

118TH CONGRESS  
1ST SESSION

# S. 1709

To require elementary schools and secondary schools that receive Federal funds to obtain parental consent before facilitating a child’s gender transition in any form, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 18, 2023

Mr. COTTON (for himself, Mrs. HYDE-SMITH, Mr. BRAUN, and Mr. SCOTT of Florida) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To require elementary schools and secondary schools that receive Federal funds to obtain parental consent before facilitating a child’s gender transition in any form, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Empower Parents to  
5 Protect Their Kids Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) Some school districts are violating parental  
2           and familial rights by encouraging or instructing  
3           staff to deceive or withhold information from parents  
4           if their child is seeking to “transition” genders.  
5           Without parental knowledge or consent, schools are  
6           facilitating “social gender transitions” by changing  
7           the names and pronouns of children in school, or  
8           even allowing children to change which sex-seg-  
9           regated facilities they use, such as dormitories for  
10          overnight field trips.

11          (2) Powerful teachers unions and activist orga-  
12          nizations are pressuring more schools to adopt poli-  
13          cies to enable children, of any age, to change their  
14          gender identity at school without parental notice or  
15          consent.

16          (3) Contrary to the unfounded assertions of ac-  
17          tivists, “socially transitioning” a child is not a neu-  
18          tral, uncontroversial decision, but an experimental  
19          intervention that has immediate effects on a child’s  
20          psychology and a high likelihood of changing the life  
21          path of a child. A “social gender transition” may  
22          make it more difficult for a child to reverse course  
23          later on, thereby increasing the likelihood that the  
24          child will continue on to a “medical transition”, re-  
25          sulting in life-changing, irreversible consequences.

1           (4) Any policies that attempt to circumvent pa-  
2           rental authority are a violation of parents' constitu-  
3           tionally protected rights to direct the care, custody,  
4           and upbringing of their children as recognized by  
5           the Supreme Court. Further, policies that withhold  
6           information from parents or ask children about inti-  
7           mate details of their family life violate Federal stat-  
8           utes designed to uphold a parent's rights and duties  
9           in education. School districts implementing such  
10          policies are misrepresenting or entirely ignoring  
11          these statutes and constitutional protections.

12          (5) Schools should never be allowed to intrude  
13          on family life by misleading parents and confusing  
14          children.

15 **SEC. 3. REQUIREMENT OF PARENTAL CONSENT.**

16          (a) IN GENERAL.—No Federal funds shall be made  
17          available to any elementary school or secondary school un-  
18          less the elementary school or secondary school, with re-  
19          spect to students enrolled at the school who have not yet  
20          reached 18 years of age, complies with each of the fol-  
21          lowing requirements:

22                (1) School employees do not proceed with any  
23                accommodation intended to affirm a student's pur-  
24                ported gender identity, where the student's pur-  
25                ported gender identity is incongruous with biological

1 sex, or any action to facilitate a gender transition,  
2 including referral or recommendation to any third-  
3 party medical provider, unless the employees have  
4 received express parental consent to do so.

5 (2) School employees do not facilitate, encour-  
6 age, or coerce students to withhold information from  
7 their parents regarding the student's gender transi-  
8 tion or the student's purported gender identity,  
9 where the student's purported gender identity is in-  
10 congruous with biological sex.

11 (3) School employees do not withhold or hide  
12 information from parents about a student's re-  
13 quested gender transition or a student's purported  
14 gender identity, where the student's purported gen-  
15 der identity is incongruous with biological sex.

16 (4) School employees do not pressure or coerce  
17 the parents of students, or students themselves, to  
18 proceed with any treatment or intervention to affirm  
19 the student's purported gender identity, where that  
20 gender identity is incongruous with biological sex.

21 (b) RULES OF CONSTRUCTION.—Nothing in this sec-  
22 tion shall be construed—

23 (1) to prevent a school employee from con-  
24 tacting appropriate legal authorities about an immi-  
25 nent threat to a student's physical safety in the

1 event that the school employee knows or has a rea-  
2 sonable suspicion that the student is at risk of phys-  
3 ical abuse, as defined in section 1169 of title 18,  
4 United States Code; or

5 (2) to deprive any parent of the right to be in-  
6 volved in a child's actions or discussions about gen-  
7 der transition, without the due process of law.

8 (c) ENSURING COMPLIANCE.—

9 (1) IN GENERAL.—The head of each Federal  
10 agency shall require each application for Federal as-  
11 sistance submitted by a State educational agency or  
12 local educational agency to the head of such Federal  
13 agency—

14 (A) to describe the steps that each elemen-  
15 tary school and secondary school served by the  
16 State educational agency or local educational  
17 agency proposes to take to ensure compliance  
18 with the requirements under this section and  
19 how these steps preserve and protect the au-  
20 thority of the family; and

21 (B) to ensure that—

22 (i) a copy of the written policy that  
23 each elementary school and secondary  
24 school served by the State educational  
25 agency or local educational agency has to

1 ensure compliance with the requirements  
2 under this section is provided to the head  
3 of such Federal agency and to the families  
4 of enrolled students; and

5 (ii) each such policy is clearly and  
6 publicly posted on the website of the  
7 school.

8 (2) ESTABLISHMENT OF CRITERIA.—The head  
9 of each Federal agency may establish criteria and  
10 provide technical assistance for meeting the require-  
11 ments of this section.

12 (d) CIVIL ACTION FOR CERTAIN VIOLATIONS.—

13 (1) IN GENERAL.—A qualified party may, in a  
14 civil action, obtain appropriate relief with regard to  
15 a designated violation.

16 (2) ADMINISTRATIVE REMEDIES NOT RE-  
17 QUIRED.—An action under this section may be com-  
18 menced, and relief may be granted, without regard  
19 to whether the party commencing the action has  
20 sought or exhausted any available administrative  
21 remedy.

22 (3) DEFENDANTS IN ACTIONS UNDER THIS  
23 SECTION MAY INCLUDE GOVERNMENTAL ENTITIES  
24 AS WELL AS OTHERS.—An action under this section  
25 may be brought against any elementary school or

1 secondary school receiving Federal financial assist-  
 2 ance or any governmental entity assisting an elemen-  
 3 tary school or secondary school.

4 (4) NATURE OF RELIEF.—In an action under  
 5 this section, the court shall grant—

6 (A) all appropriate relief, including injunc-  
 7 tive relief and declaratory relief; and

8 (B) to a prevailing plaintiff, reasonable at-  
 9 torneys' fees and litigation costs.

10 (5) ATTORNEYS FEES FOR DEFENDANT.—If a  
 11 defendant in a civil action under this subsection pre-  
 12 vails and the court finds that the plaintiff's suit was  
 13 frivolous, the court shall award a reasonable attor-  
 14 ney's fee in favor of the defendant against the plain-  
 15 tiff.

16 (e) DEFINITIONS.—In this section:

17 (1) BIOLOGICAL SEX.—The term “biological  
 18 sex” means the biological indication of male and fe-  
 19 male in the context of reproductive potential or ca-  
 20 pacity, such as sex chromosomes, naturally occurring  
 21 sex hormones, gonads, and nonambiguous internal  
 22 and external genitalia present at birth, without re-  
 23 gard to a person's psychological, chosen, or subjec-  
 24 tive experience of gender.

1           (2) DESIGNATED VIOLATION.—The term “des-  
2           ignated violation” means an actual or threatened  
3           violation of this section.

4           (3) ESEA.—The terms “elementary school”  
5           and “secondary school” have the meanings given the  
6           terms in section 8101 of the Elementary and Sec-  
7           ondary Education Act of 1965 (20 U.S.C. 7801).

8           (4) GENDER IDENTITY.—The term “gender  
9           identity” means a person’s self-perception of their  
10          gender or claimed gender, regardless of the person’s  
11          biological sex.

12          (5) GENDER TRANSITION.—

13                (A) IN GENERAL.—The term “gender tran-  
14                sition” includes both medical transition and so-  
15                cial transition.

16                (B) MEDICAL TRANSITION.—The term  
17                “medical transition” means any medical or sur-  
18                gical intervention undertaken to alter the body  
19                of a person in order to assert an identity incon-  
20                gruent with biological sex or undertaken to cre-  
21                ate or facilitate the development of physiological  
22                or anatomical characteristics that resemble a  
23                sex different from the person’s biological sex.

24                (C) SOCIAL TRANSITION.—The term “so-  
25                cial transition” means any action taken to af-



1 firm a person’s asserted gender identity that is  
2 in contradiction to the person’s biological sex,  
3 including decisions pertaining to the use of sex-  
4 specific facilities and accommodations, partici-  
5 pation in sex-segregated sports or activities,  
6 pronoun and name usage, boarding, sleeping  
7 and travel arrangements for field trips (includ-  
8 ing overnight trips), and dress code guidelines.

9 (6) GOVERNMENTAL ENTITY.—The term “gov-  
10 ernmental entity” means a school district, a local  
11 educational agency, a school board, or any agency or  
12 other governmental unit or subdivision of a State re-  
13 sponsible for education, or of such a local govern-  
14 ment.

15 (7) QUALIFIED PARTY.—The term “qualified  
16 party” means—

17 (A) the Attorney General of the United  
18 States; or

19 (B) any parent or legal guardian adversely  
20 affected by the designated violation.

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