

No. 25-8056

United States Court of Appeals

for the

Ninth Circuit

ELIZABETH MIRABELLI, *et al.*

Plaintiffs-Appellees,

v.

ROB BONTA, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of California
Case No. 3:23-cv-00768, Hon. Roger T. Benitez

**BRIEF OF NATIONAL CENTER FOR YOUTH LAW AND
17 ADDITIONAL ORGANIZATIONS AS *AMICI CURIAE*
IN SUPPORT OF DEFENDANTS-APPELLANTS**

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INTEREST OF *AMICI CURIAE*¹

Amici are state and national organizations with extensive combined experience advocating for the rights, safety, and well-being of children and youth, including through impact litigation, policy advocacy, youth organizing, and direct legal services. They include organizations focused on LGBTQ+ youth advocacy, educational equity, and family preservation. *Amici* share a commitment to ensuring that youth—particularly those from marginalized communities—are able to exercise their constitutional and statutory rights in the institutions that serve them, including in schools. *Amici* file this brief to highlight two important considerations: the independent constitutional interests of transgender and gender nonconforming students in exploring and expressing their gender identity, and the serious and well-documented harms that child welfare involvement poses for LGBTQ+ youth.

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. For more than 50 years, NCYL has fought to ensure that youths’ rights, dignity, and autonomy are respected and that public agencies promote their safety and well-being. NCYL has extensive experience using

¹ All parties consent to the filing of this brief. 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 *amici curiae*, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief.

litigation to enforce the rights of young people, including those who identify as lesbian, gay, bisexual, transgender, queer, intersex, asexual, two-spirit, and other identities across the gender and sexuality identity spectrum (“LGBTQ+”). NCYL’s priorities include reducing the United States’ reliance on traumatic family separation, supporting youths’ connections to their families and communities, and expanding access to inclusive educational opportunities for all youth, especially those who historically have been denied such opportunities.

Together with NCYL, the following *Amici* join this brief:

1. Advokids
2. California School-Based Health Alliance
3. Children Now
4. Children’s Law Center of California
5. Children’s Rights
6. Equality California
7. Equal Justice Society
8. Family Builders by Adoption
9. Family Equality
10. Genders & Sexualities Alliance (GSA) Network
11. Juvenile Law Center
12. LGBTQ+ Lawyers Association of Los Angeles

13. Movement for Family Power
14. National Health Law Program
15. Public Counsel
16. Public Justice
17. The Children's Partnership

INTRODUCTION AND SUMMARY OF ARGUMENT

A youth’s exploration of and decision to share their gender identity—with whom, when, and on what terms—is intensely personal. The Injunction below, however, deprives California students of autonomy in that process without considering the student’s own interest in determining how they navigate this aspect of their life. It requires school officials to, at a parent’s demand, discriminate against transgender and gender nonconforming students by addressing them with names and pronouns that do not reflect their gender identity. Such silencing of a student’s wishes poses unacceptable risks to the student’s health and well-being.

The Order and Injunction ignore the potential dangers that school officials disaffirming students’ gender identity and expression imposes upon LGBTQ+ students. Young people explore their identities in phases, often starting within a carefully cultivated community at school. It is vital that their right to do so, on their own terms, is honored. Schools’ failure to affirm students’ gender identity can have severe, long-lasting consequences for students.

Indeed, the Order acknowledges that the State’s “most articulate statement of the government’s interest” in defending the law at issue here included its “interest in protecting transgender and gender-nonconforming students from bullying and harassment, and in fostering a safe and supportive school environment where students can learn without fear of being outed to their parents before they are ready.”

Mirabelli v. Olson, 820 F. Supp. 3d 1123, 1152 (S.D. Cal. 2025) (quotations omitted) (hereinafter “Op.”). Despite verbalizing the strength of this interest, the District Court dismissed it without analysis, stating only that the State did not prove its argument. *Id.* The Order also fails to consider youths’ own independent and well-established constitutional rights. The Order further incorrectly suggests that if ignoring a student’s wishes as they navigate their gender identity creates a risk of physical danger to the student, that danger would be alleviated by the “mandatory reporting laws and a complete law enforcement and judicial system [that] are in place.” *Id.* at 1132. Involvement in the child welfare system, however, does not offer safety to LGBTQ+ youth; rather, it compounds harm for these youth. The Order disregards that offering support to LGBTQ+ youth reduces the likelihood of family rupture and the attendant harms of involvement in the child welfare system.²

Amici therefore urge the Court to account for two important considerations in resolving this appeal:

First, the Order’s requirement that school officials—at a parent’s demand—disregard a student’s request to use a name or pronouns consistent with their gender

² This brief uses the common term “child welfare system” to refer to the state agencies charged with investigating reports of parental abuse or neglect and arranging for temporary and permanent placement for children deemed unsafe in their homes. *Amici* recognize, however, that this system is often harsh, punitive, and painful for the children and adults involved. Some experts prefer the terms “family regulation” or “family policing” as more accurate alternatives. *See, e.g.*, Brianna Harvey, et al., *Reimagining Schools’ Role Outside the Family Regulation System*, 11 COLUM. J. RACE & L. 575, 578 n.1 (2021).

identity deprives transgender and gender nonconforming youth of the autonomy to determine when and how they explore their gender identity. Research shows that this deprivation harms both LGBTQ+ youth and their family relationships. The Order and Injunction ignore students' autonomy—favoring parental rights without even considering youths' independent constitutional rights—contrary to the body of case law that considers parental rights in conjunction with youths' own constitutional rights.

Second, when LGBTQ+ youth are not supported, they are more likely to experience family disruption, and any subsequent involvement in the child welfare system is likely to harm LGBTQ+ youth. Child welfare investigations pose unique risks to LGBTQ+ youth. And LGBTQ+ youth—who are already overrepresented in the child welfare system—face disproportionate risks of discrimination and abuse within that system, and are often denied safe and affirming placements.

ARGUMENT

I. FAILING TO SUPPORT YOUTH IN NAVIGATING THEIR GENDER IDENTITY UNDERMINES YOUTH AND THEIR FAMILY RELATIONSHIPS

Requiring school employees to disregard a student's request to use a name or pronouns consistent with their gender identity when the parent objects—as required by the Order and Injunction—harms transgender and gender nonconforming youth.

It also undermines the family relationships that both Plaintiffs-Appellees and the District Court purport to protect.

A. Transgender And Gender Nonconforming Youth Should Determine When And How They Explore Their Gender Identity

Exploring and navigating one's gender identity is an ongoing process, and young people engage in this process in different ways in different settings and at different times.³ School often serves as an important environment in this process—a place where students can build a safe community with their peers, school staff, trusted adults, and mental health support.⁴ Transgender and gender nonconforming youth are the experts on their own identities, families, and communities. Research shows that when LGBTQ+ people have autonomy in the process of exploring their identities, their families are more likely to be accepting.⁵

Rather than strengthening the parent-child relationship, requiring school officials to disaffirm a student's identity when the parent objects is more likely to

³ *A Survey of LGBT Americans: Attitudes, Experiences, and Values in Changing Times*, PEW RESEARCH CTR. 44 (June 13, 2013), https://www.pewresearch.org/wp-content/uploads/sites/20/2013/06/SDT_LGBT-Americans_06-2013.pdf; see also Mohammad Mousavi et al., *LGBTQ+ Youth Identity Disclosure Processes: A Systematic Review*, 10 ADOLESCENT RES. REV. 255 (2025), <https://doi.org/10.1007/s40894-024-00243-1>.

⁴ 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/>; Eric Layland & Brittany Zakszeski, *Creating Safe Spaces for LGBTQ+ Youth*, UNIV. OF DEL. COLL. OF EDUC. & HUM. DEV. (Oct. 10, 2025), <https://www.cehd.udel.edu/safe-spaces-lgbtq-youth/>.

⁵ Nicole Legate & William S. Ryan, *Autonomy Support as Acceptance for Disclosing and Developing a Healthy Lesbian, Gay, Bisexual or Transgendered Identity*, in N. Weinstein (ed.), HUMAN MOTIVATION & INTERPERSONAL RELATIONSHIPS 199 (2014), https://doi.org/10.1007/978-94-017-8542-6_9.

harm that relationship. For LGBTQ+ youth, being supported and affirmed in their identities at school is correlated with a whole host of positive life outcomes, including increased feelings of safety, as well as health and academic benefits.⁶ These supportive practices are the ones that are more likely to *strengthen* the parent-child relationship. Studies show that parents who initially appear hostile to their child’s LGBTQ+ identity are often motivated by concern for the child’s safety in a biased world and that, with time and support, many become accepting.⁷ Parental support is empirically associated with superior mental health outcomes for transgender youth, including higher life satisfaction and fewer depressive symptoms.⁸ Allowing students to explore their gender identity at school, with support from school staff if they so choose, fosters conditions that are most likely to produce a positive family outcome.

⁶ Megan Rouse, *What the Research Says About Supporting LGBTQ+ Youth*, UCLA CENTER FOR THE DEVELOPING ADOLESCENT (June 30, 2025), <https://developingadolescent.semel.ucla.edu/blog/item/what-the-research-says-about-supporting-lgbtq-youth>.

⁷ *A Practitioner’s Resource Guide: Helping Families to Support Their LGBT Children*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. 5 (2014) (hereinafter “*A Practitioner’s Resource*”), <https://familyproject.sfsu.edu/sites/default/files/documents/FamilySupportForLGBTChildrenGuidance.pdf>.

⁸ Lisa Simons et al., *Parental Support and Mental Health Among Transgender Adolescents*, 53 J. ADOLESCENT HEALTH 791, 792 (Dec. 2013) (“[P]arental support was significantly associated with higher life satisfaction, lower perceived burden, and fewer depressive symptoms [in transgender adolescents].”).

By requiring state actors to ignore student requests to use names and pronouns aligned with their gender identity when the parent objects, the Order and Injunction override a student’s ability to choose when, how, and with whom they navigate their gender identity—without regard for the student’s individual circumstances, family dynamics, safety, or well-being. They drive an unnecessary wedge between these students and their families. And they empower school officials to displace the expertise that transgender and gender nonconforming students develop over years of carefully protecting their own safety and comfort in their environments and communities.

Every student’s situation is unique. Research reinforces that supporting students in how they decide to explore gender identity promotes their well-being and family relationships. The Order and Injunction ignore that reality.

B. The Order And Injunction Disregard Students’ Independent Constitutional Rights And Interests In Exploring And Expressing Their Gender Identity

Students’ interests in exploring and expressing their gender identity also accord with longstanding legal precedent enshrining the independent constitutional rights of youth. As the Supreme Court has held: “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.” *Parham v. J.R.*, 442 U.S. 584, 627 (1979) (Brennan, J.,

concurring in part and dissenting in part) (citations omitted); *see also In re Gault*, 387 U.S. 1, 13, 55 (1967) (recognizing that children are entitled to constitutional protections).

Among other constitutional rights, youth have independent rights to freedom of expression, including through symbolic acts, which are entitled to “comprehensive protection under the First Amendment”—even in schools. *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 505-06 (1969) (students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate”). Youth also have independent privacy rights. *See Carey v. Population Servs., Int’l*, 431 U.S. 678, 693 (1977) (“The right to privacy ... extends to minors as well as to adults.”).

The Supreme Court’s *per curiam* opinion in this case, issued in a preliminary posture, did not have the opportunity to consider youths’ constitutional interests. It emphasized parents’ fundamental First Amendment and Fourteenth Amendment rights to direct the upbringing and education of their children. *Mirabelli v. Bonta*, 146 S. Ct. 797, 800 (2026). But those rights are “not absolute” and are “not without limitations.” *Regino v. Staley*, 133 F.4th 951, 961, 966 (9th Cir. 2025) (quotations omitted). Rather, they “must bow to other countervailing interests and rights, such as the *basic independent life and liberty rights of the child* and of the State acting as *parens patriae*.” *Id.* at 961 (emphasis added; quotations omitted); *see also Prince*

v. Massachusetts, 321 U.S. 158, 166 (1944) (“[N]either rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth’s well being, the state as *parens patriae* may restrict the parent’s control”).

Indeed, the Supreme Court has consistently held that, where parental rights are implicated, the child’s rights remain present and must receive consideration. Even its earliest precedents on parents’ fundamental rights—which both the Order and the Supreme Court’s *per curiam* opinion in this case rely upon—recognized that children have freestanding constitutional rights of their own. *See, e.g., Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (recognizing child’s due process right to receive education); *Meyer v. Nebraska*, 262 U.S. 390, 400, 403 (1923) (recognizing child’s rights to receive instruction in languages other than English); *Prince*, 321 U.S. at 165-66 (recognizing child’s independent free-exercise right when considering parental liberty interest in directing child’s religious upbringing).

For instance, in *Parham*—another case both the District Court and the Supreme Court relied upon here—youth institutionalized in a mental health hospital alleged that a state statute violated their due process rights by allowing parents to seek voluntary admission of their minor children. 442 U.S. at 587. The Supreme Court upheld the statute, but acknowledged that, because youth have constitutional rights of their own, “parents cannot always have absolute and unreviewable discretion to decide whether to have a child institutionalized.” *Id.* at 604. To protect

the youth's liberty interest, it required that "some kind of inquiry [be] made by a 'neutral factfinder' to determine whether the statutory requirements for admission are satisfied." *Id.* at 606-07. That is, even when the Supreme Court recognizes parental rights, it does not interpret them so broadly that youths' own rights are excluded; rather, the Court carefully considers both interests.

Though Plaintiffs-Appellees claim a violation of parental rights here, this case is ultimately about youth and their ability to explore and express their gender identity on their own terms. Yet youths' rights have been minimized and ignored throughout this litigation. The Order's reference to children's state-law privacy rights is fleeting and dismissive, simply asserting without analysis that they must yield to parents' federal constitutional rights under the Supremacy Clause. *See, e.g.,* Op. at 1135-36. And, even as it emphasizes the federal rights of parents, the Order fails to consider youths' federal constitutional rights *at all*. The Court cannot properly analyze the law at issue in this case without considering youths' interests and rights.

If courts only consider the perspective of parents and the State, they will fail to account for the constitutional rights of the individuals most impacted by the Order: the students themselves. That cannot stand. Absent correction from this Court, such disregard for the constitutional rights of youth may lead future parent plaintiffs to seek to:

- Block their Christian teenager from attending church due to the parents’ own atheist beliefs;
- Disenroll their ninth-grader from school—over the student’s objections—due to the parents’ religious and cultural beliefs;⁹ or
- Prevent their daughters from learning about women’s achievements in science and medicine in their public school education due to the parents’ beliefs that women should not work.¹⁰

The Order’s sweeping elevation of parental rights and failure to consider youth interests set a dangerous precedent with no limiting principle—one that could dismantle longstanding constitutional and statutory youth rights across virtually every domain of law and life. Such a precedent would drive a permanent wedge between the very parents and children the District Court purports to protect. Therefore, in resolving this appeal, this Court should account for the fact that youth have inalienable constitutional rights of their own that parental rights cannot and do not erase.

⁹ Indeed, one concurrence in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), noted that the case does not address the “interesting and important issue” of whether Amish youth have a right to attend school against their parents’ wishes. *Id.* at 237 (Stewart, J., concurring).

¹⁰ See Oral Arg. Tr. at 19:20-20:6, *Mahmoud v. Taylor*, No. 24-297 (Apr. 22, 2025) (Justice Sotomayor describing cases where parents have objected to “biographical material about women who have been recognized for achievements outside of their home” because they believed that women should not work).

II. THE CHILD WELFARE SYSTEM IS PARTICULARLY HARMFUL FOR LGBTQ+ YOUTH

As detailed above, when youth are supported in exploring their gender identity in even some aspects of their life, it promotes their well-being, making family rupture less likely. When family rupture does occur, however, the Order's assumption that the child welfare system stands as an adequate corrective is dangerously misguided. *Amici* therefore urge the Court to account for the fact that, in the event of family rupture, child welfare interventions—including both investigations and placements—can be harmful, invasive, and destabilizing for youth and families. And this Court should bear in mind the unique and disproportionate harms LGBTQ+ youth face from investigation by and placement in that system.

A. Child Welfare Investigations Inflict Distinct, Compounded Harms On LGBTQ+ Youth

As an initial matter, child welfare investigations can profoundly disrupt youth and families. Even when ultimately unsubstantiated, an investigation can last for months, and can cause both children and their parents psychological distress, depression, shame, and fear.¹¹ Families under investigation are more likely to avoid

¹¹ Samita Wilson et al., *Children's Experiences with Child Protection Services: A Synthesis of Qualitative Evidence*, 113 CHILDREN & YOUTH SERV. REV. 8, 8-9 (2020), <https://doi.org/10.1016/j.childyouth.2020.104974>; Darcey H. Merritt, *How Do Families Experience and Interact with CPS?*, 692 ANNALS AM. ACAD. POL. & SOC. SCI. 203, 212-13 (2020).

assistance programs and social services, which are often accompanied by mandatory reporting requirements.¹² Parents under investigation also are less likely to seek medical care for their children—out of fear, for example, that a playground injury could lead to forced separation.¹³ And reports show that parents tend to be less engaged in their child’s education after a school reports the family.¹⁴

By contrast, research shows that providing parents with access to accurate, non-judgmental resources decreases the odds of a child welfare investigation, as they can facilitate acceptance and reconciliation with LGBTQ+ children.¹⁵ The interventions that may follow mandatory reporting do not foster—but rather thwart—family acceptance.

Where child welfare investigations do result in a child’s removal from the home, LGBTQ+ youth are disproportionately affected. LGBTQ+ youth are significantly overrepresented in the foster system. An estimated 25% of youth in the

¹² Kelley Fong, *Concealment and Constraint: Child Protective Services Fears and Poor Mothers’ Institutional Engagement*, 97 SOCIAL FORCES 1785, 1794, 1797 (2018).

¹³ Charlotte Baughman et al., *The Surveillance Tentacles of the Child Welfare System*, 11 COLUM. J. RACE & L. 501, 512 (2021).

¹⁴ 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/>.

¹⁵ *A Practitioner’s Resource*, *supra* note 7, at 5-6; Angela Irvine-Baker & Sydney Jacobs Allen, *Youth Acceptance Project Interim Evaluation Report* (Ceres Policy Research, Feb. 2024), <https://sogiecenter.org/programs/yap/> (finding that with targeted support, non-affirming parents demonstrated statistically significant improvement in affirming behaviors toward their children identifying as LGBTQ+).

foster system identify as LGBTQ+, compared to 5% to 7% of the overall youth population in the United States.¹⁶ In California, 30.4% of foster youth self-identify as LGBTQ+, compared to 11.2% of the state's overall youth population.¹⁷ Transgender youth in California are five times more likely to be placed in the foster system than their cisgender peers.¹⁸ These disparities are even more dramatic for LGBTQ+ youth of color: one Los Angeles study found that over 90% of LGBTQ+ youth in the foster system are youth of color, and once in the system, they remain involved longer than their white, cisgender, and heterosexual peers.¹⁹

One driver of the overrepresentation of LGBTQ+ youth in the foster system is their higher rates of involvement in child welfare investigations. LGBTQ+ youth experience higher rates of discrimination and bullying and hence are more likely to suffer mental health challenges or engage in self-destructive behaviors that parents

¹⁶ These are likely underestimates, as these studies rely on youth in the foster system to voluntarily self-identify. *See generally* 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 (Apr. 2017), https://www.childrensrights.org/wp-content/uploads/imported-files/TGNC-Policy-Report_2017_final-web.pdf.

¹⁷ Laura Baams et al., *LGBTQ Youth in Unstable Housing and Foster Care*, 3:143 PEDIATRICS 1 (Mar. 2019), <https://doi.org/10.1542/peds.2017-4211>.

¹⁸ Roxanna Asgarian, *America's Foster Care System is a Dangerous Place for Trans Teens. Now They're Fighting for Change*, TIME (Dec. 7, 2021), <https://time.com/6124930/oregon-foster-care-trans-youth-lawsuit/>.

¹⁹ 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/wp-content/uploads/ncyl_issue-briefs_lgbtqia2s-youth-cse_v6_0.pdf.

may struggle to address.²⁰ Child welfare investigations can arise from educational instability: for example, school truancy is a common trigger for child welfare involvement.²¹

A second driver of overrepresentation is bias and lack of training within the child welfare system itself. Social workers, attorneys, and judges often assume without meaningful inquiry that family separation is the best option when a parent appears unsupportive. But research shows that many families who appear hostile at the moment of disclosure are motivated not by rejection but by genuine fear that societal bias will harm their child.²² This is especially true for the parents of LGBTQ+ youth of color—youth who already endure race-based bias, stigma, and discrimination—who may fear that their children’s LGBTQ+ identities will expose them to additional bigotry and pain.²³ Child welfare officials rarely receive training to understand these nuanced dynamics.²⁴ The result is that LGBTQ+ youth—

²⁰ Vasanti 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).

²¹ *LGBTQ Youths in the Juvenile Justice System*, OFF. OF JUV. JUST. & DELINQ. PREVENTION 5 (Aug. 2014), <https://www.govinfo.gov/content/pkg/GOVPUB-J32-PURL-gpo122627/pdf/GOVPUB-J32-PURL-gpo122627.pdf>.

²² *A Practitioner’s Resource*, *supra* note 7, at 4-5.

²³ Laurel Powell, *2021 Became Deadliest Year on Record for Transgender and Non-Binary People*, HUMAN RTS. CAMPAIGN (Nov. 9, 2021), <https://www.hrc.org/press-releases/2021-becomes-deadliest-year-on-record-for-transgender-and-non-binary-people>.

²⁴ 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).

especially LGBTQ+ youth of color—are more likely to be separated from their families when separation could have been avoided through timely support and intervention.²⁵

B. LGBTQ+ Youth In The Foster System Face Severe And Lasting Harms

Any action that risks displacing children from their homes is a matter of utmost seriousness. Such removals should be avoided wherever possible, as the trauma of adverse childhood experiences can last generations.²⁶ Youth displaced from their homes frequently enter the foster system, and at least “50-80% of children in that system are said to meet the criteria for a mental health disorder.”²⁷

LGBTQ+ youth suffer distinct and severe harms in the foster system. Safe and affirming foster placements—where a youth’s identity is respected, validated, and honored—can be difficult to find. LGBTQ+ youth face discrimination and physical, verbal, and sexual abuse in foster settings at rates far exceeding their non-LGBTQ+ peers, with one study finding that 100% of LGBTQ+ youth placed in group homes reported verbal harassment, and 70% endured physical violence.²⁸

²⁵ *A Practitioner’s Resource*, *supra* note 7, at 5.

²⁶ Claudia Ocampo-Chih et al., *The Intergenerational Impact and Trauma of Child Protective Services Referrals on Families*, 24 NEOREVIEWS e763, e767 (2023).

²⁷ Erin P. Hambrick et al., *Mental Health Interventions for Children in Foster Care: A Systematic Review*, 70 CHILD & YOUTH SERVS. REV. 65, 66 (2016).

²⁸ This study was limited to New York City. New York State has nondiscrimination protections similar to California’s, but LGBTQ+ discrimination runs rampant nonetheless. *LGBTQ Youth in*

Group home staff have been documented using anti-gay slurs or permitting peers to verbally, physically, and sexually assault LGBTQ+ residents.²⁹

Moreover, transgender and gender nonconforming youth are placed in group homes and institutional settings far more frequently than their cisgender peers.³⁰ Group homes, which are often sex-segregated, may exacerbate gender dysphoria.³¹ Research shows that placing transgender and gender nonconforming youth in group homes places them at heightened risk of harassment, violence, and rape.³² Transgender and gender nonconforming youth in the foster system also report that sex-segregated communal bathrooms and showers leave them especially vulnerable to sexual assault.³³

the Foster Care System, HUMAN RTS. CAMPAIGN 3, <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf>.

²⁹ Rob Woronoff et al., *Out of the Margins*, LAMBDA LEGAL 6, 18, 23 (2006), <https://lambdalegal.org/wp-content/uploads/2011/11/out-of-the-margins.pdf>.

³⁰ 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 SOC. SERVS., <https://www.cdss.ca.gov/inforesources/continuum-of-care-reform/shortterm-residential-therapeutic-program>.

³¹ 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>.

³² Woronoff et al., *supra* note 29, 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).

³³ 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, 4 (May 2015), <https://nccwe.org/downloads/info-packs/Rider.Sikerwar.pdf>.

The California Legislature has acknowledged that LGBTQ+ youth “are currently being placed in non-affirming [foster] families that have been approved by counties and the state, causing additional harm and trauma.”³⁴ In response, as of 2016, youth in California currently have a statutory right to be placed in the foster system according to their gender identity³⁵ and, as of 2023, prospective foster families must demonstrate “an ability and willingness to meet the needs of a child, regardless of the child’s sexual orientation, gender identity, or gender expression[.]”³⁶ But these legal protections rely on the availability of affirming placements and do not suffice to shield LGBTQ+ youth from sexual and physical violence, harassment, placement instability, or bigotry within the system.

Moreover, it is increasingly clear that even these insufficient statutory protections are under threat. Recently, for example, the Ninth Circuit held in *Bates v. Pakseresht* that the plaintiff—a prospective adoptive parent—was likely to show that Oregon violated the First Amendment when it denied her application because she could not, consistent with her religious beliefs, agree to use a child’s preferred pronouns or facilitate access to gender-affirming medical care. 146 F.4th 772, 784

³⁴ Cal. S.B. 407, 2023-2024 Leg., Reg. Sess., § 1(e) (Cal. 2023).

³⁵ Cal. S.B. 731, 2015-2016 Leg., Reg. Sess. (Cal. 2015) (amending Foster Care Bill of Rights to specify that foster youth have the right to be placed according to their gender identity, regardless of the sex listed in their court or child welfare records).

³⁶ Cal. S.B. 407, 2023-2024 Leg., Reg. Sess. (Cal. 2023).

(9th Cir. 2025).³⁷ Some advocacy groups have already argued publicly that the decision “signals the death knell” for SB-407, California’s most recent effort to ensure affirming foster placements for LGBTQ+ youth.³⁸ Whether or not that prediction proves correct, it illustrates the fragility of the limited protections on which LGBTQ+ youth currently depend.

Furthermore, the discrimination and instability LGBTQ+ youth experience in the foster system push them toward homelessness and commercial sexual exploitation.³⁹ LGBTQ+ youth comprise between 20% and 45% of youth experiencing homelessness.⁴⁰ Transgender and gender nonconforming youth are eight times as likely as cisgender youth to trade sex for shelter.⁴¹ Sexual exploitation

³⁷ *Bates* builds on a line of Supreme Court precedent establishing that states may not categorically exclude religious foster and adoption agencies from government contracting without satisfying strict scrutiny. *See, e.g., Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021) (holding that where a government “has in place a system of individual exemptions, it may not refuse to extend that system to cases of religious hardship without compelling reason”) (quotations omitted).

³⁸ *Court to Oregon (& CA): You Can’t Bar Christians from Adopting and Fostering for Believing in Biology*, CALIFORNIA FAMILY COUNCIL (July 29, 2025), <https://www.californiafamily.org/2025/07/court-to-oregon-ca-you-cant-bar-christians-from-adopting-and-fostering-for-believing-in-biology/>.

³⁹ Youth in the foster system suffer from high rates of homelessness and sexual commercialization generally. A study found that between 31% and 46% of youth aging out of the foster system had been homeless at least once by age 26. Amy Dworsky et al., *Homelessness During the Transition from Foster Care to Adulthood*, 103 AM. J. PUB. HEALTH S318 (2013). Further, federal data indicate that approximately 19% of youth who run away from child welfare care are likely victims of sex trafficking. *Child Welfare System*, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN (2023), *cited in* <https://youth.gov/youth-topics/homelessness-and-housing-instability/child-welfare-system>.

⁴⁰ Asgarian, *supra* note 18.

⁴¹ Remlin et al., *supra* note 16, at 3.

disproportionately impacts LGBTQ+ youth of color—studies estimate that 70% of LGBTQ+ youth affected by the commercial sex industry are Black.⁴²

Juvenile legal system involvement is also more likely for LGBTQ+ youth in the foster system. Although LGBTQ+ youth comprise just 5% to 7% of the overall youth population, they make up an estimated 20% of youth in juvenile detention facilities, 85% of whom are youth of color.⁴³ A disproportionate share of these youth had contact with the child welfare system first—one study found that 30% of LGBTQ+ youth were removed from their homes by social workers before becoming involved in the juvenile justice system, compared to just 11% of their heterosexual, cisgender peers.⁴⁴

The harms of child welfare involvement persist long into adulthood. LGBTQ+ youth who have experienced the foster system face elevated risks of anxiety, depression, post-traumatic stress, substance use disorders, HIV and other sexually transmitted infections, self-harm, and suicide.⁴⁵ They are less likely to have

⁴² Nafekh et al., *supra* note 19, at 5.

⁴³ Irvine & Canfield, *supra* note 24, at 255-56.

⁴⁴ *Id.* at 245.

⁴⁵ Kerith Conron & Bianca D.M. Wilson, *LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems*, THE WILLIAMS INST. 46-47 (June 2019), <https://williamsinstitute.law.ucla.edu/publications/lgbtq-yoc-social-services/>.

stable housing and employment as adults, tend to earn less, and experience worse physical health outcomes than their heterosexual, cisgender peers.⁴⁶

For LGBTQ+ youth, the risk of not surviving the foster system at all is tragically real. Transgender and gender nonconforming youth experience higher rates of violence and discrimination than cisgender youth and are almost four times more likely to report self-harm; over three times more likely to report suicidal ideation; and more than twice as likely to report an attempted suicide.⁴⁷ Child welfare involvement exacerbates these risks: according to a 2020 national survey, approximately 35% of LGBTQ+ youth and 45% of transgender and nonbinary youth in the foster system reported having attempted suicide.⁴⁸

In sum, a substantial body of research demonstrates that the child welfare system exposes LGBTQ+ youth to new and potentially severe dangers. Empowering LGBTQ+ youth to determine how and when they explore their gender identity, while preserving schools' ability to act when a student's safety is at risk, is an evidence-based approach that appropriately recognizes youths' constitutional rights and the harms of involvement in the child welfare system.

⁴⁶ *Id.*

⁴⁷ *LGBTQ Youth with a History of Foster Care*, THE TREVOR PROJECT 1 (May 2021), <https://www.thetrevorproject.org/research-briefs/lgbtq-youth-with-a-history-of-foster-care-2/>.

⁴⁸ *Id.*

CONCLUSION

For the foregoing reasons, *Amici* urge the Court to resolve this appeal in a manner that accounts for youths’ interests in exploring and expressing their identity, the independent constitutional rights of youth, and the unique and disproportionate harms LGBTQ+ youth face from investigation by and placement in the child welfare system.

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