No. 25-259

In the Supreme Court of the United States

JANUARY LITTLEJOHN AND JEFFREY LITTLEJOHN,
Petitioners,

v.

SCHOOL BOARD OF LEON COUNTY, FLORIDA, ET AL.,
Respondents.

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

BRIEF FOR DEFENDING EDUCATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

CHRISTOPHER E. MILLS
Counsel of Record
Spero Law LLC
557 East Bay Street
#22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

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INTEREST OF *AMICUS CURIAE*

Defending Education is a national, nonprofit membership association. Its members include parents with school-aged children. It uses advocacy, disclosure, and litigation to combat the politicization and indoctrination of K-12 and postsecondary education.*

The bond between parent and child is "the most universal relation in nature." 1 Blackstone's Commentaries 446 (10th ed. 1787). The common law "recognized that natural bonds of affection lead parents to act in the best interests of their children." *Parham* v. *J.R.*, 442 U.S. 584, 602 (1979). In turn, as parents are bound to care for their children and guarantee their well-being, "the law has given them a right to such authority." 2 James Kent, *Commentaries on American Law* 203 (12th ed. 1873). The Constitution enshrines that right in the Fourteenth Amendment, which protects the right of parents to direct the upbringing and education of their children.

Defending Education exists to defend that right. It has a significant interest in eliminating school actions that take responsibility for critical decisions about a child's well-being away from parents and give it to public school bureaucrats. To that end, Defending Education has monitored the rise of policies that allow schools to secretly transition students' genders, and it has litigated to end such policies.

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* *Amicus* provided timely notice of its intention to file this brief. No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF THE ARGUMENT

Facing parents of public school children is an explosion of policies that allow school personnel to socially transition their young children—giving children new names, pronouns, restrooms, and field trip bunks—in secret. Defending Education has found that nearly a quarter of the nation's students are subject to these policies. These "social transitions" are not neutral interventions. While the overwhelming majority of children with gender incongruity grow out of it, most children who are socially transitioned do not. Rather, they go on to increasingly invasive and irreversible interventions—puberty blockers, sterilizing cross-sex hormones, and experimental genital surgeries. Yet schools are refusing to even tell parents that they are setting their children on this dangerous pathway.

If the fundamental parental right to direct a child's upbringing protects anything, it protects against state-sanctioned transition of a child without parents' knowledge. But courts are leaving parents with no way to vindicate this right. When parents challenge a school's policy—a "legislative" action—they are often told that their concerns are too speculative so they lack standing. And when parents challenge a school's application of its policy to their child, decisions like the one below tell them they cannot assert their fundamental right unless they clear an insurmountable hurdle: the "shocks the conscience" test. The result is to deny parents meaningful judicial recourse, rendering the constitutional principle of parental rights a hollow promise for many families. To correct this result, the Court should grant certiorari.

REASONS FOR GRANTING THE WRIT

I. Secretly transitioning children is a widespread problem in public schools.

A. The phenomenon of public schools secretly socially transitioning young children has exploded in recent years. School districts across the country are adopting policies that allow school officials to socially transition students without informing parents. Defending Education keeps track of school districts with policies stating that district personnel can or should keep a student's transgender status hidden from parents. At last count, 1,215 school districts nationwide were reported to have such policies—and the actual figure is likely higher. These districts cover over 12.3 million students, roughly a quarter of the public school student population.[1]

Of course, those figures include only those districts brazen enough to adopt a policy that "openly state[s] that district personnel can or should keep a student's transgender status hidden from parents."[2] There are likely many other districts with an unwritten practice of facilitating student gender transitions. See, *e.g.*, *T.F.* v. *Kettle Moraine Sch. Dist.*, 2023 WL 6544917, at *15, 18 (Wis. Cir. Ct. Oct. 3, 2023) ("Rather than d[o]

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[1] See Defending Education, *List of School District Transgender–Gender Nonconforming Student Policies*, https://defendinged.org/investigations/list-of-school-district-transgender-gender-nonconforming-student-policies/ (last updated Apr. 21, 2025); National Center for Education Statistics, *Fast Facts*, https://perma.cc/RZ4B-MWU7.

[2] *List*, *supra* note 1.

what the voters have elected them to do" and "promulgate a policy" that allows "for public input," the school board hid behind "the actions of their employee.").

That more schools are secretly transitioning students is especially troubling given the rise in the number of American children with gender dysphoria.[3] When more students experience confusion about their body, and more school officials hide that fact from parents, that is a recipe for a mental health crisis.

It also undermines public confidence in the school system. Secrecy does not inspire trust, so when schools tell parents that they are not allowed to know critical health information about their child, parents are rightfully worried. After all, most Americans agree that parents, not school bureaucrats, are in the best position to make decisions about their children's well-being.[4] They also agree that schools should not withhold information from parents about a child's gender identity.[5]

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[3] See *Gender Dysphoria Statistics In The United States*, Bright Path Behavioral Health (Apr. 7, 2025), https://perma.cc/7QKC-7XJN (noting a "nearly threefold increase in diagnoses of gender dysphoria among children and adolescents in the U.S." from "2017 to 2021"); see also *United States* v. *Skrmetti*, 145 S. Ct. 1816, 1825 (2025) ("In recent years, the number of minors requesting sex transition treatments has increased.").

[4] Parental Rights Foundation, *Survey: Voters Overwhelmingly Support Parents' Rights* (May 31, 2022), https://perma.cc/G6J2-3M8S.

[5] Defending Education, *Poll: 71% of Voters Support Legislation Requiring Schools to Inform Parents if Their Child Wants to*

The explosion in secret transition policies has occurred in spite of this widespread opposition. It is driven from the top down by activist groups demanding that schools hide students' gender information from their parents and—relying on spurious readings of laws like FERPA and Title IX—threaten liability for schools that disagree. The National Education Association, for example, instructs school personnel not to "disclose a student's actual or perceived sexual orientation, gender identity, or gender expression to" "parents" "unless required to do so by law."[6] It partnered with a coalition of LGBT activist groups to produce a guide that urges schools "to have a plan in place to help avoid any mistakes or slip-ups" that might clue in "unsupportive parents" about what schools are doing to their children.[7] The guide even encourages school officials to testify in child custody proceedings against "biase[d]" parents.[8]

B. The sheer quantity of schools with secret transition policies is alarming enough. But the individual stories behind the statistics highlight the serious and often irreparable harm that such policies can inflict on families. Defending Education is well aware of those harms because, in addition to tracking the proliferation of secret transition policies across the country, it has litigated the issue. See *Parents*

Change Their Gender Identity (Mar. 21, 2023), http://bit.ly/41KAUeb.

[6] Nat'l Education Ass'n, *Legal Guidance on Transgender Students' Rights* 6 (June 2016), https://perma.cc/26N8-23D5.

[7] Asaf Orr et al., *Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools* 16, https://perma.cc/US5J-6AZW.

[8] *Id.* at 34.

Defending Educ. v. *Linn-Mar Cmty. Sch. Dist.*, 629 F. Supp. 3d 891 (N.D. Iowa 2022).

The stories shared by parents like the Littlejohns are heartbreaking. In Florida, Wendell and Maria Perez said that they found out that a school "employee had been counseling their 12-year-old about 'gender confusion' for months" "only after their child made two suicide attempts."[9] Their daughter "had never expressed any concerns or exhibited any signs of distress about her gender identity at home."[10] Though the elementary school counselor assured the girl that the school would not notify her parents about its transition efforts, the school apparently did not maintain the same confidentiality with her peers, who bullied her when they learned of her transition.[11] *Still* her parents were not informed.[12] The Perezes were later told that the school deliberately concealed their daughter's transition because of the family's Catholic faith.[13]

A family in one Ohio school district faced similarly disturbing treatment. When their eighth-grade daughter began suffering mental health difficulties, her teachers concluded that she was "experiencing so-called 'gender dysphoria.'" *Kaltenbach* v. *Hilliard City Sch.*, 2025 WL 1147577, at *2 (CA6 Mar. 27, 2025)

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[9] Katie J. M. Baker, *When Students Change Gender Identity, and Parents Don't Know*, N.Y. Times (Jan. 22, 2023), https://www.nytimes.com/2023/01/22/us/gender-identity-students-parents.html.

[10] Memorandum in Opposition to Motion to Dismiss 1–2, *Perez* v. *Broskie*, No. 3:22-cv-83, ECF No. 30 (M.D. Fla. Apr. 4, 2022).

[11] *Id.* at 3.

[12] *Ibid.*

[13] *Ibid.*

(Thapar, J., concurring). Without consulting her parents, they decided that they would treat her as a male, "'convinced [her] she was a boy in a girl's body,'" and had her "'adopt a new name and identity.'" *Ibid.* All the while, they "lied to [her] parents about what was happening." *Id.* at *1. Because they considered her parents insufficiently "supportive" and therefore "unsafe," school officials "treated [her] as a girl whenever she was around her parents, hoping to hide . . . the new identity [they] had concocted for her." *Id.* at *2. Again, "the school's decision had tragic consequences: [the girl] attempted suicide at school." *Ibid.* The case was, as Judge Thapar noted, "beyond troubling." *Id.* at *1.

One California couple learned that their 15-year-old child, a biological girl, had been socially transitioned at school when they "glimpsed a homework assignment with an unfamiliar name scrawled at the top."[14] School officials had concealed the transition for six months, even though the parents, once informed, "accepted their teenager's new gender identity."[15] Understandably, the parents were unsettled by the school's deception. Doctors had previously diagnosed their child with autism, ADHD, PTSD, and anxiety.[16] The teen also struggled with "loneliness" and had "repeatedly changed" names and sexual orientations.[17] But the parents weren't able to

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[14] Baker, *supra* note 9.
[15] *Ibid.*
[16] *Ibid.*
[17] *Ibid.*

address any of these issues because they were kept in the dark. Instead, the school had put their "teenager, a minor, on a path the school wasn't qualified to oversee."[18] Their child eventually "asked for hormones and [breast removal] surgery."[19]

One mother in California "went *two years* without knowing her sixth grader had transitioned at school."[20] In some cases, schools are even sending students for medical treatment without informing parents. In Pennsylvania, one school's secret transition of a 12-year-old "culminated with the school sending the child to the hospital for an evaluation with inpatient therapy."[21] "The school *still* did not inform the mother of the child's gender identity in class."[22] The theme is clear. Schools are putting students in danger by concealing critical mental health information from the people who know them best and care most about them: their parents.

C. Beyond the distrust and disruption that secret transition policies breed, they may lead to lasting negative consequences for young children. Social transitions are no neutral intervention. The evidence suggests that there is no mental health benefit

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[18] *Ibid.*
[19] *Ibid.*
[20] Donna St. George, *Gender Transitions at School Spur Debates*, Wash. Post (July 18, 2022), https://perma.cc/BVZ5-T3PK (emphasis added).
[21] Jack Panyard, *Her Child Used Transgender Name, Pronouns at School. Mom Blasts Dover for Not Telling Her*, York Daily Record (Sept. 21, 2022), http://perma.cc/BUZ7-FPBC.
[22] *Ibid.* (emphasis added).

associated with social transitions.[23] The long-term costs, on the other hand, are significant. As the United Kingdom's Cass Review—a seminal review of evidence about childhood gender transition—explained, "it is important to view [social transition] as an active intervention because it may have significant effects on the child or young person in terms of their psychological functioning and longer-term outcomes."[24] And "[t]he importance of what happens in school cannot be under-estimated."[25] Absent interventions like social transitioning, the vast majority of "children with gender dysphoria grow out of it." *Eknes-Tucker* v. *Governor of Alabama*, 114 F.4th 1241, 1268 (CA11 2024) (Lagoa, J., concurring). But one "study found that 93% of those who socially transitioned between three and 12 years old continued to identify as transgender" five years later.[26] Another "study looking at transgender adults found that lifetime suicide attempts and suicidal ideation in the past year was higher among those who had socially transitioned as adolescents compared to those who had socially transitioned in adulthood."[27]

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[23] *E.g.*, James Morandini et al., *Is Social Gender Transition Associated with Mental Health Status in Children and Adolescents with Gender Dysphoria?*, 52 Archives of Sexual Behavior 1045, 1045 (2023).

[24] Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People* 158 (Apr. 2024), https://perma.cc/74EA-L76V.

[25] *Ibid.*

[26] *Id.* at 162.

[27] *Ibid.* (internal quotation marks omitted).

Social transition is the start of a conveyor belt that sends a child through the medical transition pathway. The U.S. Department of Health and Human Services recently explained that studies "suggest[] the majority of children who socially transition before puberty progress to medical interventions."[28] According to the Endocrine Society—a proponent of medically transitioning children—"[i]f children have completely socially transitioned, they may have great difficulty in returning to the original gender role."[29] The Society even admitted that "there are currently no criteria to identify" when gender dysphoria could be reduced by early social transitions.[30] Social transitions are thus likely to usher children to dangerous, unproven, and sterilizing sex hormones and surgeries. See *Eknes-Tucker*, 114 F.4th at 1260–61, 1268–70 (Lagoa, J., concurring); see also *Skrmetti*, 145 S. Ct. at 1836–37. Those "treatments" can have lasting harmful effects, including impaired brain development, cardiovascular risks, loss of fertility, and much more. *Id.* at 1841–43 (Thomas, J., concurring).

In sum, the questions underlying this case are critically important for children and families across the country, supporting this Court's review.

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[28] U.S. Dep't of Health & Human Servs., *Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices* 71 (May 1, 2025), https://perma.cc/A322-8Z8L ("HHS Report").

[29] Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, 102(11) J. Clinic. Endocrinology & Metabolism 3869, 3879 (Nov. 1, 2017).

[30] *Ibid.*

II. The decision below leaves many parents without meaningful recourse to vindicate their constitutional rights.

Judicial recourse was already elusive for parents asserting their constitutional right to direct their children's upbringing against secret public school transitions. Courts confronting similar cases have often denied standing to parents of children who have not yet been covertly transitioned by their schools. In effect, these courts have told parents to wait until their child is secretly socially transitioned—no matter if, by design, they will not know that. Yet parents are now told by the decision below that even once that happens, and they bring an appropriate lawsuit, they cannot prevail because challenges to "executive action" are initially governed by an insurmountable "shocks the conscience" standard. This would make it impossible for parents to vindicate their constitutional rights—depriving them of the fundamental ability to guide their children's upbringing and education. Courts should not use threshold legal doctrines "as a way of avoiding . . . contentious constitutional questions" like this one. *Parents Protecting Our Children, UA* v. *Eau Claire Area Sch. Dist.*, 145 S. Ct. 14, 14–15 (2024) (Alito, J., dissenting from denial of certiorari).

A. Courts have denied standing to challenge secret transition policies.

Courts routinely—and wrongly—deny standing to parents who challenge similar secret transition policies before they are imposed on their child. Typical is one Fourth Circuit decision, which held that such parents lack a current injury because their children

did not yet have "any discussions with school officials about gender-identity or gender-transition issues"—so "no information is being withheld." *John & Jane Parents 1* v. *Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 629 (CA4 2023). The Fourth Circuit also said that no impending injury existed because the parents had "not alleged that they suspect their children might be considering gender transition." *Id.* at 630. The obvious response is that the *point* of these policies is to deny parents that knowledge, but the Fourth Circuit swept that aside. The court held it irrelevant whether "the government hides information" that would let the parents "determine whether they had been injured" enough for the court's liking. *Id.* at 631.

Other courts have come to the same conclusion. One held that parents' "worry and concern do not suffice to show that any parent has experienced actual injury." *Parents Protecting Our Children, UA* v. *Eau Claire Area Sch. Dist.*, 95 F.4th 501, 506 (CA7 2024). Another went further, holding that "[e]ven if the child" "identifies as transgender," "standing still does not exist unless [the] child has some interaction with the District pursuant to its gender policy." *Doe* v. *Pine-Richland Sch. Dist.*, 2024 WL 2058437, at *9 (W.D. Pa. May 7, 2024). Similar decisions abound. *See Kaltenbach* v. *Hilliard City Schs.*, 730 F. Supp. 3d 699, 703 (S.D. Ohio 2024) (holding that parents lack standing because they "offer no allegations that their children have told or will tell the school that they are (or may be) LGBTQ+").

To be sure, denying standing to parents whose children are subject to secret transition policies is wrong. These policies "specifically encourage school

personnel to keep parents in the dark about the 'identities' of their children, especially if the school believes that the parents would not support what the school thinks is appropriate." *Parents Protecting Our Children*, 145 S. Ct. at 14 (Alito, J., dissenting from denial of certiorari). Under these policies, "parents' fear that the school district might make decisions for their children without their knowledge and consent is not 'speculative'"—parents "are merely taking the school district at its word." *Ibid.* But the reality is that many courts deny standing in these circumstances, perhaps "as a way of avoiding some particularly contentious constitutional questions." *Id.* at 14–15.

Defending Education experienced the use of standing to insulate these harmful policies from judicial review. On behalf of parent members, it sued the Linn-Mar Community School District in Iowa for a "parental exclusion policy" depriving parents of students in seventh grade and up the right to know their child's gender identity at school. The district court refused to find standing for this claim, reasoning that "no one has been denied information related to their child's gender identity or Gender Support Plan"—*yet*. *Parents Defending Educ.* v. *Linn-Mar Cmty. Sch. Dist.*, 629 F. Supp. 3d 891, 908 (N.D. Iowa 2022). The court also noted that one parent "has freely withdrawn their child from the school district," and held that "the harm of being 'forced' out of the school district is self-inflicted." *Id.* On appeal, the Eighth Circuit declined to reach the issue, holding that it was moot. *Parents Defending Educ.* v. *Linn-Mar Cmty. Sch. Dist.*, 83 F.4th 658, 665–66 (CA8 2023).

Here, however, the Littlejohns navigated Article III's waters, which can be uniquely treacherous for disfavored or controversial rights. The Defendants were caught "hiding from the Littlejohns the fact that their 13-year-old daughter had expressed a desire to identify as a boy at school." Pet. 103a (Newsom, J., concurring). More than that, the Defendants secretly encouraged the child "to choose a preferred name, preferred pronouns, preferred restroom, and preferred room sharing arrangements on school fieldtrips." Pet. 177a. The Defendants' actions led to emotional distress, exacerbation of the child's "psychological and educational difficulties," "ongoing emotional and psychological damage to the[] family dynamic," and costs for providing the child an alternative, appropriate education. D. Ct. Dkt. 38 ¶ 163.

Yet even though the Littlejohns overcame jurisdictional hurdles—because the school had successfully started secretly transitioning their child—the Eleventh Circuit greeted their case with an even more impossible burden. According to the court, if the Littlejohns had challenged "legislative action" that "implicates a fundamental right," like the parental right to direct their children's upbringing, strict scrutiny would have applied. Pet. 12a. But because the Defendants had *applied* their policies to the Littlejohns' child, the court held that the challenge was to executive action. Pet. 18a. And according to the court, "even if a plaintiff alleges that executive action violated a fundamental right, the plaintiff must first show that the action shocked the contemporary conscience." Pet. 14a (internal quotation marks omitted).

This logic puts parents in a lose-lose situation. Challenge "legislative action" like "a school board rule of general applicability" (Pet. 18a), and be denied standing because no direct action has been taken. Or wait to challenge a direct action against your child—putting child and family in direct danger—and *still* be denied the ability to show a constitutional violation or obtain redress. As two judges below explained, "pretty much *nothing* shocks the conscience" under the "shocks the conscience" test, so schools "will almost certainly win." Pet. 118a (Newsom, J., concurring) (emphasis omitted). In short, "enforcement in the Eleventh Circuit of the fundamental liberty interests the Littlejohns seek to vindicate" will have "come to an end." Pet. 124a (Tjoflat, J., dissenting).[31]

B. Secret transition policies violate parents' rights.

The Eleventh Circuit "assume[d] without deciding that the Littlejohns invoke 'fundamental' rights." Pet. 9a. That assumption was correct, making the court's negation of those rights even more troubling. Secret social transitions are a cognizable burden on a deeply-rooted constitutional right.

1. Secret transitions implicate parents' deeply-rooted right to direct their child's upbringing. A century ago, the Supreme Court recognized that "[t]he child is not the mere creature of the State; those who

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[31] Some courts have held that interference with protected familial relationships can meet this standard. *E.g.*, *Cruz-Erazo* v. *Rivera-Montanez*, 212 F.3d 617, 623 (CA1 2000).

nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce* v. *Soc'y of Sisters*, 268 U.S. 510, 535 (1925). The Constitution confers a fundamental right "to direct the upbringing and education of children." *Id.* at 534.[32]

That right extends to knowledge about a child's development at school. Mandatory public schools are a recent development. This Court has characterized "school authorities [as] acting *in loco parentis*," *Bethel Sch. Dist. No. 403* v. *Fraser*, 478 U.S. 675, 684 (1986), drawing on Blackstone's description:

> A parent "*may* . . . delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, *as may be necessary to answer the purposes for which he is employed*."

Vernonia Sch. Dist. 47J v. *Acton*, 515 U.S. 646, 655 (1995) (emphases added) (quoting 1 Blackstone's Commentaries 441 (1769)).

In loco parentis does not mean "displace parents." *Gruenke* v. *Seip*, 225 F.3d 290, 307 (CA3 2000). "It is not educators, but parents who have primary rights in

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[32] Long history supports this right. See, *e.g.*, Thomas Aquinas, *Summa Theologica* II-II, q.10, a.12, https://perma.cc/7QPU-JEN5 ("[I]t would be contrary to natural justice" if anything were "done to [a child] against its parents' wish."); John Locke, *Second Treatise of Government*, Ch. VI, § 71, https://perma.cc/N5SA-K7BZ ("[P]arents in societies . . . retain a power over their children.").

the upbringing of children." *Ibid.* Rather, *in loco parentis* rests on a theory of delegation: parents delegate parental authority to the school while their children are not in their custody—but only partial delegation based on educational purpose. On this doctrine, teachers have incidental authority to teach and ensure order to the extent necessary to educate the child. But the parent, not the teacher, retains overall authority over the child's upbringing and education. "It is a dangerous fiction to pretend that parents simply delegate [all] their authority . . . to public school authorities." *Morse* v. *Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring). "School officials have only a secondary responsibility and must respect [parents'] rights." *Gruenke*, 225 F.3d at 307.

The common law never envisioned that schools could override parental authority. When schools took actions that exceeded the bounds of parents' partial delegation, courts held the schools liable. See, *e.g.*, *Hailey* v. *Brooks*, 191 S.W. 781, 783 (Tex. Civ. App. 1916) (delegation is "limited" and school has only "reasonably necessary" powers); *Vanvactor* v. *State*, 15 N.E. 341, 342 (Ind. 1888) (teacher's delegation is "restricted to the limits of his jurisdiction and responsibility as a teacher"); *Guerrieri* v. *Tyson*, 24 A.2d 468, 469 (Pa. Super. 1942) (school could not dictate how to treat student's injury); *State* v. *Bd. of Educ. of City of Fond du Lac*, 23 N.W. 102, 104 (Wis. 1885) (school could not punish student for failing to collect firewood); *Hardy* v. *James*, 5 Ky. Op. 36, 1872 WL 10621, at *1 (1872) (school could not punish child for "trivial" playground disagreement); *State* v.

Ferguson, 144 N.W. 1039, 1044 (Neb. 1914) (school could not force student to take a cooking class).

"If *in loco parentis* is transplanted from Blackstone's England to the 21st century United States, what it amounts to is simply a doctrine of inferred parental consent to a public school's exercise of a degree of authority that is commensurate with the task that the parents ask the school to perform." *Mahanoy Area Sch. Dist.* v. *B.L.*, 594 U.S. 180, 200 (2021) (Alito, J., concurring). That task is education of the student—not overriding parental choices about their child's upbringing. There is no reason to think that parents have delegated authority to schools to transition their own child's gender—and withhold the knowledge that is happening from the parents whose power the schools are purporting to exercise.

2. Parents "have a right to direct their minor child's education which cannot be accomplished unless they are accurately informed." *Willey* v. *Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trs.*, 680 F. Supp. 3d 1250, 1277 (D. Wyo. 2023); see *Mead* v. *Rockford Pub. Sch. Dist.*, 2025 WL 2682125, at *7 (W.D. Mich. Sept. 18, 2025) (collecting cases). Even courts rejecting similar claims have recognized the obvious reality that "knowing that the [child] had requested the use of an alternative name and pronouns in school might inform how the [p]arents respond to and direct their child's gender expressions outside of school." *Foote* v. *Ludlow Sch. Comm.*, 128 F.4th 336, 355 (CA1 2025).

The Defendants can hardly contend otherwise. After all, their own explanation for their policy centers on disrupting the parents' relationship with their child. They claim that "[o]uting a student, especially

to parents, can be very dangerous to the student's health and well-being" because some "parents are unaccepting of LGBTQ+ people out." Pet. 235a. They even claim that "[o]uting students to their parents can literally make them homeless." *Ibid.* So the whole point of the policy as it was applied here is to affect the parents' relationship with their child. By actively withholding critical information about the child, the Defendants have burdened the Littlejohns' fundamental parental rights.

Forcing parents to try to work around or counteract schools' secret transitioning is a constitutional injury. In *Meyer* v. *Nebraska*, 262 U.S. 390 (1923), this Court invalidated a state statute that restricted the teaching of a foreign language to children in school. It made no difference that the law was not an absolute constraint: parents remained free to "teach[] [a] [foreign] language on Saturday or Sunday," or outside school hours. *Nebraska Dist. of Evangelical Lutheran Synod of Missouri, Ohio, & Other States* v. *McKelvie*, 175 N.W. 531, 535 (Neb. 1919). But the Court recognized "the power of parents to control the education of their own." *Meyer*, 262 U.S. at 401.

Likewise here, whether parents can try to discover secret transitioning via other means or somehow counteract schools' efforts (without knowing about them) is irrelevant. What matters is that the government is placing a burden on their parental right to direct their child's upbringing and education. Withholding information from parents about their child's core identity constrains parents' understanding and decisions about upbringing—again, that is the *point* of these policies. See Pet. 235a. What's more,

giving the imprimatur of official approval to a child's chosen identity puts great pressure on the child to continue with that identity—and to go along with the school's approved measures to keep the identity secret from parents. "The State exerts great authority and coercive power through public schools because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Mahmoud* v. *Taylor*, 145 S. Ct. 2332, 2355 (2025) (cleaned up).

These burdens on the parental right to direct their child's upbringing triggers strict scrutiny. See *Reno* v. *Flores*, 507 U.S. 292, 302 (1993). "[T]o survive strict scrutiny," the school's actions "must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U.S. 520, 546 (1993) (internal quotation marks omitted). "[O]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation." *Sherbert* v. *Verner*, 374 U.S. 398, 406 (1963) (cleaned up). And the school must demonstrate *specifically* that "application of the [legal] burden to [these parents] represents the least restrictive means of advancing a compelling interest." *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 423 (2006) (cleaned up).

Schools engaging in secret transitioning will not be able to pass strict scrutiny. That is true for many reasons, and we focus on one here. Secret transitioning policies could not advance any interest in protecting transgender children because they harm those children. As the Cass Review explained, "[o]utcomes for children and adolescents are best if they are in a supportive relationship with their

family."[33] "For this reason parents should be actively involved in decision making unless there are strong grounds to believe that this may put the child or young person at risk."[34] A school that secretly transitions a child based only on the child's "concern about how their parents might react" "set[s] up an adversarial position between parent and child" and deprives the child of the chance for holistic support both in and out of the home.[35] On top of that, there's the high likelihood that a parent will eventually find out—and the inevitable negative consequences for the parent-child relationship, the parent-school relationship, and the child's schooling. See, *e.g.*, *Mead*, 2025 WL 2682125, at *7; *Kaltenbach*, 2025 WL 1147577, at *2; *Lee* v. *Poudre Sch. Dist.*, 2023 WL 8780860, at *7 (D. Colo. Dec. 19, 2023); *Tatel* v. *Mt. Lebanon Sch. Dist.*, 637 F. Supp. 3d 295, 306 (W.D. Pa. 2022); *Parents Defending Educ.*, 629 F. Supp. 3d at 908 (all cases like this one, in which the parents eventually find out).

Further, as discussed, secret social transitions are likely to lead to dangerous medical interventions. Given that most children would desist from gender incongruence absent social transition, there is a real danger of locking children into an identity that they would have otherwise considered and then moved away from. The result is that the State will have imposed its own vision of how a child should develop in place of the child's—and the parent's—own.

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[33] Cass, *supra* note 24, at 164.
[34] *Id.*
[35] *Id.* at 160.

According to the United States, "Every public health authority that has conducted a systematic review of the evidence has concluded that the benefit/risk profile of [pediatric medical transition] is either unknown or unfavorable."[36] That is why "number of European countries have raised significant concerns regarding the potential harms associated with using puberty blockers and hormones to treat transgender minors." *Skrmetti*, 145 S. Ct. at 1825. Some indeterminate number of children will thus be permanently harmed by early social transitions, as they will suffer "irreversible hormonal and/or surgical interventions [and] ultimately [will] not continue to identify as transgender."[37]

As one court explained, a school "policy of confidentiality and non-disclosure to parents" "is not conducive to the health of their gender incongruent students." *Mirabelli* v. *Olson*, 691 F. Supp. 3d 1197, 1209 (S.D. Cal. 2023). The school's policy here does not promote any compelling interest in protecting children—rather, that policy harms children. Because the Defendants burdened the Littlejohns' fundamental constitutional rights without an adequate justification, the erroneous holding below insulating the Defendants from liability is all the more troubling.

C. This Court's intervention is necessary.

Certiorari is necessary to ensure that parents can meaningfully vindicate their rights to direct their children's upbringing—and protect them from

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[36] HHS Report, *supra* note 28, at 77; *see generally id.* Chapter 5.
[37] *Id.* at 72–73.

transitioning zealots in many public schools. Though this case may not fix the standing errors that have plagued some cases, review could at least ensure that parents who have suffered an actual secret transitioning of their child can find some possibility of meaningful recourse through the judicial process for the denial of their fundamental rights outlined above. As Judge Newsom explained, it "is totally bizarre" to consign these parents to a near-certain loss when any other challenge to governmental infringement of a fundamental right would be a near-certain win under the strict scrutiny that applies to such infringements: "That makes *no* sense." Pet. 118a (concurring opinion). Though it may be overstatement to say "that every right" "must have a remedy," *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 147 (1803), there is no reason in law or logic for the Littlejohns to have no remedy. Certiorari is needed to avoid that senseless result.

Legislative and administrative solutions to the secret transition problem are inadequate and uncertain. At least one State, California, has passed a law that apparently "bar[s] school districts from requiring staff to notify parents of their child's gender identification change."[38] See Cal. Educ. Code § 220.3. But the United States says that rule violates federal

[38] Sophie Austin, *California is 1st State to Ban School Rules Requiring Parents Get Notified of Child's Pronoun Change*, Associated Press (July 15, 2024), https://perma.cc/35WN-ZZJS.

law.[39] On the opposite side of the coin, several States have adopted laws that do require schools to notify parents.[40] But those laws are subject to challenge, too. The ACLU has a threatening "open letter" to schools claiming that it is somehow unconstitutional "to disclose a student's sexual orientation or gender identity" "to a student's parents."[41] The Biden Administration took a similar position, suggesting that secret transitioning policies are required under Title IX and FERPA.[42] School districts commonly make similar claims about FERPA, even though rights to educational records under FERPA are the *parents'* until the student turns 18. 20 U.S.C. § 1232g(d). Though the Department of Education is now investigating schools with secret transitioning policies for violating FERPA,[43] parents need to be able to defend their fundamental right to direct their children's upbringing. "In this country," "the doctrine of judicial review protect[s] individuals who cannot

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[39] See Dana Goldstein & Laurel Rosenhall, *Trump Challenges California on Transgender Parental Notification*, N.Y. Times (Mar. 27, 2025), http://bit.ly/3JEIVek.

[40] See *ibid.*

[41] ACLU, *Open Letter to Schools About LGBTQ Student Privacy* (Aug. 26, 2020), https://perma.cc/KM2H-2MT3.

[42] See Kate Anderson et al., *The Biden Administration's Proposed Changes to Title IX Threaten Parental Rights*, Federalist Soc'y (Jan. 5, 2023), https://fedsoc.org/commentary/fedsoc-blog/the-biden-administration-s-proposed-changes-to-title-ix-threaten-parental-rights.

[43] U.S. Dep't of Education, *U.S. Department of Education Directs Schools to Comply with Parental Rights Laws* (Mar. 28, 2025), https://perma.cc/K87Q-L96U.

obtain legislative change." *Mahmoud*, 145 S. Ct. at 2360. When schools violate parents' right to direct their children's upbringing, those parents have "every right to file suit to protect that right." *Ibid.*

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Policies that let school officials transition children in secret undermine parents' ability to provide for their children's wellbeing and harm children. In a world in which schools "routinely send notes home to parents about lesser matters," such as "playground tussles, missing homework, and social events,"[44] there is no justification for withholding information about the child's preferred name and identity from parents. That withholding burdens parents' fundamental rights. When school officials encourage young, impressionable children to question and ultimately "transition" their gender—and then *hide* that fact from their parents—they threaten the very harm that the Fourteenth Amendment's guarantee of parental rights is meant to avoid: "Pitting the parents and child" against each other "as adversaries." *Parham*, 442 U.S. at 610. This Court's review is urgently needed.

CONCLUSION

The Court should grant the petition.

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[44] St. George, *supra* note 20.

Respectfully submitted,

CHRISTOPHER E. MILLS
Counsel of Record
Spero Law LLC
557 East Bay Street
#22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

Counsel for *Amicus Curiae*

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