sufficient
22 knowledge or information to form a belief as to the truth or falsity of the remaining allegations in
23 paragraph 45 and on that basis denies those allegations.

24 46. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
25 to the truth or falsity of the allegations in paragraph 46 and on that basis denies those allegations.

26 47. Proposed Defendant-Intervenor denies that AB 1266 “provides only that California public
27 schools must allow students to ‘participate in sex segregated school programs and activities . . . and use
28 facilities consistent with his or her gender identity.” Proposed Defendant-Intervenor further denies that

1 affirming students' genders and respecting students' privacy rights violates Plaintiff's constitutional rights
2 under the Fourteenth Amendment to the United States Constitution. Proposed Defendant-Intervenor lacks
3 sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in
4 paragraph 47 and on that basis denies those allegations.

5 48. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
6 to the truth or falsity of the allegations in paragraph 48 and on that basis denies those allegations.

7 49. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
8 to the truth or falsity of the allegations in paragraph 49 and on that basis denies those allegations.

9 50. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
10 to the truth or falsity of the allegations in paragraph 50 and on that basis denies those allegations.

11 51. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
12 to the truth or falsity of the allegations in paragraph 51 and on that basis denies those allegations.

13 52. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
14 to the truth or falsity of the allegations in paragraph 52 and on that basis denies those allegations.

15 53. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
16 to the truth or falsity of the allegations in paragraph 53 and on that basis denies those allegations.

17 54. Proposed Defendant-Intervenor lacks sufficient knowledge or information to form a belief as
18 to the truth or falsity of the allegations in paragraph 54 and on that basis denies those allegations.

19 55. Proposed Defendant-Intervenor denies that Plaintiff's constitutional rights under the
20 Fourteenth Amendment to the United States Constitution were violated or are at risk of being violated.
21 Paragraph 55 consists of legal arguments and conclusions to which no response is required. To the extent
22 that such a response is required, Proposed Defendant-Intervenor responds: Denied.

23 56. Paragraph 56 contains only descriptive information which Proposed Defendant-Intervenor
24 does not construe as actionable allegations requiring a response. To the extent that such a response is
25 required, Proposed Defendant-Intervenor responds: Denied.

26 57. Paragraph 57 consists of legal arguments and conclusions to which no response is required.
27 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.
28

1 58. Proposed Defendant-Intervenor denies that Plaintiff’s constitutional rights under the
2 Fourteenth Amendment to the United States Constitution were violated or are at risk of being violated.

3 Paragraph 58 consists of legal arguments and conclusions to which no response is required. To the extent
4 that such a response is required, Proposed Defendant-Intervenor responds: Denied.

5 59. Paragraph 59 consists of legal arguments and conclusions to which no response is required.
6 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

7 60. Deny—Defendants have a legitimate and compelling interest in protecting student privacy,
8 safety, and well-being as well as eliminating discrimination on the basis of gender and sexual orientation.

9 61. Paragraph 61 consists of legal arguments and conclusions to which no response is required.
10 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

11 62. Paragraph 62 consists of legal arguments and conclusions to which no response is required.
12 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

13 63. Paragraph 63 contains only descriptive information, which Proposed Defendant-Intervenor
14 does not construe as actionable allegations requiring a response. To the extent that any information is
15 construed as an allegation requiring a response, Proposed Defendant-Intervenor responds: Denied.

16 64. Paragraph 64 consists of legal arguments and conclusions to which no response is required.
17 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

18 65. Deny—Defendants have a legitimate and compelling interest in protecting student privacy,
19 safety, and well-being as well as eliminating discrimination on the basis of gender and sexual orientation.

20 66. Paragraph 66 consists of legal arguments and conclusions to which no response is required.
21 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

22 67. Paragraph 67 consists of legal arguments and conclusions to which no response is required.
23 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

24 68. Paragraph 68 contains only descriptive information, which Proposed Defendant-Intervenor
25 does not construe as actionable allegations requiring a response. To the extent that any information is
26 construed as an allegation requiring a response, Proposed Defendant-Intervenor responds: Denied.

27 69. Paragraph 69 consists of legal arguments and conclusions to which no response is required.
28 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

1 70. Paragraph 70 consists of legal arguments and conclusions to which no response is required.
2 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

3 71. Paragraph 71 consists of legal arguments and conclusions to which no response is required.
4 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

5 72. Paragraph 72 contains only descriptive information, which Proposed Defendant-Intervenor
6 does not construe as actionable allegations requiring a response. To the extent that any information is
7 construed as an allegation requiring a response, Proposed Defendant-Intervenor responds: Denied.

8 73. Paragraph 73 consists of legal arguments and conclusions to which no response is required.
9 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

10 74. Paragraph 74 consists of legal arguments and conclusions to which no response is required.
11 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

12 75. Paragraph 75 consists of legal arguments and conclusions to which no response is required.
13 To the extent that such a response is required, Proposed Defendant-Intervenor responds: Denied.

14
15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

17 (Failure to State a Claim)

- 18
19 1. Plaintiff has failed to state a claim upon which relief can be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 (No Constitutional Violation – Facial Challenge)

- 22
23 2. The District’s antidiscrimination policy is constitutional.

24 **THIRD AFFIRMATIVE DEFENSE**

25 (No Constitutional Violation – As Applied Challenge)

- 26 3. There is no violation of Plaintiff’s constitutional rights under the Fourteenth Amendment to
27 the United States Constitution.

28 //

RIGHTS RESERVED

Proposed Defendant-Intervenor reserves the right to raise additional affirmative defenses as may be established during discovery and by the evidence in this case, and specifically reserves the right to amend its Answer to allege such defenses as they become known.

Dated: February 14, 2023

Respectfully submitted,

By /s/ Adam Shearer

Adam F. Shearer (SBN 279073)

Clarence Dyer & Cohen LLP

Elizabeth O. Gill (SBN 218311)

ACLU Foundation of Northern California

Amanda Goad (SBN 297131)

ACLU Foundation of Southern California

Attorneys for Proposed Defendant-Intervenor GSA Network

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

AURORA REGINO,

Plaintiff,

v.

SUPERINTENDENT KELLY STALEY,
in her official capacity; CAITLIN DALBY,
in her official capacity; REBECCA
KONKIN, in her official capacity; TOM
LANDO, in his official capacity; EILEEN
ROBINSON, in her official capacity; and
MATT TENNIS, in his official capacity,

Defendants.

Case No. 2:23-cv-00032-JAM-DMC

**[PROPOSED] ORDER GRANTING
PROPOSED DEFENDANT-
INTERVENOR GSA NETWORK'S
MOTION TO INTERVENE**

1 This Court, having reviewed Proposed Defendant-Intervenor GSA Network’s Motion to
2 Intervene, and all of the other papers filed by the parties in connection with the Motion, it is
3 hereby ORDERED that the Motion to Intervene is GRANTED pursuant to Federal Rule of Civil
4 Procedure 24.

5

6 **IT IS SO ORDERED.**

7

Dated: _____

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The Honorable John A. Mendez
United States District Judge

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