

No. 26-

**In the
Supreme Court of the United States**

GAYS AGAINST GROOMERS, *et al.*,

Petitioners,

v.

LORENA GARCIA, *et al.*,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is legislative immunity a personal defense that is unavailable against official-capacity claims for equitable relief?
2. Is enforcing a facially viewpoint-discriminatory public comment policy subject to legislative immunity?

**PARTIES TO THE PROCEEDING AND
RULE 29.6 DISCLOSURE STATEMENT**

Petitioners were the plaintiffs-appellants in the court below. Petitioner Gays Against Groomers is a non-profit corporation. There is no parent or publicly held company owning 10% or more of the corporation's stock. Petitioner Rocky Mountain Women's Network is an unincorporated association. Petitioners Rich Guggenheim and Christina Goeke are natural persons.

Respondents were defendants-appellees in the court below. They are Lorena Garcia, in her individual and official capacities as a Colorado State Representative; Mike Weissman, in his individual and official capacities as a Colorado State Representative and Chair of the House Judiciary Committee; Leslie Herod, in her individual and official capacities as a Colorado State Representative; Julie Gonzales, in her individual and official capacities as a Colorado State Senator and Chair of the Senate Judiciary Committee; Dafna Michaelson Jenet, in her individual and official capacities as a Colorado State Senator.

RELATED PROCEEDINGS

United States District Court (Dist. Colo.): *Gays Against Groomers, et. al. v. Garcia, et. al.*, 1:24-cv-00913-RMR (judgment entered Nov. 27, 2024).

United States Court of Appeals (10th Cir.): *Gays Against Groomers, et. al. v. Garcia, et. al.*, No. 24-1473 (judgment entered March 10, 2026; order denying rehearing en banc entered April 23, 2026).

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PETITION FOR A WRIT OF CERTIORARI

Gays Against Groomers, Rocky Mountains Women’s Network, Rich Guggenheim, and Christian Goeke respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

INTRODUCTION

This petition asks this Court to resolve an important circuit split about whether legislative immunity can be invoked as a defense against an official-capacity claim for injunctive or declaratory relief directed at state officeholders. This Court has long held that personal defenses such as absolute immunity are not available in official-capacity actions because such actions are effectively claims against the underlying government entity.

But the Tenth Circuit treated absolute legislative immunity as a type of super-immunity that applies to both individual-capacity claims for damages and official-capacity claims for equitable relief. In doing so, the court deepened a circuit split that causes confusion about the nature of official-capacity suits and the scope of legislative immunity.

The Tenth Circuit also applied legislative immunity to Respondents’ enforcement of a facially viewpoint-discriminatory “decorum” policy that banned “misgendering” and criticizing the namesake of a bill during public comments. This holding will invite other legislative bodies to enforce speech rules that silence

dissenting or minority viewpoints in violation of the First Amendment.

This petition merits this Court's review.

OPINIONS BELOW

The order denying rehearing en banc, App. 61a-62a, is not reported. The opinion of the court of appeals, App. 1a-38a, is reported at *Gays Against Groomers v. Garcia*, 169 F.4th 981 (10th Cir. 2026). The final order of the district court, App. 39a-60a, is available at *Gays Against Groomers v. Garcia*, 758 F. Supp. 3d 1298 (D. Colo. 2024).

JURISDICTION

The court of appeals issued its opinion on March 10, 2026. App. 1a. The court of appeals denied Petitioners' timely filed petition for rehearing en banc on April 23, 2026. App. 61a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Section 1 of the Fourteenth Amendment to the United States Constitution provides: "All persons born

or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

42 U.S.C. § 1983 provides, as relevant here: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any . . . person within the jurisdiction thereof to the deprivation of any rights privileges, or immunities secured by the Constitution . . . shall be liable to the party injured. . . .”

STATEMENT OF THE CASE

1. Factual Background.

The Colorado General Assembly is the state legislature for Colorado and is a bicameral legislature, comprised of the House of Representatives and Senate. App. 69a. The Assembly provides citizens with an opportunity to provide public comment on pending legislation during committee hearings. App. 5a, 70a. Although the Assembly calls these public comments “testimony,” comments are not made under oath and are instead typical of public comments solicited by other governmental bodies, such as school boards and city councils at their meetings. App. 70a. The Assembly invites members of the public to sign up to speak via an online portal that requires speakers to indicate whether they represent themselves or an organization, and

whether they wish to speak in favor, against, neutrally, for amending, or “questions only” on a pending bill. App. 70a-71a. Speakers may also select their preferred pronouns, including plural pronouns. App. 71a-72a.

In addition, the Colorado House and Senate have each published an identical online Guide to Public Hearings, which provides administrative rules that prohibit booing, cheering, or applauding during the hearing. App. 5a, 72a, 94a-102a. The guide further provides that the “chair has the discretion and authority to limit testimony, ask the sergeant-at-arms to remove a disruptive person from the committee room, and clear the public from any hearing in the event of a disturbance that is disruptive to legislative proceedings.” App. 102a.

During the 74th regular session, Colorado’s legislators considered several bills concerning transgender issues. App. 5a-6a, 69a-70a. One such bill, HB24-1071, made it easier for transgender individuals with felony convictions to legally change their names. The bill’s sponsors and supporters referred to it as “Tiara’s law”—named after a biological male with a criminal record who wanted to legally change his name. App. 5a-6a, 73a, 108a-09a, 136a-138a. At the time, Tiara was legally known as Duane Powell, a.k.a. Duane Antonio Kelley or Tiara Latrice Kelley, and had numerous criminal convictions that identified him as male. App. 73a. Because Powell’s criminal history prevented him from legally changing his name in Colorado, Powell advocated for a change in the law. App. 73a, 108a-109a, 136a-138a.

Petitioners Rich Guggenheim and Christina Goeke, both as individuals and as members of Gays Against Groomers (GAG) and Rocky Mountain Women’s Network (RMWN), respectively, opposed HB24-1071 because they believe it will make it easier for transgender individuals to conceal criminal convictions, and thus pose a danger to children, women, and vulnerable populations. App. 73a-74a.

Petitioners also disagree with the ideological concepts of “misgendering” or “deadnaming.” App. 4a, 74a.¹ They consider adherence to a transgender person’s pronoun preferences, assumed gender, or assumed name to be a form of lying. *Id*; see also *West Virginia v. B.P.J.*, Nos. 24-43, 24-38, 2026 U.S. LEXIS 2884, at *42-43 (June 30, 2026) (Thomas, J., concurring) (“To use language to obscure reality . . . is to lie to the public[.]”).² And both Guggenheim and Goeke consider pronoun rituals, and the concepts of deadnaming and misgendering, to be degrading and demeaning to themselves. App. 74a.

1. In practical terms, “misgendering” means not using a trans person’s preferred pronouns and name, when those do not match their sex or legal name. App. 74a. To gender ideology adherents, “misgendering” amounts to morally culpable conduct, especially if it is intentional. See Chan Tov McNamara, *Misgendering*, 109 Calif. L. Rev. 2227, 2254-55, 2261-2264 (2021). Banning misgendering is thus an ideological and moral choice.

2. The Tenth Circuit described Petitioners’ views on misgendering bans as offending “their sincerely held belief that one cannot or should not hold a gender identity that is inconsistent with sex assigned at birth.” App. 4a. But sex is not “assigned” at birth; it is revealed at birth. Petitioners would not and did not use that ideological terminology.

During two committee hearings, Respondents denied Goeke and Guggenheim the opportunity to express their views on the pending legislation on terms equal to other Coloradans because they engaged in “misgendering” and “deadnaming.” App. 6a-9a, 75a-82a. Petitioners’ speech that violated Defendants’ restrictions included using masculine pronouns to describe “Tiara,” describing the namesake of the bill as an “admitted former prostitute,” attempting to draw an analogy between two historical figures from the Stonewall Era and the present situation, and referring to the bill’s namesake as a gay man. App. 7a-9a, 75a-82a, 116a-119a, 139a-140a, 142a-144a, 145a-148a.

Defendants’ deprivation of Petitioners’ right to speak took various forms, including interrupting, chiding, and cutting off speaking time. App. 7a-9a, 75a-82a, 116a-119a, 139a-140a, 142a-144a. And in Goeke’s case, it included asking her to leave the House hearing room (App. 78a) and erasing her comments from the Senate’s official audio record. App. 8a; *compare* App. 140a (“No audio from 6:34:41 PM to 6:36:35 PM.”) *with* App. 145a-148a (transcript of erased partial Goeke speech). The gap in the Senate hearing audio remained extant and undisputed. App. 140a. Other public commenters who embraced, or studiously avoided, the ideological language required by the defendant legislators were not interrupted, cut-off, or asked to leave. App. 81a-82a, 108a-115a, 120a-125a, 136a-139a.

The General Assembly eventually passed Tiara’s Law and the Governor signed it, but other transgender-related bills are expected to arise during future sessions of the General Assembly and Respondents have confirmed that they would again enforce their rules against misgendering. App. 6a, 9a, 83a-84a.

Petitioners sued Respondents for violating the First Amendment and sought nominal damages, an injunction, and declaratory relief. App. 84a-92a. Petitioners brought facial and as-applied claims for viewpoint discrimination, vague “decorum” rules,³ and compelled speech; and an as-applied claim for erasure of the Senate audio record of Goeke’s partial speech. App. 84a-92a.

2. District Court Proceedings.

The parties cross-moved for a preliminary injunction and to dismiss, respectively. On November 27, 2026, the district court granted Respondents’ motion to dismiss and dismissed all claims with prejudice. App. 59a.

The district court reasoned that because Petitioners’ “official capacity claims are really claims against the officials and not the state, it follows that they may not assert state sovereign immunity but may assert the personal defense of legislative immunity.” App. 48a. The district court further held that legislative immunity applied because Respondents’ acts took place during committee hearings and were integral to the legislative process. App. 52a-54a.

The district court also held that Petitioners’ claims for equitable relief were moot because the bill giving rise

3. For ease of reference, Petitioners use the term “decorum rules” to describe the administrative rules for the speech restrictions at issue, but in so doing, do not endorse the proposition that Petitioners engaged in conduct that could properly be characterized as a breach of decorum. Respondents’ rules against “misgendering” were targeted at speech, and particularly at gender-critical speech.

to the controversy had been signed into law and it was speculative whether Respondents would oversee similar committee hearings in the future. App. 57a-59a.

The court denied Petitioners' motion for a preliminary injunction as moot. *Id.*

3. Tenth Circuit Proceedings.

The Tenth Circuit affirmed, with a partial concurrence from Judge Carson. App. 3a, 34a. The court disagreed that Petitioners' claims for equitable relief were moot, holding that they faced a threat of future enforcement of the rules against misgendering. App. 11a, 14a.

But the court affirmed the district court's application of legislative immunity, holding that such immunity applies to both individual and official-capacity claims. App. 12a, 25a. The court also held that both the adoption and the enforcement of the rules were legitimate legislative activity. App. 27a-28a. Specifically, the court held that early termination and removal of comments from the official record were insulated from judicial scrutiny. App. 30a.

As a result of its holdings on legislative immunity, the court declined to reach the merits of Petitioners' constitutional claims. App. 32a.

In a concurring opinion, Judge Carson criticized the far-reaching implications of the panel majority's failure to distinguish between the rules' promulgation and enforcement. App. 34a, 38a. Judge Carson also expressed concern that the panel majority's opinion "allows legislative bodies to create rules under the guise

of decorum that essentially silence opposition in legislative hearings.” App. 38a.

The court denied Petitioners’ request for rehearing en banc. App. 61a.

REASONS FOR GRANTING THE PETITION

This Court has long held that personal defenses are only available for individual-capacity claims seeking damages, and that they do not apply to official-capacity claims seeking injunctive or declaratory relief. That is because official-capacity claims are claims against the underlying government entity, which cannot assert personal defenses. Here, Petitioners’ official-capacity claims against the chairs of the legislative committees are claims against the government itself. While its individual legislators may enjoy legislative immunity, the Colorado General Assembly could not avail itself of this personal immunity.

Nonetheless, a circuit split persists as to whether official-capacity defendants may assert legislative immunity. The Tenth Circuit’s decision adds to that divide, sowing confusion about the nature of official-capacity suits and the scope of personal defenses like legislative immunity.

This Court has also long held that legislative immunity turns on the function at issue. Here, the legislators were not legislating when they enforced a facially viewpoint-discriminatory public comment policy that banned misgendering or critical remarks. The legislators had invited the public to state their own opinions.

The Tenth Circuit opinion treats legislative immunity as a form of absolute super-immunity, that applies to both

people and entities. The decision’s practical implication is that legislative bodies may now enforce facially viewpoint-discriminatory public comment rules that insulate the majority party’s views from criticism with no legal recourse.

The Tenth Circuit erred when it held that legislative immunity applies to official-capacity claims and when it held that enforcing a blatantly viewpoint-discriminatory public comment rule was inherently legislative. In so doing, it deepened a circuit split that implicates fundamental First Amendment rights to core political speech. This Court should resolve that split.

I. The Tenth Circuit’s opinion conflicts with this Court’s precedent that absolute legislative immunity is a personal defense not applicable to official-capacity claims.

A plaintiff’s choice to sue defendants in their official—as opposed to their individual—capacities has important consequences. Due to the operation of the Eleventh Amendment, this choice is all the weightier when a plaintiff seeks pre-enforcement relief against a state’s censorship regime. Who is named in the suit matters, but at first glance, that does not always reveal the real party in interest.

1. An official-capacity suit is directed at the government. *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). “It is *not* a suit against the official personally, for the real party in interest is the entity.” *Id.* at 166; *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (“Suits against state officials in their official capacity therefore should be treated as

suits against the State.”). Thus, while personal-capacity suits “seek to impose personal liability upon a government official for actions he takes under color of state law[,]” official-capacity actions are against the “entity of which an officer is an agent.” *Graham*, 473 U.S. at 165-66 (citations omitted).

This principle also applies to state legislators. In *Karcher v. May*, 484 U.S. 72 (1987), this Court held that two members of the New Jersey legislature who litigated in defense of a controversial statute while in their official capacities as presiding officers were *not* parties in their personal capacities. *Id.* at 78. The Court reasoned that the acts performed by the same person in two different capacities are treated “as the transactions of two different legal personages.” *Id.* (cleaned up). “The concept of ‘legal personage’ is a practical means of identifying the real interests at stake in a lawsuit.” *Id.* This Court reiterated that the real party in interest “in an official-capacity suit is the entity represented and not the individual officeholder.” *Id.*

In *Karcher*, the entity represented by the official-capacity parties was the New Jersey legislature. *Id.* at 80. Thus, when two legislators, who had intervened in their official capacity as presiding officers on behalf of the legislature, ceased to hold their presiding roles, their authority “to pursue the appeal on behalf of the legislature passed to their successors in office.” *Id.* at 83.

Because official-capacity and individual-capacity defendants are different “legal personages,” that naturally has implications for the availability of defenses. For one legal personage, an entity is the real party in interest, while for the other legal personage an actual person faces liability.

2. Unlike state governments, municipal or local governments can be sued directly, including for equitable relief, because they do not enjoy sovereign immunity. *See, e.g., Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977); *Bogan v. Scott-Harris*, 523 U.S. 44, 53 (1998) (“Municipalities themselves can be held liable for constitutional violations, whereas States and the Federal Government are often protected by sovereign immunity.”). But things get a bit more complicated when seeking equitable relief from the state or a state agency.

Official-capacity suits for equitable relief against state officeholders owe their existence to what has been aptly described as *Ex parte Young*’s fiction. *Va. Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 255 (2011). The fiction is “that when a federal court commands a state official to do nothing more than refrain from violating federal law, he is not the State for sovereign-immunity purposes.” *Id.*

But as this Court has acknowledged, official-capacity suits for equitable relief functionally *are* suits against the state. “Although the Eleventh Amendment prevented respondents from suing the State by name, their injunctive suit against prison officials was, *for all practical purposes, brought against the State.*” *Hutto v. Finney*, 437 U.S. 678, 699 (1978) (emphasis added).

The pleading names an official in lieu of the state, but it is widely understood that this formality is due to the fiction required by *Ex parte Young*. *See Berger v. N.C. State Conference of the NAACP*, 597 U.S. 179, 194-95 (2022) (“Functionally, of course, this suit implicates North Carolina’s sovereign interests regardless of the named parties.”). Accordingly, if an aggrieved party

wants to obtain equitable relief from a state entity, the plaintiff sues the appropriate enforcement officials and alleges an ongoing violation of federal law. *Id.* at 184 (“So usually a plaintiff will sue the individual state officials most responsible for enforcing the law in question and seek injunctive or declaratory relief against them.”); *see also Verizon Md. Inc. v. PSC*, 535 U.S. 635, 645 (2002).

Ex parte Young provides an exception to sovereign immunity when a party sues appropriate enforcement officials for equitable relief. 209 U.S. 123, 159-160 (1908). But *Ex parte Young* says nothing about extending legislative immunity or other personal defenses to those same state officials. It provides a legal tool to overcome sovereign immunity—nothing more.

3. In a personal-capacity suit, an official may be able to assert personal defenses, including claims of qualified and absolute immunity. *Graham*, at 166-67. “In an official-capacity action, these defenses are unavailable.” *Id.* at 167. The only immunities available in an official-capacity action are those of the entity. *Id.*; *Hafer*, 502 U.S. at 25 (“For the same reason, the only immunities available to the defendant in an official-capacity action are those that the governmental entity possesses.”).

The Tenth Circuit’s majority opinion conflicts with these principles because it treats legislative immunity as a type of super-immunity, available to both natural persons and government entities. The error in this holding is illustrated by its treatment of its own precedent. The Tenth Circuit previously got this issue right.

Consistent with this Court’s understanding of immunities, the Tenth Circuit had previously held, in *Sable v. Myers*, 563 F.3d 1120 (10th Cir. 2009), that “[legislative immunity] applies . . . only to legislators sued in their *individual capacities*, not to the legislative body itself.” *Id.* at 1123 (citing *Minton v. St. Bernard Parish Sch. Bd.*, 803 F.2d 129, 133 (5th Cir. 1986)) (emphasis added).

Yet the Tenth Circuit here held that the phrase “individual capacities” in *Sable* has nothing to do with the capacity in which an individual is sued. App. 22a. Rather, the panel held that “individual capacities” refers to a distinction between “natural persons (or individuals in the colloquial sense)” and “state agencies or local bodies.” *Id.* And it thus includes official-capacity claims against “natural persons.” *Id.*

But there is no such thing as an official-capacity claim against a natural person. And the Tenth Circuit cited no authority for its exotic interpretation of an otherwise common legal phrase. For good reason: the Tenth Circuit’s re-interpretation of *Sable* conflicts with decades of precedent.

Even if the Tenth Circuit is right that the relevant distinction for legislative immunity is between “natural persons (or individuals in the colloquial sense)” and “state agencies or local bodies,” an official-capacity defendant is the latter. The Tenth Circuit’s conclusion otherwise disregards this Court’s precedent mandating that official-capacity suit is “to be treated as a suit against the entity.” *Graham* at 166.

The implications for legislative immunity follow directly from that principle. “The only immunities that can be claimed in an official-capacity action are forms of sovereign immunity that the entity, *qua* entity, may possess, such as the Eleventh Amendment [sovereign immunity].” *Id.* at 167; *see also Hafer*, 502 U.S. at 25 (same).

Legislative immunity, as even the Tenth Circuit acknowledged below, is not the kind of immunity that a government entity possesses, App. 22a, and so an official-capacity defendant cannot claim it. The Tenth Circuit’s conclusion directly contradicts *Graham*.

The Tenth Circuit downplayed *Graham* because that decision supposedly arose in the “context” of a dispute about attorneys’ fees. App. 23a. But *Graham* held that “an official capacity suit is, *in all respects* other than name, to be treated as a suit against the entity.” 473 U.S. at 166. That language includes no exceptions for legislative immunity.

This makes sense considering that a core rationale for legislative immunity is to prevent civil liability for money damages from deterring public service. *Bogan*, 523 U.S. at 52-53. “[T]he exercise of legislative discretion should not be inhibited by judicial interference or distorted by the fear of personal liability.” *Id.* at 52.

But there is no personal liability in an official-capacity suit. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 543-44 (1986) (“As a member of the School Board sued in his official capacity Mr. Youngman has no personal stake in the outcome of the litigation[.]”). A judgment against an official in his or her official capacity imposes liability on

the entity represented—not the individual. *See Brandon v. Holt*, 469 U.S. 464, 471-72 (1985).

The Tenth Circuit’s conclusion otherwise relied on an erroneous extension of this Court’s decision in *Supreme Court v. Consumers Union of United States*, 446 U.S. 719 (1980). True, some language in *Consumers Union* indicates that claims for injunctive and declaratory relief can sometimes be subject to legislative immunity—for instance, if they are directed at forcing elected officials to legislate in a certain way. *See id.* at 733-734.⁴ But the Court’s more recent decisions depart from that view. After *Consumers Union*, *Graham* held that government entities and official-capacity defendants do not benefit from personal immunities. *Graham*, 473 U.S. at 166-67.

Ten years after that, this Court held that a legislative immunity claim was “moot” because “immunity from suit under § 1983 extends to public servants only in their *individual* capacities,” and the only remaining claims were against “Board members in their *official* capacities.” *Bd. of Cty. Comm’rs v. Umbehr*, 518 U.S. 668, 677 n.* (1996) (cleaned up). If legislative immunity didn’t protect the local officials sued in their official capacity in *Umbehr*, how could it protect the state officials sued in their official capacity here?

4. Doctrinally it would be more elegant to hold simply that sovereign immunity applies to state legislators for purely legislative activity such as voting or failing to vote, because the *Ex parte Young* exception applies only to *enforcement* activity. *See* 209 U.S. at 159-60. Thus, if a party seeks to enjoin something other than enforcement of an unconstitutional restriction, baseline sovereign immunity applies to state officeholders.

The Tenth Circuit attempted to sidestep that problem by asserting that when this Court decided *Umbehr*, local officials “were not explicitly understood to benefit from legislative immunity until two years later [in *Bogan*].” App. 23a-24a. But this justification ignores *Umbehr*’s holding. This Court in *Umbehr* did not deny legislative immunity because it was unclear whether local officials could raise that defense. It denied immunity because it only applies to defendants sued in their “*individual capacities*”—and all the *Umbehr* defendants were official-capacity parties. 518 U.S. at 677 n.*.

It’s not surprising that *Graham* and *Umbehr* limited the reach of *Consumers Union*. Prior to *Graham*, there was “lingering confusion about the distinction between personal- versus official-capacity suits,” which the Court “sought to eliminate.” *Hafer*, 502 U.S. at 25. The Tenth Circuit’s opinion reintroduces that confusion by conflating personal and official-capacity claims and allowing government entities to assert personal immunities. This converts legislative immunity into a form of super-immunity, that can be invoked by both individual persons and government bodies alike.

To illuminate this error, one need only consider the implications of the Tenth Circuit’s holding. If official-capacity defendants can invoke legislative immunity, then they can also presumably invoke other personal defenses, such as qualified immunity. But that cannot be correct.

This Court has already foreclosed the availability of qualified immunity to claims for injunctive or declaratory relief. *Pearson v. Callahan*, 555 U.S. 223, 242-43 (2009) (qualified immunity unavailable in “criminal cases and

§ 1983 cases against a municipality, as well as § 1983 cases against individuals where injunctive relief is sought instead of or in addition to damages.”); *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 841 n.5 (1998) (Qualified immunity unavailable “in a suit to enjoin future conduct, in an action against a municipality, or in litigating a suppression motion in a criminal proceeding[.]”) (citing Shapiro, Public Officials’ Qualified Immunity in Section 1983 Actions Under *Harlow v. Fitzgerald* and its Progeny, 22 U. Mich. J. L. Ref. 249, 265, n. 109 (1989)); *see also Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 166 (1993) (“[U]nlike various government officials, municipalities do not enjoy immunity from suit—either absolute or qualified—under § 1983.”); *Owen v. Independence*, 445 U.S. 622, 638 (1980) (“We hold, therefore, that the municipality may not assert the good faith of its officers or agents as a defense to liability under § 1983.”).

If the General Assembly can invoke legislative immunity, then why not also qualified immunity? The Tenth Circuit does not tell us. This Court should clarify the law in this important area and re-assert the proper limits on official-capacity defenses.

II. Only this Court can resolve the circuit conflict about whether official-capacity defendants can invoke legislative immunity.

In addition to conflicting with this Court’s precedents on the nature of official-capacity claims, the Tenth Circuit deepened a circuit split on the issue of whether official-capacity defendants can assert legislative immunity.

The Fifth Circuit has long held that qualified “immunity and absolute legislative immunity are doctrines that protect individuals acting within the bounds of their official duties, *not the governing bodies on which they serve*.” *Minton*, 803 F.2d at 133 (emphasis added); *see also Wilson v. Hous. Cmty. Coll. Sys.*, 955 F.3d 490, 500 (5th Cir. 2020), *overruled on other grounds*, *Hous. Cmty. Coll. Sys. v. Wilson*, 142 595 U.S. 468 (2022) (“Wilson has filed his claims against only HCC, which is not entitled to legislative immunity from Wilson’s § 1983 suit.”). And this holding applies to official-capacity suits against public officials as well. *Minton*, 803 F.2d at 134. That is because officials “cannot be held personally liable” when “sued only in their official capacities,” and thus personal defenses like legislative immunity do not apply. *Id.*

Two years ago, the Ninth Circuit also held that absolute legislative immunity was unavailable in an official-capacity action, albeit in an unpublished decision. *Bols v. Newsom*, No. 22-56006, 2024 U.S. App. LEXIS 1276, at *2 (9th Cir. Jan. 19, 2024); *see also Schmidt v. Contra Costa Cty.*, 693 F.3d 1122, 1131 n.10 (9th Cir. 2012) (“[L]egislative immunity is inappropriate for Torre because Schmidt sued him in his *official* capacity.”).

Also consistent with this line of cases, the Eighth Circuit held that local government officials do not enjoy legislative immunity for official-capacity claims because local governments themselves do not enjoy immunity from suit and official-capacity suits are “tantamount to a suit against the [government] itself.” *Sorcan v. Rock Ridge Sch. Dist.*, 131 F.4th 646, 650-51 (8th Cir. 2025). And the Fourth Circuit similarly held that municipalities are not entitled to absolute immunity “for the actions of

its legislature in suits brought under 42 U.S.C. § 1983.” *Berkley v. Common Council*, 63 F.3d 295, 302 (4th Cir. 1995).⁵

On the other hand, in *Cushing v. Packard*, 30 F.4th 27 (1st Cir. 2022), the First Circuit held that state legislators can claim immunity for official-capacity claims. 30 F.4th at 39. But *Cushing* acknowledged that this holding meant “a legislative body *may itself* assert legislative immunity.” *Id.* at 42 (emphasis added).⁶

Other circuits have also held that legislative immunity can bar official-capacity claims. *State Emples. Bargaining Agent Coal. v. Rowland*, 494 F.3d 71, 83-88 (2d Cir. 2007); *Scott v. Taylor*, 405 F.3d 1251, 1253-56 (11th Cir. 2005).

This effectively puts the First, Second, Tenth and Eleventh Circuits in conflict with the Fifth Circuit and the Ninth Circuits. Only this Court can resolve the inter-

5. Neither opinion addresses whether or why state officeholders could claim legislative immunity as a defense to official-capacity claims. The Eighth Circuit held elsewhere that the governor can assert legislative immunity for legislative actions. *Church v. Missouri*, 913 F.3d 736, 754 n.3 (8th Cir. 2019).

6. A decade-and-a-half ago, the Tenth Circuit itself followed the Fifth Circuit on this issue in *Sable*, holding that legislative immunity does not apply “to the legislative body itself.” 563 F.3d at 1123. But in the present case, the Tenth Circuit re-cast its holding in *Sable* (App. 22a) and found *Cushing* persuasive (App. 24a). And while it did not explicitly say that legislative bodies may invoke personal defenses, that is practical effect of its holding that “[l]egislative immunity remains available to legislators acting within their legislative capacity regardless of whether they are sued in their individual or official capacity.” App. 18a.

circuit split and clear up the lingering confusion on this important issue.

III. The Tenth Circuit’s decision conflicts with this Court’s precedent by extending legislative immunity to enforcement activity.

It is “the nature of the function performed, not the identity of the actor who performed it” that informs immunity analysis. *Forrester v. White*, 484 U.S. 219, 229 (1988). The panel opinion conflicts with well-established authority distinguishing executive from legislative functions.

Even if legislative immunity could apply to *some* official-capacity claims against legislators, it cannot apply to Petitioners’ claims because the act of *enforcing* unconstitutional customs, policies, or practices is an executive activity. The Tenth Circuit’s opinion failed to maintain this critical distinction when it held that “*both* the adoption of the misgendering and deadnaming rules as well as *the implementation of those rules* within the context of legislative hearings—falls within the sphere of legitimate activity.” App. 18a (emphasis added). This holding makes legislators immune from injunctive or declaratory relief, even when they enforce blatantly illegal rules.⁷

7. Other than the exclusion of Goeke from the House committee meeting, the censoring here was implemented by the committee chairs. *Cf.* App. 78a (“And with that, she was confronted by the sergeant at arms and asked to leave.”). The Tenth Circuit’s holding would presumably also immunize the sergeant at arms, if he had been more involved and named as a party. That would conflict with *Powell v. McCormack*, 395 U.S. 486 (1969), which

Respondents may well be immune from actions seeking to hold them personally liable for the legislative act of adopting their unconstitutional censorship regime, or from an injunction directing them to legislate—to rescind or amend the regime. But Petitioners seek to enjoin Respondents’ future *enforcement* of the speech restrictions. App. 10a, 84a, 91a-92a. That makes this lawsuit like any other pre-enforcement challenge to an illegal speech restriction.

This Court made that precise distinction in *Consumers Union*, when it upheld an injunction against the Chief Justice and the state court for their enforcement of an illegal rule. The Court distinguished between the Virginia Supreme Court’s professional-conduct rulemaking function (like a legislative function) and its enforcement function (not like a legislative function). 446 U.S. at 732-37. Reviewing the plaintiffs’ challenge to a portion of the state bar code, the Court concluded that the Virginia Supreme Court was legislatively immune from suit for “for refusing to amend the Code in the wake of our cases indicating that the Code in some respects would be held invalid. . . .” *Id.* at 733-34. But this Court also held that the “Virginia Court and its chief justice properly were held liable in their enforcement capacities.” *Id.* at 736.

The panel majority below ignored this distinction. Consistent with *Consumers Union*, Petitioners have not asked a court to direct the Colorado General Assembly, or its two Judiciary Committees, to vote to repeal its decorum

held that “petitioners are entitled to maintain their action against House employees and to judicial review of the propriety of the decision to exclude petitioner Powell.” *Id.* at 506.

rules or its restrictions on “misgendering,” “deadnaming,” or “disrespectful” speech.⁸ Instead, Petitioners request an injunction analogous to the one in *Consumers Union*—one barring enforcement of the illegal speech restrictions. Compare *id.* at 727 (“On May 8, 1979, the District Court declared [a bar code provision] unconstitutional on its face and permanently enjoined defendants from enforcing it.”), with App. 10a, 91a-92a.

Judge Carson, in his concurring opinion, got this right. “The heart of this case,” he explained, “is the distinction between *enforcing* rules of decorum and *promulgating* rules of decorum.” App. 34a. That distinction “reflect[s] a decidedly jaundiced view towards extending [immunity] so as to privilege illegal or unconstitutional conduct. *Id.* at 34a, 36a (quoting *Gravel v. United States*, 408 U.S. 606, 620 (1972)). But the majority’s conflation of enacting a rule and enforcing it does away with that crucial limit. *Id.*⁹

8. Such relief might be foreclosed by *Consumers Union* or on other federalism principles, but that issue is not presented in this case because Petitioners have not requested injunctive relief to force legislators to repeal their policy. Indeed, for standing purposes, a plaintiff’s injury arises from enforcement—or the threat of enforcement—not from voting on legislation or speaking rules. Moreover, sovereign immunity may apply to state legislator’s purely legislative (non-enforcement activity) because the *Ex parte Young* exception applies only to enforcement activity. 209 U.S. at 159-60.

9. Despite this, Judge Carson did not dissent because he concluded that legislative immunity nevertheless applied because the Court could not resolve Petitioners’ claims without inquiring into “Defendants’ motives.” *Id.* at 37a n.2. Even if that were true as to Petitioners’ as-applied challenge, it does not apply to their claim that the rules are facially discriminatory.

When civil rights plaintiffs challenge a government speech restriction, they ordinarily sue the enforcement officials (here, the committee chairs or acting chairs), not the legislators or rule-making body. And while courts “cannot make even an unconstitutional [rule] disappear,” they can prevent enforcement of those rules through declaratory or injunctive relief restraining the enforcers. *Steffel v. Thompson*, 415 U.S. 452, 469-70 (1974) (quoting *Perez v. Ledesma*, 401 U.S. 82, 124-26 (1971) (Brennan, J., concurring)). Often, legislative roles are separated from enforcement roles, but executive officials do not obtain derivative immunity because they are enforcing the legislature’s law.

Defendants here act as *both* rule-makers and enforcers, and they lack immunity for the latter. To hold otherwise would allow states to avoid judicial review of illegal regimes simply by assigning the enforcement function to legislators.

And it could limit long-established free speech protections at a wide array of public meetings presided over by officials possessing legislative authority—an obvious problem left unaddressed by the panel. *See, e.g., McDonough v. Garcia*, 116 F.4th 1319 (11th Cir. 2024) (en banc) (city council meeting); *Ison v. Madison Loc. Sch. Bd. Dist. Bd. of Educ.*, 3 F.4th 887 (6th Cir. 2021) (school board meeting); *and cf. Sorcan*, 131 F.4th at 650-51 (in some circuits at least, local legislative officials would not enjoy legislative immunity as a defense to official-capacity claims); *Berkley*, 63 F.3d at 302 (same as to municipalities).

Interrupting, cutting off, and erasing Petitioners’ public comments are enforcement acts that serve to

exclude them, depriving Petitioners of an opportunity to be heard on terms equal to other citizens. Taking away someone’s time to speak is little different from ejecting or temporarily banning a speaker. And enforcing “misgendering” rules during future public comment means that citizens critical of gender ideology will not be able to comment on proposed transgender legislation using their own words. Only views deemed acceptable may be expressed.

Core legislative activity, on the other hand, includes proposing, debating, amending, or voting on legislation. *Bogan*, 523 U.S. at 55-56 (“The ordinance reflected a discretionary, policymaking decision implicating the budgetary priorities of the city and the services the city provides to its constituents.”).

It also extends to the actions of special investigative committees, *Tenney v. Brandhove*, 341 U.S. 367, 369-70, 378-79 (1951) (describing the summoning of another politician against his will to appear before California Senate Fact-Finding Committee on Un-American Activities who then invoked his right to silence), and to traditional legislative functions such as making decisions about funding, eliminating public agencies, vacating roadways, or the scope of public works. *Sable*, 563 F.2d at 1126-27. But those activities are different from what happened here.

Forcing citizens to use—and refrain from using—certain words during open public comment time, and erasing comments from the record are not traditional legislative functions, especially where the legislature has invited those citizens to express their own views.

Perhaps the Colorado General Assembly could forego altogether citizen comments on pending legislation, but it has not done so. And once the government has opened a forum for public comment, “the State must respect the lawful boundaries it has itself set.” *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995). Any restriction “must not discriminate against speech on the basis of viewpoint.” *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106-07 (2001) (cleaned up).

Here it is undisputed that the General Assembly’s ban on “misgendering” facially discriminates based on viewpoint. *Cf. Vidal v. Elster*, 602 U.S. 286, 293-94 (2024). A citizen who embraces gender ideology and gender-affirming language may comment freely on pending legislation touching on transgender issues—while a citizen who rejects gender ideology will be forced to choose between lying or refraining from comment. Such a facial challenge requires no testimony from a legislator nor any inquiry into a legislator’s motives. And so whether the rules can be enforced does not implicate any of the functional concerns behind legislative immunity.

Yet allowing this decision to stand will invite other legislative bodies—especially those where one or another party enjoys a lopsided majority—to adopt and enforce facially viewpoint-discriminatory rules that censor disfavored views while purporting to open a forum for public comment. That risk is an exceptionally important problem this Court should undo.

IV. This case is an optimal vehicle for clarifying the law, resolving the split of authority, and securing fundamental rights.

This case does not turn on complex or disputed factual issues. The Tenth Circuit’s opinion rested on its application of legislative immunity to official-capacity claims and the enforcement of the General Assembly’s decorum rule on misgendering during public comment. App. 12a, 27a-28a. This case thus presents a straightforward vehicle for the Court to resolve the circuit split and address ongoing confusion about the scope of legislative immunity.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 21, 2026

APPENDIX

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT,
FILED MARCH 10, 2026**

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 24-1473

GAYS AGAINST GROOMERS, A NONPROFIT
CORPORATION; ROCKY MOUNTAIN
WOMEN'S NETWORK, AN UNINCORPORATED
ASSOCIATION; RICH GUGGENHEIM, AN
INDIVIDUAL; CHRISTINA GOEKE, AN
INDIVIDUAL,

Plaintiffs-Appellants,

v.

LORENA GARCIA, INDIVIDUALLY AND
IN HER OFFICIAL CAPACITY AS A
COLORADO STATE REPRESENTATIVE;
MIKE WEISSMAN, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY AS A COLORADO
STATE REPRESENTATIVE AND CHAIR
OF THE HOUSE JUDICIARY COMMITTEE;
LESLIE HEROD, INDIVIDUALLY AND IN
HER OFFICIAL CAPACITY AS A COLORADO
STATE REPRESENTATIVE; JULIE GONZALES,
INDIVIDUALLY AND IN HER OFFICIAL
CAPACITY AS A COLORADO STATE SENATOR
AND CHAIR OF THE SENATE JUDICIARY
COMMITTEE; DAFNA MICHAELSON JENET,
INDIVIDUALLY AND IN HER OFFICIAL
CAPACITY AS A COLORADO STATE SENATOR,

Defendants-Appellees.

Appendix A

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:24-CV-00913-RMR)

Before **CARSON**, EBEL, and **FEDERICO**, Circuit
Judges.

FEDERICO, Circuit Judge.

For millennia, deliberative bodies across the world have set their own rules for debating matters of concern so that they may better affect the public business with “order, decency, and regularity.” Thomas Jefferson, *Manual of Parliamentary Practice* 18 (Jonathan Phillips 1848).¹ Today, legislatures across the country are debating a matter of significant public interest — the rights of transgender persons — within these broad parameters. This appeal concerns not the substance of these debates, but rather their procedural rules, and whether a federal court may inquire into the lawfulness of those rules in a suit against legislators in their official capacity. We hold that it may not.

Gays Against Groomers, Rocky Mountain Women’s Network, Rich Guggenheim, and Christina Goeke (together “GAG”) sued Lorena Garcia, Mike Weissman, Leslie Herod, Julie Gonzales, and Dafna Jenet (together the “Legislators”) in their individual capacities and official capacities as Colorado state legislators. GAG alleged that

1. For a brief history of parliamentary practice, *see generally* George Demeter, *Demeter’s Manual of Parliamentary Law and Procedure* 4-5 (Blue Book ed. 1969).

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the Legislators violated their First Amendment rights by promulgating and enforcing rules of decorum that barred misgendering and deadnaming in legislative hearings. On legislative immunity and mootness grounds, the district court granted the Legislators' motion to dismiss GAG's complaint with prejudice and entered final judgment. GAG timely appealed and, exercising our jurisdiction under 28 U.S.C. § 1291, we affirm.

Our opinion will begin first by describing the public hearings before the Colorado General Assembly that led to this lawsuit. Second, we address our own jurisdiction and hold that this case is not moot and remains justiciable. Third, we hold that the Legislators are entitled to legislative immunity. We therefore do not reach the merits of GAG's constitutional claims.

I

Because we review a district court's order dismissing the complaint under Federal Rule of Civil Procedure 12 (b)(6), we borrow the facts from the complaint itself, taking the allegations as true and construing them in the light most favorable to the plaintiffs. *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007).

According to the complaint, misgendering "is the act of referring to others, usually through pronouns or form of address, in a way that does not reflect their self-perceived gender identity." J. App. at 24. For example, referring to a transgender man with feminine pronouns and honorifics would misgender him. Deadnaming "is the

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act of referring to a transgender person by a name they used prior to ‘transitioning,’ such as their birth name.” *Id.* So, for example, referring to a transgender man named John Doe with his birth name Jane Doe would both deadname and misgender him. For people who are transgender, these practices can be deeply offensive, disrespectful, and perhaps discriminatory. For some other people, expectations or rules against misgendering or deadnaming offend their sincerely held belief that one cannot or should not hold a gender identity that is inconsistent with sex assigned at birth. J. App. at 17-18 (plaintiffs “personally reject transgender ideology”). These differing views converged at the Colorado General Assembly as it considered House Bill 24-1071, also known as Tiara’s Law.

Gays Against Groomers is a national non-profit organization that advocates policy positions related to LGBTQ+ rights and interests. As relevant here, Gays Against Groomers opposes the use of concepts like misgendering and deadnaming. Gays Against Groomers has an active Colorado chapter that is headed by Rich Guggenheim. Rocky Mountain Women’s Network is an unincorporated association of members who advocate policy positions related to women’s rights. As relevant here, the Network shares Gays Against Groomers’ opposition to the use of concepts like misgendering and deadnaming. Christina Goeke co-founded the Network and is an active Colorado member.

Mike Weissman, Lorena Garcia, and Leslie Herod are Colorado State Representatives. Representative

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Weissman is the Chair of the House Judiciary Committee, while Representatives Garcia and Herod are members of the Committee. Julie Gonzales and Dafna Jenet are Colorado State Senators. Senator Gonzales is the Chair of the Senate Judiciary Committee and Senator Jenet is a member of the Committee. The legislative body they serve, the Colorado General Assembly, provides citizens with an opportunity to speak at public hearings on pending legislation. These public hearings are regulated by House and Senate rules that authorize the committee chairs to remove people who are “impeding, disrupting, or hindering a committee meeting.” Guide to Public Hearings, Colo. Gen. Assembly House of Representatives, <https://perma.cc/5L6LGRBQ>; Guide to Public Hearings, Colo. Gen. Assembly Senate, <https://perma.cc/DGU2-WYCX>.²

During the 2024 session of the Assembly, the state legislature considered Tiara’s Law.³ Colorado law previously prohibited people who had been convicted of a felony from changing their legal name except for “good cause.” Colo. Rev. Stat. § 13-15-101 (West 2024). As introduced in the House Judiciary Committee, the bill that became Tiara’s Law sought to clarify that good cause

2. GAG refers to these permalinks in their complaint, and we are free to consider documents that are central to the plaintiffs’ claims and referred to in the complaint. *White v. Lucero*, 135 F.4th 1213, 1219 (10th Cir. 2025) (quoting *Utah Gospel Mission v. Salt Lake City Corp.*, 425 F.3d 1249, 1253-54 (10th Cir. 2005)).

3. Tiara’s Law is referred to throughout GAG’s complaint. Again, we are free to consider the bill as proposed and enacted since GAG referred to it in their complaint. *White*, 135 F.4th at 1219.

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exists when a change in legal name is sought to conform a person's name with their gender identity. H.B. 24-1071 § 1, 74th Gen. Assemb., 2d Reg. Sess. (Colo. Jan. 10, 2024). The bill was later amended to permit courts to require publication of a requested gender-affirming name change when it is sought by someone who has been convicted of a felony. *Id.* § 2 (Feb. 23, 2024). The bill as amended was ultimately passed by the House and Senate of the Colorado General Assembly, signed by Governor Jared Polis, and codified at Section 13-15-101 of the Colorado Revised Statutes. 2024 Colo. Legis. Serv. 348 (West). But prior to passage and over the course of its legislative life, each chamber of the Assembly scheduled public hearings to consider the bill in their respective judiciary committees. Guggenheim and Goeke both sought to speak at these hearings.

On January 30, the Colorado House Judiciary Committee convened to hear public testimony on the bill. Defendant Rep. Garcia addressed the chair and thanked her colleagues for “not using derogatory language or misgendering witnesses, or using a witness’s deadname.” J. App. at 25.⁴ She expressed “hope that the witnesses

4. The complaint alleges that this statement came from Defendant Sen. Gonzales. But Sen. Gonzales is not a member of the House Judiciary Committee, and elsewhere, the complaint refers to Rep. Garcia’s closing statement at the end of the hearing. We think this is a scrivener’s error, and since it neither requires extrinsic evidence nor prejudices the parties to take notice of the error, we need not accept the error as true under Rule 12(b)(6). *Cf. Peterson v. Martinez*, 707 F.3d 1197, 1206 (10th Cir. 2013) (“[F]actual allegations that contradict . . . a properly considered document are not well-pleaded facts that the court must accept as true.” (second alteration

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signed up to also testify will follow suit, and engage in respectful discourse and share their perspectives and opinions on this bill by not disparaging other members or our community or other witnesses.” *Id.* Defendant Rep. Weissman, as Committee Chair, “affirm[ed] and ratif[ied]” these comments. *Id.*

Guggenheim declined to testify under these conditions. Goeke, however, proceeded to testify. During her testimony, she described Tiara Kelley — the transgender woman after whom the bill is colloquially named — as “an admitted former prostitute.” J. App. at 26. After she was interrupted by the Committee Chair and advised to keep her testimony “to the bill” and not “individual personalities,” Goeke responded that discussion of Kelley was warranted because the “bill was literally named after him.” J. App. at 26. Goeke’s comments referred to Kelley using masculine pronouns and therefore misgendered her, contrary to the Committee’s policy. After some further back and forth between Goeke and the Committee Chair, escalated cross-talk between several persons in the hearing room, and an interjection by Defendant Rep. Herrod, the Committee stopped Goeke’s testimony and went into recess.

On March 27, the Colorado Senate Judiciary Committee also convened to hear public comments on Tiara’s Law, where Goeke and Guggenheim again wished

in original) (citation omitted)). Here, the naming errors contradict the complaint itself and the documents referred to by the complaint, all properly considered documents. *White*, 135 F.4th at 1219. For the remainder of this opinion, we overlook such errors.

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to speak. Defendant Sen. Gonzales, as Committee Chair, admonished witnesses that they would be removed “if they failed to exhibit decorum, dignity, or respect.” J. App. at 29. Sen. Jenet also stated that witnesses should not misgender or deadname others, and Sen. Gonzales agreed.

When it was Goeke’s turn to speak, she attempted to refer to Tiara Kelley with masculine pronouns and a masculine name that Kelley had previously held. The Committee Chair interrupted her and reminded her of the rules that had been adopted at the onset of the hearing.⁵ When Goeke insisted that she would continue to use masculine pronouns and a previous name to refer to Kelley, there was again some back and forth until the Chair stopped Goeke’s commentary. Goeke alleges that her comments were later removed from the official audio recording of the Senate Judiciary Committee’s hearing.

Later, it was Guggenheim’s turn to speak. He attempted to explain his view that Marsha P. Johnson and Sylvia Rivera (two major LGBTQ+ rights activists during the Stonewall Era)⁶ were not transgender women but rather gay men who were drag queens. After he was interrupted by the Committee Chair and reminded not to deadname or misgender people, he attempted to

5. Again, this part of the complaint appears to mix up Rep. Garcia and Sen. Gonzales and we overlook these errors.

6. For further explanation, *see generally* Kate Redburn, *Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement, 1963-86*, 40 L. & Hist. Rev. 679, 696 (2022).

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explain his view that Marsha P. Johnson and Sylvia Rivera were not transgender and so he was not deadnaming or misgendering them. Because the microphones were off during this interchange, the Committee Chair could not hear him but allowed him to proceed after reminding him of the rules. He later attempted to describe Tiara Kelley as a gay man instead of a transgender woman, and the Committee Chair stopped his comments.

The Senate Judiciary Committee has continued to remind people who participate in legislative hearings on bills that touch on transgender rights and interests that misgendering and deadnaming are not permitted by the committee rules. And Goeke and Guggenheim both want to attend bill hearings and provide comments consistent with their beliefs. At oral argument, counsel for the Legislators affirmed that the Colorado General Assembly would continue to implement these rules going forward. Oral Arg. at 27:30.

II

In April 2024, GAG filed their complaint against the Legislators. They alleged four claims for relief under 42 U.S.C. § 1983 and the U.S. Constitution's First and Fourteenth Amendments. First, they alleged that the committees' rules were impermissibly vague. Second, they alleged that the rules constitute viewpoint discrimination. Third, they alleged that the erasure of Goeke's comments from the public record for violation of the rules constitutes viewpoint discrimination. Fourth, they alleged that the

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rules constitute compelled speech.⁷ GAG also requested a preliminary injunction that would have barred enforcement of misgendering or deadnaming rules and restored Goeke’s comments to the public record. Finally, GAG requested relief from the district court’s local rules inviting “litigants, witnesses, and counsel to share their ‘applicable pronouns’” and requiring all parties to refer “to all other persons by their . . . applicable pronouns.” J. App. at 165 (alteration in original) (citation omitted).

The Legislators moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6), arguing that they were entitled to absolute immunity, that GAG’s claims failed on the merits, and that their requests for relief were moot. The Legislators also opposed GAG’s motion for a preliminary injunction, largely on the same grounds. The Legislators chose to “defer” to the district court with respect to GAG’s request for relief from the local practice rule because it was unclear how, in a lawsuit against the Legislators, application of the local rule would become an issue. J. App. at 194-95.

After the parties’ motions were fully briefed, the district court granted the Legislators’ motion to dismiss. The district court held that the challenged committee rules and conduct were “within the sphere of legitimate

7. The concurrence concludes that GAG *only* challenged the enforcement of the decorum rules. Concurrence at 1. Although the complaint certainly challenged enforcement, it also challenged promulgation of the rules, as most evident by the complaint’s self-described facial challenge to the rules themselves. *See, e.g.*, J. App. at 36 (second claim for relief).

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legislative activity,” and so the Legislators were entitled to absolute legislative immunity. J. App. at 243. The district court held that even if the Legislators were not entitled to legislative immunity, however, GAG’s requests for relief were moot because it was speculative that the challenged rules would be applied to GAG again after the conclusion of the General Assembly’s session. With the complaint dismissed, the district court also denied as moot GAG’s motions for a preliminary injunction and relief from the local practice rules. The district court entered final judgment, and this timely appeal followed.

III

Generally, federal courts may “choose among threshold grounds for denying audience to a case on the merits.” *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585, 119 S. Ct. 1563, 143 L. Ed. 2d 760 (1999). Here, because the district court addressed both mootness and legislative immunity, we do as well.

First, we conclude that GAG’s requests for relief under 42 U.S.C. § 1983 are not moot. GAG’s request for nominal damages is not moot because it is at least partially retrospective. And GAG’s request for injunctive and declaratory relief is not moot because the Legislators have not disclaimed an intent to engage in the challenged conduct again. Indeed, they have confirmed that the challenged conduct will continue. GAG is therefore subject to a future threat of injury and the case remains a live controversy.

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Second, we hold that GAG’s claims are barred by legislative immunity. Legislative immunity is available to the members of a legislative body regardless of whether a lawsuit is styled as an “official capacity” or “individual capacity” suit. And the establishment and enforcement of rules of decorum for legislative proceedings fall within the sphere of legitimate legislative activity. The Legislators are therefore entitled to legislative immunity and GAG’s claims cannot proceed. We therefore affirm the district court’s judgment.

A

Under Article III of the Constitution, federal courts may decide only “cases” or “controversies.” U.S. Const. art. III, § 2. A case or controversy is a live dispute between adverse parties over some concrete interest. *Prison Legal News v. Federal Bureau of Prisons*, 944 F.3d 868, 879 (10th Cir. 2019). A party seeking federal judicial relief must therefore demonstrate the “irreducible constitutional minimum” for the existence of a case or controversy: an injury-in-fact, traceable to the opposing party and redressable by a favorable decision of the court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). “An actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.” *Brown v. Buhman*, 822 F.3d 1151, 1165 (10th Cir. 2016) (citation omitted). “If an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation,” the case becomes moot, and with few exceptions, there is no controversy for a federal court to decide. *Genesis*

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Healthcare Corp. v. Symczyk, 569 U.S. 66, 72, 133 S. Ct. 1523, 185 L. Ed. 2d 636 (2013) (citation and internal quotation marks omitted); *Buhman*, 822 F.3d at 1166-68 (discussing major exceptions). “Mootness deprives federal courts of jurisdiction.” *Buhman*, 822 F.3d at 1165.

The requirements of Article III are “not dispensed in gross.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021). We assess mootness as to “each form of relief sought.” *Prison Legal News*, 944 F.3d at 880 (citation omitted). Requests for retrospective relief (like damages) rarely become moot. Past injuries are not susceptible to alteration. Thus, “so long as the plaintiff has a cause of action for damages,” the case remains live. *Buckhannon Bd. and Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598, 608-09, 121 S. Ct. 1835, 149 L. Ed. 2d 855 (2001). Requests for prospective relief (like injunctions) become moot when the party seeking relief is no longer subject to a future threat of injury. Thus, a request for an “injunction becomes moot once the event to be enjoined has come and gone.” *Citizen Center v. Gessler*, 770 F.3d 900, 907 (10th Cir. 2014). Likewise, a request for a declaratory judgment becomes moot when the requested judgment no longer “affects the behavior of the defendant toward the plaintiff.” *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1110 (10th Cir. 2010).

In general, we do not consider the merits of a plaintiff’s claims for the purposes of assessing our Article III jurisdiction. *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1092-93 (10th Cir. 2006) (en banc). With

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respect to First Amendment claims for prospective relief, which raise unique forms of injury, we apply a disciplined framework for evaluating standing and mootness to properly divorce our assessment of jurisdiction from our review of the merits. Our cases establish that a plaintiff who intends to engage in arguably protected conduct that is covered by the challenged governmental action and who faces a credible threat of enforcement has standing to bring a claim. *Ward v. Utah*, 321 F.3d 1263, 1267 (10th Cir. 2003). Generally, past enforcement, the widespread authority to enforce, and disavowal of future enforcement are all factors we take into consideration when evaluating whether a plaintiff faces a credible threat of enforcement. *Peck v. McCann*, 43 F.4th 1116, 1132 (10th Cir. 2022).

Here, as the district court acknowledged, GAG's request for nominal damages is at least partially retrospective, and so it is not moot. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 292-93, 141 S. Ct. 792, 209 L. Ed. 2d 94 (2021). We disagree with the district court, however, insofar as it found GAG's request for prospective relief moot. The Legislators have previously enforced the challenged rules against GAG. GAG intends to continue to misgender and deadname individuals in comments at the Colorado General Assembly. And counsel for the Legislators confirmed they intend to enforce rules against misgendering or deadnaming in the future. Oral Arg. at 27:30. GAG clears what we have said "is not supposed to be a difficult bar for plaintiffs to clear in the First Amendment pre-enforcement context." *Peck*, 43 F.4th at 1133. This case is not moot.

*Appendix A***B**

We turn now to a discussion of the alternative threshold basis upon which the district court dismissed this case: legislative immunity. We begin by recounting the general statutory framework from which this doctrine was born.

The enforcement of constitutional rights against state officials is largely a consequence of the Civil Rights Act of 1871, which authorizes wide access to relief for “the deprivation of any rights, privileges, or immunities secured by the Constitution and laws” of the United States. 42 U.S.C. § 1983. The Supreme Court has given § 1983 a broad construction in light of its remedial purpose. *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 685, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). Still, the reach of § 1983 is not unlimited. The Court has long assumed that the unadorned text of § 1983 incorporates background rules of liability and immunity that mark the law’s outer boundaries. *Imbler v. Pachtman*, 424 U.S. 409, 418, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976) (reading § 1983 “in harmony with general principles of tort immunities and defenses rather than in derogation of them”). Thus, for example, municipalities are liable for constitutional violations only insofar as they directly “cause” a constitutional violation, not for the violations of their employees. *Monell*, 436 U.S. at 692. States are not “persons” subject to suit under § 1983. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989). Police officers are entitled to limited immunity from suit for actions taken in good faith. *Harlow*

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v. Fitzgerald, 457 U.S. 800, 806, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). And in some cases, it is assumed that Congress intended no relief whatsoever, entitling the defendant to absolute immunity from suit. *Id.* at 807.

Legislators, exercising their legislative functions, are among those defendants entitled to absolute immunity. *Id.* In the landmark case *Tenney v. Brandhove*, the Supreme Court rejected the constitutional challenge of a plaintiff who had been summoned by the California Senate’s Committee on Un-American Activities, allegedly in retaliation for a petition he had circulated advocating against the committee. 341 U.S. 367, 370-72, 71 S. Ct. 783, 95 L. Ed. 1019 (1951). The Court traced the historic roots of the “privilege of legislators to be free from arrest or civil process for what they do or say in legislative proceedings” all the way back to the English Bill of Rights. *Id.* at 372. “We cannot believe,” explained the Court, “that Congress — itself a staunch advocate of legislative freedom — would impinge on a tradition so well grounded in history and reason by covert inclusion in the general language” of § 1983. *Id.* at 376. Thus, the conduct of legislators that is within “the sphere of legitimate legislative activity” is absolutely immune from judicial inquiry. *Id.*; see also *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 503-05, 95 S. Ct. 1813, 44 L. Ed. 2d 324 (1975) (discussing the scope of legitimate legislative activity); *Harlow*, 457 U.S. at 807 (“The absolute immunity of legislators, in their legislative functions, . . . now is well settled.” (citations omitted)).

This legislative immunity extends not only to damages suits, but also to requests for injunctive or declaratory

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relief. The Supreme Court held in *Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, that although “*Tenney* involved an action for damages under § 1983, its holding is equally applicable to § 1983 actions seeking declaratory or injunctive relief.” 446 U.S. 719, 732, 100 S. Ct. 1967, 64 L. Ed. 2d 641 (1980). The Court explained that *Tenney* did not by its own terms “distinguish between actions for damages and those for prospective relief.” *Id.* at 733. And reading such a distinction into *Tenney* would undermine the very policy concerns that justified the *Tenney* doctrine: the risk that civil liability would “create a distraction and force legislators to divert their time, energy, and attention from their legislative tasks to defend the litigation.” *Id.* (citation modified) (quoting *Eastland*, 421 U.S. at 503).

In the district court, the Legislators asserted absolute immunity in their motion to dismiss and their response to GAG’s motion for a preliminary injunction. They argued that “everything occurred wholly within the context of two formal legislative committee meetings convened specifically and exclusively for the purpose of obtaining public comment on the merits of a piece of pending legislation — and for no other purpose.” J. App. at 180. This, the Legislators argued, is wholly within the ambit of absolute legislative immunity.

In response, GAG argued that “legislative immunity is a *personal* defense not applicable to official-capacity claims for declaratory and injunctive relief.” J. App. at 199. Additionally, GAG argued that the Legislators’ enforcement activity — namely their termination of the individual GAG plaintiffs’ time for comment and the

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removal of Goeke’s comments from the public record — is not entitled to legislative immunity. Finally, GAG pressed that administering “censorship” at public hearings is not protected by legislative immunity. J. App. at 202.

The district court rejected GAG’s arguments down the line. First, the district court explained that while the nature of the suit as an official capacity suit may be relevant for sovereign immunity purposes, it did not defeat the applicability of the “completely distinct” legislative immunity doctrine. J. App. at 237. Second, the district court held that the Legislators’ conduct was sufficiently related to the “legislative function of overseeing public testimony on pending legislation and gathering relevant information and input from the public” to warrant absolute legislative immunity. J. App. at 242. The district court therefore granted the Legislators’ motion to dismiss.

On legislative immunity, we agree with the district court. First, the district court was correct to disregard the distinction between official capacity and individual or personal capacity suits for the purposes of absolute legislative immunity. Legislative immunity remains available to legislators acting within their legislative capacity regardless of whether they are sued in their individual or official capacity. Second, the Legislators’ conduct here — both the adoption of the misgendering and deadnaming rules as well as the implementation of those rules within the context of legislative hearings — falls within the sphere of legitimate legislative activity.

As we previously observed, states themselves are not proper subjects of § 1983 lawsuits. *Will*, 491 U.S. at

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67. This is because, as the Supreme Court has explained, Congress did not intend to override the states' historic, well-rooted, and structurally vital entitlement to sovereign immunity from suit, reflected in the Eleventh Amendment. *Id.*; *Hans v. Louisiana*, 134 U.S. 1, 10, 10 S. Ct. 504, 33 L. Ed. 842 (1890).⁸ But because all sovereigns operate through the actions of their officers, it has likewise been long understood that state officials are also entitled to the benefit of sovereign immunity as arms of the state. *Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977). Sovereign immunity would be meaningless otherwise. Thus, “a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official’s office[.] As such, it is no different from a suit against the State itself.” *Will*, 491 U.S. at 71 (internal citation omitted). Such suits are ordinarily barred by sovereign immunity.

The major and relevant exception to this rule is that suits for prospective relief against officials, acting in their official capacity, are not barred by sovereign immunity. *Id.* at 71 n.10. “[O]fficial-capacity actions for prospective relief are not treated as actions against the State.” *Kentucky v. Graham*, 473 U.S. 159, 167 n.14, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985). Since the seminal case *Ex Parte Young*, federal courts have exercised the power to adjudicate requests for prospective relief against state

8. Of course, as the Supreme Court simultaneously observed, Congress “undoubtedly” could override the states’ sovereign immunity pursuant to its power under § 5 of the Fourteenth Amendment to enforce constitutional protections. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 66, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989).

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officials acting in their official capacity for well over a century. 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908). But while this exception to the usual rule of sovereign immunity is important and often deployed in the context of constitutional challenges, it also has limits. In *Whole Woman’s Health v. Jackson*, for example, the Supreme Court declined to extend the scope of *Ex Parte Young* to permit injunctive relief against state court judges and their clerks because to do so “would be a violation of the whole scheme of our Government.” 595 U.S. 30, 39, 142 S. Ct. 522, 211 L. Ed. 2d 316 (2021) (quoting *Ex Parte Young*, 209 U.S. at 163); *see also id.* at 42 (distinguishing *Pulliam v. Allen*, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984), as addressing the “distinct doctrine of judicial immunity”).

Like the district court, we do not understand the *Ex Parte Young* exception to authorize injunctions against state legislators acting in their legislative capacity. To begin with, the scope of *Ex Parte Young* is generally construed in light of historic equitable traditions, which, like § 1983, incorporate the principle of legislative immunity. *Cf. id.* at 39 (examining interaction between *Ex Parte Young* and historic tradition against enjoining judges).

Additionally, § 1983 and *Ex Parte Young* are distinct sources of liability and immunity. Legislators are “absolutely immune from liability under § 1983 for their official acts because that immunity was well established at common law in 1871,” *Ziglar v. Abbasi*, 582 U.S. 120, 157, 137 S. Ct. 1843, 198 L. Ed. 2d 290 (2017) (Thomas, J., concurring in part), whereas *Ex Parte Young* is an

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exception to Eleventh Amendment sovereign immunity. As the district court noted, the fact that the Eleventh Amendment may not protect the Legislators from injunctive relief tells us nothing about whether they are liable under § 1983. And here, the Supreme Court’s decision in *Consumers Union* resolves the latter question: “[a]lthough *Tenney* involved an action for damages under § 1983, its holding is equally applicable to § 1983 actions seeking declaratory or injunctive relief.” 446 U.S. at 732; *see also* Erwin Chemerinsky, *Absolute Immunity: General Principles and Recent Developments*, 24 *Touro L. Rev.* 473, 476 (2008) (“Also, legislators have absolute immunity for injunctions for legislative functions.”). Thus, whether legislative officials are sued in their official or individual capacity, whether the relief sought is prospective or retrospective, so long as they are sued for their exercise of a legislative function, they are entitled to absolute legislative immunity.

GAG resists this conclusion by pointing to one of our prior cases, *Sable v. Myers*, 563 F.3d 1120 (10th Cir. 2009). In *Sable*, we considered an individual’s claim that a decision by a local government body to condemn his property was made in violation of the First Amendment. *Id.* at 1123. He sued city council members for damages, and the city council members raised legislative immunity as a defense. *Id.* The district court rejected the defense of absolute immunity, and we reversed. *Id.* at 1123, 1127. We applied a “broad view of legislative immunity” and held that the relevant conduct fell within the scope of legitimate legislative activity. *Id.* at 1125-26. We did not address the kind of argument that GAG raises here.

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Nonetheless, GAG points to our statement that legislative immunity applies “only to legislators sued in their individual capacities, not to the legislative body itself” to authorize injunctions against legislators. *Id.* at 1123. We think this one sentence is far too thin a reed upon which to rest so heavy an argument. We do not read this language in *Sable* as addressing a distinction between official capacity claims and individual or personal capacity claims.

Instead, the *Sable* court was clarifying that while “individual” legislators are entitled to absolute immunity under § 1983, entities that are not natural persons (or individuals in the colloquial sense) like state agencies or local bodies must rely on some other doctrine of liability or immunity to defend themselves. *See, e.g., Monell*, 436 U.S. at 694 (municipalities not liable under theories of respondeat superior); *Mt. Healthy*, 429 U.S. at 280 (arms of the state are entitled to sovereign immunity). Indeed, the sentence from *Sable* that GAG relies upon cites to a Fifth Circuit case, *Minton v. St. Bernard Parish Sch. Bd.*, that makes this same point. 803 F.2d 129, 133 (5th Cir. 1986). Further, in *Sable*, we consoled the losing plaintiff-appellee by pointing out that although we had rejected his attempt to hold city council members individually liable, the city itself might have been “subject to suit under § 1983.” 563 F.3d at 1127.

If we were to read this one sentence in *Sable* any other way, we would functionally upend the doctrine of legislative immunity and the interests it protects. Recall that GAG is not arguing at this juncture that the Legislators’ conduct falls outside the scope of legislative

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immunity, but that legislative immunity does not apply *at all* to GAG's request for injunctive or declaratory relief. GAG's theory lacks any limiting principle. It would permit a legislator to be enjoined from voting for a particular piece of legislation, based on a federal court's *ex ante* view that the unenacted bill is unconstitutional, even though voting for the bill is quintessentially legislative, solely because the plaintiff sought an injunction rather than damages. We think such extreme possibilities were far outside the scope of issues decided in *Sable*, and we foreclose such possibilities today. We thus join all our sister circuits that have considered the issue in holding that prospective relief is not available against a legislative official performing a legislative function. *Cushing v. Packard*, 30 F.4th 27, 39-40 (1st Cir. 2022); *State Emps. Bargaining Agent Coal. v. Rowland*, 494 F.3d 71, 82-88 (2d Cir. 2007); *Scott v. Taylor*, 405 F.3d 1251, 1255 n.6 (11th Cir. 2005). GAG points us to no contrary authority.

GAG instead relies on several isolated statements by the Supreme Court reiterating that personal defenses are only available to a defendant sued in their personal, not official, capacity. *Graham*, 473 U.S. at 167; *Hafer v. Melo*, 502 U.S. 21, 25, 112 S. Ct. 358, 116 L. Ed. 2d 301 (1991); *Board of County Commissioners v. Umbehr*, 518 U.S. 668, 677 n.*, 116 S. Ct. 2342, 135 L. Ed. 2d 843 (1996). But GAG takes these statements out of their relevant context. *Graham* involved attorneys' fees under 42 U.S.C. § 1988 in personal-capacity actions. 473 U.S. at 161. *Hafer* addressed whether state officials are "persons" within the meaning of § 1983. 502 U.S. at 23. And *Umbehr* was a case involving local government officials who were not explicitly understood to benefit from legislative immunity until two

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years later. *Compare* 518 U.S. at 677 n.* (1996), *with Bogan v. Scott-Harris*, 523 U.S. 44, 52-54, 118 S. Ct. 966, 140 L. Ed. 2d 79 (1998). Together, although these cases involved some distinction between official and personal capacity actions, none of them squarely addressed absolute immunity, much less legislative immunity, and even less so whether legislative immunity remains available in an official capacity suit for prospective relief.

On this point, we find persuasive the First Circuit’s explanation in *Cushing* that *Consumers Union* foreclosed suits for prospective relief against legislators acting in their official capacity. *Cushing*, 30 F.4th at 39. Although the Supreme Court did not use the term “official capacity,” the Venn diagram of official-capacity suits versus suits for prospective relief is essentially a circle. *Id.* (“Against this backdrop, we fail to see why we must treat the plaintiffs’ claims . . . as if they are not what they purport to be[.]”). So we can safely conclude that, because the distinction between official and personal capacity suits was still nascent at the time *Consumers Union* was decided, *see Graham*, 473 U.S. at 165, the Supreme Court intended the legislative immunity doctrine to apply howsoever the case is captioned.

The Court’s subsequent dicta in the varied contexts argued by GAG is insufficient to relieve us of applying the more specific and controlling holding of *Consumers Union*.⁹ Any argued or perceived inconsistency between

9. *Graham* approvingly cited and discussed *Consumers Union* in one part of its opinion, but did not acknowledge it at all in the part of the opinion that GAG relies most heavily on. *Kentucky v. Graham*,

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Consumers Union and the Supreme Court’s other cases is for the Supreme Court to clarify, not us. *Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477, 484, 109 S. Ct. 1917, 104 L. Ed. 2d 526 (1989) (“If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”).

Distinguishing between official capacity and personal capacity suits for the purposes of legislative immunity would eviscerate the Supreme Court’s holding in *Consumers Union*. Lacking the authority to do this, we hold that legislative immunity is available to legislators acting in their legislative capacity, regardless of the relief sought or the nature of the suit.¹⁰

473 U.S. 159, 164, 167, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985). It would be an extraordinary interpretation of *Graham*, then, to read it as implicitly overturning *Consumers Union*.

10. Our holding today is limited to the interpretation of § 1983 and whether the doctrine of absolute legislative immunity that has been implicitly codified in that statute authorizes prospective relief. We do not address other civil rights remedies that Congress has provided, each of which has their own interpretative jurisprudence. See, e.g., *Guttman v. Khalsa*, 669 F.3d 1101 (10th Cir. 2012) (addressing claim arising under the Americans with Disabilities Act). Thus, while we cite approvingly the First Circuit’s decision in *Cushing v. Packard*, 30 F.4th 27 (1st Cir. 2022) (en banc), our discussion of that case should not be read to adopt wholesale its ultimate holding that legislative immunity forecloses relief under the ADA.

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2

Having decided that legislative immunity is available to legislators sued in either their individual or official capacities, we now turn to whether it applies to the Legislators here. The applicability of legislative immunity “turns on the nature of the act, rather than on the motive or intent of the official performing it.” *Bogan*, 523 U.S. at 54. In *Bogan*, the Court identified several nonexhaustive factors for identifying immunized legislative activity, like the “discretionary, policymaking” nature of the act, the “prospective implications” of the act, and whether the act occurred “in a field where legislators traditionally have power to act.” *Id.* at 55-56. Moreover, the Supreme Court has extended legislative immunity to officials who are not themselves legislators so long as the suit seeks relief against the exercise of legislative power, underscoring that it is function, not person, that confers immunity.

Likewise, our holding today does not disturb the accepted wisdom of permitting federal courts to inquire into legislative motive where appropriate and where the relief sought is not against the legislators themselves, subject to a separate legal framework. *See, e.g., Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 268, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977) (“In some extraordinary instances the members might be called to the stand at trial to testify concerning the purpose of the official action, although even then such testimony frequently will be barred by privilege.”); *see also Jefferson Community Health Care Centers, Inc. v. Jefferson Parish Government*, 849 F.3d 615, 624 (5th Cir. 2017) (“While the common-law legislative immunity for state legislators is absolute, the legislative privilege for state lawmakers is, at best, one which is qualified.” (internal quotation marks and citation omitted)).

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Consumers Union, 446 U.S. at 731-34. Thus, the Court has held that voting in favor or against legislation is “in form, quintessentially legislative.” *Bogan*, 523 U.S. at 55. An executive official who formally introduces legislation is entitled to legislative immunity, even though she is not a member of the legislative branch. *Id.* And “[i]nvestigations, whether by standing or special committees, are an established part of representative government,” and so officials are entitled to legislative immunity for acts done in furtherance of legislative factfinding. *Tenney*, 341 U.S. at 377.

We conclude that these precedents dictate that both the Legislators’ adoption and their enforcement of the committee rules are within the sphere of legitimate legislative activity.

With respect to the adoption of the committee rules, we set aside GAG’s argument and allegations that the rules are unconstitutional, unlawful, or improper. Instead, we ask whether the adoption of these particular rules, like other committee rules, falls within the broad legislative tradition. We conclude that it does.

The promulgation of these rules was the exercise of a “discretionary, policymaking” function. The rules are also prospective in that they apply to a broad set of people and commentators, not just the plaintiffs-appellants here, and will continue to do so. *Cf. Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445, 36 S. Ct. 141, 60 L. Ed. 372 (1915) (identifying the general nature of a “rule of conduct” that “applies to more than

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a few people” as a legislative characteristic). And the adoption of the rules occurred “in a field where legislators traditionally have power to act.” *Bogan*, 523 U.S. at 56 (quoting *Tenney*, 341 U.S. at 379). “Investigations, whether by standing or special committees, are an established part of representative government,” *Tenney*, 341 U.S. at 377, and as we understand its arguments, GAG never contests that legislatures must be able to adopt rules for those investigations. Historically, those rules have included wide-ranging prohibitions on honest, protected expression.¹¹ The adoption of the rules “were legislative because they were integral steps in the legislative process.” *Bogan*, 523 U.S. at 55.

It follows, as night the day, that in the circumstances here, the Legislators’ enforcement of the committees’ rules was also a quintessential legislative activity. The entire purpose of adopting committee rules was to govern conduct at legislative hearings. That adoption would be meaningless if legislators, as the ones overseeing such hearings, could not enforce those rules in the very forum they were designed for. If *Tenney* upheld the use of the subpoena power to compel attendance to the California Legislature’s committee hearings, we cannot see how the Colorado Legislators’ much more limited actions here —

11. Thus, for example, a member of Congress that calls a colleague a liar, a hypocrite, or a racist might engage in protected expression, but they may also violate long-standing rules on decorum. See, e.g., Gail E. Baitinger, *Words Taken Down: Calling Members to Order for Disorderly Language in the House*, Cong. Rsch. Serv. at 7-22 (Aug. 13, 2019), available at https://www.congress.gov/crs-product/R45866#_Toc16776221 (tables of historic examples of rules violations in the U.S. House).

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ending the speaking time early for certain speakers and allegedly removing certain comments from the legislative record — can be denied the benefit of legislative immunity consistent with *Tenney*.

GAG relies principally on *Consumers Union*, where the Supreme Court did draw a distinction between the Supreme Court of Virginia’s adoption of disciplinary rules (immune) and enforcement of them (not immune). 446 U.S. at 734-37. The Court drew this distinction to implement the contours of legislative immunity: a legislator is immune for actions taken within the sphere of legislative activity, but enforcement is generally an executive, not legislative function. But we do not think this distinction stands for the broad proposition that GAG argues we should adopt.

The *Consumers Union* distinction reflects the fact that state and local bodies, free from the constraints of federal separation of powers principles, can and often do exercise mixed legislative, judicial, and executive functions. But the Supreme Court has repeatedly explained — indeed, nearly all of federal administrative law is based on this explanation — that a function can look legislative, but still be essentially executive. *See, e.g., Whitman v. American Trucking Associations*, 531 U.S. 457, 475, 121 S. Ct. 903, 149 L. Ed. 2d 1 (2001). Likewise, an action that looks executive may in fact be legislative. *Cf. Trump v. Mazars USA, LLP*, 591 U.S. 848, 862-63, 140 S. Ct. 2019, 207 L. Ed. 2d 951 (2020) (distinguishing between legitimate Congressional subpoenas for a “valid legislative purpose” and illegitimate Congressional subpoenas for law enforcement purposes).

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As above, so below: *Consumers Union* does no more than apply this federal principle to the state legislative immunity context. Just as the federal principle allows Congress to impose certain penalties for violating its legislative rules without finding that Congress has impermissibly exercised executive power, so too does the doctrine of legislative immunity permit state legislatures to impose certain limited, historically applied remedies for violating committee rules.

Taking each of GAG's allegations of impermissible enforcement separately — the early termination of time to speak at a legislative hearing and removal of comments from the official legislative record — we believe each is amply insulated from judicial scrutiny. The legislature's time is its own. The Legislators' interruption of and early termination of Goeke and Guggenheim's time to speak no more exceeded the legislative function than a judge exceeds the judicial function by interrupting or cutting off counsel during oral argument.

Similarly, the legislature is entitled to decide how its proceedings are officially recorded, and the penalties imposed here appear *uniquely* legislative. We would not expect to find Colorado executive and judicial officers injecting themselves into the legislative process to decide who speaks for how long and what goes into the legislative record. Those decisions belong peculiarly to members of the Colorado General Assembly. The Legislators are therefore entitled to absolute immunity for enforcing the committee rules at the hearings those rules were meant to govern, as they did here.

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This might have been a different case if the Legislators were empowered to seek civil damages, conduct criminal prosecution, *see Kilbourn v. Thompson*, 103 U.S. 168, 26 L. Ed. 377 (1880), or ban the plaintiffs from ever speaking at the Colorado General Assembly again. This latter example was the case in *Kamplain v. Curry County Board of Commissioners*, another case that GAG relies upon. 159 F.3d 1248 (10th Cir. 1998).

In *Kamplain*, we held that a county board’s “ban of Plaintiff from attending Commission meetings and its subsequent decision to prohibit Plaintiff from speaking at or participating in meetings were administrative acts” not entitled to legislative immunity. *Id.* at 1252. The breadth of this penalty, unconnected from the investigation of any particular issue, led us to conclude that it was fundamentally non-legislative because legislatures do not ordinarily exercise such broad power to punish. *Id.* But we specifically disclaimed any ruling on “the Board’s ejection of Plaintiff from the public meeting,” a narrower and more particularized form of enforcement. *Id.* We think the Legislators’ actions here are much narrower than those at issue in *Kamplain* and therefore within the scope of legislative immunity.¹² We could not reconcile *Kamplain* with *Tenney* if we were to conclude otherwise.

12. Like the concurrence, we apply a distinction between promulgation and enforcement for the purposes of legislative immunity. We do not hold, however, that immunity for enforcement actions automatically or always follows from immunity for other acts. Concurrence at 3. We hold only that the narrow enforcement actions alleged here are sufficiently legislative in character that they fall within the scope of the immunity doctrine. Per the *Bogan* factors,

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IV

When *Tenney* was decided well over half a century ago, Justice Douglas foresaw that it could have unseemly applications. 341 U.S. at 383 (Douglas, J., dissenting) (“Yet now we hold that no matter the extremes to which a legislative committee may go it is not answerable to an injured party under the civil rights legislation.”). But the Supreme Court perceived powerful reasons to shield the legislative process from judicial inquiry nonetheless: more than merely the risk of distracting legislators from their duties, fundamental principles of federalism and the separation of powers were key to the outcome in *Tenney*. *Id.* at 377 (it is “not consonant with our scheme of government for a court to inquire into the motives of legislators”). We faithfully apply those principles today.

The legislative process is inherently political, and therefore not easily amenable to federal judicial inquiry. People injured by this process are generally not free to sue legislators for their legislative acts. “Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule.” *Bi-Metallic*, 239 U.S. at 445. The doctrine of legislative immunity forecloses our inquiry into the merits of the Legislators’ actions here, and so the district court’s judgment is AFFIRMED. Because we affirm the district court’s dismissal of GAG’s complaint,

what matters is whether the nature of the action (enforcement or otherwise) is such that it is no longer legislative. But if that analysis reveals a legislative act, the defendants are entitled to absolute immunity and the curtain must fall on the plaintiffs’ case.

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we likewise affirm the district court’s denial of GAG’s motions for a preliminary injunction and relief from the local rules on mootness grounds.¹³

13. We are unsure by what device, if any, we are empowered to review the district court’s local practice rules. GAG’s appeal from the denial of its motion for relief from the local rules might well be susceptible to dismissal, rather than affirmance. But since we may “choose among threshold grounds for denying audience” to this aspect of the appeal, *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585, 119 S. Ct. 1563, 143 L. Ed. 2d 760 (1999), we think it simpler to affirm on mootness grounds. Our affirmance should not be read to indicate, however, that the appeal of that issue is properly before us.

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CARSON, Circuit Judge, concurring in parts II, III-A and III-B-1 and concurring in the judgment:

Although the founders created our divided system of government with checks and balances in mind, they did not design the system for federal courts to police the internal workings of legislatures—state or federal. And this case at its core involves the internal workings of a state legislature. For that reason, I agree with the majority that, in this case, the legislators have immunity. But I cannot join the majority opinion in its entirety.

The heart of this case is the distinction between *enforcing* rules of decorum and *promulgating* rules of decorum. The majority begins its opinion by saying that “GAG alleged that the Legislators violated their First Amendment rights by promulgating and enforcing rules of decorum that barred misgendering and deadnaming in legislative hearings.” I read the Complaint differently. Although Plaintiffs certainly took issue with the content of the rules, the Complaint’s various causes of action alleged the Legislators violated their constitutional rights by enforcing, *not* by promulgating, the rules of decorum. And that distinction matters.

Whether we extend legislative immunity depends on the nature of the action undertaken. Importantly, this analysis is granular enough to capture distinctions in actions involving the same legislative acts—including the difference between promulgating and enforcing a legislative act. We see this in multiple legislative immunity cases. *See Gravel v. United States*, 408 U.S. 606, 618-22, 92 S. Ct. 2614, 33 L. Ed. 2d 583 (1972) (discussing cases).

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For instance, in *Kilbourn v. Thompson*, the “House Members who had adopted a resolution authorizing” an arrest received legislative immunity, yet “the resolution was subject to judicial review insofar as its execution impinged on a citizen’s rights.” *Id.* at 618 (discussing *Kilbourn v. Thompson*, 103 U.S. 168, 26 L. Ed. 377 (1881)). Similarly, in *Dombrowski v. Eastland*, legislative immunity protected a subcommittee chairman who sought to obtain records for a committee proceeding, but not the committee counsel involved in “carry[ing] out an illegal seizure of” those records. *Id.* at 619 (citing *Dombrowski v. Eastland*, 387 U.S. 82, 84, 87 S. Ct. 1425, 18 L. Ed. 2d 577 (1967)). And in *Powell v. McCormack* the Court extended immunity to House Members who enacted an “illegal legislative act” that excluded a representative-elect, yet the Court “afford[ed] relief against House aides seeking to implement” those acts. *Id.* at 620 (discussing *Powell v. McCormack*, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969)).¹

1. Each of these cases involves federal officials subject to the Speech or Debate Clause of the Constitution, *see Kilbourn*, 103 U.S. at 204; *Dombrowski*, 387 U.S. at 83; *Powell*, 395 U.S. at 501-06, which mandates that “for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place.” U.S. Const. art I, § 6. Although the Speech or Debate Clause does not apply to state legislators, *see Lake Country Ests., Inc. v. Tahoe Reg’l Plan. Agency*, 440 U.S. 391, 404-05, 99 S. Ct. 1171, 59 L. Ed. 2d 401 (1979), their “common-law immunity from liability” is “similar in origin and rationale.” *Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 731-32, 100 S. Ct. 1967, 64 L. Ed. 2d 641 (1980). These cases are relevant to the state legislative immunity at issue here, then, because this immunity “for purposes of § 1983 has been patterned after immunity under the Speech or Debate Clause.” *Dennis v. Sparks*, 449 U.S. 24, 30, 101 S. Ct. 183, 66 L. Ed. 2d 185 (1980) (citing *Consumers Union*, 446 U.S. at 732-34).

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As the Court explained, these differential grants of immunity between promulgating and executing legislative acts “reflect[] a decidedly jaundiced view towards extending [immunity] so as to privilege illegal or unconstitutional conduct beyond that essential to foreclose executive [or judicial] control of legislative speech or debate and associated matters” *Id.* at 620. It does not matter that “protecting the rights of others may . . . to some extent frustrate[] a planned or completed legislative act,” what matters is whether a court can provide judicial relief from the unconstitutional conduct “without proof of a legislative act or the motives or purposes underlying such an act” and without threatening legislative independence. *Id.* at 621.

Under this case law, the majority’s reasoning that legislative immunity extends to the enforcement of the challenged rule because a rule’s adoption is meaningless “if legislators, as the ones overseeing such hearings, could not enforce those rules in the very forum they were designed for” is unpersuasive. As an initial matter, this overstates the necessary result of permitting judicial review of legislative rules like the rule at issue here. Legislators would remain free to enforce rules that do not violate constitutional rights. And to the extent relief is afforded against a rule as-applied, legislators would remain free to enforce that rule as a general matter. But regardless, judicial review is available even where it may “frustrate[] a planned or completed legislative act.” *Gravel*, 408 U.S. at 621. Legislative immunity protects legislative independence, *Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 731-32, 100 S. Ct. 1967,

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64 L. Ed. 2d 641 (1980), it does not entitle legislators to the fruits of their unconstitutional conduct.²

As discussed above, the Court permitted judicial review of the arrest in *Kilbourn* and the exclusion of the representative-elect in *Powell* even though relief rendered the protected—yet unconstitutional—legislative acts in those cases meaningless. So too would judicial relief be available here if such relief did not interfere with legislative independence, regardless of whether relief would frustrate the protected, but potentially

2. Plaintiff’s Complaint demonstrates why judicial review in this case would require “proof of a legislative act or the motives or purposes underlying such an act” and threaten the Colorado legislature’s independence in considering pending legislation before it. *See Gravel*, 408 U.S. at 621. The legislative rule at issue applies to “public comment on pending legislation.” Plaintiffs would have us find that Defendants have “enforced the rule in a selective, subjective, and viewpoint-discriminatory manner,” that Defendants’ “custom, policy, or practice” is to apply their decorum rule “in ways that discriminate against dissenters from trans ideology” and “compels citizens to mouth support for trans ideology,” that the rule is “not designed to confine the forum to the limited and legitimate purpose for which it was created, but rather, to suppress ideologies and opinions,” and that Defendants censored Plaintiffs in an “Orwellian fashion.” Judicial review of Defendants’ enforcement activity based on these allegations would necessitate an inquiry into the Defendants’ motives in conducting a committee hearing on pending legislation. Relief might require us to enjoin this activity based on Defendants’ views on pending legislation. Relief might also see us force the Colorado legislature to consider views and ideologies before voting on pending legislation. Such inquiries and interventions into the legislative process pose too great a risk to legislative independence, requiring immunity in this case.

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unconstitutional, promulgation of the legislative rule. Thus, although I agree that legislative immunity applies to the enforcement actions in this case, I disagree with the majority opinion's suggestion that this immunity follows from the fact that the legislatively immune act would be meaningless if we did not allow for its unconstitutional enforcement.

In conclusion, this case is about whether a legislative body can, without being subject to suit, compel or prohibit speech when it allows commentary on pending legislation. We conclude, as required by precedent, that it can. But, make no mistake, the panel's opinion is far reaching. The opinion allows legislative bodies to create rules under the guise of decorum that essentially silence opposition in legislative hearings. Are the people whose opinions are excluded in such an instance left with the ballot box as their only remedy? Likely so. Although it troubles me that a legislative body can effectively silence speech and leave the party whose speech is compelled or prohibited without a judicial remedy, the relevant authorities allow it. And the result in favor of one viewpoint in this case will apply equally if a legislative body in another state flips the script and allows only the opposite viewpoint to be expressed in its hearings. But the legislative immunity doctrine purposely imposes harsh consequences—even when a party would otherwise have a meritorious claim.

For these reasons, I respectfully concur in part and concur in the judgment.

**APPENDIX B — ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
COLORADO, FILED NOVEMBER 27, 2024**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Regina M. Rodriguez

Civil Action No. 1:24-cv-00913-RMR

GAYS AGAINST GROOMERS, A NONPROFIT
CORPORATION; ROCKY MOUNTAIN
WOMEN'S NETWORK, AN UNINCORPORATED
ASSOCIATION; RICH GUGGENHEIM, AN
INDIVIDUAL; AND CHRISTINA GOEKE, AN
INDIVIDUAL,

Plaintiffs,

v.

LORENA GARCIA, IN HER INDIVIDUAL AND
OFFICIAL CAPACITIES AS A COLORADO STATE
REPRESENTATIVE; MIKE WEISSMAN, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITIES AS
A COLORADO STATE REPRESENTATIVE AND
CHAIR OF THE HOUSE JUDICIARY COMMITTEE;
LESLIE HEROD, IN HER INDIVIDUAL AND
OFFICIAL CAPACITIES AS A COLORADO STATE
REPRESENTATIVE; JULIE GONZALES, IN HER
INDIVIDUAL AND OFFICIAL CAPACITIES AS
A COLORADO STATE SENATOR AND CHAIR
OF THE SENATE JUDICIARY COMMITTEE;
AND DAFNA MICHAELSON JENET, IN HER
INDIVIDUAL AND OFFICIAL CAPACITIES AS A
COLORADO STATE SENATOR,

Defendants.

*Appendix B***ORDER**

This matter is before the Court on Defendants' Motion to Dismiss Plaintiffs' Complaint Pursuant to Fed.R.Civ.P. 12(b)(6), ECF No. 19. The Motion is fully briefed and ripe for review. For the reasons set forth below, the Motion is GRANTED.

I. BACKGROUND¹

Plaintiffs are two organizations and two individuals who “reject transgender ideology” and the related concepts of “misgendering” and “deadnaming.”² ECF No. 1 ¶¶ 4-7. Plaintiffs bring this action under 42 U.S.C. § 1983 against Defendants Lorena Garcia, Mike Weissman, Leslie Herod, Julie Gonzales, and Dafna Michaelson Jenet in their individual and official capacities as members of the Colorado General Assembly. *Id.* ¶¶ 8-12. Plaintiffs assert that Defendants — chairs of the Colorado House and Judiciary Committee, a member of the House Judiciary Committee, and the House prime sponsor and

1. The facts are drawn from the allegations in Plaintiffs' Amended Complaint, which must be taken as true when considering a motion to dismiss. *Wilson v. Montano*, 715 F.3d 847, 850 n.1 (10th Cir. 2013) (citing *Brown v. Montoya*, 662 F.3d 1152, 1162 (10th Cir. 2011)).

2. Plaintiffs' complaint defines “misgendering” as “the act of referring to others, usually through pronouns or form of address, in a way that does not reflect their self-perceived gender identity;” and “deadnaming” as “the act of referring to a transgender person by a name they used prior to ‘transitioning,’ such as their birth name;” the Plaintiffs consider rejection or exclusion of these acts “to be a form of lying.” ECF No. 1 ¶¶ 34-36.

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Senate prime sponsor of House Bill (“HB”) 24-1071 - collectively deprived Plaintiffs of their First Amendment rights during public testimony sessions of the committee hearings regarding HB 24-1071 before both the Colorado House and Senate Judiciary Committees.

HB 24-1071 expanded the conditions upon which a person with a prior felony conviction could obtain a legal name change. *Id.* ¶ 27. Specifically, the Bill Summary states that a person convicted of a felony “must show good cause to be able to change the person’s name to a name different from the name the person was convicted under.” *Id.* ¶ 28. “The bill states that good cause includes changing the petitioner’s name to conform with the petitioner’s identity.” *Id.* HB 24-1071’s sponsors and supporters also refer to it as “Tiara’s law.” *Id.* ¶ 30. Tiara is the preferred name of Duane Antonio Kelley, a biological male with criminal convictions who has advocated for a change in the law to allow him to legally change his name to Tiara. *Id.* ¶ 31.

Plaintiffs Rich Guggenheim and Christina Goeke (members of Plaintiffs Gays Against Groomers (“GAG”) and Rocky Mountain Women’s Network (“RMWN”), respectively), opposed the adoption of HB 24-1071 “because they believe it will make it easier for transgender individuals to conceal criminal convictions and thus pose a danger to children, women, and vulnerable populations. They also disagree with the concepts of ‘misgendering’ or ‘deadnaming.’” *Id.* ¶ 33. To express their opposition to HB 24-1071, Guggenheim and Goeke, both as individuals and as members of GAG and RMWN, respectively, signed

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up to testify on HB 24-1071 before the House Judiciary Committee and Senate Judiciary Committee. *Id.* ¶¶ 36-38, 52. The stated purpose of the public comment sessions is to provide citizens “with an opportunity to provide public comment on pending legislation in the form of testimony at a committee hearing.” *Id.* ¶ 17.

The Colorado General Assembly publishes a Memorandum that provides the administrative rules for members of the public who wish to speak before legislative committees. *Id.* ¶ 21. One of these rules is that the “chair has the discretion and authority to limit testimony, ask the sergeant-at-arms to remove a disruptive person from the committee room, and clear the public from any hearing in the event of a disturbance that is disruptive to legislative proceedings.” *Id.* ¶ 22. The Colorado House and Colorado Senate each publish their own guides to public hearings, which also establish administrative rules prohibiting disruptive behavior. *Id.* ¶¶ 25-26.

On January 30, 2024, the House Judiciary Committee heard public testimony on HB 24-1071. *Id.* ¶ 39. During the session, guidelines were established that requested that participants “engage in respectful discourse and share their perspectives and opinions on this bill” by not using derogatory language, misgendering a witness, or using a witness’s deadname. *Id.* ¶ 40. Upon hearing these rules, Guggenheim left his place in line and did not testify because he felt he could not deliver his views if he could not use “derogatory” language. *Id.* ¶ 42. Goeke began giving her testimony but was interrupted for violating these rules and allegedly using “derogatory” and “disparaging” language about witnesses. *Id.* ¶ 43-44. Goeke was urged

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to abide by the rules, but she refused to comply. *Id.* Her testimony was stopped when the committee went into recess. *Id.* ¶ 45. Goeke alleges that her speaking time was prematurely terminated and that, after expressing her frustration, she was asked to leave by the sergeant at arms. *Id.* ¶ 46-47.

On March 27, 2024, the Senate Judiciary Committee held a hearing on HB 24-1071. *Id.* ¶ 52. At the opening of public comment, witnesses were instructed to treat others with dignity and respect. *Id.* ¶ 53. If they did not do so, they would be removed. *Id.* Specifically, witnesses were instructed not to use derogatory language, misgender, deadname, or otherwise disparage those present. *Id.* ¶ 54. Goeke spoke in opposition to the bill and repeatedly attempted to refer to “Tiara” as “Mr. Duane Powell.” *Id.* ¶ 56. As a result, she was interrupted and reminded that she could not “deadname” or “misgender.” *Id.* ¶ 57. Her testimony was cut short when she again referred to Tiara as “Mr. Duane Powell.” *Id.* ¶ 58. Further, portions of Goeke’s speech wherein she used this derogatory language were erased from the official audio record of the Senate Judiciary Committee hearing. *Id.* ¶ 59. Guggenheim also spoke in opposition to the bill and was interrupted when he proceeded to “deadname” and “misgender” people. *Id.* ¶ 60. He was invited to proceed with his comments in accordance with these rules. *Id.* But Guggenheim would not abide by the rules, and as a result he was not allowed to complete his testimony. *Id.*

Plaintiffs filed this lawsuit on April 4, 2024. ECF No. 1. Plaintiffs assert an ongoing deprivation of their rights under the First and Fourteenth Amendment for which

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they are entitled under 42 U.S.C. § 1983 to declaratory and injunctive relief, together with nominal damages, costs, and attorneys' fees. Defendants move to dismiss all claims, asserting absolute legislative immunity. ECF No. 19. Defendants also argue for dismissal on the basis that Plaintiffs have not alleged a sufficient factual basis to support a claim for deprivation of their First Amendment rights and because Plaintiffs' claims are moot. *Id.*

II. LEGAL STANDARD

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." In deciding a motion under Rule 12(b)(6), the court must "accept as true all well-pleaded factual allegations . . . and view these allegations in the light most favorable to the plaintiff." *Casanova v. Ulibarri*, 595 F.3d 1120, 1124-25 (10th Cir. 2010) (internal citations omitted). But the Court is not "bound to accept as true a legal conclusion couched as a factual allegation." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* at 678 (internal quotation marks omitted). Plausibility, in the context of a motion to dismiss, means that the plaintiff pleaded facts which allow "the court to draw the reasonable inference that the defendant

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is liable for the misconduct alleged.” *Id.* Granting a motion to dismiss “is a harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading but also to protect the interests of justice.” *Dias v. City & Cty. of Denver*, 567 F.3d 1169, 1178 (10th Cir. 2009) (quotation omitted). As a result, “a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that recovery is very remote and unlikely.” *Id.* (quoting *Twombly*, 550 U.S. at 556 (internal quotation omitted)).

III. ANALYSIS

A. Legislative Immunity

Defendants argue that they are entitled to legislative immunity on all claims against them. *See* ECF No. 19 at 3. Plaintiffs respond that legislative immunity does not apply to the official capacity claims and even if it did, Defendants are not entitled to legislative immunity on any of Plaintiffs’ claims. ECF No. 23 at 3-4.

1. Availability of Legislative Immunity for Official Capacity Claims

The Court first addresses Plaintiffs’ argument that legislative immunity does not apply to their official capacity claims, which requires the Court to consider the interplay between sovereign immunity—specifically, the *Ex parte Young* exception to sovereign immunity—and legislative immunity.

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Sovereign immunity is grounded in the Eleventh Amendment, which grants states sovereign immunity from suit. *See Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 965 (10th Cir. 2021); U.S. Const. amend. XI (“The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”). This immunity extends “to suits brought by citizens against their own state.” *Hendrickson*, 992 F.3d at 965. And it applies not just to suits brought against states themselves but also to “suit[s] against a state official in his or her official capacity.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). “But *Ex parte Young* created an exception under which individuals can sue state officers in their official capacities if the lawsuit seeks prospective relief for an ongoing violation of federal law.” *Free Speech Coal., Inc. v. Anderson*, 119 F.4th 732, 736 (10th Cir. 2024) (citing *Ex parte Young*, 209 U.S. at 159-60, 28 S.Ct. 441).

Ex parte Young allows plaintiffs to sue state officials even if the officials claim to be acting under valid state law because, if the officials’ conduct constitutes an ongoing violation of federal law, the state “cannot cloak their actions with state authority or state immunity.” *Elephant Butte Irrigation Dist. of N.M. v. Dep’t of the Interior*, 160 F.3d 602, 609 (10th Cir. 1998). That is, when state officials are arguably violating federal law, “[t]he state is not the real party in interest because the state cannot ‘authorize’ the officials to violate federal law.” *Id.* at 610. Thus, in allegedly violating federal law, the officials are stripped

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of their state authority and the Eleventh Amendment will not protect them from suit. *Lewis v. N.M. Dep't of Health*, 261 F.3d 970, 976 (10th Cir. 2001); *see also Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 264, 117 S. Ct. 2028, 2043, 138 L. Ed. 2d 438 (1997) (O'Connor, J., concurring) (“The [*Ex parte*] *Young* doctrine recognizes that if a state official violates federal law, he is stripped of his official or representative character and may be personally liable for his conduct; the State cannot cloak the officer in its sovereign immunity.”).

Plaintiffs contend that the *Ex parte Young* exception applies to their official capacity claims. To determine if the *Ex parte Young* exception applies, the Court “need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” *Verizon Md. Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635, 645, 122 S.Ct. 1753, 152 L.Ed.2d 871 (2002). Thus, “plaintiffs must show that they are: (1) suing state officials rather than the state itself, (2) alleging an ongoing violation of federal law, and (3) seeking prospective relief.” *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1167 (10th Cir. 2012). Viewing the allegations in the light most favorable to Plaintiffs, the Court finds that their allegations are sufficient to fall within the *Ex parte Young* exception.³ Accordingly, Plaintiffs’ official capacity claims are not barred by sovereign immunity.

3. At this stage of the jurisdictional analysis, the Court “should not analyze the merits of the claim.” *Fowler v. Stitt*, 104 F.4th 770, 782 (10th Cir. 2024) (internal quotations and citation omitted).

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But Defendants do not assert sovereign immunity; they assert legislative immunity, a completely distinct doctrine. And Plaintiffs' argument that legislative immunity cannot apply to the official capacity claims is mistaken. Plaintiffs incorrectly argue that their "official capacity claims in this case are really claims against the General Assembly and its committees, which may not rely on a personal defense, such as legislative immunity." ECF No. 23 at 3-4. But as explained above, for *Ex parte Young* to apply, the claims must be against the "*state officials rather than the state.*" *Pruitt*, 669 F.3d 1167 (emphasis added). Accordingly, because Plaintiffs' official capacity claims are really claims against the officials and not the state, it follows that they may not assert state sovereign immunity but may assert the personal defense of legislative immunity. Plaintiffs have not cited any case finding that *Ex parte Young* overcomes legislative immunity. And cases from around the country have reached the opposite conclusion. *See, e.g., Tolman v. Finneran*, 171 F. Supp. 2d 31, 37-38 (D. Mass. 2001) ("Short of the exceptional case, it is unlikely that *Ex Parte Young* is broad enough to abrogate legislative immunity and authorize suit against a legislator acting in a purely legislative capacity."); *Chase v. Senate of Virginia*, 539 F. Supp. 3d 562, 569 (E.D. Va. 2021) (even if *Ex parte Young* exception applied, defendant "would also be protected by absolute legislative immunity."); *Scott v. Taylor*, 405 F.3d 1251, 1257 (11th Cir. 2005) (state legislators who acted in their legislative capacities "are entitled to absolute legislative immunity . . . regardless of whether a suit seeks damages or prospective relief and regardless of whether the state legislators are named in their individual or official capacity."). Therefore, if Defendants were acting in their legislative capacity, they

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are entitled to legislative immunity, regardless of whether the claims are asserted against them in their individual or official capacities.

2. Whether Defendants Are Entitled to Legislative Immunity

“It is well established that federal, state, and regional legislators are entitled to absolute immunity from civil liability for their legislative activities.” *Bogan v. Scott-Harris*, 523 U.S. 44, 46, 118 S.Ct. 966, 140 L.Ed.2d 79 (1998). This absolute legislative immunity also applies to suits brought pursuant to § 1983, even where the remedy sought is declaratory or injunctive relief. *Id.* at 48-49, 118 S.Ct. 966; *see also Tenney v. Brandhove*, 341 U.S. 367, 71 S.Ct. 783, 95 L.Ed. 1019 (1951); *Supreme Court of Virginia v. Consumers Union of the U.S.*, 446 U.S. 719, 732, 100 S.Ct. 1967, 64 L.Ed.2d 641 (1980). Legislative immunity exists to “enable[] officials to serve the public without fear of personal liability. Not only may the risk of liability deter an official from proper action, but the litigation itself ‘creates a distraction and forces legislators to divert their time, energy, and attention from their legislative tasks to defend the litigation.’” *Sable v. Myers*, 563 F.3d 1120, 1123-24 (10th Cir. 2009) (quoting *Supreme Court of Virginia v. Consumers Union of the U.S.*, 446 U.S. at 733). Accordingly, state legislators, such as Defendants here, enjoy absolute immunity for their “legitimate legislative activity.” *Tenney*, 341 U.S. at 376.

“Whether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it.” *Bogan v. Scott-Harris*, 523 U.S. at 54.

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The “legislative sphere” reaches things “generally done in a session of the [legislature] by one of its members in relation to the business before it.” *Gravel*, 408 U.S. at 623-24, 92 S.Ct. 2614 (quotation omitted). Signing an ordinance into law is “quintessentially legislative,” *Bogan*, 523 U.S. at 55, but the definition is broader and covers other aspects of the legislative process, including a legislative committee’s “deliberative and communicative processes.” *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 503-04 (1975), 95 S. Ct. 1813, 44 L. Ed. 2d 324; *see also National Ass’n of Soc. Workers v. Harwood*, 69 F.3d 622, 630 (9th Cir. 1995) (absolute immunity covers “not only speech and debate per se, but also voting, ... circulation of information to other legislators, ... participation in the work of legislative committees, ... and a host of kindred activities.”) (citations omitted). The Tenth Circuit has identified acts within the legislative sphere as “legislative speech and debate, voting, preparing committee reports, *conducting committee hearings*, and other integral steps in the legislative process.” *See Kamplain*, 159 F.3d 1248, 1251 (10th Cir. 1998) (emphasis added). The inquiry does not extend to the legislators’ purpose in performing the act, because “[t]he claim of an unworthy purpose does not destroy the privilege.” *Tenney*, 341 U.S. at 377.

Here, the acts alleged by Plaintiffs occurred in the context of two formal legislative committee meetings. See ECF No. 1 at ¶ 39-64. Defendants contend that their acts are therefore “wholly within the sphere of legitimate legislative activity.” ECF No. 19 at 7. In response, Plaintiffs argue that Defendant’s actions with respect to the enforcement of their speech restrictions were executive

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actions, distinct from legislating. ECF No. 23 at 4. Thus, the question is before the Court is “whether, stripped of all considerations of intent and motive, [Defendants’] actions were legislative.” *Bogan*, 523 U.S. at 55. That is—do Defendants’ acts of enforcing decorum rules and restrictions against Plaintiffs during public testimony on pending legislation fall within the legislative sphere?

Neither the Tenth Circuit nor the Supreme Court has squarely addressed this issue. In *Kamplain*, cited by both parties, the Tenth Circuit considered whether local government officials were entitled to legislative immunity for their decision to prohibit plaintiff from speaking before or participating in any future board of commissioner meetings. 159 F.3d 1248. The board’s decision came two weeks after plaintiff protested the board’s award of a bid to a competitor of his employer and was ejected from that meeting. *Id.* The Tenth Circuit began its legislative immunity analysis by explicitly noting that the “issue here is not the Board’s ejection of Plaintiff from the public meeting but its vote to ban Plaintiff from all future Commission meetings and its subsequent decision to prohibit Plaintiff from participating in or speaking before the Board at Curry County Commission meetings.” *Id.* at 1252. The Tenth Circuit held that the board’s decisions to ban the plaintiff and its subsequent decision to prohibit his participation or speech at future county commission meetings were not legislative “[b]ecause the circumstances of this case did not concern the enactment or promulgation of public policy,” and thus were not “related to any legislation or legislative function.” *Id.* In reaching this conclusion, the Tenth Circuit reasoned

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that even though the Board was acting during a regularly scheduled meeting, “the Board members were not voting on, speaking on, or investigating a legislative issue.” *Id.* Thus, the acts were of an administrative nature. *Id.* But *Kamplain* is distinguishable.

Here, unlike in *Kamplain*, Defendants’ acts occurred in the context of two formal legislative committee meetings convened exclusively for the purpose of obtaining public comment on a specific piece of pending legislation. As stated in Plaintiffs’ complaint, [t]he Colorado General Assembly provides citizens with an opportunity to provide public comment on pending legislation in the form of testimony at a committee hearing.” ECF No. 1 ¶ 17. “In Colorado, every bill receives a public hearing by one of the legislature’s committees. At a legislative committee hearing, citizens have an opportunity to express their views and have them incorporated into the official legislative record.” *Id.* A Memorandum from the Colorado Legislative Council Staff regarding public participation in the legislative process states that “[t]he purpose of a committee hearing is to gather information so that the committee can make an informed recommendation on a given bill or resolution. *Public input is an important part of this process.*” ECF No. 1-1 (emphasis added).

Under the circumstances of this case, the Court finds that Defendants’ alleged acts were related to Defendants’ legislative function of overseeing public testimony on pending legislation and gathering relevant information and input from the public. These are “integral steps in the legislative process.” *Bogan*, 523 U.S. at 55; *see also*

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Timmon v. Wood, 633 F. Supp. 2d 453, 460 (W.D. Mich. 2008) (“Public comment is a useful way for a legislative body to gather necessary information to address the priorities of its constituents, and public comment has become a routine and legitimate part of modern-day legislative process.”). Defendants’ alleged acts were specifically related to public comment on HB 24-2071 and were therefore “done ‘in relation to the business before’ the legislative body.” *Kamplain*, 159 F.3d at 1251 (quoting *Powell v. McCormack*, 395 U.S. 486, 502, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969)). During their public testimony on the HB 24-2071, Defendants repeatedly warned Plaintiffs to abide by the decorum rules and keep testimony to the bill. See ECF No. 1 ¶ 44. For example, Defendant Weissman told Goeke “I am going to urge you to keep your testimony please to the bill, do not get into individual personalities.” *Id.* By limiting Plaintiffs’ testimony on pending legislation only when it violated decorum rules and was not focused on the bill at issue, Defendants were acting in their legislative capacity to establish a legislative record and gather information regarding the bill. See *Timmon v. Wood*, 633 F. Supp. 2d at 461 (local legislators entitled to legislative immunity when they cut plaintiff’s comments short and directed her to speak only on relevant matters because legislators’ role in gathering information during public comment period was “an integral part of the Council’s gathering of information necessary to effect wise and effective legislation.”). And because the published audio is simply a reflection of the hearing, the publishing of such audio is likewise a reflection of Defendants’ acts within the legislative sphere. Thus, the Court concludes that Defendants’ acts are within the sphere of legitimate

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legislative activity and Defendants are entitled to legislative immunity from Plaintiffs' claims against them.

B. Mootness

Additionally, even if legislative immunity did not bar Plaintiffs' claims, the Court would find Plaintiffs' claims for prospective relief moot.

"Article III of the U.S. Constitution limits the jurisdiction of federal courts to 'Cases' and 'Controversies.'" *Defs. of Wildlife v. Everson*, 984 F.3d 918, 944-45 (10th Cir. 2020) (quoting U.S. Const. art. III, § 2, cl. 1). Article III is the basis for the mootness doctrine, which "provides that although there may be an actual and justiciable controversy at the time the litigation is commenced, once that controversy ceases to exist, the federal court must dismiss the action for want of jurisdiction." *Jordan v. Sosa*, 654 F.3d 1012, 1023 (10th Cir. 2011) (citation omitted). Thus, a case becomes moot "when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Smith v. Becerra*, 44 F.4th 1238, 1247 (10th Cir. 2022) (cleaned up).

The court must decide whether a case is moot as to "each form of relief sought." *Collins v. Daniels*, 916 F.3d 1302, 1314 (10th Cir. 2019) (explaining the plaintiff's "burden to demonstrate standing for each form of relief sought . . . exists at all times throughout the litigation.") (quotations omitted). "Thus, interim developments that moot a claim for prospective relief do not necessarily moot a claim for damages." *Prison Legal News v. Fed. Bureau*

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of *Prisons*, 944 F.3d 868, 880 (10th Cir. 2019). And “[t]he mootness of a plaintiff’s claim for injunctive relief is not necessarily dispositive regarding the mootness of his claim for a declaratory judgment.” *Jordan v. Sosa*, 654 F.3d at 1025.

Here, Plaintiffs seek an order enjoining Defendants from enforcing their decorum standards and similar speech restrictions during public testimony at legislative committee hearings and from censoring Plaintiffs’ right to speak and petition by editing speech from the public record of those hearings, as well as declaratory relief consistent with the injunction. See ECF No. 1 at 28-29. Defendants contend all of Plaintiffs’ claims for relief are moot. ECF No. 19 at 9-12. Plaintiffs argue their claims are not moot because “the Court can meaningfully protect Plaintiffs’ right to speak by granting injunctive and declaratory relief against Defendants’ speech restrictions; as well as providing nominal damages for past censorship.” ECF No. 23 at 13. Having considered each form of relief sought, the Court finds that Plaintiffs’ claims for injunctive and declaratory relief are moot.⁴

“Generally, a claim for prospective injunction becomes moot once the event to be enjoined has come

4. Plaintiffs’ claims for nominal damages are not moot. See *Uzuegbunam v. Preczewski*, 592 U.S. 279, 141 S. Ct. 792, 209 L. Ed. 2d 94 (2021) (a claim for nominal damages can save a case from mootness because any amount of money—no matter how trivial—“can redress a past injury.”). However, because all claims are dismissed on legislative immunity grounds, the Court does not address the claim for nominal damages any further.

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and gone.” *Citizen Ctr. v. Gessler*, 770 F.3d 900, 907 (10th Cir. 2014). Thus, “[w]here a plaintiff seeks an injunction, his susceptibility to continuing injury is of particular importance—”[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.” *Jordan v. Sosa*, 654 F.3d at 1024 (quoting *O’Shea v. Littleton*, 414 U.S. 488, 495-95, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974)). “Moreover, a plaintiff’s continued susceptibility to injury must be reasonably certain; a court will not entertain a claim for injunctive relief where the allegations ‘take[] [it] into the area of speculation and conjecture.’” *Id.* (quoting *O’Shea*, 414 U.S. at 497).

Even if a claim for injunctive relief is moot, that does not necessarily mean the claim for declaratory judgment is moot. *See id.* at 1025. Where a plaintiff seeks both an injunction and declaratory relief, “the District Court ha[s] ‘[a] duty to decide the appropriateness and the merits of the declaratory request irrespective of its conclusion as to the propriety of the issuance of [an] injunction.’” *Super Tire Eng’g Co. v. McCorkle*, 416 U.S. 115, 121, 94 S. Ct. 1694, 40 L. Ed. 2d 1 (1974) (quoting *Zwickler v. Koota*, 389 U.S. 241, 254, 88 S. Ct. 391, 19 L. Ed. 2d 444 (1967)). A plaintiff cannot maintain a declaratory action “unless he or she can demonstrate a good chance of being likewise injured in the future.” *Facio v. Jones*, 929 F.2d 541, 544 (10th Cir.1991). Otherwise, a declaratory judgment could be an improper advisory opinion. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 212-13, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (holding

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that in order to avoid advisory opinions, a court may not hear a case if the underlying dispute loses its character as a present, live controversy). “It is well established that what makes a declaratory judgment action ‘a proper judicial resolution of a ‘case or controversy’ rather than an advisory opinion is the settling of some dispute which affects the behavior of the defendant toward the plaintiff.” *Cox v. Phelps Dodge Corp.*, 43 F.3d 1345, 1348 (10th Cir. 1994) (quoting *Hewitt v. Helms*, 482 U.S. 755, 761, 107 S. Ct. 2672, 96 L. Ed. 2d 654 (1987) (alteration omitted)). “The crucial question is whether granting a present determination of the issues offered . . . will have some effect in the real world.” *Citizens for Responsible Gov’t State Political Action Comm. v. Davidson*, 236 F.3d 1174, 1182 (10th Cir. 2000) (quotation omitted).

In this case, Plaintiffs’ claims for both injunctive relief and declaratory judgment are moot. It is undisputed that the legislation at issue, HB 24-1071, has been passed and signed into law by the Governor, and the General Assembly is no longer in session.⁵ According to Plaintiffs’ allegations, the challenged decorum rules and restrictions were announced specifically for the two committee hearings on HB 24-1071. *See* ECF No. 1 ¶¶ 40, 41, 53-55. Plaintiffs have not pointed to any “continuing, present adverse effects” beyond speculation that there will potentially be future bills that implicate transgender concerns, that Plaintiffs will likely want to testify on these potential bills, and that the same decorum rules and restrictions may be put in

5. “That the courts are allowed to take judicial notice of statutes is unquestionable.” *United States v. Coffman*, 638 F.2d 192, 194 (10th Cir.1980).

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place for any public testimony hearings on these potential bills. Given this level of speculation, the Court finds that Plaintiffs' "continued susceptibility to injury" is far from "reasonably certain" and Plaintiffs' claims for injunctive relief are therefore moot. *Jordan v. Sosa*, 654 F.3d at 1024.

The same is true with respect to Plaintiffs' claims for declaratory relief. Because of the level of speculation involved, the Court cannot presently craft a declaratory judgment that would have any known "effect on the real world." *Citizens for Responsible Gov't State Political Action Comm*, 236 F.3d 1174, 1182 (10th Cir. 2000) (quotation omitted). Crucially, "where a plaintiff seeks a declaratory judgment against his opponent, he must assert a claim for relief that, if granted, would affect the behavior of the particular parties listed in his complaint." *Jordan v. Sosa*, 654 F.3d at 1025 (citing *Rhodes v. Stewart*, 488 U.S. 1, 4, 109 S. Ct. 202, 102 L. Ed. 2d 1 (1988) (per curiam)); see also *North Carolina v. Rice*, 404 U.S. 244, 246, 92 S. Ct. 402, 30 L. Ed. 2d 413 (1971) ("[F]ederal courts are without power to decide questions that cannot affect the rights of litigants in the case before them.") (emphasis added)).

Here, it is entirely speculative—if not unlikely—that the same Defendants would oversee the public testimony hearings of any potential bills on which Plaintiffs may wish to testify. These legislators may not be re-elected, may not be chairs or members of the relevant committees, and/or may not sponsor any potential bills implicating Plaintiffs' concerns. In other words, the Defendants are not "actually situated to have their future conduct toward

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the plaintiff altered by the court's declaration of rights." *Jordan v. Sosa*, 654 F.3d at 1026. Accordingly, the Court finds that Plaintiffs' requested declaratory relief would be nothing more than an advisory opinion and the claims for declaratory relief are therefore moot. *See id.* ("If the plaintiff has not named such individuals or entities, courts are likely to determine that they cannot accord the plaintiff effective declaratory relief and that the action is moot.")⁶ For these reasons, Plaintiffs' claims for injunctive and declaratory relief are moot.

IV. CONCLUSION

For the reasons stated herein, Defendants' Motion to Dismiss, ECF No. 19, is GRANTED. All claims are DISMISSED WITH PREJUDICE. Accordingly, Plaintiffs' Motion for Preliminary Injunction, ECF No. 8, and Plaintiffs' Motion for Order to Suspend RMR Civil Practice Standards, ECF No. 15, are DENIED AS MOOT.

6. In their motion, Defendants suggest that Plaintiffs' argument against mootness may hinge on the "capable of repetition yet evading review" mootness doctrine. *See* ECF No. 19 at 9-10. Defendants contend that even if Plaintiffs asserted this exception, it would not apply. *Id.* However, Plaintiffs do not address this argument in their response or otherwise assert that this exception applies. Thus, Plaintiffs have waived this argument. *See Jiyong Wei v. Univ. of Wyoming Coll. of Health Sch. Pharmacy*, 759 F. App'x 735, 739 (10th Cir. 2019) (arguments not raised in response to 12(b)(6) motion are waived). And in any case, having failed to address the argument, Plaintiffs have not met their burden of establishing that the exception applies. *Ind v. Colorado Dep't of Corr.*, 801 F.3d 1209, 1215 (10th Cir. 2015) ("[T]he plaintiff bears the burden of establishing the issue is a wrong capable of repetition yet evading review.")).

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DATED: November 27, 2024

BY THE COURT:

/s/ Regina M. Rodriguez
REGINA M. RODRIGUEZ
United States District Judge

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**APPENDIX C — ORDER OF THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT,
FILED APRIL 23, 2026**

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 24-1473
(D.C. No. 1:24-CV-00913-RMR)
(D. Colo.)

GAYS AGAINST GROOMERS, A NONPROFIT
CORPORATION, *et al.*,

Plaintiffs-Appellants,

v.

LORENA GARCIA, INDIVIDUALLY AND IN HER
OFFICIAL CAPACITY AS A COLORADO STATE
REPRESENTATIVE, *et al.*,

Defendants-Appellees.

ORDER

Before **CARSON, EBEL**, and **FEDERICO**, Circuit
Judges.

Appellants' petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular

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active service on the court requested that the court be
polled, that petition is also denied.

Entered for the Court

Per Curiam

**APPENDIX D — COMPLAINT IN THE
UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLORADO, FILED
APRIL 4, 2024, WITH EXHIBITS A-D**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

GAYS AGAINST GROOMERS, A NON-PROFIT
CORPORATION; ROCKY MOUNTAIN WOMEN'S
NETWORK, AN UNINCORPORATED ASSOCIATION;
RICH GUGGENHEIM, AN INDIVIDUAL; AND
CHRISTINA GOEKE, AN INDIVIDUAL,

Plaintiffs,

v.

LORENA GARCIA, IN HER INDIVIDUAL AND
OFFICIAL CAPACITIES AS A COLORADO STATE
REPRESENTATIVE; MIKE WEISSMAN, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITIES AS
A COLORADO STATE REPRESENTATIVE AND
CHAIR OF THE HOUSE JUDICIARY COMMITTEE;
LESLIE HEROD, IN HER INDIVIDUAL AND
OFFICIAL CAPACITIES AS A COLORADO STATE
REPRESENTATIVE; JULIE GONZALES, IN HER
INDIVIDUAL AND OFFICIAL CAPACITIES AS
A COLORADO STATE SENATOR AND CHAIR
OF THE SENATE JUDICIARY COMMITTEE;
AND DAFNA MICHAELSON JENET, IN HER
INDIVIDUAL AND OFFICIAL CAPACITIES AS A
COLORADO STATE SENATOR,

Defendants.

*Appendix D***COMPLAINT FOR INJUNCTIVE, DECLARATORY,
AND OTHER RELIEF**

*“For when people renounce lies, lies simply cease
to exist. Like parasites, they can only survive
when attached to a person.”*

-Aleksandr Solzhenitsyn, LIVE NOT BY LIES (1974)

Americans disagree profoundly about transgender ideology. Some question the existence of biological sex and claim a scientific basis for a transgender worldview. To them, the sudden spike in individuals claiming transgender status in large urban centers is a sign of increased tolerance, acceptance, and knowledge. Others claim that there are only two sexes—that transgenderism is a social contagion, preys on the young and confused, or is a form of sexual mimicry that undermines the civil rights of women or gay Americans. Others see it as an outgrowth of queer theory, a strain of academic critical theory that seeks to “queer” existing categories. Many Americans aren’t sure about all this and are still figuring out what to think about trans ideology. In a pluralistic society, it is expected that people may disagree about issues as fundamental as biology, sex, and identity.

In many schools and workplaces, the ongoing debate about trans ideology has spawned pronoun rituals, with some people choosing to announce their pronouns as a matter of course and many transgender individuals insisting upon being referred to by their preferred pronouns, including fictional or plural pronouns.

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Americans also argue about whether, or when, to refer to people by their new trans-inspired names. And this debate has reached into the halls of government, with the Colorado Legislature considering numerous bills purporting to promote transgender rights during the current session.

There is nothing wrong with Americans, or their elected representatives, debating trans ideology. Nor is it surprising that opinions differ widely on transgender issues. But “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein.” *W. Va. State Bd. of Education v. Barnette*, 319 U.S. 624, 642 (1943). Similarly, “[c]ompelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any such effort would be universally condemned.” *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2463-64 (2018) (citing *Barnette*). And public figures are not immune to criticism—especially when they invoke their life story on behalf of legislation that others view as dangerous.

Defendants—Colorado Legislators and proponents of transgender ideology—are abusing their authority to put a thumb on the scale of the public’s debate about transgenderism. They have prescribed how critics of transgenderism must present their views during the public-testimony portion of committee hearings before the Colorado Legislature by prohibiting “misgendering”

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or “deadnaming” and otherwise requiring citizens to express fealty to transgender ideology under the guise of “civility” or “decorum.” And they have elevated favored transgender exemplars, including legislative namesakes, above criticism. For those citizens who do not submit, Defendants silence their speech, even going so far as to erase it from the public record.

The First Amendment does not allow Defendants to force their ideological beliefs on Plaintiffs in this manner. Plaintiffs are entitled to relief securing their fundamental rights to free expression and petition and freedom from compelled speech.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, as this action challenges Defendants’ violation of Plaintiffs’ civil rights pursuant to 42 U.S.C. § 1983.

2. Venue lies in this Court per 28 U.S.C. §§ 1391 (b)(1) and (b)(2) because all the parties are residents of this judicial district and the events giving rise to these claims occurred and are occurring in this judicial district.

3. The effects of Defendants’ censorial customs, policies, and practices are experienced by Plaintiffs in Colorado where Plaintiffs wish to speak freely, petition, be free from compelled speech, truthfully state their opinions opposing trans ideology and sex nullification, and freely discuss individuals for whom bills are named and whose life stories are invoked to support legislation.

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THE PARTIES

4. Plaintiff Gays Against Groomers (GAG) is a non-profit corporation consisting of gays and others in the community who oppose the sexualization, indoctrination and medicalization of children under the guise of “LGBTQIA+.” GAG and its members oppose: the sterilization and mutilation of minors, drag and pride events involving children, propagandizing youth with LGBTQIA+ media, and queer theory and gender ideology being taught in K-12 classrooms. GAG’s members reject transgender ideology being forced onto youth that are still undergoing mental development, including the concepts of misgendering or deadnaming. GAG has a chapter that is active in Colorado. GAG brings this lawsuit on behalf of its members.

5. Plaintiff Rocky Mountain Women’s Network (RMWN) is an unincorporated association whose mission is to advocate for and protect women’s and girl’s sex-based rights. Its members reject transgender ideology, including the concepts of misgendering or deadnaming. RMWN has active members in Colorado and brings this lawsuit on behalf of its members.

6. Plaintiff Rich Guggenheim is a natural person and citizen of the United States, residing in Colorado. In his private capacity as a citizen and as a member of GAG, he often speaks about transgender issues, including pending legislation in his home state. He heads GAG’s Colorado Chapter and personally rejects transgender ideology, including the concepts of misgendering or deadnaming.

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7. Plaintiff Christina Goeke is a natural person and citizen of the United States, residing in Colorado. Ms. Goeke is a woman and competitive weightlifter. She often speaks about transgender issues, including pending legislation in her home state. She is a co-founder and member of RMWN and personally rejects transgender ideology, including the concepts of misgendering or deadnaming.

8. Defendant Lorena Garcia is a Colorado State Representative for the 35th District and a member of the House Judiciary Committee. Representative Garcia promotes transgender ideology. She is sued in her individual and official capacities.

9. Defendant Mike Weissman is a Colorado State Representative for the 36th District and is Chair of the House Judiciary Committee. Representative Weissmann promotes transgender ideology. He is sued in his individual and official capacities.

10. Defendant Leslie Herod is a Colorado State Representative for the 8th District and a member of the House Judiciary Committee. Representative Herod promotes transgender ideology. She is sued in her individual and official capacities.

11. Defendant Julie Gonzales is a Colorado State Senator for the 34th District and is Chair of the Senate Judiciary Committee. Senator Gonzales promotes transgender ideology. She is sued in her individual and official capacities.

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12. Defendant Dafna Michaelson Jenet is a Colorado State Senator for the 21st District and is a member of the Senate Judiciary Committee. Senator Michaelson Jenet promotes transgender ideology. She is sued in her individual and official capacities.

FACTS

Transgender Bills and the Colorado General Assembly

13. The Colorado General Assembly is the state legislature for Colorado and is a bicameral legislature, comprised of the House of Representatives and Senate.

14. The House Judiciary Committee considers matters concerning courts and judges, civil liberties, Colorado's constitution, revision of the Colorado Revised Statutes, the state's correctional system and prison facilities, juvenile justice, and homeland security.

15. The Senate Judiciary Committee considers matters concerning civil and criminal proceedings, courts, judges, civil liberties, Colorado's constitution and statutes, the state's correctional system and prison facilities, homeland security, and juvenile justice.

16. During the current, ongoing regular session of the 74th General Assembly, Colorado's legislators have considered several bills concerning transgender issues, such as HB-24-1017– Bill of Rights for Foster Youth, HB24-1039 –Non-Legal Name Changes, SB-24-049– Content of Material in Libraries, HB-24-1071—Name

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Change to Conform with Gender Identity, SB-24-189—Gender-Related Bias-Motivated Crimes, and HB-24-1040—Gender-Affirming Health-Care Provider Study, including allocating time for public testimony during committee hearings.

*Public Testimony Before the Colorado
General Assembly*

17. The Colorado General Assembly provides citizens with an opportunity to provide public comment on pending legislation in the form of testimony at a committee hearing. In Colorado, every bill receives a public hearing by one of the legislature’s committees. At a legislative committee hearing, citizens have an opportunity to express their views and have them incorporated into the official legislative record. Although the legislature refers to this public comment as “testimony,” members of the public who provide such comment are not sworn in and the rules of evidence are not applied to their speech. Speakers are allowed to state their opinions about bills, including urging a yes vote, no vote, neutrality, or amendment of a bill.

18. Members of the public may participate in committee hearings by submitting written comments, testifying via Zoom from anywhere within the state, or testifying in person.

19. Members of the public wanting to speak in person on a bill in a committee of reference must register. Registration opens when the bill is scheduled for a committee hearing. Registration closes when the

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committee chair ends the public testimony portion of the bill hearing.

20. Similarly, members of the public wanting to speak remotely must register in advance.

21. The Colorado General Assembly publishes a Memorandum on Public Participation in the Legislative Process dated January 10, 2024, the full text of which is located at <https://perma.cc/384G-JAQS> and a copy of which is attached as Exhibit A. The Memorandum provides the administrative rules for members of the public who wish to speak before legislative committees.

22. The Assembly's Memorandum provides an administrative rule that the "chair has the discretion and authority to limit testimony, ask the sergeant-at-arms to remove a disruptive person from the committee room, and clear the public from any hearing in the event of a disturbance that is disruptive to legislative proceedings."

23. The Assembly invites members of the public to sign up to speak via an online portal located at: <https://www2.leg.state.co.us/CLICS/CLICS2024A/commsumm.nsf/signIn.xsp>. The Assembly's online sign-up interface requires speakers to indicate their name, phone, email address, their position on the hearing item, and whether the speaker is representing him or herself or an organization.

24. The Assembly's online sign-up interface also provides speakers with an option to select from a limited set of preferred pronouns, including "she, her, hers," "he,

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him, his,” or “they, them, theirs.” Even the sign-up process suggests speakers should submit to trans ideology via this pronoun ritual.

25. In addition, the Colorado House has published an online Guide to Public Hearings, which is located at <https://perma.cc/5L6L-GRBQ>. The House’s Guide provides administrative rules that prohibit booing, cheering, or applauding during the hearing. It also provides an administrative rule that the “committee chairman may request a sergeant-at-arms to remove a person who is impeding, disrupting, or hindering a committee meeting or who endangers any member, officer, or employee of the General Assembly or any member of the public.”

26. The Colorado Senate publishes a functionally identical Guide to Public Hearings, which is located at <https://perma.cc/DGU2-WYCX>. The Senate’s guide has decorum and disruption rules that are identical to the House rules.

Public Testimony on HB24-1071
Name Change to Conform with Gender Identity

27. HB-24-1071 would make it easier for transgender individuals with felony convictions to legally change their names.

28. The Bill Summary provides: “Current law specifies the conditions a person must meet in order to change the person’s name if the person was convicted of a felony. Among those conditions is that the person must show good cause to be able to change the person’s name to

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a name different from the name the person was convicted under. The bill states that good cause includes changing the petitioner's name to conform with the petitioner's gender identity."

29. The Prime Sponsors of HB-24-1071 include Defendant Garcia and Defendant Michaelson Jenet.

30. HB-23-1071's sponsors and supporters also refer to it as "Tiara's law," Tiara being the assumed name of a biological male with a criminal record.

31. Tiara is legally known as Duane Antonio Kelley, and, upon information and belief, has numerous criminal convictions in the State of Florida, which records him as a male. Kelley's criminal history currently makes a name change difficult in Colorado and this is why Kelley has advocated for a change in the law. Upon information and belief, Kelley has been unable to obtain a legal name change in Colorado.

32. Facilitating name changes for felons is a controversial topic, as many people believe that such name changes make it more difficult to learn whether a potential employee, caregiver, school volunteer, chaperone, babysitter, neighbor, roommate, or lover has a criminal past.

33. Plaintiffs Rich Guggenheim and Christina Goeke, both as individuals and as members of GAG and RMWN, respectively, oppose the adoption of HB-24-1071 because they believe it will make it easier for transgender individuals to conceal criminal convictions and thus pose

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a danger to children, women, and vulnerable populations. They also disagree with the concepts of “misgendering” or “deadnaming.”

34. “Deadnaming” is the act of referring to a transgender person by a name they used prior to “transitioning,” such as their birth name. The concept of “deadnaming” is a part of transgender ideology.

35. “Misgendering” is the act of referring to others, usually through pronouns or form of address, in a way that does not reflect their self-perceived gender identity. “Misgendering” can be deliberate or accidental, such as using the “wrong” pronouns to describe someone, calling a person “ma’am” or “sir” in contradiction to the person’s self-perceived gender identity, using a person’s previous, “pre-transition” name in place of their current name (“deadnaming”). The concept of “misgendering” is a part of transgender ideology.

36. Plaintiffs Rich Guggenheim and Christina Goeke, both as individuals and as members of GAG and RMWN, respectively, consider adherence to a transgender person’s pronoun preferences, assumed gender, or assumed name to be a form of lying; and both Mr. Guggenheim and Ms. Goeke consider pronoun rituals, and the concepts of deadnaming and misgendering to be degrading and demeaning to themselves.

37. Ms. Goeke signed up to testify on HB-24-1071 in person before the House Judiciary Committee on January 30, 2024.

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38. Mr. Guggenheim signed up to testify on HB-24-1071 remotely before the House Judiciary Committee on January 30, 2024.

*Defendants' Custom, Policy, or Practice of
Censoring Deadnaming or Misgendering
During Public Testimony*

39. On January 30, 2024, the House Judiciary Committee heard public testimony on HB-24-1071.

40. When HB-24-1071 came up for discussion, Defendant Gonzalez, one of the bill's prime sponsors, thanked her colleagues "for engaging in respectful discourse by not using derogatory language or misgendering witnesses, or using a witness's deadname. But rather referring to the witnesses as their stated names and gender pronouns." She added, "I sincerely hope that the witnesses signed up to also testify will follow suit, and engage in respectful discourse and share their perspectives and opinions on this bill by not disparaging other members or our community or other witnesses," because "this room is one where people should be able to come, share their stories, be who they are, without fear of being attacked, without fear of being disparaged."

41. House Judiciary Committee Chair Mike Weissman then adopted these sentiments as rules for the forum. "I appreciate your comments about the tenor that we should aspire to and the way that we should and should not aim to have a discussion, and as Chair I affirm and ratify your comments."

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42. Upon hearing these rules, Guggenheim left his place in line. He could not deliver his views and the views of his group if he could not use language he was certain would be deemed “derogatory” about the bill’s namesake, or use language denying the validity of trans ideology. Guggenheim did not testify at the hearing.

43. Goeke, who had been patiently waiting her turn to speak in person, did not get all the way through her presentation before being repeatedly interrupted by Defendant Weissman for violating Defendants’ customs, practices, or policies against deadnaming, misgendering, and using allegedly “derogatory” or “disparaging” language about another person. Ms. Goeke was not allowed to use her full three minutes of allotted speaking time.

44. The exchange between Goeke, Defendant Weismann and Defendant Herrod during Goeke’s testimony occurred as follows:

Goeke: “The person who this bill is named after, they’re an admitted former prostitute...”
[muttering and boos from the crowd begin]

Weissman: “Ms. Goeke, I’m going to urge you to be [cross-talk, including Goeke’s invocation of her First Amendment rights]... I am going to urge you to keep your testimony please to the bill, do not get into individual personalities.”

Goeke: “This bill is literally named after him.”

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[Set off by Goeke's use of the male pronoun, the pro-trans crowd that had been hissing and jeering Goeke erupted into louder boos, but Weissman made no effort to restore order.]

Goeke attempted to continue her speech: "Misgendering is not a crime, you know what? I'm correctly sexing, correctly sexing. You know, sex matters, gender is nothing it means nothing."

Weissman: "Ms. Goeke..."

Goeke: "Misgendering is nothing, it means nothing. I correctly sex everybody."

Weissman: "Alright..."

Goeke: "So the person this bill is written after, is literally an admitted former prostitute..."

Herrod: "Mr. Chair, I'm not going to allow that. I'm not going to allow it."

Goeke: "He works with children..."

Weissman: "The committee is going to be in recess."

45. And with that, Weissman loudly brought down the gavel. Goeke still had 31 seconds left on the clock, which was frozen from that point, and committee members and the audience began talking and milling about.

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46. Goeke attempted to keep speaking, but Chair Weissman, at Herod's urging, had prematurely terminated Goeke's speaking time. After Weissman declared a recess and went off the record, Goeke expressed her frustration by stating "I let them spew their bullshit about gender." And with that, she was confronted by the sergeant at arms and asked to leave.

47. When the hearing resumed, without Goeke, Defendant legislators repeatedly apologized to Duane Kelley/Tiara and other transgender attendees for having been exposed to Goeke's speech.

48. Other speakers representing pro-trans viewpoints were able to give their testimony without being interrupted, having their time limited or terminated, or being excluded from the hearing, including Kelley/Tiara, and representatives from pro-trans groups such as Bread and Roses, the ACLU, Parasol Patrol, and Black Sex Workers of Colorado.

49. One speaker referred to Goeke as a "transphobe" who had been "ejected for bigotry."

50. During her closing statement, Defendant Garcia referred to Goeke when she told pro-trans members of the public that they had "explicit hate thrown at you" and make pro-felon statements that sought to normalize criminal convictions as a form of victimization.

51. The Colorado General Assembly's official audio record is located at: <https://sg001-harmony.sliq.net/00327/>

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Harmony/en/PowerBrowser/PowerBrowserV2/20240130/29/15228#info_. The hearing on HB-24-1071 begins at time stamp 6:22:26PM. A transcript of relevant excerpts from the hearing is attached as Exhibit B.

52. On March 27, 2024, the Senate Judiciary Committee held a hearing on HB-24-1071, which provided for public comment. Both Ms. Goeke and Mr. Guggenheim signed up to speak in-person and in opposition to the bill.

53. At the opening of public comment about the bill, Defendant Chair Gonzalez announced that she would not allow witnesses to fail to treat others with dignity and respect or a lack of decorum, and she threatened to have witnesses removed if they failed to exhibit decorum, dignity, or respect.

54. Senator Michaelson Jenet spoke next and purported to “elevate” the words of Chair Gonzalez by announcing that witnesses should not use “derogatory language,” “misgender,” “deadname,” or otherwise “disparage” those present.

55. Chair Gonzalez adopted Senator Michaelson Jenet’s speech restrictions by stating that she appreciated that addition to the rules on decorum, dignity, and respect and asked witnesses to adhere to those restrictions.

56. Plaintiff Goeke spoke in opposition to the bill based on her belief that it would allow felons to conceal their criminal history and endanger single moms, young women, or children. When she attempted to refer to “Tiara”

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as “Mr. Duane Powell,” Chair Garcia gaveled Ms. Goeke down and interrupted her. Ms. Goeke attempted to state her opinion that Mr. Duane Powell was impersonating a woman and had appropriated a female name.

57. In response, Chair Garcia enforced her speech rules against deadnaming or misgendering. Ms. Goeke stated that she would not tell a lie and that “[a] man is a man.” Chair Garcia reminded Goeke that she was not allowed to deadname or misgender. Ms. Goeke responded that she would not lie and could not advocate for women if she is not allowed to say what a woman is.

58. Chair Garcia told Goeke she had 24 seconds left to testify, but she again gaveled over Goeke’s speech and stole Goeke’s time as soon as Goeke dissented from trans ideology by saying “Mr. Duane Powell.”

59. Significant portions of Ms. Goeke’s speech were erased from the official audio record of the Senate Judiciary Committee hearing. See https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20240403/41/15772#agenda_ (timestamp: 6:32:54PM to 6:36:34PM). *Compare* <https://bit.ly/4akyMvP> (timestamp 31:44 to 34:54); Exhibit D (transcript excerpt of censored speech).

60. Rich Guggenheim also spoke in opposition to the bill. Guggenheim stated he was speaking as a homosexual man, and he attempted to share pertinent facts about the gay liberation movement from Stonewall in 1969 by discussing Malcom Michaels Jr, and Tony Rivera,

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two black gay male sex workers and drag queens often falsely referred to as transgender women named Marsha P. Johnson and Sylvia Rivera. Chair Garcia interrupted Guggenheim, attempted to cut his microphone, and reminded Guggenheim of the rule against deadnaming or misgendering.

Chair Garcia: [Gavel] “I’m sorry. Dr. Guggenheim I did ask at the onset of this hearing that we refrain from deadnaming or misgendering people. I welcome you to proceed forward, with the rest of your comments, should you wish to continue.”

Guggenheim reminded Senator Garcia that he had not dead-named or misgendered anyone as these individuals never identified as trans but rather, as drag queen. His microphone was off during this time. Chair Garcia allowed Guggenheim to continue his comments, but when he later referred to Mr. Powell as black gay man, she gaveled Guggenheim again.

Chair Garcia: Gavel. “Dr. Guggenheim, thank you for joining us and sharing your perspectives with us today.”

61. Guggenheim was not allowed to complete his testimony and Chair Garcia stole at least 56 seconds of his time to speak against the bill.

62. During the hearing, proponents of the bill were not interrupted or silenced. At times, pro-trans audience

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members raised their hands or attempted to signify when they believed a witness was transgressing the speech restrictions against deadnaming or misgendering.

63. The hearing's official meeting audio is located here https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20240328/41/15772#a_genda_ and begins at timestamp 6:02:17 PM. While Ms. Goeke's attempted testimony was initially posted in full, Defendants later erased significant portions of it from the public record and replaced it with silence.

64. A transcript of relevant portions of the hearing, but not the erased portion of Goeke's testimony, is attached as Exhibit C. Compare Exhibit D (including erased speech).

65. On April 1, 2024, the Senate Judiciary Committee held a hearing on Senate Bill 24-189, which proposes the addition of gender identity and gender expression to the classes identified in bias-motivated crimes and harassment. Prior to hearing public testimony, Defendant Sen. Gonzalez warned everyone that the Committee "want[ed] to make sure everyone here is being treated with dignity and respect." Defendant Gonzalez then "ask[ed] people who are testifying to refrain from deadnaming or misgendering people."

66. The hearing's official meeting audio is located here: https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20240402/41/15800#a_genda_ and begins at timestamp 1:42:47.

*Appendix D**Current and Future Bills and Hearings
on Trans-Involved Bills*

67. The General Assembly is currently still in session and there is at least one more bill remaining that concerns transgender issues: SB24-189—Gender-Related Bias-Motivated Crimes, which may be set for a committee hearing in either chamber with an opportunity for public testimony.

68. HB-24-1040—Gender-Affirming Health-Care Provider Study, including allocating time for public testimony during committee hearings, has been removed from further consideration during this session, but it may re-appear again in a future session.

69. Transgender issues continue to arise in numerous contexts, and accordingly, to trigger significant public debate. As Colorado’s legislature has indicated a keen interest in addressing these topics, with many members committed to advancing the cause of the transgender movement, bills concerning transgender issues will assuredly be introduced in future sessions of the Colorado Assembly, and debate on other bills will likewise implicate transgender concerns.

70. Plaintiffs Christina Goeke and Rich Guggenheim intend to continue to oppose trans ideology, including by providing public testimony on trans-related and other bills during legislative committee hearings during this session and future legislative sessions.

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71. Plaintiffs Goeke and Guggenheim both want to continue to testify truthfully about trans issues, including making public comments at legislative hearings. Plaintiffs expect that Defendants will continue to censor them during testimony, interrupt them, steal their testimony time, and require that they express fealty to trans ideology.

72. Plaintiffs refuse to tell what to them are lies about a person's sex.

73. In the absence of protection from this Court, Plaintiffs Goeke and Guggenheim expect to self-censor by refraining from fully exercising their right to provide public comments at legislative committee hearings or alter the way they speak at such hearings in order to avoid being interrupted, gavelled down, ejected, having their testimony edited, or having to make ideological statements with which they disagree, including following pronoun rituals.

74. If Defendants' unlawful policies, customs, or practices remain in place, Plaintiffs expect to speak less, and differently, about issues of public importance.

FIRST CLAIM FOR RELIEF

VAGUENESS, EXCESSIVE DISCRETION U.S. CONST.
AMENDS. I, XIV, 42 U.S.C. § 1983 AS-APPLIED AND
FACIAL CHALLENGE TO SUBJECTIVE DECORUM,
DIGNITY, AND RESPECT RULES

75. Plaintiffs reallege and incorporate by reference paragraphs 1 through 74.

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76. Defendants have created a limited public forum by opening legislative committee hearings to public comment.

77. Defendants maintain a written rule against decorum and disruption during public testimony. Defendants have enforced the rule in a selective, subjective, and viewpoint-discriminatory manner by announcing additional decorum rules against so-called deadnaming or misgendering; barring “disparaging” or “derogatory language” about individuals, including raising unwelcome facts about legislative namesakes; and requiring that speech be “respectful.”

78. Defendants’ decorum rule is vague and lacks objective criteria to prevent viewpoint discriminatory enforcement. *See, e.g., Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1891 (2018).

79. Defendants’ custom, policy, or practice is to apply their decorum rule in ways that discriminate against dissenters from trans ideology, such as Christina Goeke, Rich Guggenheim, and other members of RMWN and GAG.

80. By enforcing their vague and subjective decorum rule, Defendants, under color of law, deprive Plaintiffs, and other similarly situated persons, of the right to petition and free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Accordingly, Plaintiffs are damaged in violation of 42 U.S.C. § 1983, and, therefore, are entitled to damages; declaratory and preliminary and permanent

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injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

SECOND CLAIM FOR RELIEF

RIGHT OF FREE SPEECH AND PETITION, U.S. CONST.
AMENDS. I, XIV, 42 U.S.C. § 1983 FACIAL AND AS-
APPLIED CHALLENGE TO VIEWPOINT DISCRIMINATORY
CUSTOM, POLICY, AND PRACTICE

81. Plaintiffs reallege and incorporate by reference paragraphs 1 through 74.

82. The First Amendment embodies “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). The government may not silence speech because it criticizes government officials or employees, or their favorite ideas or initiatives, even if that speech does so in ways that many people may find unpleasant. Allegations of hurt feelings, real or spurious, do not justify censorship of public speech.

83. The government may not “regulat[e] speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the

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restriction.” *Rosenberger v. Rector & Visitors of Univ. Of Va.*, 515 U.S. 819, 829 (1995); *see also Mesa v. White*, 197 F.3d 1041, 1047 (10th Cir. 1999).

84. The First Amendment’s viewpoint neutrality principle protects more than the right to identify with a particular side. It protects the right to create and present arguments for particular positions in particular ways, as the speaker chooses, including in ways that some people may find offensive. *See, e.g., Matal v. Tam*, 137 S. Ct. 1744 (2017).

85. Defendants created a limited public forum when they opened their legislative hearings to public testimony.

86. The First Amendment prohibits the exclusion of Plaintiffs’ viewpoints from testimony during the public testimony portion of legislative hearings.

87. On their face and as-applied against Plaintiffs, Defendants prohibitions on “misgendering,” “deadnaming,” and the use of “disparaging” or “derogatory language” about individuals, including raising unwelcome facts about legislative namesakes; and Defendants’ requirement that speech be “respectful,” violate Plaintiffs’ First Amendment rights to speak and petition and to dissent from trans ideology. These prohibitions are not designed to confine the forum to the limited and legitimate purposes for which it was created, but rather, to suppress ideologies and opinions respecting matters properly before the committee with which Defendants, and some audience members, disagree.

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88. By enforcing their customs, policies, or practices barring “misgendering,” “deadnaming,” and the use of “disparaging” or “derogatory language” about individuals, including raising unwelcome facts about legislative namesakes; and requiring that speech be “respectful,” Defendants, under color of law, deprive Plaintiffs of the rights to free speech and petition in violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of 42 U.S.C. § 1983, and are therefore entitled to damages, declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants’ unconstitutional customs, policies and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

THIRD CLAIM FOR RELIEF

RIGHT OF FREE SPEECH AND PETITION, U.S. CONST.
AMENDS. I, XIV, 42 U.S.C. § 1983 AS-APPLIED
CHALLENGE TO VIEWPOINT DISCRIMINATORY CUSTOM,
POLICY, OR PRACTICE: CENSORING, EDITING OR
ERASING HEARING AUDIO RECORD

89. Plaintiffs reallege and incorporate by reference paragraphs 1 through 74.

90. Defendants not only interrupted, censored, and terminated Plaintiffs’ live testimony, but actually erased large portions of Ms. Goeke’s testimony from the audio record of the April 27, 2024 Senate Judiciary

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Committee hearing, in an Orwellian fashion, as if it had never occurred.

91. Defendants' act of censoring, erasing, or editing Ms. Goeke's speech out of the audio record of the committee hearing constitutes viewpoint discrimination in violation of the First Amendment.

92. By enforcing their customs, policies, or practices of censoring the misgendering, deadnaming, and the use of "disparaging" or "derogatory language" about individuals, including raising unwelcome facts about legislative namesakes; and requiring that speech be "respectful," and editing any non-compliant speech out of the audio record, Defendants, under color of law, deprive Plaintiffs of the rights to free speech and petition in violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of 42 U.S.C. § 1983, and are therefore entitled to damages, declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

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FOURTH CLAIM FOR RELIEF

FREEDOM FROM COMPELLED SPEECH, U.S. CONST. AMENDS.
I, XIV, 42 U.S.C. § 1983 FACIAL AND AS-APPLIED
CHALLENGE TO COMPELLED ADHERENCE
TO TRANS IDEOLOGY

93. Plaintiffs reallege and incorporate by reference paragraphs 1 through 74.

94. Defendants' custom, policy, or practice of restricting deadnaming or misgendering compels citizens to mouth support for trans ideology as a condition for exercising their right to speak and petition in the form of testimony at a committee hearing.

95. Plaintiffs should not be compelled to embrace contested concepts such as the proposition that a biological man is actually a woman.

96. By enforcing their custom, policy, or practice against deadnaming and misgendering, Defendants, under color of law, continue to compel Plaintiffs, and other similarly situated persons, to mouth support for an ideology with which they disagree, in violation of the right to free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Accordingly, Plaintiff are damaged in violation of 42 U.S.C. § 1983, and, therefore, are entitled to nominal damages, declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs,

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policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment be entered in their favor and against Defendants as follows:

- A. An order preliminarily and permanently enjoining the Defendants, and their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction from:
 - 1) Enforcing any restrictions on speakers at committee hearings against “misgendering,” “deadnaming,” or the use of “disparaging” or “derogatory language” about individuals, including raising unwelcome facts about legislative namesakes; and that speech be “respectful,” during public testimony at legislative committee hearings;
 - 2) Requiring speakers to express support for trans ideology by using preferred pronouns or non-legal names during public testimony at legislative committee hearings;

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- 3) Discriminating on the basis of viewpoint or selectively enforcing decorum rules against dissenters from trans ideology during the public testimony portion of legislative committee hearings;
 - 4) Failing to enforce generally applicable decorum rules against supporters of trans ideology during the public testimony portion of legislative committee hearings, and
 - 5) Censoring Plaintiffs' right to speak and petition by editing speech from the public record on the basis of viewpoint.
- B. Declaratory relief consistent with the injunction;
- C. Nominal damages in the amount of \$17.91 against each Defendant;
- D. Costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- E. Any other relief this Court may grant in its discretion.

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Dated: April 4, 2024.

Respectfully submitted,

s/Endel Kolde
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EXHIBIT A

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Memorandum

January 10, 2024

TO: Interested Persons

FROM: Elizabeth Burger, Deputy Director,
303-866-6272

SUBJECT: Public Participation in the Legislative
Process

Summary

Legislative committees are a very important part of Colorado's legislative process. At a legislative committee hearing, citizens have an opportunity to express their views and have them incorporated into the official legislative record. In Colorado, every bill receives a public hearing by one of the legislature's committees. This memorandum provides guidance to the public in participating in the legislative process.

Role of a Committee

The Colorado State Constitution requires that every bill be heard on its merits. When a bill is introduced in

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either the Senate or the House, it is sent to a Committee of Reference comprised of 5 to 13 legislators for review and public comment. The committee determines if the proposal should go forward in the legislature. After the committee considers any proposed amendments, it may vote to favorably recommend the bill to the Committee of the Whole, refer the bill to another committee, or postpone the bill indefinitely.

Committee schedules. When the legislature is in session, committees generally meet as determined by the established committee schedule. However, committees will occasionally meet in different rooms at varying times to accommodate a large audience. Monday mornings (typically 10:00 a.m. until noon) and Friday mornings (typically 9:00 a.m. until noon) are reserved for floor work. Committees with hearings in the morning meet from Upon Adjournment of floor work until approximately noon. At the chair's discretion, morning committees may also meet from 7:30 a.m. until 9:00 a.m. Afternoon committees generally meet at 1:30 p.m. [Click here for links to the committees' schedules and membership lists for the 2024 legislative session.](#)

Tracking a Bill

Online bill information. The full text of bills, resolutions, and memorials, and their history, votes, fiscal notes, and committee reports are available online. Bills are named according to the house where they were introduced and the year. For example, Senate Bill 24-001 is the number of the first bill introduced in the Senate during

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the 2024 legislative session. [Click here](#) for an explanation of the bill names, or versions, based on where they are in the legislative process. The House and Senate bill status sheets are used to track legislation as it moves through the General Assembly.

Bill scheduling. The chair of each committee determines when a bill will be heard. The House and Senate daily calendars show the scheduled committee hearings and calendared bills. Both the full House and Senate meet in their respective chambers daily during session, generally at 10:00 a.m. on Mondays, and at 9:00 a.m. Tuesday through Friday. Changes to the published calendar are announced during these floor sessions. Changes may also be shared on @COLCSCcommittees.

Online Video and Audio Resources

The House and Senate live floor proceedings are available in audio and video format on the Watch and Listen page of the General Assembly's website. Live audio broadcasts of committee hearings, as well as archived audio floor and committee recordings, are also available on this page. Live audio for floor and committee sessions can also be accessed through the daily session schedule.

Public Participation in Committee of Reference Hearings

Members of the public may participate in committee hearings by:

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- submitting written testimony;
- testifying via Zoom, from anywhere in the state; or
- testifying in person.

All three options require registration on the General Assembly's public testimony website: <https://leg.colorado.gov/testimony>.

For all three options, registration is only available for bills that have been scheduled for a committee hearing. If a bill is not available for registration, the bill is not currently scheduled for a committee hearing. At times, a bill may be scheduled for a committee hearing just prior to the start of its hearing. In this case, you may need to monitor the bill's status on the General Assembly's website and refresh the testimony registration page once the bill has been scheduled for a committee hearing.

Witness lists are public records under the Colorado Open Records Act (CORA) and can be provided to any person upon request.

Written testimony. Members of the public may submit written testimony on bills scheduled for committee hearings. Written testimony is a public record under the Colorado Open Records Act (CORA) and will be included in the staff summary of each meeting, which is posted on the General Assembly's website.

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To register, visit <https://leg.colorado.gov/testimony> and select the “Submit Written Testimony” option. You may either upload a prepared document or use the space provided (max 1500 characters) to type your submission. The option to submit written testimony becomes available when a bill is scheduled for a hearing in a committee of reference and lasts until the committee takes action on the bill.

In addition to submitting written testimony, you may also testify remotely (see “Remote Testimony”) or in-person (see “Testify in Person”).

Remote testimony. Members of the public may testify remotely on bills during committee of reference hearings, via Zoom. Generally, remote testimony is for witnesses located in Colorado, but testimony by out-of-state witnesses may be permitted by the committee chair.

Advanced registration is required, and witnesses may begin registering at the time the bill is scheduled for a committee hearing. Registration will close when the bill’s hearing begins. To register, visit <https://leg.colorado.gov/testimony>, and select the “Testify via Zoom” option. After you have registered, you will receive a confirmation e-mail with the Zoom link.

Prior to participating remotely, you should familiarize yourself with Zoom and test your computer’s audio-video settings.

When it is time for the committee hearing, connect to Zoom using the link in your confirmation email. If you

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need to call into the Zoom meeting rather than connecting via the internet, please request the call in information by emailing committees.lcs.ga@coleg.gov.

For best results:

- limit internet usage for other applications or devices (such as streaming services), as this will slow down internet speeds and disrupt your Zoom connection;
- use wired headphones or a USB headset to eliminate audio loops and feedback; and
- avoid the use of Bluetooth audio headsets, which often work better with cellular phones than computers.

Multiple bills may be heard during a committee hearing; the same Zoom link is used for the entirety of a committee hearing. Therefore, it is possible you will join the Zoom conference before the bill on which you wish to testify is before the committee. To monitor committee proceedings, please visit <http://www.leg.state.co.us/public/display.nsf/index.html>

The Executive Committee of the Legislative Council has issued regulations regarding remote public testimony, which can be found [here](#).

Instead of testifying remotely, you may testify in-person (see “In-person Testimony”). You may also submit written testimony (see “Written Testimony”).

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In-person testimony. Witnesses wishing to testify in person on a bill in a committee of reference must register. Registration opens when the bill is scheduled for a committee hearing. Registration closes when the committee chair ends the public testimony portion of the bill hearing.

To register, visit <https://leg.colorado.gov/testimony>, and select the “In Person” option.

Instead of testifying in person, you may testify remotely (see “Remote Testimony”). You may also submit written testimony (see “Submit Written Testimony”).

Committee Protocol

The purpose of a committee hearing is to gather information so that the committee can make an informed recommendation on a given bill or resolution. Public input is an important part of this process. As elected officials, committee members appreciate hearing the perspective of citizens and organizations on issues.

Preparing to testify. When preparing your testimony, plan to present in less than three minutes. Most committee chairs time witnesses, and will ask you to conclude your testimony if you exceed the amount of time they have designated for testimony.

Testifying. The order of bills to be heard is posted in the daily calendars and on the committee’s webpage. The order can also be found on the committee proceedings

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website: <http://www.leg.state.co.us/public/display.nsf/index.html>. The chair will announce each bill, after which the bill's sponsor will address the committee. The chair may then ask for testimony from proponents and opponents. Hearings are conducted using formal parliamentary procedure. You may find the following recommendations to be helpful.

- Begin your presentation by stating, “Mr. or Madam Chair ____, members of the committee, thank you for the opportunity to present to you today. My name is ____, representing ____, and I am here to support/oppose this bill because . . .”
- Be brief and avoid repeating what other witnesses have said. Try to focus on points that have not been mentioned.
- At the end of your testimony, thank the committee members and offer to answer any questions.
- If a member asks a question, wait for the chair to prompt you, then state your name followed by, “Chair ____, Senator/Representative ____, the answer to your question is . . .” If you do not know the answer, it is always okay to say that you do not know. If you promise to follow-up, be sure to do so in a timely manner.
- Do not be offended if committee members come and go during a hearing. They have other commitments, including the presentation of bills in other committees that are meeting simultaneously.

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- At a hearing with a large number of witnesses, there may not be time for everyone to testify.
- Cell phones and other electronic devices should be on a silent setting.
- Food and beverages are prohibited in the committee rooms.
- The chair has the discretion and authority to limit testimony, ask the sergeant-at-arms to remove a disruptive person from the committee room, and clear the public from any hearing in the event of a disturbance that is disruptive to legislative proceedings.
- Disruptive witnesses testifying remotely will be disconnected from the Zoom conference.

Contacting a Legislator

Contact information for every legislator, including his or her office phone number, e-mail address, and committee assignments, is located in the legislative directory. Witnesses may directly contact members of the legislature to share their views on pending legislation. Comments sent to individual legislators do not become part of the public record.

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EXHIBIT B

AUDIO TRANSCRIPTION OF
HOUSE JUDICIARY COMMITTEE MEETING

Tuesday, January 30, 2024

House Bill 24-1071

[2](Recording started at 6:22:26 PM.)

CHAIRMAN WEISSMAN: Okay. We'll proceed directly to the final bill of the evening. That is House Bill 1071. We'll give Rep Garcia a moment to get situated at the table.

(Background talking.)

CHAIRMAN WEISSMAN: All right. Rep Garcia, if you're ready to proceed, go ahead and make your opening comments about House Bill 1071.

REPRESENTATIVE GARCIA: Thank you, Mr. Chair, members of the committee. I am absolutely thrilled and honored to bring 1071 to this committee. I'm going to start with just reminding all of us that a right is not truly a right if some can't access it. So House Bill 24-1071, also known as Tiara's Law is a bill intended to ensure that everyone has access to a law that promotes humanity and dignity.

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This bill will clarify what is currently ambiguous language leaving some of our community members from being able to access a law that allows people who have a felony on their records to petition for a name change for gender-affirming reasons under good cause as would a person with a felony on their record who seeks to change their name for good cause such as marriage. Nothing about the process on how to petition for a name [3]change is going to change. The final determination still lies with the court. Their criminal record still follow them. This bill does not in any way allow someone to hide their criminal records. This bill, Tiara's Law, promotes humanity and dignity.

You'll hear stories about how the way this law is currently written limits access to critical support in cases of natural disasters or tragedies including the Club Q shooting because of being forced to use a legal name that they do not identify with. You'll hear about how something many of us take for granted, having a name that matches and affirms our gender identity, even those with felonies who affirm their identity by changing their last names when they get married, can be and is out of reach for others.

I want to also state that this bill is not about the merits of whether or not in general name change should be allowed for people with felonies. We know that this right already exists. What this bill is about, it's making sure that those who currently are removed from being able to access this right can.

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As we continue with this committee hearing, I want to thank all of my colleagues on both sides of the aisle for engaging in respectful discourse by not using derogatory language or misgendering [4]witnesses or using a witness's dead name, but rather referring to the witnesses as their stated names and gender pronouns. I sincerely hope that the witnesses signed up to also testify will follow suit and engage in respectful discourse and share their perspectives and opinions on this bill by not disparaging other members or our community or other witnesses.

This body is one that is charged with evaluating, analyzing, and creating law. This room is one where people should be able to come, share their stories, be who they are without fear of being attacked, without fear of being disparaged. And it is my request that all of us, whether we are sitting in this room or online, continue with the purposes that we're here for today. Thank you.

CHAIRMAN WEISSMAN: All right. Rep Garcia. Appreciate your comments about the tenor we should aspire to and the way that we should and should not aim to have a discussion. And as Chair, I affirm and ratify your comments.

Members, are there questions of the sponsor? Rep Soper.

REPRESENTATIVE SOPER: Thank you, Mr. Chairman. Thank you, Representative Garcia. I guess the question I have for you -- and I'm certainly always [5] open to any change in law. That's for sure. But something

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like the name -- the name change statute that's already in play, I guess I'd like to understand a little bit more about the problem. Is it that the district or county court are not necessarily granting a name change for good cause as it currently exists, or are there other problems that are existing that I'm not understanding?

CHAIRMAN WEISSMAN: Rep Garcia.

REPRESENTATIVE GARCIA: Thank you, Mr. Chair.

Representative Soper, we will have witnesses that will share with the committee their particular experiences on why this is necessary. But what I will just state broadly is that the ambiguity in this bill under good cause -- because good cause is not defined, it is difficult for many of our transgender members to find attorneys to support them in this path towards -- to achieving a name change that they desire. And so by establishing that good cause does include gender affirming, it will be easier for our transgender community members to be able to state their case and find attorneys who are willing to support them.

REPRESENTATIVE SOPER: Thank you.

CHAIRMAN WEISSMAN: Rep Soper, good for now? Okay.

[6]Members, other questions of the sponsor?

All right. We'll proceed to witnesses. Members, we have a pretty good number of folks signed up to speak

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on this bill, nearing 30. Given that, out of respects for both sides, we will alternate. The sponsor has indicated a preference for proponent witnesses to go first. So we will do that. We'll call up one panel for, one panel against, one panel for, one panel against. In the event that we run out of folks on one side first, we'll just sort of proceed until everyone has had a chance to be heard. We have a mix of folks in person and online.

We may have hybrid panels, if that's just how the order sorts out. We'll keep to three minutes. I will ask everybody to observe that strictly. You'll see the red light blinking. We have to reserve the right here to just kind of bring you to a stop point out of fairness to all of the witnesses who want to be heard this evening.

With that, we will invite up our first panel of witnesses. And let's see. Mr. Imballa (phonetic), if you could please listen for names, and if you see somebody connect online, I've got a couple of things to juggle up here. I'll try to get in person versus remote right. If we could start with Erika Unger, [7]Tiara Kelley, and Tiara (sic) Brown, and MJ Coleman-Jackson.

All right. Thank you all for being with us and waiting well into the evening. Whoever would like to start, let us know your name and if you're speaking in connection with any particular organizational affiliation, and please go ahead. Note about the microphones. There's a little tiny gray button set into the table. Press that, and when the light is green you're good to go.

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TIARA KELLEY: Good evening. My name is Tiara Latrice Kelley, and I am the namesake of this bill, Tiara's Law. And I am here on behalf of Bread and Roses and Tiara Latrice Productions, LLC, and I am here for -- as a transgendered woman who has a felony 17 years ago. I have been a transgendered woman for 27 years, which means that my felony came ten years after my transition occurred.

So I know that I have heard some opposition that the point of this bill is to try to erase my history or that I would like to change or get rid of the things that have happened in the past, the mistakes, the whatever has happened in the past. And that is absolutely not the case, being that I've been a transgendered woman this whole time. I just haven't been [8]able to utilize the name that I identify with. And so that's why I'm sitting here with you here today.

During the Q tragedy this kind of -- the whole thing evolved from the fact that there were resources that I was not able to access or I didn't feel comfortable accessing because my birth name does not match who I appear to be every single day of my life. So there were all types of issues. There were times that I would have to make phone calls and get people to verify my identity and those type of things, and these are just basic things like cashing checks and paying bills and going into a doctor's office and having your name called and not having to be embarrassed by a previous name that you don't even recognize anymore.

So this bill in essence would allow for transgendered people to be able to have an identification card, a name,

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that matches the identity that we live our lives as. And I'm -- it's been mentioned -- it was mentioned in opening, but changing my name would not change my credit score. It wouldn't change my -- my anything. It wouldn't change any school records. It wouldn't change any Social Security number. It would not change any of those things. As a matter of fact, all those things would be attached to my Social Security number, which would still be who I am, and everything [9]that I have done or everything that has happened in my life would still remain there. I wish we could get rid of the credit scores, right?

(Background laughing.)

But that just -- but that's just not the way it works. That's not -- that's not what the name change is. I literally just want to be able -- me and all of these trans people that are here today, we just want to be able to have a name on our identification card that matches who we are so we don't have to continuously be reminded of the person that we never felt comfortable with in the first place. So for that reason I ask you to vote yes, please.

CHAIRMAN WEISSMAN: All right. Thank you. Whoever would like to go next.

ERIKA UNGER: Good evening, members of the committee. My name is Erika Unger. I use she/her pronouns, and I am a co-director of Bread and Roses Legal Center. We are a trans and queer-led non-profit, and we do a lot of low pay and slow pay and pro bono work as well as victim advocacy. I was a public defender for eight

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and a half years. I'm a criminal defense attorney by trade. I have represented hundreds of folks who are trans and have been incarcerated and many of whom have had felony convictions. I have also represented people [10]through the name change process, both as counsel of record and also in a pro se capacity as sort of assistance behind the scenes.

And what I can tell you -- I'm really here to tell you what the bill does and what it does not do. This is, in fact, a very narrow modest change to the current name change statute. And to the extent that we are here thinking that there is going to be just this onslaught of felons that have not previously went to go change their names, the name change statute has allowed for people with felony convictions to change their names since 2010. So this is not new.

But what it does do is it makes it so that -- and I think, Representative Soper, you may have mentioned this with Representative Garcia. It makes it so that a judge cannot say that someone's existence is not good cause, and I think that that's important because good cause is not defined. And so all that it does is it says that all of the other requirements still exist. So there is a general process that applies to people without felony convictions. There is an additional process that is required by people who have felony convictions. It's all the prior requirements. It requires the finding of good cause.

It also requires that the person applying [11]for the name change submit their fingerprints both to CBI as well as the FBI and that the petition is filed within 90 days of

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that criminal history report. It requires that the district attorney is notified from the state or district where the felony conviction was -- is lodged, and it also requires if there is a victim of that crime that the district attorney then notify the victim of the request. The court must also find that there is not -- the change is not for purposes of fraud. It's not to get out of the consequences of a felony conviction. Those are findings made by the court.

I would also note that the publication statute, which is in the same article as the name change statute, already allows and does not require publication for -- if the name change is gender affirming. So this is not -- this -- pieces of this are already present within the name change statute, and I will tell you I -- I am not a transgender person, but I am someone who has been both married and divorced. And you know what nobody never asked me? Is how my alias would show up on an NCIC.

So I think that we're more than capable of doing this. We've been doing it for a long time. And those -- the thing I would end with is that it's a requirement that the alias -- that the person who is [12]seeking a name change submit their chosen name to NCIC -- or to the FBI and CBI who then puts it in the NCIC system, and that remains. That is required prior to the filing of the petition. So that remains with those criminal justice agencies regardless of whether the petition itself is granted. So in that way, while an unintended consequence, law enforcement will actually end up with more information as the result of passing this law than without it. We would ask for an aye vote.

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CHAIRMAN WEISSMAN: All right. Thank you. Ms. Coleman-Jackson.

MJ COLEMAN-JACKSON: Sorry. Excuse me. Good evening again, Chair and members of committee. Ms. Coleman-Jackson. I'm on this bill. I come as representation of the Colorado Social Legislative Committee. I'm their executive committee chair this year. This is my third year on the executive committee. I also am a human rights consultant certified by the United States Institute of Diplomacy.

I'm urging a yes vote on this bill, and I'm going to speak from an area of experience. Have you ever been asked things, What was your gender at birth? You know what I mean, your current gender identification. And then when you can't answer that correctly, they just go right out -- they just go for the throat. And they go [13]straight up, Well, I'll tell you what, just tell me what your genitalia is between your legs. And if you're in jail, let me tell you, if you don't answer the question the way they like it, they will answer that question for you.

And the same thing happens in airports. Have you ever been publicly groped in an airport? Because I certainly have because I present myself as a woman because the name on my ID -- which I don't look like a Marcus. I ain't looked like a Marcus since the day I was born. My aunt said right out the womb I was one of the prettiest boys she had ever seen in her life. And my father started calling me MJ from the beginning, and that is my chosen name.

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As far as -- and actually I'm going to tell you my most recent experience being misgendered was as early as 1:00 this afternoon by capitol security when I walked into this building, and I was addressed intentionally as "sir." People have also used my government name as an insult to me as well.

You know what -- and I want to make sure I watch my time because you all know I'm a little long-winded. But you know what, here's the thing: People like us are already treated a lot harsher when paying their debt to society anyway. We're talking [14]24-hour lockdown in jails only because it's for our safety when in all actuality they just don't want to do their jobs and ensure our safety.

Now, here's the thing, is that this bill is not going to solve all of the social aspects that we -- that we endure, that we deal with on a daily basis, but it will be a foundation. It will be a start because it will pave the way for us to finally be accepted as the equals in society that we equally contribute to. And to that I will yield my time, and I'll expect any questions. Thank you.

CHAIRMAN WEISSMAN: Okay. Thank you. We'll go to our online witness, and then we'll see if there are questions. Okay. Taylor Brown, please go ahead.

TAYLOR BROWN: Thank you. My name is Taylor Brown, and I'm the founder of the Black Sex Workers of Colorado. I'm here today to testify in support of House Bill 1071 or Tiara's Law. In my capacity as the founder of

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Black Sex Workers of Colorado, I recognized a dire need for community to step up and support and protect trans individuals and sex workers in the absence of state or police protection. Which you may or may not know is that many trans people have been a sex worker at some point in their life. And as we know, [15]people who share those identities are some of the most vulnerable in our community. They experience higher rates of violence, including death and suicide, higher rates of criminalization, and higher rates of stigmatization and discrimination.

Black Sex Workers of Colorado has helped people who identify as a sex worker or trans and in many cases people who identify as both obtain jobs, housing, monetary support for bills, therapy, medical care, legal support, and more. But we are a small team within a small community of orgs that exist like ours, and the work that we do comes with limitations. Making a gender-affirming name change more accessible is unfortunately one of those areas our ability to help is limited, and that is why we appear in support of this bill today.

Many of the people that my org interacts with on a day-to-day basis face significant barriers to being able to work and exist in life. Those barriers are often foreign to those who have never had to exchange money and/or goods for sexual services and for those who are not and have never met anyone who is trans. We have a chance today to listen to people from those communities about what they need to be able to exist fully in life, and a more accessible gender-affirming name change [16]process is one of those things.

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As a society, we have nothing to lose by recognizing the humanity of each and every one of us. Unnecessarily maintaining barriers that force trans individuals to carry their dead name is not an example of recognizing one's humanity, especially when functionally speaking, this legislative fix does not make it easier for trans individuals to commit crimes or evade background checks like some opponents of this bill will surely suggest. Instead supporting this bill means that you're helping orgs like ours do the good and necessary work of affirming and supporting trans lives. And I yield my time.

CHAIRMAN WEISSMAN: All right. Thank you. Now we will see if there are questions for any members from any members. Rep Soper.

REPRESENTATIVE SOPER: Thank you, Mr. Chair.

My question is for Erika Unger. I wanted to ask kind of a little bit of a takeoff question that I asked the bill sponsor. I'm just trying to understand a little bit more of certainly the challenges from an attorney's perspective just to be able to kind of wrap my head. I do find that -- I mean, it's quite persuasive how you talked about in the publication element it

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[26]it's just as public as this hearing is.

CHAIRMAN WEISSMAN: All right. Thank you. Members, I think out of respect for all the other witnesses

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who want to speak to us I'm going to move us on from this panel, but thank you all for testifying with us this evening.

MJ COLEMAN-JACKSON: Thank you.

CHAIRMAN WEISSMAN: Ms. Brown, thank you for being online. All right. As noted, we're going to alternate witnesses here. So we will now invite up a panel of witnesses who signed up in the opposed position. Christina Goeke. I'm sorry if I'm mispronouncing anybody's name. Do we have Ellen Daehnick? Jessica Fenske. Jessica Fenske if you're here. Rich Guggenheim. Do we have Marla Fernandez?

All right. The next folks, Mr. Imballa, if you could look out for folks who are online. These witnesses are signed up online. Do we have Shannon Johnson? All right. Also Rich Guggenheim also shows up online, we could look for him now. Do we have Valerie Leal, L-e-a-l? Okay. Do we have Erin Meschke? Okay. And do we have Darcy Shoening? Okay. Great. We'll stop there. We'll go to our witnesses in person first while we get the folks connected online. Whoever would like to start.

[27]CHRISTINA GOEKE: I'll go. Hi guys. My name is Christina Goeke. I'm a resident of Colorado Springs. I'm also a cofounder of Rocky Mountain Women's Network. I am here to oppose this bill. We shouldn't be making it easier for felons to change their name. Names matter. Allowing felons to legally change their name is dangerous to the public. The public does not have access to people's Social Security numbers, okay? So the best we can do when

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sizing up a potential friend or love interest or babysitter is to do a Google search or use a website like TruthFinder, right? So if don't even have the correct name of the person we are looking into, how would we know if they were a sex offender, a pedophile, or a murderer?

The proponents of this bill will say that the crimes stay with the Social Security number of the felon, right? How does that help the general public? This bill would make it easier for predators to target single moms, young women, and children. There's absolutely no reason why we should be making it easier for felons to hide their crimes. Does Colorado really value the feelings of convicted felons more than women and children, who will most certainly be put in more danger by this bill? So I'm asking you guys to vote no on this.

[28]The person who this bill is being named after, you know, they're an admitted former prostitute --

CHAIRMAN WEISSMAN: Ms. Goeke, I'm going to urge you to be --

CHRISTINA GOEKE: Are you going to impinge on my free speech? First Amendment gives me right to --

CHAIRMAN WEISSMAN: I am going to urge you to keep your testimony please to the bill. Do not get into individual personalities.

CHRISTINA GOEKE: The bill is literally named after him.

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(Background booing.)

CHRISTINA GOEKE: Misgendering is not a crime. You know what, I'm correctly sexing, correctly sexing. You know, sex matters. Gender is nothing. It means nothing.

CHAIRMAN WEISSMAN: Ms. Goeke --

(Background booing.)

CHRISTINA GOEKE: Sex matters. It matters in prisons. It matters in sports. It matters in my bathroom.

(Background inaudible speaking.)

CHRISTINA GOEKE: Misgendering is nothing. It means nothing. I correctly sex everybody.

(Background booing and inaudible speaking.)

[29]CHAIRMAN WEISSMAN: All right.

CHRISTINA GOEKE: So the person this bill is written after is literally an admitted former prostitute and other previous charges --

UNIDENTIFIED FEMALE: (Inaudible) Tiara, and I'm not going to allow that.

CHRISTINA GOEKE: He works with children. He works with young boys --

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CHAIRMAN WEISSMAN: The committee is going to be in recess.

CHRISTINA GOEKE: -- who now -- they do burlesque with.

REPRESENTATIVE HEROD: Nope. You gave her too many warnings. It's not okay.

CHRISTINA GOEKE: You know what, this is my time. I let them speak. I let them --

(Recess taken from 6:59:07 PM to 7:07:00 PM.)

CHAIRMAN WEISSMAN: The committee will come back to order. Ma'am, it's your turn to testify. Please go ahead.

ELLEN DAEHNICK: Can you hear me? Hi. Thanks for the opportunity to talk to the committee tonight. My name is Ellen Daehnick. I live in Denver, and I'm here representing myself. I appreciate you being willing to hear my testimony. I think that House Bill

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[57]bill.

Okay. All right. We will move to the next panel. I have Anaya Robinson, Carrie Knott -- apologies if I'm saying the names incorrectly. Ava Frickle, and Carter

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Cadena. Okay. I might continue to call witnesses. Is there anyone online? Okay. John Arcediano? Madeline Druno. Apologies. I'm going to call until I get four. Is that okay?

(Background talking and laughing.)

VICE CHAIRWOMAN BACON: Madeline Druno? Okay. Meredith McCanns? I have a Dustin last name -- okay. I'm going to keep calling -- one more. Hannah Brodski. Okay. Thank you all. We'll go ahead and begin with whoever wants to go first. Just state your name and any organizations you choose to represent. Go ahead.

ANAYA ROBINSON: Thank you, Madam Chair and committee members. I'm Anaya Robinson, the senior policy strategist with the ACLU of Colorado here today in support of House Bill 1017 (sic). I'm also a transgender man. This bill is simple. It aligns the courts' consideration of good cause in hearing about name changes with our state statutory recognition and protection of gender identity as a protected class.

We know that the data shows that access to jobs, access to housing, access to healthcare are all [58] disproportionately impacted by the connection between our gender identity, our gender expression, and our name. Jobs, housing, healthcare are all things that we know, based on data, significantly increase individual, family, and community stability and significantly decrease recidivism rates. But most importantly this bill protects and uplifts the dignity and humanity of trans Coloradoans, dignity and humanity that inherently exists and are too

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often denied, blocked, and attempted to be erased by the society in which we live.

It has been suggested that this bill also does some things that it absolutely does not. It does not allow an individual to hide or even distance themselves from a felony record. It does not alleviate the requirement that an individual with a felony submit their name change to state and federal authorities as an alias to be listed along with any previously used or assumed names on their records. It does not change an individual's Social Security number or fingerprints. It simply allows individual to have legal verification of the name that best represents who they are and allows them to have greater access to safety when needing to show identification for any purpose, safety that should not be denied simply because of a person's history.

This bill does nothing to decrease the [59]safety of individuals, families, or communities. In fact, it does the opposite of that. It creates safety for more individuals, families, and communities. It increases access to housing, healthcare, and employment, and it keeps more trans people alive. As a representative of the ACLU of Colorado, I ask you to vote yes on House Bill 1071. And as a member of the trans community, I ask you to vote yes on this bill. Thank you.

VICE CHAIRWOMAN BACON: Thank you. Whoever would like to go next.

JOHN ARCEDIANO: Good afternoon. Thank you, Madam Representative. My name is John Arcediano. I am

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a program and outreach manager for an organization out of Colorado Springs, and I work very closely with Club Q survivors. I myself am also a Club Q survivor of the incident that took place on November 19th.

As somebody who works closely with Club Q survivors, this bill would be imperative to help increase the notability of people in the system having their actual names out in the public, and we have found that with -- with the Club Q survivors specifically there was a huge influx of them not being able to get the resources because of their lack of interest or knowledge of their actual names. And so we just ask that this bill be

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[69]harm to our children. It makes children more vulnerable and unsafe when we let people make lies saying who's harming our kids. As my friend Posha likes to say, if you want to fight predators, you look at your family first.

This bill has -- the opposition has -- it has nothing to do with name change. It is about transphobia. And instead of focusing on the overwhelming statistical evidence that sex abuse happens in the home, it has nothing to do with name changes. Don't believe them. And I urge you any time people come up and start saying these lies, stop them. Because when we let them just stand there, it puts more kids at harm. Thank you.

VICE CHAIRWOMAN BACON: Thank you. Okay. Would you like to go, please? Just share your name and any organization if you'd like to represent one.

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CLAIRE SANNIER: Yeah. Hi. My name is Claire Sannier. I'll be representing myself. Good evening, committee members. I have been proud to live in Denver for the last 11 years. I'm a proud woman. I'm a proud lesbian. I'm a proud feminist. I'm a proud anti-racist community activist. I feel perfectly neutral about being a software engineer, and more relevantly I'm proud to be trans. Trans people deserve our names. Ultimately, with all the details pushed to the side, [70]that's what's in question with this legislation. Do you believe or do you not believe that we deserve the basic dignity of our own name? Your vote yes or no will give us the answer.

This bill's opponents will have you believe there's a safety issue here. This rhetorical strategy should be very familiar to any feminist who has watched the assault of abortion rights over the past century. Misogynists imagine masses of parents deciding to have late-term abortions on a whim and then use this fantasy to frantically petition the legislators and courts in the name of averting this hypothetical crisis.

Here in reality late-term abortions are a minuscule fraction of abortions performed only in extreme medical situations, and abortion access remains in reality necessary life-saving healthcare. I expect better analysis from so-called feminists and advocates for women. Like anti-abortion misogynists, transphobes have very active imaginations. One opposing witness, who wasn't ejected for bigotry, spun a yarn about so-called predators pretending to be trans women in order to evade the law and the community.

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This is a favorite story of transphobes promoting bathroom bills and other hateful legislation nationwide. This fever dream of the pretend trans [71]predator has no precedent, has never happened, and is based on nothing but bigotry. It is always utterly clear that these so-called feminists have never known a trans person. What we are as trans people is not something someone can simply pretend to be.

I also want to categorically reject the dehumanization of felons. People with felony convictions are full human beings who deserve love, care, and respect, not to be dehumanized and used as political cudgels in the ongoing culture wars. The way this bill's opponents refer to felons as a class was to me unacceptable.

All this said, there is a safety issue at hand. Trans people who are unable to obtain legal name changes are vastly less safe with vastly less access to housing, healthcare, and employment. I was very lucky to be able to change my name in Colorado, but it was pretty difficult. I had to get my fingerprints taken. I had to get a background check from the Colorado and Federal Bureaus of Investigation. I had to file paperwork with the Social Security Administration. Nothing that married women who change their names have to do.

I'm fortunate that I didn't have a felony on my record. I don't even know how much more difficult [72]it would have been. At any rate, there's no risk of the government forgetting my dead name despite there being no reason for them to track me. There's no legitimate reason, certainly

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not a safety reason, to make this already onerous process more difficult. Tiara deserves her name exactly as much as I deserved mine. Thank you.

VICE CHAIRWOMAN BACON: Thank you. Please go ahead. Welcome back to the table.

JENNIFER IVERSON: Good evening. My name is Jennifer Iverson. My pronouns are she/her. I am a 23-year resident of Douglas County and the proud mother of two loving, beautiful transgender humans. My kids unfortunately do not feel safe coming here today, and so I came here so that their voices could be heard. And from the display that happened, I'm glad that I did. I fully support this bill.

First, I'd like to address concerns other testimonies have brought up about name changes putting their communities in danger. Fearmongering and misconceptions only serve to perpetrate -- perpetuate -- excuse me -- discrimination and harm against transgender individuals. I have never feared a transgender person. They are not the group of people statistically likely to commit sexual assault. It's crucial to base our policies and decisions on facts and evidence rather than

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[82]care what's in the statute. What I care about is that -- I mean, a name, your name, is so fundamental to who you are. And you get to have your name because that's you, and that belongs to you. And if there are impediments,

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we should get them out of the way so people can be who they are, and that's it. I'm a yes. Thank you.

CHAIRMAN WEISSMAN: Rep Herod and then Madam Vice Chair.

REPRESENTATIVE HEROD: Thank you, Mr. Chair. You know, I -- I'm not going to apologize for my colleagues because I don't believe they all deserve to have that from me. But I do want to apologize to you on behalf of this institution, Maya, for what you just endured from one of my colleagues. It's wrong that people should be verbally assaulted in this building simply for being who they are and coming to testify. So I honor you. I don't apologize for him, though. He doesn't deserve that. He deserves whatever out there you gave him. But I look forward to having a conversation with you to get more details about what happened.

MJ, I heard your testimony as well. Whatever happened outside with you being misgendered walking into this building, I want to have a conversation with you so that we can have a conversation with those who need to understand what it's like to treat a black [83]woman with respect.

(Clapping.)

So I look forward to having that conversation with you after committee as well to get more information.

Tiara, you are brave, and you continue to be. What you faced today was -- was violence that I'm sure you face

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on a multitude of magnitudes, you know. But you stood there bravely, and you continued to fight.

All of you all who are here tonight who have felt so alone in so many places, who have felt this building is not for you, who have felt these laws are not for you, who have felt like you have been -- who you have more opposition than you have support, know that is not true. In Colorado we support you, and we affirm your identities. Our bill sponsor also is brave in everything she is enduring right now, everything. We see you.

I want you all to look around at each other. We see you. But I want you all to look around at each other. You all have a lot more support in this room than you have opposition. The folks who continue to harass you online, who make comments in passing, who choose to be anonymous, you all have showed up and said, Despite you, we will make the world better for everybody like us and everyone who deserves to be looked at in the [84]eye and be treated with respect. That's commendable.

Your testimony and your being here tonight, especially to Ms. Tiara, will go down in the history of Colorado, in the history of our state. When you have felt like you were being washed away or ignored or ostracized, now in Colorado as we move forward, but even just today with what you've done and how brave you are to put your name on this bill, you are now going to be in the history books of Colorado despite how many people want to erase you. That's amazing. That's amazing.

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So today I'm proud to vote yes on this bill. I hope my colleagues do the same. I look forward to continuing to fight along side of my brave colleague as she continues to endure what so many don't see but continues to stand up and fight every single day. We are with you all. We will continue to be with you all. This building is for you. Thank you.

CHAIRMAN WEISSMAN: Thank you. All right. Madam Vice Chair.

VICE CHAIRWOMAN BACON: Well, thank you, Representative Garcia, for bringing this bill forward. Thank you to all of you who came to testify today, and thank you all. I echo the sentiments on bravery.

I really wanted to kind of talk a little [85]bit about why it is that -- the days that I love this country and why. And even though I know -- I may not know your experiences, some of the pain that you may have endured, I've experienced a little bit of my own just being in this skin. And this just reminds me of a phrase that I learned a long time ago, that "The journey is never long when freedom is the destination." And so on the one hand I want to acknowledge how long the journey has been, but on the other I just want to acknowledge what could be on the other side.

The reason why I kind of led with, you know, there are days I have to be like, I love my country. Jesus, I love my country to get through the day. There are some things that I really lean on for that, and I just feel like we heard kind of like a lot of contradictions that I want to put down

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for now. So there are some -- so my colleague says this all the time. It's called the Department of Corrections, not the department of once a felon always a felon, and you're thrown away. And there's so many people who just want to invest in that, and I have to question what their beliefs are.

I heard people question, quite frankly, the diligence, if not skills, of law enforcement, judges, the FBI, that people regularly advocate we need to invest more in, but somehow today they're all ill-equipped and [86]are terrible at their jobs, you know. I heard people saying, In fact, I have to put myself out there more just to seek my name.

And quite honestly, not -- you know, not to list all the things in constitution -- in the constitution about due process and whatnot, but there's also things in the constitution around equality. And quite frankly, I'm concerned that we might have an equal protection issue as an attorney. But I do think this law conforms with the direction in which we want to go and which we have named the -- we have named in statute discrimination can occur based off of gender identity and expression, in the workplace, and outside.

And so to note that we have to put this in statute just to acknowledge where we have already put in statute what it is that we find to be equal protection behooves me, but I'm happy to vote on it today. The notion that it depends on ZIP code is not what good jurisprudence is. That's not what belief in equal protection is, and so I can't imagine us advocating saying, These are tenants of this country but we don't believe in.

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So even when it comes to speech, I think there's one thing to be said about being able to express an opinion. But for what it's worth, we don't allow [87]people to defame and harass and even yell fire in a crowded room. And on behalf of this institution, I can say I'm working on -- maybe people can bring their opinions, but I do not allow those things and disrespect. So that's why I kind of behaved the way that I did.

So lastly, I would just like to say again just the deep gratitude in sharing your stories. I don't know. I find that this is a question of my generation where we are at in being able to see through, I guess, kind of the fear and pain to receive people for who they are. And I'm honored to be in a seat like this as a member of this generation to move us forward and to lean into the values that we say we so clearly believe in. I cannot find anything rooted in legality or even logic other than fear and hate as a grounds to not call for equality.

And lastly, I would just say that there's a real opportunity here for us as a community, as a state, as a nation to be who we said we are and another quote to commit to what we said on paper. So thank you again for bringing this bill. I look forward to supporting it.

CHAIRMAN WEISSMAN: Thank you. Members, other comments? No? All right. Rep Garcia, thank you for putting yourself in the middle of this whole thing,

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EXHIBIT C

AUDIO TRANSCRIPTION OF

SENATE JUDICIARY COMMITTEE MEETING

Wednesday, March 27, 2024

House Bill 24-1071

[2](Recording started at 6:02:26 PM)

MADAM CHAIR GONZALES: The Senate Judiciary Committee will come back to order as we begin the hearing for House Bill 24-1071. As we get started on this hearing, I'd like to remind people, members of the public who are here to join us today, that it is at the discretion of the Chair whether or not to allow photography, filming, or video. As I stated at the outset of today's hearing, I will not be allowing filming and video in the committee room. And over the course of this hearing, I will also -- should witnesses feel so inclined to testify virtually without a camera, I certainly will allow that.

What we will not allow as we begin today's hearing is failing to treat one another with dignity and respect. We can disagree. That's fine. I welcome it. It's what we do here within this building, but we will not treat each other with a lack of decorum and a lack of respect. In the spirit of that, I will not -- I -- I ask of you, recognizing that the topic that we'll be taking up this afternoon -- you know, look, the bills that we have already considered in this hearing have

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included gun policy, biometric data, what happens when an individual is finding themselves in need or -- or a family is finding themselves in need of placing an individual under [3]a guardianship or a conservatorship. It's complicated and weighty issues. And the last bill that we consider today, name change to conform with gender identity, is also an important and intense topic of discussion.

I -- I ask of you each to refrain from clapping or booing or snapping. This is -- I don't know if you can appreciate this, but this is a beautiful room, recently renovated. But the acoustics in this room, not great. And so in order for us to actually hear one another and to listen to one another, I ask that you refrain from -- from that and help us preserve that sense of decorum so that we actually can proceed with the witness portion of this hearing.

I'd like to begin also by thanking our sergeants who help to make -- to ensure that everyone can share their perspective, whether they are in support of or in opposition to this policy -- to this policy that we'll be hearing testimony on today. In the event that there is a breach of that decorum, I will ask the sergeants to remove you, okay? So can we all agree to just treat each other with a little bit of decorum and dignity and respect here today?

With that, I'd like to proceed forward and welcome Senator Michaelson Jenet and Senator Priola to tell us about House Bill 1071.

[4]SENATOR MICHAELSON JENET: Thank you so much, Madam Chair. A right is not truly a right when

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someone cannot access it. House Bill 24-1071, Tiara's Law, is a bill intended to ensure that everyone has access to a law that promotes humanity and dignity. This bill will clarify what is currently ambiguous language, leaving some of our community members from being able to access a law that allows people who have a felony on their records to petition for a name change for gender-affirming reasons under good cause as would a person with a felony on their record who seeks to change their name for a good cause such as marriage.

Nothing about the process on how to petition for a name change is -- is different. The final determination still lies with the court. Their criminal records still follow them. This bill does not in any way allow someone to hide their criminal records. This bill, Tiara's law, promotes humanity and dignity.

You will hear stories about how the way the law as currently written limits access to critical support in cases of natural disasters and tragedies, including the Club Q shooting, because of being forced to use a legal name that they do not identify with. You'll hear about how something many of us take for granted, having a name that matches and affirms our gender [5]identity, even those with felonies who affirm their identity by changing their last names when they get married, can be and is out of reach of others.

As we continue with this committee hearing, I want to thank all of my colleagues on both sides of the aisle to engage in respectful discourse, and I'll elevate the words of our Chair by not engaging in derogatory language or

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misgendering witnesses or using a witness' dead name, but rather refers to the witnesses with their stated names and gender pronouns. I sincerely hope that the witnesses signed up will also engage in respectful discourse and share their perspective and opinion on this bill by not disparaging other members of our community or other witnesses.

MADAM CHAIR GONZALES: Senator Michaelson Jenet, I very much appreciate that addition and to our -- to the rules of decorum, courtesy, dignity, and respect. And thank you for naming it, and I will ask that of our committee as we proceed forward. Thank you.

Senator Priola.

SENATOR PRIOLA: Thank you, Madam Chair and members of the committee. I know we're towards the end of session, and there's really a lot going on, and we're all very tired. I also am aware that there's a long witness list. So in that spirit I'll keep my [6]comments short because I think my cosponsor summed the bill up beautifully. This is a relatively short bill, three pages, no fiscal notes. So the motion's to the COW. You know, I support the policy, and it aligns with current statute in a number of ways. And it's simply about folks identifying as they may to get the same documents in the -- in the name that they prefer. So with that I'll open it up to any questions.

MADAM CHAIR GONZALES: Thank you, Senator Priola.

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Colleagues, do we have any questions for our senate sponsors before we enter the witness portion of the hearing?

Seeing none, thank you for introducing this bill for us to consider. I am going to -- as we now shift into the witness portion of this hearing, I will be calling folks up in alternating panels of proponents and then opponents. If you have been with us here since, I don't know, 1:30, you will see that we try our very best to allow for folks to have their time to share their perspectives with us.

And so for folks who will be testifying in person, there is a little black box with three lights. Green means go. Yellow means red and -- yellow means you have 30 seconds left. That was a test. You all were [7]listening. And red is an invitation to conclude your remarks. The same is, in fact, the case for folks who will be participating remotely. Again, I have asked that there be no filming or videography -- or videos -- filming videos or photos taken during the pendency of this hearing.

With that, I will welcome our first panel up. Thank you. If you have not yet signed up to testify on this bill and, in fact, wish to do so, I encourage you to visit our Sergeant at Arms table here in order to get signed up on this panel. With that, I am going to call our first panel of proponents and then after will call a panel of opponents. I'll welcome Erika Unger, Tiara Kelley, Dr. Olivia Compton, and Garrett Royer.

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Welcome, Ms. Unger. If you can please state your name and any organization you may represent and proceed to testimony. You'll have three minutes.

ERIKA UNGER: Good evening, members of the committee. My name is Erika Unger, and I'm the codirector of Bread and Roses Legal Center. I represent people seeking name changes, including folks with prior felony convictions across our state. This bill proposes a modest change to the current name change framework that simply says that someone's gender identity, their existence, satisfies the requirement of good cause. It

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[10]unwilling to take. This bill changes that. It makes it clear someone's existence is good cause and makes name changes accessible to some of the most vulnerable members of our community, and I ask that you support. I'm also happy to answer any questions, if there are any.

MADAM CHAIR GONZALES: Thank you, Ms. Unger. I appreciate your testimony. Next I'd like to welcome Tiara Kelley. Welcome.

TIARA KELLEY: Hi. Is it on? Thank you so much, Madam Chair. As you know, my name is Tiara Kelley, and this bill is loosely named after me. I have felonies in my past from survival work that I had to do as a trans black woman growing up in Florida. I've always been very open and honest about that. I've done national news stories, national news television shows. There have been

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documentaries. So it's never been a secret. It's never been something that I've ever tried to hide.

So the -- and I say that because I -- I've heard the opposition say that the reason why we are wanting this is so that we can hide from the things that we've done in our past, which is impossible. As Ms. Unger already said, that everything follows me, and it will always follow me, and I'm fully aware of that. I married my amazing husband eight years ago, and I took [11]his last name eight years ago, which means that the name that is on my identification right now is not the name that I was born with. However, the opposition had zero problems finding anything that they wanted to find on me, and it would be the same exact thing if my first name was changed.

So I think my -- my -- my whole message today would be that this is more about affirming -- being able to walk into a doctor's office and present your ID and wait to be called back to the doctor's office and not have to be dead named or have to have the whole building know a name that you don't even identify with or something as simple as being able to cash a paycheck without an issue because the name on your ID doesn't match the person that you're presenting as.

And this is actually how this bill came into fruition, is during -- after Club Q -- I was a producer at Club Q, and so there were many of the benefits and help that was -- I was unable to access or that I had difficulty accessing because of my name not matching. There were times that I had to call up Bread and Roses and have them identify

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who I am. Like it's -- it's very demeaning to have someone else have to identify who you are. So I ask that for that reason that you will vote yes on this bill.

[12]MADAM CHAIR GONZALES: Thank you so much for your testimony. Welcome.

DR. COMPTON: Is it on?

MADAM CHAIR GONZALES: There is a little gray button on the neck. There you go.

DR. COMPTON: Can you hear me now?

MADAM CHAIR GONZALES: Yes.

DR. COMPTON: Thank you, Madam Chair and members of the committee. My name is Olivia Compton, and I am here to testify in favor of House Bill 1071 as both a trans woman and a Ph.D. economist. So typically, we might not think of a name change as being related to economics or economic theory. So I'll try and give you a flavor for it.

So in ECON 101 we typically talk a lot about the role of property rights and the ability to exercise authority over not just property but also possession. And we also like to extend that to discuss the role of exercising prop -- rights over our bodily autonomy, the right to use whatever name we want, for instance.

And if we deny someone the right to use their preferred name or name that matches their gender identity, we're

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potentially subjecting them to bigotry and violence, which can cause some members of our

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[22]Christina Goeke. First things first, yep, let's turn your microphone on. There you go. Am I pronouncing your name correctly?

CHRISTINA GOEKE: Goeke, yes ma'am.

MADAM CHAIR GONZALES: Goeke? Okay. I'm trying. Welcome. Thank you for joining us. If you can please state your name, any organization you represent, and proceed to testimony. You'll have three minutes.

CHRISTINA GOEKE: Thank you, Madam Chair. My name is Christina Goeke. I am a resident of Colorado Springs and cofounder of Rocky Mountain Women's Network. I am here to voice my opposition to HB24-1071, also known as Tiara's Law. I am blown away that felons were ever given the right to change their names, and I believe we should not be making it easier. A convicted felon should be aware that there are consequences to their actions. Otherwise, what is stopping people with no conscience from committing crimes?

Also, allowing felons to legally change their name is dangerous to the public. The public does not have access to people's Social Security numbers. The best we can do when sizing up a potential friend, a love interest, or babysitter is a Google search or use a website like TruthFinder. If we don't even have the correct name of the person we are

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looking into, how would [23]we know if they were a sex offender, pedophile, or murderer?

The proponents of this bill will say that the crimes stay with the Social Security number of the felon, but how does that help the general public? We do not give each other our Social Security numbers. We give each other our names. This bill would make it easier for predators to target single moms, young women, and children. There is no reason why we should be helping felons to make it easier to hide their crimes. Does Colorado value the feelings of convicted felons more than that of women and children who will most likely be put in more danger by this bill?

This law is named after Mr. Duane -- has given himself Tiara. Mr. Duane Powell took the name --

MADAM CHAIR GONZALES: I'm sorry.

CHRISTINA GOEKE: -- Tiara Latrice to appropriate a female name and to impersonate women --

MADAM CHAIR GONZALES: Excuse me.

CHRISTINA GOEKE: -- while hiding his former crimes.

(No audio from 6:34:41 PM to 6:36:35 PM.)

ELLEN DAEHNICK: -- a bill, and I urge you all to vote against it. The name sounds appealing, Tiara's Law. It sounds sparkly. It sounds kind. It [24]sounds harmless,

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but that's a smokescreen. This bill's result will be violent criminals claiming a new gender identity solely to change their names, and judges won't be able to stop it. Currently, if a felon requests a name change, a judge can grant it if the judge determines that the felon has chose -- shown good cause to warrant the name change, but this bill removes a judge's discretion.

Instead, under this proposed law, any criminal, even a violent offender, can assert that he feels like he is a different gender, and that feeling is the one and only thing that in and of itself constitutes good cause. So the judge will be forced to grant the name change. This bill creates incentives for bad actors to claim a different gender so that they can change their names. There's no limit in the bill regarding the crimes the petitioner could have been convicted of.

For example, men convicted of sexually assaulting children can claim in bad faith to be women solely to be able to change their names, and judges will have to grant those name changes. If you think that won't happen, you're being naive. If there's anything we know about safeguarding, it's that you don't protect against the most likely case. You protect against the predators because bad guys look for any opening.

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[49]I believe that should this bill pass, we will see a dramatic increase in people able to obtain jobs, able to obtain secure jobs, able to obtain secure housing, able to

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acquire transportation and other opportunities within the community that, like I said, many of us take for granted on a daily basis.

MADAM CHAIR GONZALES: Thank you. Thank you for the clarification and thank you for that insight. That's helpful.

Seeing no further questions in panel from members of the committee, thank you again for sharing your perspectives with us as we -- as we consider this bill.

I'm going to call our next panel of opposition witnesses. Welcome -- let me see here. I will welcome Dr. Rich Guggenheim, Shannon Johnson, and anyone else who has not yet signed up in the audience or online. If you're online, just go ahead and raise your hand virtually, and we will acknowledge you. Come forward, and we will hear your testimony.

Dr. Guggenheim, welcome.

DR. GUGGENHEIM: Thank you, Senator Gonzales.

MADAM CHAIR GONZALES: State your name, any organization you represent, and then proceed to [50] testimony. You'll have three minutes.

DR. GUGGENHEIM: My name is Dr. Rich Guggenheim. I'm a homosexual resident of Denver representing myself. I'd like to take a moment of your time to share with you a prominent piece of the gay and

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lesbian liberation movement from Stonewall. I want to tell you about the history of Mike -- Malcolm Michaels Jr. and Tony Rivera. Both were gay, black men, sex workers, drag queens, and convicted felons. Both were well-known in the gay community in the 1960s and '70s. Malcolm may be more familiar to you by his drag name Marsha P. Johnson. Marsha P. Johnson is also falsely identified today with a -- as a transgender woman. Malcolm was frequently seen with Tony Rivera, who went by the drag name Sylvia.

MADAM CHAIR GONZALES: I'm sorry. I am going to -- again, Dr. Guggen- -- Dr. Guggenheim --

DR. GUGGENHEIM: Please continue.

MADAM CHAIR GONZALES: -- I did ask at the onset of this hearing that we refrain from dead-naming or misgendering people. I welcome you to proceed forward with the rest of your comments should you wish to continue.

DR. GUGGENHEIM: I have not misgendered or dead-named anybody. These are historical facts, and both [51]of these people went by these --

MADAM CHAIR GONZALES: Your microphones is off. So I can't hear what you're saying. If you'd like to proceed, you have 1 minute and 41 seconds remaining. Please proceed.

DR. GUGGENHEIM: Both were heavy cocaine users. In fact, the false narrative that Marsha threw the

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first brick, yet Marsha never even admitted to even being at Stonewall and was instead with Sylvia, who was passed out from cocaine on a bench in Bryant Park. Marsha and Sylvia are also known for running the Star House, a home for gay runaway boys as young as 10. Star House is described as a child prostitution operation and shelter. The owner of the building made boy-on-boy porn. The children were sex trafficked on 42nd Street by Rivera and Michaels for Matty Lenao (phonetic) and his crew. So here we have another former felon, black, gay, man, sex worker, who identified as transgender and --

MADAM CHAIR GONZALES: Again, I'm sorry. Dr. Guggenheim, thank you for joining us and sharing your perspectives with us today.

DR. GUGGENHEIM: Thank you.

MADAM CHAIR GONZALES: That concludes the opposition witnesses. And Shannon Johnson?

I'm now going to shift over to our next

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EXHIBIT D

AUDIO TRANSCRIPTION EXCERPT OF
SENATE JUDICIARY COMMITTEE MEETING

Wednesday, March 27, 2024

House Bill 24-1071

[2](Recording starting at 31:20.)

MADAM CHAIR GONZALES: I'll welcome Christina Goeke. First things first, yep, let's turn your microphone on. There you go. Am I pronouncing your name correctly?

CHRISTINA GOEKE: Goeke, yes ma'am.

MADAM CHAIR GONZALES: Goeke? Okay. I'm trying. Welcome. Thank you for joining us. If you can please state your name, any organization you represent, and proceed to testimony. You'll have three minutes.

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their actions. Otherwise, what is stopping people with no conscience from committing crimes?

Also, allowing felons to legally change their name is dangerous to the public. The public does not have access to people's Social Security numbers. The best we can do when sizing up a potential friend, a love interest, or babysitter is a Google search or use a [3]website like TruthFinder. If we don't even have the correct name of the person we are looking into, how would we know if they were a sex offender, pedophile, or murderer?

The proponents of this bill will say that the crimes stay with the Social Security number of the felon, but how does that help the general public? We do not give each other our Social Security numbers. We give each other our names. This bill would make it easier for predators to target single moms, young women, and children. There is no reason why we should be helping felons to make it easier to hide their crimes. Does Colorado value the feelings of convicted felons more than that of women and children who will most likely be put in more danger by this bill?

This law is named after Mr. Duane -- has given himself Tiara. Mr. Duane Powell took the name --

MADAM CHAIR GONZALES: I'm sorry.

CHRISTINA GOEKE: -- Tiara Latrice to appropriate a female name and to impersonate women --

MADAM CHAIR GONZALES: Excuse me.

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CHRISTINA GOEKE: -- while hiding his former crimes. Are you going to tell me that I cannot speak truthfully now? I must lie to speak? I will not tell a lie. A man is a man. His name is Duane Powell.

[4]MADAM CHAIR GONZALES: And I am telling you, Ms. Gake -- Goek -- Ms. Goeke, that as we stated --

CHRISTINA GOEKE: Go ahead. Tell me.

MADAM CHAIR GONZALES: As we stated, there will be no misgendering or dead-naming.

CHRISTINA GOEKE: I do not respect (inaudible) at all because that would force me to lie, and I will not lie about someone's sex.

MADAM CHAIR GONZALES: You can continue --

CHRISTINA GOEKE: Do you want to infringe on my free speech? Because this is my time. You are violating my First Amendment rights if you tell me that I cannot call a man a man. How can I advocate for women if I can't even define what a --

MADAM CHAIR GONZALES: Welcome.

CHRISTINA GOEKE: -- woman is?

MADAM CHAIR GONZALES: Welcome. Thank you for being here. If you would like to proceed with the remainder of your time, you certainly can. You have 24 seconds remaining.

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CHRISTINA GOEKE: Okay. Mr. Duane was admitted that he --

MADAM CHAIR GONZALES: Again --

CHRISTINA GOEKE: -- was engaged in prostitution --

[5](Banging of gavel.)

CHRISTINA GOEKE: -- not only (inaudible) he was a felon (inaudible) changing his name, but he was trying to hide the fact that he is male.

MADAM CHAIR GONZALES: Thank you.

CHRISTINA GOEKE: A felon with a sex crime history should not be allowed to change his name.

(Soft background talking that is inaudible.)

MADAM CHAIR GONZALES: Have a good day.

Have a good day. Thank you.

(Recording ended at 34:54.)

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