NO. 23-_____

# In the Supreme Court of the United States

TERPSEHORE MARAS,

*Petitioner,*

v.

MAYFIELD CITY SCHOOL DISTRICT BOARD OF EDUCATION, ET AL.,

*Respondents.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

The District Court for the Northern District of Ohio dismissed the Amended Complaint filed by Petitioner Terpsehore Maras on her personal behalf and on her daughter's behalf against the Mayfield City School District Board of Education ("MCSD"), its Superintendent, and Board reasoning that parents cannot represent *pro se* their minor children. The United States Court of Appeals for the Sixth Circuit affirmed dismissal of the Amended Complaint solely on the alternative ground of mootness given the Petitioner's daughter graduated from MCSD's high school during the pendency of the litigation.

The two questions presented are:

1. Under 28 U.S.C. § 1654, do minors have *pro se* rights that can be asserted by their parents on their behalf based on a parent's fundamental right to control their child's legal claims?

2. Does the mootness doctrine bar adjudication of a claim brought by a parent when the claim of her minor daughter in the same action terminates by virtue of mootness?

## PARTIES TO THE PROCEEDINGS

**Petitioner and Plaintiff-Appellant below**

- Terpsehore Maras

**Respondents and Respondents-Appellees below**

- Mayfield City School District Board of Education
- Dr. Michael J. Barnes, in his individual capacity as Superintendent of the Mayfield City School District
- Rob Fornaro, Sue Groszek, Al Hess, George J. Hughes, and Jimmy Teresi, in their individual capacities and as members of the Mayfield City School District Board of Education.

## LIST OF PROCEEDINGS

U.S. Court of Appeals for the Sixth Circuit

No. 22-3915

Terpsehore Maras, *Appellant*, v. Mayfield City School District Board of Education, et al., *Appellees*.

Date of Final Opinion: February 6, 2024

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U.S. District Court, Northern District of Ohio

No. 1:21-cv-1711

P.M., a Minor, By and Through her Parent, Terpsehore Mares, and Terpsehore Maras, *Plaintiffs*, v. Mayfield City School District Board of Education, et al., Defendants

Date of Final Order: September 30, 2022

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## OPINIONS BELOW

The Sixth Circuit's opinion is unpublished but available at 2024 WL 449353. (App.1a). The district court's opinion is unpublished but available at 2022 WL 22339291. (App.16a).

## JURISDICTION

The Court of Appeals for the Sixth Circuit entered judgment on February 6, 2024. (App.1a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**U.S. Const., art. III, § 2, cl. 1**

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority.

**U.S. Const., amend. I**

> 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.

**U.S. Const., amend. V**

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**U.S. Const., amend. IX**

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**U.S. Const., amend. XIV, § 1**

> 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.

**28 U.S.C. § 1654**

> In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

## INTRODUCTION

Judge Murphy—author of the Sixth Circuit opinion subject to this Petition, realized during oral argument the significant issues raised by this case:

> [C]hildren just simply do not have *pro se* rights because they can't represent themselves and their parents can't represent them. So they can only litigate through counsel, and I guess that's somewhat concerning to me. . . . It seems to me it's prioritizing wealthy parents in some respects. Why should parents have the right to forgo or eliminate their children's claims or litigate their children's claims if they have the means to retain counsel but indigent parents simply don't have the same right? That seems somewhat troubling to me, especially—I mean, you could say well the child could wait 'til the age of majority, but if it's an emergency situation like the facts of this one where they're seeking an injunction, I don't think that is feasible. And then I suppose your response was well everybody can get counsel, but obviously she didn't until appeals, so I guess this is the case that proves that that's not true. . . . it seems strange

> to say that lawyers stand between a child and a right to a courtroom.[1]

Judge Murphy was not alone in voicing his concerns. Judge Nalbandian went so far as to recognize that the federal *pro se* statute was agnostic as to age minimums: "I mean, under [28 U.S.C. §] 1654, everybody has a right to represent themselves basically, right? There's no age requirement in 1654."[2] And, Judge White also recognized: "But if you go by that rationale [that the case was without merit], then you're basically deciding it without her voice because no one's representing her."[3]

Despite the Sixth Circuit's acknowledgment that the appeal before it raised "weighty questions about when parents who cannot afford lawyers may sue to protect their children's rights" it ultimately chose to circumvent resolving these "weighty" issues in favor of affirming the dismissal on mootness grounds. Sixth Cir. Op. at 1, App.2a. Respectfully, this Court should address the serious issues raised by this case given the mootness doctrine does not apply to Petitioner's own personal claims for damages.

Petitioner's parental rights were always inextricably bound with the constitutional rights belonging to her and her daughter. To that end, the District Court's dismissal based on Petitioner's lack of standing

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[1] https://www.opn.ca6.uscourts.gov/internet/court_audio/audio/10-24-2023%20-%20Tuesday/22-3915%20Terpsehore%20Maras%20v%20Mayfield%20City%20SD%20BoE%20et%20al.mp3 (Official Audio at 20:20 and 21:38) (emphasis added).

[2] *Id*. at 23:23.

[3] *Id*. at 25:08.

to represent her then-minor daughter adversely impacted Petitioner's own separate claims. By accepting this Petition, the Court can clarify whether children have actual *pro se* rights under 28 U.S.C. § 1654 that are enforceable by their parents or whether only children of financial means can ever enter a federal courtroom to enforce their personal rights. Moreover, only after resolution of this issue will Petitioner be able to determine the scope of her own surviving separate claims.

## STATEMENT OF THE CASE

If a party cannot afford a lawyer and is denied the ability to proceed *pro se*, the ability to enforce fundamental rights through the judicial process are improperly taken away. That is exactly what happened here. Moreover, the fact the sought-after injunctive relief was no longer required given the harmful conduct ceased and Petitioner's daughter graduated from high school does not render Petitioner's claims any less live or worthy of adjudication.

P.M.—who is no longer a minor, previously attended high school in the Mayfield County School District ("MCSD") and Petitioner Terpsehore Maras is her mother. Petitioner's Amended Complaint ("PAC") ¶¶ 1-2. App.33a. Respondents are state actors consisting of a public entity and duly elected or appointed public officials who mandated mask wearing despite well-documented evidence that an "all day" masking requirement is neither effective at stopping the spread of the virus particle that causes COVID-19 nor is safe

given the short-term and long-term harm to young students. PAC ¶ 49, App.58a (quoting from sworn affidavit of Stephen E. Petty—an expert in the field of Industrial Hygiene who has been qualified as an expert witness in approximately 400 cases involving personal protective equipment and related disciplines). Petitioner filed her action *pro se* on her own behalf and on behalf of her daughter seeking injunctive relief given such required mask usage was physically harmful to students, including her minor daughter. PAC ¶ 49 at 23-25, App.58a.

### A. The District Court Proceedings

Appearing *pro se*, Petitioner filed her Amended Complaint on October 1, 2021 recognizing: "Nothing in the United States Constitution states or even suggest[s] that parents of minor children do not have the right to seek redress in the courts in order to protect the health and safety of their children, and thus, Petitioner retains this right to protect her minor child, Plaintiff P.M." PAC ¶ 69, App.23a. Believing otherwise, the District Court dismissed the case—including claims individually brought by Petitioner. App.142a.

On September 30, 2022, the District Court ruled as follows:

> Defendants assert two bases for dismissal of Plaintiff's Amended Complaint. First, Defendants argue that Plaintiff lacks standing to bring her action because it is well-settled in this Circuit that a *pro se* plaintiff may not bring an action on their child's behalf, stating that, "Plaintiff is not an attorney and she is thus prohibited from asserting a claim *pro se* on her daughter's behalf. This alone

> requires dismissal of the Complaint." (Mot. at PageID #533, 21-1.) Next, Defendants maintain that Plaintiff has failed to state a claim for relief under each of her causes of action. . . . Plaintiff counters by asserting that she possesses standing to bring her case because "[a]s the mother of P.M., [she] is empowered to assert her own fundamental constitutional rights." (Mot. at PageID #578, ECF No. 23.) Next, she argues that her present allegations are well-pled and therefore sufficient to survive Defendants' Motion to Dismiss (ECF No. 21) because, "[t]he applicable 'plausibility standard' is certainly not akin to a 'probability requirement' . . . the test here is whether well-pled allegations give rise to plausible claims. Nothing more is needed, and such standard is respectfully met in this case." (*Id*. at PageID #582.) After reviewing the parties' arguments and relevant case law, the court finds Defendants' position well-taken.

Dist. Ct. Op at 7, App.18a (emphasis added). Petitioner filed a notice of appeal on October 28, 2022. App.16a.

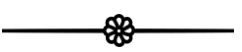
### B. The Court of Appeals Proceedings

While Petitioner appeared *pro se* in the District Court she retained counsel for her appeal in the Sixth Circuit as well as this Petition for Writ of Certiorari with this Court. After the initial briefs were filed with the Sixth Circuit and the first oral argument was conducted, the Sixth Circuit entered an Order on October 31, 2023 inviting "the parties to file supplemental briefing on any legal and factual issues pertaining to the question whether this case is moot." Sixth Cir.

Order, App.15a. After such briefing, the Sixth Circuit filed its opinion and judgment on February 6, 2024. App.1a. The Sixth Circuit ruled as follows:

> Terpsehore Maras and her school-aged daughter sued their local school district to enjoin the mask mandate it imposed during the COVID-19 pandemic. Maras lacked counsel. The district court thus dismissed the suit because it refused to let her represent her daughter. On appeal, the parties debate weighty questions about when parents who cannot afford lawyers may sue to protect their children's rights. But we need not answer those questions. The school district has since rescinded its mask mandate, and Maras's daughter has now graduated from high school. So this case is moot. We affirm the dismissal on that alternative ground.

Sixth Cir. Op. at 1, 2 App.2a.



## REASONS FOR GRANTING THE PETITION

Respectfully, this Court should grant certiorari to determine whether parents can seek federal injunctive relief that prevents physical harm to their children both on their own behalf and that of their minor children and if so determine the framework for allowing such representation. Moreover, the mootness doctrine applied by the Sixth Circuit should be modified to consider the survival of parental claims when the claim of a minor child becomes moot during litigation.

## I. UNDER SUP. CT. RULE 10(a), THE PETITION SHOULD BE GRANTED BECAUSE THE SIXTH CIRCUIT'S RULING RESULTS IN A DECISION ON AN IMPORTANT QUESTION OF FEDERAL LAW—WHETHER A MINOR AND PARENT SHARE ENFORCEABLE RIGHTS UNDER 28 U.S.C. § 1654, THAT CONFLICTS WITH OTHER CIRCUIT COURTS

For more than 200 years, courts have recognized that the ability to file suit and obtain redress for an injury is "[t]he very essence of civil liberty." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). Indeed, plaintiffs are "constitutionally entitled to access to the courts." *Jones v. Clinton*, 72 F.3d 1354, 1360 (8th Cir. 1996), *aff'd*, *Clinton v. Jones*, 520 U.S. 681 (1997). *See also Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896-97 (1984) ("[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government."); *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 511 (1972) ("The right of access to the courts is indeed but one aspect of the right of petition.").

When ruling on this important question of federal law, namely when a parent can seek injunctive relief to protect her minor child from physical harm, the Sixth Circuit failed to parse between claims belonging to Petitioner and that of her daughter. The Sixth Circuit blanketly believes that "parents cannot appear *pro se* on behalf of their minor children because a minor's personal cause of action is her own and does not belong to her parent or representative." *Shepherd v. Wellman*, 313 F.3d 963, 970-71 (6th Cir. 2002) (citation omitted). In other words, claims belonging to a minor do not sufficiently intertwine with those of a parent to allow for representation.

In contrast, other Circuits apply a more nuanced approach. *See e.g*., *Adams ex rel. D.J.W. v. Astrue*, 659 F.3d 1297, 1300 (10th Cir. 2011) (allowing a parent to represent her minor child *pro se* in a Social Security case); *Elustra v. Mineo*, 595 F.3d 699, 707 (7th Cir. 2010) (considering it permissible that a mother, *pro se*, file on behalf of her children a motion to amend the judgment of the district court.);*Tindall v. Poultney High School Dist*., 414 F.3d 281, 286 (2nd Cir. 2005) ("In our view, the rule that a parent may not represent her child should be applied gingerly."); *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ*., 297 F.3d 195, 201 (2nd Cir. 2002) (holding that it was not reversible error for the district court to allow parents to litigate *pro se* on behalf of their minor son to obtain a benefit for him); *Machadio v. Apfel*, 276 F.3d 103, 106 (2nd Cir. 2002) ("While this is not a case where only the plaintiff's interest is at stake, neither is it one affecting the interests of multiple parties with different interests. Under the Commissioner's regulations, the interests of the plaintiff and Charlene are closely intertwined.") (emphasis added) (allowing parent to represent minor child in SSI hearing because she met the basic standard of competency needed to proceed in an action on behalf of her daughter); *Harris ex rel Harris v. Apfel*, 209 F.3d 413, 416-17 (5th Cir. 2000) (same). *See also c.f. Spangler v. Pasadena City Bd. of Educ*., 537 F.2d 1031, 1035 n. 6 (9th Cir. 1976) ("It may well be that the district court could conclude that the minor could represent himself.").

This Petition allows the Court to interpret the scope of 28 U.S. Code § 1654 when juxtaposed with intertwined claims of a parent exercised to protect the safety of a minor child. *See Winkelman v. Parma City*

*Sch. Dist.*, 550 U.S. 516, 535 (2007) ("In light of our holding we need not reach petitioners' alternative argument, which concerns whether IDEA entitles parents to litigate their child's claims *pro se*.").

Those courts that have summarily dismissed *pro se* claims brought by parents have not considered claims where the risk of physical harm drives the sought-after injunctive relief. In the much more common scenario, a child's claims can be safely dismissed without prejudice, to accrue for purposes of the relevant statutes of limitations when the child reaches eighteen years of age. The underlying action did not have such a scenario.[4]

This Petition goes to the very core of parental responsibilities, namely the education, health and safety of a child, so Petitioner's personal rights as a single mom were always inextricably bound with the rights of her minor child. *See Winkelman*, *supra*, 550 U.S. at 529 ("It is not a novel proposition to say that parents have a recognized legal interest in the education and upbringing of their child.") (emphasis added).

The primary role of parents in managing their family was presupposed by early Americans as being so fundamental that "it probably never occurred to the Framers of the Constitution that parental rights could, as a practical matter, ever be called into question or challenged on a comprehensive scale by

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[4] This dismissal scenario still raises obvious problems for the minor. As the Supreme Court recognized in *Clinton v. Jones*, "the danger of prejudice resulting from the loss of evidence, including the inability of witnesses to recall specific facts, or the possible death of a party" is inherent whenever trial is delayed. *See Clinton v. Jones*, 520 U.S. 681, 707-08 (1997).

state apparatus." Daniel E. Witte, *People v. Bennett: Analytic Approaches to Recognizing a Fundamental Parental Right Under the Ninth Amendment*, 1996 B.Y.U. L. REV. 183, 218-19.

Petitioner's fundamental right as a single mother—including her right to conduct litigation to protect her child, exists as an independent claim protected under the Ninth Amendment. Under the Ninth Amendment: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const. Amend. IX (emphasis added). "[T]he Ninth Amendment shows a belief of the Constitution's authors that fundamental rights exist that are not expressly enumerated in the first eight amendments and an intent that the list of rights included there not be deemed exhaustive." *Griswold v. Connecticut*, 381 U.S. 479, 492 (1965).

In *Griswold v. State of Connecticut*, the liberty of married couples to buy and use contraceptives without government restrictions was found in the Ninth Amendment. Justice Goldberg explained:

> The fact that no particular provision of the Constitution explicitly forbids the State from disrupting the traditional relation of the family—a relation as old and as fundamental as our entire civilization—surely does not show that the Government was meant to have the power to do so. Rather, as the Ninth Amendment expressly recognizes, there are fundamental personal rights such as this one, which are protected from abridgment by the Government though not specifically mentioned in the Constitution.

*Id.* at 495-96.

In his concurrence, Justice Goldberg recognized that the Court "has had little occasion to interpret the Ninth Amendment." *Id.* at 490. Yet, he explained, "since 1791 it has been a basic part of the Constitution which we are sworn to uphold." *Id.* at 491. Justice Goldberg added that "[t]he language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments." *Id.* at 488.

Petitioner consistently asserted her own independent unenumerated constitutional rights as a parent by way of the Ninth Amendment. PAC ¶¶ 67-70. Such rights are fundamental because they are deeply rooted in the traditions and conscience of our country.

The Supreme Court has for over one hundred years jealously guarded a parent's liberty interests in raising children—affirming a constitutional custodial right protecting the right of parents to decide on the care and upbringing of their children. *See Troxel v. Granville*, 530 U.S. 57, 66 (2000) ("The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court."); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (labeling the liberty interest of natural parents in the management of their child "fundamental"); *Parham v. J. R.*, 442 U.S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases

have consistently followed that course") (emphasis added); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected") (emphasis added); *Moore v. City of E. Cleveland*, 431 U.S. 494, 503-05 (1977) (recognizing that "[d]ecisions concerning child rearing, which *Yoder*, *Meyer*, *Pierce* and other cases have recognized as entitled to constitutional protection" protect the sanctity of the family "because the institution of the family is deeply rooted in this Nation's history and tradition.") (emphasis added); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974) ("This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.") (emphasis added); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.") (emphasis added); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) ("The rights to conceive and to raise one's children have been deemed 'essential,' 'basic civil rights of man,' and '[r]ights far more precious . . . than property rights'") (citations omitted); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.") (emphasis added); *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) ("The fundamental theory of liberty upon which all govern-

ments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.") (emphasis added); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) ("While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to. . . . establish a home and bring up children.") (emphasis added). *See also Russ v. Watts*, 414 F.3d 783, 789 (7th Cir. 2005) (recognizing the fundamental constitutional liberty interest in the "care, custody, and control of their children") (citations omitted); *Tenenbaum v. Williams*, 193 F.3d 581, 593 (2nd Cir. 1999) ("Parents . . . have a constitutionally protected liberty interest in the care, custody and management of their children.") (citations omitted); *Hodge v. Jones*, 31 F.3d 157, 163 (4th Cir. 1994) ("[T]he sanctity of the family unit is a fundamental precept firmly ensconced in the Constitution and shielded by the Due Process Clause of the Fourteenth Amendment.") (internal citations and quotation marks omitted).

State courts have also long safeguarded these foundational rights. *See e.g.*, *In re Luscier*, 524 P.2d 906, 907 (Wash. 1974) ("The family entity is the core element upon which modern civilization is founded."); *In re Guardianship of Faust*, 123 So.2d 218, 221 (Miss. 1960) ("The family is the basis of our society."); *Lacher*

*v. Venus*, 188 N.W. 613, 617 (Wis. 1922) ("To protect the [individual] in his constitutionally guaranteed right to form and preserve the family is one of the basic principles for which organized government is established.").

Petitioner recognizes that the Ninth Amendment operates here only as a conduit for asserting her fundamental rights as a parent and the word "parent" is not found in the Ninth Amendment—nor in the entirety of the Federal Constitution for that matter. *See* PAC ¶ 69, App.75a Nevertheless, Petitioner's Ninth Amendment liberty right in parenting should have been enforced by the Sixth Circuit. As set forth above, it is a basic and fundamental right that is deep-rooted in our society and merits protection from state interference unless such interference is narrowly tailored to suit a compelling need—an inquiry not even made in this case.

Petitioner also asserted procedural due process rights. "[T]he Due Process Clause [of the Fifth Amendment] provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures." *Cahoo v. SAS Analytics Inc.*, 912 F.3d 887, 889 (6th Cir. 2019). The Fourteenth Amendment takes the Fifth Amendment's Due Process Clause and provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. V; U.S. Const. Amend. XIV. To that end, Petitioner alleged in her Amended Complaint that procedures in place were taken away prior to the implementation of the MCSD mask mandate and that it was enacted in contradiction to stated policies—violating Petitioner's

procedural due process rights as a parent. *See* PAC ¶¶ 56-60.

While the Due Process Clause under the Fourteenth Amendment guarantees fair process, it also "includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests." *Troxel*, *supra*, 530 U.S. at 65. More specifically, the Due Process Clause prohibits governmental interference with rights "rooted in the traditions and conscience of our people as to be ranked as fundamental" or "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted).

Petitioner sought such relief based on existing Sixth Circuit caselaw. *See Kanuszewski v. Mich. Dep't of Health & Human Servs.*, 927 F.3d 396, 406 (6th Cir. 2019); PAC, Prayer for Relief, App.82a. In *Kanuszewski*, the Sixth Circuit recognized parents could bring their own claims against state actors who took blood samples of their newborn children without adequate parental consent. *Kanuszewski*, *supra*, 927 F.3d at 404 ("Plaintiffs allege that Defendants violated their substantive due process rights by not allowing them to decide whether to accept or reject the medical procedure in question prior to the collection of their babies' blood."). The samples were used to test for certain diseases and then later stored at a facility accessible to the Michigan Department of Health and Human Services. The Court concluded that claims on behalf of the parents barring subsequent retention, transfer, and storage of the samples could be pursued. *Kanuszewski*, *supra*, 927 F.3d at 419-420 ("[I]t is logically the parents who possess a fundamental right to direct the medical care of their children. For these

reasons, parents' substantive due process right "to make decisions concerning the care, custody, and control" of their children includes the right to direct their children's medical care. . . . . The only remaining question is whether Defendants' subsequent retention, transfer, and storage of the samples violate the parents' fundamental rights. Plaintiffs allege facts sufficient to state plausible claims for relief on this issue, and we therefore reverse the district court's dismissal of these claims. . . . Taking these allegations as true, Defendants' actions constitute a denial of the parents' fundamental right to direct the medical care of their children, and their actions must survive strict scrutiny.") (emphasis added) (citations omitted).

Moreover, parental constitutional claims can allow for money damages. *See Kanuszewski*, *supra*, 927 F.3d at 408 ("If parents have a substantive due process right to make decisions relating to their children's medical care, then the parents in this case have suffered an injury-in-fact from having been denied the exercise of the right, which affords them standing to pursue damages.").

This result should not be surprising given that Petitioner's right to make healthcare and educational upbringing decisions regarding her child—two of the most personal and important of parental decisions, constitute rights so basic and fundamental and so deep-rooted in our society that they stand as rights subject to protection. Also not surprisingly, the Supreme Court in *Troxel* recognized that "there is a presumption that fit parents act in the best interests of their children." *Troxel*, *supra*, 530 U.S. at 68. Petitioner filed the case *sub judice* in the best interest of her daughter and should have been allowed to represent

her daughter's interests as well as her own despite the fact she is not a lawyer. Petitioner should also now be allowed to recover damages for the constitutional violations personally sustained by her.

## II. UNDER SUP. CT. RULE 10(c), THE PETITION SHOULD BE GRANTED BECAUSE THE SIXTH CIRCUIT'S RULING RESULTS IN A DECISION ON AN IMPORTANT QUESTION OF FEDERAL LAW-HOW THE MOOTNESS DOCTRINE APPLIES TO CLAIMS THAT ARE INEXTRICABLY BOUND BETWEEN PARENT AND CHILD

On its face, the Sixth Circuit decision to dismiss based on the alternative ground of mootness appears properly decided. Petitioner's daughter is no longer in the MCSD, she is no longer a minor, and the MCSD no longer has a mask mandate in place. In other words, there appears no longer any reason for the injunctive relief sought at the District Court level so the case lacks continuing standing to proceed.[5]

What is missing from the Sixth Circuit ruling, however, is recognition that the case may be moot as to the daughter, but Petitioner has independent claims that are not moot. Petitioner was never a student at MCSD so the fact the mandate has been lifted is of no import. Similarly, Petitioner was obviously never a minor during the litigation. Indeed, Petitioner was never forced to comply with any daily mask

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[5] *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68, n. 22 (1997) (The doctrine of mootness can be described as "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).") (citation omitted).

mandate other than when visiting the school—which she no longer must do. In other words, Petitioner's standing was always separate from that of her daughter, and it is Petitioner's standing that continues to this day.

As explained by this Court, "[f]or purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint." *Metropolitan Washington Airports Authority v. Citizens For the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 111 S.Ct. 2298, 115 L.Ed.2d 236 (1991) (*citing Warth v. Seldin*, 422 U.S. 490, 501, 95 S.Ct. 2197, 2206, 45 L.Ed.2d 343 (1975)). That was not done here.

Petitioner's Amended Complaint makes clear she was asserting her own separate rights as "an adult individual who is a resident and taxpayer in the Mayfield City School District, in Cuyahoga County, Ohio." PAC ¶ 2, App.37a. Moreover, while it is true Petitioner was seeking injunctive relief she was also asserting her rights under 42 U.S.C. § 1983. PAC ¶ 12, App.39a. Moreover, Petitioner expressly reserved her rights regarding "any additional claims to which they may be entitled under federal law as well as under the laws of the State of Ohio, including claims arising from any violations of Ohio's Open Meetings Laws or other actions of misconduct that may have been committed by Defendants." PAC at 33, App.55a (emphasis added).

The Sixth Circuit suggests that during a hearing Petitioner—who has always been merely a single mother/non-attorney looking to protect her daughter's health, conceded she was not seeking damages. Sixth Cir. Op at 8, App.9a ("Confirming our reading of the

complaint, Maras disclaimed seeking damages at the temporary-restraining-order hearing: "I'm not suing the school district for money." Tr., R.33, PageID 860").

During this very same hearing, Petitioner also states: "I have a personal stake in the action because I am a single parent and assume all medical costs related to injuries sustained by daughter." T61:19-21 (emphasis added). Moreover, as recognized by the District Court—when denying a Motion to Amend the Amended Complaint: "Plaintiff states that she "seeks leave to amend her [Amended] Complaint to continue pursuing her action against the Ohio Governor" and "(to withdraw) previously asserted direct claims of Plaintiff's minor daughter and the addition of allegations regarding bullying carried on by teachers of Plaintiff's minor daughter." (*Id*. at PageID #635.)". Dist. Ct. Op. at 8, App.26a (emphasis added).

Petitioner also sought in her Amended Complaint "other and further relief as may be just, equitable, and proper including without limitation, an award of attorneys' fees and costs to Plaintiffs." PAC at 34. Despite the Sixth Circuit's belief there were no available money damages, there can be no denying that if she ultimately won on her § 1983 claim, Petitioner would have been entitled to money damages in the form of attorneys' fees incurred during appeal.

Under the "generous formulation" of the term "prevailing party", "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Farrar v. Hobby*, 506 U.S. 103, 109 (1992) (*quoting Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). Indeed, "a plaintiff who wins nominal damages is a

prevailing party under § 1988." *Id.* at 112. If this Court takes on the Petition and Petitioner is ultimately given the opportunity to litigate on the merits, there remains a sliver of hope regarding such damages.

Petitioner was never allowed to fully explore the merits of her case—always being caught in the "Catch-22" trap of either having her own separate claim improperly dismissed at the District Court level because she also represented her daughter or having her separate claim improperly dismissed at the Circuit Court level because her daughter graduated high school and could no longer seek injunctive relief—factors completely unrelated to her own personal claims.

Under Supreme Court precedent, neither result was appropriate because this Court recognizes *jus tertii* standing remains when litigation is mooted as to one litigant—as was done here. *See e.g.*, *Craig v. Boren*, 429 U.S. 190 (1976). In *Craig*, the Supreme Court considered a constitutional challenge by a licensed beer vendor to an Oklahoma statute that prohibited the sale of 3.2% beer to males under the age of twenty-one, and to females under the age of eighteen. 429 U.S. at 194. This Court concluded that the vendor had standing to bring an equal protection challenge on behalf of males between the ages of eighteen and twenty because:

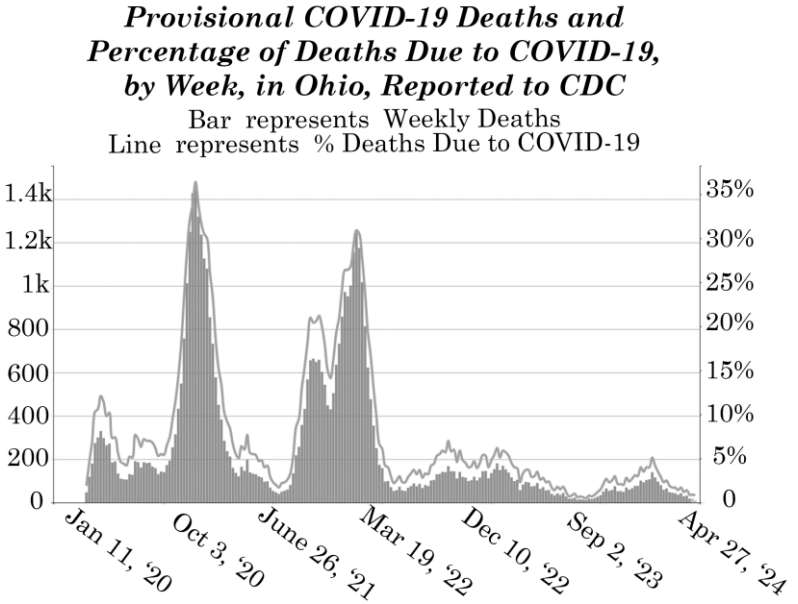
> As a vendor with standing to challenge the lawfulness of [the Oklahoma statutory provisions at issue], <u>appellant is entitled to assert those concomitant rights of third parties that would be "diluted or adversely affected" should her constitutional challenge fail and the statutes remain in force</u>.

*Craig*, 429 U.S. at 195 (emphasis supplied) (*citing Griswold*, *supra*, 381 U.S. at 481).

In other words, even though the claim belonging to the lead plaintiff became moot during litigation after he turned 21 years of age, another litigant was allowed to carry that claim forward. *Id*. at 192 ("Appellant Craig attained the age of 21 after we noted probable jurisdiction. Therefore, since only declaratory and injunctive relief against enforcement of the gender-based differential is sought, the controversy has been rendered moot as to Craig.").

Similarly, even though the prior claim of her daughter is moot given her graduation from high school, Petitioner's own claims survive—including her claims based on Respondents' violations of the Federal and Ohio Constitutions.

To that end, the Sixth Circuit points out that Respondents voluntarily removed the MCSD mask mandate in February 2022 but ignores that Ohio removed its statewide mask mandate much earlier on June 2, 2021 when weekly deaths were extremely low—demonstrating MCSD was likely far more concerned with this lawsuit despite public pronouncements to the contrary. Sixth Cir. Op. at 4, App.1a; Ohio Department of Health, *Ohio Department of Health Rescinds Pandemic Health Orders*, ODH News Release (June 2, 2021), https://odh.ohio.gov/media-center/ODH-News-Releases/odh-news-release-06-02-21). Indeed, it was in February 2022 when the second highest level of weekly deaths were sustained by Ohio during the entire pandemic—with over a thousand Ohioans a week dying from the virus at exactly the time when MCSD decided to end its mask mandate:




CDC, *Covid Data Tracker*, https://covid.cdc.gov/covid-data-tracker/#trends_weeklydeaths_weeklypctdeaths_39.

Say what it will now but Respondent MCSD's unfortunate practices remain subject to indisputable facts which demonstrate its actions are both compensable and could reasonably be expected to reappear. *See e.g.*, *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 190 ("[A] defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.").

Whether Petitioner currently has other minor children attending class in a MCSD school is also not relevant for purposes of her existing claims—which

are partially based on Respondents' prior conduct and not solely its future conduct. In other words, a ruling delineating the scope of Petitioner's parental rights remains necessary for her existing 42 U.S.C. § 1983 claims and such live issue will hopefully be resolved by this Court in her favor.

## CONCLUSION

For the foregoing reasons, it is respectfully requested that the petition for writ of certiorari be granted and the decision of the U.S. Sixth Circuit Court of Appeals be summarily reversed.

Respectfully submitted,

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