

No. 25-3686

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

CHINO VALLEY UNIFIED SCHOOL DISTRICT, *et al.*,
Plaintiffs-Appellants,

v.

GAVIN NEWSOM, *et al.*,
Defendants-Appellees.

**On Appeal from the United States District Court
for the Eastern District of California**

No. 2:24-cv-01941-DJC-JDP
Hon. Daniel J. Calabretta, District Court

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TABLE OF CONTENTS

	Page
Introduction	1
Statement of the issues.....	3
Statement of the case.....	3
A. Legal and factual background	3
B. Procedural history.....	7
Summary of argument.....	10
Argument.....	12
I. Plaintiffs lack standing	13
A. The parent plaintiffs fail to plausibly allege standing.....	13
1. Parent plaintiffs fail to show an injury in fact	13
2. Parent plaintiffs fail to show causation.....	25
B. The LEA plaintiffs lack standing under this Court’s longstanding limits on the ability of political subdivisions to sue their parent state	28
II. The Governor is entitled to Eleventh Amendment immunity	30
III. The District Court properly dismissed the FERPA claims.....	33
Conclusion	35

TABLE OF AUTHORITIES

	Page
CASES	
<i>Am. Legion v. Am. Humanist Ass’n</i> 588 U.S. 29 (2019).....	24
<i>Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris</i> 729 F.3d 937 (9th Cir. 2013)	31
<i>Babbitt v. United Farm Workers Nat’l Union</i> 442 U.S. 289, 298 (1979).....	23
<i>Board of Education v. Allen</i> 392 U.S. 236 (1968).....	29
<i>Braunfeld v. Brown</i> 366 U.S. 599 (1961).....	24
<i>Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank</i> 136 F.3d 1360 (9th Cir. 1998)	28
<i>California School Boards Ass’n v. Brown</i> 192 Cal. App. 4th 1507 (2011)	32
<i>Cantrell v. City of Long Beach</i> 241 F.3d 674 (9th Cir. 2001)	22
<i>City of Huntington Beach v. Newsom</i> No. 23-3694, 2024 WL 4625289 (9th Cir. Oct. 30, 2024)	28
<i>City of Huntington Beach v. Newsom</i> No. 25-3826, 2025 WL 3169324 (9th Cir. Sept. 12, 2025).....	27
<i>City of S. Lake Tahoe v. Cal. Tahoe Reg’l Plan. Agency</i> 625 F.2d 231 (9th Cir. 1980)	11, 28, 29
<i>Clapper v. Amnesty Int’l USA</i> 568 U.S. 398 (2013).....	passim

TABLE OF AUTHORITIES
(continued)

	Page
<i>Dep’t of Comm. v. New York</i> 588 U.S. 752	19, 20
<i>Diamond v. Charles</i> 476 U.S. 54 (1986).....	24
<i>Doe, next friend of Doe v. Horne</i> No. 23-3188, 2024 WL 4119371 (9th Cir. Sept. 9, 2024).....	19
<i>Doe No. 1 v. Bethel Loc. Sch. Dist. Bd. of Educ.</i> No. 23-3740, 2025 WL 2453836 (6th Cir. Aug. 26, 2025).....	24
<i>Doe v. Pine-Richland Sch. Dist.</i> No. 2:24-cv-51, 2024 WL 2058437 (W.D. Pa. May 7, 2024).....	17
<i>Drake v. Obama</i> 664 F.3d 774 (9th Cir. 2011)	29
<i>Dream Palace v. Cnty. of Maricopa</i> 384 F.3d 990 (9th Cir. 2004)	23
<i>Ex Parte Young</i> 209 U.S. 123 (1908).....	30, 31
<i>Food & Drug Admin. v. All. for Hippocratic Med.</i> 602 U.S. 367 (2024).....	13, 14, 26, 27, 28
<i>Harris v. McRae</i> 448 U.S. 297 (1980).....	24, 25
<i>In re Zappos.com, Inc.</i> 888 F.3d 1020 (9th Cir. 2018)	21
<i>Int’l Partners for Ethical Care Inc. v. Ferguson</i> 146 F.4th 841 (9th Cir. 2025)	17, 18
<i>John & Jane Parents I v. Montgomery Cnty. Bd. of Educ.</i> 78 F.4th 622 (4th Cir. 2023)	passim

TABLE OF AUTHORITIES
(continued)

	Page
<i>Kaltenbach v. Hilliard City Schools</i> 730 F. Supp. 3d 699, 703-704 (S.D. Ohio 2024).....	17
<i>Kerr v. Polis</i> 20 F.4th 686 (10th Cir. 2021)	29
<i>Krottner v. Starbucks Corp.</i> 628 F.3d 1139 (9th Cir. 2010)	21
<i>Laird v. Tatum</i> 408 U.S. 1 (1972).....	22
<i>Lopez v. Candaele</i> 630 F.3d 775 (9th Cir. 2010)	22, 23
<i>Los Angeles Branch NAACP v. Los Angeles Unified Sch. Dist.</i> 714 F.2d 946 (9th Cir. 1983)	31, 33
<i>Los Angeles Cnty. Bar Ass’n v. Eu</i> 979 F.2d 697 (9th Cir. 1992)	30, 31
<i>Lujan v. Def. of Wildlife</i> 504 U.S. 555 (1992).....	13, 26
<i>Mahmoud v. Taylor</i> 606 U.S. 522 (2025).....	23, 24
<i>Massachusetts v. EPA</i> 549 U.S. 497 (2007).....	19, 20
<i>Miller v. Gammie</i> 335 F.3d 889 (9th Cir. 2003)	29
<i>Murthy v. Missouri</i> 603 U.S. 43 (2024).....	20
<i>N. Cnty. Cmty. All., Inc. v. Salazar</i> 573 F.3d 738 (9th Cir. 2009)	12

TABLE OF AUTHORITIES
(continued)

	Page
<i>Ocean Cnty. Bd. of Comm'rs v. Att'y Gen. of N.J.</i> 8 F.4th 176 (3d Cir. 2021)	29
<i>Okanogan Sch. Dist. #105 v. Superintendent of Pub. Instr. for State of Wash.</i> 291 F.3d 1161 (9th Cir. 2002)	29
<i>Palomar Pomerado Health Sys. v. Belshe</i> 180 F.3d 1104 (9th Cir. 1999)	29
<i>Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1</i> 551 U.S. 701 (2007).....	18, 19
<i>Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist., Wisconsin</i> 95 F.4th 501 (7th Cir. 2024)	16, 17
<i>Pena-Rodriguez v. Colorado</i> 580 U.S. 206 (2017).....	18
<i>Phyllis v. Super. Ct.</i> 183 Cal. App. 3d 1193 (1986)	6
<i>Regino v. Staley</i> 133 F.4th 951 (9th Cir. 2025)	27
<i>Safe Air for Everyone v. Meyer</i> 373 F.3d 1035 (9th Cir. 2004)	12
<i>Short v. New Jersey Dep't of Educ.</i> No. 23-21105, 2025 WL 984730 (D. N.J. Mar. 28, 2025)	17
<i>Silk v. Bond</i> 65 F.4th 445 (9th Cir. 2023)	25

TABLE OF AUTHORITIES

(continued)

	Page
<i>Spokeo, Inc. v. Robins</i> 578 U.S. 330 (2016).....	13
<i>Susan B. Anthony List v. Driehaus</i> 573 U.S. 149 (2014).....	14
<i>T.F. v. Kettle Moraine Sch. Dist.</i> No. 21-cv-1650 (Wis. Cir. Ct., Waukesha Cnty., Oct. 3, 2023).....	22
<i>TransUnion, LLC v. Ramirez</i> 594 U.S. 413 (2021).....	22, 25
<i>Tweed-New Haven Airport Authority v. Tong</i> 930 F.3d 65 (2d Cir. 2019)	29
<i>Wash. Env’t Council v. Bellon</i> 732 F.3d 1131 (9th Cir. 2013)	26
<i>West Virginia v. EPA</i> 597 U.S. 697 (2022).....	19
<i>Wheeler v. City of Santa Clara</i> 894 F.3d 1046 (9th Cir. 2018)	32
<i>Wright v. SEIU</i> 48 F.4th 1112 (9th Cir. 2022)	23
STATUTES	
20 U.S.C.	
§ 1232g(a)(1)(A).....	34
§ 1232g(a)(2)	34
§ 1232g(a)(4)	34

TABLE OF AUTHORITIES **(continued)**

Page

Cal. Educ. Code

§ 215.....	6
§ 217.....	5
§ 220.1.....	5
§ 220.3(a)	4, 5, 27, 33
§ 220.5(a)	4, 5, 27, 33
§ 220.5(c)	5
§ 49602(c)	6

Cal. Gov't Code § 13337	31
-------------------------------	----

CONSTITUTIONAL PROVISIONS

Cal. Const. art. IV, § 12	31
---------------------------------	----

COURT RULES

Fed. R. Civ. P.

12(b)(1)	12
12(b)(6)	12

OTHER AUTHORITIES

Assemb. B. 1955, 2023-2024 Reg. Sess. (Cal. 2024)

§ 2(d)	3, 4
§ 2(e)	3
§ 2(f).....	3
§ 2(g).....	4
§ 2(j).....	5
§ 2(m).....	5
§ 5(a)	5
§ 6(a)	5

TABLE OF AUTHORITIES
(continued)

	Page
Cal. Dep’t of Educ., <i>Model Youth Suicide Prevention Policy for Local Education Agencies that Service Kindergarten through Twelfth Grade Students</i> (Feb. 1, 2023), https://tinyurl.com/3kde9w88	6
Cal. Dep’t of Just., <i>Legal Alert: Forced Disclosure Policies re: Transgender and Gender Nonconforming Students</i> , No. OAG-2024-02 (Jan. 11, 2024) http://bit.ly/3GnYR3L	4, 6, 27
Foreign Intelligence Surveillance Act § 702	20
Press Release, Off. of Gov. Gavin Newsom, <i>Governor Newsom Announces Contract to Secure Textbooks for Students in Temecula</i> (July 19, 2023), https://tinyurl.com/4wz7erd3	32

INTRODUCTION

The California Legislature enacted Assembly Bill 1955 after finding that LGBTQ youth thrive when they are able to share their sexual orientation and gender identity with others—including their parents—when they are ready. The Legislature recognized that parents have an important role in shaping their children’s lives. It also found that outing LGBTQ students to their families without their consent hinders their ability to learn and succeed in school, undermines their relationships with their families, and puts far too many at risk of physical and psychological harm.

In balancing those considerations, the Legislature narrowly crafted AB 1955 to prohibit only those school policies that *require* school officials to out LGBTQ students without the student’s consent. In other words, the Legislature prohibited mandatory outing policies, which do not permit school officials to take account of individualized considerations, such as whether disclosure would serve the student’s well-being or put the student at risk of serious harm. But AB 1955 does not restrict or otherwise regulate permissive school policies that allow for disclosure in certain circumstances, such as when a student’s health or safety is at risk. And the statute expressly does not interfere with any disclosures that are required under federal or state law.

A group of parents and local educational agencies (LEAs) contend that AB 1955's narrow prohibition unconstitutionally infringes parents' free exercise and substantive due process rights. The upshot of that argument would be extraordinary: that the Constitution *compels* school districts to adopt mandatory disclosure policies as a matter of substantive due process and free exercise doctrine and that more permissive, nuanced school policies—such as policies that allow disclosure when consistent with the student's well-being—are never constitutional.

But the implications of those far-reaching claims are not before this Court today. The district court dismissed all of plaintiffs' claims for lack of standing, and rightly so. No plaintiff can demonstrate any form of judicially cognizable injury; they offer only a highly speculative chain of events that has not occurred and is not certainly impending. Parent plaintiffs have not alleged that their children identify as transgender or gender non-conforming. Nor have they alleged that their children are at risk of identifying as transgender or gender non-conforming. The parents' principal theory of injury from AB 1955 seems to be that they disagree with it as a policy matter. But as the Supreme Court has held repeatedly, ideological disagreement alone is insufficient to establish an injury in fact. Because no plaintiff has plausibly alleged facts that support Article III standing, this Court should affirm.

STATEMENT OF THE ISSUES

1. Whether plaintiffs lack Article III standing to challenge AB 1955 under the First Amendment and Fourteenth Amendment.
2. Whether the Governor is entitled to Eleventh Amendment immunity.
3. Whether the district court properly dismissed plaintiffs’ claim under the Family Educational Rights and Privacy Act (“FERPA”).

STATEMENT OF THE CASE

A. Legal and Factual Background

In response to a growing number of “[a]ttacks on the rights, safety, and dignity” of LGBTQ youth in schools, the California Legislature in July 2024 enacted Assembly Bill 1955, known as the Support Academic Futures and Educators for Today’s Youth Act. *See* Assemb. B. 1955, 2023-2024 Reg. Sess. (Cal. 2024). In so doing, the Legislature expressed particular concern about “forced outing” policies. *Id.* § 2(e). Those policies single out transgender and gender non-conforming students for discriminatory treatment by requiring school staff to notify parents when a student identifies as transgender or gender non-conforming or requests to use a name and pronouns consistent with that identity. *Id.* §§ 2(d)-(f). And those policies typically apply even if the student does not consent to parental notification and even if notifying the parent poses a serious risk of physical or psychological harm to the student. *Id.* §§ 2(d), (e).

The Legislature recognized that “[p]arents and families have an important role to play in the lives of young people,” and that “LGBTQ+ youth thrive when they have parental support and feel safe sharing their full identities with them.” Assemb. B. 1955 § 2(d), 2023-2024 Reg. Sess. (Cal. 2024). It also recognized that students have a “right to privacy when it comes to sensitive information.” *Id.* § 2(g). To accommodate the concerns about forced outing policies and the benefits of parental support, the Legislature crafted AB 1955 to prohibit only mandatory parental notification policies—policies that *require* school employees to out LGBTQ students even where the student does not consent to that disclosure. Cal. Educ. Code §§ 220.3(a), 220.5(a).

AB 1955 does not mandate that schools adopt non-disclosure policies or otherwise obligate schools to keep gender-identity and related information secret from parents. Nor does it prohibit or otherwise regulate permissive policies that allow school employees to disclose information based on individual circumstances, such as a student’s safety or physical and mental well-being.¹ And AB 1955 only

¹ AB 1955 is not the only authority relevant to the legality of disclosure or non-disclosure policies. Any such policy would, of course, have to comply with other constitutional and statutory limits, such as the State’s Equal Protection Clause. *See, e.g.,* Cal. Dep’t of Just., *Legal Alert: Forced Disclosure Policies re: Transgender and Gender Nonconforming Students*, No. OAG-2024-02, at 1-2 (Jan. 11, 2024), <http://bit.ly/3GnYR3L>.

applies “unless [disclosure is] otherwise required by state or federal law.” Cal. Educ. Code § 220.5(a).

There are two provisions of AB 1955 at issue in this case. Section 5(a) of AB 1955 provides that “[a]n employee or contractor of a school district, county office of education, charter school, or state special school for the blind or the deaf shall not be required to disclose any information related to a pupil’s sexual orientation, gender identity, or gender expression to any other person without the pupil’s consent, unless otherwise required by state or federal law.” Cal. Educ. Code § 220.3(a). Section 6(a) similarly provides that no school district or other covered agency or office shall “enact or enforce any policy, rule, or administrative regulation that would require an employee or a contractor to disclose any information related to a pupil’s sexual orientation, gender identity, or gender expression to any other person without the pupil’s consent, unless otherwise required by state or federal law.” *Id.* § 220.5(a). Any policy “inconsistent with [this section] is invalid and shall not have any force or effect.” *Id.* § 220.5(c).²

² Other sections of AB 1955 aim to “support LGBTQ+ pupils and their parents and families in working towards family acceptance on their own terms” and to ensure that students can access “safe and supportive learning environments.” *See* Assemb. B. 1955 §§ 2(j), (m), 2023-2024 Reg. Sess. (Cal. 2024). Section 3 requires the California Department of Education to develop resources to better support LGBTQ middle- and high-school students and their families. *See* Cal. Educ. Code § 217. Section 4 prohibits school officials from retaliating against employees who support students exercising their rights under state education and antidiscrimination laws. *Id.* § 220.1.

“[F]easible and effective alternatives to forced disclosure policies”—alternative policies that AB 1955 in no way restricts—include “allow[ing] disclosure where a student does not consent where there is a compelling need to do so to protect the student’s wellbeing.” Cal. Dep’t of Just., *supra*, at 2. Under state law, schools may notify parents—and in some instances, *must* notify parents—when staff learns of significant risks to student safety. *See, e.g.*, Cal. Educ. Code § 49602(c) (allowing disclosure of confidential communication communications to a school counselor where “necessary to avert a clear and present danger”); *cf. Phyllis v. Super. Ct.*, 183 Cal. App. 3d 1193, 1196-1197 (1986) (school had tort duty to notify parents that 8-year-old student had been sexually assaulted at school); Cal. Educ. Code § 215 (requiring LEAs to adopt suicide prevention policies); Cal. Dep’t of Educ., *Model Youth Suicide Prevention Policy for Local Education Agencies that Service Kindergarten through Twelfth Grade Students*, at 17-18 (Feb. 1, 2023), <https://tinyurl.com/3kde9w88> (discussing parental notification, involvement, and referrals to resources).

AB 1955 also does not address whether school officials have any role in whether, when, or how a student requests to use a name and pronouns consistent with their gender identity at school. Nor does it speak to whether school officials must honor such requests. And it does nothing to prevent students from choosing to share information about their gender identity and gender expression with their

parents, or to prevent parents from talking with their children about gender identity and gender expression. AB 1955 has been in effect since January 1, 2025. ER-143.

B. Procedural History

The day after the Governor approved AB 1955, the Chino Valley Unified School District (CVUSD) and eight parents filed this lawsuit challenging the portions of AB 1955 that prohibit school districts and employees or contractors of a school district from adopting mandatory parental notification policies. ER-143, ER-155. A few weeks later, plaintiffs filed an amended complaint adding the Anderson Union High School District (AUHSD) and the Orange County Board of Education (OCBE) as plaintiffs (collectively, with CVUSD, the “LEA plaintiffs”). ER-138. The children of the parent plaintiffs attend schools in the Chino Valley Unified School District, the Orange Unified School District, the Anderson Union High School District, the Pacheco Unified School District, and the Temecula Valley Unified School District. ER-141-142.

Two of the LEA plaintiffs, CVUSD and AUHSD, had adopted mandatory notification policies prior to the passage of AB 1955. CVUSD Board Policy 5010 and AUHSD Board Policy 5010.11 provide that parents must be notified “in writing, within three days from the date any District employee, administrator, or certified staff, becomes aware that a student is requesting to change any

information contained in the student’s official or unofficial records.” ER-148.

Although neither policy defines “official” or “unofficial” records, all parties agree that, “[t]o the extent that a child requests that their school facilitate socially transitioning the student by, for example, changing their preferred name or pronouns,” these policies “require that parents be notified of that change.” *Id.*; *see also* ER-134-135. The third LEA plaintiff, OCBE, had adopted a policy expressing support for, but not requiring, parental disclosures. OCBE Board Policy 600-2 provides that “[p]arents/guardians should have the right to . . . be notified regarding all aspects of their children’s educational program,” including the right “to be notified of their children’s preferred use of gender pronouns.” ER-148.

Parent plaintiffs alleged that AB 1955 violated their substantive due process rights under the Fourteenth Amendment to direct their child’s upbringing and education. ER-149-150. They also alleged that they had a right under the Free Exercise Clause to “be notified if their child requests to socially transition at school.” ER-150; *see id.* at ER-150-151. In addition, all plaintiffs raised a preemption challenge, arguing that FERPA’s guarantee of parental access to student education records conflicts with AB 1955’s prohibition on mandatory parental notification policies. ER-151-152. The LEA plaintiffs separately sought declaratory and injunctive relief that the First and Fourteenth Amendments

precluded the adoption of AB 1955. ER-152-153. CVUSD and AUHSD also sought a declaratory judgment in the alternative that their policies—which mandate parental notification if *any* student record, related or unrelated to gender identity, is changed—fall outside the scope of AB 1955 as a matter of state law. ER-152-153.³

Defendants moved to dismiss for lack of standing and failure to state a claim on the merits. ER-102-137. The district court granted that motion on the ground that the Court lacked jurisdiction to hear the case. ER-4-19. The district court held that the parent plaintiffs lack standing because they had not plausibly alleged an injury in fact for Article III purposes. ER-8-13. The court additionally determined that the LEA plaintiffs lack standing because, under longstanding Ninth Circuit precedent, political subdivisions cannot sue a parent State to challenge the validity of a state law under the federal constitution. ER-16. As to the claims against the Governor, the court concluded that they fail for the additional, independent reason that he is entitled to Eleventh Amendment immunity. ER-16-17.

The district court dismissed the LEA plaintiffs’ claims, and all claims against the Governor, with prejudice. ER-19. However, the district court determined that “it may be possible for Parent Plaintiffs to allege sufficient facts to establish

³ Plaintiffs later abandoned this argument when they acknowledged that the two LEA policies at issue would require schools to “mak[e] parents aware that the school is participating in the social transition of their child.” ER-76.

Article III standing,” and granted the parents leave to amend. ER-18. The parent plaintiffs declined to amend and filed a notice of appeal. ER-170.

SUMMARY OF ARGUMENT

This Court should affirm the dismissal of plaintiffs’ claims for lack of subject matter jurisdiction. The parent plaintiffs failed to adequately allege standing. They pled a hypothetical future injury: that school officials will elect not to disclose information related to their children’s gender identity or gender expression, thereby burdening the parents’ alleged free exercise and substantive due process rights. But there is no plausible basis to think that any such injury is certainly impending or at a substantial risk of occurring. No parent has alleged that their child is transgender or gender non-conforming, or that their child is even at risk of identifying as transgender or gender non-conforming. It is well-settled that plaintiffs cannot rely on a highly attenuated chain of hypotheticals to establish injury in fact for purposes of Article III standing. And an abstract concern that a student could conceivably change their gender identity without their parent’s knowledge does not suffice to establish a concrete or imminent injury. Were it otherwise, presumably any parent could establish an injury in fact.

Nor are parent plaintiffs subject to a reduced standing burden on their due process or free exercise claims. Parent plaintiffs allege that AB 1955 conflicts with their sincerely held religious belief that gender is an immutable characteristic.

But as the Supreme Court has repeatedly recognized, plaintiffs bringing a free exercise claim must still plausibly allege a concrete injury to invoke the jurisdiction of federal courts. To hold otherwise would allow any parent to seek judicial review of any school policy that implicates their religious beliefs, regardless of whether they have any personal stake in the outcome of the case.

Plaintiffs' standing theories also fail on causation grounds. No plaintiff persuasively explains how any information related to their child's gender identity or gender expression could be withheld because of AB 1955. AB 1955 is limited in scope: it bars only mandatory policies that require disclosure, regardless of individual circumstance. AB 1955 does nothing to prevent a school district from adopting a policy forbidding disclosure or allowing disclosure based on a student's individual circumstances. If a parent does not receive information from school officials about their gender identity, it is the result of a school official's independent judgment or a local non-disclosure policy. It is not a result compelled by AB 1955.

The LEA plaintiffs additionally lack standing under longstanding circuit precedent. This Court held in *South Lake Tahoe* that political subdivisions do not have standing to sue their parent State over alleged violations of the federal Constitution. This Court has repeatedly applied that rule in recent decades,

including when political subdivisions assert federal preemption claims pursuant to the Supremacy Clause, and the Court is bound to follow that precedent here.

Plaintiffs’ remaining jurisdictional arguments are likewise unavailing. The district court did not err in concluding that the Governor was entitled to Eleventh Amendment immunity. The Governor has no direct enforcement power over AB 1955. Finally, as to FERPA, plaintiffs concede that their asserted basis for standing is the same as for their constitutional claims. Because the district court properly ordered dismissal for lack of standing as to those claims, the dismissal of the FERPA claim was necessarily correct. This Court should affirm the dismissal of plaintiffs’ complaint.

ARGUMENT

Although defendants moved to dismiss under both Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), the district court dismissed the case under the former for lack of subject matter jurisdiction. This Court reviews de novo whether a district court properly dismissed a case under Rule 12(b)(1). *N. Cnty. Cmty. All., Inc. v. Salazar*, 573 F.3d 738, 741 (9th Cir. 2009). When a party asserts a facial attack on jurisdiction, the Court takes the complaint’s allegations as true, and examines whether “the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

I. PLAINTIFFS LACK STANDING

The core requirements for Article III standing are injury, causation, and redressability. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). “The party invoking federal jurisdiction bears the burden of establishing these elements.” *Lujan v. Def. of Wildlife*, 504 U.S. 555, 561 (1992). Here, no plaintiff can satisfy that burden.

A. The Parent Plaintiffs Fail to Plausibly Allege Standing

As the district court determined, the “inquiry into standing” in this case “begins and ends with an assessment of whether Plaintiff Parents have suffered an injury in fact.” ER-8. None of the parent plaintiffs comes close to adequately alleging that they have suffered—or will suffer—any harm as a result of AB 1955. No parent has alleged that their children have exhibited signs of identifying as transgender or gender non-conforming, nor have they alleged that their school district is withholding information about their children. Even if they had properly alleged an injury in fact, however, they could not satisfy the causation or redressability requirements.

1. Parent plaintiffs fail to show an injury in fact

“To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’” meaning that “it ‘must affect the plaintiff in a personal and individual way’” and be “‘real’ and not ‘abstract.’” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339-340 (2016).

The injury must also be “actual or imminent, not speculative—meaning that the injury must have already occurred or be likely to occur soon.” *All. for Hippocratic Med.*, 602 U.S. at 381. A plaintiff alleging “future injury” must show that “the threatened injury is ‘certainly impending,’ or there is a ‘substantial risk that the harm will occur.’” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). A future injury that “relies on a highly attenuated chain of possibilities” does not suffice. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013).

a. Parent plaintiffs have not alleged an injury for each of their constitutional claims beyond a highly speculative chain of events that has not occurred and that is not “certainly impending.” Although parent plaintiffs separately discuss standing for each of their constitutional claims, *see, e.g.*, Opening Br. 13-19, 19-21, their arguments are the same for purposes of the free exercise and due process claims. Specifically, they allege two forms of injury: “an imminent harm that their children could be secretly transitioned in the future” and “the uncertainty of not knowing whether the school is currently transitioning their students behind their back.” Opening Br. 15.⁴ Neither alleged injury supports Article III standing.

⁴ Plaintiffs assert at various points a concern that the school is actively “secretly transition[ing]” students without parental consent or awareness. Opening Br. 15, 17, 19. To the extent that plaintiffs suggest that AB 1955 requires school officials to respect students’ social transitions, AB 1955 does not speak to whether officials may be required to use a student’s requested pronouns or otherwise acknowledge their identity. The law merely prohibits school districts and other

(continued...)

Plaintiffs’ first theory of injury relies on a risk of future harm based on the possibility that their child will decide to socially transition at school, and that the school will hide that information from them. But in order to establish that injury, parent plaintiffs must adequately plead that a series of facts are all substantially likely to occur: (1) a child of parent plaintiffs must be transgender or gender nonconforming; (2) that student must inform a school staff member of their identity and/or wish to express that identity at school; (3) the student must then ask the school not to share that information with their parents; and finally, (4) the school must make the choice to not inform the parents of the child’s gender identity or expression. ER-11.

Parent plaintiffs have not plausibly shown that even the first step in that speculative chain of facts is likely: they have not alleged that any of their children are transgender or gender non-conforming. ER-141-142 ¶¶ 13-21. Nor have they alleged that their children are at risk, let alone substantially likely, to identify as transgender or gender non-conforming. *See id.* Indeed, other than their grades in school and the districts in which they live, parent plaintiffs do not allege *anything* about their children. *Id.*; *see, e.g.*, ER-141 (describing A.B. as “a rising tenth-grade student attending public school in the Temecula Valley Unified School

covered entities from adopting extreme policies that *mandate* disclosure when a student identifies as transgender or gender non-conforming.

District”). Plaintiffs argue that there is some “possibility” that their child may decide to transition in the future. Opening Br. 17. But plaintiffs make no effort to connect that argument to the complaint, likely because the complaint is bereft of any relevant allegations. And even if there were plausible, particularized allegations to support the prospect that parent plaintiffs’ children are substantially likely to identify as transgender or gender non-conforming in the future, parent plaintiffs have not alleged facts related to the subsequent steps in the chain: that their children would be more likely to inform the school, rather than them, of a decision to transition—or that school officials would respect a child’s desire not to inform the parents. Recall that AB 1955 in no way bars school officials or teachers from disclosing information. It merely bars school districts from *requiring* disclosure. A “speculative chain of possibilities,” *Clapper*, 568 U.S. at 414, that “require[s] guesswork as to how independent decisionmakers will exercise their judgment,” *id.* at 413, is insufficient to establish harm for purposes of Article III standing.

Other circuits have held that similar allegations by parents challenging school gender-identity non-disclosure policies cannot establish actual or imminent injury, and the Supreme Court has declined to review those questions. For example, in *Parents Protecting Our Children, UA v. Eau Claire Area School District, Wisconsin*, 95 F.4th 501, 504-506 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 14

(2024), the Seventh Circuit held that parents lacked standing where they failed to allege that their children “had questioned their gender identity or otherwise sought guidance or support under the School District’s policy.” Mere “expressions of worry and concern” that a child might transition in the future, the Court held, “do not suffice to show” injury. *Id.* Similarly, in *John and Jane Parents I v. Montgomery County Board of Education*, 78 F.4th 622, 630 (4th Cir. 2023) (similar), *cert. denied*, 144 S. Ct. 2560 (2024), the Fourth Circuit determined that parents failed to allege “a certainly impending injury or a substantial risk of future harm” because “they ha[d] not alleged that they suspect their children might be considering gender transition or have a heightened risk of doing so.”⁵

Plaintiffs attempt to exempt themselves from Article III’s requirements by arguing that any “possibility” that their child transitions is sufficient to demonstrate an injury in fact. Opening Br. 17. But as this Court recently explained, “[a]lthough probabilistic harm can create standing, it does not replace the foundational rule that a future injury must be imminent in order to satisfy the injury-in-fact requirement.” *Int’l Partners for Ethical Care Inc. v. Ferguson*, 146

⁵ Several district courts have held that parent plaintiffs advancing similar allegations lack standing. *Short v. New Jersey Dep’t of Educ.*, No. 23-cv-21105, 2025 WL 984730, at *12-13 (D. N.J. Mar. 28, 2025); *Doe v. Pine-Richland Sch. Dist.*, No. 2:24-cv-51, 2024 WL 2058437, *4-9 (W.D. Pa. May 7, 2024), *appeal docketed*, No. 24-3348 (3d Cir.); *Kaltenbach v. Hilliard City Schools*, 730 F. Supp. 3d 699, 703-704 (S.D. Ohio 2024), *appeal dismissed for lack of jurisdiction*, No. 24-3336, 2025 WL 1147577 (6th Cir. Mar. 27, 2025).

F.4th 841, 852 (9th Cir. 2025). In *International Partners for Ethical Care*, this Court considered whether parent plaintiffs had standing to challenge a Washington law that allowed minors to access gender-affirming care without parental consent in youth shelters under certain circumstances. *Id.* at 844-845. Because plaintiffs would only be injured “if a [] convoluted series of events transpires,” the Court determined that “Plaintiffs’ basic ‘[a]llegations of *possible* future injury’ are especially insufficient.” *Id.* at 851-852. So too here, where plaintiffs have not alleged any facts at all to support the notion that there is a chance their children will transition in the future, and where their theory of injury depends on a speculative chain of causation.

The injuries of the parents in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007) are not “strikingly similar” to the allegations of parent plaintiffs here. Opening Br. 15. In *Parents Involved*, parents alleged an injury based on a student assignment plan that facially relied on race to allocate slots to certain public schools. *Id.* at 709. Because “one form of injury under the Equal Protection Clause is being forced to compete in a race-based system,” the Court determined that the parents could establish standing. *Id.* at 719. That is consistent with the fact that discrimination on the basis of race is a “recurring evil” that poses “unique historical, constitutional, and institutional concerns.” *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 224 (2017). The standing

analysis of *Parents Involved* has never been extended to apply to education policies outside the equal protection context. *See John & Jane Parents I*, 78 F.4th at 634. Nor does it abrogate the core Article III requirement that there must be a “substantial risk” that a harm is “certainly impending.” *Id.*⁶ And unlike the parents in *Parents Involved*, the plaintiffs here have not alleged any “real prospect of being impacted” by the policy at issue, because their children are not transgender or gender non-conforming. *See, e.g., Doe, next friend of Doe v. Horne*, No. 23-3188, 2024 WL 4119371, at *2 (9th Cir. Sept. 9, 2024).

Parent plaintiffs’ allegations are also wholly unlike those in *Massachusetts v. EPA*, 549 U.S. 497 (2007) or *Department of Commerce v. New York*, 588 U.S. 752, 767. *See* Opening Br. 17-18. The injury in fact in each case—rising sea levels as a result of greenhouse gas emissions in *Massachusetts* and the diminishment of political representation and loss of federal funding as a result of census changes in *Department of Commerce*—were injuries that the Court determined were sufficiently imminent to support standing based on specific record evidence. *See*

⁶ Plaintiffs also contend that “in this case, standing is even more apparent than in *Parents Involved*” because the school districts in *Parents Involved* had ceased applying the race-based admissions scheme after the litigation began, whereas AB 1955 remains in effect. Opening Br. 17. That distinction turns on the doctrine of mootness, not standing, which addresses “whether ‘an intervening circumstance [has] deprive[d] the plaintiff of a personal stake in the outcome of the lawsuit.’” *West Virginia v. EPA*, 597 U.S. 697, 719 (2022). Here, plaintiffs do not allege that they had a “personal stake” in the outcome of litigation at any point.

Massachusetts, 549 U.S. at 521-523; *Dep’t of Comm.*, 588 U.S. at 767. Plaintiffs rely heavily on Justice Alito’s description of *Massachusetts* and *Department of Commerce* in a dissenting opinion. See *Murthy v. Missouri*, 603 U.S. 43, 97-98 (2024) (Alito, J., dissenting). But of course, dissenting opinions are not the law. And in any event, Justice Alito’s dissent merely suggested that there was uncertainty in *Massachusetts* and *Department of Commerce* with respect to the *redressability* prong of the Article III inquiry, not uncertainty as to the concreteness or immediacy of the alleged injury.

The parent plaintiffs’ second theory of injury is even more extreme and divorced from precedent: that the mere “uncertainty of not knowing” whether their children have transitioned is causing harm today. Opening Br. 19. The Fourth Circuit properly rejected a similar argument under the Supreme Court’s reasoning in *Clapper*. See *John & Jane Parents 1*, 78 F.4th at 631. The Court should do the same here.

If mere uncertainty were all that was required to support an injury in fact, the result in *Clapper* would have been different. *Clapper* considered a challenge to Section 702 of the Foreign Intelligence Surveillance Act by lawyers and organizations who were concerned that their privileged and confidential communications with foreign clients and colleagues would be intercepted. See 568 U.S. at 406. The plaintiffs were uncertain as to whether the government had

actually intercepted their communications. *Id.* at 411. But plaintiffs’ uncertainty—that is, their “fear[] of hypothetical future harm,” *id.* at 416—was insufficient to establish an injury in fact. *See, e.g., id.* at 410-418. Instead, the Court demanded that plaintiffs show that “the Government will imminently target communications to which [the plaintiffs] are parties.” *Id.* at 411; *see also id.* at 416 (emphasizing that “a nonparanoid fear” is inadequate to show standing); *id.* at 418 (similar).

This Court has also determined that a speculative fear of injury is insufficient to establish an injury in fact. For example, in *In re Zappos.com, Inc.*, 888 F.3d 1020, 1026 (9th Cir. 2018), this Court explained that the theft of a laptop with personal identifying information established injury because the thief “had all the information he needed to open accounts or spend money in the plaintiffs’ names.” For that reason, there was “a ‘substantial risk’ of injury.” *Id.* If plaintiffs had merely alleged a “‘risk that [the laptop] would be stolen at some point in the future,’” their allegations would have been too speculative to show standing. *Id.* at 1027 (quoting *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1143 (9th Cir. 2010)).

Here, too, parents’ allegations that they are harmed by the “uncertainty of not knowing” does not relieve them of their obligation to allege a certainly impending or substantial risk of harm. *See John & Jane Parents I*, 78 F.4th at 631. It is well-settled that an “‘asserted informational injury that causes no adverse effects cannot

satisfy Article III.”’ *TransUnion, LLC v. Ramirez*, 594 U.S. 413, 442 (2021); *see also Laird v. Tatum*, 408 U.S. 1, 10-15 (1972).⁷

b. That parent plaintiffs brought substantive due process and free exercise claims does not change the injury-in-fact analysis, as they assert. *See, e.g.*, Opening Br. 14, 20. Regardless of the nature of the claim, plaintiffs are not exempt from Article III’s requirement to “show an actual or imminent injury to a legally protected interest.” *Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010).

In seeking to lower the bar to show standing on their substantive due process claim, plaintiffs invoke cases involving *procedural* due process. *See* Opening Br. 20. But those cases stand for the settled principle that plaintiffs invoking procedural rights need not satisfy the ordinary requirements for causation and redressability. Those cases are thus irrelevant here two times over. First, they do not relax the requirements for showing an injury in fact, which is what plaintiffs have failed to plausibly allege in this case. *See, e.g., Cantrell v. City of Long Beach*, 241 F.3d 674, 682 (9th Cir. 2001) (“[o]nce a plaintiff has established an injury” in a procedural rights case, *then* “the causation and redressability

⁷ In support of their standing analysis, plaintiffs also cite to one Wisconsin state court order that analyzed standing on similar facts for parent plaintiffs under state statutory requirements, not Article III. *See* Opening Br. 19 (citing *T.F. v. Kettle Moraine Sch. Dist.*, No. 21-cv-1650, 2023 WL 6544917 at *9 (Wis. Cir. Ct., Waukesha Cnty., Oct. 3, 2023)). The Court never analyzed the plaintiffs’ claims under *Clapper* or any of the other cases discussed above. Nor did it apply the more stringent Article III standing standard for injury in fact.

requirements are relaxed”) (emphasis added); *supra* pp. 13-22. Second, those cases apply only in the context of procedural claims, *see Wright v. SEIU*, 48 F.4th 1112, 1121-1122 (9th Cir. 2022), and plaintiffs have not challenged AB 1955 on procedural grounds.

As to their free exercise claim, plaintiffs point to statements from the free speech context to the effect that “plaintiffs may establish an injury in fact without first suffering a direct injury from the challenged restriction.” *Lopez*, 630 F.3d at 785. But all that the Court meant was that to “avoid the chilling effect of sweeping restrictions” on speech, pre-enforcement challenges may move forward where a plaintiff demonstrates “an intention to engage in a [prohibited] course of conduct . . . and a credible threat of prosecution.” *Id.* (quoting *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979)). While this Court has sometimes referred to that test as a “relaxed standing analysis,” that test does *not* relax “the rigid constitutional requirement that plaintiffs must demonstrate an injury in fact to invoke a federal court’s jurisdiction.” *Id.* (quoting *Dream Palace v. Cnty. of Maricopa*, 384 F.3d 990, 999 (9th Cir. 2004)). Plaintiffs still must demonstrate that they “ha[ve] suffered an injury” or at least a “*threat* of injury that is credible, not ‘imaginary or speculative.’” *Id.* at 786 (emphasis added). For the reasons detailed above, plaintiffs have not done so here.

Nor does *Mahmoud v. Taylor*, 606 U.S. 522 (2025), relieve parent plaintiffs of their burden to show that a future injury is certainly impending or at substantial risk of occurring. *See* Opening Br. 18-19. *Mahmoud* addressed the merits of a free exercise claim, not standing. And in *Mahmoud*, the parent plaintiffs demonstrated a substantial risk of harm: they challenged a school system’s use of books as part of its curriculum, and it was undisputed that teachers were “requir[ed] . . . to use [the books] as part of instruction” and “encouraged . . . to approach classroom discussions in a certain way.” *Mahmoud*, 606 U.S. at 560. *Mahmoud* does not stand for the limitless proposition that plaintiffs can challenge any school policy that they disagree with based on their religious beliefs, regardless of whether they adequately allege an injury in fact. *Cf. Doe No.1 v. Bethel Loc. Sch. Dist. Bd. of Educ.*, No. 23-3740, 2025 WL 2453836, at *6-7 & n.3 (6th Cir. Aug. 26, 2025) (rejecting an expansive reading of *Mahmoud*).

As the Supreme Court has repeatedly held, “offense alone” or “[t]he presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself to meet Art[icle] III’s requirements.” *E.g., Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 80 (2019) (Gorsuch, J., concurring) (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986)). In order to satisfy standing requirements, a free exercise plaintiff must still “show the coercive effect of the enactment as it operates against him in the practice of his religion.” *Harris v.*

McRae, 448 U.S. 297, 321 (1980) (internal quotation marks omitted); *see also Braunfeld v. Brown*, 366 U.S. 599, 615 (1961) (Brennan, J., concurring and dissenting) (plaintiff must “show that his good-faith religious beliefs are hampered before he acquires standing to attack a statute under the Free-Exercise Clause”). Although plaintiffs allege that AB 1955 conflicts with their sincerely held religious belief that gender is immutable, *see* ER-158, a “description of [] religious beliefs” without injury is insufficient to establish “the personal stake in the controversy needed to confer standing.” *Harris*, 448 U.S. at 320. To allow a lawsuit to move forward without such a “personal stake” would undermine the core purpose of Article III standing, which “serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Clapper*, 568 U.S. at 408.

2. Parent plaintiffs fail to show causation

The district court determined that the plaintiffs lacked standing because they could not establish injury in fact. Even if the parent plaintiffs could satisfy the injury requirement, however, the Court should exercise its discretion to affirm the dismissal because plaintiffs also fail to satisfy the standard for causation. *See Silk v. Bond*, 65 F.4th 445, 456 (9th Cir. 2023) (holding that this Court “may affirm the district court’s dismissal on any ground that is supported by the record”).

Causation requires the plaintiff to show “that the injury was likely caused by the defendant.” *TransUnion*, 594 U.S. at 423. To satisfy causation, a plaintiff must show that an alleged injury is “fairly traceable” to the defendant’s alleged misconduct and not the result of third-party conduct. *Lujan*, 504 U.S. at 560-561 (alterations and internal quotation marks omitted). “The line of causation . . . must be more than attenuated” and any links in the causal chain must be plausible, *Wash. Env’t Council v. Bellon*, 732 F.3d 1131, 1141 (9th Cir. 2013) (internal quotation marks omitted), not merely “hypothetical or tenuous,” *id.* at 1142. “[I]t is ordinarily ‘substantially more difficult’” to establish causation where, as here, “the plaintiff is not himself the object of the government action . . . he challenges.” *Lujan*, 504 U.S. at 562. A plaintiff may not “rely on speculation about ‘the unfettered choices made by independent actors not before the courts.’” *Clapper*, 568 U.S. at 414 n.5. Like the injury-in-fact requirement, “the causation requirement screens out plaintiffs who were not injured by the defendant’s action.” *All. for Hippocratic Med.*, 602 U.S. at 383.

None of the parent plaintiffs have established that AB 1955 has prevented or will prevent them from receiving information about their children’s gender identity or social transition. The district court’s order appears to have misunderstood the scope of AB 1955, suggesting that the Act “prohibits California public schools from disclosing to parents instances in which a parent’s child goes by a different

name or gender pronoun at school.” ER-5. But the Act is much more limited. It does not mandate that school officials have any role in whether, when, or how a student requests to socially transition at school. It does not mandate that schools “transition” children without parental consent. And its provisions do not “forbid a school district from adopting a policy that employees *may* elect to make such disclosures.” *City of Huntington Beach v. Newsom*, No. 25-3826, 2025 WL 3169324, at *2 (9th Cir. Sept. 12, 2025). Under AB 1955, a school district remains free to adopt a policy forbidding disclosure or allowing disclosure based on a student’s individual circumstances. Cal. Dep’t of Just., *Legal Alert*, *supra*, at 2.

AB 1955 only prevents school officials from adopting *mandatory* disclosure policies of information related to a student’s sexual orientation, gender identity, or gender expression. Cal. Educ. Code §§ 220.3(a), 220.5(a). To the extent plaintiffs wish to challenge the refusal of school officials to share information with parents, that injury would be caused by the independent judgment of *those* officials or a districtwide policy of nondisclosure, not the state officials tasked with implementing AB 1955. Compare, e.g., *Regino v. Staley*, 133 F.4th 951, 956 (9th Cir. 2025) (suit addressing legality of district policy barring disclosure of student’s “preferred name and pronouns” without student’s permission, unless required by law or necessary to preserve student’s physical or mental well-being). Parent plaintiffs have not alleged facts that demonstrate that it is “sufficiently predictable”

that those “third part[y]” officials will decline to disclose that information as a result of AB 1955. *All. for Hippocratic Med.*, 602 U.S. at 383. Although plaintiffs assert an injury based on “general, legal, moral, ideological, and policy concerns,” they should not be permitted to “advance . . . complicated causation theories to connect [AB 1955] to [their] alleged injuries in fact.” *Id.* at 386. The theoretical possibility that plaintiffs would have standing to sue the school districts or officials in a future case does not give them standing to bring this suit challenging a state law that does not cause the putative injury they have alleged.

B. The LEA Plaintiffs Lack Standing Under this Court’s Longstanding Limits on the Ability of Political Subdivisions to Sue Their Parent State

The district court also correctly concluded that the LEA plaintiffs lack standing. Circuit precedent has long established that political subdivisions, such as school districts, do not have standing in federal court to challenge state laws under the federal constitution. *See, e.g., City of S. Lake Tahoe v. Cal. Tahoe Reg’l Plan. Agency*, 625 F.2d 231, 233-234 (9th Cir. 1980); *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998); *City of Huntington Beach v. Newsom*, No. 23-3694, 2024 WL 4625289, at *1 (9th Cir. Oct. 30, 2024), *pet’n for rehearing en banc denied*, 134 F.4th 1025, *cert. pending*, No. 25-337. That principle, established in *South Lake Tahoe*, applies to lawsuits against the State, as well as actions by political subdivisions “seeking declaratory

and injunctive relief against unconstitutional actions taken by state officers in their official capacities.”” *Palomar Pomerado Health Sys. v. Belshe*, 180 F.3d 1104, 1108 (9th Cir. 1999).⁸

Plaintiffs concede that *South Lake Tahoe* is binding, but ask the panel to reexamine that precedent here. Opening Br. 25-26. That request is properly directed to the full court in an en banc petition, not this three-judge panel. *See Miller v. Gammie*, 335 F.3d 889, 899 (9th Cir. 2003) (en banc). That LEA plaintiffs bring a FERPA claim under the Supremacy Clause does not change the result.⁹ This Court has repeatedly “declined to recognize an exception [to *South*

⁸ The Supreme Court’s decision in *Board of Education v. Allen*, 392 U.S. 236 (1968) was issued before *South Lake Tahoe* and is not to the contrary. *Cf.* Opening Br. 23. A short footnote in *Allen* suggests that public officials have standing if they must “choose between violating their oath [to uphold the Constitution] and . . . refus[ing] to comply with . . . the [challenged] statute.” 392 U.S. at 241 n.5. But because the Supreme Court “significantly tightened standing requirements” in the years after *Allen*, its brief discussion of standing is no longer “binding Supreme Court precedent.” *South Lake Tahoe*, 625 F.2d at 236, 237; *see also Drake v. Obama*, 664 F.3d 774, 780 (9th Cir. 2011).

⁹ Plaintiffs overstate the degree to which other courts have disagreed with *South Lake Tahoe*. Although some courts of appeals have allowed preemption claims to proceed, *see, e.g., Ocean Cnty. Bd. of Comm’rs v. Att’y Gen. of N.J.*, 8 F.4th 176, 181 (3d Cir. 2021), there is no disagreement about categorically barring political subdivisions from suing their parent State under “constitutional provisions that ‘provide substantive restraints on state action.’” *Kerr v. Polis*, 20 F.4th 686, 701 (10th Cir. 2021) (en banc). Some courts treat that as a standing-based limit. *See, e.g., Tweed-New Haven Airport Auth. v. Tong*, 930 F.3d 65, 73 n.7 (2d Cir. 2019); *Ocean Cnty.*, 8 F.4th at 181 n.3. Some treat it as a merits-based limit. *See Kerr*, 20 F.4th at 696 n.4. But either way, the practical effect is the same: political
(continued...)

Lake Tahoe] for Supremacy Clause claims.” *Okanogan Sch. Dist. #105 v. Superintendent of Pub. Instr. for State of Wash.*, 291 F.3d 1161, 1165 (9th Cir. 2002). And even if plaintiffs could invoke an exception for preemption claims, plaintiffs’ claim that “AB 1955 is preempted by federal constitutional law,” ER-168, would not meet the exception because it simply repackages plaintiffs’ First and Fourteenth Amendment allegations.

II. THE GOVERNOR IS ENTITLED TO ELEVENTH AMENDMENT IMMUNITY

The district court generally granted parent plaintiffs leave to amend but dismissed their claims against the Governor with prejudice. ER-18. Because the Governor is entitled to Eleventh Amendment immunity, that decision was correct. Even if plaintiffs could theoretically amend their complaint to establish standing, they could not amend in any ways that would allow suit against the Governor.

“The Eleventh Amendment generally bars the federal courts from entertaining suits brought by a private party against a state or its instrumentality in the absence of state consent.” *Los Angeles Cnty. Bar Ass’n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992). The exception under *Ex Parte Young*, 209 U.S. 123, 157 (1908) “provide[s] a pathway to relief from continuing violations of federal law by a state or its officers” where the state officer has “some connection with the enforcement of

subdivisions cannot raise constitutional claims other than preemption against their parent State.

the” challenged statute, *Eu*, 979 F.2d at 704. The enforcement connection “must be fairly direct; a generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit.” *Id.*

The Governor has no direct enforcement power over AB 1955. Plaintiffs contend that because the state Constitution vests “[t]he supreme executive power of th[e] State” in the Governor, the Governor does not enjoy Eleventh Amendment immunity in this case. Opening Br. 27. But this Court has repeatedly rejected the argument that the Governor’s “general duty to enforce California law” under the state constitution is sufficient to waive sovereign immunity. *Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 943 (9th Cir. 2013); *see also Los Angeles Branch NAACP v. Los Angeles Unified Sch. Dist.*, 714 F.2d 946, 953 (9th Cir. 1983).

The Governor’s “statutory authority over the state education budget,” Opening Br. 27, is likewise insufficient to establish the requisite enforcement connection for purposes of *Ex Parte Young*. The California Constitution requires that the Governor submit a budget recommendation at the beginning of the year, which the Legislature can modify, reject, or approve. *See* Cal. Const. art. IV, § 12; Cal. Gov’t Code § 13337. But this Court has rejected arguments that the Governor’s authority to “mak[e] general policy and budget recommendations” for

state education establishes the connection between the Governor and the allegedly unconstitutional act. *Los Angeles Branch NAACP*, 714 F.2d at 953. The Governor’s power to veto state legislation—including his “power to veto the appropriation of reimbursement funding” for school district mandates, *see California School Boards Ass’n v. Brown*, 192 Cal. App. 4th 1507, 1512 (2011)—also cannot establish the Governor’s enforcement power over AB 1955. *Contra* Opening Br. 28. Such a broad rule would render the immunity afforded to the Governor meaningless, because the Governor possesses veto authority over all legislation and could presumably be sued for any allegedly unconstitutional state law.

The district court did not abuse its discretion in denying plaintiffs’ request to amend. ER-18. “Leave to amend may be denied if the proposed amendment is futile or would be subject to dismissal.” *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1059 (9th Cir. 2018). While plaintiffs allege that they would amend their complaint to show that the Governor unilaterally “stripped \$1.5 million in funding from the Temecula Valley Unified School District,” Opening Br. 28, the press release they reference in fact announces that the Governor was “working with the Legislature and Superintendent of Public Instruction Tony Thurmond to *enact legislation* to impose fines on any school district that fails to provide adequate

instructional materials.”¹⁰ Plaintiffs fail to explain how a piece of proposed legislation concerning textbooks demonstrates the Governor’s direct enforcement power over AB 1955.

AB 1955 does not empower the Governor to suspend funding for school districts that violate its provisions, nor have plaintiffs alleged that the Governor has ever unilaterally suspended funding to school districts that have violated AB 1955. Plaintiffs should not be permitted to use the “Governor as a surrogate for the state” to circumvent Eleventh Amendment immunity. *Los Angeles Branch NAACP*, 714 F.2d at 953.

III. THE DISTRICT COURT PROPERLY DISMISSED THE FERPA CLAIMS

The district court included a brief discussion of the merits of plaintiffs’ FERPA claims in the final order, ER-17-18, but that provides no basis for reversal, Opening Br. 4. The district court’s standing analysis plainly extends to all of plaintiffs’ claims—both the constitutional claims and the FERPA challenge. ER-8-16. It was not error—and certainly not prejudicial error requiring reversal—for the district court to make a brief observation about the merits of FERPA in a decision otherwise focusing on standing.

¹⁰ Press Release, Off. of Gov. Gavin Newsom, *Governor Newsom Announces Contract to Secure Textbooks for Students in Temecula* (July 19, 2023), <https://tinyurl.com/4wz7erd3/> (emphasis added).

In any event, the district court’s brief analysis of the FERPA claim was correct as a matter of law. As the district court explained, AB 1955 “has an explicit carveout for any conflict with federal law (i.e., FERPA).” ER-17; *see* Cal. Educ. Code §§ 220.3(a), 220.5(a). And even setting aside that carveout, AB 1955 does not conflict with FERPA. As a condition of federal funding, FERPA provides parents the right to “inspect and review” upon request written documents that fall within the definition of “education records.” *See* 20 U.S.C. § 1232g(a)(1)(A). It does not provide the right for a parent to be affirmatively notified when their student requests to use a different name or pronoun. *Id.* §§ 1232g(a)(1)(A), (a)(2), (a)(4). AB 1955 only prohibits school districts from adopting mandatory policies that require schools to affirmatively notify parents when a student requests to change information related to their sexual orientation, gender identity, or gender expression. *See supra* pp. 3-7. AB 1955 by its plain terms would therefore not prevent a parent from accessing and inspecting student records under FERPA.

CONCLUSION

The judgment of the district court dismissing plaintiffs' claims for lack of subject matter jurisdiction should be affirmed.

Dated: December 2, 2025

Respectfully submitted,

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STATEMENT OF RELATED CASES

The following related case is pending: *City of Huntington Beach v. Newsom*,
No. 25-3826.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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