IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

SARAH OSBORN and **TERRY OSBORN**,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 4:25-cv-02918
	§	Hon. Keith P. Ellison
HOUSTON INDEPENDENT SCHOOL DISTRICT; et al.,	§	
Defendants.	§	

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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NATURE & STAGE OF THE PROCEEDING

Employees of the Houston Independent School District are treating Sarah and Terry Osborn's daughter as if she were a boy, a practice sometimes called "social transition." This started without notifying the Osborns. And it continues without their consent. They have objected on multiple occasions to a variety of HISD officials. They first objected to specific teachers. When that didn't work, they escalated their objections to Sarah Ray, their daughter's school counselor, and Michael Niggli, her principal. Eventually, the Osborns sent letters demanding that HISD stop transitioning their daughter to HISD's superintendent, F. Mike Miles, and HISD's Board. In response, HISD provided no assurance that it would honor the Osborns' instructions, and it identified its nondiscrimination policies as its basis for socially transitioning their daughter.

With her senior year starting August 12, 2025, the Osborns decided this Court was their only hope for relief. They filed this lawsuit because HISD, Mr. Miles, Mr. Niggli, and Ms. Ray have violated their First and Fourteenth Amendment rights. Socially transitioning their daughter without their consent "poses 'a very real threat of undermining' the religious beliefs and practices that [they] wish to instill" in her. *Mahmoud v. Taylor*, No. 24-297, 2025 WL 1773627, at *5 (U.S. June 27, 2025) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)). And it violates their fundamental right to direct their daughter's upbringing, education, and healthcare—a right that, for over a century, the Supreme Court has held the Fourteenth Amendment protects. *See Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923).

"In the absence of an injunction," the Osborns "will continue to be put to [an unconstitutional] choice:" either endure Defendants' violations, or find an educational alternative. *Mahmoud*, 2025 WL 1773627, at *24. Because the Constitution doesn't allow Defendants to put the Osborns to that choice, they ask the Court to grant their Motion for Preliminary Injunction.

STATEMENT OF FACTS

To protect the privacy of the Osborns' daughter, their complaint refers to her as "Jane Doe." From the beginning of Jane's ninth-grade year at Bellaire High School in August 2022, the Osborns have repeatedly instructed HISD employees to refer to Jane only by her given name (or a related nickname) and female pronouns. (Verified Compl., Doc. 1 ¶¶ 40, 45, 56, 62, 68, 73, 91–92, 100, 129, 136.) Yet over the last three school years, HISD employees—acting pursuant to HISD policy, practice, and custom—have repeatedly flouted the Osborns' express instructions by persistently referring to Jane by a masculine name and male pronouns without the Osborns' knowledge or consent. (*Id.* ¶¶ 51, 53, 83, 118, 131.) That led to this lawsuit.

A. HISD employees flout the Osborns' instructions to refer to their daughter by her given name and female pronouns.

This issue first arose in the fall of 2022 when Jane brought home a form from her theater teacher, Allison Underhill, discussing "preferred pronouns." (*Id.* ¶¶ 37–39.) A short time later, the Osborns met with Ms. Underhill at a school open house. They instructed her to refer to Jane only by her given name and female pronouns. (*Id.* ¶ 44–45.) Although Ms. Underhill agreed to comply, the Osborns later discovered that she had continued using a masculine name and male pronouns to refer to Jane. (*Id.* ¶¶ 47, 51–52, 55.)

In December 2023, the Osborns discovered schoolwork from multiple classes referring to Jane—now in tenth grade—by a masculine name. (*Id.* ¶¶ 51–52.) One teacher even crossed out Jane's name in red ink and replaced it with the masculine name. (*Id.* ¶ 53.) The Osborns learned that at least four teachers from different classes were using the masculine name or male pronouns for Jane. (*Id.* ¶ 55.)

In response, Mrs. Osborn met with Jane's English teacher, Brian Wolf. (*Id.* ¶ 59.) She explained that his actions violated her and her husband's religious beliefs. (*Id.* ¶¶ 59–62.) Mr. Wolf responded by bringing in his superior, the English

department chair, Elizabeth Chapman. (*Id.* ¶¶ 63–64.) After Mrs. Osborn again explained her concerns, both Mr. Wolf and Ms. Chapman assured her they would follow the Osborns' instructions not to use the masculine name or male pronouns for Jane. (*Id.* ¶¶ 65–67.) That same evening, Mrs. Osborn emailed Jane's world history teacher, Alan Heise, with similar instructions. (*Id.* ¶ 68.)

Then, during a February 2024 meeting, Ms. Ray mentioned to Mrs. Osborn that one of Jane's teachers had noted the Osborns didn't support HISD's social transition of Jane. (*Id.* ¶¶ 71–72.) This led Mrs. Osborn to again reiterate her and her husband's instruction: HISD employees should refer to Jane only by her given name and female pronouns. (*Id.* ¶¶ 73–75.)

Those discussions led the Osborns to believe that HISD employees would refer to Jane only by her given name and female pronouns. (*Id.* ¶ 76.) But despite their instructions, the Osborns continued to discover schoolwork referring to Jane by a masculine name. (*Id.* ¶ 83.) In August 2024, as Jane entered eleventh grade, the Osborns discovered evidence that at least three additional Bellaire teachers continued to override their instructions and treat Jane as a boy. (*Id.*)

B. Meeting with the school principal doesn't resolve the issue.

In an effort to resolve the situation once and for all, the Osborns set up a meeting with Mr. Niggli, Bellaire's principal, in the fall of 2024. (*Id.* ¶ 84.) Before the meeting, the Osborns sent a detailed letter outlining the numerous instances where they had discovered HISD employees using a masculine name and male pronouns to refer to Jane. (*Id.* ¶ 85; *see* Doc. 1-1 at 2.) They documented the times they had given express instructions to multiple HISD employees. (Doc. 1 ¶ 86.)

The Osborns met with Mr. Niggli and Ms. Ray on September 23, 2024. (*Id.* ¶ 89.) They reiterated their concerns about HISD's social transition of Jane, again explaining how it violated their religious beliefs. (*Id.* ¶¶ 90–92.) Despite that, Mr.

Niggli did not commit to ensuring that Bellaire staff would stop referring to Jane as a boy. (*Id.* ¶¶ 93–98.) Rather, he suggested a "middle ground" approach of using Jane's surname going forward—but did not promise to enforce even that. (*Id.* ¶¶ 95, 97.) In response, the Osborns repeated yet again their instruction to refer to their daughter by her given name and female pronouns, which they later confirmed in an email to Mr. Niggli and others. (*Id.* ¶¶ 98, 100.)

Following these exchanges, Mr. Niggli informed the Osborns that Ms. Ray had "communicated with teachers about [their] desires for [Jane] not be called [a masculine name]." (*Id.* ¶ 106.) But Mr. Niggli did not assure them that HISD employees would comply. (*Id.* ¶ 107.) And he told the Osborns "there will be no emails with directives to call [Jane] by any particular name." (*Id.* ¶ 105.)

C. The Osborns inform HISD's Board and superintendent but still find HISD employees disregarding their instructions.

Even after elevating their objections to Mr. Niggli, the Osborns continued to discover evidence that HISD employees were using a masculine name and male pronouns for Jane. (*Id.* ¶¶ 118, 131.) So in March 2025, the Osborns sent a letter through counsel to HISD, copying Mr. Miles and all HISD board members, detailing their experience to date. (*Id.* ¶¶ 127–28; *see* Doc. 1-2 at 2–5.) That letter asked for documents related to HISD's social transition of their daughter. (Doc. 1 ¶ 130.) And it requested that HISD ensure its employees would comply with the Osborns' instructions to stop socially transitioning Jane. (*Id.* ¶ 129.) But just days after sending the letter, they discovered still more schoolwork referring to her by a masculine name. (*Id.* ¶ 131.) HISD's response provided neither documents nor any assurance the social transition would stop. (*Id.* ¶¶ 132–34; *see* Doc. 1-3 at 2–4.)

In May, the Osborns again wrote to HISD through counsel. (Doc. 1 ¶ 136; *see* Doc. 1-4 at 2–3.) The Osborns repeated their request for documents, including for policies related to HISD's social transition of Jane. (Doc. 1-4 at 2.) And they

requested that HISD clarify its "position on its employees' repeated practice of socially transitioning" Jane "without [the Osborns'] knowledge or consent—and even over their express objection." (*Id.* at 3.) Absent such clarification, "the only conclusion is that HISD employees' pattern of cutting [the Osborns] out of decisions about their own daughter is consistent with HISD policy." (*Id.*) When HISD responded later that month, it provided no clarification. (Doc. 1 ¶¶ 139–43; *see* Doc. 1-5 at 2–4.)

HISD's response did make one thing clear: As to the Osborns' request for information about the policies that allowed HISD to socially transition their daughter, HISD directed them to "all HISD policies related to non-discrimination." (Doc. 1-5 at 3.) So Defendants' actions in socially transitioning Jane without notifying the Osborns, obtaining their consent, or heeding their express objections were done pursuant to HISD's policy, practice, or custom. (Doc. 1 ¶¶ 144–72.)

D. Socially transitioning the Osborns' daughter violates the Osborns' religious beliefs and lacks a scientific basis.

According to the Osborns' sincerely held religious beliefs, their daughter must not be socially transitioned. As Christians, they believe that God created two sexes, male and female. (Doc. 1 ¶¶ 206, 215.) And they believe that a person's biological sex, which is a gift from God, is fixed. (*Id.* ¶ 216.)

The Osborns believe God requires them to care for and raise their children consistent with their faith. (*Id.* ¶ 213.) Thus, they would not encourage any form of social transition. (*Id.* ¶ 222.) This means they will not use names or pronouns inconsistent with their child's biological sex, because it would communicate that the child's sex is subject to change, contrary to their beliefs. (*Id.* ¶ 223.) In fact, socially transitioning Jane directly violates their religious beliefs. (*Id.* ¶ 242.)

The Osborns also worry about the potential lifetime consequences of social transitioning. (*Id.* ¶¶ 219–23.) Scientific evidence supports their worries. Social transition is a powerful intervention that radically changes outcomes, almost

eliminating natural "desistance" (*i.e.*, when a person achieves comfort with her biological sex). (Expert Decl. of Stephen B. Levine, M.D. ("Levine Decl.") ¶¶ 151–56.)[1] It puts children "on a path from which very few … escape—a path which includes puberty blockers and cross-sex hormones." (*Id.* ¶ 171.) And there is no evidence of benefit to outweigh that risk. Existing studies do not show social transition noticeably improving mental-health outcomes. (*Id.* ¶¶ 182–85.) Schools are not equipped to resolve the complex issues raised by social transition, let alone make a unilateral decision to socially transition a child without parental involvement. (*Id.* ¶¶ 248–86.)

STATEMENT OF THE ISSUES

1. Are the Osborns likely to succeed on the merits of their claims that socially transitioning their daughter without notice or consent, and over their express objections, violates the First and Fourteenth Amendments?
2. Do the other injunction factors weigh in favor of a preliminary injunction?

LEGAL STANDARD

To obtain preliminary relief, the Osborns "must show that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction would be in the public interest." *Mahmoud*, 2025 WL 1773627, at *13.

ARGUMENT

I. The Osborns are likely to succeed on the merits of their claims.

Acting pursuant to HISD policy, practice, and custom, Defendants socially transitioned the Osborns' daughter without notifying them or seeking their consent. And when the Osborns instructed them to stop, they continued the social transition. The Osborns are likely to show those actions (A) unconstitutionally burden their free-exercise rights; (B) violate their fundamental right to direct their daughter's upbringing, education, and healthcare; and (C) deny them procedural due process.

[1] This declaration is contemporaneously filed as an attachment to this brief.

A. Secretly transitioning the Osborns' daughter violates their free-exercise rights.

"At its heart, the Free Exercise Clause of the First Amendment protects 'the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of' religious acts." *Mahmoud*, 2025 WL 1773627, at *13 (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022)). When parents send children to public school, that "right to free exercise, like other First Amendment rights, is not 'shed … at the schoolhouse gate.'" *Id.* (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506–07 (1969)). And "those rights are violated by government policies that 'substantially interfer[e] with the religious development' of children." *Id.* (quoting *Yoder*, 406 U.S. at 218).

Based on those principles, the Osborns are likely to succeed on the merits of their free-exercise claim. "Defendants subjected their daughter to a social transition that directly violates their beliefs," which burdens their religious exercise. (Doc. 1 ¶ 242.) That burden "substantially interfere[s] with the religious development of" the Osborns' daughter and "pose[s] a very real threat of undermining the religious beliefs and practices [they] wish[] to instill in" her. *Mahmoud*, 2025 WL 1773627, at *18 (citation modified). For that reason and others, Defendants must satisfy strict scrutiny. *Id.* And they cannot do that.

1. Defendants burdened the Osborns' religious beliefs.

The starting point for any free-exercise claim is a showing that the government has "burdened" a plaintiff's "sincere religious practice." *Kennedy*, 597 U.S. at 525. That showing is not onerous. *See, e.g.*, *Fulton v. City of Phila.*, 593 U.S. 522, 532 (2021) ("[I]t is plain that the City's actions have burdened CSS's religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs."). All the Osborns must show is that they have a sincerely held religious belief and that Defendants negatively affected it.

That's true here. The Osborns believe that God created two biological sexes and that God made each person's biological sex fixed. (Doc. 1 ¶¶ 215–16.) Because of that, the Osborns also believe that it would be wrong to participate in a social transition—particularly of a child. (*Id.* ¶¶ 210, 217–23.) Doing so "communicates a message to and about the child that is untrue" (*id.* ¶ 218), namely "that people can change their sex" (*id.* ¶ 243). Of course, that means the Osborns believe their children must not socially transition. (*Id.* ¶¶ 220–23, 241–42.) And the Osborns believe that they must direct "all aspects" of their children's lives "in a way that is consistent with their faith," including their children's "education" and "spiritual growth and training." (*Id.* ¶¶ 213–14.) Like many religious believers, for the Osborns "the religious education of children is not merely a preferred practice but rather a religious obligation." *Mahmoud*, 2025 WL 1773627, at *13. (*See* Doc. 1 ¶¶ 210–14.)

Defendants have burdened those sincerely held religious beliefs. Pursuant to HISD's policy, practice, and custom, school employees have secretly treated the Osborns' daughter as a boy over the course of three school years, despite their repeated objections. (Doc. 1 ¶¶ 26–30, 51, 53, 83, 118, 131, 149, 151–64.) The Osborns expressly told multiple HISD employees—and eventually even HISD's Board and Mr. Miles—on multiple occasions that they did not consent to Defendants' social transition of Jane. (*Id.* ¶¶ 153, 156–57, 162, 165.) And they told one of Jane's teachers, Mr. Niggli, and Ms. Ray that HISD's social transition of their daughter "conflicted with how they were raising her and burdened their faith." (*Id.* ¶ 91; *see id.* ¶ 61.) Despite those religious objections, the social transition continued. (*Id.* ¶¶ 167–68.)

Defendants' actions "carry with them 'a very real threat of undermining' the religious beliefs that the [Osborns] wish to instill in their" daughter. *Mahmoud*, 2025 WL 1773627, at *17 (quoting *Yoder*, 406 U.S. at 218). By treating the Osborns' daughter as boy, Defendants "impose upon [her] a set of values and beliefs that are 'hostile' to [her] parents' religious beliefs." *Id.* (quoting *Yoder*, 406 U.S. at 211).

Especially given the "potentially coercive nature" of the public-school environment, that burdens the Osborns' free exercise of religion. *Id.*

2. The burden on the Osborns' religious beliefs triggers strict scrutiny.

The question then becomes whether that burden is "constitutionally permissible." *Fulton*, 593 U.S. at 533. It's not, because Defendants' burden on the Osborns' religious exercise triggers strict scrutiny for three reasons: (i) secretly transitioning their daughter substantially interferes with her religious development; (ii) Defendants have conditioned the availability of a public benefit (*i.e.*, public education) on the Osborns' willingness to surrender their religious beliefs; and (iii) Defendants' actions were neither neutral nor generally applicable.

i. Secretly transitioning the Osborns' daughter substantially interferes with her religious development.

Defendants have burdened and continue to burden the Osborns' religious exercise by "substantially interfer[ing] with the religious development of" their daughter, which "pose[s] a very real threat of undermining the religious beliefs and practices the [Osborns] wish[] to instill in" her. *Mahmoud*, 2025 WL 1773627, at *18 (citation modified). As a result, "strict scrutiny is appropriate regardless of whether the law is neutral or generally applicable." *Id.* at *22.

The Supreme Court's recent decision in *Mahmoud* illustrates this. Much like the Osborns, the *Mahmoud* parents "believe[d] that biological sex reflects divine creation, that sex and gender are inseparable, and that children should be encouraged to accept their sex and to live accordingly." *Id.* at *3. (*See* Doc. 1 ¶¶ 205–26.) The school district in that case refused to let those parents opt their children out of storybooks that were "designed to present the opposite viewpoint." *Mahmoud*, 2025 WL 1773627, at *15. Because "the books exert[ed] upon children a psychological pressure to conform to their specific viewpoints," they "impose[d] upon children a

set of values and beliefs that [we]re hostile to their parents' religious beliefs." *Id.* at *17 (citation modified). That sufficed to show "that instruction related to the storybooks w[ould] substantially interfere with the parents' ability to direct the religious development of their children." *Id.* (citation modified).

The burden in this case is far more egregious. Defendants are not just subjecting Jane to hearing lessons that "explicitly contradict [the Osborns'] religious views." *Id.* Defendants are having Jane participate in a "psychosocial treatment" known as social transition (Levine Decl. ¶ 154)—one that "directly violates [the Osborns'] beliefs" (Doc. 1 ¶ 242). And that transition "contribute[s] to the likelihood of persistence" of gender confusion or dysphoria, meaning it dramatically increases the chances Jane will continue to assert an opposite-sex identity in violation of the Osborns' beliefs. (Levine Decl. ¶ 154 (citation omitted).) That not only "pose[s] a very real threat of undermining the religious beliefs and practices that the [Osborns] wish to instill in" their daughter, it also skyrockets the likelihood that she will continue to live in conflict with those beliefs and practices. *Mahmoud*, 2025 WL 1773627, at *22 (citation modified). Defendants' actions thus trigger strict scrutiny.

ii. Defendants condition the availability of a public benefit on the Osborns' willingness to surrender their religious beliefs.

Strict scrutiny applies for a second reason. "Public education is a public benefit, and the government cannot 'condition' its 'availability' on parents' willingness to accept a burden on their religious exercise." *Mahmoud*, 2025 WL 1773627, at *20 (quoting *Trinity Lutheran Church of Columbia v. Comer*, 582 U.S. 449, 462 (2017)).

Defendants have "condition[ed] the availability" of a public education upon the Osborns' "willingness to surrender" their religious beliefs about their daughter's upbringing and education. *Id.* (citation modified). To continue enrolling their daughter in an HISD school, they must accept that its employees will continue to socially transition her against their wishes. (*See* Doc. 1 ¶¶ 144–72 (summarizing how

HISD's policy, practice, and custom led Defendants to continue socially transitioning Jane even after they learned of the Osborns' objections).) And to allow that to continue would violate their sincerely held religious beliefs. (*Id.* ¶¶ 205–26, 242.)

"It is both insulting and legally unsound to tell parents that they must abstain from public education in order to raise their children in their religious faiths, when alternatives can be prohibitively expensive and they already contribute to financing the public schools." *Mahmoud*, 2025 WL 1773627, at *21. Because Defendants continue to put the Osborns to the choice of violating their faith or forsaking the benefit of a public education, they must satisfy strict scrutiny. *Id.*

iii. Defendants' secret social transition of the Osborns' daughter was neither neutral nor generally applicable.

Finally, strict scrutiny also applies because Defendants secretly transitioned the Osborns' daughter pursuant to an HISD policy, practice, and custom that is neither neutral nor generally applicable. *Fulton*, 593 U.S. at 533; *see Emp. Div. v. Smith*, 494 U.S. 872, 878–82 (1990).[2]

Regarding neutrality, the "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Fulton*, 593 U.S. at 533. That includes "even 'subtle departures from neutrality' on matters of religion." *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 584 U.S. 617, 638 (2018) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993)).

The evidence here shows that Defendants have socially transitioned Jane—and continue to do so—"in a manner intolerant of [the Osborns'] religious beliefs." *Fulton*, 593 U.S. at 533. The Osborns expressly informed Mr. Niggli, Ms. Ray, and one of Jane's teachers that they objected to the social transition because of their

[2] *Smith*'s neutral-and-generally-applicable test is wrong. *See, e.g.*, *Fulton*, 593 U.S. at 545–618 (Alito, J., concurring). The Osborns preserve for appeal the argument that *Smith* should be overruled.

religious beliefs. (Doc. 1 ¶¶ 61, 91.) Yet none of them committed to ensuring HISD employees at the high school would stop violating the Osborns' religious beliefs. (*Id.* ¶¶ 96–97.) In fact, "Mr. Niggli told the Osborns that 'there will be no emails with directives to call [Jane] by any particular name." (*Id.* ¶ 105.) And once the Osborns raised their concerns to the HISD Board and Mr. Miles, nothing changed. (*Id.* ¶¶ 127–43.)

By refusing to honor the Osborns' express religious objections, Defendants acted in a way that is not neutral towards religion. *Cf. Ashaheed v. Currington*, 7 F.4th 1236, 1248 (10th Cir. 2021) (holding that prison guard violated clearly established law when he "ignored the [prison's] religious exemption" policy and "forced [the plaintiff] to shave his beard").

Next, HISD's policy, practice, and custom are "not generally applicable," because they "invite the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton*, 593 U.S. at 533 (citation modified). "[T]he inclusion of a formal system of entirely discretionary exceptions," regardless of whether it is ever invoked, suffices to render it "not generally applicable." *Id.* at 536.

The Osborns' interactions with HISD employees demonstrate the individualized, discretionary determinations central to HISD's policy, practice, and custom. For example, that policy, practice, and custom proceeded based on individualized determinations by teachers about socially transitioning Jane. (Doc. 1 ¶¶ 51–55, 83–84.) One teacher even made a determination to cross out Jane's correct name in red ink and "write[] the masculine name next to it." (*Id.* ¶ 53.) And when the Osborns informed Mr. Niggli of their religious objections to socially transitioning their daughter, he proposed "a 'middle ground' solution" of calling Jane by her surname during the school day. (*Id.* ¶¶ 94–95.) Similarly, Ms. Ray took an "individualized" approach in response to the Osborns' objections. *Fulton*, 593 U.S. at 533 (citation

modified). (*See* Doc. 1 ¶¶ 71–76.) Actions like these demonstrate that HISD's policy, practice, and custom are "not generally applicable." *Fulton*, 593 U.S. at 533 (citation modified).

3. Defendants cannot satisfy strict scrutiny.

For these reasons, Defendants' secret social transition of the Osborns' daughter must satisfy strict scrutiny. *See Mahmoud*, 2025 WL 1773627, at *22; *Carson ex rel. O.C. v. Makin*, 596 U.S. 767, 780–81 (2022); *Fulton*, 593 U.S. at 532–34. They "must demonstrate that" their actions and HISD's policy, practice, and custom "advance[] interests of the highest order and [are] narrowly tailored to achieve those interests." *Mahmoud*, 2025 WL 1773627, at *22 (citation modified).

Defendants fail on both fronts. Regarding their interests, broadly formulated interests aren't good enough. *Fulton*, 593 U.S. at 541. Defendants must show that they have a compelling interest specifically in socially transitioning Jane without notifying the Osborns or obtaining their consent. *Id.* Defendants cannot make that showing.

They fare even worse on narrow tailoring. Defendants have made no effort to rebut "the traditional presumption that the parents act in the best interests of their children." *Parham v. J.R.*, 442 U.S. 584, 604 (1979). There has never been even a suggestion that Defendants' actions are narrowly tailored to any conceivable interest—certainly nothing to suggest withholding the social transition would have endangered Jane. *See Yoder*, 406 U.S. at 234 (suggesting limits to the parental right if "parental decisions will jeopardize the health or safety of the child").

Quite the opposite. The Osborns have made clear that they would love Jane no matter what. (Doc. 1 ¶¶ 224–26.) That explains why the Osborns took steps to help her by finding a counselor to support her through her discomfort with her sex. (*Id.* ¶¶ 69–70.) Defendants can't satisfy strict scrutiny.

B. Secretly transitioning the Osborns' daughter violates their fundamental right to direct her upbringing, education, and healthcare.

Next, the Osborns raise their fundamental rights as parents. HISD employees—acting pursuant to policy, practice, and custom—secretly treated the Osborns' daughter as a boy and actively concealed that conduct over the course of three school years, even though the Osborns told them to stop. (*E.g.*, Doc. 1 ¶¶ 51, 53, 83, 118, 131.) And those employees continue to do so. (*E.g.*, *id.* ¶¶ 167–68.) That violates the Osborns' fundamental right to direct their daughter's upbringing, education, and healthcare—"perhaps the oldest of the fundamental liberty interests recognized by" the Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.). This right has "perennially been honored by American courts." *Deanda v. Becerra*, 96 F.4th 750, 758 (5th Cir. 2024).

This claim arises under the Fourteenth Amendment. Its text prohibits government officials from "abridg[ing] the privileges or immunities of citizens of the United States," and "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Those provisions guarantee certain substantive rights. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 237–40 (2022). In particular, the Due Process Clause protects "a select list of fundamental rights that are not mentioned anywhere in the Constitution."[3] *Id.* at 237.

The substantive-due-process analysis has three steps. First, it begins with "a 'careful description of the asserted fundamental liberty interest'" to determine whether it is "deeply rooted in this Nation's history and tradition." *Dep't of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997)). If the asserted right, carefully described, is deeply rooted, then it is

[3] The Court has said the analysis likely would not change if it proceeded under the Privileges or Immunities Clause instead. *Dobbs*, 597 U.S. at 240 n.22; *see* William Baude, Jud Campbell, Stephen E. Sachs, *General Law and the Fourteenth Amendment*, 76 Stanford L. Rev. 1185, 1252 (2024) (discussing relationship between substantive due process and the Privileges or Immunities Clause).

fundamental. Second, a court must ask whether the challenged government action "infringe[s]" that fundamental right. *Reno v. Flores*, 507 U.S. 292, 302 (1993); *see Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 348 (1st Cir. 2025) (per curiam) (asking whether parents had shown a fundamental right, then whether school "restrict[ed]" it). If so, the third step is strict scrutiny: "the Government can act only by narrowly tailored means that serve a compelling state interest." *Muñoz*, 602 U.S. at 910.

The Osborns satisfy each step. (1) The Supreme Court has already held parents' right to direct children's upbringing, education, and healthcare is "deeply rooted" in our history and tradition. (2) Because secretly treating the Osborns' daughter as a boy infringes that right, strict scrutiny applies. And (3) Defendants can't satisfy that test.

1. The Osborns have a fundamental right to direct their daughter's upbringing, education, and healthcare.

Considering a parental-rights claim similar to the Osborns', one court of appeals has already concluded that a secret social transition like this one "fell within the broader, well-established parental right to direct the upbringing of one's child." *Foote*, 128 F.4th at 348. Longstanding Supreme Court precedent, lower courts' decisions, and common-law history confirm the correctness of that conclusion.

For over a century, the Supreme Court has affirmed that parents have a fundamental right to direct their children's upbringing. *Troxel*, 530 U.S. at 65 (plurality op.) (citing *Meyer*, 262 U.S. at 399). Half a century ago, the Supreme Court already said that the "primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Yoder*, 406 U.S. at 232. When it comes to "important decisions," the Court has protected parents' "guiding role" in their children's lives. *H.L. v. Matheson*, 450 U.S. 398, 410 (1981) (citation modified). In our society, the "child is not the mere creature of the state." *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925).

That includes decisions about their children's upbringing, education, and healthcare. Parents have a fundamental right to "make decisions concerning the care, custody, and control of their children." *Troxel*, 530 U.S. at 66 (plurality op.). They have the right to "establish a home and bring up children," which includes "the right of control" over those children. *Meyer*, 262 U.S. at 399–400. They have the right "to direct the upbringing and education of children under their control." *Pierce*, 268 U.S. at 534–35; *accord Dobbs*, 597 U.S. at 256. And they have the right to make judgments about their children's "need for medical care or treatment." *Parham*, 442 U.S. at 603.

Empowering parents to make decisions about children's upbringing, education, and healthcare makes sense. Because "pages of human experience … teach that parents generally do act in the child's best interests," our society presumes parents make decisions on behalf of their children—even over a child's objection. *Id.* at 602–04. And "[n]either state officials nor federal courts are equipped to review such parental decisions." *Id.* at 604; *cf.* 20 U.S.C. § 3401(3) ("parents have the primary responsibility for the education of their children, and States, localities, and private institutions have the primary responsibility for supporting that parental role").

The Supreme Court's protection of parental rights flows from common-law history. At common law, parents had "the responsibility and the authority to … make important decisions on their [children's] behalf." Eric A. DeGroff, *Parental Rights & Public School Curricula: Revisiting* Mozert *after 20 Years*, 38 J.L. & Educ. 83, 108 (2009). Blackstone first focused on parents' *duties* to their children. 1 William Blackstone, *Commentaries on the Laws of England* *450, http://bit.ly/3TNe01g. And "to perform [their] duty," parents must have correlative *rights* to make decisions for their children. *Id.* at *452. Kent echoed Blackstone by expressly linking parental duties and rights. "The rights of parents result from their duties." 2 James Kent, *Commentaries on American Law* *202 (5th ed. 1844), http://bit.ly/44PSPSG.

The view that parents exercise the primary role in decisions about their children persisted through the Reconstruction Era and culminated in the Supreme Court's early parental-rights decisions. Under the common law, state courts in the late 19th century "protect[ed] the right of parents to opt-out their children from studying certain curricula." Joseph K. Griffith II, *Is the Right of Parents to Direct Their Children's Education "Deeply Rooted" in Our "History and Tradition"?*, 28 Tex. Rev. L. & Pol. 795, 806 & nn.82–87 (2024) (collecting cases). The Supreme Court then held that various private-school prohibitions and regulations violated parents' right to direct their children's upbringing. *See Farrington v. Tokushige*, 273 U.S. 284, 298 (1927) (regulation of private, foreign-language academies); *Pierce*, 268 U.S. at 535 (mandatory public-school requirement); *Meyer*, 262 U.S. at 400 (prohibition on teaching a foreign language to certain students). And the Court eventually extended those protections to parents and children in the public-school context. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *see Barnette v. W. Va. State Bd. of Educ.*, 47 F. Supp. 251, 252 (S.D. W. Va. 1942) (plaintiffs were parents of "children attending the public schools" who sought to defend "religious liberty").

That history, tradition, and precedent explain why lower courts have held that actions by public schools can implicate parents' fundamental right to direct children's upbringing, education, and healthcare. In *Gruenke v. Seip*, for example, the Third Circuit held that school officials violated parental rights by withholding information about a student's suspected pregnancy, indirectly pushing her to take a pregnancy test, and spreading gossip about her suspected pregnancy. 225 F.3d 290, 306–07 (3d Cir. 2000). And *Gruenke* relied on an Eleventh Circuit decision holding that school officials who coerced a minor to have an abortion and conceal it from her parents infringed parental rights. *Arnold v. Bd. of Educ. of Escambia Cnty.*, 880 F.2d 305, 313 (11th Cir. 1989). As *Gruenke* explained, "[p]ublic schools must not forget that '*in loco parentis*' does not mean 'displace parents.'" 225 F.3d at 307.

In short, history, tradition, and precedent show that the Fourteenth Amendment guarantees to parents a fundamental right to direct their children's upbringing, education, and healthcare. If a public school's actions deprive parents "of their right to make decisions concerning their child" on "matters of the greatest importance," it implicates that right. *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 934 (3d Cir. 2011) (en banc) (citation modified).

Defendants' actions here did just that. Across three school years, at least half a dozen HISD employees referred to the Osborns' daughter by a masculine name and male pronouns initially without notifying them and, later, over their express objection. (*E.g.*, Doc. 1 ¶¶ 151–64.) The Osborns instructed Mr. Niggli and Ms. Ray to inform Bellaire employees to stop socially transitioning their daughter. (*Id.* ¶ 162.) But Mr. Niggli told them that "there will be no emails with directives to call [Jane] by any particular name." (*Id.* ¶ 163.) When the Osborns wrote letters to HISD's Board and Mr. Miles seeking assurance that this social transition would stop, they provided none. (*Id.* ¶¶ 165–66.) To the contrary, the Osborns continued to discover evidence of HISD employees' ongoing social transition. (*Id.* ¶ 167.) And HISD's counsel expressly linked the social transition to its "policies related to non-discrimination." (*Id.* ¶¶ 146–50.)

Those actions, all taken pursuant to HISD's policy, practice, and custom, "implicate a fundamental right"—the Osborns' right to make decisions about their daughter's upbringing, education, and healthcare. *Glucksberg*, 521 U.S. at 722.

2. Defendants infringed the Osborns' fundamental right by socially transitioning their daughter in secret.

The next question is whether Defendants "actually restricted th[at] fundamental right[]." *Foote*, 128 F.4th at 349. Defendants, acting according to HISD's policy, practice, and custom, infringed the Osborns' "right to make decisions concerning" Jane on a "matter[] of the greatest importance"—her very identity as a young

woman. *Blue Mountain*, 650 F.3d at 934 (citation modified). HISD policy, practice, and custom led Bellaire employees to socially transition Jane (1) without notifying the Osborns, (2) without obtaining their consent, and (3) while actively concealing it from them. Each of those three actions violates their right to direct her upbringing, education, and healthcare.

First, socially transitioning Jane without notifying the Osborns violates their fundamental rights. For example, after the Osborns discovered the social transition and voiced their objections, it continued without any notice to them. (Doc. 1 ¶¶ 26–30.) And they discovered the ongoing social transition only by accident, when school-work came home with a masculine name on it. (*Id.* ¶¶ 51–55.)

That lack of notice necessarily deprives the Osborns "of their right to make decisions concerning their child" on a matter "of the greatest importance." *Blue Mountain*, 650 F.3d at 934 (citation omitted). Whether their daughter is raised and treated consistent with her biological sex is critical to her care and upbringing. It goes to her formation and moral education—the nature of reality and what is right and wrong. (*E.g.*, Doc. 1 ¶ 218.) *See Yoder*, 406 U.S. at 233 (explaining that a parent's duty includes "the inculcation of moral standards, religious beliefs, and elements of good citizenship").

Whether to socially transition a child also *implicates* healthcare matters. No doubt, a "child's gender incongruity is a matter of health." *Mirabelli v. Olson*, 761 F. Supp. 3d 1317, 1331 (S.D. Cal. 2025). Social transition is a "psychosocial intervention" that increases the likelihood a child persists in gender confusion or dysphoria. (Levine Decl. ¶¶ 151–52.) It "starts a juvenile on a 'conveyor belt' path that almost inevitably leads to the administration of puberty blockers, which in turn almost inevitably leads to the administration of cross-sex hormones." (*Id.* ¶ 156.) Because of the healthcare implications of social transition, Defendants should not socially transition a child without guidance from her parents. (*Id.* ¶¶ 248–86.) The Osborns have

the right to make decisions related to social transition. *Parham*, 442 U.S. at 584.

In short, socially transitioning Jane implicates "very personal decisionmaking about [her] health, nurture, welfare, and upbringing." *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 646 (4th Cir. 2023) (Niemeyer, J., dissenting). As a matter of HISD's policy, practice, and custom, Defendants socially transitioned Jane without notifying the Osborns. That deprived them of their fundamental right to direct her upbringing, education, and healthcare.

Second, along similar lines, Defendants treated the Osborns' daughter as a boy without their consent. Socially transitioning her without her parents' consent is inconsistent with their "authority to decide what is best for" her. *Parham*, 442 U.S. at 604. When the government undertakes an action like social transition "without informed parental consent," it infringes parents' fundamental rights. *Kanuszewski v. Mich. Dep't of Health & Hum. Servs.*, 927 F.3d 396, 420 (6th Cir. 2019).

Here, the Osborns expressly told multiple HISD employees, including Ms. Ray and Mr. Niggli, on multiple occasions that they did not consent to socially transitioning Jane. (*E.g.*, Doc. 1 ¶¶ 153, 156–57, 162.) They eventually raised their concerns with HISD's Board and Mr. Miles. (*Id.* ¶ 165.) Yet after each instance, they discovered additional evidence that HISD employees continued to socially transition their daughter. (*E.g.*, *id.* ¶¶ 154–55, 159–61, 164, 167.) Not only that, Mr. Niggli specifically told them that "there will be no emails with directives to call [Jane] by any particular name." (*Id.* ¶ 163.) And the Board and Mr. Miles took no action in response to the Osborns' instruction to stop the social transition. (*Id.* ¶166.)

The Constitution protects parents' right to "make decisions concerning the care, custody, and control of their children." *Troxel*, 530 U.S. at 66 (plurality op.). When school officials act without parental consent, they infringe that right. Defendants know that the Osborns have withheld their consent to socially transition their daughter. Yet Defendants continue to do it, pursuant to HISD policy, practice, and

custom. That infringes the Osborns' fundamental rights.

Third, Defendants concealed their social transition of Jane from the Osborns. (*See, e.g.*, Doc. 1 ¶ 266 (alleging that Ms. Ray and Mr. Niggli "actively concealed the social transition from the Osborns by telling them their objections had been communicated to HISD employees at Bellaire, while HISD employees continued to socially transition Jane").) That concealment also violates their right to direct her upbringing, education, and healthcare.

Over the course of three school years, the Osborns expressed their objections time and again—first directly to the relevant teachers, then escalating their concerns to Ms. Ray and Mr. Niggli, and eventually in letters to the HISD Board and Mr. Miles. (*Id.* ¶¶ 45, 48, 59–68, 73–74, 90–92, 98, 100, 129, 136.) At points during this process, HISD employees led the Osborns to believe that they would stop socially transitioning Jane. (*Id.* ¶¶ 48, 67, 75–76, 106.) Yet the Osborns have continued to discover additional evidence that Defendants are still socially transitioning Jane. (*Id.* ¶¶ 49, 77–81, 83, 101, 114, 118, 131.)

By telling the Osborns one thing and doing another, Defendants have concealed their social transition of Jane. That's worse than *Gruenke*, where the coach did not tell parents he suspected their daughter was pregnant, pushed her to take a pregnancy test, and spread gossip of her suspected pregnancy. 225 F.3d at 306–07. Defendants' concealment here is "manipulative" conduct that deprives parents "of their right to make decisions concerning their child." *Blue Mountain*, 650 F.3d at 934 (citation modified). It infringes the Osborns' fundamental rights.

3. Although the Osborns need not prove conscience-shocking conduct, Defendants' conduct shocks the conscience.

In a narrow category of substantive-due-process cases unlike this one, courts apply a different test. It asks whether the challenged government conduct "shocks the conscience." *Reyes v. N. Tex. Tollway Auth., (NTTA)*, 861 F.3d 558, 562 (5th Cir.

2017); *see Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). But that test only applies to "executive action." *Reyes*, 861 F.3d at 562. Executive actions are "more individualized," while legislative actions "appl[y] [more] broadly." *Id.*

This case challenges a broadly applicable policy, practice, and custom in HISD that spans multiple school years. That "better fits into the legislative bucket." *Foote*, 128 F.4th at 347; *see Regino v. Staley*, 133 F.4th 951, 960 n.5 (9th Cir. 2025). Another recent secret-social-transition decision applied the shocks-the-conscience test, because the plaintiffs there had "waived their general challenges to the Guide, its adoption, and its broad implementation." *Littlejohn v. Sch. Bd. of Leon Cnty.*, 132 F.4th 1232, 1243 n.8 (11th Cir. 2025). But the Osborns have not waived their challenge to HISD's policy, practice, and custom. So the Court should follow *Foote* and not apply the shocks-the-conscience test.

Regardless, Defendants' actions here would also satisfy that test. With actual knowledge of the Osborns' objection to the ongoing social transition of their daughter, HISD implemented a policy, practice, and custom of continuing to socially transition her. (*E.g.*, Doc. 1 ¶¶ 169–70.) Similarly, Mr. Miles and Mr. Niggli both knew about that violation and did nothing to stop it, despite their authority to do so as superintendent and principal. (*Id.* ¶¶ 257–64, 305–06.) And Mr. Niggli and Ms. Ray told the Osborns that their objections had been communicated to Bellaire employees, which concealed the social transition. (*E.g.*, *id.* ¶¶ 106, 116, 266, 306.)

The Fifth Circuit has held that deliberate indifference towards a plaintiff's rights shocks the conscience. *M.D. ex rel. Stukenberg v. Abbott*, 907 F.3d 237, 251 (5th Cir. 2018) (citing *Rosales-Mireles v. United States*, 585 U.S. 129, 138 (2018)). And "the deliberately indifferent state of mind can be inferred 'from the fact that the risk of harm is obvious.'" *Id.* at 253 (quoting *Hope v. Pelzer*, 536 U.S. 730, 737 (2002)). Here, the risk of harm to the Osborns' constitutional rights was obvious. Defendants had actual knowledge the Osborns didn't consent to the social transition

of their daughter. Yet Defendants continued apace, with no change to HISD's implementation of its policy, practice, and custom. That shocks the conscience.

4. The infringement of the Osborns' fundamental rights triggers—and fails—strict scrutiny.

Because the Osborns have shown that Defendants infringed their fundamental rights, Defendants must show their actions are narrowly tailored to a compelling state interest. *Muñoz*, 602 U.S. at 910. For the reasons already discussed, *see supra* p.13, Defendants cannot make that showing.

C. Secretly transitioning the Osborns' daughter denies them procedural due process.

The Osborns' procedural-due-process claim has two elements: "whether the state has 'deprived the individual of a protected interest'"; and whether the government asks "what process is due" before depriving the individual of that interest. *Jauch v. Choctaw Cnty.*, 874 F.3d 425, 430–31 (5th Cir. 2017) (quoting *Augustine v. Doe*, 740 F.2d 322, 327 (5th Cir. 1984)). The latter is obvious here. Defendants gave the Osborns no process whatsoever before socially transitioning their daughter. (*See, e.g.*, Doc. 1 ¶¶ 52–56 (recounting how the Osborns first discovered that HISD employees were transitioning their daughter without parental notice).) So the only question is whether that social transition deprived them of a protected liberty interest.

Separate from substantive-due-process doctrine, the Due Process Clause "requires that the state follow certain procedures before encroaching on" parents' "liberty interest in the care, custody, and management of their children." *Romero v. Brown*, 937 F.3d 514, 521 (5th Cir. 2019); *see Regino*, 133 F.4th at 967 ("[T]he procedural component of the Due Process Clause protects more than just fundamental rights." (citation modified)). Thus, "the Constitution recognizes both a protectible procedural due process interest in parenting a child and a substantive fundamental right to raise one's child." *Bartell v. Lohiser*, 215 F.3d 550, 557 (6th Cir. 2000). And "the

differences between" them "are significant." *Id.* Procedural protections apply to all deprivations of protected liberty interests—whether or not they could pass strict scrutiny. *Id.*

Pursuant to HISD policy, practice, and custom, Defendants made parenting decisions about the Osborns' daughter without their consent and without providing them any procedural protections. (*E.g.*, Doc. 1 ¶¶ 51–56, 72–73, 77, 83–84, 101, 144–45, 149–52, 166–72, 323–30.) "By design," HISD's policy, practice, and custom afforded to the Osborns neither "notice" nor "an opportunity to be heard," both of which they're presumptively entitled to as "fit parent[s]." *Doe v. Uthmeier*, 407 So. 3d 1281, 1291 (Fla. Dist. Ct. App. 2025). The Osborns are likely to succeed on their procedural-due-process claim.

II. The other injunction factors support a preliminary injunction.

The Osborns have also satisfied the irreparable-harm factor. "The loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Mahmoud*, 2025 WL 1773627, at *24 (citation modified); *see BST Holdings, L.L.C. v. Occupational Safety & Health Admin., U.S. Dep't of Lab.*, 17 F.4th 604, 618 (5th Cir. 2021) (extending that to other constitutional provisions). Because Defendants' ongoing social transition of Jane violates the First and Fourteenth Amendments, it amounts to irreparable harm. *BST Holdings*, 17 F.4th at 618. It has already persisted through three separate school years. (Doc. 1 ¶ 152.) Even the Osborns' repeated, express objections to the transition of their daughter has not changed Defendants' conduct. (*See id.* ¶¶ 153–72.)

The balance of harms and public interest "'merge when the Government is the opposing party.'" *Bencivenga Corp. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 4:23-CV-3887, 2024 WL 2261960, at *6 (S.D. Tex. May 17, 2024) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). The Osborns have satisfied

these two factors by "show[ing] a substantial likelihood that" their constitutional rights "will be violated if [their] motion for a preliminary injunction is denied." *Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511, 531 (S.D. Tex. 2020).

CONCLUSION

Contravening the Osborns' clear instructions and often without their knowledge, Defendants have socially transitioned their daughter for three-fourths of her high-school career. All indications are that they won't stop unless this Court intervenes before her senior year starts on August 12, 2025.

For these reasons, the Osborns respectfully request the Court grant their Motion for Preliminary Injunction and enter the contemporaneously filed proposed order enjoining Defendants' ongoing constitutional violations.

Dated: July 8, 2025

Respectfully submitted,

/s/ *Vincent M. Wagner*

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CERTIFICATE OF CONFERENCE

I certify that, on June 30, 2025, I conferred via telephone with Paul A. Lamp, who represents Defendants in this matter, along with another attorney from his office and my colleague Katherine L. Anderson. I informed Mr. Lamp that we intended to file a motion for preliminary injunction from the Court early during the week of July 7–11 that requested an order enjoining Defendants from socially transitioning Plaintiffs' daughter. He responded that, because of Independence Day, he wasn't likely able to obtain Defendants' position on this motion prior to our filing it but that he anticipated Defendants would oppose it. As of the date of this filing, Mr. Lamp has not informed me whether Defendants oppose this motion.

By: /s/ *Vincent M. Wagner*

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CERTIFICATE OF SERVICE

I hereby certify that, on July 8, 2025, I electronically filed the foregoing document with the Clerk of Court and that the foregoing document will be served via email and private process server delivering hard copies to the office address of the following attorney who represents Defendants:

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