August 15, 2024

VIA CM/ECF

Molly C. Dwyer
Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Supplemental Letter Brief
Regino v. Staley, 9th Circuit Case No. 23-16031
Oral Argument date: May 9, 2024
Panel: Wardlaw, Christen, and Bennett

Dear Ms. Dwyer:

I am writing on behalf of Appellant Aurora Regino. On August 2, 2024, the Court directed the parties to file "letter briefs addressing the effect, if any, on this case of California Assembly Bill AB 1955." For the reasons set forth herein, Ms. Regino agrees with Appellee that AB 1955 "has no effect" on the outcome of this case. Dkt. 105 at 1. As Ms. Regino explained in her merits briefing—and as she explains below—the Court should reverse the district court's order dismissing this case.

BACKGROUND

Before Ms. Regino filed this lawsuit, the Chico Unified School District (the "District") adopted Administrative Regulation 5145.3 (the "Parental Secrecy Policy"). In broad strokes, the Parental Secrecy Policy provides that schools in the District must socially transition students upon their request, without regard to their

parents' wishes and, unless students want their parents to be informed, without notifying their parents in most situations. ER-98–100. Ms. Regino contends that the Parental Secrecy Policy is unlawful because the First and Fourteenth Amendments to the United States Constitution require public schools to obtain parental consent before socially transitioning their children in the absence of individualized evidence that the child is subject to harm. Further, when such individualized evidence exists, parents are still entitled to notice and an opportunity to be heard regarding their fitness as parents and whether the social transition is necessary to prevent the individualized harm.

Oral argument in this case took place on May 9, 2024. On July 15, 2024, Governor Newsom signed AB 1955 into law. *See* California Legislative Information, Bill History AB 1955, available online at https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202320240 AB1955 (last visited Aug. 14, 2024). As relevant here, AB 1955 prohibits school districts from "requir[ing]" school personnel, through formal policies or otherwise, "to disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent unless otherwise required by state or federal law." AB 1955 § 5 (codified at Cal. Educ. Code. § 220.3); *see also id.* § 6 (codified at Cal. Educ. Code. § 220.5).

AB 1955 was passed in response to several California school districts enacting policies requiring school personnel to disclose to parents that their children were being socially transitioned at school. *See* Press Release from AB 1955 Sponsor Assemblymember Chris Ward (July 15, 2024), https://a78.asmdc.org/press-releases/20240715-new-safety-act-signed-law-protect-lgbtq-students-california. One of the purposes of the law was to prohibit such mandatory parental disclosure policies as a matter of state law. *Id.*

The Parental Secrecy Policy is not a mandatory parental disclosure policy of the type targeted by AB 1955. Instead, the Parental Secrecy Policy provides the opposite—it requires schools to socially transition students upon their request, and it generally requires school personnel to conceal the social transition from the student's parents. Accordingly, Appellee takes the view that "AB 1955 does not . . . prevent the District from implementing [the Parental Secrecy Policy]" at schools in the District. Dkt. 105 at 3.

The issue relevant to this appeal is whether AB 1955 impacts the outcome of this case. For the reasons set forth below, it does not.

ARGUMENT

AB 1955 has no impact on this case. By its plain text, AB 1955 is not inconsistent with the relief that Ms. Regino seeks—*i.e.*, a declaration that the Parental Secrecy Policy violates the United States Constitution and an injunction against the Policy's continued application. ER-81. And even if AB 1955 were inconsistent with that relief, it would be invalid under the United States Constitution for the same reasons the Parental Secrecy Policy is invalid.

I. BY ITS PLAIN TEXT, AB 1955 IS NOT INCONSISTENT WITH THE RELIEF MS. REGINO SEEKS

The declaration and injunction Ms. Regino seeks are not inconsistent with AB 1955. First, AB 1955 does not apply to parental disclosures that are required by federal law, and federal law requires schools to disclose to parents that their children are being socially transitioning at school. Second, AB 1955 does not require school districts to *enact* policies mandating parental secrecy when schools socially transition students. Rather, AB 1955 *prohibits* school districts from requiring school personnel to provide parental disclosure in that situation. Thus, AB 1955 has no impact on this case.

A. AB 1955 does not prohibit school districts from mandating disclosures required by federal law.

Under AB 1955, school districts may require school personnel to disclose to parents that their children are being socially transitioned at school. AB 1955 exempts from its prohibitions "information . . . required [to be disclosed] by . . . federal law." AB 1955 §§ 5(a), 6(a). Under this exemption, AB 1955 does not purport to prohibit school districts from requiring school personnel to disclose information that schools must disclose under federal law. *Id.*

This exemption applies to parental disclosure when schools socially transition students. As Ms. Regino's merits briefing explains, the United States Constitution requires schools to (at least) inform parents that their children are being socially transitioned at school. Because the United States Constitution constitutes a form of "federal law," *see Elgharib v. Napolitano*, 600 F.3d 597, 602–04 (6th Cir. 2010) (holding that statutory reference to "law" included the United States Constitution), that "require[s]" parental disclosure in this situation, school district policies and practices mandating that school personnel must provide notice to parents when their children are being socially transitioned at school fall within the scope of AB 1955's

exemption. Accordingly, as Appellee admits, AB 1955 has "no bearing" on the outcome of this litigation. Dkt. 105 at 3.

B. AB 1955 does not require school districts to enact secrecy policies.

Even if AB 1955's reference to "federal law" did not include the United States Constitution (and it does), AB 1955 does not require school districts to *enact* policies prohibiting school personnel from notifying parents when the school is socially transitioning their children. Instead, it *prohibits* school districts from mandating that school personnel reveal this information to anyone, including parents. For this reason, as Appellee also admits, if "this litigation ultimately resolves with a court order enjoining the District from implementing [the Parental Secrecy Policy], the District's observance of that order would not result in any violation of AB 1955." Dkt. 105 at 3. Ms. Regino agrees with this conclusion.

Indeed, if the district court were to enter such an injunction, Appellee would have options available to it that would not require school personnel to disclose information to parents, including, for example, enacting a policy providing that all requests to socially transition students must originate with their parents. Thus, even if AB 1955 did not exempt federal constitutional disclosure requirements (and it does), AB 1955 would have no impact on this case.

II. TO THE EXTENT THE PROHIBITIONS IN AB 1955 CONFLICT WITH THE REQUIREMENTS OF FEDERAL LAW, AB 1955 IS INVALID

Even if AB 1955 were inconsistent with the relief Ms. Regino seeks, AB 1955 would be invalid under the Supremacy Clause of the United States Constitution. Again, a public school's failure to (at least) notify parents before socially transitioning their children violates parents' federal constitutional rights. If AB 1955 meant that schools were prohibited from providing such notice, it would be unconstitutional for the same reasons the Parental Secrecy Policy is unconstitutional. And under the Supremacy Clause, AB 1955—like the Parental Secrecy Policy—must yield to the demands of the United States Constitution. *See 303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023) ("[W]hen [state] law and the Constitution collide, there can be no question which must prevail.").

In short, even if AB 1955 purported to preclude parental notification when schools socially transition students, it would be invalid.

CONCLUSION

For the forgoing reasons, AB 1955 does not impact the outcome of this case. The Court should reverse.

Respectfully submitted,

/s/Josh Dixon
Josh Dixon
Attorney for Plaintiff-Appellant

cc: Counsel of Record (via CM/ECF)