No. 23-601

In the
Supreme Court of the United States

JOHN AND JANE PARENTS 1; JOHN PARENT 2,
Petitioners,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, SHEBRA L. EVAN, BRENDA WOLFF, JUDITH DOCCA, KARLA SILVESTRE, REBECCA SMONDROWSKI, LYNNE HARRIS, SCOTT JOFTUS, AND MONIFA B. MCKNIGHT,
individually and in their official capacity as Members of Montgomery County Board of Education,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

AMICUS BRIEF OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS*

Amicus, the American Center for Law and Justice (ACLJ), is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have frequently appeared before this Court as counsel either for a party, *e.g., Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), or for amicus, *e.g.*, *Biden v. Nebraska*, 143 S. Ct. 2355 (2023). As an organization dedicated to protecting the family, the ACLJ opposes government intrusion in the parent-child relationship absent a showing of parental unfitness.

SUMMARY OF THE ARGUMENT

This case presents perhaps the most staggering governmental assault on parental rights in the nation's history. The Montgomery County Board of Education's Parental Preclusion Policy requires school employees to hide from parents that their child identifies as transgender at school if the child requests it, or the school decides the parents will not be "supportive" enough of their child's transition. The policy applies to all children, regardless of age—even as young as kindergarteners. Similar policies are proliferating around the nation and will continue to inflict untold damage on the parental right to make decisions for children's health and wellbeing.

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* No counsel for any party in this case authored this brief in whole or in part. No person or entity aside from Amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

The Fourth Circuit misread this Court's standing jurisprudence to give minor children and school officials veto power over parental rights. First, the Fourth Circuit failed to recognize the actual harm the Parental Preclusion Policy inflicts on Petitioners' parental rights and, for that matter, on other constitutional protections. Parental rights cases often implicate other constitutional interests because parental rights are interconnected with other fundamental rights, including free speech, free exercise of religion, and intimate association. The court's failure stemmed from its deficient understanding of the rights at stake.

The Parental Preclusion Policy 1) condones school employee interference in the parent/child bond; 2) deceives parents on a critical children's health issue; and 3) promotes school-wide adherence to gender fluidity orthodoxy. When hundreds of children in the school district are deceiving their parents with the school's imprimatur, other children cannot help but get the message that they can and should lie to parents who do not agree with school dogma. The Fourth Circuit's reasoning that Petitioners will not suffer injury until their children request school employee interference in the parent-child relationship trivializes the right to family integrity and sanctions immediate interference in the parent/child bond.

The Parental Preclusion Policy also implicates First Amendment concerns because it conditions the parental right to make decisions affecting a child's health on the parents' adherence to governmentally mandated gender-fluidity orthodoxy. Based solely on the minor child's current self-perception, potentially

while the child is still in pre-school, school employees determine whether parents "support" their child's transitioning. For the same reason, the Parental Preclusion Policy implicates equal-protection interests because it erects a barrier to Petitioners' exercise of their fundamental right to make decisions for their children. The Fourth Circuit's insistence that this Court's equal-protection cases have no bearing on standing misapprehends the Court's rationale in those cases.

The Fourth Circuit even more profoundly misread this Court's precedents defining imminent injury. The court held that no imminent harm threatens Petitioners until their children tell school employees they identify as transgender *and* ask the school to assist them with a "gender support plan" behind their parents' backs. In other words, Petitioners' minor children enjoy the autonomy to make independent decisions that nullify the imminence of Petitioners' future injury. Under the Fourth Circuit's reasoning, children can collude with school officials to conceal the school's offer of free tattoos during lunch breaks, and the Parents have no recourse until after the child receives the tattoo—if and when the Parents happen to discover it.

This Court's cases establish that the standard for imminent harm is lowest where, as here, separation-of-powers concerns are de minimis. Because 1) Petitioners' have brought claims against local school officials for violation of personal fundamental rights; 2) the school district is currently deceiving hundreds of parents; and 3) the magnitude of threatened injury Petitioners may suffer is severe, Petitioners' have

shown a threat of imminent harm. Even were that not so, however, Petitioners' Article III standing is beyond cavil because their claims share a historical pedigree with parental rights claims brought for the past century and a half.

This Court's review of this unprecedented assault on the fundamental rights of parents is imperative.

ARGUMENT

Even though the School District has colluded with hundreds of minor students to conceal from their parents that they are pursuing gender transitioning, the Fourth Circuit held that Petitioners lacked standing because they suffered no actual harm, and their future injury was not imminent. *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 631 (4th Cir. 2023). The court's foundational (but unarticulated) premise was that children enjoy the autonomy to be deemed "independent decisionmakers," who can impact the imminence of their parents' injury. According to the court, Petitioners' injury is not imminent until their minor children decide they "identify as transgender or gender nonconforming," and "want to approach the school about a gender support plan." *See id.* at 630-31 (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013)).

The Fourth Circuit's reliance on *Clapper* is badly misplaced. *Clapper,* a national security case, held that plaintiffs' injury was not imminent because it was contingent on a variety of potential actions by at least two federal government entities. As "independent

decision-makers," the government entities may never take the actions necessary to cause Plaintiffs injury. *Clapper*, 568 U.S. at 413-14. *Clapper* has no bearing here for the obvious reason that minor children cannot be "independent decision-makers" from their parents. Following the Fourth Circuit's reasoning to its logical end, school districts can secretly offer minor students a variety of enticements, such as marijuana, or live sex-ed demonstrations. Having no knowledge of these offerings, parents are without recourse until their child happens to mention his participation.

The Fourth Circuit grievously misread this Court's standing jurisprudence. There is no one-size-fits-all test, and context matters in determining whether plaintiffs have suffered imminent injury. Where, as here, separation of powers concerns are de minimis (if not non-existent), imminent injury exists when 1) the challenged government action has violated plaintiffs' personal constitutional rights; 2) the defendant has committed past wrongs against hundreds of similarly situated individuals; and 3) the magnitude of threatened injury is severe. This should have been an easy case because Petitioners' claims satisfy not just one, but all three factors. Instead, the Fourth Circuit exalted gender fluidity orthodoxy over the fundamental right to parent minor children.

Review is warranted not only to reverse the lower court's "abdication of judicial duty with respect to a very important constitutional issue," *Parents 1*, 78 F.4th at 637 (Niemeyer, J., dissenting), but also to reverse the Fourth Circuit's profoundly misguided standing analysis which cuts the legs out from under the nation's oldest fundamental right.

I. The Fourth Circuit Wrongly Assessed Petitioners' Actual Injury by Minimizing the Rights at Stake.

The Fourth Circuit's failure to recognize Petitioners' actual injury and the imminence of their future injury derives from a deficient understanding of the rights at issue. That deficit also explains the court's erroneous conclusion that the standard for establishing imminent injury is more rigorous in this case than in *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1,* 551 U.S. 701 (2007) because that case presented an Equal Protection Clause claim. *See Parents 1*, 78 F.4th at 633-34.

There is no hierarchy of constitutional rights for purposes of Article III standing. Even assuming Equal Protection Clause rights enjoy preferred status, the Parental Preclusion Policy runs afoul of equal-protection principles because it erects a barrier to Petitioners' ability to make decisions about their children's health. Under *Parents Involved* and this Court's other equal-protection cases, that barrier qualifies as actual injury.

Equally important, the constitutional protection for family integrity and parental authority over the health care decisions of minor children necessarily forecloses the notion that Petitioners' injuries are speculative because their minor children have the autonomy to act as "independent decision-makers." The very idea eviscerates parental rights while creating out of whole cloth an autonomy right for

minor children—including the right to collude with governmental officials to deceive their parents.

A. Parental Rights Are Multifaceted and Fundamental

Parental rights have a pedigree unmatched in constitutional law. As one of the only pre-constitutional rights recognized by this Court under the Due Process Clause of the Fourteenth Amendment, parental rights are among the most sacred liberties our nation cherishes. *See, e.g., Troxel v. Granvill*e, 530 U.S. 57, 65 (2000) (plurality opinion) (fundamental rights of parents to direct their children's upbringing are "perhaps the oldest of the fundamental liberty interests recognized by this Court."); *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."); *Stanley v. Illinois*., 405 U.S. 645, 651 (1972) ("The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed 'essential,' *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), 'basic civil rights of man,' *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *Smith v. Org. of Foster Fams. for Equal. & Reform*, 431 U.S. 816, 845 (1977) (stating that "the liberty interest in family privacy has its source . . . in intrinsic human rights, as

they have been understood in 'this Nation's history and tradition'").

What is more, parental rights and the corollary right, family integrity, are safeguarded by other constitutional provisions, such as the First Amendment Religion, Free Speech, and Right of Association Clauses, and the Equal Protection Clause. *See, e.g.*, *Yoder*, 406 U.S. at 219 ("enforcement of the State's requirement of compulsory formal education after the eighth grade would gravely endanger if not destroy the free exercise of respondents' religious beliefs."); *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987) (Although "[f]amilies entrust public schools with the education of their children," they "condition their trust on the understanding that the classroom will not purposely be used to advance religious [or ideological] views that may conflict with the private beliefs of the student and his or her family."); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637, 642 (1943) (upholding parents' right to opt Jehovah's Witness schoolchildren out of saying the Pledge of Allegiance, because "[f]ree public education . . . will not be partisan or enemy of any class, creed, party, or faction"); *Roberts v. United States Jaycees*, 468 U.S. 609, 618-20 (1984) (citing this Court's family integrity cases [1]) (The right of intimate association affords "certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State."); *Skinner*, 316 U.S. at 541

[1] *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *Smith v. Org. of Foster Fams.*, 431 U.S. 816, 844 (1977); *Carey v. Population Servs. Int'l*, 431 U.S. 678, 684-86 (1977); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 639-40 (1974).

(Equal Protection Clause protects the "basic civil right[]" of family integrity).

As is true in many parental rights cases, this case implicates both immediate and future harm to fundamental constitutional rights. If allowed to stand, the decision below threatens constitutional rights beyond those asserted in this case.

B. Petitioners' Immediate Harms

The Parental Preclusion Policy causes multiple, immediate harms to Petitioners' parental rights and the right to family integrity: 1) school employees asserting preeminent authority over minor children; 2) colluding to deceive the child's parents; and 3) endorsement of gender fluidity orthodoxy. The Parental Preclusion Policy unjustifiably interferes with the parent/child bond and violates the right to intimate association and family integrity. *Roberts*, 468 U.S. at 618-20. The right to parental control over a child's medical treatment encompasses parental decisions that are "not agreeable to a child," *Parham v. J.R.*, 442 U.S. 584, 603 (1979)—which certainly includes those related to gender dysphoria.

> [T]he right of parents to raise their children as they think best, free of coercive intervention, comports as well with each child's biological and psychological need for *unthreatened and unbroken continuity of care by his parents.* No other animal is for so long a time after birth in so helpless a state that its survival depends upon continuous nurture

> by an adult. Although breaking or weakening the ties to the responsible and responsive adults may have different consequences for children of different ages, there is little doubt that such *breaches in the familial bond will be detrimental to a child's well-being*.

Joseph Goldstein, *Medical Care for the Child at Risk: On State Supervention of Parental Autonomy*, 86 Yale L.J. 645, 649 (1977) (emphasis added).

Whether the child invites or consents to such parental intrusion is irrelevant. *Parham,* 442 U.S. at 604 ("Neither state officials nor federal courts are equipped to review such parental decisions," even if the child "balk[s]" or "complain[s]" about them). The Fourth Circuit's facile reasoning that Petitioners have not suffered injury until their children request school employee interference in the parent-child relationship trivializes the right to family integrity and sanctions an immediate breach in the familial bond. The injury has already occurred and is not dependent on the minor child's alliance with school officials.

If minor children can act as independent decision-makers, schools could, for example, surreptitiously provide free tattoos to minor children or replace study halls with seminars teaching that violence against Israel is warranted. Under the Fourth Circuit's reasoning, parents would have no right to sue to keep their children from either event unless the child makes the "independent decision" to get a tattoo or attend the seminars and discloses that decision to his parents. Worse, the Parental Preclusion Policy authorizes school officials to conspire with students to

keep their parents from finding out about this gross intrusion on the parent/child relationship, making it impossible to avoid permanent harm in advance.

As in *Barnette*, the Free Speech Clause may also afford protection to parental rights.[2] The Free Speech Clause forbids the government from "inquir[ing] about a man's views or associations solely for the purpose of withholding a right or benefit because of what he believes." *See Baird v. State Bar of Ariz.*, 401 U.S. 1, 7 (1971). The Parental Preclusion Policy requires school officials to ask gender dysphoric children about their parents' "support" for gender transitioning solely for the purpose of deciding whether to keep parents from exercising their right to be involved in important life decisions for their minor children. The Parental Preclusion Policy constitutes a transparent attempt to coerce ideological orthodoxy. *See Barnette*, 319 U.S. at 642 ("[N]o 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."); *cf. Elrod v. Burns*, 427 U.S. 347, 351, 373 (1976) (holding that plaintiffs "unquestionably" suffered irreparable injury where government officials threatened to punish plaintiffs for their political views).

In a similar vein, policies like the Parental Preclusion Policy implicate equal protection concerns

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[2] Although the parents in *Barnette* did not bring parental rights claims, the Court's decision may accurately be characterized as holding that the Jehovah's Witnesses parents' rights to direct the upbringing of their children trumped the school board's requirement that all students must salute the flag. *See* 319 U.S. at 637.

by giving preferential treatment to parents who support gender fluidity dogma and penalizing those who do not.

> When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The "injury in fact" in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.

Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville, 508 U.S. 656, 666 (1993); *see also Turner v. Fouche*, 396 U.S. 346, 361 n.23 (1970) (holding plaintiffs had standing to challenge a Georgia law limiting school board membership to property owners even though plaintiffs could not show that they would otherwise be elected); *Clements v. Fashing*, 457 U.S. 957, 960, 962 (1982) (holding that plaintiffs suffered injury from the "obstacle" the "automatic resignation" provision of the Texas Constitution, imposed on some, but not all, state officeholders upon their announcement of a candidacy for another office).

The Parental Preclusion Policy erects an obstacle to parental involvement in a significant child development issue. Contrary to the Fourth Circuit's reasoning, *Parents I*, 78 F.4th at 633-34, Petitioners'

injury here is, if anything, much worse than the injury suffered by the parents in *Parents Involved,* which resulted from a barrier to a government benefit. 551 U.S. at 718-19 (denial of equal access to competition for places at public high schools). This case involves a barrier to the exercise of a constitutional right.

Petitioners have suffered actual harm, but even were that not so, their future harm is sufficiently imminent to confer standing. The Fourth Circuit's contrary conclusion derives from a distorted view of this Court's cases addressing imminent injury.

II. The Fourth Circuit Wrongly Analyzed this Court's Cases Defining Imminent Injury.

Imminence is an "elastic concept." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 565 n.2 (1992). This Court's standing jurisprudence requires a nuanced approach that considers several factors, including: the nature of the case and the parties involved; whether others similarly situated have already suffered the specific injury alleged; and the magnitude of the injury. When those factors are properly considered, Petitioners' future injuries are sufficiently imminent to confer standing.

A. Nature of the Case and Parties Involved

Because this case involves the violation of private constitutional rights by municipal officials, a relaxed formulation of the "substantial risk" test is the proper standard. *See, e.g.*, *Pennell v. San Jose*, 485 U.S. 1, 8

(1988) ("realistic danger" qualifies as imminent injury in suit against municipality for violation of various federal constitutional provisions). This case has none of the hallmarks which trigger the most rigorous test for imminent injury. The bar for Article III standing is highest when the case poses the greatest risk to the separation of powers. *Clapper*, 568 U.S. at 408 ("[O]ur standing inquiry has been especially rigorous when reaching the merits of the dispute would force us to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." (quoting *Raines v. Byrd*, 521 U.S. 811, 819-20 (1997))). For example, congressionally authorized citizen suits run the risk of enabling the judiciary "to assume a position of authority over the governmental acts of another and co-equal department.'" *Lujan*, 504 U.S. at 577; *see also TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2207 (2021) ("A regime where Congress could freely authorize unharmed plaintiffs to sue defendants who violate federal law not only would violate Article III but also would infringe on the Executive Branch's Article II authority.").

Similarly, the presence of national security interests justifies heightened vigilance for separation of powers. *See, e.g., Clapper*, 568 U.S. at 409 ("We have often found a lack of standing in cases in which the Judiciary has been requested to review actions of the political branches in the fields of intelligence gathering and foreign affairs"); *Laird v. Tatum*, 408 U.S. 1, 11-16 (1972) (plaintiffs lacked standing to challenge an Army intelligence-gathering program).

By contrast, Petitioners' claims present "no danger" that their "suit is an impermissible attempt to police the activity of the political branches." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 347 (2016) (Thomas, J., concurring) (noting for purposes of standing inquiry the critical distinction between public-rights cases and cases where "private individuals sue to redress violations of their own private rights"). The Fourth Circuit's primary reliance on *Clapper* was therefore misplaced.

Other factors weigh in favor of finding imminent injury here, including that the Parental Preclusion Policy is currently being applied to hundreds of other unknowing parents in the school district. Pet. Cert. at 17, 33-34.

B. Past Wrongs Lower the Bar in Assessing Imminence of Injury

Past wrongs against similarly situated individuals can impact whether there is a realistic threat of injury. *Blum v. Yaretsky*, 457 U.S. 991, 1001 (1982) (holding that because defendants subjected others similarly situated to the same wrongs that plaintiffs feared, the threat of injury was sufficiently "realistic" to confer standing); *O'Shea v. Littleton*, 414 U.S. 488, 496 (1974). The Parental Preclusion Policy is currently being applied to hundreds of other students and their parents, Pet. Cert. at 17, 33-34, at a time when there is an exponential increase in American children identifying as transgender.

Between 2017 and 2021, the number of children who were diagnosed with gender dysphoria in the U.S.

nearly tripled.[3] Social contagion is undoubtedly a significant contributor. Former Brown University professor Lisa Littman documented the increase in the "rapid onset of gender dysphoria" and concluded that social contagion plays a significant role.[4] Dr. Littman surveyed parents of children who identified as transgender and found that 69% of the children were part of a friend group where at least one friend came out as trans around the same time.[5] Comparing modern and historic trends in gender dysphoria, Dr. Littman concluded that peer-influence could have an outsized influence on the increase in gender dysphoria.[6]

In combination, the dramatic rise in transgender children and the number of parents currently being kept in the dark about their child more than suffice to establish a realistic threat of future injury.

C. Magnitude of the Threatened Harm

Another factor in determining the imminence of injury is the severity of the harm. "The more drastic the injury that government action makes more likely, the lesser the increment in probability to establish

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[3] *See* Robin Respaut and Chad Terhune, *Putting Numbers on the Rise in Children Seeking Gender Care*, Reuters (Oct. 6, 2022, 11:00 AM), https://www.reuters.com/investigates/special-report/usa-transyouth-data/.

[4] Lisa Littman, *Rapid-Onset Gender Dysphoria in Adolescents and Young Adults: A Study of Parental Reports* 2-3 (2018), https://rogd.fi/wp-content/uploads/2021/10/pone.0214157.s001.pdf.

[5] *Id*. at 16.

[6] *Id*. at 37.

standing." *Massachusetts v. EPA*, 549 U.S. 497, 525 n.23 (2007) (citation omitted) (holding that "[t]he risk of catastrophic harm" to Massachusetts' coastline from climate change satisfied the imminent injury requirement). Although the Fourth Circuit acknowledged that the Parental Preclusion Policy is "staggering," *Parents I*, 78 F.4th at 631, it failed to recognize the magnitude of imminent harm that threatens Petitioners as their children are inescapably exposed at school to the social contagion associated with gender fluidity orthodoxy. The Fourth Circuit was apparently untroubled by the prospect that an elementary school-age child could conspire with school officials to deceive her parents about her gender identity throughout the remainder of her public-school education. If that is not drastic imminent harm to parental rights, the right is meaningless.

III. The Historical Pedigree of Similar Suits Establishes Petitioners' Article III Standing.

Apart from the severe imminent injury threatened, Petitioners have standing because their claims share commonality with parental rights suits brought for the last century and a half. "History and tradition offer a meaningful guide to the types of cases that Article III empowers federal courts to consider" and where parties have "long been permitted to bring" the type of suit at issue, it is *"well nigh conclusive"* that Article III standing exists. *Sprint Commc'ns. Co., L.P. v. APCC Serv*s., 554 U.S. 269, 274-75, 285 (2008) (emphasis added).

Parental rights suits date back to the nineteenth century and common law courts were "highly respectful of the control that parents, particularly fathers, exercised over their households and children . . . ."). Jill Elaine Hasday, *Parenthood Divided: A Legal History of the Bifurcated Law of Parental Relations*, 90 Geo. L.J. 299, 311 (2002). Even after compulsory public education laws were the norm, parents were permitted to bring suits requesting exemption for their children from courses even though some of the courses were mandated by state legislatures or local school districts. *See* Eric DeGroff, *Parental Rights and Public School Curricula: Revisiting* Mozert *after 20 Years*, 38 J.L. & Educ. 83 (2009). Professor DeGroff compiled cases from across the country upholding parental rights in clashes with public schools. *Id.* at 113-16.

In the typical case, the student was barred from attending the school if he did not attend a class due to his parents' objections to the class. Parents then brought a writ of mandamus action to compel the school to readmit the student. In virtually every case, the court ruled for the parents on parental rights grounds. *See, e.g.*, *Trs. of Sch. v. People*, 87 Ill. 303, 308 (1877) (exemption from the study of grammar); *Kelley v. Ferguson*, 144 N.W. 1039, 1040 (Neb. 1914) (exemption from required cooking class); *Garvin Cnty. v. Thompson*, 103 P. 578 (Okla. 1909) (exemption from music course); *Vollmar v. Stanley*, 255 P. 610, 613-15 (Colo. 1927) (exemption from reading King James version of the Bible; court held that "the right of parents to select, within limits, what their children shall learn, is one of the liberties guaranteed by the

Fourteenth Amendment to the national Constitution."); *but see Hardwick v. Bd. of Sch. Trs.*, 205 P. 49 (Cal. Ct. App. 1921) (granting student exemption from dance classes on free exercise clause grounds).

That these cases involved mandamus actions is immaterial. To determine whether Petitioners "have identified a close historical or common-law analogue for their asserted injury[,] . . . an exact duplicate in American history and tradition" is not necessary. *TransUnion*, 141 S. Ct. at 2204.

Moreover, as Petitioners pointed out, Pet. Cert. at 12-13, more recent cases join these historical examples to establish Petitioners' standing to challenge the Parental Preclusion Policy. *See, e.g., Lee v. Weisman,* 505 U.S. 577, 584 (1992) (challenging graduation ceremony prayer that student was not compelled to pray herself); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 19 (2004) (Rehnquist, C.J., O'Connor, J., Thomas, J., concurring) (noting majority opinion's holding that divorced parent "satisfies the requisites of Article III standing" but criticizing majority's "novel" principle that parent lacks "prudential standing" because of California domestic relations law).

Contrary to the Fourth Circuit's view, this case does not present a problem for the ballot box. *Parents I*, 78 F.4th at 636. Petitioners have Article III standing. Any other conclusion will give school districts carte blanche to shred constitutional rights by deceiving parents who refuse to support gender fluidity orthodoxy.

CONCLUSION

Amicus respectfully requests this Court to grant review and reverse the Fourth Circuit.

Respectfully submitted,

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