

VIRGINIA: IN THE CIRCUIT COURT FOR ROCKINGHAM COUNTY

D [REDACTED] F [REDACTED], et al.,

Plaintiffs,

v.

THE SCHOOL BOARD OF THE
CITY OF HARRISONBURG,
VIRGINIA, et al.,

Defendants.

CASE NO. CL22-1304

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY INJUNCTION

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INTRODUCTION

In Virginia, there is no question that “[a] parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent’s child.” Va. Code § 1-240.1; *see L.F. v. Breit*, 285 Va. 163, 182 (2013). But HCPS¹ has not honored that fundamental right. No, HCPS has instead usurped that right by prescribing a one-size-fits-all psychotherapeutic intervention for children in its schools struggling with gender identity: immediate “social transition,” a medical decision with potentially permanent and life-altering consequences. Plaintiffs’ Appendix (“App.”) 20–21. And HCPS cavalierly marches its students down this consequence-filled road without any parental knowledge or involvement. App. 15, 20–21. In fact, HCPS intentionally deceives parents about whether it has unilaterally subjected their child to that psychotherapeutic intervention. HCPS’s deception prevents students’ parents—like T ██████ and L ██████ N ██████ and J ██████ and N ██████ S ██████, who are Plaintiffs here—from making vital decisions about their children’s mental, physical, and spiritual health.

HCPS shows similar disregard for the rights of its employees. Under pain of discharge, HCPS forces all staff members, including Teacher Plaintiffs D ██████ F ██████, K ██████ M ██████, and L ██████ N ██████ (who is both a teacher and a parent in the district), to be complicit in this active deception by lying to parents whom HCPS deems not sufficiently “supportive.” App. 15, 21. HCPS also compels Teacher Plaintiffs to participate in the so-called “social transition” of students by using only a student’s preferred name and pronouns. App. 14. But because of their Christian beliefs, Ms. M ██████, Ms. F ██████, and Ms. N ██████ cannot lie to parents. And they cannot use any preferred names or pronouns that do not align with a student’s biological sex. Teacher Plaintiffs care deeply about each student and desire to act for the good of every student. That’s

¹ Throughout this brief, “HCPS” is used to refer collectively to the school board of Harrisonburg City Public Schools and to Superintendent Michael Richards, both Defendants here.

why they will not, through the use of pronouns or otherwise, convey a false message to any student about his or her identity or conceal important information from a student's parents.

Similarly, the S [REDACTED] and the N [REDACTED] love their children and desire to raise them in accordance with their Christian faith. Like Ms. M [REDACTED] and Ms. F [REDACTED], the S [REDACTED] and the N [REDACTED] believe that every child's identity is rooted in the reality that he or she is a beloved son or daughter of God. This innate identity is not based on any arbitrary or malleable self-perception about gender but rather cuts to the very core of the Christian life. But HCPS deprives the S [REDACTED] and N [REDACTED] from even seeking treatment that aligns with their faith for any of their children struggling with gender identity, because HCPS has already chosen a treatment that directly contradicts Parent Plaintiffs' Christian beliefs.

In doing so, HCPS has violated Virginia constitutional, statutory, and common law in at least three ways. First, the free-speech provision of the Virginia Constitution prohibits HCPS from compelling Ms. M [REDACTED], Ms. F [REDACTED], and Ms. N [REDACTED], over their objection, to intentionally communicate false messages to parents and to use students' preferred names and pronouns. Second, HCPS violates all Plaintiffs' right to freely exercise their religion. It forces Teacher Plaintiffs to speak messages about sensitive topics like sexuality that contradict their Christian beliefs. And it prevents Parent Plaintiffs from raising their children in accordance with the Christian faith. Third, HCPS infringes the S [REDACTED] and N [REDACTED] fundamental parental rights to make vital decisions about their children's upbringing by prescribing a psychotherapeutic intervention for all students struggling with gender identity and actively concealing this pertinent information from parents.

These violations are happening now in schools in Harrisonburg. To stop the ongoing irreparable harm to local students, parents, and teachers, Plaintiffs respectfully request that this Court grant their motion for a temporary injunction.

FACTS

I. HCPS's New Policy on Transgender Students

On August 17, 2021, HCPS modified its “Policy 401, Equal Educational Opportunities/Nondiscrimination” to add “gender identity” to the list of protected classes. App. 1–4; *see* App. 5 (adopting Policy 401). HCPS then promulgated Policy guidelines through teacher training and slide presentations that set out the Policy’s new requirements regarding transgender students for teachers, staff, and students. App. 8–114. The Policy and corresponding guidelines went into effect during the 2021–2022 school year, and teachers, staff, and students are currently bound by these rules. Decl. of D█████ F█████ (“D.F.”) ¶¶ 17–23; Decl. of K█████ M█████ (“K.M.”) ¶¶ 7–13; Decl. of L█████ N█████ (“L.N.”) ¶¶ 18–23.

The Policy has at least three key features. First, it requires teachers and other HCPS employees, upon a student’s request, to immediately begin using a preferred name or opposite-sex pronouns to refer to that student. Second, it vests school counselors with unilateral discretion to determine whether to inform a student’s parents about a student’s new name or pronouns at school. And third, it mandates that teachers and other HCPS employees deceive parents about a student’s new name or pronouns, unless a student tells school officials to speak freely with their parents about their gender identity.

First, in a mandatory staff training, HCPS directed employees to “immediately” start asking students for their “preferred names and pronouns,” App. 13, and to “[a]lways utilize a student’s preferred name and pronouns,” App. 14 (emphasis in original); *see also* App. 39–40. Teachers are required to ask students for their “preferred names and pronouns” and to use those “preferred names and pronouns” without any notice to the students’ parents. App. 13–15. In fact, teachers are forbidden from asking for parental “permission to utilize the preferred name.” App. 15.

Second, as part of the Policy, HCPS adopted a “Gender Transition Action Plan” to be used for students struggling with gender identity. The Plan dictates that “[s]chool counselors should serve as the lead in the intervention process, working collaboratively with administration and, *when appropriate*, families.” App. 20 (emphasis added). As soon as counselors “receive[] information directly from a student or from a reliable resource regarding a gender transition,” they must initiate a transition meeting with the student—not their parents. *Id.*

At this “transition” meeting, without parental knowledge or consent, the counselor completes a Gender Transition Action Plan form “in collaboration with the student.” App. 21. The Plan specifically requires the counselor to ask the student, “Are your guardian(s) supportive of your gender status?”; and then determine, “If no, what considerations must be accounted for in implementing this plan?” *Id.* In other words, the school will only involve parents in the Plan if a student specifically requests it. Otherwise, the school will implement the Plan without their knowledge or consent.

This highlights the third key feature of HCPS’s Policy: deception of parents. Not only does the Policy vest counselors with discretion about whether to involve parents, it also requires HCPS teachers and staff to conceal information about a child’s struggles with gender identity from his parents, absent permission from the student, confirmed by the counselor. Even though HCPS recognizes that students who identify as transgender are “a high risk population that should be monitored for mental health concerns and issues related to bullying or harassment,” App. 13, HCPS’s Policy directs teachers to use deception in “parent communication” about gender identity, App. 15. That means teachers must share information about a child’s “preferred name and pronouns” with her “assigned school counselor” but not with her parents. App. 14. In fact, the Policy forbids teachers from discussing anything regarding the child’s gender identity with her parents without her consent because “[a] student’s gender transition should be considered **confidential**” when it comes to communications with parents.

App. 15 (emphasis in original).

Teachers must “connect with the student’s school counselor” to see “whether the student’s parent/guardian is in support of the name or pronoun change.” App. 15. And they must never ask parental permission to use a child’s “preferred name” because, according to the Policy, “It is highly detrimental to out a student to . . . a student’s family. All communication should be *in collaboration with the student.*” *Id.* (emphasis in original).

The Policy, quite bluntly, requires teachers and staff to deceive parents: “If the parent/guardian is **NOT** aware, you should utilize the student’s preferred name at school but not in any communication with the parent/guardian.” *Id.* (emphasis in original). In short, use one set of names and pronouns at school, and a different set when communicating with parents.

II. HCPS’s Implementation of the Policy through Staff Training

In August 2021, Lora Cantwell, HCPS Mental Health Counselor, and April Howard, Chief Officer for Student Support, provided training for all HCPS school counselors using the slide deck “Supporting Our Transgender Students” or “SOTS”. App. 8–19; *see* L.N. Decl. ¶ 16.

Later in August, HCPS provided Policy training for Skyline Middle School teachers using the same slide deck. App. 8–19. Plaintiff D [REDACTED] F [REDACTED], a teacher at Skyline, attended a portion of this training and later reviewed the entire SOTS slide deck. D.F. Decl. ¶ 17. HCPS also provided Policy training for elementary-school physical-education teachers. K.M. Decl. ¶ 7. Teacher Plaintiff K [REDACTED] M [REDACTED] did not attend this training, but other staff in her building did. *Id.* Ms. M [REDACTED] became aware of the Policy and its requirements for HCPS teachers and staff around this time, and she has seen the slides associated with HCPS’s Policy training, including the SOTS Presentation. *Id.* And Lora Cantwell provided Policy training for all HCPS high-school teachers using the SOTS presentation. App. 8–19. Teacher Plaintiff L [REDACTED]

N█████ attended this training and viewed these slides. L.N. Decl. ¶ 15.

Along with the initial Policy training, in September 2021, HCPS conducted additional mandatory training for HCPS administrators and counselors presented by the organization “Side by Side.” App. 52–104; *see* L.N. Decl. ¶ 16. This training emphasized the need to “[h]ave clear conversation[s] with all school staff on the expectation to use students’ chosen name and pronoun,” App. 83; claimed it is “illegal to out students to family,” and that no regulation required parental notification, App. 93; and, told HCPS staff that “[i]n each of your schools you have” children who identify as transgender, App. 103.

To continue the school training, in October 2021, April Howard gave another presentation entitled “Supporting ALL Students: October Bullying Prevention Highlights” (“October Bullying Presentation”) at a School Board work session. App. 27–51; *see* L.N. Decl. ¶ 17. The slides were then posted on HCPS’s website and made available to students, all HCPS staff, and the public through that website. *Id.* Among other things, the slides emphasized that “[a] student’s gender transition should be considered confidential,” that “[a]ll communication should be in collaboration with the student” (not the parents), and that if an HCPS staff member is “unaware of whether the student’s parent/guardian is in support of the name or pronoun change,” the staff member should “connect with the student’s school counselor” and let the counselor handle the issue with sole discretion and no parental involvement. App. 42; *see* App. 40. It also stated that “[i]t is not appropriate for school staff to take the lead on sharing this information or to contact the parent/guardian to ask permission to utilize the chosen name” and indicated that “[s]tudent support staff” will be the ones to handle when (and whether) the school will involve families in the discussion. App. 42. The October Bullying Presentation noted that school counselors “and many others participated in Side by Side training,” and that HCPS had “[p]lans for additional training for all staff which will take place this year.” App. 37.

HCPS did host additional Policy training throughout the Division. For example, at Keister Elementary School, HCPS conducted an all-staff Policy training using a modified version of the October Bullying Presentation. App. 105–14. The presentation reiterated the requirement to use “a student’s chosen name and pronouns” at school but not “in any communication with the parent,” whenever “the parent/guardian is NOT aware.” App. 111–12.

And in a February 2022 planning meeting for special-education teachers at Skyline Middle School, HCPS’s secondary special-education coordinator trained teachers on how to conceal information about a child’s gender identity from that child’s parents. D.F. Decl. ¶¶ 18–19. HCPS instructed teachers not to include information about gender-identity issues on certain paperwork that would be transmitted to the high school because parents might see it. *Id.* Instead, the secondary special-education coordinator told teachers to note on the paperwork that there was further information about the student that should be discussed orally. *Id.*

III. Background on Gender Dysphoria

“Gender dysphoria” is “a distressing incongruence between an individual’s genetically determined sex and the gender with which they identify or to which they aspire.” Decl. of Dr. Stephen Levine (“Levine Decl.”) ¶ 23. Although the underlying causes of gender dysphoria remain largely unknown, significant research has shown that the majority of children struggling with gender dysphoria ultimately find comfort in their biological sex and cease to experience gender dysphoria. *Id.* ¶¶ 88–91, 93–101 (reviewing studies).

In recent years, there has been an exponential increase in teens experiencing gender dysphoria. Gender clinics worldwide have seen a 30-fold increase in patients experiencing gender dysphoria. *Id.* ¶ 80. And there has been a surge in girls and women who identify as transgender. *Id.* ¶ 81. A large number of these cases occur

within certain schools and even certain friend groups. *Id.* ¶ 82. Researchers have not established the cause of this surge. *Id.* ¶ 81–82.

There is no settled standard of care for treating gender dysphoria among children and teens. *Id.* ¶ 52–53. Some mental health professionals advance a “watchful waiting” approach, which addresses any underlying health conditions without specifically focusing on gender and allows a child to naturally resolve his or her gender identity. *Id.* ¶ 39. Others, including Dr. Stephen Levine, employ the psychotherapy model, which seeks to alleviate distress over gender incongruence by identifying and addressing the actual causes of a patient’s repudiation of his or her sex. *Id.* ¶¶ 40–43. Using this approach, Dr. Levine has “seen children desist even before puberty in response to thoughtful parental interactions and a few meetings of the child with a therapist.” *Id.* ¶ 46.

Finally, some promote the “affirmative care” model, which promotes immediately accepting and actively affirming any expression of transgender identity through the use of names, pronouns, clothing, or toys, for example, thereby “comprehensively resocializ[ing]” a child as the opposite sex. *Id.* ¶ 47. This “social transition,” is a powerful psychotherapeutic intervention that can set the child on a treatment path with irreversible and life-altering consequences including permanent sterility. *Id.* ¶¶ 12(f), 105, 109. This method is especially controversial when treating children. *Id.* ¶ 58.

The medical debate over how to treat children with gender dysphoria reflects the fact that social transition is a psychotherapeutic intervention—one that increases the odds a child will continue experiencing gender dysphoria. *Id.* ¶ 57–59, 105, 108–09. So social transition is a psychotherapeutic treatment that cannot be considered in isolation. It typically leads to “medical transition,” which involves puberty blockers, cross-sex hormones, and possibly surgical intervention such as mastectomy. *Id.* ¶ 109; *see* App. 64. These treatments can have life-altering consequences, including health complications like cardiovascular disease and permanent sterility,

consequences that a child cannot fully understand when she or he decides to engage in social transition. Levine Decl. ¶¶ 12(k), 28–29, 104, 173–179.

For that reason, parental involvement is essential. Parents are able to provide necessary background on family dynamics to mental health professionals so they can accurately diagnose and treat children. *Id.* ¶ 193. In general, the mental health treatment of children requires a trusting relationship between the mental health professional, the child, and the parents. *Id.* ¶ 198. This is especially true when dealing with gender identity because a child’s conception of gender likely has been influenced by marital and family dynamics. *Id.* ¶ 199.

Parental knowledge and involvement is also important because it is psychologically unhealthy for a child to perform different gender identities and roles at school and at home. *Id.* ¶ 200. This inconsistency can lead to anxiety and create, in the child’s mind, the inaccurate notion that the parents are “the enemy.” *Id.* Schools strengthen this wrong perception of parents as “the enemy” and thwart the parents’ natural desire to support their child’s mental health when they actively deceive parents about their child’s gender-identity issues. *Id.* And because of the life-altering consequences of “affirmative” care, including social transition, institutions administering this type of psychotherapeutic intervention must obtain informed consent from parents for minor children. *Id.* ¶ 202.

HCPS wrongly picked a side in this medical debate by implementing a new Policy regarding transgender students that mandates only “affirmative care” in all HCPS schools without parental knowledge or consent and even over parental objections. That mandate violates Plaintiffs’ constitutional and statutory rights and threatens to harm students.

IV. The Policy Harms Plaintiffs

Plaintiffs are current HCPS teachers and parents. D. F. [REDACTED] is a special education and English teacher at Skyline Middle School. D.F. Decl. ¶ 2. Before her eight

years of teaching with HCPS, Ms. F [REDACTED] homeschooled her own children, who struggled with learning disabilities, to provide them with the individualized attention they needed. *Id.* ¶ 3. This led her to teaching with a focus on helping children with special needs gain critical literacy skills and grow into well-adjusted and successful students. *Id.* At ¶ 8. K [REDACTED] M [REDACTED] is a reading specialist at Spotswood Elementary School with 30 years of teaching experience. K.M. Decl. ¶ 2. In her position, Ms. M [REDACTED] works individually with students who are struggling to read and helps them overcome these challenges and equips them for success in their education and lives. *Id.* ¶¶ 3–4.

L [REDACTED] and T [REDACTED] N [REDACTED] have one child enrolled at Skyline Middle School and two at Smithland Elementary School. L.N. Decl. ¶¶ 2–3. The N [REDACTED] deeply value public education, and for their family it is the only viable option. *Id.* ¶¶ 9–10. L [REDACTED] has been an English-as-a-second-language (“ESL”) teacher at Harrisonburg High School for 18 years. *Id.* ¶ 4. As an ESL teacher, Ms. N [REDACTED] helps her students adapt to the language and culture of the United States and navigate the challenges that come with it. *Id.* ¶ 7.

N [REDACTED] and J [REDACTED] S [REDACTED] have five children. Decl. of N [REDACTED] S [REDACTED] (“N.S.”) ¶ 2. Their three oldest children are all enrolled in Bluestone Elementary School. *Id.* ¶ 3. Like the N [REDACTED], the S [REDACTED] greatly value the richness of experience that public education provides. *Id.* ¶ 5. And for them, neither private education nor homeschooling are possible, making public education their only option. *Id.* ¶ 4.

All Plaintiffs are practicing Christians whose religious faith teaches that biological sex is an immutable gift from God and that parents are the primary educators of their children. Decls. D.F. ¶¶ 26, 29–32; K.M. ¶¶ 16, 18–22; L.N. ¶¶ 25, 28–32; N.S. ¶¶ 11, 13–18. That means Ms. F [REDACTED], Ms. M [REDACTED], and Ms. N [REDACTED] cannot speak any message that contradicts their religious beliefs, including using preferred pronouns. Decls. D.F. ¶¶ 33–34; K.M. ¶¶ 23–24; L.N. ¶¶ 33–34. These teachers’ sincerely held religious beliefs also prevent them from intentionally deceiving anyone, especially

parents in matters that concern their children. Decls. D.F. ¶ 35; K.M. ¶ 26; L.N. ¶ 35. For similar reasons, L [REDACTED] and T [REDACTED] N [REDACTED] and N [REDACTED] and J [REDACTED] S [REDACTED] cannot go along with HCPS's uniform treatment for gender dysphoria that begins with social transition. Decls. L.N. ¶¶ 39–45, 46–49; N.S. ¶¶ 22–31. Rather, these parents' Christian beliefs would inform the right treatment for their child. *Id.*

Because of their Christian faith, all Plaintiffs strongly believe in the inherent dignity and worth of every human person and firmly denounce discrimination and harassment. Decls. D.F. ¶ 36; K.M. ¶ 27; L.N. ¶ 36; N.S. ¶ 30. They also believe it would be unloving towards one of their students or their own children to participate in a so-called “social transition,” which encourages false ideas about sex and increases the odds of life-changing “medical transition” through puberty blockers and cross-sex hormones. *See* L.N. Decl. ¶ 45; *see also* Levine Decl. ¶ 109. Despite these beliefs, the Policy requires teachers like Ms. F [REDACTED], Ms. M [REDACTED], and Ms. N [REDACTED] to use a student's preferred pronouns at school while intentionally hiding the information from parents. And it prevents parents like the N [REDACTED] and the S [REDACTED] from determining the best course of treatment for their struggling child. This Policy remains in effect across the Division.

HCPS has made clear that it intends to use the Policy to punish employees, including teachers like Ms. F [REDACTED], Ms. N [REDACTED], Ms. M [REDACTED] and others—not only for intentional discrimination but also for “perceived discrimination.” App. 115. It is a violation of the Policy, and therefore discrimination or harassment, for Teacher Plaintiffs or other employees to decline to use a student's preferred name and pronouns or to share this information with the child's parents. *See* App. 12–15, 37, 39–40, 42, 107, 110–12.

HCPS has declared there are transgender students in each of Teacher Plaintiffs' schools. *See* App. 103. And Teacher Plaintiffs already have encountered some of these students. Ms. F [REDACTED] already has worked with three students who identify as

transgender and is aware of at least 10 others in her school. D.F. Decl. ¶¶ 9–12. Similarly, Ms. M█████ is aware of elementary-aged children in the local area who identify as transgender and will likely interact with them at school. K.M. Decl. ¶ 9. And Ms. N█████ has already worked with one student who identifies as transgender and is aware of several others at her school. L.N. Decl. ¶¶ 12–13.

The Policy compels Ms. F█████, Ms. M█████ and Ms. N█████ to use a student’s preferred name and pronouns and conceal this information from parents. *See* App. 15, 42, 112. It thus compels them to speak messages about contested topics like gender and sexuality, or whether deceiving parents is appropriate. But these three teachers cannot, in good conscience, speak these required messages. Decl. D.F. ¶¶ 33–34; K.M. ¶¶ 23–24; L.N. ¶¶ 33–34. If they follow their sincerely held religious beliefs against speaking HCPS’s compelled messages, HCPS threatens Teacher Plaintiffs with discipline—including even discharge. *See* App. 3, 118.

The Policy likewise is currently harming and will continue to harm Parent Plaintiffs. The N█████ and S█████ both have multiple children in HCPS schools. Decl. L.N. ¶¶ 2–3; N.S. ¶¶ 2–3. HCPS has unilaterally prescribed how to treat any student in its schools struggling with gender dysphoria now or in the future, App. 13–15; namely, regardless of parents’ wishes, HCPS has decided to subject such students to the psychotherapeutic intervention known as “social transition.” But experts on sex and gender recommend that parents be involved in any decision about proposed treatment for gender dysphoria, including any medical or psychotherapeutic interventions. Levine Decl. ¶¶ 58, 192–95. Yet the Policy forbids HCPS employees from even notifying Parent Plaintiffs (or any parents) if their children seek to undergo social transition—let alone ask for their consent to this psychotherapeutic intervention for their children.

Even worse, the Policy affirmatively requires HCPS employees to hide information from and lie to the N█████ and the S█████ if their children sought social

transition at school and did not authorize school staff to tell their parents. The Policy's deception requirement harms them and other parents in Harrisonburg by preventing them from exercising their rights to advise their children about medical or psychotherapeutic intervention, to raise their children consistent with their sincerely held religious beliefs by seeking other treatment options, and to make choices about their children's education. By denying parents essential information, HCPS denies them their constitutional rights.

The Policy remains in full effect. Immediate injunctive relief is the only way to stop this ongoing harm and secure Plaintiffs' rights.

LEGAL STANDARD

A temporary injunction is warranted here because all four factors favor Plaintiffs: (1) Plaintiffs are likely to succeed on the merits; (2) Plaintiffs will suffer irreparable harm absent temporary relief; (3) the balance of the equities favors Plaintiffs; and, (4) the public interest favors the injunction. *CG Riverview, LLC v. 139 Riverview, LLC*, 98 Va. Cir. 59 (Norfolk 2018) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

ARGUMENT

I. Plaintiffs are likely to prevail on the merits of their claims.

By official policy, HCPS requires employees to use students' preferred names and pronouns, even when they do not correspond to a student's sex; and it also requires employees to hide information about students' names and pronouns from parents, unless a student consents to disclosure and a counselor confirms the student's consent. This Policy violates Plaintiffs' constitutional and statutory rights in at least three ways. First, the Policy violates Teacher Plaintiffs' free-speech rights under the Virginia Constitution. It compels Ms. F [REDACTED], Ms. M [REDACTED], and Ms. N [REDACTED] to speak HCPS's preferred message by requiring the use of certain names and pronouns even

if they object. And HCPS discriminates on the basis of viewpoint by dictating what messages they can communicate—even compelling Teacher Plaintiffs to lie to parents about psychotherapeutic interventions performed on those parents’ children.

Second, HCPS’s Policy violates all Plaintiffs’ religious-freedom rights, under both the Virginia Constitution and the Virginia Code. It requires the teachers to violate their sincerely held religious beliefs by communicating messages contrary to those beliefs—messages about sensitive topics like sex and gender. Likewise, the Policy prevents Parent Plaintiffs from exercising their right to raise their children according to their Christian faith. These parents believe they must educate their children to follow Christian teaching on sex, gender, and other topics, and HCPS’s Policy prevents them from doing that.

Third, and related to that last point, HCPS intentionally deceives the parents of children in Harrisonburg schools, including the N [REDACTED] and the S [REDACTED], about their children’s struggle with gender identity, which makes it impossible for Parent Plaintiffs to make decisions about their children’s education and healthcare. Not only does this violate their freedom to exercise their religion, it also unconstitutionally interferes with their fundamental right as parents to make decisions about the care and upbringing of their children.

For these reasons, strict scrutiny applies to the Policy. “[A] generalized interest in withholding or concealing from the parents of minor children, information fundamental to a child’s identity, personhood, and mental and emotional well-being such as their preferred name and pronouns”—the sort of information at stake under HCPS’s Policy—“is difficult to envision.” *See Ricard v. USD 475 Geary Cnty. Sch. Bd.*, No. 5:22-CV-04015, 2022 WL 1471372, at *8 (D. Kan. May 9, 2022). As a result, the Policy likely fails strict scrutiny, Plaintiffs are likely to prevail on the merits of their claim, and this Court should enjoin its implementation while this case proceeds to trial.

A. HCPS's Policy triggers strict scrutiny.

1. HCPS's Policy violates Teacher Plaintiffs' free speech rights.

Under the Virginia Constitution, the government cannot coerce citizens to speak its preferred message while simultaneously restraining them from speaking a message in accord with their beliefs. But HCPS does both. The Policy compels Teacher Plaintiffs to speak HCPS's preferred message about gender identity by forcing them to use a student's preferred names and pronouns. And it restrains Teacher Plaintiffs' speech on the basis of viewpoint by preventing them from expressing their own beliefs on gender and sexuality.

The Virginia Constitution provides that "the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects." Va. Const. Art. I, § 12. This protection generally is "coextensive with the free speech provisions of the federal First Amendment." *Elliott v. Commonwealth*, 267 Va. 464, 473–74 (2004). The freedom of speech includes "both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). It "necessarily compris[es] the decision of both what to say and what *not* to say." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 797 (1988). And "[w]hen the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). In fact, "[d]iscrimination against speech because of its message is presumed to be unconstitutional." *Id.* at 828.

Because HCPS's Policy compels speech and because it does so in a viewpoint-discriminatory manner, it is subject to strict scrutiny review.

i. The Policy compels Teacher Plaintiffs to speak.

The Policy requires Ms. F [REDACTED], Ms. M [REDACTED], Ms. N [REDACTED], and their colleagues

in HCPS schools to use a student's preferred name and pronouns, even if that name differs from the student's given legal name. When a student's chosen name and pronouns differ from that student's given name and pronouns that align with the student's biological sex, the use of the student's chosen pronouns communicates a message: that gender can be different from biological sex. *See Meriwether v. Hartop*, 992 F.3d 492, 507 (6th Cir. 2021) (reversing order dismissing professor's free-speech challenge to policy requiring use of preferred pronouns in classroom). That statement is the subject of much widely contested political debate, making the free-speech implications even greater. *See Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2471–73 (2018) (discussing the essential First Amendment protections for issues of public concern). Yet HCPS has adopted this message as its own and enacted the Policy to mandate staff acceptance of and speech communicating this controversial viewpoint.

Teacher Plaintiffs disagree with this message. Because of their sincerely held Christian beliefs, Ms. F [REDACTED], Ms. M [REDACTED], and Ms. N [REDACTED] believe that God created each person either male or female in his image. Biological sex is immutable and should be celebrated rather than hidden or changed. Decls. D.F. ¶¶ 31–32; K.M. ¶¶ 21–22; L.N. Decl. ¶¶ 31–32. Beliefs like these have guided Teacher Plaintiffs in the past. Ms. F [REDACTED], for example, has “walked closely alongside individuals and family members who have struggled with their gender identity” as they “ultimately aligned with their biological sex.” D.F. Decl. ¶ 13. Ms. N [REDACTED] Christian faith led her to spend a year doing mission work in Paraguay, ministering to impoverished children. L.N. Decl. ¶ 5 Similarly, Ms. M [REDACTED] spent four years as a Christian missionary teaching in Ecuador. K.M. Decl. ¶ 15.

Ms. F [REDACTED], Ms. M [REDACTED], and Ms. N [REDACTED] believe that God created every person in his image means they believe they must love all people. That requires them to treat all people with dignity. Decls. D.F. ¶¶ 36–37; K.M. ¶¶ 27–28; L.N. ¶¶ 36–37.

And it also requires them to speak truthfully to others about how God created them. To do otherwise would be inconsistent with their belief that they must love all people. Decls. D.F. ¶¶ 34-35; K.M. ¶¶ 23-24; L.N. ¶¶ 33-34. They cannot, therefore, speak in support of HCPS's viewpoint about sex and gender. Decls. D.F. ¶¶ 39, 41; K.M. ¶¶ 29-30; L.N. ¶ 46.

Yet that is precisely what the Policy compels them to do. For example, the Policy requires all employees to "immediately" start asking for students' preferred names and pronouns. App. 13, 39, 110. And training materials state that teachers must "[a]lways utilize a student's preferred name and pronouns." App. 14, 40, 111. Adding to the problem, the Policy also compels teachers to speak objectionable messages to parents. Until and unless HCPS deems parents sufficiently "supportive" of their child's social transition, HCPS instructs teachers to hide that information from parents. Indeed, HCPS prohibits teachers from telling parents about even the existence of their child's Gender Transition Action Plan, because "[a] student's gender transition should be considered confidential" when it comes to communications with parents. App. 15. And HCPS tells teachers it is "not appropriate" to inform parents about their child's transition or to ask permission to use a child's preferred name or pronouns. *Id.*

So, while teachers are required to use a child's preferred name and pronouns at school, they are forbidden from doing so in communications with parents. *Id.* Teachers may not convey any message to parents about their child's struggle with gender identity even though it can be a serious medical concern, as HCPS has admitted. App. 13. In other words, HCPS forces teachers to lie to parents about their own child's mental health and the psychotherapeutic intervention that HCPS is providing the child. Just as Ms. F [REDACTED] Ms. M [REDACTED] and Ms. N [REDACTED] cannot violate their faith by speaking untruthfully to students about sex and gender, they also cannot lie to parents about whether those parents' children are undergoing the psychotherapeutic

intervention known as “social transition” while at school. Decls. D.F. ¶¶ 40–41; K.M. ¶¶ 31–32; L.N. ¶¶ 47–48.

The speech compelled by the Policy is thus speech directed at both students and their parents about sensitive topics like sex and gender, and Teacher Plaintiffs object “to mouth[ing] support for [HCPS’s] views” on such topics. *Janus*, 138 S. Ct. at 2463. By compelling Teacher Plaintiffs to support “views they find objectionable,” HCPS “violates [the First Amendment’s] cardinal constitutional command.” *Id.* “[I]n most contexts, any such effort would be universally condemned.” *Id.* It should also be condemned here, because HCPS has impermissibly “prescribe[d] what shall be orthodox in politics . . . religion, or other matters of opinion [and] force[d] citizens to confess by word or act their faith therein.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

Similar reasoning guided the Sixth Circuit when it reversed a district court order dismissing a free-speech challenge to a pronoun policy similar to HCPS’s. *See Meriwether*, 992 F.3d at 503–04, 506–07. Any other ruling would allow schools to require, for example, a teacher who is “a pacifist to declare that war is just,” or one who is “a believer to deny the existence of God.” *Id.* at 506. “That cannot be.” *Id.*

The constitutional problems created by the Policy are not hypothetical. Teacher Plaintiffs have already run into its requirements in interacting with students. Ms. F [REDACTED] has previously worked with three different students who identify as transgender. D.F. Decl. ¶ 10. She is also aware of at least ten students at Skyline Middle School who identify as transgender. *Id.* ¶ 9. Ms. M [REDACTED] is similarly aware of elementary-aged children in the local area who struggle with gender identity, and she is likely to encounter them at Spotswood Elementary. K.M. Decl. ¶ 9. Ms. N [REDACTED] has had at least one student in her class struggling with gender identity and is aware of several others in the school. L.N. Decl. ¶¶ 12–13.

Based on these student interactions, Teacher Plaintiffs are continually at risk of severe punishment. HCPS deems this noncompliance as “discrimination” and “harassment,” which is punishable by “discipline up to and including expulsion or discharge.” App. 1–3, 115–18, 122–24. Like *Barnette*, these harsh penalties compel teachers like Ms. F █████, Ms. M █████, and Ms. N █████ to speak only HCPS’s prescribed message even though they disagree. HCPS’s Policy containing these requirements is unconstitutional. *Cf. Meriwether*, 992 F.3d at 509–12 (holding that teacher had stated valid free-speech claim under U.S. Constitution against similar policy).

ii. The Policy discriminates against viewpoints other than HCPS’s preferred viewpoint.

HCPS regulates Teacher Plaintiffs’ speech on the basis of viewpoint. For example, if Ms. F █████, Ms. M █████, or Ms. N █████ wished to communicate HCPS’s preferred message that sex and gender identity are distinct categories that do not necessarily align, they are free to do so. Yet they can be discharged if, based on their religious faith, they communicate the opposite message by declining to use a child’s preferred name and pronouns. *See Meriwether*, 992 F.3d at 508 (holding that refusal to use opposite sex pronouns “reflect[s] [the] conviction that one’s sex cannot be changed”). In this way, HCPS targets “particular views taken by speakers on a subject,” rather than targeting a “subject matter” in general. *Rosenberger*, 515 U.S. at 829. Such viewpoint discrimination “is presumed to be unconstitutional.” *Id.* at 828.

Likewise, when a child is struggling with gender identity, a teacher may communicate a false message about his status to his parents. In fact, they are required to communicate a false message to parents who are “NOT aware” of their child’s struggle when the child does not agree to disclosure. App. 15 (emphasis in original). For parents in that situation, teachers must “utilize the student’s preferred name at school but not in any communication with the parent/guardian.” *Id.* But when Teacher Plaintiffs want to communicate a viewpoint contrary to HCPS’s—namely,

the truth about that child's status—they are forbidden from speaking about the child's social transition to his parents. *See* App. 15, 42, 112.

There can scarcely be a better example of impermissibly instituting “orthodox[y]” in public schools. *Barnette*, 319 U.S. at 642. HCPS forbids Teacher Plaintiffs from speaking their desired message and even from informing parents about their child's potential mental health issues. And this deceptive regime is supported by the threat of discharge. But the school “may not exclude speech based on religious viewpoint” because “doing so constitutes impermissible viewpoint discrimination.” *Shurtleff v. City of Boston*, 142 S. Ct. 1583, 1593 (2022) (cleaned up). HCPS has unconstitutionally stripped Teacher Plaintiffs of their free-speech rights.

2. HCPS's Policy violates Plaintiffs' rights to free exercise of religion.

“The constitutional guarantees of religious freedom have no deeper roots than in Virginia, where they originated, and nowhere have they been more scrupulously observed.” *Reid v. Gholson*, 229 Va. 179, 187 (1985). The Virginia Constitution provides that “all men are equally entitled to the free exercise of religion, according to the dictates of conscience” and that no one shall “suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever.” Va. Const. art. I, § 16. These guarantees provide even broader protection than the federal constitution. *Vann v. Guildfield Missionary Baptist Church*, 452 F. Supp. 2d 651, 653 (W.D. Va. 2006); *see also* 1 A.E. Dick Howard, Commentaries on the Constitution of Virginia 55 (1974) (Virginia's religious liberty provision is “[l]onger and more inclusive than its federal counterpart”).

For its part, the U.S. Constitution forbids even a “slight suspicion” of hostility toward religion. *Masterpiece Cakeshop, Ltd. v. Colo. C. R. Comm'n*, 138 S. Ct. 1719,

1731 (2018) (“The Free Exercise Clause bars even subtle departures from neutrality on matters of religion.”); *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993). “Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature.” *Fulton v. City of Phil.*, 141 S. Ct. 1868, 1877 (2021).

And not one, but two, statutes protect this most basic right in Virginia. The Virginia Code states that no one shall “suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.” Va. Code § 57-1. It further provides that “[n]o government entity shall substantially burden a person’s free exercise of religion even if the burden results from a rule of general applicability unless it demonstrates that application of the burden to the person is (i) essential to further a compelling governmental interest and (ii) the least restrictive means of furthering that compelling governmental interest.” Va. Code § 57-2.02(B).

In Virginia, any violation of a plaintiff’s free-exercise rights are subject to strict scrutiny. *Id.*

- i. The Policy requires Teacher Plaintiffs to violate their religious beliefs regarding sex, gender, and honesty.*

The Policy substantially burdens the free exercise of Ms. F [REDACTED] Ms. M [REDACTED] and Ms. N [REDACTED] religion. All three believe every person is made in God’s image, either male or female, and therefore worthy of love. Decls. D.F. ¶ 36; K.M. ¶ 27; L.N. ¶ 36. All three also believe they must tell the truth, including telling the truth about sex and gender to students and others with whom they interact. And these beliefs preclude all three from using pronouns contrary to a person’s sex. To do otherwise would amount to denying God’s truth about sex and gender, which would violate not only their beliefs about those topics but also their beliefs that lying is

wrong and that they must show God's love to everyone. Decls. D.F. ¶¶ 33–34; K.M. ¶¶ 23–24; L.N. ¶¶ 33–34. For they believe it is not loving to lie to others about their sex and gender. Decls. D.F. ¶¶ 33–34, 36; K.M. ¶ 25; L.N. ¶ 45.

HCPS's Policy requires Teacher Plaintiffs to violate these sincerely held religious beliefs. For one thing, it requires them and all other employees to communicate HCPS's sanctioned message about gender identity by forcing staff to “[a]lways” use a student's preferred name and pronouns. App. 14 (emphasis in original). But this government-sanctioned message directly contradicts sincerely held religious beliefs of Ms. F█████, Ms. M█████, and Ms. N█████. Decls. D.F. ¶¶ 33–34; K.M. ¶¶ 23–24; L.N. ¶¶ 33–34. They cannot communicate HCPS's preferred message because they believe that biological sex is a gift from God that cannot be changed. Coercing these three teachers to use preferred pronouns impermissibly forces them to choose between their sincerely held religious beliefs and their job.

So too does instructing them to deceive parents. Teacher Plaintiffs' religion dictates that lying is wrong. Decls. D.F. ¶ 35; K.M. ¶ 26; L.N. ¶ 35. But HCPS requires Teacher Plaintiffs to intentionally deceive parents about the state of their children. App. 15, 42, 112. And it requires them to do so regarding a child's mental health and sexuality, among the most sensitive topics parents must address with their children.

HCPS acts with overt hostility toward Teacher Plaintiffs' religious beliefs by enforcing a one-sided system with heavy punishment. If Teacher Plaintiffs exercise their Christian beliefs by declining to use a child's preferred pronouns and informing the child's parents, then Teacher Plaintiffs may be discharged. By contrast, another teacher whose religion encouraged the use of preferred pronouns notwithstanding a child's sex would face no threat of discharge. *Cf., e.g.,* Gen. Convention of the Episcopal Church, Resolution 2009-D090: Encourage Inclusive Self-Identification on All

Church Data Forms.² By targeting Teacher Plaintiffs' religious beliefs and not others, HCPS has engaged in "a religious gerrymander." *Lukumi*, 508 U.S. at 535 (cleaned up). That is far more than a "slight suspicion" of hostility. *Masterpiece*, 138 S. Ct. at 1731. In fact, just a few months ago in a challenge to a similar policy in Kansas, a federal district court concluded that it burdened a teacher's free-exercise rights under the U.S. Constitution. *See Ricard*, 2022 WL 1471372, at *5–9 (finding similar policy in Kansas school system policy likely to violate teacher's free-exercise rights).

By threatening punishment, HCPS clearly causes Teacher Plaintiffs to "suffer on account of [their] religious opinions or belief" in violation of Virginia law. They go so far as to impose a religious test on public school teachers: teachers who hold the religious beliefs shared by Ms. F [REDACTED] Ms. M [REDACTED] and Ms. N [REDACTED] on gender identity and sexuality must surrender their employment. Decls. D.F. ¶ 21; K.M. ¶ 10; L.N. ¶ 18. This religious test is an unconstitutional condition of employment and a clear burden to Teacher Plaintiffs' free-exercise rights.

ii. *The Policy substantially burdens Parent Plaintiffs' right to freely exercise their religion by directing their children's upbringing.*

Similarly, Parent Plaintiffs are practicing Christians, and they exercise their religious beliefs by raising their children in the faith. Decls. L.N. ¶ 40; N.S. ¶¶ 21–22. Directing their children in the Christian faith, especially concerning gender identity and sexuality, constitutes religious exercise. Va. Const. art. I, § 16; *see, e.g., Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020); *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 881–82 (1990); *Wisconsin v. Yoder*, 406 U.S. 205, 213–14 (1972); *Pierce v. Soc'y of Sisters of Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925).

For example, if the N [REDACTED] or the S [REDACTED] children ever experienced any gender identity issue, they would always love and accompany their children through

² https://episcopalarchives.org/cgi-bin/acts/acts_resolution.pl?resolution=2009-D090.

the struggle and suffering but would never “affirm” any belief about the child’s sex that contradicts the Christian faith. Rather, Parent Plaintiffs would counsel their children in the faith. For example, they would teach their children about how God created them in his image to be either male or female and that nothing can change this fact; about how their identity is not rooted in perceptions about gender but rather in the immutable reality that each child is a beloved son or daughter of God. Decls. L.N. ¶¶ 50–53; N.S. ¶¶ 29–32. But HCPS’s Policy directly and substantially burdens Parent Plaintiffs’ free-exercise rights by directing their children in an ideology of gender identity that explicitly opposes Christianity. Decls. L.N. ¶ 54; N.S. ¶ 33.

Worse, HCPS’s Policy requires that it actively conceal from Parent Plaintiffs the fact that HCPS has already begun the psychotherapeutic intervention of social transition on the child. App. 14, 40, 111. This outright fraud prevents Parent Plaintiffs from choosing a course of intervention that aligns with their religious beliefs or even counseling their own child on a potentially life-altering decision. Decls. L.N. ¶ 54; N.S. ¶ 33.

But HCPS doesn’t conceal this information from *all* parents. They only intentionally deceive parents who are not, in their view, deemed “supportive” enough. App. 20–21. That means HCPS will lie to some Christian parents because their religion does not support gender transition, but they will not lie to parents of other religions that promote HCPS’s view and approach. This approach impermissibly “invites [HCPS] to consider the particular reasons for a person’s conduct” and allows HCPS to “proceed[] in a manner intolerant of religious beliefs.” *Fulton*, 141 S. Ct. at 1877. That is blatant hostility toward religion and a substantial burden on Parent Plaintiffs’ free-exercise rights. *See* Va. Const. art I, § 16; Va. Code §§ 57-1, 57-2.02.

3. **HCPS's Policy violates Parent Plaintiffs' fundamental parental rights.**

Virginia's common law, statutes, and Constitution establish parents' fundamental right to control their children's education and upbringing. But parents cannot exercise this most basic right when HCPS has promised to actively conceal from parents critical information about their children's welfare.

At common law, the right of parents to control their children's care and education without government interference was beyond dispute. "Law-givers in all free countries, and, with few exceptions, in despotic governments, have deemed it wise to leave the education and nurture of the children of the State to the direction of the parent or guardian. This is, and has ever been, the spirit of our free institutions." *Rulison v. Post*, 79 Ill. 567, 573 (1875). In other words, in a free society, children belong to their parents—not the government. For parents, not governments, have an innate interest in the flourishing of their children, and they are in a much better position than schools to decide what course of action is in the best interest of their own child. *State ex rel. Sheibley v. Sch. Dist. No. 1 Dixon Cnty.*, 48 N.W. 393, 395 (Neb. 1891). Yet exercising that right is impossible when a school lies to parents about the status of their own children.

The Virginia Constitution also protects this fundamental right. *See* Va. Const. art. I, § 11. In *L.F. v. Breit*, the Virginia Supreme Court recognized the pre-existing fundamental right of parents to direct and control the upbringing of their children. *L.F.*, 285 Va. 163. This state protection is virtually identical to that of the U.S. Constitution. *Id.* at 182 n.7. And a parent's federal due-process right over the education and upbringing of his child is "perhaps the oldest of the fundamental liberty interests recognized by th[e Supreme] Court," *Troxel v. Granville*, 530 U.S. 57, 65, 66 (2000) (collecting cases), and is "established beyond debate as an enduring American tradition," *Yoder*, 406 U.S. at 232.

This fundamental right is especially strong when, as here, schools attempt to usurp the role of parents in making important decisions for their children. For example, in *Meyer v. Nebraska*, the Court struck down a statute that, against the will of the parents, simply prohibited foreign language instruction in schools. It held that the Due Process Clause “without doubt” includes the right of parents to “establish a home and bring up children” and “to control the education of their own.” *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923). Then, in *Pierce*, the Court struck down a law mandating public-school attendance for children, reasserting that the “liberty of parents and guardians” includes the right “to direct the upbringing and education of children under their control.” 268 U.S. at 534–35. For, “[t]he child is not the mere creature of the state.” *Id.* at 535. Later, in *Yoder*, the Court determined that the government could not compel Amish children to attend school past eighth grade in violation of their parents’ fundamental rights to direct their children’s upbringing in accordance with their religious faith. 406 U.S. at 213–14. The Court noted that the parental rights were especially salient when paired with the free-exercise right. *Id.*

HCPS, through its Policy, also frustrates parents’ right to direct their children’s education. But HCPS does so by deception rather than by open prohibition, like the governments in *Meyer*, *Pierce*, or *Yoder*. It would be as if in *Meyer*, instead of prohibiting German lessons, Nebraska told teachers to lie to parents, to tell parents their children were learning German when in fact they were not. *See Meyer*, 262 U.S. at 399, 401. Such a hypothetical law would have frustrated the parents’ rights just as surely as the prohibition that Nebraska had actually passed. HCPS similarly violates Parent Plaintiffs’ fundamental parental rights by deliberately deceiving them about the status, well-being, and psychotherapeutic interventions of their children.

HCPS’s deception would be a problem no matter what the subject of the deception. But HCPS’s deception is not about just any normal subject. Without any parental involvement, much less consent, HCPS has taken it upon itself to decide how to

best handle important and intimate decisions about a child's gender identity that will have drastic effects on the rest of that child's life. Levine Decl. ¶¶ 109, 160–80. If the government has no right to compel students to attend public school or any school at all past eighth grade for religious reasons, then clearly the government has no right to administer psychotherapeutic interventions to children by socially transitioning them without parental consent. *See Pierce*, 268 U.S. at 534-35; *Yoder*, 406 U.S. at 213-14. The government has no right to make these kinds of life-altering decisions for and with children without so much as notifying their parents. By doing just that, HCPS has violated Parent Plaintiffs' fundamental parental rights.

What's more, HCPS's chosen psychotherapeutic intervention of social transition contradicts Parent Plaintiffs' sincerely held religious beliefs about sexuality and gender identity. And by intentionally deceiving Parent Plaintiffs about whether any of their children struggle with gender identity, HCPS prevents Parent Plaintiffs from helping their children through these issues in a way that aligns with their Christian faith. That's doubly unconstitutional. *Yoder*, 406 U.S. at 233.

B. HCPS's Policy fails any standard of review.

Because each of the Policy's constitutional violations triggers strict scrutiny review, HCPS must show that the Policy is narrowly tailored to further a compelling government interest. *See Va. Code* § 57-2.02; *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 19 (1986) (plurality op.) (speech); *Lukumi*, 508 U.S. at 546 (religion); *L.F.*, 285 Va. at 182 (parental rights); *Yoder*, 406 U.S. at 233 (religion and parental rights). They cannot meet this high standard.

This Court would not be the first to conclude that a policy like HCPS's likely violates the law. *See Ricard*, 2022 WL 1471372, at *8; *Doe v. Madison Metro. Sch. Dist.*, No. 2020CV000454 (Wis. Cir. Ct. Sept. 28, 2020) (App. 170–72); *see also T.F. v. Kettle Moraine Sch. Dist.*, No. 2021CV1650 (Wis. Cir. Ct. June 1, 2022) (App. 194–98) (denying motion to dismiss similar claim). It would not even be the first Virginia

Circuit Court to do so. *See Cross v. Loudoun Cnty. Sch. Bd.*, No. CL21-3254 (Va. Cir. Ct. June 8, 2021) (App. 173–79), *aff'd*, No. 210584, 2021 WL 9276274 (Va. Aug. 30, 2021) (App. 180–93).

1. **HCPS has no compelling interest in requiring teachers to speak its message about sex and lie to parents.**

HCPS has absolutely no compelling interest in forcing Teacher Plaintiffs to communicate certain messages that contradict their sincerely held religious beliefs and lie to parents. And HCPS equally has no compelling interest in usurping Parent Plaintiffs' role by intentionally deceiving them and blocking them from finding treatment for their children that accords with their sincerely held religious beliefs.

By HCPS's own admission, students who experience gender identity issues are a "high risk" group who "should be monitored for mental health concerns." App. 13. Yet HCPS mandates a one-size-fits-all approach to dealing with these issues without truly knowing each student. Worse, it compels teachers to actively conceal the truth from a child's parents, who are in a better position to know and understand the child. HCPS's course of action puts children struggling with gender identity issues at an even higher risk of making life-altering decisions at a young, impressionable age without the counsel of their parents. Levine Decl. ¶ 109.

None of this advances HCPS's asserted goals of creating a "safe" environment for students. App. 10. Rather, it puts an at-risk population further at risk by shepherding them down a potentially irreversible course of treatment without parental knowledge or involvement. The schools only interact with each child for a short number of years, but the parents will have a lifelong relationship with their child. Long after the school has initiated its chosen psychotherapeutic intervention of social transition, the parents and their child, not the school, will have to suffer the long-term

effects of such reckless action that could have been prevented with parental involvement. Levine Decl. ¶¶ 185–201.

HCPS's actions hinder, not further, any compelling interest.

2. HCPS's coercion of speech, violation of free-exercise rights, and deception of parents are not narrowly tailored to support any government interest.

On narrow tailoring, HCPS “receives no deference.” *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 311 (2013). Rather, it must demonstrate that the Policy is “the least restrictive means among available, effective alternatives.” *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). HCPS cannot make this showing for two primary reasons.

First, the Policy's coercion of speech is not narrowly tailored to HCPS's goal of stopping discrimination and harassment against transgender students at school. With this purpose in mind, HCPS compels Teacher Plaintiffs to speak messages that violate their sincerely held religious beliefs. But Teacher Plaintiffs do not discriminate against transgender students at all. Rather, their religious beliefs require them to treat every single student with the dignity and respect he or she deserves as one created in the image and likeness of God. Decls. D.F. ¶ 36; K.M. ¶ 30; L.N. ¶ 36. Teacher Plaintiffs simply object to speaking HCPS's messages about gender identity and sexuality that contradict their religious beliefs. Decls. D.F. ¶ 39; K.M. ¶ 30; L.N. ¶ 47. Teacher Plaintiffs already treat every student equally by, for example, only using last names and avoiding the use of pronouns. Decls. D.F. ¶¶ 37–38; K.M. ¶¶ 27–29; L.N. ¶¶ 37–38. But that violates HCPS's Policy which requires Teacher Plaintiffs to “immediately” start using a student's preferred pronoun. App. 13–14. The Policy could still accomplish its goal of ending discrimination without violating Teacher Plaintiffs' rights. It is, therefore, not narrowly tailored.

Second, actively concealing from parents crucial healthcare information about their children does not serve any interest at all, so it certainly is not narrowly tailored to any interest. HCPS could advance its safety goals much better in collaboration

with parents. Requiring parental consent for social transition would better advance HCPS's goals because students would not be performing one gender expression at school and another at home, which is psychologically unhealthy. Levine Decl. ¶ 200. And parental involvement and permission is required for any other type of medical treatment or intervention like giving a child an aspirin at school. *See, e.g.*, Va. Code §§ 22.1-274.01:1, 22.1-274.2 (parental consent necessary to administer asthma and diabetes treatment at school); Va. Code § 22.1-274.3 (preventing school staff from even recommending "behavior altering" or "psychotropic medication" for a student). Social transition is much more serious than these examples, yet HCPS does not require parental permission. Instead, HCPS's Policy is to deliberately deceive parents about their child's struggles at school, creating an unsafe environment for the child. This is not narrowly tailored either.

II. Plaintiffs satisfy the remaining preliminary injunction factors.

Because HCPS's Policy remains in effect, Plaintiffs have suffered and will continue to suffer irreparable injury without an injunction. For "[i]t has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Leaders of a Beautiful Struggle v. Balt. Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) (en banc) (cleaned up). Thus, a "likely constitutional violation," as here, "satisfie[s]" the "irreparable harm factor." *Id.*

Ms. F [REDACTED], Ms. M [REDACTED], and Ms. N [REDACTED] are continually at risk of discipline up to and including discharge because of the Policy, which requires them to use a student's preferred name and pronouns and lie to parents. App. 14–15. This compulsion violates their free-speech and free-exercise rights. *See supra* I.A.1-2. Similarly, the N [REDACTED] and S [REDACTED] are utterly prevented from exercising their fundamental parental rights to make decisions for their children and their free-exercise rights to raise their children in the Christian faith, because HCPS intentionally conceals vital information about their children and makes medical decisions for their children that

violate their faith. App. 15. As long as the Policy is in place, these harms will continue.

The balance of the equities also favors Plaintiffs. Like irreparable harm, this factor is intertwined with the merits. Here, “the balance of the equities favors preliminary relief because” the government “is in no way harmed by issuance of a preliminary injunction which prevents [it] from enforcing restrictions likely to be found unconstitutional.” *Leaders of a Beautiful Struggle*, 2 F.4th at 346 (citation omitted). “If anything, the system is improved by such an injunction.” *Id.* (citation omitted). Far from harming Defendants, allowing parents to participate in life-altering decisions for their children and letting teachers exercise their free speech and free exercise rights would be in the best interest of the students.

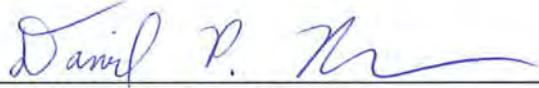
Under the balance of the equities, “a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional.” *Id.* (citation omitted). Indeed, “the system is improved by such an injunction.” *Id.* (citation omitted). Finally, “it is well-established that the public interest favors protecting constitutional rights.” *Id.*

Finally, a temporary injunction would also serve the public interest. For “it is well-established that the public interest favors protecting constitutional rights.” *Id.* Not only that, the public interest is not served by a Policy that silences teachers and deceives parents.

CONCLUSION

Plaintiffs respectfully ask this Court to grant their motion and enter the temporary injunction detailed therein.

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2022, a true and correct copy of the foregoing was served by e-mailing to:

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