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

BRIEF OF FLORIDA, MONTANA, WEST VIRGINIA, 19 OTHER STATES, AND THE ARIZONA LEGISLATURE AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE*

Amici are the States of Florida, Montana, West Virginia, 19 other States, and the Arizona Legislature ("Amici States"). Amici States seek to ensure that parents retain their fundamental right to direct the upbringing of their minor children—a right this Court has described as "essential" and "far more precious . . . than property rights." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (first quoting *Meyer v. Nebraska*, 262 U.S. 390, 299 (1923); and then *May v. Anderson*, 345 U.S. 528, 533 (1953)).

SUMMARY OF ARGUMENT

Parental rights are fundamental and foundational. It is parents who are entrusted with ultimate responsibility for the care, formation, and well-being of their children. Recently, parental rights have taken on new focus as an ever-growing number of public-school officials are placing it upon themselves to make life-altering decisions for children in place of, or in direct conflict with, parents' convictions. That unfortunate phenomenon is front and center in this case. School officials in Leon County, Florida, helped a child "socially transition" at school—meaning, they treated that child as being of the opposite sex—then hid that fact from the child's parents. This sort of intervention

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* Pursuant to Supreme Court Rule 37.2, Counsel of Record for both parties were timely notified of the States' intent to file this *amicus curiae* brief.

is highly destructive and can lead to permanent damage to the child's mental and physical health.

As this Court has recognized, "the interest of parents in the care, custody, and control of their children" "is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion). Yet the lower courts have struggled to interpret and apply the Court's jurisprudence in this context.

Rather than merely looking to history and tradition, a troubling number of circuit courts impose an additional burden—the inscrutable shocks-the-conscience test—on anyone seeking to vindicate their fundamental rights in the face of executive infringement. This is wrong. Applying the shocks-the-conscience test to liberty-interest claims is already a dubious undertaking, but there is no good reason to apply that onerous test to fundamental-rights claims. Opaque precedent has confused the lower courts and generated an 8-2 circuit split along the way. Now eight circuits require plaintiffs to satisfy the shocks-the-conscience test on top of the traditional elements of a fundamental rights claim.[1] Two circuits, taking the

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[1] *See Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 346 (1st Cir. 2025) (per curiam); *Hancock v. Cnty. of Rensselaer*, 882 F.3d 58, 65–66 (2d Cir. 2018); *Steele v. Cicchi*, 855 F.3d 494, 502 (3d Cir. 2017); *Hawkins v. Freeman*, 195 F.3d 732, 738–39, 738 n.1 (4th Cir. 1999); *Christensen v. Cnty. of Boone*, 483 F.3d 454, 462 n.2 (7th Cir. 2007); *Slusarchuk v. Hoff*, 346 F.3d 1178, 1181–82, 1182 n.2 (8th Cir. 2003); *Browder v. City of Albuquerque*, 787 F.3d 1076, 1078–79, 1079 n.1 (10th Cir. 2015).

correct view, do not.[2] Given the importance of fundamental rights and the capricious nature of the shocks-the-conscience test, lower courts and litigants alike need guidance. The Court should grant certiorari.

ARGUMENT

In *County of Sacramento v. Lewis*, the Court noted "that the substantive component of the Due Process Clause is violated by executive action only when it can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense." 523 U.S. 833, 847 (1998) (quotation omitted). But then, in *Chavez v. Martinez*, a plurality of the Court suggested that fundamental-rights claims need not satisfy the shocks-the-conscience test. 538 U.S. 760, 774–76 (2003) (plurality opinion) (treating the shocks-the-conscience test and the fundamental-liberty test as alternative standards for identifying a constitutional violation). Amici States offer three points below. First, lower courts need guidance in adjudicating a wave of parental-rights litigation. Second, parental rights are some of the oldest fundamental rights that this Court has recognized and play a bedrock role in American society. And third, the shocks-the-conscience test is an unworkable standard. Each point weighs in favor of certiorari.

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[2] *See Regino v. Staley*, 133 F.4th 951, 960 n.5 (9th Cir. 2025); *Kanuszewski v. Mich. Dep't of Health & Hum. Servs.*, 927 F.3d 396, 414 n.9 (6th Cir. 2019).

I. Lower courts need clarity to resolve the increasing number of parental-rights disputes in this context.

The Littlejohns' story is troubling but increasingly common. Across the country, government officials are fundamentally altering the upbringing of children and keeping parents in the dark. Dizzying numbers of school districts and a growing number of states have passed similar "secret transition" laws and ordinances without any concerns for parental rights. A flood of litigation has followed.

In Southern California, for example, public school officials facilitated a secret "social transition" for Jessica Bradshaw's autistic 15-year-old daughter.[3] Unbeknownst to Ms. Bradshaw, teachers and administrators encouraged her daughter to live as a boy for six months. *See id.* Officials secured permission for Ms. Bradshaw's daughter to "use the boy's bathroom and call [her] by male pronouns." *Id.* When Ms. Bradshaw confronted a school official about these practices, the official stated that "[d]istrict and state policies" did not require officials to inform Ms. Bradshaw how they shaped her daughter's development. *Id.*

This school district is one of many across the country that will happily hide and facilitate a child's social transition. *See id.* Just over a year ago, "more than 1,000 districts [had] adopted such policies." *Parents*

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[3] *See* Katie J.M. Baker, *When Students Change Gender Identity, and Parents Don't Know*, N.Y. Times (Jan. 22, 2023), https://tinyurl.com/yyy47n6n.

Protecting Our Child., UA v. Eau Claire Area Sch. Dist., 145 S. Ct. 14, 14 (2024) (Alito, J., dissenting from denial of certiorari). That number has increased to more than 1,200 school districts today.[4] 12.3 million students, approximately one quarter of all public K-12 students nationwide, are subject to these policies.[5]

Newly enacted laws and policies at the state level have created increasing tension with parents' rights. In 2023, the New York State Education Department promulgated guidance to public school teachers on how to conceal a social transition from a child's parents.[6] "The key takeaway: if your child decides that he or she wants to socially transition to the opposite gender, it is now a 'best practice' for the school to lie to you about it."[7] New York follows New Jersey, which has had near-identical policies on the books since 2018.[8]

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[4] *See List of School District Transgender – Gender Nonconforming Student* Policies, Defending Educ. (Apr. 21, 2025), https://tinyurl.com/7rtmmv7r (last accessed Sept. 18, 2025).

[5] *See id.*; *Public School Enrollment*, Nat'l Ctr. for Educ. Stat., (last accessed Oct. 6, 2025), https://tinyurl.com/5d2vvwcs (estimating public K-12 public school enrollment at 48.2 million students in 2025).

[6] *See* N.Y. State Dep't of Educ., *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices* 16–17 (2023), https://tinyurl.com/3685jcjd.

[7] Max Eden, *New York State's Directive to Schools: Lie to Parents*, City J. (June 16, 2023), https://tinyurl.com/mr44mdnd.

[8] *See* Dana DiFilippo, *State, School District Defend NJ Guidance on Transgender Students from Court Challenge*, N.J. Monitor (Sept. 5, 2025, at 6:35 AM), https://tinyurl.com/bdezkcdt; *see*

In 2024, California took a step further by enacting protections for all school officials who refuse to disclose *any* information concerning a child's gender expression to *any other person*. *See* Cal. Educ. Code § 220.3. California also provides robust anti-retaliation protections for school officials that feel the need to shape a child's sexual identity away from parental supervision. *See id.* § 220.1. And it further bars school districts from requiring parental disclosures concerning efforts to socially transition children. *See id.* § 220.5(a).[9]

These radical policies have revealed a blind spot in the Court's jurisprudence. As one district court lamented, "[t]here are no controlling decisions" in this context. *Mirabelli v. Olson*, 761 F. Supp. 3d 1317, 1332 (S.D. Cal. 2025). This case presents an opportunity to resolve that confusion.

II. Parental rights are among the oldest and most established rights in our legal tradition.

It's especially important to understand what test applies given the significance of the right at issue. Courts have long acknowledged the importance of empowering parents to manage their child's care. Such rights are "perhaps the oldest of the fundamental lib-

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also N.J. Dep't of Educ., *Transgender Student Guidance for School Districts* 3 (2018), https://tinyurl.com/mr47m2hm.

[9] *See also* Diana Lambert & Monica Velez, *Newsom Signs Bill to End Parental Notification Policies at Schools; Opponents Say Fight is Not Over*, EdSource (July 17, 2024).

erty interests recognized." *Troxel*, 530 U.S. at 65 (plurality opinion). Because children are unable "to make sound judgments concerning many decisions," the Court has understood our Constitution to incorporate "broad parental authority over minor children." *Parham v. J.R.*, 442 U.S. 584, 602–03 (1979). Accordingly, the Court has recognized a parent's right to direct their child's education, *see Meyer v. Nebraska*, 262 U.S. 390, 400 (1923); *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925), religious upbringing, *see Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972), and their own relationship, *see Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

This Court has heralded a parent's right "to make decisions concerning the care, custody, and control of their children." *Troxel*, 530 U.S. at 66 (plurality); *see Mahmoud v. Taylor*, 145 S. Ct. 2332, 2358 (2025) ("We reject this chilling vision of the power of the state to strip away the critical right of parents to guide the religious development of their children."). As relevant here, that right "include[s] their need for medical care or treatment." *Parham*, 442 U.S. at 603. Whereas a "child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery," a parent typically will know better and should have the "authority to decide what is best for the child." *Id.* at 604. That basic right is only more pressing when the ideology pushed by the schools ignores basic reality about the two sexes and further confuses innocent and impressionable children.

History and tradition undergird those precedents. As early commentators recognized, children do not understand "how to govern themselves." 2 Samuel Pufendorf, *The Whole Duty of Man According to the Law*

of Nature 202 (1735). Their "wants and weaknesses" thus "render it necessary that some person maintains them" until adulthood. 2 James Kent, *Commentaries on American Law* 190 (1873); 1 William Blackstone, *Commentaries on the Laws of England* 447 (1753); Pufendorf, *Whole Duty of Man* at 202; *see also Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 828–29 (2011) (Thomas, J., dissenting). Parents have traditionally been entrusted as "the most fit and proper person[s]" for that task. Kent, *American Law* at 190. And so, the common law equipped parents with equally robust parental rights. "[H]ousehold heads" were empowered to "speak for their dependents in dealings with the larger world," Toby L. Ditz, *Ownership and Obligation: Inheritance and Patriarchal Households in Connecticut*, 1750-1820, 47 Wm. & Mary Q. 235, 236 (1990), and parents enjoyed the "right . . . to govern their children's growth," *Brown*, 564 U.S. at 828 (Thomas, J., dissenting).

Medical and social-science literature only confirms the wisdom of our tradition. Longstanding research shows that children are unable to "deliberate maturely" towards their own best interests. Ferdinand Schoeman, *Parental Discretion and Children's Rights: Background and Implications for Medical-Decision-Making*, 10 J. Med. & Phil. 45, 46 (1985). As any parent knows, children often make poor decisions because they lack life experience. Medical science also tells us that children make these poor decisions because a child's prefrontal cortex, the portion of the brain that

deals with reasoning and long-term consequences, is underdeveloped.[10]

Those deficiencies also make parental involvement critical in the context of gender dysphoria, a condition characterized as "distress that may accompany the incongruence between one's experienced or expressed gender and one's assigned gender." *Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1262 (11th Cir. 2020). One purported treatment for that ailment—the treatment school officials secretly provided the Littlejohns' child—is social transitioning: the practice of treating a person in line with their imagined proper gender. *See id.* at 1263. But recent reports reveal that social transitioning "can concretize gender dysphoria" and may not "improve[] mental health status in the short term."[11] Worse still, "de-transition and/or regret could be more frequent than previously reported" for individuals suffering from adolescent-onset gender dysphoria, and continuing down these types of treatment paths may lead to "irreversible effects." *Id.*[12] Indeed, social transitions are serious psychosocial

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[10] *See* Adele Diamond, *Normal Development of Prefrontal Cortex from Birth to Young Adulthood: Cognitive Functions, Anatomy, and Biochemistry, in Principles of Frontal Lobe Function* 466 (D. Stuss & R. Knight eds., 2002) (noting that the pre-frontal cortex takes "over two decades to reach full maturity"), https://tinyurl.com/4j5xvbpa.

[11] Sarah C. J. Jorgensen, *Transition Regret and Detransition: Meanings and Uncertainties*, 52 Arch Sex Behav., 2173, 2173–84 (2023), https://doi.org/10.1007/s10508-023-02626-2.

[12] Officials encouraging children to transition—whether socially or medically—heavily relied on position statements published by medical associations like the World Professional

interventions that have shown long-term negative consequences on mental health.[13]

The decision below discounts this authority. In fact, it led the dissenting judge to question whether "the Constitution still protect[s] parents' fundamental right[s] to direct the upbringing of their children" in the face of those serious risks. App. 173a (Tjoflat, J., dissenting). By misapplying this Court's shocks-the-conscience precedent, the panel "water[ed] down" parents' "fundamental right[]" to know of and control what supposed medical care a school provides to their child. App. 167a. The correctness of that move "presents a question of great and growing . . . importance" that the Court should answer. *Parents Protecting*, 145

Association for Transgender Health ("WPATH"). *See* Chloe K. Jones, *The Façade of Medical Consensus: How Medical Associations Prioritize Politics Over Science*, 2025 Harv. J.L. & Pub. Pol'y Per Curiam 4–6 (2025). There is, however, compelling evidence to suggest these medical associations "often [choose] their positions . . . to advance policy objectives rather than scientific principles." *Id.* at 6. Indeed, "[r]ecent revelations suggest that WPATH, long considered a standard bearer in treating pediatric gender dysphoria . . . bases its guidance on insufficient evidence and allows politics to influence its medical conclusions." *United States v. Skrmetti*, 145 S. Ct. 1816, 1847 (2025) (Thomas, J., concurring).

[13] *See* Hilary Cass, *Independent review of gender identity services for children and young people* 158–64 (2024), https://tinyurl.com/cytx5spn. "Clinical involvement in the decision-making process should include advising on the risks and benefits of social transition as a planned intervention, referencing best available evidence. This is *not* a role that can be taken by staff without appropriate clinical training." *Id.* at 164 (emphasis added).

S. Ct. at 14 (Alito, J., dissenting from denial of certiorari).

III. Bench, bar, and academy agree that the shocks-the-conscience test is unworkable.

In *Sacramento v. Lewis*, the Court attempted to explain the shocks-the-conscience standard. 523 U.S. at 846–47. That standard, the Court wrote, is equivalent to conduct that "violates the 'decencies of civilized conduct'" or that was "so 'brutal' and 'offensive' that it did not comport with traditional ideas of fair play and decency." *Id.* "While the measure of what is conscience shocking is no calibrated yard stick, it does . . . point the way." 523 U.S. at 847 (cleaned up). That amorphous guidance has proved unhelpful. Critiques of the shocks-the-conscious test have come from every corner of the legal industry. Start with scholars, who have repeatedly noted that "the test established in *Lewis* has proved to be unworkable." Rosalie B. Levinson, *Time to Bury the Shocks the Conscience Test*, 13 Chap. L. Rev. 307, 333 (2010); *see* Lee Farnsworth, *Conscience Shocking in the Age of Trump*, 2020 Wis. L. Rev. 805, 811–20 (2020) (surveying the lower courts' confusion when applying the shocks-the-conscience test); Robert Chesney, *Old Wine or New? The Shocks-The-Conscience Standard and the Distinction Between Legislative and Executive Action*, 50 Syracuse L. Rev. 981, 999–1000 n.102 (2000) (cataloging the different standards spawned by *Lewis* in the circuit courts).

So too among courts, which agree that "[t]here appears to be little consensus on the proper standard one ought apply in the deployment of the shocks-the-conscience test." *Connor B. ex rel. Vigurs v. Patrick*, 985 F. Supp. 2d 129, 159 (D. Mass. 2013), *aff'd*, 774 F.3d

45 (1st Cir. 2014) (collecting cases). Given its subjective nature, many judges have concluded that "the 'shocks the conscience' test is hardly a test at all." *Fagan v. City of Vineland*, 22 F.3d 1296, 1319 (3d Cir. 1994) (en banc) (Cowen, J., dissenting); *see, e.g.*, *Doe ex rel. Doe v. Jewell*, 151 F.4th 236, 251 (5th Cir. 2025) ("To be sure, the 'shocks the conscience' theory of the Due Process Clause has come under withering criticism in both judicial and academic circles." (Ho, J., concurring)); Richard A Posner, *Reflections on Judging* 118–19 (2013) ("shock[] the conscience—whatever that means . . . . I don't know what the expression means, or what it adds to indifference to a known risk of injury"). "Such a meandering, personal approach is the antithesis of justice under law, and we ought not indulge it." *United States v. Miller*, 891 F.2d 1265, 1273 (7th Cir. 1989) (Easterbrook, J., concurring).

More than 70 years ago, Justice Clark recognized that the shocks-the-conscience test "makes for such uncertainty and unpredictability that it would be impossible to foretell—other than by guess-work—just how brazen the invasion of the [protected right] must be in order to shock itself into the protective arms of the Constitution." *Irvine v. People of California*, 347 U.S. 128, 138 (1954) (Clark, J., concurring). Over the ensuing decades, criticism has only sharpened. Justice Scalia quipped that the shocks-the-conscience test is nothing more than "the *ne plus ultra,* the Napoleon Brandy, the Mahatma Gandhi, the Cellophane of subjectivity." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 861 (1998) (Scalia, J., concurring). And when the Court appeared to fully embrace the shock-the-conscience test in *Lewis*, Justice Scalia noted that the "atavistic methodology . . . announce[d] for the Court is

the very same methodology that the Court called atavistic when it was proffered . . . in *Glucksberg*." *Id.* (Scalia, J., concurring). Such strong medicine requires a firm basis in law. Neither text nor history supplies that basis. As a result, parents seeking to vindicate their parental rights are treated differently based on their geography alone. An official infringing parental rights in Florida must shock-the-conscience, but not in California. This "is not a rule of any kind, let alone a command of the Due Process Clause." *Miller*, 891 F.2d at 1273 (Easterbrook, J., concurring).

The lack of a coherent approach and the extraordinary disregard for parental rights underscores why the Court's guidance is needed. Parents cannot prepare for every possible game that opposing parties will play and that lower courts will adopt. More critically, the status quo leaves parents without recourse when schools seek to commandeer the parental role at times when their children most need the wisdom, guidance, and values that only parents—who know and love their children best—can provide.

CONCLUSION

The court should grant Petitioners' writ of certiorari.

Respectfully submitted,

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