

SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

X.A., a minor, by and through his
next friends P.A., his father **and**
M.A., his mother,

Plaintiff

No. 3PA-24-01525 CI

v.

**Matanuska-Susitna Borough
School District,**

Defendant

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff X.A., by and through counsel and his next friends and parents P.A. and M.A., moves for a preliminary injunction. He asks this Court to enjoin Mat-Su Borough School District Policy 5134 BP, which forbids transgender students from using restrooms aligned with their gender identities. He also asks the Court to enjoin the Defendant Mat-Su Borough School District's policies and practices that publicize X.A.'s former name and transgender status in violation of his privacy. This motion is supported by the attached memorandum of law and exhibits, which establish that X.A. faces irreparable harm and is likely to succeed on the merits of his claims that the Defendant's policies violate the Alaska Constitution's rights to equal protection and privacy.

X.A. v. Matanuska-Susitna Borough School District
MOTION FOR HEARING ON PLAINTIFF'S MOTION FOR P.I.

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DATED this 4th day of September, 2024.

Respectfully Submitted,

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MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION

INTRODUCTION

From time to time, we are called upon to decide constitutional cases that touch upon the most contentious moral, ethical, and political issues of our day. In deciding such cases, we are ever mindful of the unique role we play in our democratic system of government. We are not legislators, policy makers, or pundits charged with making law or assessing the wisdom of legislative enactments. We are not philosophers, ethicists, or theologians, and cannot aspire to answer fundamental moral questions or resolve societal debates. We are focused only on upholding the constitution and laws of the State of Alaska.¹

This quote defines this Court's role in this case. Plaintiff's motion for a preliminary injunction requires the Court to address what the Alaska

¹ *State v. Planned Parenthood of Alaska*, 171 P.3d 577, 579 (Alaska 2007) (internal quotes omitted), quoted in *Planned Parenthood of the Great Northwest*, 375 P.3d 1122, 1133 (Alaska 2016).

Constitution's Equal Protection and Privacy Clauses require public schools to do to protect, keep safe, and provide an adequate learning environment for one of their most vulnerable student populations: transgender children. In this case, the bathroom and informational privacy policies of defendant Matanauska-Susitna Borough School District are subjecting plaintiff X.A., a transgender elementary school student, to irreparable harm by singling him out as transgender and indiscriminatorily broadcasting his transgender status to students, teachers, and staff who have no legitimate need to know this information. These actions violate X.A.'s right to be treated equally and to keep his deeply personal information private; they open him up to bullying, harassment, and ridicule; and they interfere with his physical and mental health. X.A. asks this Court to enter a preliminary injunction protecting him from these harms during the pendency of this litigation, thereby making good on the promises that the Alaska Constitution makes to safeguard all Alaskans against discrimination and harmful government intrusions into their personal lives.

Statement of Facts

A. Sex, Gender Identity, and the Unique Risks Transgender Children Face

Gender identity refers to one's innate sense of belonging to a particular gender. A person's gender identity emerges at a young age and,

generally by age four, “gender identity is stable.”² All people have a gender identity; for most, their gender identity conforms with their sex assigned at birth. Transgender people, however, experience a gender identity that is incongruent with the sex they were assigned at birth.

The American Psychiatric Association explains that being transgender is not an illness or affliction to be fixed; it will not go away, and it “implies no impairment in [a person’s] judgment, stability, reliability, or general social or vocational capabilities.”³ Numerous other leading representatives of the healthcare community and major medical organizations, including the American Academy of Pediatrics, the American College of Physicians, and the American Academy of Child and Adolescent Psychiatry, join in this overwhelming medical consensus.⁴

² David A. Levine et al., *Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 PEDIATRICS e297, e299 (July 2013) (reaffirmed April 2021) (Technical Report of American Academy of Pediatrics), available at <https://pediatrics.aappublications.org/content/pediatrics/132/1/e297.full.pdf>.

³ Jack Drescher et al., *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals*, AM. PSYCHIATRIC ASS’N OFFICIAL ACTIONS 1 (July 2018), available at <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf>.

⁴ See, e.g., Brief of Amici Curiae Medical, Public Health and Mental Health Organizations in Support of Plaintiff-Appellee, *Grimm v. Gloucester*

Many, but not all, transgender people experience a condition known as “gender dysphoria,” which the American Psychiatric Association recognizes as “the distress caused by the body and mind not aligning and/or societal marginalization of gender-variant people.”⁵ The international consensus throughout the healthcare community is that the appropriate treatment for gender dysphoria, and also a way to prevent gender dysphoria from occurring, is to support the transgender person’s social transition, so that they may live fully in accordance with their gender identity. This process of social transitioning may take several forms, including use of a new name and pronouns, new clothes and hairstyles, and living in all respects in accordance with a person’s gender identity.⁶ Older transgender persons may also benefit from age-appropriate medical care

Cnty. Sch. Bd., 972 F.3d 586 (4th Cir. 2020) (No. 19-1952, ECF No. 32-1) [hereinafter “Academy of Pediatrics Amicus Br.”].

⁵ Eric Yarbrough et al, *Gender Dysphoria Diagnosis*, AM. PSYCHIATRIC ASS’N (2017), *available* at <https://www.psychiatry.org/psychiatrists/cultural-competency/education/transgender-and-gendernonconforming-patients/gender-dysphoria-diagnosis>; *see also* AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 511–520 (5th ed. 2022) (“DSM-5”).

⁶ *See* Eli Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People*, WORLD PROF’L ASS’N FOR TRANSGENDER HEALTH (8th Version 2022), at 575-76 [hereinafter “WPATH Guidelines”], *available* at <https://www.tandfonline.com/doi/full/10.1080/26895269.2022.2100644>.

such as puberty blocking medications, hormone therapy, and gender-confirming surgery.⁷

Respecting a child's social transition with full acceptance and support protects his mental health, whereas failing to support transgender children in their transitions has profound negative consequences. "Transgender children who live in accordance with their gender identity in all aspects of life have lower rates of depression compared to transgender children who have not socially transitioned."⁸ While "acceptance and affirmation" of a child's gender identity and social transition "are associated with fewer negative mental health and behavioral symptoms and more positive mental health and behavioral functioning," the opposite is true where a child's gender identity and expression are not supported: "Rejection by family, peers, and school staff (e.g., intentionally using the name and pronoun the youth does not identify with, not acknowledging affirmed gender identity, bullying, harassment . . .)" is "strongly linked to negative outcomes, such as anxiety, depression, suicidal ideation, suicide attempts, and substance use."⁹

⁷ *Id.*

⁸ Academy of Pediatrics Amicus Br. at 14.

⁹ WPATH Guidelines, *supra* note 6, at 552, 5107.

Support and acceptance of a child's social transition is especially crucial for younger children. Prepubescent children like X.A. who are well-supported and accepted in their diverse gender identities are generally well-adjusted.¹⁰ Research shows that respecting and supporting a child in their social transition at a young age can provide a protective effect against development of gender dysphoria and other negative mental health outcomes: early childhood “offers a window of opportunity to promote a trajectory of well-being that will sustain [transgender children] over time and during the transition to adolescence,” which can “potentially mitigate some of the common mental health risks faced by transgender and gender diverse (TGD) teens, as frequently described in literature.”¹¹

Bathroom use in accordance with a person's gender identity is a critical aspect of social transition and a critical protection for transgender children. Transgender children are already more likely to experience bullying, harassment, and rejection from peers. The stress from such bullying and rejection is exacerbated by having to use a restroom that does not reflect the gender consistent with their sense of self and public identity, thereby forcing them to reveal their transgender status in order to use the

¹⁰ *Id.* at 568.

¹¹ *Id.*; *see also id.* at 577.

restroom.¹² This involuntary outing of a person's transgender status is detrimental to their well-being because control over the circumstances of disclosure is fundamental to the development of individuality and autonomy.¹³ Forcing a transgender person to use a restroom that does not align with their gender identity thus can cause or exacerbate gender dysphoria, leading to detrimental mental, emotional, and health consequences.¹⁴ In particular, research shows that denial of access to bathrooms corresponding with their gender identities corresponds with increased suicidality in transgender persons.¹⁵

¹² See Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, Nat'l Ctr. for Transgender Equality 134 (2016), available at <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹³ See Am. Acad. of Pediatrics, *American Academy of Pediatrics Opposes Legislation that Discriminates Against Transgender Children* (May 1, 2016), available at <https://www.aapdc.org/2016/05/01/american-academy-of-pediatrics-opposes-legislation-that-discriminates-against-transgender-children/>.

¹⁴ See Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. HOMOSEXUALITY 1378, 1388–89 (2016), available at https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1065&context=ssw_facpub; WPATH Guidelines, *supra* note 6, at 5174-75.

¹⁵ Seelman, *supra* note 14, at 1388–89 (finding that 60.5% of transgender college students who had been denied access to facilities corresponding to their gender had attempted suicide); WPATH Guidelines, *supra* note 6, at 5174-75.

These well-established, evidence-based mental health principles have important implications for schools. Multiple studies have found that school policies and programs intended to prevent bullying of LGBTQ+ students reduce rates of depression, suicidality, and other negative outcomes.¹⁶ Schools with transgender-inclusive policies pose lower risks of harassment, violence, or anti-LGBTQ+ remarks at schools.¹⁷ In order to avoid devastating mental health consequences for this vulnerable class of children, the American Psychiatric Association recommends that schools permit transgender students “to have access to the sex-segregated facilities, activities, and programs that are consistent with their gender identity, including, but not limited to, bathrooms, locker rooms, sports teams, and classroom activities.”¹⁸ Use of a transgender person’s chosen name similarly is associated with lower rates of depression and suicidality,¹⁹ so this is another important step that schools can take to

¹⁶ See Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools, Am. Psychiatric Ass’n 1, 3 (2015), available at <https://www.apa.org/about/policy/orientation-diversity>.

¹⁷ See Joseph G. Kosciw et al., The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools, GLSEN xxi–xxv (2020), https://www.glsen.org/sites/default/files/2020-10/NSCS-2019-Full-Report_0.pdf.

¹⁸ Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools, *supra* note 16, at 3.

¹⁹ WPATH Guidelines, *supra* note 6, at 5174-75.

support the mental health of transgender students and decrease the likelihood of negative mental health outcomes in this class of students.

B. Mat-Su Borough School District Policy On Bathroom Usage Before 2022.

For at least seven years preceding fall 2022, the Mat-Su Borough School District's policy permitted transgender students to use restrooms consistent with their gender identities. [Exh. 1 (Matanuska-Susitna Borough School District, *Comprehensive Transgender Student Guidelines*); Exh. 2 (Transcript of MSBSD Meetings) at 9/7 Tr. 58-59²⁰] As the previous section demonstrates, the former policy reflected sound science and the recommendations of major medical, psychiatric, and educational authorities as representing evidence-based best practices and research regarding transgender children and how critical it is for their safety, well-being, and effective learning that their gender identity and gender presentation is respected at school and that they be permitted to use bathrooms that are consistent with their gender identities.

The District's pre-2022 policy, titled *Comprehensive Transgender Student Guidelines*, addressed numerous aspects of the School District's

²⁰ Exhibit 2 consists of transcriptions of the public testimony portions of the meetings of the Defendant School Board held on Sept. 7, 2022; October 5, 2022; and October 9, 2022. This motion cites the transcript by date and transcript page number.

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policies for working with transgender students with the goals of fostering a learning environment that is safe and free from discrimination, harassment, and bullying, and assisting in the educational and social integration of transgender students. [Exh. 1 at 1] Those Guidelines stated that a student would be considered transgender “if, at school, he/she consistently asserts a gender identity or expression different from the gender assigned at birth. This involves more than a casual declaration of gender identity or expression, but it does not necessarily require a medical diagnosis.” [*Id.* at 2]

In the section titled “Guidance on Specific Issues,” the Guidelines provided that transgender students should be permitted to use the restroom matching the gender identity that they “consistently assert at school”:

A student who has been identified as transgender under these guidelines should be permitted to use the restrooms assigned to the gender which the student consistently asserts in school. A transgender student who expresses a need for privacy will be provided with reasonable alternative facilities or accommodations such as using a separate stall or a staff facility. However, a student shall not be required to use a separate gender-neutral facility over his/her objection.

[*Id.* at 3-4]

This policy was not only consistent both with medical and psychiatric evidence and best practices; it also was harmonious and consistent with

other, longstanding District policies requiring the District to ensure a safe and effective educational environment through respect for the personal autonomy of all students, including transgender students; committing to nondiscrimination against any students, including transgender students; protection of student privacy; and prohibition of harassment and bullying of all students.

The District's longstanding non-discrimination policy requires that all programs and activities must be free from discrimination, including discrimination on the basis of sex and gender identity: "District programs and activities shall be free from discrimination with respect to sex, race, color, religion, national origin, sexual orientation, gender identity, ethnicity, marital or parental status, and physical or mental disability."²¹ District policy also requires the District to provide an environment for students that is free from harassment and discrimination on these bases: "It is the intent of the district to provide an environment for students that is free from harassment and discrimination whether based on sex, gender identity, . . . or any other unlawful consideration."²² Policies further require

²¹ MSDSB Policy 5145.03 BP (adopted Aug. 7, 1995 and last revised Nov. 7, 2018). Current District policies are available at <https://go.boarddocs.com/ak/matsu/board.nsf/public#>.

²² MSDSB Policy 5145.07 AR (adopted Aug. 7, 1995 and last revised Nov. 7, 2018).

the School Board to “promote programs which ensure that discriminatory practices are eliminated in all district activities.”²³ A specific District policy requires that “[r]ecords pertaining to individual students of the District” generally must be kept confidential, as must any “other record or records for which a legitimate and clearly demonstrable need for confidentiality exists.”²⁴ District policies require that parents and students have an opportunity to object to disclosure of information about the student, including their name as assigned at birth.²⁵ And district policy confirms that students “have the right to make individual choices from a wide range of clothing and grooming styles” and commits that “[a] student’s style of dress and grooming will not be regulated by the School District, except to the extent reasonably necessary to promote the educational environment.”

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C. Policy Change In Autumn 2022

September 7, 2022 School Board meeting. On September 7, 2022, the School Board’s Policy Committee presented a “report” and an

²³ MSDSB Policy 0410 BP (adopted June 5, 1995 and last revised Feb. 6, 2013).

²⁴ MSDSB Policy 1340 AR (1), (17).

²⁵ MSDSB Policy 5125 BP (F) (adopted March 5, 2008 and last revised Nov. 7, 2018).

²⁶ MSDSB Policy 5132 BP (Aug. 7, 1995); 5144.01 BP(B)(2)(e) (adopted Aug. 7, 1995 and last revised June 5, 2024).

“emergency” proposal to suspend the then-current restroom and locker room policy. [Exh. 2 at 9/7 Tr. 2-4]

The “report” was a two-paragraph statement read into the record by School Board and Policy Committee member Ole Larson. [Exh. 2 at 9/7 Tr. 2-3] The report stated that “[a] federal judge has enjoined the United States Department of Education Title IX guidance allowing transgender students to use communal bathrooms and locker rooms that match their gender identity.” [*Id.*] The Policy Committee report apparently referred to a then-recent decision from a Tennessee federal district court, which held that certain states, including Alaska, were entitled to a preliminary injunction against the U.S. Department of Education (“DOE”) based on the claim that DOE had not complied with the notice and comment requirements of the federal Administrative Procedure Act when it promulgated its June 2021 Guidance on the application of Title IX to transgender students.²⁷

The Policy Committee report asserted that the Mat-Su School District “has been following that [G]uidance in its transgender student guidelines,” and that the “court action affords the committee an opportunity to review its current policy regarding such matters, and for the

²⁷ See *Tennessee v. U.S. Dep’t of Educ.*, 615 F. Supp. 3d 807, 839-40 (E.D. Tenn. 2022), *appeal filed* (6th Cir. Sept. 13, 2022).

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district administration to review its guidelines regarding student use of communal bathrooms and locker rooms that match their gender identification.” [Exh. 2 at 9/7 Tr. 3] This explanation for the genesis of the policy change was, however, not accurate, as the bathroom policy in effect in 2022 was *not* based on the DOE Guidance that was enjoined by the Tennessee district court. Instead, as noted above, the District’s policy on restroom and locker room usage predated the challenged DOE Guidance by six years or more. [Exh. 2 at 9/7 Tr. 58-59]²⁸

²⁸ Further, the Committee misunderstood (or misstated) the nature of the DOE guidance and the significance of the Tennessee court’s order. The report implied that, by invalidating the DOE guidance, the Tennessee court order forbade schools from enacting policies permitting transgender students to use communal restrooms consistent with their gender identity. [Exh. 2 at 9/7 Tr. 2-3] In fact, the DOE Guidance asserted no specific position on school restroom policies for transgender students, though it cited cases that interpreted Title IX to require schools to permit transgender students to use the restroom consistent with their gender identity, and was invalidated only on procedural grounds. *See Enforcement of Title IX of the Education Amendments of 1972 with respect to Discrimination on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 22637 (June 22, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-13058.pdf>.

In any case, because the DOE Guidances interpret a federal statute and not the Alaska Constitution, the federal courts’ approval or disapproval of the process of adopting the Guidance has no legal effect on whether any Mat-Su Borough School District policy violates the Alaska Constitution. X.A. is not asserting any claim in this litigation based on Title IX or any other federal statute or source of law, including the United States Constitution.

On behalf of the Policy Committee, Larson requested that the School Board vote that day on an emergency action to direct Superintendent Trani to suspend the District’s restroom and locker room policies then in effect and instead require all students to use the communal restrooms and locker rooms that match their sex assignment at birth, or else use a private restroom or changing room. [Exh. 2 at 9/7 Tr. 3-4] Larson cited no recent incident or problem in the many years that the Mat-Su Comprehensive Transgender Student Guidelines were in effect and described no logistical problems with the District’s ability to administer the Guidelines. [*Id.*]

Following Larson’s reading of the Policy Committee’s brief report, the School Board president noted that the recommendation to suspend the District’s restroom policy was an “emergency measure,” rather than a proposed permanent policy. [Exh. 2 at 9/7 Tr. 6] But neither he nor any other member of the Board explained what the emergency was or why a sudden policy change was necessary.

The Board then opened the floor to public testimony. This testimony illustrates a coordinated effort by community residents opposed to the policy then in effect based almost exclusively on political, religious, and other views about transgender people—rather than any specific concerns about how the then-current policy was affecting the District’s students or any logistical or practical concerns about its implementation.

The first speaker called passionately for repealing the existing policy. [Exh. 2 at 9/7 Tr. 7-9] She described her daughter's discovery that "there was a biological male" in the girls' locker room. [Exh. 2 at 9/7 Tr. 8] She did not explain how her daughter knew that another person was a "biological male." [Id.] Nor did she describe anything *happening* to her daughter as a result of this person allegedly being in a locker room; there was no claim of assault or harassment, for example. Instead, the entire issue seemed to be personal discomfort with this person's presense. The speaker concluded her remarks by saying that "it is neither safe, nor healthy, for our biological females to be undressing with biological male youth within its district." [Exh. 2 at 9/7 Tr. 9] She then asked "those of you in the audience that agree to please stand and show your support." [Id.] The video of the meeting reflects that the speaker then turned around and swept her arm, as if conducting a choir to rise. Thus summoned, nearly every person visible to the camera (numbering well over fifty people) rose.²⁹ After this display of coordination, twenty-six additional speakers spoke in support of repealing the District's policy that allowed transgender students

²⁹ The video is available at:
<https://vimeo.com/showcase/11062381?page=2&page=3&page=4&page=5>
at 22:30-40.

to use restrooms and locker rooms consistent with their gender identity, without a single dissenting voice at that meeting. [Exh. 2 at 9/7 Tr. 9-55]

Those who spoke at this first meeting often expressed their support for repealing the then-existing policy in overtly religious terms. Many denied the science concerning transgender individuals, insisting essentially that being transgender is just a misguided belief, a casual choice, or a product of teen-age confusion.³⁰ A number of speakers went

³⁰See, e.g., Exh. 2 at 9/7 Tr. 9-10 (“We believe that God created man, us as man and woman. Sex and gender are determined at conception, . . . not assigned at birth. We disagree with accommodating transgender students in communal restrooms/locker rooms based on identity.”), 10-12 (speaker described himself as compassionate to the “confused young people in our district suffering from gender dysphoria, otherwise known as transgenderism”), 13 (speaker called “the transgender movement’s claims unscientific” and “their plan to let teenagers determine their own gender, madness”), 16 (“Feelings of gender confusion can be very real to some people . . . but we must spread the word that feelings are not facts, and feelings do not change the essence of anatomy and sex.”), 19 (“Listen, God created man and woman. He created male and female. Please get rid of this perverse policy.”), 19-20, 21 (Speaker asserted that Trotsky and Marx “brought in transgenderism. They brought in homosexuals This is what this is all about, is turning America upside down and trying to make it a communist country.”), 25-26 (speaker asserted that schools must tell the truth to children and the reality is that “feelings of angst and social anxiety . . . do not mean that he becomes a she or vice versa”), 30 (“God doesn’t make mistakes. Satan, the deceiver, is the one that . . . is trying to confuse our children.”), 34-35 (“I have strong beliefs that God created male and female for a purpose, and we are created perfectly as we are meant to be. I believe the body parts we are born with determine . . . if a person is male or female. . . . I have a right to expect equal treatment of our beliefs and preferences.”), 36-37 (“The term ‘gender identity’ confuses me. . . . A child cannot think themselves into a different sex, no more than they can think themselves into becoming a dragon or a cat.”), 44 (the existing policy

even further, implicitly equating transgender youth with sex offenders. [Exh. 2 at 9/7 Tr. 13-16, 25, 29, 34, 42, 51] Some referred to an incident from a Virginia school where, as one speaker put it, a “skirt-wearing male” sexually assaulted a girl in a school restroom. [Exh. 2 at 9/7 Tr. 13; *see also id.* at 9/7 Tr. 43, 50, 55]³¹ Beyond citing this one anecdote occurring thousands of miles away, no one presented any evidence that allowing transgender students to use restrooms consistent with their gender identity increases the risk of sexual violence against non-transgender students. Nor did any speaker describe any kind of assault, harassment, or other identifiable incident that had ever occurred in the Mat-Su schools.

Another very common theme was that non-transgender girls need to

will “groom these innocent children into accepting that which goes against nature, common sense, and the Word of God”), 46-47, 53 (“There is no scientific evidence to suggest sexual confusion is anything but an expression of emotional distress. . . . [These issues] are learned, practiced, and chosen behaviors. Perhaps it is linked to the breakdown of the family or culture. Perhaps it is a form of Munchausen syndrome. Maybe it is simply fashionable.”).

³¹ This single, sensationalized incident obviously victimized one girl, and the perpetrator was convicted and punished for a sexual assault. News coverage does not make clear whether the offender was actually transgender or a non-transgender male dressed as a female. *See Sexual assault victim files \$30M lawsuit against Loudoun Co. school board*, available at wtop.com/loudoun-county-2023/10/school-bathroom-sexual-assault-victim-files-30m-lawsuit-against-loudoun-co-school-board (Oct. 6, 2023) (reporting that in May 2021 a girl “was sexually assaulted by a male student”).

be protected against being in private spaces with “biological males,” by which the speakers clearly meant transgender girls. [Exh. 2 at 9/7 Tr. 12, 15-16, 18, 20, 23, 27-28, 29, 30, 38, 40, 49, 54-55] The desired protection for non-transgender girls covered protection of their privacy, as well as protection against assault. [*Id.*] One speaker noted that her daughter’s school had created four “privacy stalls” inside the girls’ locker room, but she was concerned that a transgender student might not use them, “forc[ing]” the non-transgender girls to wait for their turn to use these spaces or not change their clothes at all. [Exh. 2 at 9/7 Tr. 23] A few suggested creating separate bathrooms for transgender students. [Exh. 2 at 9/7 Tr. 10, 20, 35] Many speakers contended that allowing transgender children to use restrooms consistent with their gender identity violates the rights of non-transgender children and elevates the interests of a small minority of transgender students over those of the vast majority of non-transgender children. [Exh. 2 at 9/7 Tr. 11-12, 23, 31-32, 34-35, 39, 41-43, 46, 50-51]³² No one suggested that a non-transgender student who is uncomfortable in a shared restroom could be the one to use a separate, private facility to respectfully alleviate their personal discomfort with other students.

³² Some speakers also expressed their discomfort with policies requiring schools to use the pronouns students request and policies regarding transgender students’ participation on sports teams, though neither of these was at issue. [Exh. 2 at 9/7 Tr. 11-12, 28, 31, 40-41]

After ending the public testimony, there was a formal motion to accept the Policy Committee's recommendation to suspend the existing policy and to adopt a more restrictive one on an emergency basis. [Exh. 2 at 9/7 Tr. 56] Student representative Vanessa Schachle was the only one to speak against the motion. She expressed concern that enforcement of the new policy would force school personnel to check students' genitalia or otherwise confirm their anatomy, as well as concern about privacy violations, disruption to learning, and harm to transgender students:

In addition to the staff taking time away from preparing for class, this process would be an invasion of students' bodily integrity, and leave a lasting negative impact on students' mental health. . . . Our school district is facing a systematic issue regarding privacy and safety in the restroom, which will not be resolved with the suspension of transgender student guidelines concerning restroom use. [Exh. 2 at 9/7 Tr. 57-58]³³

In their brief discussion before voting, no Board member responded to Schachle or offered a detailed statement of their reasons for favoring the motion. One apologized for not being aware of the existing policy and applauded the people who brought the issue to light. [Exh. 2 at 9/7 Tr. 61-62] Another also thanked the public for coming forward to support

³³ Her comments were applauded, indicating that at least some in the audience who did not have a chance to speak agreed with her perspective. [Exh. 2 at 9/7 Tr. 58]

changing the policy; she said that “it is extremely important, as elected officials, that we are representing the will of the people.” And, she continued, “you can see [that] . . . the majority of parents are in support of . . . suspending this policy.” [Exh. 2 at 9/7 Tr. 65-66; *see also* Tr. 76, 77] One Board member mentioned wanting to avoid a situation like “what happened down south.” [Exh. 2 at 9/7 Tr. 66] Another echoed that safety is a paramount concern, especially “for the most vulnerable”—but did not appear to extend this paramount concern to vulnerable transgender students in the District. [Exh. 2 at 9/7 Tr. 72] No Board member described the existing policy as unworkable or causing any specific identifiable problems in the District.

Board member Probasco, who would be the lone dissenter, asked for development of a policy that would keep all students’ gender identity confidential, saying it is important to protect the District’s transgender students. [Exh. 2 at 9/7 Tr. 67-68] No Board member responded to his concern.

The Board voted 5-1 in favor of the “emergency” suspension of the existing policy. [Exh. 2 at 9/7 Tr. 73]

October 5, 2022 School Board meeting. The School Board next met on this issue on October 5, 2022, for the first reading of a proposed permanent policy. That policy formalized the emergency measure

approved in Spetember, declaring that, at all schools in the District, restrooms and changing areas must be designated for the exclusive use of the male sex or the female sex, where “sex” is defined to mean “the physical condition of being male or female based on gender and physiology, as designated at the individual’s birth.” [Exh. 3 (First Reading Restroom Changing Room Policy)]

In the public testimony portion of this meeting, five people addressed the proposed new policy, with four speaking against it. [Exh. 2 at 10/5 Tr. 2-9]³⁴ The first speaker explained that the September 7 public testimony made it appear “that all transgender students are rapists, are gay, have illicit intentions, when in reality we have a very high rate of child trafficking in this state, and probably the highest percentage of children who are trafficked in this state are transgender students. They are the most vulnerable population.” [Exh. 2 at 10/5 Tr. 3] Three speakers were themselves transgender, including two students, one of whom described the fear and dehumanization she felt due to the proposed new policy:

I cannot tell you how afraid I am with the way that the world is viewing the people in the community that I am part of. It is not by choice. It is simply how you are. It is simply how you feel. You cannot choose any of this.

³⁴ The attached transcripts of the October 5 and October 19 School Board meetings have been redacted to include only those portions related to the proposed new restroom and locker room facilities. All portions related to that proposal are transcribed.

And I ask the board members to please, in any future decisions you make about LGBTQAI+ students, to please consider that we are, in fact, human. And humans make mistakes. That is true. But we don't try to. We do try not to be a bother. We just want to survive, and we just want to be heard and recognized and supported for who we are. [Exh. 2 at 10/5 Tr. 4-5]

The other self-identified transgender student similarly testified about the need to protect vulnerable transgender students from harm:

Regarding the issue of how transgender students are treated in this district, I want to say I am appalled with how we're treated. We're treated as criminals or miscreants before we've done anything wrong. Guilty before proven innocent.

As a transgender student, whether I go into the bathroom of my gender or my sex is no one's business other than mine. If I or someone like me were to assault a fellow student, that has nothing to do with identity.

As someone who has been sexually assaulted, [it] is treated lightly when a cis person does it. But if a trans person does it, it is only about their identity and not how disgusting it is that they did it in the first place. It's always, "They shouldn't be allowed in this bathroom or locker room," and not "How can we prevent sexual assault within our school or district? What would be proper punishment for the assailant? How can we help students who have been sexually assaulted?" [Exh. 2 at 10/5 Tr. 8-9]

The third speaker, a transgender man, talked about how much easier it is to navigate the world beyond high school because "[y]ou can use whatever bathroom you want, and nobody is going to beat you up for it, probably." [Exh. 2 at 10/5 Tr. 6] He called his public school years "the worst experience of my life" and explained that, when he is permitted to use the bathroom

that corresponds with his gender identity, it causes no problems for anyone:

I avoided using the bathroom of the gender that corresponded with my identity because I thought that would hurt other people if I did that or other people would be uncomfortable with it. But the thing is – is that nobody cares. You could ask my friends that were there. They didn't care what bathroom I used, and nobody at the place I work now cares what bathroom I use.

[I]t's, frankly, none of your business what genitals I have and what bathroom I'm going into, and it's the same with every other student in your district. It's none of your business what genitals they have, and you shouldn't be thinking so hard on it that you're thinking that they're going to go in a bathroom just to assault someone, when most students are just trying to get through their day, trying to get through their classes okay. [Exh. 2 at 10/5 Tr. 7]

Only one person spoke in favor of the proposed new permanent policy [10/5 Tr. 5], and he had already testified at the previous meeting. [Exh. 2 at 9/7 Tr. 18-19]

October 19, 2022 School Board meeting. Despite the overwhelming public opposition to the permanent new bathroom policy on October 5, and notwithstanding its earlier position that the Board should adopt policies reflecting the majority's views, the Board nevertheless passed the permanent policy at its October 19, 2022 meeting. Prior to the vote, the Board heard from several additional members of the public, including transgender students and parents of transgender and non-binary students. [Exh. 2 at 10/19 Tr. 2-27] One speaker proposed that the District

allow schools to develop gender-neutral restrooms as an easy way to accommodate many needs, including letting fathers accompany young girls and allowing caregivers to assist people with special toileting needs. [Exh. 2 at 10/19 Tr. 4-5] Recognizing all students' desire for privacy, she also urged making all restrooms and locker rooms more private for everyone. [Exh. 2 at 10/19 Tr. 5] Another called the proposed policy "thinly veiled discrimination against transgender students based on hateful and false stereotypes that gay and transgender individuals are predators and threats to health and safety. This bathroom policy is not really about safety[.]" [Exh. 2 at 10/19 Tr. 6] Others observed that the policy in fact does nothing to promote the safety of any student and instead simply discriminates against an unpopular group. [Exh. 2 at 10/19 Tr. 19-20, 21-22]

Several speakers noted the alarmingly elevated incidence of suicide and suicidality among transgender youth as well as the fact that transgender youth are substantially more likely to experience sexual violence and harassment than their non-transgender peers. [Exh. 2 at 10/19 Tr. 9, 11-12,³⁵ 14, 22, 25] Two described their first-hand experiences navigating the fraught issue of school restrooms and urged the Board not

³⁵ This speaker also provided a hand-out showing the sources for his claims that transgender children are frequently victimized and have disproportionately high rates of suicide and suicide attempts.

to add to those struggles by adopting a policy that singles out transgender students for discrimination. The first stated:

I am a transgender man. I transitioned my senior year of high school. It was awful. It really was. Bathrooms were a huge issue for me. I was not allowed to use the boy's bathroom. But I also did not pass as a girl, so when I tried to use the girls' bathroom, girls were freaked out, and I was basically disallowed to use the girls' bathroom.

To hear an onslaught of transphobia from your community members, to hear it from the local school board, to hear it in the news, on social media all the time, it's – it's – it's crushing. I mean, to be made out to be an existential threat to society, it's . . . unbearable.

And transgender students, or transgender people overall, have an attempted suicide rate of 41 percent. If you guys pass this policy, it's going to lead more kids to suicide, or at least attempted suicide. That much is the case. That's not hyperbole. . . . Refusing to approve this policy is suicide prevention, ultimately, and it's just unnecessary to subject kids to death for political gain. [Exh. 2 at 10/19 Tr. 23-24]

The second, a current student, made similar comments:

Every day at school for transgender students, particularly non-binary children like myself, bathrooms are a minefield. Every trip is a reminder that we're not normal. It's another agonizing internal argument: "Which bathroom do I use? Do I want to use the wrong bathroom or risk getting stared at or bullied? Is it even worth it? I can probably hold it four more hours."

All of these little moments pile up, dragging us down more and more until horrific statistics show up on the headlines. LGBTQ+ youth are more than four times more likely to attempt suicide than their peers, including more than half of transgender and non-binary youth.

It is proven that sex-segregated bathrooms increase the likelihood of transgender students becoming depressed, anxious, isolated, and hopeless. They also establish a school environment that stigmatizes transgender students as different or unusual. It ultimately leads to social dynamics of being bullied and shamed. Safe, accessible bathrooms for all could literally save lives[.] [Exh. 2 at 10/19 Tr. 24-25]

No one spoke in favor of the proposed permanent policy at this meeting.

After the Board Chair closed public testimony, Board member Probasco proposed amending the proposed policy to add “designated gender-neutral restrooms or changing rooms” as an alternative, along with allowing access to a single-occupancy restroom or changing room. His proposed amendment died for lack of a second. [Exh. 2 at 10/19 Tr. 29-30] With minimal discussion, and again disregarding the testimony before it, the Board then voted 5-to-1 to adopt the new policy, with Probasco again the only dissenter. [Exh. 2 at 10/19 Tr. 32] The adopted Policy was officially numbered Policy 5134 BP. [Exh. 4]

D. Plaintiff X.A.’s Experiences In The Matanuska-Susitna Borough School District.

Plaintiff X.A.’s experiences with Policy 5134 BP form the heart of this litigation and request for injunctive relief. X.A. is an elementary-aged boy who lives with his mother, M.A., father, P.A., and younger sibling in the Matanuska-Susitna Valley. [X.A. Aff. ¶¶ 1-2; M.A. Aff. ¶ 3] X.A. attends

an elementary school within the Matanuska-Susitna Borough School District (“MSBSD”). [M.A. Aff. ¶ 3] Like most elementary school kids, X.A. enjoys spending time with his friends and playing with his classmates at recess. [X.A. Aff. ¶ 3] He is an avid reader [X.A. Aff. ¶ 3], and has been recognized for his contributions to his school as Student of the Month. [X.A. Aff. ¶ 4]

X.A. is transgender. [X.A. Aff. ¶ 5; M.A. Aff. ¶ 5; P.A. Aff. ¶ 5] He was designated female at birth but realized he was a boy at a young age, expressing aversion to traditionally feminine clothing and themes as early as age two. He told his parents that he is a boy in the summer of 2023. [X.A. Aff. ¶¶ 5-6; M.A. Aff. ¶¶ 6-7] He expressed that “he/him” pronouns were the appropriate way to refer to him, and he chose a new, non-feminine name that felt right to him. [X.A. Aff. ¶ 8; M.A. Aff. ¶ 5] From then on, X.A. has consistently been called by his male name and with he/him pronouns. [M.A. Aff. ¶¶ 5-9; P.A. Aff. ¶ 5] Around the same time, X.A. began presenting himself as a boy with a masculine haircut and exclusively masculine clothing. [X.A. Aff. ¶ 9; M.A. Aff. ¶¶ 8-9] X.A. was thrilled to share his gender identity with the world now that his outward appearance matched his inner feelings. [M.A. Aff. ¶ 9] When X.A. meets new people, he introduces himself with his boy name and as a boy. [M.A. Aff. ¶ 8]

At the beginning of the 2023-24 school year, M.A., P.A., and X.A. met with the principal of X.A.'s new school; X.A.'s parents had chosen to take him to a different elementary school for the new school year in hopes that the new school, known for being more inclusive than others in the MSBSD, might be more accepting of their child. [X.A. Aff. ¶ 13; M.A. Aff. ¶¶ 11-12; P.A. Aff. ¶ 8] The focus of the meeting was how X.A., as a transgender boy, would be treated by the school. During the meeting, the school principal informed X.A. that he would not be allowed to use the boys' restroom at school, despite being a boy. [X.A. Aff. ¶ 13; M.A. Aff. ¶ 12] When M.A. pointed out that this would not be in line with national education standards for affirming students' gender, the principal essentially told the family that her hands were tied by an MSBSD policy that forces children to use the restroom that matches the sex they were assigned at birth, not their gender identity. [M.A. Aff. ¶ 12] X.A. could also use the single restroom in the nurse's office. [X.A. Aff. ¶ 13; M.A. Aff. ¶ 12]

X.A. tried to exclusively use the nurse's office restroom at the beginning of the 2023-24 school year, but the nurse's office was much farther away from X.A.'s classroom than the regular girls' and boys' restrooms scattered throughout the school. [X.A. ¶ 14] Every time he had to use the restroom, he missed out on more class time than any other child does when they go to one of the communal restrooms. [*Id.*] As an engaged

student, X.A. hated missing out on whatever his class was doing at the time by spending it going back and forth to the nurse's office, so he started limiting his fluid intake at school so he would not have to urinate while at school. [X.A. Aff. ¶ 14] This caused him physical pain that was noticeable to his parents. [X.A. Aff. ¶¶ 14-15]

Despite the family's vehement disagreement with the policy, X.A.'s parents knew from him limiting his fluid intake that the nurse's office bathroom was not a viable sole option for X.A. M.A. began working with X.A. on feeling more comfortable using the girls' bathroom even though he is a boy, practicing different techniques and roleplaying scenarios that could arise with other children. [X.A. Aff. ¶ 15; M.A. Aff. ¶ 13] After working with his mother on using humor, ignoring mean comments, or educating other children in response to different conversations that might come up in the girls' bathroom, X.A. did try to follow the policy—and the principal's instructions—and he used the girls' restroom early on in the school year. [X.A. Aff. ¶ 16]

But because X.A. clearly presents to the world as a boy, school staff were immediately alerted that there was a "boy in the girls' restroom." The principal questioned X.A. about why he was using the girls' restroom, which caused confusion and stress for X.A., who was trying to follow instructions from the pre-school-year meeting. [X.A. Aff. ¶¶ 16-19; M.A. Aff.

¶ 14] The distress of working with his mother to gain the courage to use the girls' restroom despite his gender identity, only to be singled out, interrogated about it, and made to feel as if he had done something wrong, was devastating for X.A. He was full of shame and fearful of getting in trouble for something as simple as using the bathroom. [X.A. Aff. ¶¶ 18-19; M.A. Aff. ¶ 15]

After the principal confronted X.A. about using the girls' restroom, X.A. no longer felt safe using that restroom. [X.A. Aff. ¶ 20] He continued to use the restroom in the nurse's office, but this option also was problematic. Besides requiring X.A. to miss more class time than his peers, using the nurse's restroom also singles him out to children who are receiving care from the school nurse. [X.A. Aff. ¶ 21] While X.A. tries not to draw attention to himself when he goes into the nurse's office, he is nervous about other children wondering why he is coming in to use that restroom and then leaving. [*Id.*] And although the regular nurse does not ask X.A. why he is there or draw attention to him, that is not true for substitute nursing staff. A substitute nurse told X.A., "Have a nice day, young man!" as he was leaving the nurse's office after using the restroom, but then stopped him to ask, "Wait, are you a boy or a girl?" [X.A. Aff. ¶ 22] This question was so upsetting to X.A. that, while he wanted to tell his parents that something bad happened at school, he initially did not want to share

the details out of shame. [X.A. Aff. ¶ 22; M.A. Aff. ¶¶ 17, 21] The substitute nurse also may have outed X.A. as transgender to all the other children within earshot.

X.A.’s mother worked with School to develop another option for X.A. He was allowed to go to the preschool classroom at set times twice a day—once in the morning, once in the afternoon—to help the preschool class with an activity like passing out snack, working on a craft, or reading a story; he can use the private, single-person restroom within the preschool classroom while he is there. [X.A. Aff. ¶ 23; M.A. Aff. ¶ 18] X.A. could go to the preschool classroom outside of the two set times, but those are the only times that he has another “excuse” to be there—helping the preschool class with an activity. At any other time, his coming into the classroom merely to use the restroom and then leave might raise questions from the younger children. The preschool restroom was not an option on Mondays, because there is no preschool then. [X.A. Aff. ¶ 23] Additionally, while X.A. enjoyed helping out with the younger children, he often did not want to go spend ten to fifteen minutes in the preschool classroom at his set times because he missed out on his own class’s activities and learning. [X.A. Aff. ¶ 24; M.A. Aff. ¶ 19]

Before the start of the 2024-25 school year, M.A. and P.A. again met with the School principal, who is new this year. [M.A. Aff. ¶ 20] During

this school year, what was formerly the preschool classroom is now being used as the Intensive Resource Room, which serves special education students. [M.A. Aff. ¶ 20; X.A. Aff. ¶ 25] X.A. is permitted to use this bathroom as long as a teacher is there. [M.A. Aff. ¶ 20; X.A. Aff. ¶ 25] To use this bathroom, X.A. still must miss classroom time and be singled out as someone who is different from the other boys in his class. [M.A. Aff. ¶ 20; X.A. Aff. ¶ 25]

Beyond the stress of figuring out where and when he can use the restroom on a given day, X.A. also deals with the stress of being continually outed by school staff. The school's electronic information system only displays X.A.'s feminine birth name, not his chosen masculine name (or "preferred" name). [M.A. Aff. ¶¶ 21-24; P.A. Aff. ¶ 10] This causes problems for staff unfamiliar with X.A. who clearly see a boy in front of them but are looking at an electronic system that is displaying a traditionally feminine name. For example, a lunch line worker unfamiliar with X.A. was ringing him up and, when she could not find his (preferred boy) name on the list, he had to tell her, in front of the other children in line, his feminine birth name so she could find him in the system. [X.A. Aff. ¶ 25; M.A. Aff. ¶ 22] She began questioning X.A.—confused by seeing a clearly masculine child who had just given her a feminine name—which embarrassed X.A. and risked outing him as transgender to the other children, who only know him

as X.A. The lunch line worker would not let it go until a teacher familiar with X.A. intervened. [*Id.*]

X.A.'s school-issued computer, the phone app the school uses for after-school pick-up, the choir concert program, and all state testing materials are just some examples of places that display X.A.'s feminine birth name. [X.A. Aff. ¶¶ 26-28; M.A. Aff. ¶¶ 22-23; P.A. Aff. ¶ 10] These have all outed X.A. as transgender to school staff, testing volunteers, other students, and/or parents. X.A. has been teased for his gender identity, for example when his classmates suggested he should wear a dress to school. [M.A. Aff. ¶ 27] When X.A. sees his old feminine birth name pop up, like on his school computer, his emotional pain is visible on his face. [X.A. Aff. ¶ 28; P.A. Aff. ¶ 10].

In addition, for the 2024-25 school year, School has changed the way it handles afterschool pick-ups in a way that broadcasts X.A.'s transgender status to a large group of students and staff almost every day. [X.A. Aff. ¶ 30; M.A. Aff. ¶ 24] After school, all the kids now go to the gym and wait for their rides. [X.A. Aff. ¶ 30; M.A. Aff. ¶ 24] Using an app called "PikMyKid," teachers are notified when a child is ready to be picked up, and they shout that child's name across the room to let them know their ride has arrived. [X.A. Aff. ¶ 30; M.A. Aff. ¶ 24] But the app only uses X.A.'s old feminine name. [X.A. Aff. ¶ 30; M.A. Aff. ¶ 24] Some teachers know X.A. and are

familiar with his situation, and they will call out his correct name. But on most afternoons, a teacher or staff person yells out his discarded, feminine name instead. [X.A. Aff. ¶ 30; M.A. Aff. ¶ 24] This means that, every afternoon, a large group of children and staff all hear X.A.'s deadname—which is incongruent with his presentation as a boy—and thereby learn or are reminded that he is transgender. This is upsetting to X.A. [X.A. Aff. ¶ 30; M.A. Aff. ¶ 24]

These problems are present only for X.A. at school. When he is out in public, he uses the men's bathroom without issue, whether with his father or on his own. [X.A. Aff. ¶ 11; M.A. Aff. ¶ 10; P.A. Aff. ¶ 7] He simply goes into a stall, does his business like anyone else, washes his hands, and leaves, and no one questions whether he should be in that restroom. [*Id.*] People in public also accept him as a boy because he introduces himself as a boy with a masculine name, has a traditionally masculine haircut, and wears traditionally masculine clothes. [P.A. Aff. ¶ 7, 16; X.A. Aff. 11]

Because these problems *do* infect X.A.'s daily school experience, his parents decided to file an internal formal administrative complaint with MSBSD. [P.A. Aff. ¶ 11] They filed their complaint in September 2023, describing how the bathroom policy and electronic information system were negatively impacting X.A. [P.A. Aff. ¶ 11] Despite MSBSD's conflict resolution policy promising that investigations would be completed within

thirty days, the investigation into their complaint took approximately three months. [P.A. Aff. ¶¶ 12-14] Although the investigator substantiated all of their concerns but one, he did not provide any next steps for the family or any path to resolution; he simply closed the investigation after informing the family that their concerns were well-founded. [P.A. Aff. ¶ 14]

PRELIMINARY INJUNCTION STANDARDS

A party may obtain preliminary injunctive relief in Alaska by satisfying either of two standards. If the moving party faces the threat of irreparable harm and the opposing party is adequately protected from harm if the injunction issues, the “balance of hardships” standard applies.³⁶ Under this test, the plaintiff must demonstrate “serious and substantial questions going to the merits of the case,” meaning that the issues he raises are not “frivolous or obviously without merit.”³⁷ The court then balances the harm facing the plaintiff if the status quo continues against the harm to the defendant that could result from the injunction.³⁸

³⁶ *State v. Galvin*, 491 P.3d 325, 332-33 (Alaska 2021); *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005).

³⁷ *Galvin*, 491 P.3d at 333 (citing *Alaska Pub. Utils. Comm’n v. Greater Anchorage Area Borough*, 534 P.2d 549, 554 (Alaska 1975) and *A. J. Indus., Inc. v. Alaska Pub. Serv. Comm’n*, 470 P.2d 537, 541 (Alaska 1970), modified in other respects, 483 P.2d 198 (Alaska 1971)).

³⁸ *Galvin*, 491 P.3d at 333.

If the moving party does not face irreparable harm, or if the opposing party cannot be adequately protected against injury caused by the injunction, then the plaintiff must make a “clear showing of probable success” on the merits of the case to obtain an injunction.³⁹

Irreparable harm means an injury that should not occur and cannot be compensated for with money. An irreparable injury, “because it is so large or so small, or is of such constant and frequent occurrence, or because no certain pecuniary standard exists for the measurement of damages, cannot receive reasonable redress in a court of law.”⁴⁰

The party opposing the injunction is adequately protected when they “can be indemnified by a bond when financial harm is at stake; can be otherwise protected by some action; or, at a minimum, is facing only ‘relatively slight’ harm compared to the potential harm facing the party seeking relief.”⁴¹

ARGUMENTS

I. The District’s Bathroom And Informational Privacy Policies Cause Irreparable Harm to X.A.

³⁹ *Id.* (quoting *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014) and *State v. United Cook Inlet Drift Ass’n*, 815 P.2d 378, 378-79 (Alaska 1991)).

⁴⁰ *Galvin*, 491 P.3d at 333 (quoting *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1273 n.5 (Alaska 1992)).

⁴¹ *Galvin*, 491 P.3d at 333 (quoting *Kluti Kaah*, 831 P.2d at 1273).

Plaintiff X.A. easily carries his burden to show that he faces irreparable harm if the Court does not issue an injunction and allows the status quo to continue.

The affidavits of X.A. and his parents describe many ways in which the Borough's bathroom policy profoundly and negatively affects him. X.A. is singled out and treated differently from the other children in his class. He cannot use any communal restrooms at school like the other kids do; he is forbidden from using the boy's room, and when he tried to use the girls' room, other children were upset to see a boy in the girls' room, and as a result he was scolded. Using the nurse's bathroom is not private, requires him to miss class, subjects him to uncomfortable questioning about his gender identity and sex, and outs him to other children. Using the preschool or special needs classroom similarly causes him to miss class, be treated differently, and take time away from learning. X.A. has tried to avoid using the bathroom entirely, but that causes him pain and increases the risk of medical problems from withholding. And by denying him the use of the bathroom that corresponds with his gender identity, the District places him at higher risk of detrimental mental, emotional, and health consequences, including gender dysphoria, depression, and suicidality.⁴²

⁴² See Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J.

The District’s approach to informational privacy also irreparably harms X.A. The School often refuses to use X.A.’s preferred name, instead indiscriminately broadcasting X.A.’s feminine name assigned at birth to substitute teachers, nutritional services staff, school staff, and large groups of children every day after school. Being outed as transgender over and over distresses X.A. This too places him at risk for developing negative mental health outcomes.

II. X.A. Is Likely To Succeed On The Merits Of His Claims; At A Minimum, His Claims Are Not Frivolous Or Obviously Without Merit.

Because X.A. faces irreparable harm, the Court should apply the balance of hardships standard, under which an injunction should issue if the balance of hardships favors him and his legal claims are not “frivolous or obviously without merit.” As described below, X.A.’s legal claims are strong. Indeed, X.A. is likely to succeed on the merits of his claims and is therefore entitled to an injunction under either standard.

Mat-Su Borough School District’s Policy 5134 BP, which requires X.A. to use the girls’ restroom or a special, single-occupant restroom, violates X.A.’s fundamental rights of equal protection and privacy. As an

HOMOSEXUALITY 1378, 1388–89 (2016), *available at* https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1065&context=ssw_facpub; WPATH Guidelines, *supra* note 6, at 5174-75; see also M.A. Aff. ¶ 30. .

elementary school student, X.A. wants to be like the other children in his class, but each time he needs to use the restroom during school hours he is treated differently from all of them. In practice, he cannot use either of the communal restrooms that the other kids in his class use. The plain language of the District's Policy prevents him from using the boys' restroom. [Exh. 4] The reaction of his schoolmates prevents him from using the girls' restroom: when he tried to follow the Policy, he upset people who complained about a boy using the girls' restroom and was scolded for doing so. [X.A. Aff. ¶¶ 16-18; M.A. Aff. ¶¶ 14-15; *see also* Exh. 2 at 10/19 Tr. 23] The message that he is not welcome in any restroom at school where others are present is devastating to this child.

The District Policy gives X.A. only two real-world options. He can try not to use any restroom during the school day, or he can use a single-occupant restroom, such as in the nurse's office or in the preschool or special needs classroom, when it is available. Neither option is acceptable. Restricting fluid intake and trying to avoid using the restroom for the six and a half hours of a school day causes physical discomfort and risks infection. [X.A. Aff. ¶ 4; M.A. Aff. ¶ 19] Heading out alone to a special restroom, different from the ones other children regularly use, denies X.A. the ability to keep private some of the most intimate, sensitive details about himself, because other children, teachers, and adults such as

substitute nurses may ask why he needs to use a special restroom. [X.A. Aff. ¶ 22; M.A. Aff. ¶ 21] X.A. must cope each day with the stress of figuring out how best to manage his basic human need to use the restroom and his equally strong needs to be himself, to live consistent with his gender identity, and not to be publicly identified as different from other children who also live consistent with their gender identity.

The District's Policy violates X.A.'s constitutional rights of equal protection and of privacy. As discussed below, similar legal tests apply to the analysis of the constitutionality of the Policy under these two provisions – and the Policy does not survive scrutiny under either test.

A. The Bathroom Policy Violates X.A.'s Right Of Equal Protection.

Article I, Section 1 of the Alaska Constitution provides that “all persons are equal and entitled to equal rights, opportunities, and protection under the law.” This section unquestionably protects children as well as adults.⁴³ Further, Article I, Section 1 applies to children in

⁴³ See *Breese v. Smith*, 501 P.2d 159, 163 (Alaska 1972) (calling it “an established premise that children are possessed of fundamental rights under the Alaska Constitution” and that children’s constitutional rights “will not be denied in deference to governmental benevolence or popular social theories”); *Planned Parenthood of the Great Northwest v. State* (“*Planned Parenthood 2016*”), 375 P.3d 1122, 1135-36 (Alaska 2016) (recognizing that minors are protected under the equal protection clause of the Alaska Constitution).

school.⁴⁴

In some cases, the preliminary question is whether the challenged policy distinguishes among similarly situated individuals,⁴⁵ but that is not an issue here. All students are similar in their need to use the restroom during the school day. The challenged Policy on its face treats students differently depending on whether their gender identity does or does not coincide with the sex written on their birth certificate. [Exh. 4]⁴⁶

In its real-world application, the Policy has an even starker effect than the face of the Policy suggests. Because of the Policy, all non-transgender children may use a communal restroom along with their classmates. In practice, transgender children who dress and act in accordance with their gender identity may not use *any* communal restroom. As described above, the Policy expressly prevents X.A. from using the boys' restroom; the distress caused to others when he uses the girls' restroom

⁴⁴ See *Breese*, 501 P.2d at 167.

⁴⁵ See *American Civil Liberties Union v. State*, 122 P.3d 781, 787 (Alaska 2005) ("Absent disparate treatment of similarly situated persons, the law as applied to the aggrieved group does not violate the group's right to equal protection"); see generally *Planned Parenthood 2016*, 375 P.3d at 1135 (discussing how courts determine what groups to compare and whether a rule or statute treats two similarly situated groups differently).

⁴⁶ See *Harris v. Millenium Hotel*, 330 P.3d 330, 333-34 (Alaska 2014) ("When a law by its own terms classifies people for different treatment, the law is facially discriminatory." (internal quotation marks and footnotes omitted)).

prevents him from using the girls' restroom.⁴⁷ Because of the Policy, X.A.'s only option is to use a single-occupant restroom, although, outside of school, X.A. regularly uses the communal men's room without issue. [X.A. Aff. ¶ 11; M.A. Aff. ¶ 10; P.A. Aff. ¶ 7] Because of the Policy, X.A. is treated differently from the other children in his class, all of whom may use a communal restroom while he alone is singled out. The question for the court is whether it is legally justified to distinguish between transgender children who present themselves in accordance with their gender identity and non-transgender children who present themselves in accordance with their gender identity.

Alaska courts use a well-established three-part, sliding scale test to analyze whether a classification that distinguishes among similarly situated individuals violates the guarantee of equal protection:

First, the court identifies the personal right infringed upon and evaluates its importance. The importance of the right determines the government's burden of justifying the differential treatment.⁴⁸

⁴⁷ For an older transgender teen or transgender parent volunteer, whose birth certificates identify them as female but whose appearances are unmistakably male, the uproar that would result from their using a girls' restroom, as required by the Policy, is obvious. It is doubtful that any of the upset girls would be mollified by being told that they should feel OK because these masculine-looking people have birth certificates that identify them as female.

⁴⁸ See *Watson v. State*, 487 P.3d 568, 570-71 (Alaska 2021); *State v.*

Second, the court examines the purpose that the government contends is served by the challenged rule. If the individual rights infringed on are fundamental rights, the government must show that its rule is motivated by a compelling interest. At the low end of the sliding scale, the government need show only that its objective is legitimate.⁴⁹

Third, the court evaluates how well the challenged policy serves the government's asserted interest. When the policy infringes on fundamental rights, the fit between means and end must be very close, and there must be no less restrictive alternative that would serve the government's interest. At the low end of the sliding scale, the fit may be less close, but still there must be a "substantial relationship between means and ends."⁵⁰

Applying these principles to the facts of this case demonstrates that the District's Policy violates X.A.'s constitutional right of equal protection.

Planned Parenthood of the Great Northwest ("Planned Parenthood 2019"), 436 P.3d 984, 1001 (Alaska 2019); *Alaska Pacific Assurance Co. v. Brown*, 687 P.2d 264, 269-70 (Alaska 1984).

⁴⁹ See *Planned Parenthood 2019*, 436 P.3d at 1001; *American Civil Liberties Union*, 122 P.3d at 789.

⁵⁰ See *Planned Parenthood 2016*, 375 P.3d at 1137; *id.* at 1138 ("As the level of scrutiny selected is higher on the sliding scale, we require that the asserted governmental interests be relatively more compelling and that the legislation's means-to-end fit be correspondingly closer." (internal quotation marks and brackets omitted)); see generally *id.* at 1139-43 (illustrating application of high-level scrutiny); *Public Employees' Retirement System v. Gallant*, 153 P.3d 349, 349-55 (Alaska 2007) (illustrating application of low-level scrutiny).

1. The individual rights that are burdened by the Policy are fundamental.

As shown above, the Policy treats X.A. differently from all of his classmates because he presents himself to the world in accordance with his gender identity, which does not match the sex he was assigned at birth. The Policy infringes on at least three distinct, but interrelated, constitutional rights of X.A.

First, the Policy infringes on X.A.'s right of liberty or autonomy. This is a fundamental right protected by Article I, Section 1 of the Alaska Constitution, as first discussed by the Alaska Supreme Court in *Breese v. Smith*. This case recognized a constitutional right of students to wear their hair as they choose, even when (as in that case) a boy chooses a hair style more commonly associated with girls:

No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free of all restraint and interference of others, unless by clear and unquestionable authority of law.⁵¹

⁵¹ *Breese v. Smith*, 501 P.2d 159, 168 (Alaska 1972); *see also id.* at 169 (Alaska is a “pluralistic society, grounded upon such basic values as the preservation of maximum individual choices, protection of minority sentiments, and appreciation for divergent lifestyles. The spectre of governmental control of the physical appearances of private citizens, young and old, is antithetical to a free society, contrary to our notion of a government of limited powers, and repugnant to the concept of personal liberty.”).

We hold that under article I, section 1 of the Alaska constitution's affirmative grant to all persons of the natural right to "liberty," students attending public educational institutions in Alaska possess a constitutional right to wear their hair in accordance with their personal tastes. In reaching this conclusion, we are cognizant of the fact that the term "liberty" is an illusive concept, incapable of definitive, comprehensive explication. Yet at the core of this concept is the notion of total personal immunity from governmental control: the right to be left alone.⁵²

While the District's Policy does not outright forbid X.A. from presenting himself in school as a boy consistent with his gender identity, it nevertheless implicates the constitutional equal protection guarantee. This Court must "look to the real-world effects of government action to determine the appropriate level of equal protection scrutiny."⁵³ A challenged policy "need not expressly forbid the exercise of the right" in order to require the court to apply strict scrutiny.⁵⁴ As the Alaska Supreme Court explained, "we also apply strict scrutiny 'where the government, by selectively denying a benefit to those who exercise a constitutional right, effectively deters the exercise of that right.'"⁵⁵ Such is the case here.

⁵² *Id.* (internal quotation marks and footnote omitted).

⁵³ *Planned Parenthood 2019*, 436 P.3d at 1002 (internal quotation marks and footnote omitted).

⁵⁴ *Id.* at 1001.

⁵⁵ *Id.*, quoting *State, Dep't of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc. ("Planned Parenthood 2001")*, 28 P.3d 904, 909 (Alaska 2001).

The District Policy heavily burdens X.A.’s right of self-expression by singling out X.A. for different treatment because he presents himself consistent with his gender identity rather than consistent with the sex assigned on his birth certificate. The differential treatment based on his self-expression causes X.A. both physical and psychological harms.⁵⁶ It is no answer to say that X.A. could avoid these problems if he came to school as a girl. Transgender individuals suffer great psychological harm if they are not permitted to live in accordance with their gender identity.⁵⁷ It trivializes X.A.’s understanding and presentation of himself as a boy to call it a “choice” comparable to Breese’s choice to wear his hair long—but the Supreme Court held that even Breese’s choice of how to appear in school was constitutionally protected. Alaska’s constitution necessarily similarly protects X.A. against a District policy that targets and unequally burdens X.A.’s gender identity and expression.

Second, the Policy discriminates against X.A. on the basis of sex. Article 1, Section 3 of Alaska’s Constitution specifically prohibits sex discrimination,⁵⁸ subjecting laws that discriminate on the basis of sex to

⁵⁶ See nn 2-19 and accompanying text *supra*

⁵⁷ See nn 2-19 and accompanying text *supra*.

⁵⁸ Article I, Section 3 provides: “Civil Rights. No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin. The legislature shall implement this section.”

heightened scrutiny under Alaska’s equal protection jurisprudence.⁵⁹ Although the Alaska courts have not yet had occasion to frame the issue in this way, the United States Supreme Court held in *Bostock v. Clayton County, Georgia*⁶⁰ that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”⁶¹ Although the Supreme Court’s observation arose in a different legal context than X.A.’s claims—*Bostock* dealt exclusively with employment discrimination under Title VII of the federal Civil Rights Act of 1964—this holding reflects the common-sense proposition that “homosexuality and transgender status are inextricably bound up with sex,”⁶² which applies equally in other contexts beyond statutory employment claims. The *Bostock* Court reasoned that if an employer fires a transgender man because he was assigned female at birth and now identifies and presents as a woman, but does not fire a person who identically presents and identifies as a woman because she was assigned female at birth, then the employees are being treated dissimilarly based on sex—since the only material difference between the two women is their sex

⁵⁹ *E.g., Plas v. State*, 598 P.2d 966, 968 (Alaska 1979).

⁶⁰ 590 U.S. 644 (2023).

⁶¹ *Id. at* 659.

⁶² *Id. at* 660-61.

as assigned at birth. This employer thus “intentionally penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth,” meaning that the “employee’s sex plays an unmistakable and impermissible role in the discharge decision.”⁶³ Though X.A. brings an Alaska constitutional claim rather than a federal statutory claim, *Bostock’s* logic and reasoning apply equally here: By allowing a boy who presents and identifies as a boy and was assigned *male* at birth to use the boys’ restroom, but forbidding a boy who presents and identifies as a boy and was assigned *female* at birth from using the same restroom, the Mat-Su School District is treating the two students differently, and unequally, based on sex. This is sex discrimination, entitling X.A. to heightened constitutional protection and scrutiny under Alaska’s equal protection clause.

Third, the Policy infringes on X.A.’s right of privacy, which encompasses both the right of personal autonomy⁶⁴ and the right to shield

⁶³ *Id.* at 660.

⁶⁴ The Alaska Supreme Court discussed the right of autonomy in *Breese* as protected by Article I, Section 1 of the Alaska Constitution. *See* 501 P.2d at 169. After the explicit constitutional right of privacy was added to the state constitution, the Court has mostly addressed autonomy as an aspect of privacy. *See Valley Hospital Ass’n, Inc. v. Mat-Su Coalition for Choice*, 948 P.2d 963, 968 (Alaska 1997) (defining reproductive rights as fundamental and encompassed within the right of privacy in Article I, Section 22); *see also, e.g., Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 246 (Alaska 2006) (addressing a patient’s right to refuse psychotropic

sensitive personal information from public disclosure.⁶⁵ Both aspects of the right of privacy are infringed upon each time X.A. is required to act differently from all his classmates when he needs to use the restroom, which causes others to ask him who he really is and why he needs different treatment. Because X.A.’s right of privacy is explicitly protected by the Alaska Constitution, it is a fundamental right.⁶⁶

Because each of the individual rights infringed upon by the Policy is a constitutional right, this Court must apply strict scrutiny in evaluating

medication as an aspect of the right of privacy because “few things [are] more personal than one’s own body”).

⁶⁵ See generally *Doe v. State, Dep’t of Public Safety*, 444 P.3d 116, 126 (Alaska 2019) (discussing the two aspects of the right of privacy, then concentrating on the informational privacy aspect of the right); *Falcon v. Alaska Public Offices Comm’n*, 570 P.2d 469, 480 (Alaska 1977) (holding that Article I, Section 22 protects an individual’s privacy right to shield sensitive personal information about medical treatment from public disclosure).

⁶⁶ A fourth fundamental interest arguably is at stake here as well: X.A. has a constitutional right to a public education, the same as all the other children in his class. See Alaska Const., Art. VIII, Sec. 1. X.A.’s right to an education is burdened by the way the Policy imposes physical and psychological distress on X.A. every school day, as he struggles to accommodate his basic needs to use the restroom and to avoid suffering an invasion of his rights of autonomy and informational privacy. His right to an education is also burdened because the restrooms he may use—in the preschool or special needs classroom, and in the nurse’s office—are farther from his classroom than the communal restrooms his classmates may use; X.A. loses educational time each time he must take a longer walk to use the restroom. Additionally, he misses out on some classroom activities and is denied the learning that comes with being a full participant in the class.

whether the Policy's classification is constitutional. Strict scrutiny requires the District to articulate a compelling interest served by the Policy, and to demonstrate that the District's interest cannot be served by a less restrictive alternative.

If, for any reason, this Court were to determine that X.A.'s fundamental rights are not infringed by the Policy, the Court must conclude that the rights at issue are at least important; they are not like the merely economic interests that receive the least demanding scrutiny at the lowest end of the sliding scale.⁶⁷ Consequently, at least intermediate scrutiny applies.⁶⁸

2. The District proffered facially compelling interests to justify the Policy, but substantial evidence establishes that these are not the real interests that motivated the District's adoption of the Policy.

⁶⁷ Compare, e.g., *Watson*, 487 P.3d at 573-76 (illustrating analysis at a midpoint on the sliding scale where important individual rights were infringed on, so the State had to show the challenged classification served important interests and there was a close fit between the State's important interests and the classification) with, e.g., *Stanek v. Kenai Peninsula Borough*, 81 P.3d 268, 270-72 (Alaska 2003) (illustrating low-level scrutiny because individual interest infringed upon was economic).

⁶⁸ In this case, the level of scrutiny may not matter. As shown below, the Policy does not survive scrutiny at any level of the sliding scale. See generally *Alaska Civil Liberties Union*, 122 P.3d at 789-94 (applying low-level scrutiny without deciding the importance of the interests infringed upon, because the challenged classification did not pass scrutiny at the lowest level on the sliding scale).

The Policy on its face states that its purpose is “to maintain an effective learning and working environment,” and that enforcing the Policy will “ensure privacy and safety” in all District facilities. [Exh. 4] X.A. accepts these, in theory, as compelling interests for a school district.

Notwithstanding the assertions in the Policy about its purposes, substantial evidence indicates that these are *not* the real purposes of the Policy. No Board member (or community speaker) discussed how the Policy would “maintain an effective learning and working environment.” Apart from expressing a mistaken understanding of the significance of the federal district court order enjoining the 2021 Guidelines for complying with Title IX, Board members stated very little about why they favored the emergency or new permanent Policy. [Exh. 2 at 9/7 Tr. 3-4, 56-73, 10/19 Tr. 29-33]

Rather than state their own reasons, Board members deferred to the anti-transgender sentiment among the testifying public at its September 2023 meeting. The Board thanked the public for raising the issue and expressing their views, and one member stated her belief that the Board should follow the will of the (apparent) majority. [Exh. 2 at 9/7 Tr. 61, 62, 65-66, 70] The record supports the conclusion that Board members favoring the emergency action, which they later voted to make permanent, shared the motivations of the speakers whose comments they appreciated, and deferred to anti-transgender public sentiment in their decisionmaking.

The speakers at the first meeting voiced their desire to promote the privacy and safety of non-transgender students, particularly non-transgender girls, but much of that discussion also reflected sharp animus toward transgender people. [Exh. 2 at 9/7 Tr. 7-55] Transgender students were described as predators at worst, and confused and pitiable at best. Multiple speakers grounded their support for the Policy in religious terms, and expressed resentment over transgender students' desires for "special" rights. [*Id.*] Five of six Board members voted the way these speakers requested.

By contrast to the appreciation for the comments at the first meeting, no Board member thanked the speakers who came to the later two meetings—where the majority who spoke strongly *opposed* the new Policy. [Exh. 2 at 10/5 Tr. 2-12, 10/19 Tr. 2-15, 18-27, 29-32] The Board proponents of the new Policy said nothing in response to the transgender people who explained how harmful exclusionary policies are. [Exh. 2 at 10/5 Tr. 5-9, 10/19 Tr. 8-13, 23-26] The Board vote to adopt the new Policy entirely disregarded those significant and compelling concerns about how the new anti-transgender policy would harm the District's transgender students. Nor did any Board member appear to consider how the new policy would affect the effectiveness of the learning and working environment for its vulnerable transgender students. Testimony from transgender students

and X.A.'s own experience establish that the policy has significant and tangible deleterious effects on a transgender student's ability to fully participate and focus on learning in his classroom: it causes stress, anxiety and uncertainty about when and how a student can use the restroom; it singles out a transgender child, and outs him as transgender, thus placing him at higher risks for harassment and bullying; it causes physical pain and risks infection in a child who tries to hold in urine to avoid the stress of using the bathroom; and it forces the transgender child to miss classroom instructional time to use bathrooms that are inconvenient rather than the communal restroom the other boys use. Nor did any Board discussion appear to consider how the new policy could possibly be consistent and in accord with other, longstanding District policies that protect students and further effective learning environments by promoting tolerance and non-discrimination and disallowing bullying and harassment based on sex and gender identity. Finally, the Board only selectively deferred to public sentiment—articulating the need to implement “the will of the majority” only when the majority of speakers advanced anti-transgender views, then ignoring this principle when public testimony did not support the Board's proposed anti-transgender policy.

For all these reasons, the record supports the conclusion that the Board majority was motivated to adopt the new Policy for the reasons

advanced by the speakers at the first meeting. These were discriminatory reasons grounded in antipathy for transgender students, with no expressed concern about the harms caused to transgender students from adopting the new Policy and no discussion at all of the less restrictive alternatives that speakers advanced at the latter two meetings.

3. Because the real purpose behind the Policy is discriminatory, the Policy is unconstitutional, and no further analysis is required.

It is well-settled Alaska equal protection law that a government enactment is unconstitutional if it is designed to discriminate. “[I]f the purpose is intended discrimination against a class of [individuals], the purpose will be considered illegitimate without needing to ask about the relationship between purpose and efficacy.”⁶⁹ To determine intent, this Court looks to “the totality of the circumstances, including the Board’s process and the substance of its decision.”⁷⁰ As discussed above, the totality of the circumstances surrounding the enactment of Policy 5134BP places the Policy squarely in the category of government actions motivated by an illegitimate purpose: to discriminate against transgender students. The

⁶⁹ *In re 2021 Redistricting Cases*, 528 P.3d 40, 57 (Alaska 2023); *see also Planned Parenthood 2001*, 35 P.3d at 45.

⁷⁰ *In re 2021 Redistricting Cases*, 528 P.3d at 58 (internal quotes omitted).

Board based its actions on its uncritical endorsement of anti-transgender animus from the public, rather than any legitimate considerations. It disregarded the testimony of transgender students and other public testifiers, as well the medical and scientific consensus, about the danger that the Policy poses to some of the District’s most vulnerable students through singling out transgender students for unequal treatment, invading their privacy, and placing them at heightened risk for bullying, harassment, and the likelihood of depression, gender dysphoria, and suicide.

The Board misrepresented its motivation, mischaracterizing the facts and effect of litigation in Tennessee to explain its actions, thereby downplaying its reliance on religious and political anti-transgender rhetoric rather than consideration of the well-being of students.⁷¹ It

⁷¹ Relying on the DOE guidance as a justification for District policy is disingenuous for an additional reason—because the Board did not similarly rush to change its Policy to align with a later-promulgated DOE guidance that directs that transgender students *should* be permitted to use the restrooms in accordance with their gender identities. *See* 89 Fed. Reg. 33886 (2024). (These regulations have been enjoined from going into effect at the present time, so they do not compel any change in the District’s policy. *See* Order on Application for Stay, *Department of Educ. v. Louisiana*, No. 24A78, 603 U. S. ____ (2024) (per curiam).) But the contrast between the District’s rush to enact “emergency” policies discriminating against transgender students based on a flimsy legal justification and its lack of motivation to enact policies to protect transgender students even when required to by the Department of Education is notable, and it suggests that the Tennessee-litigation justification for Policy 5134 BP was pretextual.

enacted the Policy despite the lack of any evidence or even a suggestion that the prior policy had ever caused any actual problems in the District for students, teachers, administration, or staff.

And the Policy was enacted although it appears to flatly conflict with a number of other policies, like the District's nondiscrimination policy that obligates it to protect transgender students. As discussed above, longstanding District policies respect the personal autonomy and protect the health and safety of all students by requiring an environment where all students, including transgender and gender non-conforming students, are protected from bullying, harassment, and privacy violations based on their sex, gender presentation, and gender identity.⁷² It is difficult to square these policies, taken individually or as a whole, with Policy 5134 BP—which singles out transgender and non-gender-conforming students for differential treatment and invites privacy violations, bullying, and harassment on those exact bases. This suggests that the true intent of the new anti-transgender bathroom policy is in fact motivated by something other than protecting the privacy, safety, and security of some of the District's most vulnerable students. This too militates in favor of the Court's finding that the Policy is motivated by animus and that the stated

⁷² See text accompanying nn. 21-26 *supra*.

justifications for it are pretextual, or at a minimum, the policy's fit between means and ends are too flimsy to survive constitutional scrutiny.

For all these reasons, this Court should find that the Policy was enacted for an illegitimate purpose and is therefore unconstitutional as a matter of law.

4. Even if the Policy's aims are legitimate, the Policy does not closely further the District's interests that it purports to serve.

Even if the Court accepts the interests stated in the Policy as the District's genuine and legitimate interests, the Policy is still unconstitutional because it does not adequately serve those interests.

As discussed above, the Court must apply strict scrutiny because the Policy infringes on X.A.'s fundamental rights. Accordingly, the District must show a very close means-end fit between the Policy and its asserted goals, and that no less restrictive policy could serve the District's compelling interests. To make that showing, the District must point to evidence, not speculation or fears of what might happen if transgender children use the communal restroom associated with their gender

identity.⁷³

The District has not and cannot make that showing. No evidence establishes that it is necessary to prevent X.A. from using the boys' bathroom in order to preserve an effective learning environment at his school or to protect students' privacy and safety. The District for at least seven years allowed transgender students to use a restroom consistent with their gender identity [Exh. 1; Exh. 2 at 9/7 Tr. 58-59], and no one offered any evidence that between 2015 and 2022 this policy resulted in anyone's loss of privacy or safety or impaired anyone's ability to learn in the school environment. Parents' outrage exploded in fall 2022, possibly due to one girl's dismay when she appeared to realize that a transgender girl used the same locker room she did. [Exh. 2 at 9/7 Tr. 8] Although other parents said they were equally upset to learn about the longstanding District policy, none recounted any specific incident in a Mat-Su school that had ever invaded the privacy or threatened the safety of any student.

⁷³ See *Club Sinrock, LLC v. Municipality of Anchorage*, 445 P.3d 1031, 1039 (Alaska 2019) ("We require, in all cases, an evidence-based analysis demonstrating that a restriction is narrowly tailored to meet specific, compelling government interests."); *Planned Parenthood 2016*, 375 P.3d at 1139-43 (noting how benevolent intentions to protect certain minors cannot justify discriminatory treatment); *Breese*, 501 P.2d at 172-74 (holding that the defendant school failed to establish that a hair length policy actually served a compelling need, where the school offered no statistics, expert testimony, or other "hard facts" to demonstrate that long-haired boys are more disruptive of the learning environment than shorter-haired boys).

In contrast to the lack of evidence demonstrating that the Policy is necessary to serve compelling District interests, substantial evidence shows that the Policy disserves the stated goals: Prohibiting X.A. from using the boys' bathroom infringes on his privacy and detracts significantly from his ability to be in an effective learning environment. Public statements by transgender individuals describing their experiences highlighted how the Policy will harm transgender students' interests in privacy, safety, and learning, while not actually contributing to the safety or privacy of non-transgender students. Where transgender students are not publicly outed, they regularly use the communal restrooms of their gender identity without disturbing anyone else in that space.

Less restrictive alternatives exist, and they were before the Board. First, X.A. can use the boys' restroom. If the District had allowed X.A. to use the boys' restroom from the time he started attending School, no one at School would have any reason to suspect that X.A. is different in any way from the other boys, and no one's privacy, safety, or ability to learn would be impaired by having him in the communal boys' restroom – as demonstrated by X.A.'s seamless experience using public men's restrooms in every other setting. Other less restrictive alternatives offered at the meetings include creating gender neutral bathrooms that anyone may use and adding more privacy stalls in restrooms and locker rooms. Another

less restrictive alternative would be allowing *non-transgender* students to utilize an alternative bathroom, like the nurse's office, preschool classroom, or special needs classroom, if they are uncomfortable using a communal restroom with any of their classmates; this alternative would allow such students to segregate themselves without outing or ostracizing vulnerable transgender students, and without negative effects on any students' privacy, safety, or autonomy.

Because the Policy thus lacks even a fair and substantial relationship to the goals of protecting privacy and safety and creating an effective learning and working environment, the District cannot justify the Policy even at the lowest end of the sliding scale. Again, no evidence at all establishes that forbidding X.A. from using the boy's restroom enhances anyone's ability to learn, and uncontradicted evidence establishes that the Policy impairs X.A.'s privacy and his ability to learn while at school and places him at risk. Likewise, no evidence cited by the Board or the community established that forbidding transgender students from using restrooms consistent with their gender identity has any substantial relationship to ensuring students' safety and privacy. The lack of any evidentiary basis for the Policy bolsters the conclusion that the Policy was adopted for other, illegitimate reasons—to cater to peoples' fears and

ignorance and to discourage transgender students from presenting in school in accordance with their gender identity.

Indeed, the evidence before the Court illustrates that the Policy achieves the *opposite* of its stated goals, at least for the District's transgender students like X.A. He and his parents have placed evidence before the Court that the Policy makes him less safe at school, violates his privacy, and interferes with his ability to learn. The District's policy cannot survive heightened—or any level—of scrutiny when it actively undermines the goals and values it purports to achieve.

For all these reasons, the Policy cannot survive judicial scrutiny. X.A. has demonstrated that he is irreparably harmed by the Policy, that there are serious and substantial questions going to the merits of his equal protection claims, and further that he is likely to succeed on his claims that the Policy unconstitutionally distinguishes among students on the basis of whether their gender identity aligns with the sex assigned on their birth certificate, violating X.A.'s right to equal protection as guaranteed by the Alaska Constitution.

B. The Bathroom Policy Violates X.A.'s Right Of Privacy.

Alaska's Constitution, Article I, Section 22 recognizes privacy as a constitutionally protected right in this state. It declares that the people's right of privacy "shall not be infringed."

The Alaska Supreme Court has held unambiguously that children, like adults, have fundamental privacy rights that must be protected.⁷⁴ The initial impetus for adding an explicit privacy protection to the state constitution may have been a concern for informational privacy,⁷⁵ but the Court has interpreted the provision broadly, consistent with its broad language.⁷⁶

Alaska's right to privacy encompasses two types of personal interests: "One is an individual's interest in personal autonomy and independence in decision making. The other is an individual's interest in protecting sensitive personal information . . . which, if disclosed, . . . could cause embarrassment, anxiety, humiliation, harassment, or economic and physical reprisals."⁷⁷ Both aspects of the Alaska Constitution's right of

⁷⁴ See *Planned Parenthood 2016*, 375 P.3d at 1127 ("a pregnant minor has the same fundamental privacy right to reproductive choice as an adult"); *Breese v. Smith*, 501 P.2d 159, 168 (Alaska 1972).

⁷⁵ See *Valley Hospital Ass'n, Inc. v. Mat-Su Coalition for Choice*, 948 P.2d 963, 969 & n.10 (Alaska 1997).

⁷⁶ See *Planned Parenthood 2001*, 35 P.3d at 35-36 (listing the types of privacy that the Court has held protected under Article I, Section 22, including privacy in the home, the right to make reproductive choices, freedom from surreptitious recording of certain conversations, safeguarding medical records, limiting required public disclosure of sources of income that would disclose confidential information about the payors, shielding communications that include sensitive personal information, and shielding private records of state employees).

⁷⁷ *Doe v. State, Dep't of Public Safety*, 444 P.3d 116, 127 (Alaska 2019) (internal quotation marks, brackets, and footnotes omitted).

privacy are implicated by the Policy.

Forcing X.A. to use a single-occupancy restroom burdens X.A.'s interest in personal autonomy and independence in decision making as relates to his choice to express himself consistently with his gender identity—that is, to dress like a boy and to ask to be treated as the boy he knows he is. If X.A. outwardly denied his gender identity and came to school looking like a girl and using the girl's name he was assigned at birth, no one would question his right to use the girls' restroom. Because he presents to the world as a boy, consistent with his gender identity, he is singled out, and he faces teasing, embarrassment, and loss of time in his classroom.⁷⁸ Thus, X.A.'s personal autonomy and independence in decision making about how he looks, dresses, cuts his hair, and presents as a boy to the world are implicated, and restricted, by the Policy.

X.A. also faces the loss of privacy about very sensitive personal information—that he is transgender—since the requirement that he use a single-occupant restroom often puts him in situations where he is asked to explain why he is seeking “special” treatment instead of using the communal restroom along with the other boys in his class.

⁷⁸ See *State v. Glass*, 583 P.2d 872, 879-80 (Alaska 1978) (“The meaning of privacy . . . [includes] protect[ing] the individual’s interest in preserving his essential dignity as a human being.” (internal quotation marks omitted)).

Judicial analysis of the constitutionality of a rule that infringes on an individual's privacy rights follows essentially the same three steps as the equal protection sliding scale analysis described above, as the Alaska Supreme Court has explained:

Under our case law, we begin our analysis . . . by measuring the weight and depth of the individual right at stake so as to determine the proper level of scrutiny with which to review the challenged legislation. If this individual right proves to be fundamental, we must then review the challenged legislation strictly, allowing the law to survive only if the State can establish that it advances a compelling state interest using the least restrictive means available. In cases involving the right to privacy, the precise degree to which the challenged legislation must actually further a compelling state interest and represent the least restrictive alternative is determined, at least in part, by the relative weight of the competing rights and interests. As we have previously explained, the rights to privacy and liberty are neither absolute nor comprehensive . . . and their limits depend on a balance of interests.⁷⁹

Applying this test to the District's Policy establishes that the Policy is unconstitutional.

1. The privacy rights at issue are fundamental.

The Alaska Supreme Court has repeatedly recognized the fundamental nature of the personal privacy right to make decisions about one's own

⁷⁹ *State v. Planned Parenthood of Alaska* ("Planned Parenthood 2007"), 171 P.3d 577, 581 (Alaska 2007) (internal quotation marks, brackets, and footnotes omitted); *see also Meyers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 245-46 (Alaska 2006) (describing the three-part test for evaluating an invasion of privacy).

body.⁸⁰ As detailed above, the Policy substantially infringes on X.A.'s right to make decisions about how he presents his body in school. From the District's perspective, X.A. is free to attend school dressed like a girl and asking to be treated as a girl—but expecting X.A. to deny his gender identity would cause him significant psychological harm.⁸¹ When X.A. comes to school dressed like a boy and asking to be treated as the boy he is, based on his gender identity, the Policy harshly penalizes that choice by making it very difficult for X.A. to manage both his need to use the restroom and his need not to be singled out and not to be compelled to disclose deeply personal information about his body. Because the Policy infringes on X.A.'s fundamental right of private decision making about sensitive matters, the Policy must be analyzed using strict scrutiny.⁸²

⁸⁰ See, e.g., *Planned Parenthood 2007*, 171 P.3d at 581-82 (minors as well as adults have fundamental privacy rights regarding their bodies, including the right to choose whether to terminate a pregnancy); *Meyers*, 138 P.3d at 248 (mentally ill person has a fundamental right to refuse to take psychotropic medicines); *Valley Hospital*, 94 P.3d at 969 (reproductive rights are fundamental privacy rights); *Breese*, 501 P.2d at 170 (student at school has a fundamental right to choose his appearance).

⁸¹ See Exh. 2 at 10/19 Tr. 25 (citing studies that show that sex-segregated bathrooms increase the likelihood of transgender students becoming depressed, anxious, isolated, and hopeless); see also nn 2-19 and accompanying text *supra*.

⁸² See *Planned Parenthood 2007*, 171 P.3d at 582; *Meyers*, 138 P.3d at 248; *Valley Hospital*, 94 P.3d at 971; *Breese*, 501 P.2d at 172.

In this case, the second aspect of the right of privacy is closely related to the first. X.A.'s compliance with the Policy regularly puts him in the position of having to disclose extremely sensitive personal information that he does not wish to share. Claims involving forced disclosure of sensitive personal information are often analyzed using strict scrutiny.⁸³ Strict scrutiny applies when the plaintiff has both a legitimate expectation of privacy and suffers a substantial, not minimal, infringement of privacy as a result of the challenged policy.⁸⁴ Those requirements are met here. Elementary school children are taught about bodily privacy and legitimately expect not to be required to share publicly how their clothed body parts may differ from others'. X.A. unquestionably has a legitimate expectation of privacy about the fact that his genitals do not match his gender identity and his outward appearance as a boy. When X.A. is questioned because he attempts to comply with the Policy, he must disclose this very sensitive personal information; this is a substantial, not minimal, invasion of his privacy. Because X.A. has both a legitimate expectation of privacy about his body and he suffers a substantial infringement of his privacy as a result of the Policy, this Court must apply strict scrutiny in

⁸³ See *Doe*, 444 P.3d at 125-27.

⁸⁴ See *id.* at 126-27.

evaluating the constitutionality of the Policy. The District must establish that the Policy that requires such sensitive disclosures serves a compelling interest and that the disclosures occur in the manner that is least intrusive of X.A.'s right of privacy.⁸⁵

2. The Policy does not serve any compelling interest in the manner that is least intrusive of X.A.'s rights of privacy.

As addressed above, the District's written Policy articulates legitimate, perhaps even compelling, reasons for enacting the Policy: to create an effective learning and work environment and to ensure privacy and safety in all District facilities. However, substantial other evidence indicates that the true reason for the Policy is to discriminate against transgender individuals who ask to be treated in school in accordance with their gender identity rather than try to hide their true identity by appearing in public dressed in accordance with the sex assigned on their birth certificate.

If the real, underlying purpose for the Policy is to discriminate against a disfavored minority, the Policy is unconstitutional.⁸⁶ No means-end fit analysis is required.

⁸⁵ See *id.* at 125.

⁸⁶ See *In the Matter of 2021 Redistricting Cases*, 528 P.3d 40, 57 (Alaska 2023); *Planned Parenthood 2001*, 35 P.3d at 45.

If this Court accepts that the true purposes of the Policy are to protect privacy, safety, and an effective work and learning environment and that these are compelling interests, then the Court must examine the closeness of the fit between the asserted interests and the means chosen to achieve those interests. Because the individual privacy interests infringed by the Policy are fundamental, the District must show that the Policy serves the District's compelling interest in the way that is least intrusive to X.A.'s privacy.⁸⁷

The District cannot make that showing. The District has proffered no evidence that allowing a transgender student to use the communal restroom consistent with his gender identity would create an unsafe situation, invade anyone's privacy, or harm the work and learning environment. And X.A. has presented substantial evidence that complying with the Policy compromises his privacy and adversely affects his ability to learn in the school environment. The obvious alternative that is less intrusive of his privacy is to revert back to the former District policy that allowed students to use the restroom consistent with their gender identity, which was in place for years without any reported problems as to any student's ability to learn, to be safe, and to have their privacy protected.

⁸⁷ See *Doe*, 444 P.3d at 125, 132.

The Policy therefore infringes on X.A.'s fundamental privacy interests, and fails to serve a compelling District interest in the way least intrusive of X.A.'s privacy. The Court must find the Policy is unconstitutional.

C The District's Informational Privacy Policy Violates X.A.'s Constitutional Right To Privacy.

As well as violating X.A.'s right to privacy by outing him as transgender when he uses the bathroom, another aspect of Policy 5134 BP also violates X.A.'s privacy right: the District's insistence on publicizing X.A.'s sex as assigned at birth and his no-longer-used feminine given name to a wide variety of school employees who do not need this information. This aspect of the policy is unconstitutional and causes harm to X.A., and it also should be enjoined by this Court.

X.A.'s privacy is invaded when the School continues to publicize his female name assigned at birth to staff, students, and teachers who do not need access to this information. Because the name is female and X.A. presents as a boy, calling him by his feminine birth name operates to broadcast that he is a transgender child. School now not only publicizes this information to a wide variety of school staff including lunch workers and substitute teachers, but also to large groups of children each afternoon when X.A.'s birth name is shouted out loud in a crowded gym after school.

The Alaska Supreme Court has not yet considered whether Alaska’s constitutional right to privacy protects against government disclosures of a person’s transgender status, but one superior court judge had little difficulty concluding that it does; this Court should find the same. Though it is not binding on this Court, *K.L. v. State, Department of Administration, Department of Motor Vehicles*⁸⁸ is an instructive decision illustrating how Alaska’s constitutional privacy right protects transgender Alaskans against involuntary disclosures about their status as transgender people. In that case, a transgender woman sued the Department of Motor Vehicles, alleging that the DMV’s refusal to allow her to change the gender marker on her driver’s license to reflect her gender identity violated the Alaska Constitution by infringing on her privacy. She argued that the obvious mismatch between her gender identity and presentation as a woman and the male sex designation on her license “force[d] disclosure of [her] transgender status,” opening her to “severe embarrassment and anxiety” as well as placing her “at risk of harm, harassment, or [being] subject to discrimination.”⁸⁹ The court agreed that these facts implicated the constitutional privacy interest in “protecting sensitive personal

⁸⁸ 2012 WL 2685183 (Alaska Super. March 12, 2012).

⁸⁹ *Id.* at *6.

information from public disclosure.”⁹⁰ As the Alaska Supreme Court has explained, a “common thread woven into our decisions” about constitutional privacy is that Alaskans are protected against forced disclosure of what has been variously been described as “private matters,” “sensitive personal information,” or “a person’s more intimate concerns”—meaning “the type of personal information which, if disclosed even to a friend, could cause embarrassment or anxiety.”⁹¹ The *K.L.* court agreed that “transgendered status is private, sensitive personal information,” and reasoned that the DMV’s refusal to allow K.L. to use a gender marker matching her gender identity risked disclosing that personal and private information against her will because “the discrepancy between [a

⁹⁰ *Id.* at *4 & nn. 23-25 (citing *Falcon v. Alaska Pub. Offices Comm’n*, 570 P.2d 469, 479-80 (Alaska 1977) (holding that disclosure of information about the doctor-patient relationship must yield to the right to privacy); *Rollins v. Ulmer*, 15 P.3d 749 (Alaska 2001) (recognizing that public disclosure about medical conditions can be stigmatizing and invade of the right to privacy); *Alaska Wildlife Alliance v. Rue*, 948 P.2d 976, 980 (Alaska 1997) (holding that the right to privacy protects public employees and private contractors from public disclosure about their involvement in controversial predator control program); *Gunnerud v. State*, 611 P.2d 69, 72 (Alaska 1980) (holding that right to privacy protects against unnecessary disclosure of medical records); *State, Dep’t of Revenue v. Oliver*, 636 P.2d 1156, 1166–67 (Alaska 1981) (holding that privacy clause protects communications involving “a person’s more intimate concerns” like personal finances); and *Doe v. Alaska Superior Court*, 721 P.2d 617, 629 (Alaska 1986) (“[T]he right of privacy embodied in the Alaska Constitution is implicated by the disclosure of *personal* information about oneself.”)).

⁹¹ *K.L.*, 2012 WL 2685183 at *4 (quoting *Doe*, 721 P.2d at 629).

transgender person's] license and their physical appearance can lead to the forced disclosure of the person's transgendered status.”⁹²

So it is with X.A. Like K.L., X.A. is transgender, so the sex designation and given name on his official school records no longer match his gender identity and the way he presents to the world. Thus, the District's policy of publicizing his “deadname” and sex as assigned at birth to all school personnel—including lunchroom workers, substitute teachers, groups of students, and other personnel who do not need this information—risks forced disclosure of his transgender status, carrying with it the risks of embarrassment, anxiety, harassment, and bullying. Indeed, X.A. has already experienced these effects, feeling upset, embarrassed, and singled out when he is repeatedly forced to explain that he is transgender and that is why school records show a girl's given name even though X.A. is, looks like, and acts like a boy. This forced disclosure of X.A.'s personal and sensitive information to his detriment implicates the right to constitutional privacy. As such, the District's informational policy is subject to heightened scrutiny to ensure that the government has a “legitimate interest” for its policy, and that there exists a “close and substantial

⁹² *K.L.*, 2012 WL 2685183 at *6.

relationship between its interest and its chosen means of advancing that interest.”⁹³

The District’s interests in disclosing X.A.’s transgender status are not entirely clear, but no legitimate government purpose bears a close and substantial relationship to this policy. The District certainly has a legitimate interest in maintaining accurate student records; this may well require that the District’s central files include every student’s name and gender as they appear on official government records. But the issue here is whether the District has a legitimate and well-tailored justification for further publicizing this information to every employee and volunteer at X.A.’s school through its computer system, and to large groups of children after school—widespread disclosures that go well beyond any need to maintain accurate official records. There is no legitimate interest in disclosing a child’s sensitive personal information to every staff person at the school, or to other children. Indeed, with respect to matters other than transgender status, the School is vigilant about not disclosing a child’s private medical information to others. [M.A. Aff. ¶ 26]

⁹³ *Sampson v. State*, 31 P.3d 88, 91 (Alaska 2001).

Nor can the District rely on logistical roadblocks, for example by arguing that its computer system does not allow it to utilize preferred student names rather than legal names. After all, the prior District informational privacy policy—which was in effect in the District for more than six years—required that schools use transgender students’ preferred names and gender in every instance where reliance on legal name and gender is not mandatory:

Schools are required to maintain a permanent record for each student, which includes legal name and gender. This information is also required for standardized tests and official school unit reports. This official information will only be changed upon receipt of documentation that a student’s name or gender has been changed in accordance with any applicable laws. Any requests to change a student’s legal name or gender in official records should be referred to the Superintendent.

To the extent that the school is not required to use a student’s legal name or gender on school records or other documents, the school should use the name and gender identified in the student’s plan.

[Exh. 1 at 3]

The prior policy also required that school staff “take care . . . not to inadvertently disclose information that is intended to be kept private” and that they address transgender students “by the name and pronoun corresponding to their gender identity that is consistently asserted at school.” [Exh. 1 at 3] These policies—which appropriately guard against

unconstitutional disclosures of sensitive student information—were in place in the District for at least six years, and the record contains no suggestion whatsoever that they were unworkable or caused any logistical problems for the District. Accordingly, the new policy is not closely drawn to further any legitimate government interest and thus is unconstitutional.

This Court should find that plaintiffs are likely to succeed on the merits of their constitutional privacy claim with respect to disclosures of X.A.'s transgender status by widely publicizing the feminine given name and sex designation he was assigned at birth.

III. The Balance of Hardships Tips Strongly in X.A.'s favor.

Finally, in considering whether to grant an injunction, the Court must balance the hardships. The balance of hardships here tilts sharply in X.A.'s favor. X.A. is a vulnerable child, a transgender elementary school student who is being singled out at school due to the District's discriminatory policy. Every day at school, X.A. faces discomfort and shame when he is treated differently from the other boys in his class because he cannot use the convenient communal restroom like the other boys do. X.A. faces the prospect of suffering physical pain and discomfort and becoming physically ill from holding in his urine to avoid using an inappropriate bathroom; being singled out by other children and staff for his restroom use; missing valuable educational class time to use the nurse's

bathroom or preschool/resource room bathroom; being repeatedly outed as transgender and questioned about his gender by students and staff due to the school's refusal to consistently inform teachers and staff of X.A.'s proper name and gender and instead broadcast his deadname for all to hear. The medical and scientific consensus is that the District's policies place X.A. at heightened risk for developing gender dysphoria and other poor mental health outcomes.⁹⁴

In contrast to the harms that the District's policy will continue to place on X.A. and other transgender students if no injunction issues, the District will not be harmed by an injunction. The District had in place its former policy for six years and the record does not reflect that it caused any problems for students, staff, or the District. Reverting to that policy will not harm the District in any real way—but it will protect a vulnerable child, and others like him, from ongoing harms at school. The Court should find that the balance of hardships favors X.A. and should issue an injunction to protect him.

⁹⁴ See nn. 2-19 and accompanying text; see also M.A. Aff. ¶ 30.

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SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

X.A., a minor, by and through his
next friends P.A., his father and
M.A., his mother,

Plaintiff

No. 3PA-24-01525 CI

v.

Matanuska-Susitna Borough
School District,

Defendant

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Having reviewed Plaintiff's Motion for Preliminary Injunction, supporting exhibits, and all oppositions, replies, and argument, and being fully advised in the premises, this Court Orders that the Motion for Preliminary Injunction is hereby GRANTED. The Court finds that X.A. is being subject to irreparable harm as a result of Defendant's policies and procedures that forbid him from using the boy's restroom in accordance with his gender identity, and its informational privacy policies and practices that disclose his personal and private information, transgender status, to students, staff, and others who do not need this information. The Court further finds that X.A. is likely to

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succeed on the merits of his claims that these policies violate the Alaska Constitution's right to equal protection and privacy.

Accordingly, the Court orders that:

1. Defendant Matanuska-Susitna Borough School District is enjoined from relying or enforcing Policy 5134 BP and shall permit X.A. to use the boys' restrooms without limitations; and
2. Defendant Matanuska-Susitna Borough School District is enjoined from publicly disclosing X.A.'s transgender status, including by disclosing his female name as assigned at birth, to any person, including teachers, staff, students, and volunteers, unless X.A. consents to the disclosure or it is necessary to fulfill the District's legal obligations. The District shall use X.A.'s preferred name in school records, communications with teachers, staff, volunteers, and other students.

DATED:

The Hon. Tom V. Jamgochian
Superior Court Judge