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Via Electronic Filing

Hon. Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street NE
Washington, DC 20543

Re: *Littlejohn v. School Board of Leon County, Florida, et al.*, No. 25-259

Dear Mr. Harris:

I am counsel for Respondents in the above-captioned case, which is scheduled for conference on Friday, March 6. I am writing to address this Court's decision in *Mirabelli v. Bonta*, 2026 WL 575049 (U.S. Mar. 2), and to respond to Petitioners' March 3, 2026, letter asserting that this Court should GVR the decision below in this case in light of *Mirabelli*.

Contrary to Petitioners' claim, *Mirabelli* does not support a GVR, and certainly does not support a grant of review in this case. To begin with, Petitioners here did not bring a First Amendment claim. Pet. 22. *Mirabelli's* First Amendment Free Exercise holding (2026 WL 575049 at *3) therefore has no relevance here. As Petitioners note, the three-Justice plurality applied the *Glucksberg* test to the due process claim in *Mirabelli*. *Id.* at *3-4 (Barrett, J., concurring). But the question presented in the Petition here is whether *Glucksberg* is the only due process test that applies when plaintiffs challenge executive conduct, or whether a "shocks the conscience" test applies. *See* Pet. i. *Mirabelli* did not address or answer that question about executive conduct because it was not posed or presented in that case. Because *Mirabelli* did not address the grounds on which the court below ruled, a GVR would serve no purpose.

Petitioners suggest that *Mirabelli* is like their case and involves a similar due process challenge to executive action, because in both cases the government made post-complaint changes to its policy. That is wrong. In the case here, the school board revoked its old policy and replaced it with one directing that “[s]chool personnel must not intentionally withhold information from parents.” Br. in Opp. 4; see Pet. 6a n.2. That change mooted Petitioners’ claims for injunctive relief, Pet. 181a-182a, which led Petitioners to waive their challenge to the school board’s guidance and challenge only Respondents’ “course of conduct,” Pet 19a. And it was that purposeful choice that transformed Petitioners’ case into one challenging executive conduct, not legislative action. In *Mirabelli*, by contrast, the school district withdrew its original guidance but replaced it with one that “similarly directed teachers not to tell parents about their children’s gender identity without the children’s consent.” 2026 WL 575049 at *2. Because the guidance was the same, plaintiffs’ challenges were not moot, *id.*, and the plaintiffs continued to “claim[] that *these policies* violated their rights,” *id.* at *1 (emphasis added); see *id.* at *3 (“parents who object to *those policies* on due process grounds”) (emphasis added). In short, *Mirabelli* did not involve a due process challenge to executive conduct and thus provides no guidance for this case.

Nor, finally, is the due process claim in *Mirabelli* similar to the one presented here. In *Mirabelli* “no one told the Poes about their daughter’s transitioning” and “[c]ontrary to the Poes’s instructions, teachers and school officials continued to use a male name and pronouns for their daughter.” 2026 WL 575049 at *1. The opposite is true here: after Petitioners complained, school officials told them they could attend all future meetings with their child, provided a copy of their child’s Student Support Plan, and there is no allegation in the complaint that anyone at school persisted in using a different name or pronouns for their child. Br. in Opp. 70-8. Because Petitioners’ due process claim is based on fundamentally different conduct from that considered in *Mirabelli*, nothing in *Mirabelli* would direct the outcome in Petitioners’ case regardless of the applicable due process test. A GVR is thus unwarranted. And for the reasons explained in the cert. opposition, a grant of plenary review is also wholly unwarranted, and nothing in *Mirabelli* alters that conclusion.

Sincerely,

/s/ Mark Herron

cc: Cameron Thomas Norris, Counsel of Record for Petitioners