

No. 23-16031

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**In the United States Court of Appeals for the Ninth Circuit**

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Aurora Regino,  
*Plaintiff-Appellant,*

v.

Kelly Staley, *et al.*,  
*Defendants-Appellees.*

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

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**MOTION FOR LEAVE TO FILE BRIEF OF  
*AMICUS CURIAE* THE FOUNDATION FOR MORAL LAW IN SUPPORT  
OF PLAINTIFF/APPELLANT AND REVERSAL**

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November 6th, A.D. 2023

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**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE***

Eleven days before the deadline for filing *amicus* briefs in this case, counsel for both parties received notice of the Foundation for Moral Law’s intent to file this brief. Appellant consented to this filing, but counsel for Appellees did not provide consent. *Amicus* Foundation for Moral has a unique interest in this case and the brief accompanying this motion provides important information relevant to the disposition of this case.

This brief discusses the historical constitutional origins and understanding of the right of parents to direct and control the education and upbringing of their children; the practice of “social transitioning” and how it directly implicates the core of a child’s upbringing; how gender identification is a highly charged medical, scientific, sociological, political, and religious issue, so parental rights related to gender deserve the highest legal protection; and the fact that children are not competent to make decisions on a subject with such important lifelong ramifications as one’s sex or gender. A school policy that excludes parents from this decision or knowledge of the decision therefore violates parents’ constitutional rights.

As described in the Interest of the *Amicus* section of the attached proposed brief, *amicus curiae* Foundation for Moral Law (“the Foundation”), a 501(c)(3) non-profit, national public interest organization based in Montgomery, Alabama, dedicated to defending religious liberty and the strict construction of the Constitution

according to the Founders, has an interest in this case because it believes that the challenged policy places an unconstitutional burden on the right of parents to direct and control the education and upbringing of their children.

Respectfully submitted,

/s/ John Eidsmoe

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November 6th, A.D. 2023

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## CORPORATE DISCLOSURE STATEMENT

*Amicus* makes the following disclosures under R. App. P. R. 26.1 and 9th Cir.

R. 26.1:

**1. Is any *Amicus* a subsidiary or affiliate of a publicly owned corporation?**

No. Each *amicus* is a natural person, and as such has no parent company and has not issued stock.

**2. Is there a public corporation, not a party to the appeal or an *Amicus*, that has a financial interest in the outcome?**

None known.

/s/ John Eidsmoe

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## INTEREST OF THE *AMICUS*<sup>1</sup>

*Amicus curiae* Foundation for Moral Law (“the Foundation”) is a 501(c)(3) non-profit, national public interest organization based in Montgomery, Alabama, dedicated to defending religious liberty, God’s moral foundation upon which this country was founded, and the strict interpretation of the Constitution as intended by its Framers who sought to enshrine both. To those ends, the Foundation directly assists, or files *amicus* briefs, in cases concerning religious freedom, the sanctity of life, and other issues that implicate the God-given freedoms enshrined in our Bill of Rights.

The Foundation has an interest in this case because the Foundation believes that sex is determined at conception, cannot be changed by social or medical intervention, and that the challenged policy of “secret gender transitioning” is an unconstitutional violation of the right of parents to direct and control the education and upbringing of their children. School officials encouraging gender transitions is an egregious abuse of authority and an intolerable attack on the family.

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<sup>1</sup> No party or party’s counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

## ARGUMENT

In Aldous Huxley’s 1932 dystopian novel *Brave New World*, the words “father” and “mother” are considered obscenities, family is considered obsolete, and all children are created and raised by the state. Today, many Americans are concerned that the institution of the family is under attack and that we are heading towards a world like Huxley depicted. Policies such as the one at issue in this case are direct evidence that their concerns are warranted. The Appellees’ policy of secret gender transitioning is an unconstitutional violation of Appellant’s parental rights, promotes a harmful ideological belief as public doctrine, and should have no place in the public school system.

### **I. The history of the fundamental right of parents to direct and control their children’s education and upbringing.**

The United States Supreme Court has long recognized that parents have a fundamental right to make decisions concerning the upbringing and education of their children. The Court first acknowledged parental rights in the 1923 case *Meyer v. Nebraska*, finding that parents had a right to “establish a home and bring up children.” 262 U.S. 390, 399. Two years later, in *Pierce v. Society of Sisters*, the Court stated that

the fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. *The child is not the mere creature of the state*; those who nurture

him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

268 U.S. 510, 535 (1925) (emphasis added). However, long before the Supreme Court acknowledged the fundamental right of parents to direct and control their children's upbringing, the Founding generation of Americans understood the parent-child relationship to be a basic principle of the common law.

**A. The common law origin of parental rights and *in loco parentis*.**

Rooted in the common law of their English ancestors, America's Founding generation knew that the right of parents to direct the upbringing of their children is not merely fundamental, but also God-given. The influential English jurist, Sir William Blackstone recognized the parent-child relationship as "the most universal in nature" and required parents to fulfil the fundamental duties of providing maintenance, protection, and education to their children in order to ensure a successful society. S. Ernie Walton, The Fundamental Right to Homeschool: A Historical Response to Professor Bartholet, 25 Tex. Rev. L. & Pol. 377, 401 (2022). The philosopher John Locke also believed that parents had a special duty to educate their children in order for a nation to prosper. Id. at 402. At early common law, this parental right and duty was considered so important that third parties could only educate another's child "*in loco parentis*," i.e., in place of the parents, if that child's parents chose to delegate that authority. Id.

In the colonial and Founding eras of America, the right of parents to direct their children's upbringing and education was a fundamental principle, with education almost universally conducted at home. Id. at 408-409. Even when some colonies began to pass laws to enforce parents' duty to educate their children, create public schools for those children whose parents were unable to educate them, and ensure that children were able to read and understand the Bible and law, these laws always acknowledged that parents held the primary right and responsibility of raising their children. Id. at 410-411.

The Founding generation also recognized that parents' right and responsibility of raising their children was a matter of moral right as acknowledged by Blackstone. James Wilson, a signatory of both the Declaration of Independence and Constitution, as well as one of the original Associate Justices of the Supreme Court, stated that parents had a duty to "maintain their children decently, and according to their circumstances; to protect them according to the dictates of prudence; and to educate them according to the suggestions of a judicious and zealous regard for their usefulness, their respectability, and their happiness." S. Ernie Walton, Gender Identity Ideology: The Totalitarian, Unconstitutional Takeover of America's Public Schools, 34 Regent U. L. Rev. 219, 251-52 (2021). St. George Tucker, who was a professor of law at William & Mary during the Founding era and appointed to a federal judgeship by President Madison, stated that parents' foremost obligation is

to educate their children in “moral character, the most essential object of education.” Id. at 252.

Two state cases decided in the immediate wake of the Fourteenth Amendment illustrate the right of parents to direct and control the upbringing of their children before the twentieth century and universal compulsory education. S. Ernie Walton, In Loco Parentis, the First Amendment, and Parental Rights—Can they Coexist in Public Schools?, 55 Tex. Tech L. Rev. 461 (2023). In the 1885 case, *Sheehan v. Sturges*, the Connecticut Supreme Court upheld the use of corporal punishment of a student by a teacher on the common law principles of *in loco parentis*. See 53 Conn. 841. However, in the 1874 case *Morrow v. Wood*, the Wisconsin Supreme Court recognized that, where a parent has refused to delegate authority to a teacher, the teacher has no authority or right *in loco parentis*. See 35 Wis. 59, 62.

In *Wood*, a father sent his son to public school to study spelling and the “three Rs,” but the teacher insisted the student was also required to study geography. *Id.* After the father expressly told the teacher that his son was not permitted to study geography, the teacher nevertheless disciplined the son when he refused to study the subject. *Id.* at 63. In response, the father filed criminal charges of assault and battery against the teacher, and the teacher sued for malicious prosecution. *Id.* The court reasoned that the teacher had no authority to discipline the child, by either rule of law, “rule of morals or social usage.” *Id.* at 64. Ultimately, the court held that “the

law gives parents the exclusive right to govern and control the conduct of his minor children, and he had the right to enforce obedience to his commands by moderate and reasonable chastisement.” *Id.* As such, the court found that the father’s directions to his son were reasonable, and that the teacher was liable for acting without authority. *Id.* 65-67.

*Sheehan, Wood*, and many similar cases across the country show that the doctrine of *in loco parentis* was the guiding principle of the parent-child relationship after ratification of the Fourteenth Amendment and leading into the twentieth century. Walton, *In Loco Parentis*, supra 474-76.

**B. The Supreme Court’s recognition of parental rights and *in loco parentis*.**

This common law heritage formed the foundation on which the Supreme Court would later recognize parental rights beginning in *Meyer* and continuing to the present. These cases limit the power of the state to intrude upon parental rights in a variety of ways. A state may not: prohibit parents from having their children instructed in languages other than English (*Meyer*); force parents to send their children to public schools (*Pierce*); require private education to be substantially the same as public education (*Farrington v. Tokushige*, 273 U.S. 284 (1927); *Wisconsin v. Yoder*, 406 U.S. 205 (1972)); disregard the authority of parents in committing their children to mental hospitals (*Parham v. J.R.*, 442 U.S. 584 (1979)); require parents to allow visitation with grandparents (*Troxel v. Granville*, 530 U.S. 57 (2000)).

Throughout the last century, the Supreme Court reiterated the importance and common law lineage of parental rights often. *Parham*, 442 U.S. at 602 (1979) (“Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children.”); *Fed. Comm’n Comm’n v. Pacifica Found.*, 438 U.S. 726, 769 (1978) (Brennan, J., dissenting) (“[There is a] time-honored right of a parent to raise his child as he sees fit—a right this Court has consistently been vigilant to protect.”); *Moore v. East Cleveland*, 431 U.S. 494, 503-04 (1977) (“[T]he institution of the family is deeply rooted in this Nation’s history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural.”); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968) (“[C]onstitutional interpretation has consistently recognized that the parents’ claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.”).

These cases reflect the Supreme Court’s strong commitment to the right of parents to direct and control the education and upbringing of their children. By reasoning based on our common law tradition, each of these cases also deals with principles of the *in loco parentis* doctrine. While these cases evince a strong foundation of *in loco parentis* regarding the right of parents to direct and control the education and upbringing of their children, there have been recent Supreme Court cases involving students’ individual rights such as the freedom of speech that

revealed tensions on the Court regarding the proper function of *in loco parentis*. Walton, In Loco Parentis, supra 476-82.

However, the Supreme Court's most recent case involving the doctrine, *Mahanoy Area Sch. Dist. v. B. L.*, indicates that *in loco parentis* is a fundamental doctrine of law that is implicated even when a student is asserting their own individual rights. 141 S. Ct. 2038, 2042-43, 2048 (2021). As explained by Justice Alito in concurrence, under the doctrine of *in loco parentis* applied to the contemporary twenty-first century American education system, public schools should only have the authority "to carry out their state-mandated educational mission, as well as the *authority to perform any other functions to which parents expressly or implicitly agree.*" *Id.* at 2048 (Alito, J., concurring) (emphasis added). In other words, the state via the public school system can only exercise authority and make decisions regarding children pursuant to a delegation of that authority and decision making from the parents.

## **II. Gender identity ideology is incorrect as a matter of fact and the practice of gender transitioning is harmful in practice.**

Gender identity ideology and the practice of gender transitioning are topics central to moral and religious beliefs, norms, and practices that parents have the ultimate right of control and direction for the upbringing of their children. The main beliefs of gender identity ideology are that the biological sex binary of male and

female is not real, that there are innumerable genders beyond male and female, that a person's "gender" is different from their "sex assigned at birth."<sup>2</sup>

Nineteen states and the District of Columbia now have a law that "prohibits discrimination based on sexual orientation and gender identity."<sup>3</sup> Most of these laws in practice operate like the law at issue in the present case, that is, to require schools to accept a student's asserted gender identity and hide this information from the child's parents. See Walton, Gender Identity Ideology, supra, at 256. Unfortunately, these laws are premised on a falsehood because gender identity is a faith-based ideology, not a matter of scientific truth.

The basic reality of biological sex is that there are only two sexes, male and female, and that anything else is mutation. T.W. Sadler, Langdon's Medical Embryology 40 (Philadelphia: Lippencott Williams & Wilkins) (2004); William J. Larsen, Human Embryology 519 (New York: Churchill Livingstone) (2001); Keith L. Moore & T.V.N. Persaud, The Developing Human: Clinically Oriented Embryology 35 (Philadelphia: Saunders/Elsevier) (2003). Biological sex is not "assigned;" it is determined at the exact moment of fertilization whereby a sperm

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<sup>2</sup> See Sex and Gender Identity, Planned Parenthood, <https://www.plannedparenthood.org/learn/gender-identity/sex-gender-identity> (last visited October 31, 2023).

<sup>3</sup> Student Nondiscrimination Policies, GLSEN, <https://maps.glsen.org/student-nondiscrimination-policies/> (last visited October 31, 2023).

cell that carries an X chromosome produces a female (XX) embryo, while a sperm cell that carries a Y chromosome produces a male (XY) embryo. Id.

While there are some people that do experience a discordance between their body's biological sex and their mental perception of what their gender is, this is a medical condition that needs compassionate treatment based in reality, not to be exacerbated by a rejection of it. The distress this discordance causes is now called "gender dysphoria." Am. Psychiatric Ass'n, Gender Dysphoria, in Diagnostic and Statistical Manual of Mental Disorders 432 (Am. Psychiatric Publ'g., 5th ed. 2013). The Diagnostic and Statistical Manual of Mental Disorders (DSM-5) defines gender dysphoria as "incongruence between one's experienced/expressed gender and assigned gender" that causes "clinically significant distress or impairment in social, occupational, or other important areas of functioning." Id. However, the DSM used to list "gender identity disorder" instead and defined it as incongruence between a person's experienced gender and their biological sex itself – no mention of "assigned gender." Am. Psychiatric Ass'n, Gender Identity Disorder, in Diagnostic and Statistical Manual of Mental Disorders 435 (Am. Psychiatric Publ'g., 4th ed. text rev. 2000).

Dr. Paul McHugh, former director of Johns Hopkins University's Department of Psychiatry and psychiatrist-in-chief of Johns Hopkins Hospital, has explained that gender identity disorder is the proper clinical conception of the condition because it

emphasizes the patient's discordance with the reality of their natural body. Ryan T. Anderson, When Harry Became Sally: Responding to the Transgender Movement 95 (Encounter Books, paperback ed.) (2019). However, advocates for gender identity ideology reject biological sex entirely and seek only to affirm the feelings of those suffering distress from gender dysphoria. Far from being compassionate, this kind of response is like agreeing with a person suffering from Anorexia Nervosa when they assert that they are overweight.

The World Professional Association for Transgender Health (WPATH) is one of the major advocates for gender identity ideology and gender transitioning. WPATH regularly publishes a Standards of Care report which WPATH states in the eighth edition (SOC-8) has the purpose of providing “clinical guidance to health care professionals to assist transgender and gender diverse (TGD) people.” World Professional Association for Transgender Health, Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, Int'l J. of Transgender Health, S5 (2022). WPATH includes “social transitioning” like what is at issue in the present case as a clinical treatment for health care professionals to discuss with families considering it. Id. at S75-79. The SOC-8 specifically details that social transitioning is clinical treatment that should be “individualized based on both a child's wishes and other psychosocial considerations, and is a decision for which

possible benefits and challenges should be weighted and discussed.” Id. at S77 (internal citations omitted).

Michelle Cretella, executive director of the American College of Pediatricians, has explained that this psychological treatment frequently leads to further medical intervention including puberty blockers, cross-sex hormones, and physical amputations.<sup>4</sup> These medical interventions carry significant known risks for adults and do not ultimately aid mental health outcomes. Id. The risks are even worse for children who are unable to consent to such irreversible life-altering procedures and is tantamount to child abuse. Id.

### **III. The school district’s policy violates the right of parents to make decisions concerning the lives of their children.**

The Chico Unified School District’s policy of secrecy regarding children gender transitioning intrudes upon parental rights far beyond anything contemplated by the Supreme Court’s parental rights jurisprudence. Not only does the policy allow school officials to withhold critical information from parents concerning their children’s mental and physical health, but the fact that school officials encourage and facilitate gender transitions for children without the notification and consent of parents shocks the conscience.

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<sup>4</sup> I’m a Pediatrician. How Transgender Ideology Has Infiltrated My Field and Produced Large-Scale Child Abuse., DAILY SIGNAL (July 3, 2017), <https://www.dailysignal.com/2017/07/03/im-pediatrician-transgender-ideology-infiltrated-field-produced-large-scale-child-abuse/>.

Few decisions, if any, are more life-altering than a decision to change one's gender identification. Not only will this permanently change the child's life in substantial ways; it will alter the family as well. As parents and siblings discover that they no longer have a daughter and sister but rather a "son" and "brother" instead, the entire family dynamic is upheaved. Dr. James Cantor reports that, according to a consensus of ten scientific studies, "[t]he exact number varies by study, but roughly 60-90% of trans-kids turn out no longer to be trans by adulthood."<sup>5</sup> One can only imagine how much damage can be done to children and to their families by facilitating or encouraging children to identify with the opposite gender. For example, a child who identifies with the opposite sex may decide to take puberty blockers or undergo surgery, only to change his/her mind later. The physical, psychological, social, and/or emotional damage to children and their families may be severe and irreparable.

That Chico Unified School District would encourage and facilitate children to make this drastic life change in secret without parental consent is an egregious violation of parental rights as identified by the Supreme Court. Children cannot consent to such life-altering procedures themselves, and the state certainly should

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<sup>5</sup> James Cantor, *Do Trans Kids Stay Trans When They Grow Up?*, SEXOLOGY TODAY (Jan. 11, 2016), [http://www.sexologytoday.org/2016/01/do-trans-kids-stay-trans-when-they-grow\\_99.html](http://www.sexologytoday.org/2016/01/do-trans-kids-stay-trans-when-they-grow_99.html); *See also*, *Do Children Grow Out of Gender Dysphoria?*, TRANSGENDER TREND, <https://www.transgendertrend.com/children-change-minds/>.

not have the power *in loco parentis* to consent for them. Such a policy is an unconstitutional intrusion into the foundational parent-child relationship that indicates the beginnings of totalitarian control, and ultimately destruction, of the family. The Constitution is our bulwark against a world where children are mere creatures of the state to be used to further ideological ends. We must defend parental rights under the Constitution in order to protect our most innocent and vulnerable citizens.

### CONCLUSION

The Chico Unified School District's policy violates the fundamental right of parents to direct and control the upbringing and education of their children.

This Court should reverse the decision of the District Court.

Respectfully submitted,

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November 6th, A.D. 2022

## CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Rule 32(a)(7), Fed. R. App. P., because, excluding the parts of the document exempted by Rule 32(f), Fed. R. App. P., and 6th Cir. R. 32(b)(1), this document contains 3151 words.
2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it was prepared using Microsoft Word in 14-point Times New Roman.

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## CERTIFICATE REGARDING SERVICE

I certify that on November 6th, A.D. 2023, a true copy of this document is being filed electronically (via CM/ECF) and will thereby be served on all counsel of record.

/s/ John Eidsmoe

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