No. 24-1167

IN THE

Supreme Court of the United States

NIAGARA WHEATFIELD
CENTRAL SCHOOL DISTRICT,

Petitioner,

v.

THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL,

Respondent.

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

REPLY BRIEF

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PRELIMINARY STATEMENT

The Niagara Wheatfield Central School District respectfully submits this reply brief in further support of its petition for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

A. The Second Circuit's Decision Conflicts With Decisions Of Other Circuits And Decisions Of This Court

The New York State Attorney General denies the demonstrated circuit conflict concerning how widespread an injury to a State's quasi-sovereign interest must be, and how clearly it must transcend harm to particular private parties, to give the State *parens patriae* standing. She is wrong, and her claim that none of the circuit decisions discussed in the petition for a writ of certiorari are "inconsistent with the Second Circuit's opinion in this case," Br. in Opp. 18, is pure fiction. Judge Cabranes had good reason for citing several of those very same cases in his separate opinion below to support his observation that the question presented has generated sufficient "confusion among the Courts of Appeals," and created such a "doctrinal muddle," as to warrant "clarification or correction by the Supreme Court." Pet. App. 30a-31a, 33a.

The decisions, discussed at length in the petition, Pet. 11-21, speak for themselves, but here are the highlights. In *Harrison v. Jefferson Parish School Board*, 78 F.4th 765 (5th Cir. 2023), the Fifth Circuit rejected the State of Louisiana's invocation of *parens patriae* standing to sue a local parish school board to contest the board's

suspensions of two students. Louisiana alleged that the suspensions injured the State's "quasi-sovereign interest in preventing its political subdivisions from violating the constitutional rights of 52,000 public schoolchildren" in the parish. *Id.* at 772. The court found this alleged injury "wholly derivative" of the injuries incurred by the two students who were actually suspended. *Id.* at 773.

In *Chapman v. Tristar Products, Inc.*, 940 F.3d 299 (6th Cir. 2019), the Sixth Circuit denied the State of Arizona's attempt to use *parens patriae* standing to intervene in a class action for purposes of objecting to a proposed settlement offer. "[T]he only injury alleged is injury to an identifiable group of Arizonans (class members in the instant litigation), and Arizona has not fleshed out the indirect effects of this alleged injury on *Arizona as a whole*," the court determined. *Id.* at 306 (emphasis added).

In *Missouri ex rel. Koster v. Harris*, 847 F.3d 646 (9th Cir. 2017), *cert. denied sub nom.*, *Missouri ex rel. Hawley v. Becerra*, 581 U.S. 1006 (2017), the Ninth Circuit held that the State of Missouri, and a collection of other States, did not have *parens patriae* standing to challenge a California law prohibiting the sale of certain types of eggs within that State. Although the complaint alleged the adverse impact that the law would have on egg farmers in the plaintiff States, "the Shell Egg Laws are not alleged to threaten the health *of the entire population*" of the plaintiff States. *Id.* at 653 (emphasis added).

The Ninth Circuit applied the same approach in *Washington v. Food & Drug Administration*, 108 F.4th 1163 (9th Cir. 2024). That court held that the State of Idaho

lacked *parens patriae* standing to challenge a federal determination regarding access to abortion medication because Idaho's alleged injury "concern[ed] the well-being of individual citizens—not a distinct interest *of the state as a whole*." *Id.* at 1178 (emphasis added).

The Ninth Circuit's decision in *Washington*, which the Attorney General simply ignores, post-dates *Chemehuevi Indian Tribe v. McMahon*, 934 F.3d 1076 (9th Cir. 2019). In any event, *Chemehuevi Indian Tribe* does not call into question the Ninth Circuit's stance on *parens patriae* standing. That decision, made in the context of *parens patriae* standing for Indian Tribes, does not reflect that the Ninth Circuit "apparently saw no issue with the [Chemehuevi Indian] Tribe asserting *parens patriae* standing on the basis of injury to four Tribe members," contrary to the Attorney Geneal's contention. *See* Br. in Opp. 21. Indeed, the decision reflects precisely the opposite proposition. The court held that the Tribe cannot properly "assert its members' individual rights as *parens patriae*" and affirmed the dismissal of the Tribe's complaint on that basis. *Chemehuevi Indian Tribe*, 934 F.3d at 1078, 1082.

As far as *parens patriae* standing for Indian Tribes is concerned, the Ninth Circuit has shown no signs of deviating from the approach embraced by the Eighth Circuit in *United States v. Santee Sioux Tribe of Nebraska*, 254 F.3d 728 (8th Cir. 2001). There, the Eighth Circuit explained that "[t]he doctrine of *parens patriae* * * * is reserved for actions which are asserted on behalf of *all* of the sovereign's citizens." *Id.* at 734. Thus, in the tribal context, the doctrine thus "cannot be used to confer standing on [a] Tribe to assert the rights of a dozen or so members of the Tribe." *Id.*

The Fifth Circuit, the Sixth Circuit, the Eighth Circuit, and the Ninth Circuit all would have roundly and readily rejected the New York State Attorney General's claim for *parens patriae* standing here. After all, the Second Circuit did not purport to identify any consequences of the School District's alleged inaction that extended beyond the School District's "student and parent community." Pet. App. 26a; *see* Pet. App. 23a-26a. As serious and troubling as those supposed consequences are alleged to be, they simply do not impact the State of New York "as a whole," even indirectly. *See Washington*, 108 F.4th at 1178; *Chapman*, 940 F.3d at 306. The Second Circuit's decision is a prime example of the "confusion among the Courts of Appeals" that Judge Cabranes noted surrounds the question of how widespread an injury to a State's quasi-sovereign interest must be, and how clearly it must transcend harm to particular private parties, to support *parens patriae* standing—confusion in need of this Court's "clarification or correction." Pet. App. 30a, 33a.

As the School District explained, the Second Circuit's decision is also plainly out of step with this Court's *parens patriae* precedents. Pet. 22-25. In each of those cases, the Court permitted States to sue on their residents' behalf only after concluding that "the injury alleged affects the general population of [the] State in a substantial way." *Maryland v. Louisiana*, 451 U.S. 725, 737 (1981). And that includes the four of those cases discussed by the Attorney General, Br. in Opp. 12-14: *Louisiana v. Texas*, 176 U.S. 1, 4 (1900), in which the Court conferred *parens patriae* standing on the basis of alleged injuries that "affect [the State of Louisiana's] citizens at large"; *Missouri v. Illinois*, 180 U.S. 208, 241 (1901), in which the Court found *parens patriae* standing to rectify alleged

injuries that "affect the entire state" of Missouri; *Kansas v. Colorado*, 206 U.S. 46, 99 (1907), where the Court found *parens patriae* standing after determining that the alleged injuries "affect[] the general welfare of the state" of Kansas; and *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 238-239 (1907), in which the Court recognized *parens patriae* standing to combat the effects of "large quantities of sulphur dioxide" that "often [are] carried by the wind great distances and over great tracts of Georgia land" so as to "cause and threaten damage on so considerable a scale to the forests and vegetable life, if not to health, within the plaintiff state, as to make out a case within the requirements of *Missouri v. Illinois*."

Moreover, the consequences flowing from the School District's alleged inaction were too circumscribed for the State to "attempt to address [them] through its sovereign lawmaking powers." *See Alfred L. Snapp & Son*, 458 U.S. at 607. The State undisputedly did not attempt to remedy those consequences by passing new legislation. Indeed, the Attorney General did not even invoke in her amended complaint any of the pre-existing New York anti-harassment legislation she now references. *Compare* Br. in Opp. 15-16 *with* 2d Cir. App. 9-21.

Further, contrary to the Attorney General's contention, Br. in Opp. 15, this Court's cases also show that the Second Circuit's blessing of *parens patriae* standing here is profoundly ahistorical. As originally conceived, *parens patriae* standing in federal court was a means for States to resolve legal disputes with other States or with citizens of another States that were so weighty and pervasive that, absent a federal judicial forum for resolution, they could result in armed conflict. Pet. 25-27; *see* F. Andrew Hessick,

Quasi-Sovereign Standing, 94 Notre Dame L. Rev. 1927, 1943 (2019); *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439, 450 (1945). Even accepting the suggestion of the authority cited by the Attorney General that *parens patriae* standing as originally conceived would have permitted States to protect children *from a pandemic*, Meredith Johnson Harbach, Parens Patriae *After the Pandemic*, 101 N.C. L. Rev. 1427, 1429-1430 (2023), that use of the doctrine bears no resemblance to the Attorney General's use of the doctrine in this case.

Here, the Attorney General identified four disparate and unrelated incidents in which the School District is alleged to have "failed to respond adequately" to reports of sexual assault, harassment, gender-based violence, and bullying, further contending that "in the last few years," the School District received 30 other complaints. Pet. App. 5a, 30a. The Attorney General did *not* allege a policy or practice of discrimination on the School District's part, and the Second Circuit did not require such a showing. In the Second Circuit's view, injury to a relatively small number of identifiable individuals was sufficient to support *parens patriae* standing.

In sum, the Justices who participated in this Court's *parens patriae* cases would scarcely recognize what that doctrine has become in the hands of the Second Circuit. They would blanche at that court's decision to give the State of New York standing to hale one of its own school districts into federal court to address alleged injuries confined to members of a discrete educational community that comprises just six schools within a relatively small, remote New York county near the Canadian border. *See* Pet. App. 23a-26a; *see also* Niagara Wheatfield Central

School District, *About Us/Home*, https://www.nwcsd.org/about-us.

The Court should reject the Attorney General's attempt to bring the Second Circuit's decision in line with the aforementioned circuit cases and cases of this Court by manufacturing—for the first time in the brief in opposition—farther-reaching consequences supposedly flowing from the School District's alleged inaction. *See* Br. in Opp. 14-18. Not only is that maneuver procedurally improper, it does nothing to diminish the conflicting nature of the Second Circuit's decision here. As already discussed, that court gave the New York State Attorney General *parens patriae* standing based upon highly localized alleged injuries alone.

Moreover, the far-flung consequences posited by the Attorney General here are completely unsupported by the allegations in the amended complaint. She relies on hypothetical "ripple effects," positing that "the School District's inaction emboldened and arguably enticed increasing numbers of students to participate in bullying, harassment, and even physical violence," with the result that these students will become antisocial and unable to become productive members of society, which, in turn, will "threaten[] the health and safety of current and future classmates, colleagues, and acquaintances." Br. in Opp. 26. Tellingly, the Attorney General cites no support whatsoever for that unbounded theory. Further, accepting that theory would render the requirements of *parens patriae* standing completely toothless. If evaluation of alleged injuries to quasi-sovereign interests is divorced from the underlying concrete incidents and instead based on hypothetical future effects and abstract harm to the

community, then one would be hard-pressed to identify *any* alleged act of wrongdoing that would not support the exercise of *parens patriae* standing.

Nor does the Attorney General gain any headway by pointing out that neither this Court, nor any of the circuit courts that reject the Second Circuit's view, has held that "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." Br. in Opp. 11; *see* Br. in Opp. 18. The School District does not contend that either this Court or any circuit has adopted, or should adopt, that test. The salient point is that, as Judge Cabranes explained, the relative lack of guidance from this Court since *Alfred L. Snapp & Son* has given rise to a "doctrinal muddle" necessitating this Court's review. Pet. App. 31a.

B. This Case Is An Appropriate Vehicle For Resolving The Critical Jurisprudential Conflicts Involved

The Attorney General is off-base to contend, Br. in Opp. 8-10, that Judge Cabranes in his separate opinion below described a *different* "doctrinal muddle" than the one explained in the School District's petition for a writ of certiorari and amplified further here: conflict regarding how widespread an injury to a State's quasi-sovereign interest must be, and how clearly it must transcend harm to particular private parties, to give the State *parens patriae* standing. Judge Cabranes expressly dispelled any notion that he might have been focused exclusively on the problem of *identifying* quasi-sovereign interests in the first instance. He described the subject of his separate opinion as including not only "what such an interest may be" but "how it is to be evaluated." Pet. App. 29a.

Further, in identifying the "confusion among the Courts of Appeals" that warrants "clarification or correction by the Supreme Court," Pet. App. 30a, 33a, Judge Cabranes cited several of the very same circuit cases discussed by the School District regarding evaluation of the size and scope of quasi-sovereign interests, including the Fifth Circuit's decision in *Harrison*, the Sixth Circuit's decision in *Chapman*, and the Ninth Circuit's decision in *Koster*. Pet. App. 30a-31a nn.6-7. The School District seeks the Court's review of precisely those issues.

Finally, the Court should take no comfort whatsoever in the fact that, system wide, *parens patriae* cases do not make it to the courts of appeals with the same frequency as cases addressing other subjects. *See* Br. in Opp. 28-29. If the Court turns down Judge Cabranes's invitation to accept review here and instead lets stand the Second Circuit's decision "[r]elaxing *parens patriae* standing requirements," Pet. App. 31a, crusading state attorneys general within that circuit and elsewhere will be emboldened to use and abuse *parens patriae* lawsuits in the same manner that the New York State Attorney General is using and abusing that power here.

CONCLUSION

The School District's petition for a writ of certiorari should be granted.

Respectfully submitted,

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