

No. 24-1167

IN THE
Supreme Court of the United States

NIAGARA-WHEATFIELD CENTRAL SCHOOL DISTRICT,
Petitioner,
v.
State of NEW YORK,
Respondent.

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

BRIEF IN OPPOSITION

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**COUNTERSTATEMENT OF
QUESTION PRESENTED**

Whether the State of New York sufficiently alleged a quasi-sovereign interest that affects a substantial segment of its population to confer standing to sue as *parens patriae*.

TABLE OF CONTENTS

	Page
Table of Authorities	iii
Introduction	1
Statement	2
A. Facts as Alleged in the Complaint	2
B. Procedural History	5
Reasons for Denying the Petition	8
I. This Case Is a Poor Vehicle to Resolve the Purported Confusion Identified in the Concurrence.	8
II. The Second Circuit’s Decision Is Consistent with Decisions of This Court and Those of Other Circuits.	11
A. The Second Circuit’s Decision Is Consistent with This Court’s Decisions.	11
B. Petitioner Has Not Identified Any Disagreement Among the Circuits.	18
III. The Petition Does Not Present an Important Legal Question Warranting Certiorari.	27
Conclusion	30

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez</i> , 458 U.S. 592 (1982).....	1, 11, 12, 15, 16, 18, 25, 29
<i>American Elec. Power Co. v. Connecticut</i> , U.S. 410 (2011).....	564 29
<i>Chapman v. Tristar Products, Inc.</i> , 299 (6th Cir. 2019).....	940 F.3d 19, 20
<i>Chemehuevi Indian Tribe v. McMahon</i> , F.3d 1076 (9th Cir. 2019)	934 21
<i>Connecticut v. American Electric Power Co.</i> , F.3d 309 (2d Cir. 2009).....	582 29
<i>Connecticut v. Physicians Health Servs. of Conn., Inc.</i> , 287 F.3d 110 (2d Cir. 2002).....	29
<i>Estados Unidos Mexicanos v. Diamondback Shooting Sports Inc.</i> , No. 22-cv-472, 2024 WL 1256038 (D. Ariz. Mar. 25, 2024).....	21
<i>Georgia v. Tennessee Copper Co.</i> , 206 U.S. 230 (1907)	230 13, 14, 17
<i>Harrion v. Jefferson Parish Sch. Bd.</i> , No. 20-cv-2916, 2022 WL 539277 (E.D. La. Feb. 23, 2022)	23
<i>Harrison v. Jefferson Parish School Board</i> , F.4th 765 (5th Cir. 2023).....	78 23, 24
<i>Hartman v. Summers</i> , 120 F.3d 157 (9th Cir. 1997)...	21
<i>Hawaii v. Standard Oil Co.</i> , 405 U.S. 251 (1972).....	15
<i>In re Racing Servs., Inc.</i> , 619 B.R. 681 (8th Cir. 2020)	22
<i>Kansas v. Colorado</i> , 206 U.S. 46 (1907).....	14

Cases	Page(s)
<i>Lacewell v. Office of Comptroller of Currency</i> , 999 F.3d 130 (2d Cir. 2021)	28
<i>Louisiana ex rel. Louisiana Dep’t of Wildlife & Fisheries v. National Oceanic & Atmospheric Admin.</i> , 70 F.4th 872 (5th Cir. 2023)	26, 27
<i>Louisiana v. Texas</i> , 176 U.S. 1 (1900)	12, 17
<i>Missouri ex rel. Bailey v. People’s Republic of China</i> , 90 F.4th 930 (8th Cir. 2024)	23
<i>Missouri ex rel. Koster v. Harris</i> , 847 F.3d 646 (9th Cir. 2017)	20
<i>Missouri v. Illinois</i> , 180 U.S. 208 (1901) ..	13, 18, 20, 25
<i>New York ex rel. Abrams v. 11 Cornwell Co.</i> , 695 F.2d 34 (2d Cir. 1982)	28
<i>New York v. Griep</i> , 11 F.4th 174 (2d Cir. 2021)	28
<i>People of the State of N.Y. by Abrams v. Seneci</i> , 817 F.2d 1015 (2d Cir. 1987)	28
<i>People of the State of N.Y. by Vacco v. Operation Rescue Nat’l</i> , 80 F.3d 64 (2d Cir. 1996)	28
<i>Town of W. Hartford v. Operation Rescue</i> , 915 F.2d 92 (2d Cir. 1990)	28
<i>United States v. Hooker Chemicals & Plastics Corp.</i> , 749 F.2d 968 (2d Cir. 1984)	22
<i>United States v. Santee Sioux Tribe of Nebraska</i> , 254 F.3d 728 (8th Cir. 2001)	21, 22
<i>Washington v. Geo Grp., Inc.</i> , 283 F. Supp. 3d 967 (W.D. Wash. 2017)	21

Laws	Page(s)
N.Y. Educ. Law	
§ 10.....	16
§ 12.....	16
N.Y. Exec. Law	
§ 296(4)	16
 Miscellaneous Authority	
Meredith Johnson Harbach, <i>Parens Patriae After the Pandemic</i> , 101 N.C. L. Rev. 1427 (2023).....	15

INTRODUCTION

In *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592 (1982), this Court set the standard for a State to have standing to sue as *parens patriae* on behalf of its residents. To invoke *parens patriae* standing, a State “must express a quasi-sovereign interest” that is separate from “the interests of particular private parties” and must demonstrate that the gravamen of its suit affects “a sufficiently substantial segment of its population.” *Id.* at 607. This Court expressly declined to catalog all of the quasi-sovereign interests a State may possess or to draw definitive limits on the proportion of a State’s population that must be adversely affected by the behaviors sought to be challenged, instead instructing courts to conduct a case-by-case analysis to determine standing. *Id.* The Second Circuit Court of Appeals conducted exactly such a case-specific analysis in this case, following the same approach used by every federal court of appeals in such cases, and concluding that the State sufficiently alleged standing to survive a motion for judgment on the pleadings. Although a concurring opinion invited this Court’s review of the decision below to clarify purported confusion over how to apply *Snapp*, this case does not present a suitable vehicle to resolve the issues the concurrence identifies.

The petition for a writ of certiorari provides no reason for this Court to review that decision, either. The petition fails to demonstrate any tension, let alone conflict, among the federal courts of appeals with its muddled and often shifting explanations of which of *Snapp*’s requirements for *parens patriae* standing are implicated here, how the Second Circuit supposedly erred, and where exactly the Second Circuit parted company from its sister courts. Nor could the petition

have done so because the Second Circuit adhered to this Court's precedent, and its decision presents no conflict with other courts of appeals' decisions, each of which was decided on the basis of the specific factual allegations made. In short, there is no clear and persistent disagreement among the courts of appeals over either how widespread an injury must be, nor how clearly a State's quasi-sovereign interest must transcend harm to private parties. This Court's review is thus not warranted.

The petition attempts to manufacture disagreement between the courts of appeals, arguing that several circuits require that a State's *entire population* must be injured to meet the substantial segment requirement. This argument fails at every hurdle. Such a rule would run contrary to this Court's decision in *Snapp*, and no federal court of appeals requires such a showing.

Nor does the petition raise an important question of federal law, given how rarely the courts of appeals are called on to determine whether a State has *parens patriae* standing.

STATEMENT

A. Facts as Alleged in the Complaint

In June 2021, respondent State of New York, by Letitia James as Attorney General, brought suit in the U.S. District Court for the Western District of New York against the Niagara-Wheatfield Central School District seeking injunctive relief to remedy repeated and ongoing violations of Title IX and state law. (Pet. App. 14a.) The suit, brought pursuant to the State's *parens patriae* power, alleged that the school district failed to take any action to protect its students from repeated incidents of

gender-based bullying, harassment, and sexual violence. (Pet. App. 4a-5a.) Because the petition provides so little information about the serious allegations at issue here, those allegations are described below.

The State's allegations fall into three categories. The first detail how the school district failed to protect four individual students from gender-based bullying and harassment, despite receiving repeated notices of ongoing incidents of that conduct. (Pet. App. 5a.) The State alleges that these four incidents serve as exemplars of the district's widespread failure to protect all students who face persistent gender-based bullying, harassment, and violence.

Two of these students were sexually assaulted; one was sexually assaulted by a rising high school senior who subsequently pleaded guilty to rape in the third degree, and the other was sexually assaulted by a fifth-grade student while in second grade. (Pet. App. 5a, 10a.) While these incidents took place outside of school, the parents of both victims reported the assaults to the school district and urged school officials to take steps to keep their children safe from further abuse (Pet. App. 6a, 10a). School officials did nothing, however, even after the abusers continued to harass their victims on school grounds. (Pet. App. 6a, 10a-11a.) As the harassment continued, other students joined in by repeatedly mocking the victims about their sexual assaults, which the school did nothing to stop. (Pet. App. 7a, 11a.) As a result, one of the students suffered a panic attack and began missing class due to the ongoing harassment (Pet. App. 6a-7a); the other required years of counseling to cope with the bullying (Pet. App. 11a).

The complaint also describes the experience of a female student who was bullied for multiple years at

multiple schools within the district for her choice of clothing, being called “gay,” “transgender,” “fat,” “ugly,” and “slut” and told to kill herself. (Pet. App. 8a.) Despite multiple complaints from the student and her parents, the school district refused to take any action. (Pet. App. 8a.) The student developed anxiety and depression and stopped attending school. (Pet. App. 9a.) When she requested a transfer to a high school in a neighboring district, the school district not only refused but reported the family to Child Protective Services. (Pet. App. 9a.) Consequently, the student dropped out of high school entirely without completing her education. (Pet. App. 9a.)

The final student in this category was bullied online by members of her high school’s football team, including comments that she appeared to have male genitalia and that a boy would not want to have sex with her. (Pet. App. 9a.) Shortly thereafter, female friends of the football team began harassing the student by chanting in a derogatory fashion and hitting her in the head eleven times. (Pet. App. 9a.) Yet school officials refused to take any action to prevent future harassment and assault of the student, instead suggesting that the student not attend an upcoming dance for her safety. (Pet. App. 10a.) The student was too afraid to continue attending the school at all and eventually transferred to a private school. (Pet. App. 10a.)

The second category of allegations concerns at least thirty additional instances, against additional victims, of sexual assault, harassment, and gender-based bullying of which the State was aware in which the school district similarly took no action to prevent the abuse from continuing to recur at school. (Pet. App. 11a-12a.)

The third category of allegations addresses harms to the broader student body and community. (Pet. App. 12a.) The State alleges that the school district’s indifference to harassment and abuse caused many students—particularly but not exclusively female students—to feel unsafe all the time. (Pet. App. 13a.) As a result of that fear, students ultimately staged a walkout to protest the district’s inaction, and the school district responded by suspending some of the participants. (Pet. App. 8a, 13a.) And each year, the State alleges, injuries from the district’s inaction befall new students entering the district’s schools. (Pet. App. 24a-25a.) The State further alleges that that inaction emboldens more students to engage in abusive behavior, as evidenced by the groups of otherwise-uninvolved students who began harassing the four documented victims over time. (Pet. App. 12a-13a, 25a.) And the State alleges that the families of the district are also adversely affected, as evidenced by the hundreds of messages received by one victim’s parent expressing concern that the school district had allowed a rapist to attend school with their children for an entire year. (Pet. App. 13a.)

B. Procedural History

1. After the State filed suit and then an amended complaint, the school district answered and moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). (Pet. App. 14a.)

The district court, adopting the report and recommendation of the magistrate judge, concluded that the State lacked *parens patriae* standing. The court concluded that the State had not demonstrated that the school district’s actions had harmed a substantial segment of the population because the State had not shown that the school district had a “policy or practice” of fail-

ing to protect victims of gender-based assault, harassment, and bullying. (Pet. App. 15a.)

2. The State timely appealed to the Second Circuit, which reversed the district court's decision and remanded the case to district court. The court concluded that the State was not required to show a policy or practice to satisfy the substantial-segment requirement. (Pet. App. 19a-21a.) The court further concluded that the State had sufficiently alleged that the school district's inaction affected a sufficiently substantial segment of New York's population to survive a motion for judgment on the pleadings. (Pet. App. 18a, 23a-27a.)

In particular, the court recognized the State's plausible allegations that the school district had failed to take any action to protect either the four student exemplars whose harassment was detailed in the complaint or the 30 other students whose names and experiences with bullying and harassment were not given but were known to the State. (Pet. App. 23a-24a.) The court further recognized the many adverse ripple effects of that inaction: The parents of the bullied students were harmed because they were forced to "contend with the psychological and financial burdens of dealing with the effects the School District's inaction had on their children." (Pet. App. 24a.) The dozens of students who perpetrated the bullying and harassment without consequence were harmed because they received no guidance about how to conduct themselves appropriately in the school environment. (Pet. App. 25a.) The rest of the student body and the greater community were harmed, as evidenced by the fear and anxiety expressed by the student walkout and the numerous communications from parents concerned that a convicted rapist was permitted to attend school. (Pet. App. 26a.) Additionally, the district's inaction would likely lead to future cases of

gender-based harassment and bullying in the school district. (Pet. App. 24a-25a.) After all, the State’s allegations demonstrated that the school district’s inaction had emboldened more and more students to join in the harassment. (Pet. App. 25a.) Altogether, the majority reasoned, these allegations were sufficient to demonstrate that a substantial segment of the State’s population had been affected by the school district’s inaction.

The court only briefly addressed the remaining criteria for *parens patriae* standing—that the State assert a quasi-sovereign interest in the case apart from vindicating the rights of individual litigants, and the Second Circuit’s added requirement that individual plaintiffs would be unable to obtain complete relief in a private suit. (Pet. App. 17a, 27a.) As the court noted, “the parties agree that the [State] has made the other two showings required for *parens patriae* standing.” (Pet. App. 27a; *see also* Pet. App. 17a (noting lack of dispute that State adequately alleged a quasi-sovereign interest for *parens patriae* standing).) In any event, the court concluded that the State had alleged a quasi-sovereign interest apart from the interests of private parties, namely its interest in protecting the “health and welfare” of students and families harmed by the school district’s allowance of gender-based violence and harassment. (Pet. App. 17a-18a.) The court also concluded that the State’s involvement was necessary to ensure prospective relief that would benefit the entire school community, particularly in light of the short duration during which any particular student attended a district’s school where harassment occurred. (Pet. App. 17a & n.3.)

In a separate “concurrence dubitante,” Judge Cabranes expressed concern over what he considered the vague definition of what qualifies as a quasi-sovereign interest (Pet. App. 30a)—an issue never raised by

any party, not considered by the district court, not briefed before the Second Circuit, and not addressed at oral argument. Judge Cabranes also discussed “confusion among the Courts of Appeals” about whether a qualifying quasi-sovereign interest is sufficient to confer *parens patriae* standing, such that the other factors identified by the *Snapp* Court should be treated as considerations that inform that determination, or rather whether there must be a quasi-sovereign interest in addition to the other factors. (Pet. App. 30a.) Judge Cabranes did not suggest any way in which the difference between these approaches would affect the outcome of this case. Instead, Judge Cabranes characterized this case as one that lacked a quasi-sovereign interest because it was based on only “four unrelated incidents” of gender-based bullying and harassment across different schools, years, and grades in a school district with “six schools and more than three thousand students.” (Pet. App. 31a-32a.) In his view, then, this was a case in which the State lacked an interest apart from the interests of four individual students. (Pet. App. 32a.)

REASONS FOR DENYING THE PETITION

I. THIS CASE IS A POOR VEHICLE TO RESOLVE THE PURPORTED CONFUSION IDENTIFIED IN THE CONCURRENCE.

Although the petition repeatedly relies on Judge Cabranes’s “concurrence dubitante” as a basis for granting certiorari (Pet. 1-3, 10-11, 19-22, 27), this case does not provide an opportunity to resolve any of the purported confusion identified in that concurrence (Pet. App. 30a).

1. The concurrence describes at length disagreement among the circuits over whether the factors identi-

fied in *Snapp* should be treated as “independent prongs of a multi-factor test” that includes a State’s assertion of a quasi-sovereign interest, or rather multiple considerations that inform whether the State has adequately asserted a quasi-sovereign interest. (Pet. App. 30a.) The concurrence further notes that some circuits, including the Second, have added additional requirements for a State to demonstrate *parens patriae* standing. (Pet. App. 31a.) The concurrence suggests that this case would provide the Court with an opportunity to clarify the contours of the correct test. (Pet. App. 31a.)

But any such confusion about the contours of the correct test is academic here. Regardless of whether the *Snapp* factors constitute independent requirements or rather considerations that inform whether the requisite quasi-sovereign interest has been adequately alleged, the Second Circuit correctly concluded that all of the factors were present here. Petitioner seemingly agrees; the petition makes no mention of these differing approaches, nor suggests that they provide a reason to grant certiorari.

2. The rest of the concurrence, although nominally pointing out a “doctrinal muddle” (Pet. App. 31a), does not identify a reason to grant certiorari, either. It only disputes whether the State in *this* case demonstrated a quasi-sovereign interest apart from the interests of private parties. In the concurrence’s view, the State predicated its *parens patriae* suit on “four unrelated incidents” that could have been litigated by individual parties. (Pet. App. 32a.) To reach this conclusion, the concurrence apparently rejected the State’s allegations that it had a quasi-sovereign interest apart from any private party’s interests in protecting the health and well-being of the entire student body, future students, students’ families, and the broader community, as well

as in ensuring an adequate, discrimination-free education for all current and future students.

This case presents a poor vehicle to consider whether the interests the State identified qualify as quasi-sovereign interests. Petitioner has never disputed that the State asserted a qualifying quasi-sovereign interest. As a result, the parties have not litigated this issue in any degree of detail. Nor did the Second Circuit have reason to consider the issue in detail. Indeed, the disagreement between the majority opinion and concurrence does not center on the scope or nature of the State's quasi-sovereign interest, but rather on whether to credit the State's allegations at the pleadings stage that the health, well-being, and education of the entire student body were at risk as a result of the school district's inaction.¹ The concurrence nowhere suggests that the State lacks a quasi-sovereign interest in protecting the health, well-being, and education of portions of its population *at large* as the State alleges here. Nor does the petition devote even a single sentence to articulating why the State's allegations did not sufficiently demonstrate a quasi-sovereign interest apart from the interests of any private party. The Court should thus decline the concurrence's invitation to use this case to resolve alleged confusion over the nature of a State's interest that qualifies as a quasi-sovereign interest.

¹ The majority opinion was unquestionably correct to credit the State's allegations, which came up on appeal at the pleadings stage.

II. THE SECOND CIRCUIT’S DECISION IS CONSISTENT WITH DECISIONS OF THIS COURT AND THOSE OF OTHER CIRCUITS.

A. The Second Circuit’s Decision Is Consistent with This Court’s Decisions.

The Second Circuit’s decision is consistent with both this Court’s decision in *Snapp* and the Court’s earlier *parens patriae* precedents. In arguing to the contrary, petitioner relies on snippets of text from this Court’s opinions to argue that, under this Court’s precedents, a State has standing to sue as *parens patriae* only when it demonstrates that *all* of its citizens have been harmed by the action giving rise to suit. But this Court has never held any such thing; to the contrary, this Court has expressly required that only a *segment* of the population, albeit a substantial one, be affected for the State to sue as *parens patriae*. And here, the State adequately alleged that a substantial segment of its population was harmed.

1. In *Snapp*, this Court set forth the requirements for a State to sue as *parens patriae*. First, a State must assert a “quasi-sovereign interest” that is “an interest apart from the interests of particular private parties.” 458 U.S. at 607. These quasi-sovereign interests include, but are not limited to, ensuring “the health and well-being” of its residents and ensuring its residents “are not excluded from the benefits that are to flow from participation in the federal system.” *Id.* at 607-08. Second, the State must allege that the challenged action injured “a sufficiently substantial segment of its population.” *Id.* at 607. This Court emphasized that it “has not attempted to draw any definitive limits on the proportion of the population of the State that must be adversely affected by the challenged behavior.” *Id.* And although the State

must allege more than “an injury to an identifiable group of individual residents, the indirect effects of the injury must be considered as well.” *Id.* This Court instructed that one “helpful indication” in determining whether an alleged injury suffices to give a State standing to sue as *parens patriae* “is whether the injury is one that the State, if it could, would likely attempt to address through its sovereign lawmaking powers” rather than through “private bills,” which indicate a State is no more than a nominal party to the suit. *Id.* at 607 & n.14.

2. *Snapp* followed a long line of cases in which this Court repeatedly affirmed a State’s right to sue to vindicate a quasi-sovereign interest when only a geographically and numerically limited portion of the State’s population was injured, so long as the effects were more widely felt.

In its earliest *parens patriae* case, *Louisiana v. Texas*, the Court recognized Louisiana’s quasi-sovereign interest in challenging a Texas law prohibiting goods originating in New Orleans from being transported into Texas. 176 U.S. 1, 4 (1900). Louisiana alleged that New Orleans contained approximately 275,000 residents, which comprised less than one-quarter of the State’s population, and that “many” of the residents were engaged in interstate commerce with Texas. *Id.* at 2. Despite the fact that only a small fraction of Louisiana residents would be directly harmed by the Texas embargo, the Court recognized that Louisiana “presents herself in the attitude of *parens patriae*” because it sought to vindicate not an injury to its sovereign interests, but rather matters that “affect her citizens at large.” *Id.* at 19.

The next year, in *Missouri v. Illinois*, this Court again recognized a State’s right to sue when a discrete

group was directly injured but the possible indirect effects could spread more widely. 180 U.S. 208 (1901). In that case, Missouri sued Illinois and a local sanitation department over pollution entering the Mississippi River in Chicago and impeding Missouri residents' ability to use the water. *Id.* at 209-12. Missouri alleged that "many thousands" of the State's more than three million residents relied upon the Mississippi River for drinking water, agriculture, and manufacturing purposes. *Id.* at 208-10. This Court concluded that Missouri had a right to vindicate the rights of its citizens. *Id.* at 241. The Court reasoned that, as a result of pollution, "contagious and typhoidal diseases introduced in the river communities may spread themselves throughout the territory of the state." *Id.* Moreover, "substantial impairment of the health and prosperity of the towns and cities of the state situated on the Mississippi river, including its commercial metropolis, would injuriously affect the entire state." *Id.* The Court did not suggest that it was *necessary* for Missouri to show that the entire State would be affected by the complained-of injury, merely that this allegation was sufficient to grant the Court original jurisdiction to hear the case before it. *Id.*

In *Georgia v. Tennessee Copper Co.*, this Court once again held that a State was entitled to sue to protect the rights of a segment of its residents, this time in a suit against a private actor. 206 U.S. 230 (1907). The State of Georgia sued a group of copper companies over air pollution that emanated from their work sites and traveled over the Tennessee border into Georgia. *Id.* at 236. Georgia alleged that the discharge had harmed forests, orchards, and crops in only five Georgia counties. *Id.* Nevertheless, this Court recognized Georgia's quasi-sovereign interest in protecting the health and commercial operations of its residents and concluded that the envi-

ronmental damage was on “so considerable a scale” that Georgia was entitled to sue. *Id.* at 237-39.

In the same year, this Court upheld the State of Kansas’s right to sue to vindicate the rights of residents who lived in the Arkansas Valley after Colorado diverted water that had previously flowed through the region. *Kansas v. Colorado*, 206 U.S. 46, 52 (1907). Kansas argued that the diversion of river water deprived residents living in the area of river navigation, hydro-power, and irrigation ditches, thereby making their land less productive and decreasing the State’s revenue. *Id.* The Court recognized Kansas’s right to sue, reasoning that it was not merely vindicating the right “of any individual citizen to protect his riparian rights,” but rather protecting the benefits to *many* individuals that the land bordering the Arkansas river provided. *Id.* at 99. This Court reasoned that the prosperity of the valley “affects the general welfare of the state,” although it did not suggest that *all* residents were directly or indirectly impacted by the diversion of water away from the valley. *Id.*

3. The Second Circuit’s decision faithfully adhered to *Snapp* and these earlier precedents.

The State was vindicating quasi-sovereign interests apart from the interest of any private party in suing the school district. Indeed, as noted above, petitioner has not seriously disputed that the State satisfied this criterion for *parens patriae* standing.² The State sued to ensure the health and well-being of its residents, including the

² Although the petition presents the question for this Court’s answer of how clearly must a quasi-sovereign interest transcend harm to private parties to give the State *parens patriae* standing (Pet. i), petitioner never once argues that New York was vindicating only private interests here nor explains why that would be so.

children attending schools in the Niagara-Wheatfield Central School District, their families, and the broader community. And this Court has expressly recognized that a State has a quasi-sovereign interest in protecting the health and well-being of its residents. *Snapp*, 458 U.S. at 607. Moreover, protecting *children*, particularly when they are at a public institution outside of the direct care of their parents, is a quintessential function of the State’s *parens patriae* power. Meredith Johnson Harbach, *Parens Patriae After the Pandemic*, 101 N.C. L. Rev. 1427, 1429-30 (2023); *see also Hawaii v. Standard Oil Co.*, 405 U.S. 251, 257 (1972) (discussing origin of *parens patriae* authority from the English King as “father of the country,” which gave him guardianship and litigation rights “of persons under legal disabilities to act for themselves”).

The State was also vindicating its quasi-sovereign interest in ensuring that its residents were not excluded from the benefits of participation in the federal system. *Snapp*, 458 U.S. at 607. More particularly, the State was ensuring that students in the school district were not deprived of their rights under Title IX of the Education Amendments of 1972 to be free from discrimination on the basis of sex while at school. The State has a recognized interest in ensuring that school districts not interfere with the ability of their students to enjoy the full protections afforded by federal statute. *Snapp*, 458 U.S. at 607 (“[F]ederal statutes creating benefits or alleviating hardships create interests that a State will obviously wish to have accrue to its residents.”).

While individual students may have an interest in preventing discrimination *against themselves* while attending a district school, the State has a quasi-sovereign interest in requiring systematic action from the district to protect *all* students from harassment and

bullying, both now and in the future. This is exactly the type of harm the State “would likely attempt to address through its own sovereign lawmaking powers,” *Snapp*, 458 U.S. at 607. Indeed, the State *has* used its lawmaking powers to prevent discrimination and protect access to education in its schools. *See* N.Y. Exec. Law § 296(4) (prohibiting educational institutions from permitting harassment against any student); N.Y. Educ. Law § 10 (memorializing legislative finding that “students’ ability to learn and to meet high academic standards, and a school’s ability to educate its students, are compromised by incidents of discrimination or harassment including bullying, taunting or intimidation”); N.Y. Educ. Law § 12 (prohibiting harassment and bullying on school property or at school functions). The State also has a quasi-sovereign interest in protecting the health and safety of individuals only indirectly harmed by the school district’s inaction, including future victims, parents and families that must deal with the consequences of the harassment and bullying their children suffer at school, and those who may be harmed outside of school in the future by bullies emboldened by the district’s inaction.

Second, the State had standing to sue as *parens patriae* because a substantial segment of New York’s population was affected by the school district’s inaction. As the complaint alleges, the entire student body within the school district was harmed either directly or indirectly by the school district’s failure to take any action in the face of gender-based bullying and discrimination. The resulting harassment deprived students of their ability to learn. The victims of direct harassment missed school due to mental health episodes, staff retaliation, or fear of continued harassment and violence. Indeed, one such victim dropped out entirely, failing to complete her high school education. The rest of the student body was

harmed as well, as students faced not only constant fear for their safety at school but also disruptions to their own education, including a walkout protesting the administration's inaction and then resulting suspensions of participants. And each year, hundreds of new students enter the school district, where their emotional and physical well-being, as well as their education, are at risk of harm by the pervasive gender-based bullying, harassment, and assault that occurs in the district with no remedial action. The serious harm done to students and their families in the district is itself sufficient to warrant standing to sue as *parens patriae*. See *Tennessee Copper Co.*, 206 U.S. at 237-39; *Louisiana*, 176 U.S. at 19.

The extent of the harm rippled out further. Depriving students, and similarly affected future students, of their education has consequences that extend beyond the time those students spend in the school district, potentially limiting their job opportunities and affecting the State's work force. Further, parents of victims were forced to forgo their other obligations to their jobs, families, and community to repeatedly engage with the school district's administration to implore the district to take steps to protect their children from harassment. (Pet. App. 6a-11a.) Parents had to pay for children to attend counseling or therapy to cope with the ongoing harassment. (Pet. App. 11a.) And families had to transfer their children to other schools, either by seeking out private education or relocating. (Pet. App. 9a-10a.) Moreover, as the Second Circuit emphasized, the school district's inaction in the face of bullying and harassment caused ever more students to participate in bullying, harassment, and even physical violence against bullied students. (Pet. App. 25a.) Each year, hundreds of students graduate from Niagara-Wheatfield High School

after years of learning that they will not face repercussions if they engage in bullying, sexual harassment, and assault. As they spread out across the State for higher education or employment, these former students face potential harmful consequences for their actions and represent a threat to those around them. Such indirect effects of the school district's inaction align with the circumstances in which this Court has concluded that States may sue to protect a quasi-sovereign interest, including the risk that a small number of residents could become ill and spread disease to other parts of a state, *Missouri v. Illinois*, 180 U.S. at 241. Moreover, the school district's failure to protect students from harassment gained national media attention, making the safety of public school in the State an issue of widespread public concern. (CA2 J.A. 15, ECF No. 31.)

B. Petitioner Has Not Identified Any Disagreement Among the Circuits.

1. Petitioner purports to identify a conflict among the circuits over how much of a State's population must be affected for a State to demonstrate *parens patriae* standing (Pet. 8-22), but the purported split is illusory and does not warrant this Court's review. Contrary to petitioner's contention, not a single circuit court has held that a State must demonstrate injury to all of its residents to sue as *parens patriae*. In fact, none of the decisions on which petitioner relies establishes *any* rule for determining what qualifies as a substantial segment of a State's population, much less a rule inconsistent with the Second Circuit's opinion in this case. Instead, the subject decisions—to the extent they address the substantial-segment factor for *parens patriae* standing at all—engage in the very case-specific analysis that this Court required in *Snapp*. 458 U.S. at 607. And none of

these decisions suggests any disagreement with the Second Circuit's decision here.

2. Petitioner is simply wrong in contending that the Sixth Circuit limits *parens patriae* standing to “injuries that undeniably effect [sic] the entire state” (Pet. 14). Petitioner cites (at 14-15) *Chapman v. Tristar Products, Inc.*, 940 F.3d 299 (6th Cir. 2019), but that case did not concern whether a State had alleged injury to a sufficient portion of its residents to sue as *parens patriae*. Rather, *Chapman* stands for the separate, and unremarkable, proposition that a State lacks *parens patriae* standing to intervene in a lawsuit on behalf of citizens already represented in the litigation for the sole purpose of vindicating the rights of those litigants.

In *Chapman*, a nationwide plaintiff class reached settlement in a defective-product suit. 940 F.3d at 302. The State of Arizona moved to intervene in the litigation to object to the settlement on behalf of class members who were Arizona citizens. *Id.* at 304. The Sixth Circuit concluded that the State did not have a quasi-sovereign interest at stake because the only objections Arizona could make to challenge the class settlement were “indistinguishable from the objections which individual Arizonans might raise.” *Id.* at 306. Significant to the Sixth Circuit's decision was the fact that Arizona had “specifically disclaimed any objection to the proposed settlement on the grounds of fraud or collusion” at the fairness hearing in the district court. *Id.* The court of appeals suggested that, had it not done so, Arizona may have been able to assert a quasi-sovereign interest based on its interest in the economic health and well-being of its citizens, as reflected in the State's consumer fraud statute. *Id.* As the Sixth Circuit noted, Arizona did not suggest that the class settlement would have any indirect effects on the people of its State beyond class mem-

bers already represented in the litigation. *Id.* The court thus had no occasion to consider whether the State had alleged that a substantial segment of the population would be affected by the settlement.

3. Nor has the Ninth Circuit “insist[ed] on allegations of a state-wide injury” as a requirement of *parens patriae* standing, petitioner’s contrary assertion notwithstanding (Pet. 16). *Missouri ex rel. Koster v. Harris*, 847 F.3d 646 (9th Cir. 2017), does not establish any such rule. In *Koster*, several States sued as *parens patriae* to challenge a California law prohibiting the sale of eggs from hens confined in a manner that violated California’s health and safety laws. *Id.* at 650. The court concluded that the States lacked *parens patriae* standing because the only nonspeculative harms they alleged were harms to egg farmers. *Id.* at 652-53. Relying on Second Circuit authority, *Koster* explained that *parens patriae* standing “is inappropriate where an aggrieved party could seek private relief,” and that “complete relief would be available to the egg farmers themselves, were they to file a complaint on their own behalf.” *Id.* at 652; see also *id.* at 653 (“[T]hose directly affected—egg farmers—are capable of pursuing their own interests.”). The Ninth Circuit contrasted the case before it to cases like *Missouri v. Illinois*, 180 U.S. 208, in which *parens patriae* standing would lie because private relief would be unlikely or unrealistic due to the river pollution at issue potentially indirectly causing health effects in other parts of the State. 847 F.3d at 652-53. While the court noted that the States in *Koster* had not made the analogous argument that the challenged egg laws threatened “the health of the entire population (or, indeed of anyone),” *id.* at 653, the court did not state, let alone hold, that to establish *parens patriae* standing, the States had to allege harm to the entire population.

The Ninth Circuit’s subsequent decision in *Chemehuevi Indian Tribe v. McMahon*, 934 F.3d 1076 (9th Cir. 2019), confirms that the Ninth Circuit does not require a sovereign to demonstrate that its entire population is harmed to sue as *parens patriae*. *Chemehuevi Indian Tribe* concerned a California Sheriff who had cited four members of the Chemehuevi Indian Tribe for violating California traffic laws within the Chemehuevi Reservation. *Id.* at 1078-79. The Tribe as *parens patriae* sued under 42 U.S.C. § 1983, asserting various statutory and constitutional rights. The court, possessing an “independent obligation to examine [its] own jurisdiction,” *Hartman v. Summers*, 120 F.3d 157, 159 (9th Cir. 1997), apparently saw no issue with the Tribe asserting *parens patriae* standing on the basis of injury to four Tribe members, and thus decided the case on its merits. *Chemehuevi Indian Tribe*, 934 F.3d at 1082-83.

Unsurprisingly, then, the district courts within the Ninth Circuit have not interpreted the Ninth Circuit’s decision in *Koster* as establishing a rule that a State’s entire population must be harmed for the State to demonstrate *parens patriae* standing. *See, e.g., Washington v. Geo Grp., Inc.*, 283 F. Supp. 3d 967, 979 (W.D. Wash. 2017) (concluding that the State of Washington met substantial-segment requirement by alleging harm to 1,575 individuals detained in federal facility); *Estados Unidos Mexicanos v. Diamondback Shooting Sports Inc.*, No. 22-cv-472, 2024 WL 1256038, at *5 (D. Ariz. Mar. 25, 2024) (concluding that plaintiff had standing to sue as *parens patriae* because “firearm violence affects a substantial segment of the population”).

4. Petitioner similarly misplaces its reliance (Pet. 18-19) on the Eighth Circuit’s decision in *United States v. Santee Sioux Tribe of Nebraska*, 254 F.3d 728 (8th Cir. 2001). There, the Eighth Circuit held that the Santee

Sioux Tribe lacked standing to sue as *parens patriae* to challenge an alleged injury to twelve identifiable members of the Tribe whose bank accounts had been garnished by the federal government. *Id.* at 731-32, 734. The Tribe asserted *parens patriae* standing for the first time at oral argument, *id.* at 734, and the court’s decision was understandably sparse in its discussion of *parens patriae* standing, neither citing *Snapp* nor applying the factors for *parens patriae* standing established therein.

To be sure, the Eighth Circuit’s decision states that the doctrine of *parens patriae* standing “is reserved for actions which are asserted on behalf of *all* of the sovereign’s citizens.” *Id.* at 734. In support of this proposition, however, the Eighth Circuit cited the Second Circuit’s opinion in *United States v. Hooker Chemicals & Plastics Corp.*, 749 F.2d 968 (2d Cir. 1984). *See Santee Sioux Tribe*, 254 F.3d at 734. And *Hooker* expressly recognized that “[o]nce quite limited, the concept of *parens patriae* has been expanded to include actions in which a state seeks to redress quasi-sovereign interests, such as damage to its general economy or environment, *even where the injury is to a fairly narrow class of persons.*” 749 F.2d at 984 (emphasis added). Given the facts of the Eighth Circuit case and its reliance on *Hooker*, there is no reason to think the court intended to create a novel rule that a State may only sue as *parens patriae* if every resident of the State has been harmed.

In any event, the Eighth Circuit has not since repeated or applied any such rule. Instead, the Eighth Circuit has consistently recognized that a State may assert *parens patriae* standing where it challenges action that harms a substantial segment of its population. *See, e.g., In re Racing Servs., Inc.*, 619 B.R. 681, 685 (8th Cir. 2020) (recognizing that “there is no specific number of persons who must be affected for a state to invoke”

parens patriae standing). Most recently, in a suit against Chinese officials for allegedly hoarding high-quality face masks during the COVID-19 pandemic, the Eighth Circuit concluded that Missouri had standing to sue as *parens patriae*, even though it neither alleged that *all* of its residents would have worn such masks absent China's actions, nor that every resident was directly or even indirectly harmed by the hoarding at issue. See *Missouri ex rel. Bailey v. People's Republic of China*, 90 F.4th 930, 933-34, 939 n.2 (8th Cir. 2024).

5. Finally, petitioner cites two cases from the Fifth Circuit that purportedly “handle[d] *parens patriae* standing properly.” (Pet. 11.) But petitioner articulates no conflict between the Fifth Circuit's approach and the Second Circuit's here. Nor is there any such conflict.

a. In *Harrison v. Jefferson Parish School Board*, two students suspended for having BB guns visible during the virtual school day sued their school board to challenge the constitutionality of the board's virtual learning policy, which punished students for conduct that otherwise might be acceptable at home. 78 F.4th 765, 767 (5th Cir. 2023). Louisiana intervened on the side of the students with a complaint alleging that the school board had violated state law and students' constitutional right to due process by denying students an opportunity to appeal the imposition of serious discipline such as expulsion. *Harrison v. Jefferson Parish Sch. Bd.*, No. 20-cv-2916, 2022 WL 539277, at *2-3 (E.D. La. Feb. 23, 2022). The school board settled with both students, but Louisiana attempted to continue the suit, citing its “broad interest in compliance with its laws.” 78 F.4th at 767.

The Fifth Circuit concluded that Louisiana lacked *parens patriae* standing to challenge the school board's

policies. The court reasoned that the State failed to allege an interest apart from that of vindicating students' right to due process, which the individual student plaintiffs could adequately vindicate. *Id.* at 773.

Petitioner does not identify any basis to conclude, based on *Harrison*, that the Fifth Circuit would have decided the present case differently from the Second Circuit. Nor does petitioner purport to show that the two circuits take conflicting approaches to addressing *parens patriae* standing more broadly. To the contrary, *Harrison* applied the *Snapp* factors in the same manner that the Second Circuit did. And while *Harrison* and the present case both involve a State asserting *parens patriae* standing on behalf of students, their different outcomes on standing reflect at least four material differences between the two cases rather than any inconsistent interpretation of law.

First, *Harrison* was decided solely on the nature of the quasi-sovereign interest asserted. As we have explained, however, petitioner here conceded at every stage of this litigation that New York asserted a qualifying quasi-sovereign interest. The State thus had no occasion to identify all its quasi-sovereign interests, let alone explain them in detail. And the courts below did not discuss this factor in any serious detail. Instead, the dispute in this case was over whether the State sufficiently alleged that a significant segment of its population was affected.

Second, the present case implicates the State's quasi-sovereign interest in ensuring that students enrolled in its public schools receive an adequate education. Unlike in *Harrison*, the State alleges here that victims of harassment and bullying regularly missed school or even dropped out, and even students who were

not direct victims of bullying suffered class disruptions as well as fear and anxiety. The State's interest in an adequately educated populace is different from the interest of individual students in their own education, which in any event many students may not have sufficient time in school or a sufficiently cognizable interest to be able to sue to protect.

Third, the present case implicates the State's quasi-sovereign interest not to be "excluded from the benefits that are to flow from participation in the federal system." *Snapp*, 458 U.S. at 608. More particularly, the State has an interest in ensuring its residents receive the full antidiscrimination protections enshrined in federal law, but which were denied to students by the school district here. And, unlike in *Harrison*, the district's harmful behavior does not take the form of discrete actions that can be challenged in court by individual students. In *Harrison*, the State alleged that a student's due process right was violated when he was denied an appeal of the decision to punish him. As the Fifth Circuit recognized, that student could then sue to challenge that appeal denial, thereby vindicating his due process right. In contrast, in the present case, most students were not directly denied protection from bullying and harassment, but rather experienced the indirect effects of pervasive harassment created by the district's inaction. Even assuming students could maintain individual suits on these facts, most students would not do so or would graduate before they could obtain relief. See *Missouri v. Illinois*, 180 U.S. at 241 (upholding *parens patriae* standing where "suits brought by individuals, each for personal injuries threatened or received, would be wholly inadequate and disproportionate remedies").

Fourth, unlike in *Harrison*, the State alleged that the school district's inaction will have widespread, ripple

effects beyond the school that implicate the State's quasi-sovereign interests. These effects include the phenomenon in which the school district's inaction emboldened and arguably enticed increasing numbers of students to participate in bullying, harassment, and even physical violence. The State's interest in the health and well-being of its population includes preventing students from learning such antisocial behaviors, which both undermines students' ability to become productive members of society and threatens the health and safety of current and future classmates, colleagues, and acquaintances. The indirect effects alleged here also include significant mental, emotional, and financial burdens on the families of harassed students, which cannot be vindicated through individual suits. And the school district's failure to protect students became a subject of national media attention, causing concern among the broader population of the State about student safety in the State's public schools.

Harrison thus sheds little light on how the Fifth Circuit would have resolved the present case and offers no basis to conclude that a conflict exists between the circuits.

b. The Fifth Circuit's decision in *Louisiana ex rel. Louisiana Department of Wildlife & Fisheries v. National Oceanic & Atmospheric Administration*, 70 F.4th 872 (5th Cir. 2023), also fails to demonstrate any conflict with the Second Circuit. In that case, Louisiana asserted *parens patriae* standing to challenge a federal rule governing shrimp trawlers. *Id.* at 875, 881. The State alleged that the rule would harm Louisiana's shrimping industry, but the court of appeals concluded that Louisiana failed to proffer evidence that the challenged rule would harm a sufficiently substantial segment of its population. *Id.* at 881. That holding, however,

concerned the quantum of evidence required to survive a motion for summary judgment, not the proportion of Louisiana's population that would be harmed by the challenged rule. Although Louisiana had alleged in its complaint that a substantial segment of the population would be harmed by the rule, the State proffered no evidence to support that allegation at the summary judgment stage. *Id.* Indeed, the Fifth Circuit suggested that Louisiana's shrimping industry *might* constitute a substantial segment of its population, but the record evidence only demonstrated that the shrimping industry across the Gulf of Mexico would be adversely affected by the challenged rule without quantifying the harm that would be felt by Louisiana's residents in particular. *Id.*

The evidentiary issues presented in *Louisiana Department of Wildlife & Fisheries* present no conflict with the Second Circuit's opinion here, which was decided at the pleadings stage and thus accepted the allegations in the complaint as true. Petitioner offers no explanation as to how this Louisiana case diverges from the Second Circuit's holding, stating only that the Fifth Circuit applied a "rigorous approach" to *parens patriae* standing. (Pet. 13.)

III. The Petition Does Not Present an Important Legal Question Warranting Certiorari.

1. The question presented by petitioner does not warrant this Court's review. As demonstrated in Part II.B (*supra* at 18-28), the federal courts of appeals have not struggled to apply the *Snapp* factors to a litany of different factual circumstances. Nor have the circuits reached meaningfully different outcomes in granting or denying States standing to sue as *parens patriae*. There is thus no need to provide the courts with more detailed standards, as petitioner requests.

2. What's more, the federal courts of appeals are infrequently called on to apply the *Snapp* test at all. The Second Circuit's caselaw is illustrative. Petitioner argues that the Second Circuit applies looser requirements than appropriate for a State to sue as *parens patriae*, and thereby enables "[a]ggressive state attorneys general" to abuse the doctrine. (Pet. 28.) Petitioner further argues that the circuit has employed this looser standard since at least 1982. (Pet. 19 (citing *New York ex rel. Abrams v. 11 Cornwell Co.*, 695 F.2d 34 (2d Cir. 1982), *vacated in part on other grounds*, 718 F.2d 22 (2d Cir. 1983)). Petitioner's warning that the Second Circuit has let attorneys general run amok under the authority of *parens patriae* suits finds no basis in fact. In over four decades of the Second Circuit's allegedly lax approach to *parens patriae* standing, that court has rarely been called on to rule on *parens patriae* standing.

More particularly, in the forty-three years since the *Abrams* decision, the Second Circuit has been called on to decide whether a State has satisfied the *Snapp* test for *parens patriae* standing only eight times, including the present case. In three of those cases, the court concluded that the State lacked standing to sue as *parens patriae* because it had not demonstrated a quasi-sovereign interest. See *People of the State of N.Y. by Vacco v. Operation Rescue Nat'l*, 80 F.3d 64, 71 (2d Cir. 1996); *Town of W. Hartford v. Operation Rescue*, 915 F.2d 92, 102 (2d Cir. 1990); *People of the State of N.Y. by Abrams v. Seneci*, 817 F.2d 1015, 1017-18 (2d Cir. 1987). In three other cases, the court ultimately determined that it did not need to decide the issue of *parens patriae* standing to resolve the case. *New York v. Griep*, 11 F.4th 174 (2d Cir.), *vacating on reh'g*, 991 F.3d 81, 129-32 (2d Cir. 2021); *Lacewell v. Office of Comptroller of Currency*, 999 F.3d 130, 142 n.13 (2d Cir. 2021);

Connecticut v. Physicians Health Servs. of Conn., Inc., 287 F.3d 110, 120-21 (2d Cir. 2002).

Thus, in only one case before this one did the Second Circuit conclude that States had sufficiently alleged standing to sue as *parens patriae*. That suit alleged a public nuisance, which this Court has recognized as the quintessential use of a State's *parens patriae* power. *Snapp*, 458 U.S. at 603-05 (tracing the Court's history of upholding "traditional" *parens patriae* suits against public nuisances). In *Connecticut v. American Electric Power Co.*, a group of States filed a public nuisance claim against a group of power companies for their emissions of carbon dioxide. 582 F.3d 309, 338-39 (2d Cir. 2009), *rev'd on other grounds*, 564 U.S. 410 (2011). The Second Circuit concluded that the States had asserted a "classic" quasi-sovereign interest in safeguarding the public's health and the States' natural resources and that the States had satisfied the substantial-segment requirement by alleging "that the injuries resulting from carbon dioxide emissions will affect virtually their entire populations." *Id.* at 338. This Court subsequently reversed the Second Circuit's decision on grounds unrelated to *parens patriae* standing. *American Elec. Power Co. v. Connecticut*, 564 U.S. 410.

In short, the present suit is only the second time in over forty years that the Second Circuit has upheld a State's authority to sue as *parens patriae*. Petitioner's alarmist warnings about rampant abuse of the *parens patriae* power in the Second Circuit are unfounded.

3. Nor does this case implicate the consequences to litigants that petitioner asserts (Pet. 27). The State brought suit in this case seeking only prospective relief—to require the school district to implement general safeguards to protect students from known

instances of harassment and bullying. There is thus no risk that, should the State prevail, the outcome here would have preclusive effect on a future damages claim by a victim of past bullying. Nor would the State's suit for systematic relief prevent any student in the future from seeking prospective relief to prevent *individual instances* of harassment or bullying that they were experiencing. And, as discussed (*supra* at 25), there is little chance of any such suit being filed given the unique circumstances of this case.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

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