

No. 23-16031

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

AURORA REGINO,

Plaintiff-Appellant,

v.

KELLY STALEY,

Defendant-Appellee,

and

CAITLIN DALBY; REBECCA KONKIN; TOM LANDO; EILEEN ROBINSON;
MATT TENNIS,

Defendants.

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

**MOTION FOR LEAVE TO FILE BRIEF OF NATIONAL CENTER FOR
YOUTH LAW AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-
APPELLEE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* state that no *amicus* has a parent corporation and that no publicly held company owns 10% or more of the stock of any *amicus*.

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), the National Center for Youth Law respectfully moves this Court for leave to file an *amicus curiae* brief in the above-captioned case in support of Defendant-Appellee.

Counsel for amicus sought consent from the parties prior to filing this motion by email to Brian A. Duus and Jimmie E. Johnson of Leone, Alberts & Duus, Counsel for Defendants-Appellees; and Harmeet K. Dillon of Dhillon Law Group, Inc. and Joshua W. Dixon of Center for American Liberty, Counsel for Plaintiff-Appellant. As of filing amicus has not received a response.

DESIRABILITY AND RELEVANCE OF *AMICUS*' BRIEF

The National Center for Youth Law (“NCYL”) is a private, non-profit law firm that uses the law to help children achieve their potential by transforming the public agencies that serve them. NCYL’s priorities include ensuring that children and youth have the resources, support, and opportunities they need to live safely with their families in their communities and that public agencies promote their safety and well-being. NCYL represents youth in cases that have broad impact and has extensive experience using litigation to enforce the rights of young people, including their rights to autonomy and privacy, and to facilitate their connections to their families and communities. NCYL’s goal is to center the voices of youth in its work, including youth who identify as lesbian, gay, bisexual, transgender, queer, intersex, asexual,

two-spirit, and other identities across the gender and sexuality identity spectrum¹ (hereinafter referred to as “LGBTQI+ youth” for brevity).

NCYL has appeared as counsel-of-record or amicus in many cases nationwide to ensure the rights of youth in areas including education, LGBTQI+ issues, child welfare, and health. For instance, NCYL recently filed amicus briefs before the Texas state courts in *Masters v. PFLAG*, No. 03-22-00587-CV (Ct. App. Tex. 2023), and *Abbott v. Doe*, No. 03-22-00126-CV (Ct. App. Tex. 2022), addressing the harms of initiating child welfare investigations of families solely because they provide gender-affirming care to their children; and before the Supreme Court of Montana in *Planned Parenthood of Montana v. State*, No. DA-23-0272 (Sup. Ct. Mont. 2023), addressing the harmful impact of Montana’s law requiring parental consent for abortion care on youth in the foster system.

In California, the National Center for Youth Law has a long history of vigorous advocacy to defend and advance the rights of youth and their families, including as counsel of record in *Katie A v. Bonta*, No. 2:02-cv-05662-JAK-FFMx, (C.D. Cal. 2007), a lawsuit challenging the county and state agencies’ failures to

¹ As used herein, “LGBTQI+” refers to youth identifying with any of the identities described above. Amici will specify when referring only to a particular subset of those youth (e.g., transgender youth). A more comprehensive set of definitions for various gender identities and sexualities is available at *Glossary of Terms*, HUMAN RIGHTS CAMPAIGN (May 31, 2023), <https://www.hrc.org/resources/glossary-of-terms>.

provide necessary and legally mandated health care services to foster children with mental health needs; *Freeman v. County of Riverside*, No. RIC2001772 (Cal. Super. 2020), which successfully challenged the county's practice of illegally charging families for administrative costs associated with their children's involvement in the juvenile court system; *Tonisha Smith v. Alameda County*, No. RG20079483 (Cal. Super. 2021), regarding the failure of the county child welfare agency to provide housing to foster youth over the age of 18; *Black Parallel School Board v. Sacramento City Unified School District*, No. 2:19-cv-01768-TLN-KJN (E.D. Cal. 2019), alleging districtwide disability and race discrimination against students with disabilities, especially Black students; and *Planned Parenthood v. Promesa Behavioral Health*, No. 16CECG00543 (Cal. Super. 2016), asserting the privacy rights of young women in foster care to decide whether and when to parent.

NCYL is deeply invested in the issues of youth rights to privacy and self-determination, particularly in the context of the LBGTQI+ rights, as well as in their right to live safely in their homes and communities. Therefore, NCYL is uniquely placed to bring relevant legal expertise to this matter.

CONCLUSION

For these reasons, the Court should grant *amicus curiae* leave to file the accompanying brief in support of Defendant-Appellee.

Dated: January 9, 2024

/s/ Jean Strout

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify as follows:

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because this brief contains 691 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and

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

Dated: January 9, 2024

/s/ Jean Strout

Jean Strout

Counsel for Amicus Curiae

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<i>Bellotti v. Baird</i> , 443 U.S. 622 (1979)	8
<i>Brown v. Entertainment Merchants Ass’n</i> , 564 U.S. 786 (2011)	5
<i>Dobbs v. Jackson Women’s Health Organization</i> , 597 U.S. 215 (2022)	8
<i>In re Jasmon O.</i> , 8 Cal. 4th 398 (1994)	8
<i>In re Roger S.</i> , 19 Cal. 3d 921 (1977)	8
<i>In re Scott K.</i> , 24 Cal. 3d 395 (1979)	9
<i>Parham v. J.R.</i> , 442 U.S. 584 (1979)	7
<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925)	10
<i>Planned Parenthood of Cent. Missouri v. Danforth</i> , 428 U.S. 52 (1976)	6, 8

State v. Planned Parenthood of Alaska,
171 P.3d 577 (Alaska 2007).....8

State v. Planned Parenthood of Alaska,
35 P.3d 30 (Alaska 2001).....8

Other Authorities

A Practitioner’s Resource Guide: Helping Families to Support Their LGBT Children, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN. 5 (2014),
<https://store.samhsa.gov/product/practitioners-resource-guide-helping-families-support-their-lgbt-children/pep14-lgbtkids> 18, 19, 20

A Survey of LGBT Americans: Attitudes, Experiences, and Values in Changing Times, PEW RESEARCH CENTER 44 (June 13, 2013),
<https://www.pewresearch.org/social-trends/2013/06/13/chapter-3-the-coming-out-experience/> 15

Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population*, 24:2 J. OF GENDER, SOC. POL., & L. 243, 255-56 (2015)..... 19, 27, 28

Angela Roddey Holder, *Legal Issues in Pediatrics and Adolescent Medicine*, YALE UNIV. PRESS 133 (1985)6

Ariel Love, *A Room of One’s Own: Safe Placement for Transgender Youth in Foster Care*, 89 N.Y.U. L. REV. 2265, 2268 (Dec. 2014)22, 23

Bianca D.M. Wilson et al., *Sexual and Gender Minority Youth in Foster Care*, UCLA SCH. OF L. WILLIAMS INST. (July 2019).....23

Carly B. Dierkhising & Mae Ackerman-Brimberg, <i>CSE Research to Action Brief: Translating Research to Policy and Practice to Support Youth Impacted by Commercial Sexual Exploitation (CSE)</i> , NAT’L CTR. FOR YOUTH LAW 11 (2020), https://youthlaw.org/resources/research-action-brief-translating-research-policy-and-practice-support-youth-impacted	27
Carly B. Dierkhising et al., <i>Recommendations to Improve Out of Home Care from Youth who have experienced commercial sexual exploitation</i> , 116 CHILD AND YOUTH SERV. REV. 1 (2020), https://doi.org/10.1016/j.chilyouth.2020.105263	25
Charlotte Baughman et al., <i>The Surveillance Tentacles of the Child Welfare System</i> , 11 COLUM. J. RACE & L. 501, 527 (2021)	13
<i>Child Maltreatment 2018</i> , U.S. DEP’T OF HEALTH AND HUM. SERVS., ADMIN. ON CHILDREN, YOUTH AND FAM. CHILD.’S BUREAU 71 (2020), https://www.acf.hhs.gov/sites/default/files/documents/cb/cm_2018.pdf	12
Christina Wilson Remlin et al., <i>Safe Havens: Closing the Gap Between Recommended Practice and Reality for Transgender and Gender Expansive Youth in Out-of-Home Care</i> , CHILDREN’S RIGHTS 1, (April 2017), https://www.childrensrights.org/wp-content/uploads/imported-files/TGNC-Policy-Report_2017_final-web.pdf	16, 24, 25, 26
<i>Cisgender</i> , MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/cisgender	23
Dorothy E. Roberts, <i>Torn Apart: How the Child Welfare System Destroys Black Families—and How Abolition Can Build a Safer World</i> , BASIC BOOKS (April 5, 2022)	11
Dorothy Roberts, <i>Abolishing Policing Also Means Abolishing Family Regulation</i> , THE IMPRINT (June 16, 2020), https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480	3

<i>During Pride Month, Strive to Better Support Homeless Youth</i> , NAT’L ALL. TO END HOMELESSNESS (June 17, 2016), https://endhomelessness.org/blog/during-pride-month-strive-to-better-support-lgbtq-homeless-youth/	24
Erin French Nafekh et al., <i>Understanding the Commercial Sexual Exploitation of LGBTQIA2S+ Youth</i> , NAT’L CTR. FOR YOUTH LAW 26 (June 2023), https://youthlaw.org/sites/default/files/attachments/2023-06/NCYL_Issue%20Briefs_LGBTQIA2S%2B%20Youth%20CSE_v6_0.pdf	passim
<i>Glossary of Terms</i> , HUMAN RIGHTS CAMPAIGN (May 31, 2023), https://www.hrc.org/resources/glossary-of-terms	1
Harper Seldin, <i>Trans Students Should Be Treated with Dignity, Not Outed By Their Schools</i> , ACLU (January 26, 2023), https://www.aclu.org/news/lgbtq-rights/trans-students-should-be-treated-with-dignity-not-outed-by-their-schools	3
Kate Walker, <i>Ending the Commercial Sexual Exploitation of Children: A Call for Multi-System Collaboration in California</i> , CALIFORNIA CHILD WELFARE COUNCIL 16-17 (2013), https://youthlaw.org/resources/ending-commercial-sexual-exploitation-children-call-multi-system-collaboration-california	27
Kathryn L. Mercer, <i>A Content Analysis of Judicial Decision-Making-How Judges Use the Primary Caretaker Standard to Make A Custody Determination</i> , 5 WM. & MARY J. WOMEN & L. 1, 14-16 (1998).....	6
Kelley Fong, <i>Concealment and Constraint: Child Protective Services Fears and Poor Mothers’ Institutional Engagement</i> , 97 SOCIAL FORCES 1785, 1794, 1797 (2018)	13
Kerith Conron & Bianca D.M. Wilson, <i>LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems</i> , THE WILLIAMS INST. 46 (June 2019), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-YOC-Social-Services-Jul-2019.pdf	17, 28

- Laura Baams et al., *LGBTQ Youth in Unstable Housing and Foster Care*, 143
PEDIATRICS 4 (March 2019), <https://doi.org/10.1542/peds.2017-4211>.....16, 20
- Laurel Powell, *2021 Became Deadliest Year On Record for Transgender and Non-Binary People*, HUMAN RIGHTS CAMPAIGN (Nov. 9, 2021),
<https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2022>19
- LGBTQ in Child Welfare: A Systematic Review of the Literature*, THE ANNIE E. CASEY FOUNDATION 5, <https://assets.aecf.org/m/resourcedoc/aecf-LGBTQ2inChildWelfare-2016.pdf>23, 24, 28
- LGBTQ youth in the California foster care system: a question and answer guide*, NAT'L CTR. FOR LESBIAN RIGHTS (July 2017),
https://www.nclrights.org/wpcontent/uploads/2013/07/LGBTQ_Youth_California_Foster_System.pdf20
- LGBTQ Youth in the Foster Care System*, HUMAN RIGHTS CAMPAIGN 3, <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf>21
- LGBTQ Youth with a History of Foster Care*, THE TREVOR PROJECT 1 (May 2021),
https://www.thetrevorproject.org/wp-content/uploads/2021/07/LGBTQ-Youth-with-a-History-of-Foster-Care_-May-2021.pdf15, 29
- LGBTQ Youths in the Juvenile Justice System*, OFF. OF JUV. JUST. AND DELINQ. PREVENTION 1 (2014),
<https://www.ojjdp.gov/mpg/litreviews/LGBTQYouthsInTheJuvenileJusticeSystem.pdf>18
- Marianne Sharko et. al, *State-by-State Variability in Adolescent Privacy Laws*, PEDIATRICS (June 2022).....9

- Matt Villano, *Tweens and Teens Explore the Power of Pronouns*, CNN.COM (Feb. 19, 2022), <https://www.cnn.com/2022/02/19/health/pronouns-guide-for-parents-wellness/index.html>.....15
- Meredith Dank et al., *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex*, URBAN INSTITUTE (2015), <https://www.urban.org/research/publication/surviving-streets-new-york-experiences-lgbtq-youth-ymsm-and-ywsw-engaged-survival-sex>.....25
- Priya Sikerwar & Erin Rider, *Transgender Youth in Child Welfare Settings*, NAT'L CTR. FOR CHILD WELFARE EXCELLENCE AT THE SILBERMAN SCH. OF SOC. WORK 2 (May 2015), <https://nccwe.org/downloads/info-packs/Rider.Sikerwar.pdf>21, 23
- Rachel Swaner et al., *Youth Involvement in the Sex Trade: A National Study*, CENTER FOR COURT INNOVATION 75 (June 2016), <https://www.ojp.gov/pdffiles1/ojjdp/grants/249952.pdf>26
- Rebecca Klein & Caroline Preston, *When schools use child protective services as a weapon*, THE HECHINGER REPORT (Nov. 17, 2018), <https://hechingerreport.org/when-schools-use-child-protective-services-as-a-weapon-against-parents/>.....13
- Rob Woronoff et al., *Out of the Margins*, LAMBDA LEGAL xi-xii, 6, 18 (2006), <https://legacy.lambdalegal.org/sites/default/files/publications/downloads/out-of-the-margins.pdf>22
- Roxanna Asgarian, *America's Foster Care System is a Dangerous Place for Trans Teens. Now They're Fighting for Change*, TIME (December 7, 2021), <https://time.com/6124930/oregon-foster-care-trans-youth-lawsuit/>17, 24
- Samita Wilson et al., *Children's Experiences with Child Protection Services: A Synthesis of Qualitative Evidence*, 113 CHILDREN AND YOUTH SERV. REV. 8 (2020), <https://doi.org/10.1016/j.childyouth.2020.104974>12

Sarah A. Font et al., <i>Child Protective Services Involvement and Exclusionary School Discipline</i> , 94 CHILD DEVELOPMENT 1625, 1626 (2023)	12
<i>School-Related Protective Factors for LGBTQ Middle and High School Student</i> , THE TREVOR PROJECT (August 24, 2023), https://www.thetrevorproject.org/research-briefs/school-related-protective-factors-for-lgbtq-middle-and-high-school-students-aug-2023/	25
<i>Schools</i> , YOUTH.GOV, https://youth.gov/youth-topics/lgbtq-youth/school-experiences	25
Shanta Trivedi, <i>The Harm of Child Removal</i> , 43 N.Y.U. REV. L. & SOC. CHANGE 523 (2019)	11
<i>Short Term Residential Therapeutic Program</i> , CAL. DEPT. OF SOCIAL SERVS., https://www.cdss.ca.gov/inforesources/continuum-of-care-reform/short-term-residential-therapeutic-program	22
Sir William Blackstone, <i>1 Commentaries on the Laws of England Book 1</i> 441 (1753)	6
<i>State Laws that Enable a Minor to Provide Informed Consent to Receive HIV and STD Services</i> , CENTERS FOR DISEASE CONTROL AND PREVENTION (Oct. 25, 2022), https://www.cdc.gov/hiv/policies/law/states/minors.html	9
Svetlana Shpiegel & Cassandra Simmel, <i>Functional Outcomes Among Sexual Minority Youth Emancipating from the Child Welfare System</i> , 61 CHILDREN AND YOUTH SERV. REV. 101, 102 (Feb. 1, 2016).....	23
<i>Update on Analysis and Key Questions: Racial and Ethnic Disproportionalities in California’s Child Welfare System</i> , CAL. LEGIS. ANALYST’S OFF., ASSEMB. SUBCOMM. ON HEALTH AND HUM. SERVS. 1 (March 22, 2023), https://www.lao.ca.gov/handouts/socservices/2023/Disproportionalities-in-CWS-032223.pdf	14

V. Jadva et al., *Predictors of self-harm and suicide in LGBT youth: The role of gender, socio-economic status, bullying and school experience*, 45 J. PUB. HEALTH 102, 104-05 (Nov. 27, 2021)17, 28

What is Gender Dysphoria, AM. PSYCHIATRIC ASS’N (Aug. 2022), <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.....22

STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

The National Center for Youth Law (“NCYL”) is a private, non-profit law firm that uses the law to help children achieve their potential by transforming the public agencies that serve them. NCYL’s priorities include ensuring that children and youth have the resources, support, and opportunities they need to live safely with their families in their communities and that public agencies promote their safety and well-being. NCYL represents youth in cases that have broad impact and has extensive experience using litigation to enforce the rights of young people, including their rights to autonomy and privacy, and to facilitate their connections to their families and communities. NCYL’s goal is to center the voices of youth in its work, including youth who identify as lesbian, gay, bisexual, transgender, queer, intersex, asexual, two-spirit, and other identities across the gender and sexuality identity spectrum¹ (hereinafter referred to as “LGBTQI+ youth” for brevity).

Pursuant to Fed. R. App. P. 29(a)(4)(E), no party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting the brief. No person other than the *amicus curiae*, its

¹ As used herein, “LGBTQI+” refers to youth identifying with any of the identities described above. Amici will specify when referring only to a particular subset of those youth (e.g., transgender youth). A more comprehensive set of definitions for various gender identities and sexualities is available at *Glossary of Terms*, HUMAN RIGHTS CAMPAIGN (May 31, 2023), <https://www.hrc.org/resources/glossary-of-terms>.

members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

INTRODUCTION

In 2022, eleven-year-old A.S. shared important and intimate information with the school guidance counselor. Plaintiff-Appellant’s Opening Brief on the Merits, ECF No. 6 at 9 (“Pl.’s Brief”). A.S. “felt like a boy,” wanted to be referred to by a boy’s name, and wanted to use male pronouns at school. *Id.* The guidance counselor passed on that information to school staff, so that A.S. could be referred to with the requested name and pronouns. *Id.* The guidance counselor asked A.S. whether that information should also be shared with A.S.’s mother. *Id.* A.S. told the school guidance counselor no. *Id.* Thanks to Chico Valley Unified School District Administrative Regulation 5145.3 (hereinafter “Policy”), which requires the child to consent to disclosure of transgender or “gender nonconforming”² status except when “necessary to preserve the student’s physical or mental well-being,” the school was able to honor A.S.’s wishes. *Id.* at 8. Upon discovering that A.S. had requested to use

² In conformity with the District’s Policy, this brief will use the term “transgender and gender nonconforming” to refer to transgender, non-binary, genderqueer, genderfluid, intersex, two-spirit, and other youth whose identities fall across the gender spectrum and whose pronouns are different than those associated with their sex assigned at birth. Through its work with LGBTQI+ youth, NCYL is aware that many young people prefer the term “gender expansive” to “gender nonconforming” because it does not invoke gender norms to which genderqueer youth do not conform.

a different name and pronouns at school, A.S.’s mother, the Plaintiff-Appellant (“Plaintiff”) in this matter, sued the School District to strike down the policy as a violation of her parental rights. *Id.* at 11.

The lower court properly concluded that Plaintiff’s arguments are meritless. On appeal and in support of her parental rights argument, Plaintiff argues that children are subject to absolute parental control and unable to make any important decisions on their own, ignoring well-settled law establishing the rights of youth to autonomy and privacy. Pl.’s Brief at 37-40. Plaintiff also fails to address the harms that “forced outing”³ can pose, and the benefits of allowing youth to share information about their gender and sexuality at their own pace. Plaintiff suggests that if forcibly outing a child to their parent(s) presents a danger to the child, that danger would be alleviated by a report to the child welfare system.⁴ Yet research makes clear

³ “Forced outing” is the disclosure of a child’s request to use a new name and pronouns to their parents without the child’s consent. Harper Seldin, *Trans Students Should Be Treated with Dignity, Not Outed By Their Schools*, ACLU (January 26, 2023), <https://www.aclu.org/news/lgbtq-rights/trans-students-should-be-treated-with-dignity-not-outed-by-their-schools>.

⁴ For clarity, this brief uses the common term “child welfare system” to refer to the state agencies charged with investigating reports of parental abuse or neglect; providing services to parents struggling to care for their children; and arranging for temporary and permanent placement for children deemed unsafe in their homes. Amicus recognizes, however, that this system is more often harsh, punitive, and painful for the children and adults involved. Many child welfare experts prefer the terms “family regulation” or “family policing” as more accurate alternatives. Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, THE IMPRINT (June 16, 2020), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480>.

that the child welfare system is not a safe place for LGBTQI+ youth, who are already overrepresented in the system, experience rampant discrimination, abuse, and instability there, and are unlikely to find a safe and affirming foster placement. By contrast, the district policy offers a balanced approach that reasonably acknowledges that it is best for youth to decide when and to whom to disclose, but also gives the district the authority to disclose to others when necessary to preserve the student's physical or mental well-being.

ARGUMENT

I. It Is Well-Settled that Youth Have Rights to Autonomy and Privacy that are Independent of their Parents' Rights.

Plaintiff characterizes this case as a struggle between herself and the School District, disregarding entirely the rights of her child. She alleges “that the Policy authorizes the District to make important decisions in her children’s lives” and “authorizes the District to interfere with the integrity of her family by fostering and facilitating secrecy between her and her children.” Pl.’s Brief at 2. However, the story Plaintiff tells erases the person at the center of this case: A.S.

The relevant factual allegations in this case describe A.S. as an eleven-year-old who was in the midst of the common and developmentally appropriate process of exploring her⁵ own gender identity with the support of a school counselor. During

⁵ Absent A.S.’s voice identifying the appropriate pronouns to use, Amicus will follow the briefing and use female pronouns while referring to A.S.

that process, A.S. chose not to inform Plaintiff of her evolving gender identity, and asked the School District not to inform Plaintiff at that time. Nowhere does Plaintiff address the fact that the challenged Policy merely enabled the School District to carry out A.S.’s wishes. Nor does the Plaintiff allege that she should have been informed under an exception to the Policy that requires parental notification when “necessary . . . for the child’s ‘physical or mental well-being.’” Pl.’s Brief at 8. Plaintiff instead relies solely on her overly broad parental rights argument, flatly denying her child any autonomy, self-determination, or privacy.

Plaintiff articulates the parental right far too broadly. Plaintiff’s interpretation of the parental right forecloses any rights held by the child, characterizing children as mere puppets of their parents, categorically unable to make any independent decisions and forbidden to do so by the law. In support of this argument, Plaintiff repeatedly suggests that, under the common law, “parents had absolute authority over their minor children.” Pl.’s Brief at 29 (quoting *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 822–23 (2011) (Thomas, J., concurring)). Plaintiff writes favorably of “the obligation of children to absolute parental ‘subjection and obedience’” described by Blackstone nearly 300 years ago. Pl.’s Brief at 29 (citing Sir William Blackstone, *1 Commentaries on the Laws of England Book 1* at 441

(1753)).⁶ Although Plaintiff describes this formulation of the parental right in the past tense, it is clear that her stale legal analysis relies on outdated conceptions from an era when children were likened to property.⁷ Pl.’s Brief at 29-30. Plaintiff’s nostalgia also conveniently omits that the “mature minor” rule—which allowed minors to consent to medical procedures under certain circumstances—also existed at common law.⁸ Thus, even the common law recognized young people’s ability to make informed decisions for themselves. *Id.*

Contrary to Plaintiff’s argument, statutory and case law make clear that youth have their own rights. *See, e.g., Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 74–75 (1976) (“Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights.”). Moreover, parental rights are not absolute. Plaintiff concedes that courts have long held the state may interfere with parental rights in the context of abuse or neglect. Pl.’s Brief at 50. However, she incorrectly reads the case law to hold that abuse and

⁶ Plaintiff omits that these obligations were owed only to fathers—“a mother, as such, [was] entitled to no power, but only reverence and respect.” Blackstone at 441.

⁷ For discussion of children as chattel of the father, see Kathryn L. Mercer, *A Content Analysis of Judicial Decision-Making-How Judges Use the Primary Caretaker Standard to Make A Custody Determination*, 5 WM. & MARY J. WOMEN & L. 1, 14-16 (1998).

⁸ Angela Roddey Holder, *Legal Issues in Pediatrics and Adolescent Medicine*, YALE UNIV. PRESS 133 (1985).

neglect are the *only* contexts where the law recognizes the rights of the child even if they conflict with the parent(s)' wishes. *Id.* at 23, 29. For instance, Plaintiff mischaracterizes the foundational case *Parham v. J.R.*, 442 U.S. 584 (1979), as ruling “that parents ha[ve] the authority to commit their child to a mental institution over the child’s contrary wishes.” Pl.’s Brief at 39. But *Parham* specifically did not hold that parents have such absolute authority. In fact, the Supreme Court recognized that due to “the child’s rights and the nature of the commitment decision . . . parents *cannot always have absolute and unreviewable discretion to decide whether to have a child institutionalized.*” *Parham*, 442 U.S. at 604 (emphasis added). Rather than giving parents carte blanche to commit a child, the Court ruled that children have a substantial liberty interest in not being confined unnecessarily for medical treatment, and are entitled to procedural protections before being deprived of this liberty, including a neutral factfinder to “determine whether the statutory requirements for admission are satisfied.” *Id.* at 606. The Court further ruled that the child has a right to an individualized determination in all cases, not only when there is an indication of abuse or neglect, or other evidence that the parent is not acting in the child’s best interests. *Id.* at 604.

Similarly, many courts have addressed the autonomous rights of minors in the context of abortion. In striking down parental notification and consent requirements, both the U.S. Supreme Court and state supreme courts have affirmed that minors

have rights, including the right to privacy and to make decisions about their own lives, even when those decisions are serious and life-changing. *See, e.g., Planned Parenthood of Cent. Missouri*, 428 U.S. at 74–75; *Bellotti v. Baird*, 443 U.S. 622, 643 (1979); *Am. Acad. of Pediatrics v. Lungren*, 16 Cal. 4th 307, 317–18 (1997); *State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007). Plaintiff dismisses these cases as irrelevant in light of *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022). However, *Dobbs* did not overrule these courts’ holdings that youth have enforceable rights that are uniquely theirs, and that there are circumstances where children have the right to make decisions independent of their parents. *Dobbs*, 597 U.S. at 302; *see Planned Parenthood of Cent. Missouri*, 428 U.S. at 74–75; *Bellotti*, 443 U.S. at 647; *Lungren*, 16 Cal. 4th at 336-37 (“Children are not simply chattels belonging to the parent, but have fundamental interests of their own that may diverge from the interests of the parent.”) (quoting *In re Jasmon O.*, 8 Cal. 4th 398, 419 (1994)); *State v. Planned Parenthood of Alaska*, 35 P.3d 30, 41 (Alaska 2001). In many states, such as California, these rights are also grounded in state constitutions. *Lungren*, 16 Cal. 4th at 334, 359 (“it is well established that, as a general matter, ‘minors as well as adults are “persons” under the Constitution who are entitled to the protection’ provided by our constitutional rights” (quoting *In re Roger S.*, 19 Cal. 3d 921, 927 (1977) and finding that parental consent and notification requirements violated minors’ right to privacy set forth in

Article I, Section I of the state Constitution)); *see also In re Scott K.*, 24 Cal. 3d 395 (1979).

Plaintiff does not address California's state constitutional privacy rights at all in arguing that minors do not have the same privacy rights as adults. Instead, Plaintiff looks to state laws that restrict the activities of minors. Plaintiff notes that some states have laws that prevent minors from participating in "adult" activities, such as marriage, consensual sexual relations, and viewing indecent materials. Pl.'s Brief at 44-45. However, Plaintiff ignores the fact that the statutory division between minors and adults is not that categorical. For instance, every state grants minors some of the rights that Plaintiff would assign solely to the parent, including the right to consent to treatment for mental health conditions, substance abuse, or sexually transmitted infections.⁹

Although only two parties appear in the caption, there are not, and never have been, only two parties at issue in this case. At the center of this case is A.S., and her rights must be considered. Although the precise line between the constitutional authority of the parent and the constitutional autonomy of the child has yet to be drawn, state and federal courts as well as legislatures have made clear that the will

⁹ *State Laws that Enable a Minor to Provide Informed Consent to Receive HIV and STD Services*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Oct. 25, 2022), <https://www.cdc.gov/hiv/policies/law/states/minors.html>; Marianne Sharko et. al, *State-by-State Variability in Adolescent Privacy Laws*, PEDIATRICS (June 2022).

of the parent is not absolute, and youth have clear rights to autonomy and privacy. Plaintiff's legal arguments frame the child as an object subject to a game of tug of war between her parents and the state. This frame erases the rights and voices of children like A.S. She is not merely a "creature of the state," *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925), but she is also not merely a creature of her parents: she is her own creature, and her rights must be considered. By following the child's wishes except when "necessary to preserve [her] physical or mental well-being," Chico Valley Unified School District's Policy here properly balances the rights of the parent with the child's rights to privacy and autonomy.

II. The Child Welfare System Is Harmful to LGBTQI+ Children and Cannot Be the Solution When a Parent Does Not Support the Child's Identity.

Plaintiff argues that the School District's Policy—which promotes the state's interest in "creating a zone of protection for [students] questioning their gender identity from adverse hostile reactions, including, but not limited to, domestic abuse"—is "overbroad" because child welfare agencies already sufficiently safeguard against child abuse. *See* Pl.'s Brief at 48-50 (citing Order Granting Defendant's Motion to Dismiss, ECF No. 57 at 11). Plaintiff's suggestion is misguided, uninformed, and dangerous, especially as to LGBTQI+ youth, who are already overrepresented and experience disproportionate harms in the child welfare system.

Imagine a scenario where a child struggling with their gender or sexuality discloses to their school that they are unsure whether their parent(s) will react positively to their request to use a new name and pronouns. The child may not fear abuse but might worry that coming out will cause their parent(s) to treat them differently or change their relationship with their parent(s), or they simply may not be ready to come out for a host of deeply personal reasons. Plaintiff's suggestion would force school officials to either inform the parent(s) against the child's wishes or make a report to the child welfare system. Faced with only these options, a school official who has any concerns about "adverse hostile reactions" may err on the side of making a report—whether or not those concerns rise to the level of suspected child abuse.

But the child welfare system is not a neutral or harmless intervention: for any family, contact with the child welfare system is traumatic and destabilizing.¹⁰ For children exploring their gender identity, involvement with the child welfare system can have devastating consequences.

¹⁰ This brief focuses narrowly on the impact of the child welfare system upon LGBTQI+ children. It does not and cannot capture the full extent of the damage the child welfare system causes, particularly for families of color and those experiencing poverty. For more extensive discussions of the harms of family surveillance, regulation, and separation, *see generally* Dorothy E. Roberts, *Torn Apart: How the Child Welfare System Destroys Black Families—and How Abolition Can Build a Safer World*, BASIC BOOKS (April 5, 2022); Shanta Trivedi, *The Harm of Child Removal*, 43 N.Y.U. REV. L. & SOC. CHANGE 523 (2019).

a. Referrals to and investigations by the child welfare system are harmful to all children, especially LGBTQI+ children.

Although the majority of investigations do not result in findings of neglect or abuse and do not result in family separation,¹¹ even just reporting a family invariably exposes children to an invasive, confusing, and harmful investigatory process. Exposing even more families to the risk of child welfare system involvement can have far-reaching consequences, including reducing access to necessary supports and services.

Investigations themselves are invasive and traumatic. Child welfare investigations may require contacting a child's school and service providers, reviewing children's private medical records, and conducting invasive medical examinations.¹² Children report feeling dismissed, disbelieved, anxious, confused, and violated.¹³ Moreover, the effects of child welfare investigations are long-lasting. Even unsubstantiated investigations can threaten a family's long-term financial and

¹¹ See *Child Maltreatment 2018*, U.S. DEP'T OF HEALTH AND HUM. SERVS., ADMIN. ON CHILDREN, YOUTH AND FAM. CHILD.'S BUREAU 71 (2020), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2018.pdf>.

¹² Sarah A. Font et al., *Child Protective Services Involvement and Exclusionary School Discipline*, 94 CHILD DEVELOPMENT 1625, 1626 (2023).

¹³ Samita Wilson et al., *Children's Experiences with Child Protection Services: A Synthesis of Qualitative Evidence*, 113 CHILDREN AND YOUTH SERV. REV. 8 (2020), <https://doi.org/10.1016/j.chilyouth.2020.104974>.

housing stability.¹⁴ Parents report becoming less engaged in their children's education after the school reports alleged abuse and neglect.¹⁵ Unsurprisingly, children involved in child welfare investigations often lose trust in the adults who reported their families, affecting their willingness and ability to attend school, receive healthcare, and engage with social activities.¹⁶

Moreover, fear of child welfare involvement may deter youth and families from seeking needed social services.¹⁷ Because families are aware that assistance programs and social services are often accompanied by mandatory reporting requirements and increased government access to their homes and personal information, parents who have never harmed or neglected their children avoid seeking medical care, mental healthcare, and other social services out of fear that their children could be taken from them.¹⁸

Plaintiff's suggestion that concerns about forced outing should be resolved by reporting the family to child welfare agencies increases the likelihood that

¹⁴ See Charlotte Baughman et al., *The Surveillance Tentacles of the Child Welfare System*, 11 COLUM. J. RACE & L. 501, 527 (2021).

¹⁵ See Rebecca Klein & Caroline Preston, *When schools use child protective services as a weapon*, THE HECHINGER REPORT (Nov. 17, 2018), <https://hechingerreport.org/when-schools-use-child-protective-services-as-a-weapon-against-parents/>.

¹⁶ See *id.*

¹⁷ See Kelley Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers' Institutional Engagement*, 97 SOCIAL FORCES 1785, 1794, 1797 (2018).

¹⁸ See Baughman et al., *supra* note 14, at 512.

LGBTQI+ children and their families will become embroiled in the child welfare system, and may deter some LGBTQI+ youth and their families from seeking the supports they need. This is particularly harmful to LGBTQI+ children of color, LGBTQI+ children experiencing poverty, and LGBTQI+ children of parents with disabilities, who are disproportionately investigated and face racism, bias, and intolerance within the child welfare system.¹⁹

Plaintiff's position would also sow distrust between families and schools. As a result, LGBTQI+ children, especially children of color or those experiencing poverty, would be less likely to seek support in school out of fear of child welfare involvement. Similarly, fear of having their children taken away may deter some parents struggling to accept their children's identities from seeking help, such as counseling or parenting classes, that could help them grow more comfortable with having an LGBTQI+ child. Deterring LGBTQI+ youth from seeking support from school staff and parents from seeking resources for how to better support their children could have life-threatening consequences. Due to systemic anti-LGBTQI+ bias and discrimination, LGBTQI+ youth are more than four times as likely to attempt suicide as their non-LGBTQI+ peers. More than half of transgender and

¹⁹ *Update on Analysis and Key Questions: Racial and Ethnic Disproportionalities in California's Child Welfare System*, CAL. LEGIS. ANALYST'S OFF., ASSEMB. SUBCOMM. ON HEALTH AND HUM. SERVS. 1 (March 22, 2023), <https://www.lao.ca.gov/handouts/socservices/2023/Disproportionalities-in-CWS-032223.pdf>.

nonbinary youth seriously considered suicide in the last year. However, the presence of just one accepting adult—including at school—can reduce the risk of suicide for an LGBTQI+ child by 40%.²⁰

For LGBTQI+ children struggling with their identities, enduring a child welfare investigation is particularly harmful. For most LGBTQI+ individuals, understanding and communicating their gender and sexuality is a process that can take many years.²¹ For some young people, school is vitally important to this process, a place where they can build community with other LGBTQI+ youth and test the waters with different names and pronouns.²² But in the scenario Plaintiff envisions, this personal and often lengthy journey would be abruptly interrupted by an invasive child welfare investigation and potential separation from their families. They would be outed by their school to their parent(s) *and* to strangers within state agencies, and their private medical and educational records could be open to inspection by agency officials, law enforcement, attorneys, courts, and more. For

²⁰ *LGBTQ Youth with a History of Foster Care*, THE TREVOR PROJECT 1 (May 2021), https://www.thetrevorproject.org/wp-content/uploads/2021/07/LGBTQ-Youth-with-a-History-of-Foster-Care_-_May-2021.pdf.

²¹ See *A Survey of LGBT Americans: Attitudes, Experiences, and Values in Changing Times*, PEW RESEARCH CENTER 44 (June 13, 2013), <https://www.pewresearch.org/social-trends/2013/06/13/chapter-3-the-coming-out-experience/>.

²² See Matt Villano, *Tweens and Teens Explore the Power of Pronouns*, CNN.COM (Feb. 19, 2022), <https://www.cnn.com/2022/02/19/health/pronouns-guide-for-parents-wellness/index.html>.

that child, school becomes a place of fear and distrust, not safety, learning, growth, and maturation. That child does not just lose autonomy over when and how to share intimate information with their parent(s). Plaintiff's suggestion would drag children struggling with the common, confusing, and sometimes painful experience of figuring out who they are into a complicated state system where their identities—uncertain or evolving as they may be—are dissected, questioned, and even rejected.

b. Bigotry and bias cause LGBTQI+ children to be disproportionately separated from their families and placed in the foster system, even when it is avoidable.

LGBTQI+ youth are overrepresented among foster youth. Nationwide, LGBTQI+ youth comprise between 5 and 7% of the overall youth population. But they make up an estimated 25% of youth in the foster system.²³ In California, 30.4% of foster youth self-identify as LGBTQI+, as opposed to 11.2% in the state's overall youth population.²⁴ The limited data available about transgender and gender nonconforming youth specifically show even worse overrepresentation: transgender youth in California are five times more likely to be in the foster system than their

²³ These are likely underestimates, as these studies relied on foster youth to voluntarily self-identify. See Christina Wilson Remlin et al., *Safe Havens: Closing the Gap Between Recommended Practice and Reality for Transgender and Gender Expansive Youth in Out-of-Home Care*, CHILDREN'S RIGHTS 1, (April 2017), https://www.childrensrights.org/wp-content/uploads/imported-files/TGNC-Policy-Report_2017_final-web.pdf.

²⁴ Laura Baams et al., *LGBTQ Youth in Unstable Housing and Foster Care*, 143 PEDIATRICS 4 (March 2019), <https://doi.org/10.1542/peds.2017-4211>.

cisgender peers.²⁵ These disparities are even more dramatic for Black and brown LGBTQI+ children. A Los Angeles study found that over 90% of LGBTQI+ foster youth are youth of color.²⁶ And once in the system, LGBTQI+ youth of color tend to remain involved longer than their white, heterosexual, and cisgender peers.²⁷

One reason for the overrepresentation of LGBTQI+ youth in the foster system is that LGBTQI+ children face stigma and intolerance at school or in their communities. LGBTQI+ children who have experienced discrimination or been bullied in school may resort to behaviors or experience mental health crises their parents and caregivers lack the resources to address.²⁸ School-based bullying also contributes to high rates of truancy among LGBTQI+ youth, a common trigger of

²⁵ Roxanna Asgarian, *America's Foster Care System is a Dangerous Place for Trans Teens. Now They're Fighting for Change*, TIME (December 7, 2021), <https://time.com/6124930/oregon-foster-care-trans-youth-lawsuit/>.

²⁶ See Erin French Nafekh et al., *Understanding the Commercial Sexual Exploitation of LGBTQIA2S+ Youth*, NAT'L CTR. FOR YOUTH LAW 26 (June 2023), https://youthlaw.org/sites/default/files/attachments/2023-06/NCYL_Issue%20Briefs_LGBTQIA2S%2B%20Youth%20CSE_v6_0.pdf.

²⁷ Kerith Conron & Bianca D.M. Wilson, *LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems*, THE WILLIAMS INST. 46 (June 2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-YOC-Social-Services-Jul-2019.pdf>.

²⁸ V. Jadvā et al., *Predictors of self-harm and suicide in LGBT youth: The role of gender, socio-economic status, bullying and school experience*, 45 J. PUB. HEALTH 102, 104-05 (Nov. 27, 2021) (explaining how school- and community-based bullying and lack of access to resources are predictors of suicidality among LGBTQI+ youth).

child welfare investigations.²⁹ This is one reason that a safe and supportive school environment is so critical.

Bias and a lack of familiarity with LGBTQI+ issues within the child welfare system also cause LGBTQI+ children to be overrepresented among foster youth. To be sure, some LGBTQI+ children are rejected by their families. But studies indicate that providing parents with access to support and accurate, non-judgmental resources can help facilitate acceptance and reconciliation, thereby reducing rates of family separation, juvenile justice involvement, homelessness, and suicide for LGBTQI+ youth.³⁰ The child welfare system is poorly equipped to provide such resources or to help parents understand and accept their LGBTQI+ children. For instance, well-meaning social workers, attorneys, and judges often assume without any meaningful inquiry that family separation is preferable in the face of a perceived lack of family support.³¹ But studies indicate that many families that appear hostile when their

²⁹ *LGBTQ Youths in the Juvenile Justice System*, OFF. OF JUV. JUST. AND DELINQ. PREVENTION 1 (2014), <https://www.ojjdp.gov/mpg/litreviews/LGBTQYouthsInTheJuvenileJusticeSystem.pdf>.

³⁰ *A Practitioner's Resource Guide: Helping Families to Support Their LGBT Children*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN. 5 (2014), <https://store.samhsa.gov/product/practitioners-resource-guide-helping-families-support-their-lgbt-children/pep14-lgbtkids>.

³¹ *LGBTQ Youths in the Juvenile Justice System*, *supra* n.29, at 5-6.

children initially disclose are in fact motivated by legitimate concern that societal bias and bigotry will impact their LGBTQI+ children's life outcomes.³²

This is particularly salient for parents of LGBTQI+ youth of color, who live in the shadow of shocking rates of violence against transgender people of color, especially Black transgender women.³³ Parents of LGBTQI+ youth of color may acutely and justifiably fear for their children's lives. LGBTQI+ children of color may share that fear and may find it difficult to talk about their gender identity with their families for that reason. But child welfare officials rarely receive training to understand the nuanced forces and discrimination impacting LGBTQI+ youth of color and their families.³⁴

Family rejection need not always result in separating the child from their family, but the child welfare system lacks the capacity to address the often nuanced and complicated dynamic between LGBTQI+ children and their families, and too often defaults to family separation. As a result, LGBTQI+ youth, and especially LGBTQI+ youth of color, are disproportionately likely to be separated from their

³² *Practitioner's Resource Guide*, *supra* n.30, at 4-5.

³³ Laurel Powell, *2021 Became Deadliest Year On Record for Transgender and Non-Binary People*, HUMAN RIGHTS CAMPAIGN (Nov. 9, 2021), <https://www.hrc.org/resources/fatal-violence-against-the-transgender-and-gender-non-conforming-community-in-2022>.

³⁴ Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population*, 24:2 J. OF GENDER, SOC. POL., & L. 243, 255-56 (2015).

parents and placed in the foster system, often when separation could have been avoided by access to supports and interventions.³⁵

c. LGBTQI+ foster youth experience unique and disproportionate harms in the child welfare system.

Instead of finding safety and support, LGBTQI+ children entering the foster system are met with a carousel of unsafe and non-affirming placements where they are harassed, belittled, and physically harmed. The consequences of child welfare system involvement for LGBTQI+ youth are devastating and long-lasting.

Safe and affirming foster placements for LGBTQI+ youth are notoriously hard to find. Even in California, where the law prohibits discrimination by child welfare *agencies* against LGBTQI+ foster parents, the law does not prohibit individual foster *families* from refusing to house LGBTQI+ children due to religious or moral objections to their gender or sexuality.³⁶ California is one of only thirteen states with legal protections against sexual orientation and gender identity discrimination for foster youth.³⁷ But even with those protections, LGBTQI+ children face discrimination³⁸ and physical, verbal, and sexual abuse in foster

³⁵ See *Practitioner's Resource Guide*, *supra* n.30, at 5.

³⁶ *LGBTQ youth in the California foster care system: a question and answer guide*, NAT'L CTR. FOR LESBIAN RIGHTS (July 2017), https://www.nclrights.org/wpcontent/uploads/2013/07/LGBTQ_Youth_California_Foster_System.pdf.

³⁷ Baams, *supra* n.24, at 7.

³⁸ Transgender and gender nonconforming children are often called by the name and pronouns assigned to them at birth by child welfare officials and foster

settings more frequently than their non-LGBTQI+ peers do—by their peers and their adult caregivers. One study found that 100% of LGBTQI+ youth placed in group homes experienced verbal harassment and 70% endured physical violence.³⁹ One child was told outright that “foster families didn’t want a gay kid in their home” and spent eight years in group homes and residential centers where he was “abused sexually, physically, and emotionally.”⁴⁰ Another reported that her foster parents would not allow biologically female foster children to wear any masculine clothing.⁴¹ Still more recall that group home staff routinely referred to them with anti-gay slurs or permitted other youth to verbally, physically, and sexually assault

families, even when they request otherwise. See Priya Sikerwar & Erin Rider, *Transgender Youth in Child Welfare Settings*, NAT’L CTR. FOR CHILD WELFARE EXCELLENCE AT THE SILBERMAN SCH. OF SOC. WORK 2 (May 2015), <https://nccwe.org/downloads/info-packs/Rider.Sikerwar.pdf>. This is a form of discrimination and can have severe consequences for transgender and gender nonconforming children’s mental health. *Id.*

³⁹ This study was limited to New York City. The state of New York has non-discrimination protections similar to California’s, and even with those protections, LGBTQI+ discrimination runs rampant. *LGBTQ Youth in the Foster Care System*, HUMAN RIGHTS CAMPAIGN 3, <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf>.

⁴⁰ *Id.* at 2.

⁴¹ Nafekh et al., *supra* n.26, at 9.

them.⁴² When these children defended themselves, they reported that they were punished instead of their attackers.⁴³

In part due to this dearth of affirming foster placements, transgender and gender nonconforming youth are placed in group homes and other institutions⁴⁴ more frequently than their non-LGBTQI+ peers, where they are segregated in accordance with their sex assigned at birth rather than their gender identity, exacerbating gender dysphoria⁴⁵ and placing them at an increased risk of harassment, violence, and rape.⁴⁶ Transgender and gender nonconforming youth report that sex-segregated

⁴² Rob Woronoff et al., *Out of the Margins*, LAMBDA LEGAL xi-xii, 6, 18 (2006), <https://legacy.lambdalegal.org/sites/default/files/publications/downloads/out-of-the-margins.pdf>.

⁴³ *Id.* at 22.

⁴⁴ The State of California replaced the term “group home” with “short-term residential therapeutic program” (“STRTP”) in 2017. Both refer to residential facilities that provide supervision and services to children in the child welfare system. See *Short Term Residential Therapeutic Program*, CAL. DEPT. OF SOCIAL SERVS., <https://www.cdss.ca.gov/inforesources/continuum-of-care-reform/short-term-residential-therapeutic-program>.

⁴⁵ Gender dysphoria is “psychological distress that results from an incongruence between one’s sex assigned at birth and one’s gender identity,” including depression, anxiety, self-harm, and difficulties with day-to-day life. See *What is Gender Dysphoria*, AM. PSYCHIATRIC ASS’N (Aug. 2022), <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>

⁴⁶ Woronoff et al., *supra* n.41, at 23; see also Ariel Love, *A Room of One’s Own: Safe Placement for Transgender Youth in Foster Care*, 89 N.Y.U. L. REV. 2265, 2268 (Dec. 2014).

communal bathrooms and showers—like those in many group homes—leave them especially vulnerable to sexual assault.⁴⁷

Although LGBTQI+ youth “are the victims in these situations, they are nonetheless the ones to repeatedly move, in search of a safe ... living arrangement.”⁴⁸ In California and nationwide, LGBTQI+ foster youth change placements at much higher rates than their cisgender and heterosexual peers. LGBTQI+ children are also more likely to be placed in group homes or other restrictive settings—not because they could not thrive in a family-like setting, but because they have nowhere else to go.⁴⁹ They are even less likely than heterosexual, cisgender⁵⁰ children to achieve permanence through reunification, kinship care, or adoption.⁵¹

For any foster child, disconnection and placement instability cause educational disruption, gaps in necessary medical or mental health services, missed

⁴⁷ Sikerwar & Rider, *supra* n.37, at 2; *see also* Love, *supra* n.44, at 2278.

⁴⁸ Svetlana Shpiegel & Cassandra Simmel, *Functional Outcomes Among Sexual Minority Youth Emancipating from the Child Welfare System*, 61 CHILDREN AND YOUTH SERV. REV. 101, 102 (Feb. 1, 2016).

⁴⁹ *Id.*

⁵⁰ “Cisgender” refers to individuals whose gender identity matches the sex they were assigned at birth. *Cisgender*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/cisgender>.

⁵¹ Bianca D.M. Wilson et al., *Sexual and Gender Minority Youth in Foster Care*, UCLA SCH. OF L. WILLIAMS INST. (July 2019) <https://williamsinstitute.law.ucla.edu/publications/sgm-youth-la-foster-care/>; *LGBTQ in Child Welfare: A Systematic Review of the Literature*, THE ANNIE E. CASEY FOUNDATION 5, <https://assets.aecf.org/m/resourcedoc/aecf-LGBTQ2inChildWelfare-2016.pdf>.

or unidentified needs, emotional and behavioral difficulties, waning bonds with their families, communities, and supportive adults, higher risk of commercial sexual exploitation, increased likelihood of criminalization and incarceration, and fewer services available after exiting the foster system.⁵² Faced with restrictive or abusive foster placements, many LGBTQI+ foster youth make the difficult decision to leave, contributing to a disproportionately large population of LGBTQI+ homeless youth. LGBTQI+ youth comprise between 20-45% of youth experiencing homelessness.⁵³ Studies of unhoused LGBTQI+ youth have found that nearly 80% of them were removed from or left foster homes because of abuse or discrimination, and more than half felt safer on the street than in the foster system.⁵⁴

Placement instability, discrimination, and homelessness also push LGBTQI+ foster youth into commercial sexual exploitation. One half of youth between the ages of 13 and 24 involved in the sex trade across the U.S. identified as LGBTQI+,⁵⁵ and LGBTQI+ youth experiencing homelessness—the majority of whom are former foster youth—are over seven times more likely to suffer sexual violence than their

⁵² *Id.*

⁵³ See Asgarian, *supra* n.25; *During Pride Month, Strive to Better Support Homeless Youth*, NAT'L ALL. TO END HOMELESSNESS (June 17, 2016), <https://endhomelessness.org/blog/during-pride-month-strive-to-better-support-lgbtq-homeless-youth/>.

⁵⁴ Remlin et al., *supra* n.23, at 3.

⁵⁵ Nafekh et al., *supra* n.26, at 5.

straight and cisgender peers.⁵⁶ Sexual exploitation disproportionately impacts LGBTQI+ youth of color—studies estimate that 70% of LGBTQI+ youth who are impacted by the commercial sex industry are Black.⁵⁷

Facilitating healthy and trusting relationships with adults, including and especially at school, can reduce the likelihood that LGBTQI+ youth will experience commercial sexual exploitation. Access to safe, accepting, and supportive schools is a protective factor for LGBTQI+ youth.⁵⁸ On the other hand, the rejection, abuse, and instability LGBTQI+ youth experience in the child welfare system make them targets for traffickers, who prey on their need for material supports and acceptance.⁵⁹ It also makes them vulnerable to engaging in “survival sex,” meaning trading sexual acts, even when no trafficker is involved, to meet their basic needs, such as shelter, clothing, food, or health care.⁶⁰ For young people whose caregivers restrict access to

⁵⁶ Remlin et al., *supra* n.23, at 3.

⁵⁷ Nafekh et al., *supra* n.26, at 5.

⁵⁸ *Schools*, YOUTH.GOV, <https://youth.gov/youth-topics/lgbtq-youth/school-experiences>; *School-Related Protective Factors for LGBTQ Middle and High School Student*, THE TREVOR PROJECT (August 24, 2023), <https://www.thetrevorproject.org/research-briefs/school-related-protective-factors-for-lgbtq-middle-and-high-school-students-aug-2023/>.

⁵⁹ Carly B. Dierkhising et al., *Recommendations to Improve Out of Home Care from Youth who have experienced commercial sexual exploitation*, 116 CHILD AND YOUTH SERV. REV. 1 (2020), <https://doi.org/10.1016/j.childyouth.2020.105263>.

⁶⁰ Meredith Dank et al., *Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YSWW Engaged in Survival Sex*, URBAN INSTITUTE (2015), <https://www.urban.org/research/publication/surviving-streets-new-york-experiences-lgbtq-youth-ymsm-and-ysww-engaged-survival-sex>.

gender-affirming clothing or health care, the sex trade may be the only place they feel they can access the care they need. Indeed, transgender and gender nonconforming youth are eight times as likely as cisgender youth to trade sex for shelter.⁶¹ Employment discrimination also contributes to high rates of sexual exploitation among transgender and gender nonconforming youth. According to a transgender girl from the San Francisco Bay Area, “It’s really hard for trans kids to get jobs because there’s so much prejudice against them. . . . When you’re young, the jobs available to you are things like CVS or McDonald’s. Those places have an endless pool of unskilled labor; they won’t hire the trans kid. In doing sex work, they can make a lot of money quickly and save enough to get their [gender-affirming] surgery.”⁶²

The harms of experiencing commercial sexual exploitation are severe and long-lasting. Children and youth who are impacted by commercial sexual exploitation face frequent violence; short and long-term mental and physical health issues; disconnection from school, communities, and other natural connections; increased likelihood of contact with the juvenile and criminal legal systems; and in

⁶¹ Remlin et al., *supra* n.23, at 3.

⁶² Rachel Swaner et al., *Youth Involvement in the Sex Trade: A National Study*, CENTER FOR COURT INNOVATION 75 (June 2016), <https://www.ojp.gov/pdffiles1/ojjdp/grants/249952.pdf>.

too many cases, death.⁶³ Transgender youth who experience sexual violence or exploitation are uniquely reluctant to report their experiences to adults, fearing that they will be outed, forced to return to abusive or discriminatory foster homes, or criminally punished themselves.⁶⁴

For LGBTQI+ youth, especially LGBTQI+ youth of color, the risk of criminal punishment is also very real. Although queer and trans youth comprise just 5 to 7% of the overall population, they make up an estimated 20% of youth in juvenile detention facilities.⁶⁵ Of these youth, 85% are youth of color.⁶⁶ And a disproportionate number of LGBTQI+ justice-involved youth had some contact with the child welfare system first. One study showed that 30% of LGBTQI+ youth were removed from their homes by social workers before becoming involved in the juvenile justice system, compared to just 11% of straight, cisgender youth.⁶⁷

⁶³ Kate Walker, *Ending the Commercial Sexual Exploitation of Children: A Call for Multi-System Collaboration in California*, CALIFORNIA CHILD WELFARE COUNCIL 16-17 (2013), <https://youthlaw.org/resources/ending-commercial-sexual-exploitation-children-call-multi-system-collaboration-california>.

⁶⁴ Nafekh et al., *supra* n.26, at 15-16. In the child welfare system, youth who have experienced commercial sexual exploitation have more placement instability and face additional rejection from providers and foster families alike. See Carly B. Dierkhising & Mae Ackerman-Brimberg, *CSE Research to Action Brief: Translating Research to Policy and Practice to Support Youth Impacted by Commercial Sexual Exploitation (CSE)*, NAT'L CTR. FOR YOUTH LAW 11 (2020), <https://youthlaw.org/resources/research-action-brief-translating-research-policy-and-practice-support-youth-impacted>.

⁶⁵ Irvine & Canfield, *supra* n.34, 242.

⁶⁶ *Id.*

⁶⁷ *Id.* at 245.

LGBTQI+ youth are also over seven times as likely as their non-LGBTQI+ peers to have been placed in a foster or group home before entering juvenile detention.⁶⁸

It is unsurprising that the harms of child welfare involvement persist well into adulthood. LGBTQI+ current and former foster youth face increased risk of anxiety, depression, post-traumatic stress, substance abuse disorders, HIV and other STDs, self-harm, and suicide.⁶⁹ Compared to heterosexual and cisgender youth, they are less likely to have stable housing and employment, tend to earn less, and have poorer physical health outcomes as they transition into adulthood.⁷⁰

Moreover, countless LGBTQI+ foster youth do not even make it to adulthood. Because of institutional and interpersonal bigotry, mental health issues are endemic in the LGBTQI+ community. Transgender and gender nonconforming youth, who tend to experience higher rates of violence and discrimination, are almost four times more likely to report self-harm, over three times more likely to report suicidal ideation, and two and a half times as likely to report an attempted suicide as cisgender youth.⁷¹ Involvement in the child welfare system elevates the risk of suicide for LGBTQI+ youth: an estimated 13% of all LGBTQI+ youth reported attempting

⁶⁸ *Id.*

⁶⁹ *LGBTQ Youth in Child Welfare*, *supra* n.49, at 2; Conron & Wilson, *supra* n.27, at 46-47.

⁷⁰ *Id.*

⁷¹ Jadva et al., *supra* n.29, at 104.

suicide on a 2020 national survey. This number jumped to 35% of all LGBTQI+ youth in the foster system, and 45% for transgender and nonbinary foster youth.⁷²

Research shows that, contrary to Plaintiff's suggestion, the child welfare system is not the solution when parents do not accept their LGBTQI+ children. Instead, in most cases, the system itself subjects LGBTQI+ youth to further discrimination, rejection, trauma, and terrible outcomes including homelessness, incarceration, commercial sexual exploitation, and physical and mental health problems. Child welfare reporting cannot and should not replace the affirming, protective impact of the School District's Policy, which comports with the research and trusts LGBTQI+ youth to determine when and how to safely share information about their gender identities with their parent(s).

CONCLUSION

Plaintiff's arguments about the scope of her parental rights, and A.S.'s complete lack of rights to privacy and autonomy, are meritless. Beyond her utter refusal to acknowledge the legal rights of youth codified in statutory and case law, Plaintiff fails to consider the practical realities of both "forced outing" and reports to the child welfare system. Rather than strengthen family integrity, forced outing can interfere with the parental relationship by triggering family conflict or a report to the child welfare agency. Moreover, forced outing does not ensure that youth get the

⁷² *LGBTQ Youth with a History of Foster Care*, *supra* n.21, at 1.

support they need during this difficult time of identity exploration. “[I]f a trusting and supportive relationship between a parent and child has not already been established, it is unlikely that the State can create in a moment of crisis what the parents were unable to develop over the course of the preceding years.” *Lungren*, 16 Cal. 4th at 365. And rather than protecting children, exposing them to the child welfare system can cause severe and permanent harm to both the child and the family—especially in the case of LGBTQI+ children. In accordance with settled law and with common sense, the Court should uphold the Policy allowing school officials to honor students’ decisions on when to inform their parents of their gender identities.

Dated: January 9, 2024

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

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I am the attorney or self-represented party.

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 9, 2024.

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