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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11
12 **ELIZABETH MIRABELLI, an**
13 **Individual, and LORI ANN WEST,**
14 **an individual,**

15 Plaintiffs,

16 v.

17 **MARK OLSON, in his official**
18 **capacity as President of the EUSD**
19 **Board of Education, et al.,**
20 Defendants.

3:23-cv-00768-BEN-VET

**STATE DEFENDANTS' EX
PARTE APPLICATION FOR
STAY OF ORDER GRANTING
SUMMARY JUDGMENT AND
INJUNCTION PENDING APPEAL,
OR ALTERNATIVELY, 14-DAY
ADMINISTRATIVE STAY**

Courtroom: 5A
Judge: The Honorable Roger T.
Benitez

Action Filed: April 27, 2023

21 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
22 **RECORD:**

23 PLEASE TAKE NOTICE that Defendants, the California Superintendent of
24 Public Instruction (SPI), the State Board of Education (SBE), and the California
25 Attorney General (AG) (collectively, State Defendants), request that the Court stay
26 the order granting Plaintiffs' motion for summary judgment (ECF No. 307), and the
27 related injunction order (ECF No. 308) pending appeal (collectively, "the Orders").
28 If the Court is not inclined to grant a stay of the Orders pending appeal, then State

1 Defendants request a brief administrative stay of fourteen days, to seek relief from
2 the Ninth Circuit Court of Appeals. State Defendants request a ruling on this
3 request no later than 2 p.m. on December 23, 2025. The parties to this case were
4 notified that State Defendants would be making this request on December 22, 2025.

5 A stay pending appeal—and at a minimum a brief stay to seek relief from the
6 Court of Appeals—is warranted in this case. The Court has issued a statewide
7 injunction that abruptly enjoins State Defendants from enforcing longstanding state
8 laws that protect vulnerable transgender and gender nonconforming students. The
9 Court’s ruling raises serious questions going to the merits of Plaintiffs’ claims. If
10 the Orders are allowed to stay in effect before the Court of Appeals has a chance to
11 review them, they would irrevocably alter the status quo and will create chaos and
12 confusion among students, parents, teachers, and staff at California’s public
13 schools. And this chaos and confusion would arise several days before the
14 Christmas holiday. Absent at least a brief stay, Defendants will be forced to seek
15 an emergency stay from the Ninth Circuit, just before Christmas, requiring that
16 Court and its employees to spend time on the emergency over a state and federal
17 holiday. Therefore, at an absolute minimum, if the Court is not inclined to stay the
18 Orders pending appeal, State Defendants request an interim fourteen-day stay to
19 seek relief from the Ninth Circuit Court of Appeals.

20 Dated: December 22, 2025

Respectfully submitted,

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22 Attorney General of California
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POINTS AND AUTHORITIES IN SUPPORT OF STAY

INTRODUCTION

This Court has granted summary judgment in favor of Plaintiffs on all claims and issued a class-wide permanent injunction that bars enforcement of the state constitutional right to privacy, as well as various statutory privacy protections, in the school context. As the Court acknowledged at the hearing on Plaintiffs' motion, this case will now move to the Ninth Circuit. A stay of the permanent injunction pending that appeal is warranted. Here, even if this Court is convinced that it will not be reversed by the Ninth Circuit, there remains serious questions going to the merits of the unprecedented and sweeping constitutional relief that the Court has afforded Plaintiffs. Those serious questions, in combination with the unequivocal irreparable injury associated with an injunction that bars the State from implementing and enforcing state law, justify a stay pending appeal. In the alternative, the Court should issue a 14-day administrative stay to allow the Ninth Circuit to consider a motion for stay pending appeal without needing to resolve an emergency request for relief over the holidays.

LEGAL STANDARD

Granting a stay of a preliminary injunction pending appeal is an exercise of judicial discretion, based upon the circumstances of the particular case. *Al Otro Lado v. Wolf*, 952 F.3d 999, 1006 (9th Cir. 2020). In deciding whether to grant a stay pending appeal, courts consider (1) whether the applicant has made a strong showing that they are likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) whether a stay is in the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *Doe #1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020). The first two factors are the "most critical," and courts need only reach the last two factors where the applicant has satisfied the first. *Nken*, 556 U.S. at 434-35; *Al Otro Lado*, 952 F.3d at 1007.

1 The Ninth Circuit applies a “sliding scale” approach to these factors, meaning
2 that a stronger showing on one element may offset a weaker showing of another.
3 *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). Thus, a stay pending
4 appeal is warranted where the applicant shows a high degree of irreparable injury
5 and “‘serious legal questions’ going to the merits.” *Manrique v. Kolc*, 65 F.4th
6 1037, 1041 (9th Cir. 2023) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1435-36 (9th
7 Cir. 1983)). And importantly, in the context of motion for stay of a final judgment,
8 where the district court has already ruled on the legal issue being appealed, the
9 court need not conclude that it is likely to be reversed on appeal in order to grant a
10 stay. *See Strobel v. Morgan Stanley Dean Witter*, 2007 WL 1238709, at *1 (S.D.
11 Cal. Apr. 24, 2007). Rather, “it may grant the stay when it has ruled on ‘an
12 admittedly difficult legal question and when the equities of the case suggest that the
13 status quo should be maintained.’” *Spieler ex rel. Spieler v. Mt. Diablo Unified*
14 *Sch. Dist.*, 2007 WL 3245286, at *3 (N.D. Cal. Nov. 2, 2007) (quoting *Wash.*
15 *Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 844-45 (D.C.
16 Cir. 1977)).

17 ARGUMENT

18 I. THERE ARE SERIOUS QUESTIONS THAT GO TO THE MERITS OF 19 PLAINTIFFS’ CONSTITUTIONAL CLAIMS FOR RELIEF

20 In its order granting summary judgment and a permanent class-wide injunction
21 in favor of Plaintiffs, the Court concluded that “parents have a right to gender
22 information based on the Fourteenth Amendment’s substantive due process
23 clause . . . [and] the First Amendment’s free exercise of religion clause . . . [, while]
24 religious public school teachers have a right to provide gender information to
25 parents based on the First Amendment’s free exercise clause . . . [and] a right to
26 communicate accurate gender information to parents based on the First
27 Amendment[’s] free speech clause.” ECF 307 at 2. But as the Court correctly
28 acknowledged at the hearing on Plaintiffs’ motion, the issues in this case are

1 “unprecedented,” “very serious,” and “difficult.” MSJ Hearing Transcript at 181.
2 The Court believes as a matter of law that Plaintiffs have established viable
3 constitutional claims, but there can be no doubt that there are at least serious
4 questions going to the merits of those claims that warrant a stay pending appeal.

5 A. On Plaintiffs’ substantive due process claim, for instance, the Court’s
6 holding fit squarely within the type of “sweeping generalizations” the Ninth Circuit
7 has explicitly rejected. *See Regino v. Staley*, 133 F.4th 951, 964 (9th Cir. 2025).
8 While parents have an undisputed right direct the upbringing of their children,
9 including making decisions pertinent to their children’s education, *see Meyer v.*
10 *Nebraska*, 262 U.S. 390, 399, 401 (1923); *Troxel v. Granville*, 530 U.S. 57, 65-66
11 (2000), no court (until this one) has recognized a right of parents to insist on
12 affirmative school notification of all information that might facilitate the exercise of
13 those rights. Indeed, the First Circuit has explicitly rejected this exact
14 constitutional claim, demonstrating the serious questions manifest in Plaintiffs’
15 assertion. *See Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 353-54 (1st Cir. 2025).

16 B. The Parent Plaintiffs’ free exercise claim presents similarly serious
17 questions. Though the Court determined that this claim succeeds under the
18 Supreme Court’s recent decision in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), the
19 all-encompassing relief that Plaintiffs claim under that decision cannot be squared
20 with the Court’s actual holding. In particular, the Court recognized the state’s
21 compelling interest in having an undisrupted school environment. *See Mahmoud*,
22 606 U.S. at 566. Unlike the opt-out required in that case, which could be
23 effectuated without altering the learning environment for all students, the ability
24 afforded to parents by this Court to demand that their child be misgendered by
25 school staff indisputably cannot be limited to just their child. The broad free
26 exercise right recognized by the Court permits a parent to alter the learning
27 environment for all students, while undermining the State’s ability to dictate
28 appropriate policy for the public-school environment. And the Court’s application

1 of *Mahmoud* squarely conflicts with the limited understanding of that decision
2 recently embraced by the Sixth Circuit. *See Doe No.1 v. Bethel Loc. Sch. Dist. Bd.*
3 *of Educ.*, No. 23-3740, 2025 WL 2453836, at *6-7 & n.3 (6th Cir. Aug. 26, 2025).
4 This Court may disagree with the Sixth Circuit’s analysis. But it is beyond debate
5 that there are at least serious questions about the scope of *Mahmoud*—questions
6 that the parties should have a chance to litigate on appeal before the Ninth Circuit
7 before this Court’s injunction takes effect.

8 C. The Teacher Plaintiffs free exercise claims raise serious questions because
9 First Amendment rights are limited in the context of claims by public employees.
10 And the operative laws challenged —the state constitutional right to privacy and
11 related statutory protections—are neither discretionary nor contain comparable
12 secular exemptions. *See Fulton v. City of Phila., Pa.*, 593 U.S. 522, 533 (2021).
13 Under California law, whether a teacher can legally disclose a student’s private
14 gender identity information turns on an objective constitutional analysis—namely,
15 whether the student’s factual circumstances evidence a compelling need for
16 disclosure without consent for the student’s safety or well-being. *See Tarasoff v.*
17 *Regents of Univ. of California*, 17 Cal. 3d 425, 431 (1976). Nor is the religious
18 exemption that Teacher Plaintiffs are granted under the injunction comparable to
19 compelling need disclosure because the expected numbers for the religious
20 exemption recognized will far surpass the number of disclosures made based on a
21 compelling need. *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1177-78 (9th
22 Cir. 2021).

23 D. Additionally, serious questions exist as to the Court finding that Teacher
24 Plaintiffs have established a viable free speech claim. There can be little doubt that
25 an individual student’s private gender identity information is not a matter of public
26 concern and has no newsworthiness for purposes of affording the requested
27 disclosures constitutional protection. *See Lane v. Franks*, 573 U.S. 228, 241
28 (2014). And even if so, a teacher’s interactions with parents are owed entirely to

1 their professional capacity and duties as teachers. Indeed, as this Court previously
2 explained, the teachers’ job responsibilities include “the duty to communicate with
3 a student’s parents from time to time about the student’s school performance.”
4 *Mirabelli v. Olson*, 691 F. Supp. 3d 1197, 1215 (S.D. Cal. 2023).

5 E. There are also serious questions concerning the propriety and scope of
6 class-wide relief ordered by the Court. *TransUnion LLC v. Ramirez*, 594 U.S. 413,
7 431 (2021) (“plaintiffs must demonstrate standing for each claim that they press
8 and for each form of relief that they seek (for example, injunctive relief and
9 damages)”). For instance, the Court held that parents have a “right to be informed
10 about the gender identity expressed within the schoolhouse gates,” Opn. 30, and
11 enjoined defendants from “permit[ting] . . . any employee in the California state-
12 wide education system from misleading the parent or guardian of a minor child in
13 the education system about their child’s gender presentation at school,” Order
14 2. But other courts have denied parents seeking similar relief standing, where the
15 parents have failed to allege that their children “had questioned their gender identity
16 or otherwise sought guidance or support under the School District’s policy.”
17 *Parents Protecting Our Children, UA v. Eau Claire Area School District*,
18 *Wisconsin*, 95 F.4th 501, 504-506 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 14
19 (2024); *see also John and Jane Parents I v. Montgomery County Board of*
20 *Education*, 78 F.4th 622, 630 (4th Cir. 2023) (similar), *cert. denied*, 144 S. Ct. 2560
21 (2024) (parents failed to allege “that they suspect their children might be
22 considering gender transition or have a heightened risk of doing so”).¹ It is thus
23 doubtful that the named plaintiffs have standing to get relief on their substantive
24 due process claims compelling disclosure of gender-identity information. But the
25 Court did not even attempt to conduct the factbound inquiry with respect to the
26 broad class of all “parents/guardians who object to having Parental Exclusion

27 ¹ The Ninth Circuit is currently considering similar standing questions in
28 *Chino Valley v. Newsom*, No. 25-3686.

1 Policies applied against them and have children who are attending California public
2 schools.” Dkt. 286 at 13. And “Article III does not give federal courts the power to
3 order relief to any uninjured plaintiff, class action or not.” *TransUnion LLC*, 594
4 U.S. at 431 (quoting *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 466 (2016)
5 (Roberts, C.J., concurring)).²

6 **II. THE STATE WILL SUFFER IRREPARABLE HARM IF THE PERMANENT**
7 **INJUNCTION IS NOT STAYED PENDING APPEAL**

8 To show the requisite risk of irreparable injury, a stay applicant must show
9 that such injury is likely to occur during the period before the appeal is likely to be
10 decided. *Leiva-Perez*, 640 F.3d at 968. That is unequivocally the case here.

11 The Court’s permanent injunction prohibits the State Defendants from
12 enforcing, among other things, “the Privacy Provision of the California
13 Constitution, Cal. Const. art. I, § 1 . . . [and] any provision of California law,
14 including equal protection provisions such as Cal. Educ. Code §§ 200, 220, Cal.
15 Gov. Code § 11135.” See ECF 308 at 2. Courts have long recognized that an
16 injunction prohibiting the enforcing of duly enacted state laws inflicts irreparable
17 harm on the state. See *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018) (interference
18 with state’s sovereign authority to enact law inflicts irreparable harm); *Maryland v.*
19 *King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (same); *New Motor*
20 *Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J.,
21 in chambers) (“[A]ny time a State is enjoined by a court from effectuating statutes
22 enacted by representatives of its people, it suffers a form of irreparable injury.”);

23 ² Citing *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31
24 F.4th 651, 682 n.32 (9th Cir. 2022), Plaintiffs have previously argued that “when a
25 court is certifying a class seeking injunctive or other equitable relief,” it is not
26 necessary to show that all members have Article III standing. Even if that is
27 accurate “before a court certifies a class,” that is a “distinct question” from whether
28 any member of a certified class is ultimately entitled to relief at the conclusion of
proceedings. *TransUnion*, 594 U.S. at 431, n.4. A rule that would allow relief,
injunctive or otherwise, to extend to class members who lack standing would be in
serious tension with the Supreme Court’s recent decision limiting a court’s
authority to issue injunctions no “broader than necessary to provide complete relief
to each plaintiff with standing to sue.” *CASA v. Trump*, 606 U.S. 831, 861 (2025)
(emphasis added).

1 *Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“a state suffers
2 irreparable injury whenever an enactment of its people or their representatives is
3 enjoined”). Absent of a stay pending appeal, the Court’s sweeping injunction,
4 which forecloses enforcement of state constitutional and statutory protections
5 applicable in the school environment, inflicts severe and indisputable irreparable
6 harm on California.

7 **III. A STAY PENDING APPEAL WILL NOT SUBSTANTIALLY OR IRREPARABLY**
8 **INJURE PLAINTIFFS**

9 The Court held that both categories of Plaintiff had established irreparable
10 harm “by showing the State Defendants are violating their rights.” ECF 307 at 51.
11 But this simply dovetails into the merits of the constitutional claims, which, as
12 explained, pose various serious and difficult questions that will be addressed on
13 appeal. Moreover, as the State Defendants have repeatedly argued as to this
14 Court’s jurisdiction, the named Plaintiffs have not established that they are likely to
15 be injured in the exercise of their asserted constitutional rights. As such, Plaintiffs
16 murky and uncertain case for irreparable harm, when compared to the indisputable
17 irreparable harm the injunction inflicts on the State, cuts in favor of a stay pending
18 appeal.

19 **IV. A STAY PENDING APPEAL IS IN THE PUBLIC INTEREST**

20 Finally, the severe public harms associated with nonconsensual disclosure of a
21 student’s private gender identity information weigh strongly in favor of stay. As
22 explained in the record before the Court, such disclosures, before a student is ready
23 to share such personal information with family members present multi-faceted
24 harms. These included an undermining of the trust between student and teacher
25 that is critical to a functioning and safe learning environment. A fear of
26 nonconsensual disclosure can not only harm a student academically, but
27 disincentivizes the type of open communication that allows the student to report
28 instances of harm, bullying, or depression. *See* Al-Shamma MSJ Decl. ¶¶ 36, 39-

1 40. In some instances, too, a nonconsensual disclosure of gender identity can harm
2 the openness and quality of the parent-child relationship. The Court's summary
3 conclusion that it is always in the public's interest to prevent a violation of
4 constitutional rights again fails to grapple with these serious considerations. A stay
5 pending appeal would freeze the status quo, ensuring that students remain protected
6 by California law while the difficult issues in this case are addressed by the Ninth
7 Circuit. Absent a stay, however, teachers and school officials could begin
8 informing parents about students' gender identities in ways that threaten substantial
9 harm to students. Once that occurs, the harm is irreparable. The information
10 cannot be un-disclosed. That should not happen while the serious, weighty legal
11 questions discussed above are resolved in the State's soon-to-be-filed appeal.

12 CONCLUSION

13 For these reasons, the State Defendants respectfully request that this Court
14 stay its permanent injunction pending appeal, or in the alternative, issue a 14-day
15 administrative stay of the injunction to allow the Ninth Circuit adequate time to
16 consider a motion for emergency relief.

17
18 Dated: December 22, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

Case Name: Mirabelli et al. v. Olson, et al. No. 3:23-cv-00768-BEN-VET

I hereby certify that on December 22, 2025, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**STATE DEFENDANTS' EX PARTE APPLICATION FOR STAY OF ORDER
GRANTING SUMMARY JUDGMENT AND INJUNCTION PENDING APPEAL, OR
ALTERNATIVELY, 14-DAY ADMINISTRATIVE STAY**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 22, 2025, at Sacramento, California.

Kevin L. Quade
Declarant

/s/ Kevin L. Quade
Signature