Schoolhouse Secrets: Parental Rights and Gender Identity Disclosure in the American Classroom

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In 2025, two key cases reviewed school policies on a parent's right to be informed of their student's use of a gender-nonconforming name or pronoun. The first case, Foote v. Ludlow School Committee *(2025), was dismissed by the United States Court of Appeals for the First Circuit after the court found no violation of a fundamental right. The second case,* Mirabelli et al. v. Olson et al. *(2025), yielded an entirely opposite result; the United States District Court for the Southern District of California found that the parents' rights were violated, and the school's policy faced a permanent injunction. These contrasting results highlight ongoing disagreements about gender identity, parental authority, the right to privacy, the right to freedom of religious expression, and the government's ability to control and protect students within public institutions. This review examines the jurisdictional and doctrinal differences underlying these decisions, the constitutional rights implicated, and state and federal statutes currently shaping this area of law.*

Introduction

Gender identity, gender dysphoria, and the use of gender-nonconforming pronouns are issues of great sensitivity and nuance within the United States' social and political landscape. There lacks any clear consensus among Americans; most public opinion polls reveal a great divide across age, race, and party affiliation. For example, in a 2022 survey by Pew Research, younger Americans tended to favor increased healthcare regarding gender transitions when compared to Americans over thirty.[1] Additionally, other research shows a steady increase in the percentage of citizens who are broadly identifying as LGBT (lesbian, gay, transgender, or bisexual) as the observed group of citizens gets younger.[2] When considering the issue from a political stance, the notable difference in opinion remains. Seventy percent of Republicans and those leaning Republican stating that societal views on gender identity and transgender people were changing too quickly, while only twenty-one

[1] Anna Brown et al., *Americans' Complex Views on Gender Identity and Transgender Issues*, PEW RESEARCH CENTER (Jun. 28, 2022), https://www.pewresearch.org/social-trends/2022/06/28/americans-complex-views-on-gender-identity-and-transgender-issues.

[2] Kerith J. Conron & Andrew R. Flores, *Adult LGBT Population in the United States*, WILLIAMS INSTITUTE, UCLA School of Law (Dec. 2023), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Dec-2023.pdf.

percent of Democrats and those leaning Democrat agreed.[3] These data reveal tension surrounding the direction of politics, healthcare, and social treatment for transgender individuals. While one group might seek to advance the rights and protections of transgender or gender-nonconforming individuals, another group might believe that it would be a cultural or political overreach to do so.

Nowhere is this disagreement more heightened than in the public school system. Multiple groups are actively seeking for their side to be considered most important. Parents desire the right to be informed of their child's behavior while at school. Students seek a right to privacy while they are in a safe learning environment. Teachers are caught between following school policies and being honest with parents who have questions. Administrators and school board members hope to create regulations that increase safety, efficiency, and trust. Two similar lower court cases from 2025 focused on this topic of gender identity and school policies.

The first case, *Foote v. Ludlow School Committee* (2025), relates to a policy change at a middle school in Massachusetts. Ruled in February, *Foote* focuses on a policy that allows a student to request a certain name and gender pronouns to be used at school without notifying the parents unless the student consents.[4] The United States Court of Appeals for the First Circuit found no fundamental right violation and dismissed the parents' complaint. The second case, *Mirabelli et al v. Olson et al* (2025), was ruled in December, yet it yielded an entirely opposite result.[5] In *Mirabelli*, the United States District Court for the Southern District of California found that the parents' rights were violated, and the school's policy faced a permanent injunction. Both cases are currently undergoing an appeals process to the Supreme Court of the United States and the United States Court of Appeals for the Ninth Circuit, respectively.

This review will begin by observing key jurisdictional and doctrinal differences between the United States Court of Appeals for the First Circuit and the United States District Court for the Southern District of California, which falls under the Ninth Circuit, as a means of explaining why these cases reached different conclusions. Afterwards, there will be a section on the rights of parents, students, and teachers as established by the Constitution and by prior ruling. Finally, this review will inspect relevant existing federal legislation on the topic.

Part I: Jurisdictional & Doctrinal Differences

Looking first at *Foote*, there is clear precedent within the First Circuit Court of deferring to government authority in cases of disagreement between parents and school districts. For example, the First Circuit ruled in *Brown v. Hot, Sexy and Safer Productions, Inc.* (1995) that parents do not have the right to dictate school curriculum, and that even if a parent considers some subject matter to be

[3] Brown et al., *supra* note 1.
[4] Foote v. Ludlow School Committee, 128 F.4th 336, 358 (1st Cir. 2025).
[5] Mirabelli et al v. Olson et al, No. 3:2023cv00768, Document 308 (S.D. Cal. 2025).

morally offensive, the school may still teach that content.[6] The court stated: "We do not think... that this freedom [for parents to rear children in their preferred way] encompasses a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children."[7] They derived this opinion partially due to the immense administrative burden that might occur if every parent could force the school to teach their children certain material, but also due to their interpretation of prior precedent that had initially established a parent's right to raise their child with certain freedoms. The court in *Foote* referenced *Brown* when explaining that schools have the "right to control [their] curricular and administrative decisions" and that parents cannot demand that a school teach a certain concept in a certain manner.[8] Another example of the First Circuit's tendency to defer to school authority is seen in *Parker v. Hurley* (2008). Here, the court reemphasized its stance from *Brown* and ruled that exposure to ideas, in this case same-sex families within a novel, does not violate parental rights. The First Circuit stated that "[p]ublic schools are not obliged to shield individual students from ideas which potentially are religiously offensive," and that there was no viable argument of indoctrination.[9] When observing the rulings of both *Brown* and *Parker*, it is clear that the First Circuit takes a narrower approach to a parent's right to rear children, as well as provides broad structural deference to schools for their programming and learning materials.

Moving to *Mirabelli*, the U.S. District Court for the Southern District of California is bound by stare decisis to the rulings of the Ninth Circuit, therefore it is helpful to observe the opinions of the Ninth Circuit's cases by using the same focus as above in *Foote* with the First Circuit. Doing so, it is clear that the Ninth Circuit provides much stronger protections of parental rights than the First Circuit does. One case demonstrating this point is *Wallis v. Spencer* (2000). In this case, the court found that parents must provide the school with consent to complete intrusive medical exams, otherwise the school would be violating the parents' rights.[10] Overall, *Wallis* emphasized the importance of parental decision-making. The Court stated that "[t]he right to family association includes the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state."[11] The First Circuit reaffirmed this key parental power in *Mueller v. Auker* (2012) when the court discussed other medical issues, finding that parents required timely notice except in rare emergency circumstances.[12] These cases highlight the Ninth Circuit's tendency to favor parental protection and consent over state control.

These differences in interpretation rely on each districts' individual precedent. However, *Foote* and *Mirabelli* are both bound to the rulings of the Supreme Court of the United States by stare decisis. It is therefore important to consider how these differing districts handled the same cases.

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[6] Brown v. Hot, Sexy & Safer Prods., Inc., 68 F.3d 525 (1st Cir. 1995).
[7] *Id.* at 525.
[8] Foote, 128 F.4th at 364.
[9] Parker v. Hurley, 514 F.3d 87 (1st Cir. 2008).
[10] Wallis v. Spencer, 202 F.3d 1126 (9th Cir. 2000).
[11] *Id.* at 1126.
[12] Mueller v. Auker, 700 F.3d 1180 (9th Cir. 2012).

There are three key Supreme Court cases relevant to the topic of parent and student rights in education: *Meyer v. Nebraska* (1923), *Pierce v. Society of Sisters* (1925), and *Troxel v. Granville* (2000). The court in *Foote* accurately acknowledged that all of these cases "[fall] within the broader, well-established parental right to direct the upbringing of one's child."[13] Beginning first with *Meyer*, below is an examination of how the courts for *Foote* and *Mirabelli* applied these cases to their own rulings.

In *Meyer v. Nebraska* (1923), the court found that a state law forbidding the teaching of German in schools violated the Fourteenth Amendment. The underlying goal of the law was the inhibit foreigners from teaching their children a native language, thereby interfering with a parent-child relationship by way of the public school system. This law was affirmed to be unconstitutional, and the right to "establish a home and bring up children" was considered generally protected by the Fourteenth amendment.[14] The First Circuit in *Foote* acknowledged that *Meyer* discusses this larger, more fundamental right when explaining its ruling as opposed to merely targeting the right to allow a child to learn German at school. However, when the court studied the ways in which the parents claimed they faced restrictions of this right, the court remained unconvinced that the school policy violated their right. They state that "[t]o the extent the Parents oppose certain academic assignments, the use of a student's pronouns in the classroom, decisions about bathroom access, and a guidance counselor speaking to a student, none of these concerns restrict parental rights under the Due Process Clause."[15] The court instead claims that the parents are challenging the academic environment under which their child is currently learning, which the First Circuit continuously finds to be under the control of the school, as described above in *Brown* and *Parker*.

The Southern District of California's interpretation of *Meyer* as seen in *Mirabelli* is entirely different from the First Circuit's conclusion in *Foote*. The District Court reads *Meyer* with greater emphasis, stating that parental rights "[encompass] both a right to direct a child's education and a duty to provide for a child's health care."[16] *Mirabelli* focuses on the idea that parents should have the ability to make decisions for their children, even if those decisions might not be exactly what the child wants, due to the fact that parents typically have their child's best interests at heart. This concept is especially potent in issues related to healthcare, and strong parental rights can be seen in other Supreme Court cases such as *Parham v. J.R.* (1979).[17] To support this concept in connection with gender identity, the court for *Mirabelli* spends time explaining the health risks of identifying as a different gender than that assigned at birth, particularly mental health risks of gender dysphoria. By doing so, the plaintiff and the court is able to find adequate reasoning for alerting parents of their child's change in self-identification at school.

The second key Supreme Court case relevant to both *Foote* and *Mirabelli* is *Pierce v. Society of Sisters* (1925). The court in *Pierce* unanimously struck down Oregon's Compulsory Education Act

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[13] Foote, 128 F.4th at 358.
[14] Meyer v. Nebraska, 262 U.S. 390, 399 (1923).
[15] Foote, 128 F.4th at 367.
[16] Mirabelli, 3:2023cv00768, Document 308 at 13.
[17] Parham v. J.R., 442 U.S. 584, 602-603 (1979).

which required that children attend only public schools between the ages of eight and sixteen. This Act effectively banned parents from sending their children to private or religious schools. Referencing *Meyer*, the case reads that parents have the liberty to "direct the upbringing and education of [their] children," and also that a "child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[18] As was seen with *Foote*'s interpretation of *Meyer*, however, this liberty to "direct" a child's education does not constitute a liberty to control the operations of faculty and staff within the school in the eyes of the First Circuit Court. *Foote* points out a key difference between its ruling and the ruling seen in *Pierce*. While *Pierce* focused on education that the state unconstitutionally banned, *Foote* focuses on education that the state supports.[19] *Foote* is not about public school broadly, but it is instead about an internal component of this schooling, which the First Circuit considers to be under the legal control of the state. In other words, the government is not forcing students to go to a school that makes all its students go through a gender transition, but instead the government is allowing schools to include gender-related discussion in a program or conversation. On the flipside, *Mirabelli* references *Pierce* in passing to emphasize the high duty that parents have towards their children to act in their best interest.[20] This contrast shows how *Foote* applies cases narrowly, while *Mirabelli* interprets the same rights broadly.

Thirdly and finally, *Troxel v. Granville* (2000) is an important case for *Foote* and *Mirabelli*. In *Troxel*, the Supreme Court ruled that parents possess the fundamental right to determine who may visit their children.[21] This right, which is more broadly understood as the right to direct the care, custody, and upbring of one's children, is described in *Troxel* as "perhaps the oldest of the fundamental liberty interests recognized by th[e] Court."[22] *Foote* referenced this parental right in their summary judgment, however as was shown with their use of the other cases above, the court determined that the school policy did not violate the right. The court highlights that a school can speak to and share resources with interested students on topics of gender and sexuality without violating parent's rights. *Foote* uses the following example: "But providing educational resources about LGBT-related issues to a child who has shown interest imposes no more compulsion to identify as genderqueer than providing a book about brick laying could coerce a student into becoming a mason."[23] By containing the issue within an academic, material-based context, *Foote* can avoid the need to defend challenging positions that are more closely related to a parent.

If *Foote* is an example of narrowing the rights found in *Troxel*, then *Mirabelli* does the opposite. *Mirabelli* applies *Foote* liberally, and it shows how parent's rights are broad and ongoing. The court for *Mirabelli* states that "[p]arental involvement in essential to the healthy maturation of schoolchildren," and that the "California's public school system parental exclusion policies place a

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[18] Pierce v. Society of Sisters, 268 U.S. 510, 534-535 (1925).
[19] Foote, 128 F.4th 336, at 388.
[20] Mirabelli, 3:2023cv00768, Document 308 at 13.
[21] Troxel v. Granville, 530 U.S. 57 (2000).
[22] *Id.* at 65.
[23] *Id.* at 377.

communication barrier between parents and teachers."[24] This line clarifies the intent of *Mirabelli*; the court is not attempting to pass all teaching powers off to the parents, but the court instead desires for parents to have an intentional presence in their child's education.

Part II: Constitutional Rights of Teachers

Alongside the parents and students, these school policies greatly impact school faculty. This group is emphasized more in *Mirabelli* than in *Foote*. This is likely due to the fact that *Mirabelli* discusses the fear that teachers in the district faced if they did not follow the school board's nondisclosure rule. The case states that "[a]dministrators made it clear... that failing to adhere to the policy would result in termination."[25] This became especially important in *Mirabelli* because there were teachers who felt the policy was against their faith since they would be expected to lie or hide the truth from parents. Ultimately, therefore, this is an issue of the right to the freedom of expression, which can be found in the Constitution and reads: "Congress shall make no law... prohibiting the free expression" of religion.[26] Since the Fourteenth Amendment incorporated this clause, the right to freedom of expression must also not be abridged by state or local law. One important question the court should consider is whether the government as a public employee should have the ability to enforce such a policy as is seen in *Mirabelli*.

Public school teachers are public employees to the government. This provides the government with some abilities to restrict the actions of their teachers, and there are multiple cases that establish this control. For example, the Supreme Court in *Connick v. Myers* (1983) states that "[w]hen employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment."[27] Even more recently, the Supreme Court in *Garcetti v. Ceballos* (2006) said a public employee must, "by necessity ... accept certain limitations on his or her freedom" because his or her speech can "contravene governmental policies or impair the proper performance of governmental functions."[28] The government has the ability to redirect or restrict the behavior of their employees. This can be helpful, especially when considering the inefficiencies and risks that could arise from an inability to adjust anything that a teacher is doing in the classroom. However, teachers do not lose all of their rights while they are fulfilling their official duties. The court must seek to balance the government's power and a teacher's right to freedom of expression. One way the court could determine if the government should possess a certain dominance is to observe the constitutionality of the school's policy. If the policy conflicts with a state law, then the policy cannot stand. A second method of determining which side's interests are weightier is to conduct a balancing test, as is seen in *Connick* and *Pickering v. Board of Education* (1968). In *Pickering*, the Supreme Court stated that "[t]he teacher's

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[24] Mirabelli, 3:2023cv00768, Document 308 at 51.
[25] Mirabelli, 3:2023cv00768, Document 308 at 44.
[26] U.S. Const. amend. I.
[27] Connick v. Myers, No. 461 U.S. 138, 146 (1983).
[28] Garcetti v. Ceballos, 547 U.S. 410, 418 (2006).

interest as a citizen in making public comments must be balanced against the State's interest in promoting the efficiency of its employees' public services."[29] If either *Foote* or *Mirabelli* reach the Supreme Court, then the court could also create a new test to further clarify parental rights.

Part II: State & Federal Legislation on Education Rights & Protections

Federal legislation relevant to the topic of education and parent knowledge includes the Family Educational Rights and Privacy Act of 1974 (FERPA), as well as the Protection of Pupil Rights Amendment of 1978 (PPRA). Both FERPA and PPRA apply to K-12 schools, and FERPA also applies to colleges and universities in the United States. In brief, FERPA discusses what, how, and when schools can disclose health information to parents. This could be important in cases where a student is considering or actively participating in surgeries or medication processes related to their gender. Both *Foote* and *Mirabelli* focus on pronoun and name usage as opposed to specific medical changes, making FERPA less relevant to these cases. It is important to note, however, that while *Foote* completely dismisses the idea of a name or pronoun being considered something medical, *Mirabelli* highlights possible medical ailments in the form of psychological struggles such as gender dysphoria in its reasoning for alerting parents in order to increase a student's access to support.

The PPRA establishes a parental right to inspect material and curriculum prior to their student experiencing it. More specifically, it reads that "[a]ll instructional materials... shall be available for inspection by the parents or guardians of the children."[30] This statement creates a baseline level of parental right to supervision over that which occurs in the classroom. Additionally, the PPRA outlines rights of students' privacy: "[n]o student shall be required... to [reveal] information concerning (1) political affiliations or beliefs of the student or the student's parent; (2) mental or psychological problems of the student of the student's family; (3) sex behavior or attitudes... (7) religious practices, affiliations, or beliefs of the student or student's parent."[31] These listed categories are some of the most sensitive areas of a person's life, so preventing government intrusion in these sectors is important. This section of the PPRA also helps to prevent compelled speech, which could violate the First Amendment, as well as coercion. Ultimately, it protects students from being forced to reveal personal information, but it does not regulate voluntary sharing, and it also does not state that if such information is voluntarily shared, then the parents must be notified. Contacting the parents about details depends upon FERPA and health records, as well as local and state policy.

The SAFETY (Support Academic Futures and Educators for Today's Youth) Act in California is an example of state policy clarifying what a teacher must do in a situation where a student shares personal information such as a gender or pronoun change. This act, passed earlier in

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[29] Pickering v. Board of Education, 391 U.S. 563, 568 (1968).
[30] Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h (2022).
[31] *Id.*

2025, states that it will "prohibit school districts, county offices of education, charter schools, and the state special schools, and a member of the governing board or body of those educational entities, from enacting or enforcing any policy, rule, or administrative regulation that requires an employee or a contractor to disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent unless otherwise required by law, as provided."[32] This Act means that no teacher or public-school employee may be forced to share this personal information with a parent or guardian. If a teacher desires to share with a parent, then they possess the capacity to do so. This SAFETY Act is crucially different from the school policies in *Mirabelli*, which the State Department of Education developed. The policies in *Mirabelli*, as per the summary judgment, "[were] designed to create a zone of secrecy around a school student who expresses gender incongruity. The policies restrain public school teachers and staff from informing parents about a child's unusual gender expression, unless the child consents."[33] While the SAFETY Act gives teachers the option to share or not, the policies upon which the Southern District of CA ruled did not provide teachers with a choice. This contrast is important because the SAFETY Act does not inhibit teachers, but the policies in *Mirabelli* do, which create issues for teachers' rights to freedom of expression as described above.

Conclusion: Looking Forward

At this time, *Foote* and *Mirabelli* are both under the appeals process, being sent to the Supreme Court of the United States and the Court of Appeals for the Ninth Circuit, respectively. Depending on the actions of these higher courts, the policies relevant to these cases might face injunctions, or they might be found constitutional and receive the approval of the court. Remembering the divide in opinion based on political party, it is helpful to note that the Supreme Court currently possess a strong conservative majority (6-3). Another piece of guiding information is the Supreme Court's most recent parental rights-related ruling: *Mahmoud v. Taylor* (2025). This case granted parents the First Amendment right to opt their child out of curriculum that includes LGBT content or themes in elementary school.[34] *Mahmoud* discusses a parental opt-out right, the right to control religious upbringing, and substantive due process rights such as the right to direct a child's education as discussed above in *Meyer* and *Pierce*. The Supreme Court split along ideological lines in their ruling in *Mahmoud*.

Relationships between the United States government and its people rest at the heart of the Constitution's rights and amendments. School policies must balance the powers of the government and the rights of parents. *Foote* and *Mirabelli* provide two different results of very similar issues, and the court should carefully consider the logic behind both cases' summary judgments when they inevitably face another decision related to these topics.

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[32] Support Academic Futures and Educators for Today's Youth (SAFETY) Act, ch. 95, 2024 Cal. Stat. (codified at Cal. Educ. Code § 217).

[33] Mirabelli, 3:2023cv00768, Document 308 at 7.

[34] Mahmoud v. Taylor, 606 U.S. 522 (2025).