

No. 23-16031

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AURORA REGINO,

Plaintiff-Appellant

v.

Superintendent KELLY STALEY, in her official capacity,

Defendant-Appellee.

On Appeal from the United States District Court for the Eastern District of
California No. 2:23-cv-00032-JAM-DMC Hon. John A. Mendez

**APPELLANT'S REPLY TO APPELLEE'S RESPONSE TO SECOND
REQUEST FOR JUDICIAL NOTICE**

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Appellant Aurora Regino (“Ms. Regino”) submits this Reply to Appellee’s Response to Ms. Regino’s Second Request for Judicial Notice (the “Second RJN”). For the following reasons, as well as those set forth in the Second RJN, the Court should grant the Second RJN and take judicial notice of the Cass Review.

ARGUMENT

As Ms. Regino explained in her Second RJN, the Court should take judicial notice of *The Cass Review: Independent review of gender identity services for children and young people*, Dr. Hilary Cass, United Kingdom National Health Service (April 10, 2024) (“the Cass Review”). Among other things, the Cass Review—written by a prominent pediatric psychiatrist in the field of gender identity disorders—expresses the opinion that social transitioning is a form of psychological treatment. This conclusion buttresses the plausibility of Ms. Regino’s allegation that social transitioning constitutes psychological treatment and, ultimately, supports Ms. Regino’s argument that she has the right under the United States Constitution to consent before the District socially transitions her children at school.

In its Response, Appellee (the “District”) does not dispute the authenticity of the Cass Review. Instead, the District argues that the Court should not take judicial notice of the Cass Review because it is (1) “highly disputed,” Response to Second RJN (“Resp.”) at 2, and (2) “not relevant to the disposition of this appeal,” *id.* at 4. The District is mistaken on both accounts.

I. THE STANDARD FOR JUDICIAL NOTICE IS NOT WHETHER ITS CONTENTS ARE DISPUTED

This Court must take judicial notice of a document if it “is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201. The District asserts that the Cass Review’s conclusions are “highly disputed,” Resp. at 2, but this is not a valid basis for denying Ms. Regino’s RJN.

As Ms. Regino has explained, she asks the Court to take judicial notice of the fact that the Cass Review concludes social transitioning is a form of psychological treatment to buttress her argument that her Complaint satisfies the *Iqbal* plausibility standard on this point. *See generally* Second RJN. The District does not dispute that the Cass Review arrives at that conclusion. Thus, it is straightforward that judicial notice is proper. *See Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (noting that while courts may not take judicial notice of an opinion “for the truth of the facts recited therein,” they may take notice of “the existence of the opinion” (cleaned up)); *see also Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007) (noting that courts may take judicial notice of “what the [relevant] documents stated” without violating hearsay rule (cleaned up)); *Lyons P’ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 804 (4th Cir. 2001) (holding statements of belief not hearsay when not offered to prove the truth of the matter asserted); *In re Online DVD Rental*

Antitrust Litig., No. M 09-2029 PJH, 2011 WL 5883772, at *16 (N.D. Cal. Nov. 23, 2011), *aff'd*, 779 F.3d 914 (9th Cir. 2015) (same). Whether others might *disagree* with the Cass Review’s conclusions has no bearing on whether it contains the opinions set forth therein. Because the District does not dispute that the Cass Review concludes social transitioning is a form of psychological treatment, judicial notice is proper.

Further, while not germane to Ms. Regino’s Second RJN, it is worth noting that the District misstates the nature of the alleged “dispute” over the Cass Review. Contrary to the District’s assertion, the WPATH *Standards of Care for the Health of Transsexual, transgender, and Gender-Nonconforming People* Version 8 (“WPATH SOC8”) does not remotely suggest that “social transitioning [is] something the affected person does themselves.” Resp. at 3. Instead, according to WPATH SOC8, “[g]ender social transition refers to a process by which a child is acknowledged *by others* . . . in the gender identity they affirm.” WPATH SOC8 at S75. Indeed, the District’s position makes no sense—names and pronouns are ways that individuals are referred to *by others*, and under the Parental Secrecy Policy, the District requires everyone in the school environment to refer to transgender-identifying students by their new name and pronouns. This constitutes the provision of psychological treatment without parental consent.

As for the advocacy organizations the District claims disagree with the Cass Review, the District does not cite a single organization that disagrees with the aspect of the Cass Review that is relevant here: namely, its conclusion that referring to minors by a new name and pronouns associated with their transgender identity is a form of psychological treatment. *See* Cass Review Section 12. Ms. Regino does not ask the Court to take judicial notice of conclusions found in other Sections of the Cass Review—such as its recommendation that puberty blockers be available in research settings only—and those conclusions have no bearing whatsoever on this appeal.

In short, it is not subject to reasonable dispute that the Cass Review opines that social transitioning is a form of psychological treatment.

II. THE CASS REVIEW IS RELEVANT TO THIS APPEAL

The District also argues that the Cass Review is “not relevant” to this appeal. *Resp.* at 4. This argument is mystifying. One of Ms. Regino’s central arguments is that social transitioning is a form of psychological treatment, and, accordingly, that she has the constitutional right to consent before the government facilities the social transition of her children. *Op. Br.* at 35. In Section 12, the Cass Review concludes that social transitioning is a form of psychological treatment, explains why it arrives at that conclusion, and explains the consequences of that conclusion. The Cass Review thus supports the Complaint’s well-pleaded allegations on this point and

confirms Ms. Regino's argument that the Parental Secrecy Policy is unconstitutional because it authorizes the District to perform psychological treatment on her minor children without parental consent. The Cass Review is therefore plainly relevant to this appeal.

CONCLUSION

For the foregoing reasons, Ms. Regino respectfully asks this Court to GRANT her Second Request for Judicial Notice and take judicial notice of the Cass Review.

Dated: April 25, 2024

Respectfully submitted,

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