**Oppose SB 948**
Children – Parental Rights – Educational Rights
Testimony of Family Law Professors
March, 3 2025

Chair Atterbeary, Vice-Chair Wilkins, and Members of the Committee:

We are law professors at the University of Baltimore School of Law and the University of Maryland Francis King Carey School of Law, the only two law schools in the state of Maryland. Margaret E. Johnson is a Professor of Law, Director of the Bronfein Family Law Clinic and Co-Director of the Center on Applied Feminism and Shanta Trivedi is an Assistant Professor of Law and Faculty Director of the Sayra & Neil Meyerhoff Center for Families, Children and the Courts at the University of Baltimore. Leigh Goodmark is the Associate Dean for Research and Faculty Development and Marjorie Cook Professor of Law and directs the Gender, Prison, and Trauma Clinic and Sarah H. Lorr is an Associate Professor at the University of Maryland Carey School of Law.

We all teach and write about family law, which includes the constitutional rights of parents. Some of us also teach about children's rights, disability, and anti-discrimination law and do clinical work with transgender individuals. We write to provide context and information about the scope of parental rights under current constitutional law as well as the discriminatory nature of this bill's significant deviation from that scope. We also explain the rights of minors under Maryland law. **We urge an unfavorable report on SB 948 because we believe this bill exceeds the limits of the fundamental right to parent, reduces the important role of the state in educating children in a pluralistic society, is against Maryland's public policy, would permit gender and sex discrimination, and will ultimately be harmful to children.**

1. **This Bill Incorrectly Defines the Constitutional Rights of Parents**

Undoubtedly, much of the support for this bill is based on the Supreme Court cases that establish that parents have a fundamental right to the care, custody and control of their children. It is critical then to understand the rules of law that these cases establish, in addition to the limits they impose.

The Supreme Court has held that parents can make educational decisions for their own child but cannot decide what they want other children to learn and impose that on a school. In *Meyer v. Nebraska,* a German teacher at a parochial school was convicted of violating a law that prohibited teaching any language other than English.[1] While this case was not brought by parents, in finding the law unconstitutional, the Supreme Court said that the teacher's right "to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the [14th] Amendment."[2] Importantly, the Court noted that "the legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of *their own.*"[3] *Meyer* therefore stands for the proposition that parents can decide that they want their children to learn German and can hire someone to teach them. *Meyer* does not, however, stand for the proposition that parents can impose upon their child's school the obligation to teach German to their child or other children, especially when so doing would interfere with the opportunities of other students to "acquire knowledge."

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1 Meyer v. Nebraska, 262 U.S. 390, 396–97 (1923).
2 *Id.* at 400.
3 *Id.* at 401 (emphasis added).

The Supreme Court, recognizing the state's role in directing students' education, has also held that a parent may direct what type of school their child may attend, but cannot do so for others' children. In *Pierce v. Society of Sisters*, Oregon passed a law that required all students to go to public school.[4] A military academy and a Catholic school sued the state because they believed the law effectively meant they would cease to exist. In ruling in favor of the schools, the Supreme Court noted that, based on *Meyer,* this law:

> [U]nreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control…The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The 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.[5]

*Pierce* held that a state cannot force a parent to send their child to a particular type of school and that parents have the right to "direct the upbringing and education of children *under their control*."[6] That is, while *Pierce* makes clear that a parent can decide what type of school their child goes to, it does not support the proposition that a parent can mandate that other children attend military or religious schools.

Finally, in *Prince v. Massachusetts,* an aunt who was the guardian of her niece was convicted of violating a child labor law (among other things) after her 9-year-old niece went with her at night to distribute copies of a religious magazine.[7] The Court noted that:

> It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.[8]

Despite this language, however, the Court held that the state has authority over children's activities that is not necessarily subordinate to the parents' authority under certain circumstances relating to a child's well-being. Based on this principle, the Court ruled *against* the guardian in this case because the rights of parents and caregivers are not without limitation and the state has its own role to play in a child's upbringing. The Court explained that "[the state's] authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience."[9] Further, it stated that:

> The state's authority over children's activities is broader than over like actions of adults. This is peculiarly true of public activities and matters of employment. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers, within a broad range of selection.[10]

Thus, while parents are certainly free and even encouraged to make choices about their own children's education, such decisions cannot harm the child, and they are not entitled to make educational choices for all children in their school district. The state, through its public schools, stands *in loco parentis*, that is, as

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4 Pierce v. Society of Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 530 (1925).
5 *Id.* at 534–35 (citing *Meyer*, 262 U.S. at 400–01).
6 *Id.* (emphasis added).
7 Prince v. Massachusetts, 321 U.S. 158, 159–60 (1944).
8 *Id.* at 166 (citing *Pierce*, 268 U.S. at 534–35).
9 *Id.* at 167.
10 *Id.* at 168.

substitute parents, while children are at school and therefore, education personnel are entitled to discretion in determining what curriculum best serves the student population. Parents may work with the school, join the school board, attend PTA meetings, and have conversations with teachers and school administrations to register their objections to school curriculum and policy. SB 948, however, would disrupt the balance between the role of parents and the state as it pertains to educating our children.

**2. This Bill Goes Against Maryland Public Policy that Prioritizes Children's Autonomy**

Under certain, limited circumstances, the State of Maryland has recognized that children need to be free to seek care without interference from their parents because of the harm that would be done if parents intervened. Adolescents, for example, are free to discuss reproductive and mental health issues with their physicians without parental interference. This legislature has explicitly granted children rights in areas of importance that were long ago reserved to their parents. Children whose parents deny or denigrate their gender identities should be similarly free to determine for themselves how they would like to be addressed.

For example, parents generally have medical decision-making authority over their children's mental health. In Maryland, however, youth who are "12 years old or older who is determined by a health care provider to be mature and capable of giving informed consent has the same capacity as an adult to consent to consultation, diagnosis, and treatment of a mental or emotional disorder" by a physician, psychologist, or a clinic.[11] Further, like school personnel, when a minor in a provider's care does not consent to or objects to their health care provider sharing the minor's health information with their parent or caregiver, providers are allowed to, *but are not required*, provide parents or other caregivers with information about the minor's treatment..[12]

Similarly, all minors, regardless of age, have the same capacity as adults to consent to treatment for venereal disease, alcohol and drug abuse, and related to pregnancy.[13] In these instances, medical providers may, but need not, reveal any information about this treatment to the young person's parents without their consent or over their objection.[14]

In the context of abortion, the legislature permits unmarried minors to access abortion care based on the physician's expertise.[15] In these cases, a physician may perform an abortion on an unmarried minor without notice to the minor's parents if the physician determines that:

(i) Notice to the parent or guardian may lead to physical or emotional abuse of the minor;
(ii) The minor is mature and capable of giving informed consent to an abortion; or
(iii) Notification would not be in the best interest of the minor.[16]

Notably, there is no age requirement in this provision. This permission is an exception to the legislature's general provision that a physician may not perform an abortion on an unmarried minor unless the physician first gives notice to a parent or guardian of the minor.[17]

The Supreme Court has recognized the importance of minors' access to professionals to discuss important decisions. The above laws permit independent decision-making by minors separate from their parents. These laws address situations in which young people need to make decisions that are deeply personal. In the words of the Supreme Court, "[u]nder the Constitution, the State can 'properly conclude that parents and others, teachers

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11 Md. Code Ann., Health-Gen. § 20-104(b)(1) (West 2024).
12 *Id.* at (c)(1).
13 Md. Code Ann., Health-Gen. § 20-102(c)(1)–(4) (West 2024).
14 *Id.* at (f).
15 Md. Code Ann., Health-Gen. § 20-103(d)(1) (West 2024).
16 Md. Code Ann., Health-Gen. § 20-103(d)(1) (West 2024).
17 *Id.* at (b).

for example, who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility.'"[18]

### 3. This Bill Would Hinder Development of the State's Citizens and Permit Unconstitutional Gender and Sex Discrimination

Under this proposed legislation, parents would be able to direct a school not to call a student by their preferred pronouns. This provision targets transgender children; there is no history of which the authors are aware where a parent has disagreed with a student's choice of pronouns when that student chooses pronouns that agree with the sex assigned at birth. SB948 disregards the expertise of educators and the role of the state in ensuring students are educated to fulfill their role as citizens of Maryland, a state that is home to people of all religions, cultures, ethnicities, sexual orientations, gender identities, and belief systems. This bill would permit parents to interfere in educators' work in the day-to-day business of school education if the parent disagrees with the student's choice of pronouns only when they are different from their sex assigned at birth.

Accordingly, this bill would not affect the boy (assigned the male sex at birth) who wants to be called he/him but it will affect the child (assigned female sex at birth) who wants to be called he/him. This is sex discrimination: one child is being treated differently from another because of their sex and gender. In addition, the bill discriminates on the basis of gender by targeting those students whose gender identification and pronouns differ from their sex assigned at birth. Under Maryland's regulations, all public school students, regardless of gender and sexual orientation, have the right to educational environments that are safe, appropriate for academic achievement, and free from harassment.[19] This bill jeopardizes those rights. Supporting transgender individuals by accepting their gender identity and using the pronouns they request is important to their health, safety, and learning.[20]

Finally, this bill could violate federal anti-discrimination law regarding educational programming, such as Title IX of the Education Amendments of 1972, which precludes discrimination on the basis of sex, and drawing from Title VII of the Civil Rights Act of 1964, precludes discrimination on the basis of gender identity, despite the Trump Administration's recent Executive Orders.[21]

**For these reasons, we urge an unfavorable report on SB 948.**

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18 *See* Bellotti v. Baird, 443 U.S. 622, 639 (1979) (quoting Ginsberg v. New York, 390 U.S. 629, 639 (1968)).

19 COMAR 13A.01.04.03.

20 Harper Seldin, *Trans Students Should Be Treated with Dignity, Not Outed by Their Schools*, ACLU, Jan. 26, 2023, https://www.aclu.org/news/lgbtq-rights/trans-students-should-be-treated-with-dignity-not-outed-by-their-schools (citing research studies therein).

21 *Compare* Education Amendments Act of 1972, 20 U.S.C. §§ 1681–1688 (prohibiting discrimination on the basis of sex in educational programs and activities), *and* Civil Rights Act of 1964, 42 U.S.C. §§ 2000e–2000e-17 (prohibiting discrimination on the basis of sex in hiring and employment), *and* Bostock v. Clayton County, 590 U.S. 644, 651–52 (2020) (holding that under Title VII, discrimination on the basis of sex includes discrimination on the basis of gender identity), *with* Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025) (prohibiting Executive Agencies from recognizing a person's gender identity if it does not align with sex-assigned at birth), *and* Exec. Order No. 14190, 90 Fed. Reg. 8853 (Feb. 3, 2025) (directing members of the Cabinet to provide policy advice to eliminate federal funding and to K-12 schools that affirm students' gender identity), *and* Exec. Order No. 14201, 90 Fed. Reg. 9279 (Feb. 5, 2025) (directing the Secretary of Education, Attorney General, Secretary of State, and leaders of private entities governing sports to prohibit transgender individuals from participation in women's sports). Transgender minors and their parents are challenging Executive Orders 14168 and 14201. *See Litigation Tracker: Legal Challenges to Trump Administration Actions*, JUST SECURITY, https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/ (last visited Jan. 28, 2025).