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

NO. 24-3348

JANE DOE,

*Appellant*

v.

PINE RICHLAND SCHOOL DISTRICT

*Appellee.*

ON APPEAL FROM THE MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA ENTERED DECEMBER 12, 2024, IN CIVIL ACTION NO. 2:24-CV-00051-WSS
(The Honorable William S. Stickman)

# BRIEF FOR APPELLANT JANE DOE

WALTER S. ZIMOLONG III
DANIEL J. BITONTI
JAMES J. FITZPATRICK III
ZIMOLONG, LLC
P.O. Box 552
Villanova, PA 19085
(215) 665-0842
wally@zimolonglaw.com
*Counsel for Appellant, Jane Doe*

NICHOLAS R. BARRY
AMERICA FIRST LEGAL FOUNDATION
Tennessee Bar No. 031963
nicholas.barry@aflegal.org
611 Pennsylvania Ave SE #231
Washington, DC 20003

## STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully requests oral argument because the issues in this case are sufficiently important and complex to warrant argument time.

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**Statutes**

## STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331 because the case arises under United States Constitution and federal statute. This Court's appellate jurisdiction rests on 28 U.S.C. § 1291 because plaintiff has appealed a final decision – the district court's dismissal of the second amended complaint with prejudice.

## STATEMENT OF THE ISSUES

Does a parent of a child attending school in a school district have Article III standing to bring a constitutional challenge to a school district policy that applies to all parents and students?

## STATEMENT OF RELATED CASES AND PROCEEDINGS

Counsel is unaware of any other case or proceeding that is in any way related to, completed, pending, or about to be presented before this Court or any other court or agency, state or federal.

# STATEMENT OF THE FACTS

## I. GENDER INCONGRUENT OR TRANSGENDER PERSONS.

A "gender incongruent" person (also known as a "transgender" person or "gender nonconforming" person) "refers to a person whose sex [recognized] at birth (i.e. the sex [recognized] at birth, usually based on external genitalia) does not align to their gender identity (i.e., one's psychological sense of their gender)." Appx0023.[1] If a gender incongruent person does not receive proper treatment he or she may experience "gender dysphoria." *Id.* Gender dysphoria "refers to psychological distress that results from an incongruence between one's sex [recognized] at birth and one's gender identity." *Id.*[2] A clinical diagnosis is required to determine if a gender incongruent person has gender dysphoria. *Id.*[3]

Most gender incongruent children simply "grow out" of the condition. *Id.* That is at a certain age they no longer identify with a

[1] American Psychiatric Association, *What is Gender Dysphoria?*, https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria (Last visited, Jan. 19, 2024).
[2] *Id.*
[3] *Id.*

gender different than their biological sex. Appx0023-24.[4] Gender-incongruent children should receive treatment from a mental health professional experienced in treating gender-incongruent children. *Id.* "Psychologists and other mental health professionals who have limited training and experience in [gender] affirming care may cause harm to [transgender] people." Appx.0025.[5] There is no "adequate[], empirically validated, consensus . . . regarding the best practice [for treatment]." *Id.*[6] And there is "limited available research regarding the potential benefits and risks of different treatment approaches for children and for adolescents." *Id.*[7] Accordingly, mental health professionals take divergent views on the proper treatment protocol for gender-incongruent children. *Id.*[8] One camp believes it is appropriate to assist gender-

[4] Am. Psychol. Ass'n, Guidelines for Psychological Practice with Transgender and Gender Nonconforming People, 70 Am. Psychologist 832, 842 (2015).

Multiple courts have found the APA guidelines authoritative on issues of gender incongruent child in public schools. *See e.g., Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 594 (4th Cir. 2020), as amended (Aug. 28, 2020); *Edmo v. Corizon, Inc.*, 935 F.3d 757 (9th Cir. 2019); *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 622 F. Supp. 3d 118 (D. Md. 2022), vacated and remanded, 78 F.4th 622 (4th Cir. 2023)

[5] *Id.* at 832.
[6] *Id.* at 842.
[7] *Id.* at 843.
[8] *Id.* at 842.

incongruent children "to socially transition and to begin medical transition when their bodies are physically developed." *Id.* [9] The other camp believes that gender-incongruent children should be encouraged to embrace their biological sex because medical alteration of the body and living as a transgender adult "may cause harm or lead to psychosocial adversities." *Id.* [10] Still, there is a near universal belief, even among those that favor "transitioning," that the child's treatment *should involve the child's parents*. *Id.* [11]

## II. SCHOOL DISTRICT ADMINISTRATIVE REGULATION 103(B)

The School District's policy disregards prevailing professional consensus. In 2017, it passed Administrative Regulation 103(B) ("AR 103(B)"). Appx0015, AR 103(B), ECF No. 1-1. AR 103(B) states that "[a]ll students"—regardless of age—"have a right to privacy and this right includes the right to keep one's transgender status private at school." Appx0016 at § D. AR 103(B) states, "transgender and gender-expansive students have the right to discuss his or her gender identity openly and

[9] *Id.*
[10] *Id.*
[11] *Id.* ("Psychologists are encouraged to offer *parents* and guardians clear information about available treatment approaches, *regardless of the specific approach chosen by the psychologist*.") (emphasis added)

to decide when, with whom, and how much to share private information." *Id.* AR 103(B) states, "[t]o ensure the safety and well-being of the student, District personnel should not disclose a student's transgender status to others, **including the student's parents/guardians** or other District personnel, unless: (1) legally required to do so, or (2) the student has authorized such disclosure."[12] *Id.* (emphasis added). AR 103(B) states the child **shall meet** with a Student Support Team (the "Transition Team") to "discuss a timeline for the transition in order to create the conditions supporting a safe and accepting environment at the school." Appx0016 at § E. AR 103(B) states a "gender transition" is "[t]he processes by which some individuals strive to more closely align their gender identity with outward manifestations. Some people socially transition, whereby they might begin dressing, using names and pronouns and/or be socially recognized based on their gender identity. Others undergo **physical transitions** in which they modify their bodies through medical interventions." Appx0015 at § C (emphasis added). AR103(B) goes on to

[12] AR 103(B) ban on parental disclosure applies only to a child's "transgender status." It does not apply to a child expressing issues with his or her sexuality, sexual practices, or a child exhibiting signs of depression. Thus, under AR 103(B), School District employee could not disclose to a parent that a child is transgender but could disclose to a parent that the child is gay or lesbian.

state, "surgical treatments are **generally** not available for school age transgender youth." *Id.* (emphasis added).

The Transition Team consists of the school nurse, psychologist, principal, guidance counselor, and the child's teacher. *Id.* But it does not include a student's parent. *Id.* In fact, AR 103(B) does not require any parental notification that a student is meeting with a Transition Team. *Id.* Meanwhile, the Transition Team will help the student transition at school without parental notice or consent. "When a student transitions during the school year, the [Transition Team] shall hold a meeting with the student and parents/guardians, **if they are involved in the process**. The [Transition Team] should discuss a timeline for the transition in order to create the conditions supporting a safe and accepting environment at the school." Appx0016 at § E. There is nothing in AR103(b) that would prevent this "transition" from including physical transitions, including medications. And parents may not even be involved in the process.

Thus, despite the near universal belief that (a) parents should be involved in the treatment of a gender-incongruent child and (b) treatment should come from mental health professionals with extensive experience

in treating gender incongruity, the School District has enacted AR 103(B), which excludes parents from the treatment of gender incongruent children in the School District and places the care of these children, not in the hands of a trained mental health professional with extensive experience in the treatment of a gender-incongruent child, but in the hands of the school nurse, psychologist, school administrator, and guidance counselor.

## III. JANE DOE

Ms. Doe is a parent of a child who was enrolled in the school district when this action was initiated in January 2024. Appx0045, Declaration of Jane Doe, ECF No. 5-2, ¶ 1. Ms. Doe has legitimate concerns that her child is gender incongruous. *Id.*, ¶ 2. Ms. Doe found her child viewing online videos related to transitioning, videos of transgender individuals advocating transitioning, and videos on sexuality. *Id.*, ¶ 3. Moreover, Ms. Doe's child began hanging out with a new friend group, which includes children who identify as transgender or who are socially transitioning. *Id.*, ¶ 4. When her child was enrolled in a school district school, Ms. Doe became concerned that if her child started exhibiting more pronounced signs of gender incongruity at school or gender dysphoria, the School

District would, in compliance with AR 103(B), immediately begin providing her child gender-affirming care from inexperienced and untrained personnel before Ms. Doe knew and could take steps to help her child obtain appropriate medical treatment. *Id.*, ¶ 5.

Therefore, Ms. Doe sent written notice to the School District that, absent her prior written consent, the School District shall not refer her child to any mental health counselor or social worker for evaluation. Appx0046 at ¶ 6. Ms. Doe's notice to the School District also demanded that the School District notify her within three days of learning about any matters related to gender identity or gender dysphoria expressed by her child. *Id.*, ¶ 7. Ms. Doe met the principal of her child's school and the school's guidance counselor, to discuss her written notice. *Id.*, ¶ 8. At the meeting, School District representatives told Ms. Doe that, pursuant to AR 103(B), under no circumstances would the School District notify her if it became aware that her child has requested to be addressed by different pronouns, a different name, or otherwise exhibited behavior consistent with gender incongruity, gender dysphoria, or a desire to transition to a gender other than her biological gender. *Id.*, ¶ 9. The School District's representatives further stated to Ms. Doe that they

would only notify her if "legally required to do so." *Id.*, 10. Finally, the School District's representatives stated to Ms. Doe that she had no parental rights under AR 103(B). *Id.*, ¶ 11.

Thereafter, Ms. Doe emailed the School District memorializing what was stated to her at the meeting, including the statements made concerning parental rights under AR 103(B). *Id.*, ¶ 12. She stated that the School District should immediately notify her if she had misstated the School District's positions concerning AR 103(B) that the School District expressed at the meeting. Appx0047 at ¶ 13. The School District responded to Ms. Doe's email. *Id.*, ¶ 14. The School District did not deny that it stated that Ms. Doe had no parental rights under AR 103(B). *Id.*, ¶ 15. Regarding AR 103(B), the School District stated the School District was a "partner" with parents and, therefore, would not comply with Ms. Doe's demand to be notified if the School District becomes aware that her child has requested to be addressed by different pronouns, a different name, or other exhibited behavior consistent with gender dysphoria or a desire to transition to a gender other than her biological gender. *Id.*, ¶ 16. Rather, the School District stated it would work with the student, not the parent, on such matters. *Id.*, ¶ 17.

On or about July 30, 2024, because of AR103(B), Ms. Doe withdrew her child from the School District and enrolled her in a parochial school. Appx0128-0129, ¶¶ 40-41. However, Ms. Doe would consider re-enrolling her daughter in a School District school if AR103(B) was repealed, declared unconstitutional, or enjoined. *Id.*, ¶ 43.

## STATEMENT OF THE CASE

On January 12, 2024, appellant, Ms. Doe sued the School District over AR103(B). Appx0001, Original Complaint, ECF No. 1. The original complaint asserted two claims against the School District. First, Ms. Doe claimed that AR103(B) violated her parental rights guaranteed by the Fifth and Fourteenth Amendments by, among other things, (i) failing to provide parents with notification regarding the mental health and well-being of their children, including the life-altering decision to change one's gender, (ii) secretly submitting children to psychological and mental evaluations by government psychologists and officials, (iii) secretly subjecting children to interrogation by a team of government officials about their parents religious and political beliefs regarding, among other things, gender dysphoria and (iv) secretly providing medical and psychological care without parental consent by government approved psychologists and medical professionals to a child to "assist" a child in making the life-altering decision to change one's gender. Appx0007-0008 at ¶¶ 39-50.

Second, Ms. Doe claimed that AR103(B) violated 20 U.S.C. § 1232h, because it (i) fails to provide parents with notification and the

opportunity to opt out of surveys regarding their child's mental health and well-being', (ii) fails to provide parents with notification and the opportunity to opt out of surveys regarding their child's psychological and mental health, and (iii) secretly subjecting children to interrogation by a team of government officials about their parents religious and political beliefs regarding, among other things, sex behaviors or attitudes about gender dysphoria'. Appx0009-0010 at ¶¶ 51-60.

The same day, Ms. Doe filed a motion for a preliminary injunction, ECF No. 5, seeking an order prohibiting the School District from implementing or applying certain portions of AR103(B) as to Ms. Doe and her child. Appx0019, ECF No. 5.

On March 22, 2024, the School District responded to the complaint with a motion to dismiss under Rules 12(b)(1) and 12(b)(6). The School District argued the Court lacked subject matter jurisdiction because Ms. Doe lacked an Article III injury because her claims were "speculative" and not concrete. ECF No. 16. The School District also argued that Ms. Doe's claims should be dismissed on the merits.

On April 4, 2024, the School District filed its response in opposition to Ms. Doe's motion for a preliminary injunction. Appx0048, ECF No. 17.

The School District challenged Ms. Doe's ability to meet the factors necessary to obtain a preliminary injunction. While conceding that Ms. Doe's fundamental right to control the care and upbringing of her child, the School District argued Ms. Doe was not suffering irreparable harm because AR103(B) does not require an "affirmative" or "compelled behavior on the part of any student." Appx0057. The School District also argued that Ms. Doe was not likely to succeed on the merits because her "liberty interest was too amorphous at this point." Appx0058. But it did not argue she lacked standing to obtain a preliminary injunction.

On April 12, 2024, Ms. Doe filed an amended complaint which added two additional counts. Appx0076, Amended Complaint, ECF No. 31. First, Ms. Doe added a claim that AR 103(B) violated her common law right to parental consent before medical treatment could be administered to her child. Appx0085-0086, ¶¶ 61-67. Second, Ms. Doe claimed AR103(B) violated her rights under the Pennsylvania Minors' Consent to Medical Care Act, 36 P.S. 10101, et seq. Appx0086-0087 at ¶¶ 68-70.

On April 15, 2024, the district court denied the School District's motion to dismiss as moot because of the filing of the Amended Complaint. ECF No. 32. On April 26, 2024, the School District filed a

motion to dismiss the amended complaint, raising almost the same arguments again, claiming Ms. Doe lacked Article III standing. ECF No. 34 and 35. On April 29, 2024, the Court issued a briefing schedule and ordered Ms. Doe to respond to the School District's motion to dismiss by May 20, 2024.

But, before Ms. Doe could file her response to the School District's motion to dismiss to address the merits of plaintiff's standing, on May 7, 2024, the Court issued its order and memorandum opinion denying Ms. Doe's motion for a preliminary injunction because in the district court's opinion, Ms. Doe lacked Article III standing and, therefore, lacked a likelihood of success on the merits. Appx0090, Opinion, ECF No. 37. The district court opined that Ms. Doe "has not plead or presented evidence of a current injury or an imminent future injury" because she failed to allege her child is transgender, failed to allege her child approached the School District about her child's gender or interacted with the School District about gender. Appx0103-0104. Moreover, the district court concluded that "even if [Ms. Doe's child identified as transgender], standing still does not exist until Doe's child has some interaction with the District pursuant to the District's gender policy." Appx0104.

On May 10, 2024, Ms. Doe filed a notice of appeal with this Court. Appx0112, ECF No. 39. However, on August 18, 2025, Ms. Doe voluntarily dismissed her appeal of the denial of motion for a preliminary injunction because her child has withdrawn from the School District.

Following a status conference, the district court granted Ms. Doe leave to file an Amended Complaint ("Second Amended Complaint"). Appx0123, ECF No. 47. The significant change in the factual circumstances between the Amended Complaint and the Second Amended Complaint was that Ms. Doe's daughter was no longer enrolled in one of the School District's schools. Currently, Ms. Doe's daughter is attending a parochial school. However, in the Second Amended Complaint, Ms. Doe asserts that she would consider re-enrolling her daughter in the School District if AR 103(B) were repealed, declared unconstitutional, or enjoined. *Id.*, ¶ 43.

The School District subsequently filed a motion to dismiss the Second Amended Complaint, contending, again, that Ms. Doe had not established Article III standing. Appx0141, ECF No. 48. In response to the Motion to Dismiss, Ms. Doe reiterated her standing arguments previously made in the context of her request for a preliminary

injunction. Appx0157, ECF No. 51. She further contended that her daughter's enrollment in a parochial school does not render her action moot, as she continued to seek damages for constitutional violations that occurred while her daughter was enrolled in the School District. *Id.*

The district court granted the School District's Motion to Dismiss thereby dismissed Ms. Doe's claims for lack of Article III standing. Appx0176, ECF No. 57. In its December 12, 2024 Memorandum Order, the district court incorporated its previous standing analysis from the denial of preliminary injunctive relief. Appx0179. The district court found that Ms. Doe failed to demonstrate an cognizable injury or immediate future injury necessary to establish standing. Appx0178-0179. The Court emphasized that the only change in the Second Amended Complaint—Ms. Doe's daughter no longer attending the School District's schools—only weakened her standing argument. Appx0179.

## STANDARD OF REVIEW

The Court reviews justiciability issues, such as lack of standing, de novo. *Common Cause of Pennsylvania v. Pennsylvania*, 558 F.3d 249, 257 (3d Cir. 2009)

## SUMMARY OF ARGUMENT

The School District's implementation and enforcement of Administrative Regulation 103(B) ("AR103(B)") inflicted a concrete injury on Ms. Doe by subverting her authority as a parent, thereby violating the deeply rooted due process right of a parent to maintain the care, custody, and control of a minor child free from undue state interference. *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) *Gruenke v. Seip*, 225 F.3d 290, 303 (3d Cir. 2000) The district court's failure to recognize the injury the School District inflicted on Ms. Doe's parental rights and to correctly apply Article III standing principles warrants reversal. AR103(B) actively interferes with Ms. Doe's parental prerogatives in two critical ways.

*First*, AR103(B) inflicted a concrete harm on Ms. Doe because it forced Ms. Doe to navigate sensitive healthcare and well-being decisions for her child under a policy that promotes secrecy and withholds vital information. Therefore, her parental rights were not free from "undue state interference." *Gruenke,* 225 F.3d at 303. Thus, she has been injured and satisfies Article III's standing requirements. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718–19, (2007).

*Second*, the School District's explicit policy of withholding information from Ms. Doe regarding her child's gender identity inflicted another injury by creating an untenable conflict between the School District's actions and Ms. Doe's right to make informed decisions about her child's healthcare and upbringing. This breaches the constitutionally protected parent-child relationship and inflicts a separate and distinct injury. *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees*, 680 F. Supp. 3d 1250, 1277 (D. Wyo. 2023).

Finally, the district court improperly concluded that Ms. Doe's withdrawal of her daughter from the School District weakened her claim for standing. Standing is determined at the commencement of the action, and the subsequent withdrawal does not retroactively negate Ms. Doe's standing based on the facts alleged when the suit was filed. Moreover, Ms. Doe's claims are not moot, as she seeks monetary damages and attorneys' fees, and because injunctive relief remains a viable remedy given her stated intention to re-enroll her daughter if AR 103(B) is enjoined.

Thus, the district court was wrong to conclude that Ms. Doe could not establish Article III standing unless her child "has some interaction with the School District pursuant to its gender policy." Appx0104. Accordingly, this Court should reverse and remand the matter to the district court.

# ARGUMENT

## I. THE DISTRICT COURT INCORRECTLY HELD THAT MS. DOE LACKED ARTICLE III STANDING.

To establish Article III standing, a plaintiff needs to plead: (1) an injury in fact, which is (2) fairly traceable to the challenged conduct of the defendant, and is (3) likely to be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). In reviewing the Second Amended Complaint, the district court was required to assume all facts as alleged in her Second Amended Complaint as true and view each allegation in the light most favorable to Ms. Doe. *In re Schering Plough Corp. Intron/Temodar Consumer Class Action*, 678 F.3d. 235, 243 (3d Cir. 2012). Ms. Doe pleaded injury in fact in several separate and distinct ways.[13]

[13] The district court did not address whether Ms. Doe met the two remaining factors to establish standing. In all events, Ms. Doe easily establishes the remaining two factors. Ms. Doe's injury is clearly traceable to the actions of the School District because her injuries are caused by AR103(B), which is a School District policy. A favorable decision will certainly redress her harm because favorable decision would vindicate her rights and prevent the School District from violating her constitutional and statutory rights through AR 103(B).

### A. The School District inflicted an immediate, concrete injury because the policy on its face subverted Ms. Doe's authority as a parent by forcing her to contend with the policy in making decisions regarding the care, custody, and control of her child.

To begin, there should be no dispute that matters of "family life [are] one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639–640, (1974). More than a century of case law establishes a parent, like Ms. Doe, enjoys a "fundamental right [] to make decisions concerning the care, custody, and control of [her] child." *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (the Fourteenth Amendment protects the right to "marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) ("The history and

culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.") *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."); *Troxel*, 530 U.S. at 65 (the right "is perhaps the oldest of the fundamental liberty interests recognized by this Court.") *Anspach ex rel. Anspach v. City of Philadelphia, Dep't of Pub. Health*, 503 F.3d 256, 261 (3d Cir. 2007) ("The Supreme Court has long recognized that the right of parents to care for and guide their children is a protected fundamental liberty interest.") Indeed, the Supreme Court has declared that the rights of parents are "essential," "basic civil rights of man" and "far more precious ... than property rights." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).[14]

[14] The School District does not argue that Ms. Doe lacked a fundamental right guaranteed by the Fourteenth Amendment regarding the care custody and control of her child. Likewise, the district court did not find Ms. Doe's lacked standing because she did not maintain any fundamental right as a parent.

Ms. Doe suffered a concrete injury because AR103(B) substantially burdened her fundamental rights as a parent. It is well settled that a constitutional violation occurs when a constitutional right is denied outright or when it is substantially burdened. *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah.*, 508 U.S. 520 (1993). And, in *Gruenke*, this Court recognized "the right of parents to raise their children without undue state interference is well established." *Gruenke,* 225 F.3d at 303.

The School District has burdened and interfered with Ms. Doe's rights because AR103(B) subverted her right to the care, custody, and control of her child in two ways. First, it burdened Ms. Doe's right to make unfettered and informed health care decisions on behalf of her child. A parent's right to care for a child includes a "dominant" right to make health care decisions on behalf of a child. *Parham v. J. R.*, 442 U.S. 584, 604 (1979). "Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. [Therefore], parents can and must make those judgments" *Id. at* 603. This includes medical treatment with which the child might disagree. *Id.* at 604. ("The fact that a child may

balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parents' authority to decide what is best for the child.").

But AR103(B) supplanted Ms. Doe from her dominant role. Ms. Doe could not make informed health care decisions for her daughter when the School District was intent on keeping information about her child's gender identity secret from her. She was unable to make health care decisions for her child because AR103(B) allowed her child to receive mental health care from the School District's Transition Team behind her back. Ms. Doe, therefore, lost her right to consent or deny consent for the provision of medical or mental health care for her child. The School District impermissibly seized her decision-making authority from her. As such, Ms. Doe's role was no longer dominant but subservient to the School District's preferred care option. Accordingly, it burdened and interfered with her dominant role as a parent in making health care decisions for her child. The loss of decision-making authority or the degradation of her decision-making authority is sufficient to establish Article III standing because she is currently suffering this injury.

Second, the School District burdened and interfered with Ms. Doe's right to make everyday decisions regarding the care, custody, and control of her child. Ms. Doe makes parental decisions on behalf of her child daily. She does not make parenting decisions on some days and not others. She does not toggle parenting on and off. AR103(B)'s secrecy provisions burdened her right to make unfettered decisions concerning the care, custody, and control of her child. Ms. Doe could not make critical decisions concerning the care, custody, or control of her daughter if the School District purposely kept vital information from her. Accordingly, AB103(B) subverted her parental authority. Her decisions would have been different if she did not have to contend with AR103(B). Ultimately, Ms. Doe withdrew her daughter from the School District rather than having to contend with AR103(B). But even a small decision she made because of AR103(B) would be sufficient to garner Article III standing. "The injury-in-fact requirement is very generous to claimants, demanding only that the claimant allege some specific, identifiable trifle of injury." *Cottrell v. Alcon Lab'ys*, 874 F.3d 154, 162 (3d Cir. 2017) (internal citations and quotations omitted). This is sufficient to create Article III standing. *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of*

*Trustees*, 680 F. Supp. 3d 1250, 1277 (D. Wyo. 2023) ("To the extent the Student Privacy Policy prohibits a teacher or school employee, upon inquiry by a parent or legal guardian, from responding or providing accurate and complete information concerning their minor child (and absent a threat to the wellbeing of the student), it burdens a parent's fundamental right to make decisions concerning the care, custody and education of their child.")

Likewise, the policy is a public document, and students know about it. A student who wishes to socially transition knows that the School District will provide the mental health care necessary to permit them to socially transition without informing or seeking consent from their parents. This drives a wedge in the constitutionally protected parent-child relationship. *Quilloin*, 434 U.S. at 255. By implementing AR 103(B), the School District has overstepped its role and improperly interfered with Ms. Doe's parental rights. It is firmly established that "freedom of personal choice in matters of … family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. *Id.* at 255 (quoting *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639–640, (1974)).

In sum, AR103(B) burdened Ms. Doe's parental rights to a sufficient degree to confer standing.

### B. Ms. Doe's child does not need to seek "support" under the policy for her to maintain Article III standing to challenge it.

The district court incorrectly held that Ms. Doe has no Article III standing "unless Doe's child has some interaction with the [School] District pursuant to its gender policy." Appx0104. But a long line of cases hold that a plaintiff need not actually "interact" or be subjected to a government program or policy to maintain Article III standing. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718–19 (2007) ("The fact that it is possible that children of group members will not be denied admission to a school based on their race—because they choose an undersubscribed school or an oversubscribed school in which their race is an advantage—does not eliminate the injury claimed."); *Ne. Fla. Chapter v. Jacksonville*, 508 U.S. 656, 665-66 (1993) (holding that a plaintiff challenging a policy that potentially would deny him a government benefit does not also have to allege the policy will actually do so to have standing) *Parents United for Better Schools, Inc. v. School District of Philadelphia Board of Education*, 148 F.3d 260 (3d Cir. 1998)

(holding parents could challenge condom-distribution program in the Philadelphia public schools on the ground that it subverts their authority as parents without the need to allege or show that his children would actually obtain (or try to obtain) the prophylactics.); *Parents United For Better Schools, Inc. v. School District of Philadelphia Board of Education*, 646 A.2d 689, 691 (Pa. Cmwlth. 1994) (holding that parents have standing to challenge condom-distribution program in the Philadelphia public schools, even though the program allowed parents to opt their children out of the program by mailing in a "veto form," because parents suffered injury from the loss of their prerogative to "consent . . . before medical treatment [is] provided"); *Deanda v. Becerra*, 96 F.4th 750 (5th Cir. 2024) (parent had standing to challenge birth control distribution and family planning program even though child had not received birth control or family planning services from the program.) Thus, Ms. Doe did not have to plead that her child availed herself to AR103(B).

Still, contrary to the district court's opinion, Doe did "interact" with the policy. As set forth above, she interacted with it daily because it applied to all students and all parents, and Doe was forced to parent a child while navigating the policy. Moreover, Ms. Doe did have direct

"interaction" with the AR103(B). Ms. Doe sent written notice to the School District that absent her prior written consent, the School District could not refer her daughter to any mental health counselor or social worker for and treatment. Appx0127, at ¶ 25. She also demanded that the School District notify her of any matters involving her daughter's gender identity. *Id.* at 26. She met with School District officials to discuss her demands. *Id.* at 27. But the School District flatly refused her demands and stated that under no circumstances would they notify her if it became aware of her child's desire to be addressed by different pronouns, a different name, or otherwise exhibited behavior indicative of gender identity issue. *Id.* at 28. This is an "interaction" that creates an injury-in-fact for purposes of Article III standing because it burdened her right to make decisions concerning the care, custody, and control of her child by making it more difficult for her to address sensitive topics such as gender identity or to provide the psychological or medical care of her choice. *Willey,* 680 F. Supp. 3d at 1277

Furthermore, Ms. Doe's continual interaction with AR 103(B) led her to withdraw her child from the School District school and its existence serves as a barrier to re-enrollment, as Ms. Doe has expressed a genuine

interest in returning her child to the district if the policy were to be repealed, declared unconstitutional, or enjoined.

Therefore, this situation creates an ongoing injury by forcing Ms. Doe to choose between her constitutional rights and access to public education benefits for her child. The policy's existence continues to influence Ms. Doe's current decision-making regarding her child's education and potentially impacts her ability to fully understand her child's educational history. These ongoing effects demonstrate that Ms. Doe maintains a concrete interest in the outcome of this litigation, despite her daughter's current enrollment in a parochial school. The Court should recognize that AR 103(B) continues to exert a tangible influence on Ms. Doe's parental rights and educational choices, thus preserving her standing to challenge the policy's constitutionality.

Moreover, Ms. Doe has also had other direct "interaction" with the AR103(B). Ms. Doe sent written notice to the School District that absent her prior written consent, the School District could not refer her daughter to any mental health counselor or social worker for and treatment. Appx0046, ¶ 6. She also demanded that the School District notify her of any matters involving her daughter's gender identity. *Id.* at ¶ 7. She met

with School District officials to discuss her demands. *Id.* at ¶ 9. But the School District flatly refused her demands and stated that under no circumstances would they notify her if it became aware of her child's desire to be addressed by different pronouns, a different name, or otherwise exhibited behavior indicative of gender identity issue. *Id.* at ¶ 9. This is an "interaction" that creates an injury-in-fact for purposes of Article III standing because it burdened her right to make decisions concerning the care, custody, and control of her child by making it more difficult for her to address sensitive topics such as gender identity or to provide the psychological or medical care of her choice. *Willey*, 680 F. Supp. 3d at 1277.

The district court minimized Ms. Doe's concerns regarding her child's gender identity issues. Appx0104 ("The mere fact that Doe's child has friends who identify as transgender and that the child allegedly looked at internet sites discussing gender issues does not indicate the that Doe's child identifies as transgender.") But the perceived de minimums nature of Ms. Doe's concerns does nothing to diminish her claim of injury in fact for purposes of standing. Article III standing exists

whenever a plaintiff has a direct state in the outcome of the litigation, "even though small." *Cottrell*, 874 F.3d at 162

Finally, the district court failed to consider AR103(B)'s secrecy provisions. There is no doubt that AR103(B) is designed to keep information about a child's transgender status or gender identity secret from a parent. Under the district court's theory, a parent from whom information is kept secret has no standing to sue. But if a parent finds out, she has standing. As this Fifth Circuit recently opined regarding parental secrecy provisions, "that makes little sense." *Deanda*, 96 F.4th at 759. Ms. Doe's "standing to sue should not depend on whether the [School District] has successfully kept [her] in the dark about [her] children's [transgender status.]" *Id.*

Likewise, the policy's secrecy provisions do not make Ms. Doe's fears that the School District might keep information from her speculative. *Parents Protecting Our Child., UA v. Eau Claire Area Sch. Dist., Wisconsin*, _____ S.Ct. _____, (2024) (Alito, J., dissenting from denial of certiorari). As Justice Alito noted in his dissent from the denial of certiorari in *Parents Protecting Our Children*, "the challenged policy and associated equity training specifically encourage school personnel to

keep parents in the dark about the 'identities' of their children, especially if the school believes that the parents would not support what the school thinks is appropriate." *Id.* Therefore, Ms. Doe, "is merely taking the school district at its word" when she fears they will not be transparent, and the district court was wrong to consider her complaints merely "speculative." *Id.*

Furthermore, her concerns about her daughter only strengthen her case for Article III standing. Her concerns show she is not "merely [an] unharmed bystander[] who simply [has] a keen interest in the issue." *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 641 (4th Cir. 2023) (Niemeyer, J. dissenting) (quotations excluded). Her concerns, even if they are considered "small" give her a "direct stake in the outcome of [the] litigation" and distinguish her "from a person with a mere interest in the problem." *Cottrell*, 874 F.3d at 154 (citations omitted). Claims predicated on a threat of future enforcement are permissible, so long as the threat is not "'imaginary or wholly speculative,' *Babbitt v. Farm Workers Nat'l Union*, 442 U.S. 289, 302 (1979), "chimerical,' *Steffel v. Thompson*, 415 U.S. 452, 459 (1974), 'wholly conjectural,' *Golden v. Zwickler*, 394 U.S. 103, 109 (1969), or

relying on 'a highly attenuated chain of possibilities.'" *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2014)." *Parents 1*, 78 F. 4th at 641. Ms. Doe's claims are none of those.

Accordingly, Ms. Doe has Article III standing to challenge AR103(B).

## II. THE CASES CITED BY THE DISTRICT COURT SUPPORT MS. DOE'S STANDING.

In denying Ms. Doe's standing claims, the district court relied upon several federal court cases challenging policies analogous to Ms. Doe's case. Each of those cases is distinguishable and each support, rather than undermine, Ms. Doe's standing.

First, the district court cites Fourth Circuit's holding in *Parents 1*. Appx. 0098-99. There a majority panel of the Fourth Circuit found that a group of parents lacked standing to challenge a school policy that, like AR103(B), permitted schools to implement "gender support plans . . . without the knowledge or consent of the students' parents" and "to withhold information about plans from parents if the school deems the parents to be unsupportive." But as the panel majority held that parents lacked standing because "[t]he parents have not alleged that their children have gender support plans, are transgender **or are even**

**struggling with issues of gender identity."** *Parents 1*, 78 F.4th at 626 (emphasis added). Moreover, the panel majority held that the parents "had not alleged that they suspect their children might be considering gender transition or have a heightened risk of doing so." *Id.* at 630. Here, unlike in *Parents 1*, Ms. Doe does just that. She offered an uncontroverted declaration attesting to her concerns that her child has shown signs of struggling with issues of gender identity. Appx0045. The District Court never addressed this distinction.

The district court also relied upon the federal district court's decision in *Parents Protecting Our Children, UA v. Eau Claire Area Sch. District*, 657 F. Supp. 3d 1161 (W.D. Wis. 2023), which found an unincorporated parent's group lacked standing to challenge a school district's transgender policy. In so holding, the district court explained that "plaintiff does not allege any of its members' children are transgender or gender nonconforming, (2) that the district has applied the gender identity support of Guidance or Plan with respect to its member's (sic) children or any other children, or (3) **that any parent or guardian has been denied information related to their child's gender identity**." *Id.* at 1169-70 (emphasis added). Here, Ms. Doe's claims are

clearly distinguishable because she has requested information from the School District and the School District has flatly denied her request for that information. Appx0046-0047.

The district court then cited the federal district court decision in *Parents Defending Educ. v. Linn-Mar Cmty. Sch. Dist*, 629 F. Supp. 3d 891 (N.D. Iowa 2022). There the district court found that the plaintiff lacked standing because "no one has been denied information related to their child's gender identity or Gender Support Plan." *Id.* at 908. But again, here, the School District has denied Ms. Doe that information. Appx0046-0047.

Not only are these cases distinguishable, but the holdings of each would support a claim for Article III standing by Ms. Doe. In *Parents 1*, the Court of Appeals noted that plaintiffs had not alleged any child "was struggling with issues of gender identity." *Parents 1*, 78 F.4d at 626. But Ms. Doe has made that allegation. Appx0046-47. In *Parents Protecting* and *Parents Defending*, the district court noted that the School District had not denied any parent information regarding a child's transgender status. *Parents Protecting*, 657 F. Supp. 3d at 1169-70; *Parents*

*Defending*, 629 F. Supp. 3d at 908. But Ms. Doe has been expressly denied that information from the School District.

The district court also ignores the Fifth Circuit's holding *Deanda*, which supports Ms. Doe's claim for standing.

Finally, the district court's narrow interpretation of Article III standing improperly shielded the School District's policy from judicial review, an outcome Justice Alito warned against in his dissent from the denial of certiorari in *Parents Protecting Our Children*. Justice Alito expressed concern that "some federal courts are succumbing to the temptation to use the doctrine of Article III standing as a way of avoiding some particularly contentious constitutional questions." *Parents Protecting Our Child.,* (Alito, J., dissenting). He also stated that the Supreme Court should address a "questionable understanding of *Clapper v. Amnesty Int'l USA, 568 U.S. 398* (2013) and related standing decisions," because lower courts must carry out their "virtually unflagging obligation…to exercise the jurisdiction given them." *Id.* (citing *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). The judgement of the district court improperly ignored the role of the federal judiciary and must be addressed.

In sum, Ms. Doe has plead facts that would support standing under each of these decisions. She was denied information from the School District and she has legitimate concerns regarding her child's gender identity. Under each of the cases relied upon by the district court, either of these facts would support standing.

## III. THE DISTRICT COURT WRONGLY CONCLUDED THAT MS. DOE'S REMOVAL OF HER DAUGHTER FROM THE SCHOOL WEAKENED HER STANDING ARGUMENT

The district court erred in concluding that Ms. Doe's withdrawal of her daughter from the School District weakens her standing argument. Her decision to withdraw her child from the School District school does not diminish her Article III standing.

Standing is determined based on the facts alleged when the cause of action was commenced. *Davis v. Federal Election Commission*, 54 U.S. 724, 734 (2008). It is undisputed that Ms. Doe's child was enrolled in the School District when this action was initiated in January 2024. Consequently, Ms. Doe's standing must be evaluated based on the facts alleged at that time. Her subsequent decision to withdraw her child from the School District does not retroactively impact the standing analysis.

The district court's dismissal also cannot be sustained on mootness grounds, as Ms. Doe's claims remain justiciable. Ms. Doe's Second Amended Complaint specifically seeks monetary damages to redress past constitutional violations, and the availability of such relief precludes a finding of mootness. *See Alpha Painting & Constr. Co., Inc. v. Delaware River Port Auth. of Pennsylvania New Jersey*, 822 F. App'x 61, 68 (3d Cir. 2020) (monetary damages serve to "vindicate past violations of a plaintiff's rights where the 'deprivation has not caused actual, provable injury.'"). A defendant's change in conduct does not moot a case so long as the plaintiff maintains a cause of action for damages. *Road.-Con, Inc. v. City of Philadelphia*, 120 F.4th 346, 356 (3d Cir. 2024); *Buckhannon Bd. & Care Home, Inc. v. W. Virginia Dep't of Health & Human Res.*, 532 U.S. 598, 608–09, 1 (2001)) ("[S]o long as the plaintiff has a cause of action for damages, a defendant's change in conduct will not moot the case."); *Freedom from Religion Found. Inc v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 473 (3d Cir. 2016) (request for injunctive relief is not moot when a plaintiff seeks both nominal damages and injunctive relief). Moreover, Ms. Doe's claims for attorney's fees and costs under 42 U.S.C. §§ 1983 and 1988 further preserve a live controversy. *Donovan ex rel.*

*Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 218 (3d Cir. 2003). Therefore, any assertion that Ms. Doe's withdrawal of her daughter from the School District mooted her claims would be incorrect, as the request for monetary damages and attorney's fees alone sustains a live controversy regardless of the status of injunctive relief.

The case is also not moot because Ms. Doe can still seek injunctive relief notwithstanding the withdraw of her child from the School District. This Court's decision in *Freedom from Religion Foundation, Inc.*, 832 F.3d at 481 is instructive. In that case, a parent challenged the presence of a Ten Commandments monument at her child's school, alleging a violation of the Establishment Clause. Although the parent subsequently transferred her child to a different school, this Court held that the claim for injunctive relief was not moot, reasoning that the child could return to the high school if the monument were removed. Similarly, Ms. Doe has affirmed that she would consider re-enrolling her daughter in the School District if AR 103(B) were repealed or enjoined. As in *Freedom from Religion Foundation*, Ms. Doe maintains "a concrete interest in the resolution of her request for injunctive relief" because her daughter could return to the School District absent the challenged policy. This Court has

made clear that the "principles of standing [do not] require [a] plaintiff[ ] to remain in a hostile environment to enforce [her] constitutional rights." *Id.* Ms. Doe's decision to remove her child from that environment, therefore, does not negate her standing to seek injunctive relief and does not moot her claim.

The district court's determination that Ms. Doe's withdrawal of her daughter from the School District weakens her standing argument reflects a misunderstanding of established standing principles. The Supreme Court has clearly established that standing is assessed at the time the action is filed, and Ms. Doe's subsequent decision does not retroactively negate her standing. Moreover, this case is not moot, as Ms. Doe seeks monetary damages and attorneys' fees to remedy past harms. Injunctive relief also remains a viable remedy, as Ms. Doe has credibly stated her intention to re-enroll her daughter if AR 103(B) is enjoined, consistent with this Court's reasoning in *Freedom from Religion Foundation*. Therefore, the district court's dismissal on standing grounds was in error and should be overturned.

## CONCLUSION

Based on the foregoing, appellant, Jane Doe, respectfully requests that the Court reverse the order of the district court granting Appellee's motion to dismiss the Second Amended Complaint and that it remand the case to the district court.

Respectfully submitted,

*/s/ Walter S. Zimolong*
WALTER S. ZIMOLONG III
DANIEL J. BITONTI
ZIMOLONG LLC
Post Office Box 552
Villanova, PA 19085
(215) 665-0842
wally@zimolonglaw.com

NICHOLAS R. BARRY
AMERICA FIRST LEGAL FOUNDATION
Tennessee Bar No. 031963
nicholas.barry@aflegal.org
611 Pennsylvania Ave SE #231
Washington, DC 20003

Date: February 10, 2025

*Counsel for Appellant*

## CERTIFICATE OF BAR MEMBERSHIP

I certify that I am a member of the United Court of Appeals for the Third Circuit.

Respectfully submitted,

*/s/ Walter S. Zimolong*

WALTER S. ZIMOLONG III
ZIMOLONG LLC
Post Office Box 552
Villanova, PA 19085
(215) 665-0842
wally@zimolonglaw.com

Date: February 10, 2025

*Counsel for Appellant*

## CERTIFICATION OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 7,776 words, excluding the parts of the brief excluded by Fed. R. App. P. 32(f).

2. The brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it uses Century font face throughout, and Century is a proportionally spaced typeface that includes serifs.

3. The text of the electronically filed brief is identical to the text in the proper copies that will be provided.

4. The electronically filed brief has been scanned with the most recent version of MacAfee and is free from viruses.

Respectfully submitted,

*/s/ Walter S. Zimolong*

WALTER S. ZIMOLONG III
ZIMOLONG LLC
Post Office Box 552
Villanova, PA 19085
(215) 665-0842
wally@zimolonglaw.com

Date: February 10, 2025

*Counsel for Appellant*

## CERTIFICATE OF SERVICE

I certify that on the date indicated below, this document was electronically filed with the Clerk of Court for the United States Court of Appeals for the Third Circuit and served through CM/ECF upon:

Jamie N. Doherty
Lisa M. Siefert
GRB Law
525 William Penn Place, Suite 3110
Pittsburgh, PA 15219

Christina L. Lane
Maiello, Brungo, & Maiello
Southside Works, 424 South 27th Street
Suite 210
Pittsburgh, PA 15203

*Counsel for Appellee*

Respectfully submitted,

*/s/ Walter S. Zimolong*
WALTER S. ZIMOLONG III
ZIMOLONG LLC
Post Office Box 552
Villanova, PA 19085
(215) 665-0842
wally@zimolonglaw.com

Date: February 10, 2025

*Counsel for Appellant*