

No. 23-16031

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

AURORA REGINO,
Plaintiff-Appellant,

v.

KELLY STALEY,
Defendant-Appellee.

**On Appeal from the United States District Court
for the Eastern District of California**

No. 23-cv-00032

Hon. John A. Mendez, District Judge

**MOTION BY AMICUS CURIAE THE STATE OF CALIFORNIA FOR
LEAVE TO PARTICIPATE IN ORAL ARGUMENT**

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April 5, 2024

MOTION

Under Federal Rule of Appellate Procedure 29(a)(8), amicus curiae the State of California respectfully requests leave to participate in the oral argument in this matter. The State requests that the Court grant it ten minutes of argument time, or whatever allocation of time the Court deems appropriate and equitable, to present argument in support of Defendant-Appellee Chico Unified School District (CUSD) Superintendent Kelly Staley. Defendant does not oppose the State's participation in oral argument provided she retains 20 minutes of argument time. Plaintiff-Appellant Aurora Regino opposes California's participation.

1. This appeal concerns whether the district court properly dismissed plaintiff's claims under Federal Rule of Civil Procedure 12(b)(6) because plaintiff failed to plausibly allege any cognizable legal claims in her lawsuit challenging CUSD's Administrative Regulation 5145.3. That regulation takes appropriate steps to protect the safety, well-being, and privacy of transgender and gender-nonconforming students, including by providing many ways for schools to partner with parents. Among other things, the regulation allows school personnel to disclose a student's transgender or gender-nonconforming status with the student's prior written consent or when necessary to protect the student's physical or mental well-being.

Plaintiff alleged that the regulation violates her substantive due process, procedural due process, and First Amendment familial association rights. The district court held that plaintiff's claims were not plausibly alleged and dismissed them with prejudice.

2. California has a substantial interest in the issues presented in this case and experience litigating those issues in other contexts. California has supported policies like CUSD's that appropriately help to ensure that schools are safe and supportive environments for transgender and gender-nonconforming students. If accepted, plaintiff's arguments could undermine efforts to protect transgender and gender-nonconforming students in California and throughout the Ninth Circuit. Accordingly, California filed an amicus curiae brief in this appeal, joined by 14 other States and the District of Columbia, in which it argued that policies like CUSD's are important and consistent with due process.

3. The State's participation in oral argument would aid the Court in its resolution of this appeal. Participation in oral argument would allow California to address the State's interest in this case and to respond to questions about the matters addressed in the amicus brief, including points made by the State that expand upon defendant's arguments.

For example, defendant's brief explains why there is no substantive due process right to compel school districts to notify parents and disclose to them their

child's transgender or gender-nonconforming status, and why plaintiff's procedural due process and familial association claims similarly fail as a matter of law. In so doing, defendant's brief emphasizes students' informational privacy rights under federal law. The amicus curiae brief California filed explains how CUSD's Administrative Regulation 5145.3 also advances the legitimate and compelling interest in ensuring a safe and supportive school environment for transgender and gender nonconforming-students.

In addition, the State explained in its brief why plaintiff's position regarding the scope of parental substantive due process rights in the educational setting is foreclosed by *Runyon v. McCrary*, 427 U.S. 160 (1976), *Norwood v. Harrison*, 413 U.S. 455 (1973), *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020), and other authority. Those precedents provide further support for the arguments made in defendant's brief.

The State also explained why plaintiff failed to plausibly allege that respecting a transgender student's name and pronouns constitutes medical or psychological treatment requiring parental involvement under substantive due process by, among other things, responding to plaintiff's reliance in her opening brief on expert declarations from other litigation involving the Attorney General of California.

The State is well positioned to respond to any questions on these and other arguments developed in the amicus brief.

4. The Court has scheduled argument for May 9, 2024, and allocated 20 minutes per side. California respectfully requests ten minutes of time, or whatever allocation of time the Court deems appropriate and equitable. Defendant does not oppose the State's participation in oral argument provided she retains 20 minutes of argument time. Plaintiff opposes California's participation at argument.

CONCLUSION

The State of California respectfully requests that the Court grant it leave to participate at oral argument, and that the Court allocate California ten minutes of argument time.

Dated: April 5, 2024

Respectfully submitted,

s/ Julie Veroff

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CERTIFICATE OF COMPLIANCE

I certify that the forgoing Motion complies with the type-volume limitation of Fed. R. App. 27 because it contains 697 words. This Motion complies with the typeface and type-style requirements of Fed. R. App. P. 27 because it has been prepared in a proportionally spaced typeface using Word 14-point Times New Roman font.

s/ Julie Veroff
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