No. 25-759

In the Supreme Court of the United States

AMBER LAVIGNE,
Petitioner,
v.
GREAT SALT BAY COMMUNITY SCHOOL BOARD,
Respondent.

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

BRIEF OF *AMICI CURIAE* STATE OF SOUTH CAROLINA AND 18 OTHER STATES IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are the States of South Carolina, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and West Virginia ("*Amici* States").

Amici States are committed to safeguarding the constitutional rights of parents and ensuring that public schools operate with transparency that enables parents to fulfill their primary role in the upbringing and education of their children. Many of the undersigned States have laws in place to ensure that those rights are protected by state law. In fact, some States have expressly banned policies similar to the withholding policy challenged here.[2] Whether explicitly or implicitly, these laws acknowledge that the "family is the primary unit through which social values and moral precepts are transmitted to the young" and that the States have an interest in not "undermining" the family unit. *Wynn v. Carey*, 582 F.2d 1375, 1385 (7th Cir. 1978). Withholding policies not only violate these state laws but also infringe fundamental, long-standing constitutional rights.

The district court below improperly granted a motion to dismiss. The First Circuit blessed the district court's error, leaving the Petitioner with nowhere to turn but this Court. As the Petition for a Writ of

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[1] Counsel of record for all parties timely received notice of *Amici* States' intention to file this brief.

[2] For the sake of consistency, *Amici* refer to these policies as "withholding policies," recognizing that schools use a variety of terms to refer to these types of policies, including parental notification policies and parental exclusion policies.

Certiorari ably explains, the First Circuit applied a flawed legal analysis and prematurely foreclosed a parent's constitutional claims to vindicate her parental rights. *Amici* States submit this brief to highlight the importance of the constitutional question at hand and the need for this Court's review.

INTRODUCTION

The Petitioner sued her local school board and several school officials after she discovered that her child's school allegedly withheld information about her child's gender identity. App. 58a. The Petitioner alleges that school officials failed to inform her that multiple school officials were using a new name for her child and were referring to her child by new gender pronouns. App. 64. The Petitioner also alleges that school officials failed to tell her that a school employee gave her child two chest binders to assist in the child's gender transition. App. 63.

After the Petitioner discovered her child's chest binder, she allegedly met with the school's principal and the school district's superintendent to express her concerns. App. 65. She also allegedly expressed her concerns at a school board meeting. App. 67. The Complaint further alleges that the board issued several statements after these concerns were expressed, which were attached as exhibits to the Complaint. App. 67–69.

The Petitioner's Complaint asserts both substantive and procedural due process claims under the Fourteenth Amendment. The school board and school officials subsequently moved to dismiss the Petitioner's claims. In dismissing the school board, the

district court concluded that the Petitioner failed to plead facts to establish municipal liability under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

As relevant for the purposes of this brief, neither the district court nor the First Circuit engaged with the weighty constitutional question at issue. In so doing, the lower courts perpetuated a mechanism by which schools, school districts, and school boards can secretly facilitate social gender transition of students at school without parental knowledge or consent, and without any judicial recourse for the parents.

SUMMARY OF ARGUMENT

In recent years, school districts across the country have implemented withholding policies that limit the information schools can reveal to parents about their child's gender identity. *See* Sara Randazzo, THE WALL STREET JOURNAL, *Should Schools Tell Parents When Kids Say They're Transgender?*, Sept. 22, 2023 (https://tinyurl.com/v7u2tvkj). Although the justifications for the policies differ, many of these policies represent an improper infringement on the constitutional rights of parents.

The district court improperly dismissed the Petitioner's challenge to a withholding policy. In doing so, the district court prematurely foreclosed the Petitioner's parental rights claims.

The First Circuit fared no better. And now Petitioner turns to this Court to vindicate her fundamental parental rights. This Court should grant the petition to settle a circuit split, uphold the constitutional rights of Petitioner, and clarify the rights of millions of parents across the country.

REASONS FOR GRANTING THE PETITION

I. The question presented is exceptionally important to the States.

A. School Districts Across the Country Have Undermined Parental Rights by Adopting Withholding Policies.

Tens of thousands of schools across the country have implemented policies that withhold students' gender identities from parents. *See* DEFENDING EDUCATION, *List of School District Transgender - Gender Nonconforming Student Policies* (last updated: April 21, 2025) (https://tinyurl.com/mwp2sspa). By one estimate, these policies apply to over 12 million students in 38 states across the country, including students in Maine. *See id*.

Proponents of these policies often invoke the "right to privacy," citing students' purported privacy interests in their gender identity. *See* Stephen McLoughlin, *Toxic Privacy: How the Right to Privacy Within the Transgender Student Parental Notification Debate Threatens the Safety of Students and Compromises the Rights of Parents*, 15 DREXEL L. REV. 327, 341 (2023) ("Transgender Rights Advocates generally use the 'right to privacy' to challenge laws or policies that force individuals to expose their gender identity without consent."). Some districts, in fact, expressly describe their withholding policy in a privacy section. *See, e.g.*, Portland, Maine Public Schools, "Transgender and Gender Expansive Students," https://tinyurl.com/2k4szbx4 (last accessed Feb. 23, 2026) ("School staff shall comply with the student's wishes regarding disclosure of their transgender

status to others, including but not limited to parents or guardians, students, volunteers or other school staff, unless the student has explicitly authorized the disclosure or unless legally required to do so.").

Other times, proponents of these policies invoke health concerns, arguing that the policies are necessary to promote the physical or mental health of students. *See*, *e.g.*, Westford, Massachusetts Public Schools, "Transgender and Gender Nonconforming Student," https://tinyurl.com/neazxb2s (last accessed Feb. 23, 2026) ("In some cases, however, notifying parents/guardians carries risks for the student. Prior to notification of any parent/guardian regarding the transition process, school staff should work closely with the student to assess the degree to which, if any, the parent/guardian will be involved in the process and must consider the physical and mental health, well-being, and safety of the transitioning student.").

Whatever their purported justifications, these policies often fail to account for the long-recognized right of parents to "direct the upbringing and education of children under their control." *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 535–35 (1925). This right, considered by some to be "the oldest of the fundamental liberty interests recognized" by this Court, is "fundamental" and secures the liberty interest of parents in the "care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 47, 65 (2000). The Court has consistently recognized this right for nearly one hundred years, deeming the right to be "beyond debate." *See Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

To vindicate this right, parents across the country have sued to enjoin withholding policies with some degree of success. *See, e.g.*, *Ricard v. USD 475 Geary Cnty., KS Sch. Bd.*, No. 522CV04015HLTGEB, 2022 WL 1471372, at *8 (D. Kan. May 9, 2022) (Parents' "constitutional right to raise their children as they see fit" includes "the right of a parent to have an opinion and to have a say in what a minor child is called and by what pronouns they are referred."). One district court observed that the policy of "elevating a child's gender-related choices to that of paramount importance, while excluding a parent from knowing of, or participating in, that kind of choice, is as foreign to federal constitutional and statutory law as it is medically unwise." *Mirabelli v. Olson*, 691 F. Supp. 3d 1197, 1212 (S.D. Cal. 2023).

Yet other courts have rejected or limited the constitutional rights of parents. *See, e.g., Foote v. Ludlow Sch. Comm.,* 128 F.4th 336, 357 (1st Cir. 2025), *petition for certiorari filed*, No. 25-77 (U.S. July 22, 2025) (concluding that a school committee did not violate parental rights by implementing a protocol requiring its staff to use a student's requested name and gender pronouns within the school without notifying parents unless the student consents); *Littlejohn v. Sch. Bd. of Leon Cnty.*, 132 F.4th 1232, 1243 (11th Cir. 2025), *petition for certiorari filed*, No. 25-259 (U.S. Sept. 5, 2025) (concluding that school officials did not "shock the conscience," and therefore did not violate parental rights, when they implemented a gender-identity-related "student support plan" without parental involvement and contrary to parental wishes); *Hartzell v. Marana Unified Sch. Dist.*, 130 F.4th 722, 744 (9th Cir.), *cert. denied,* 146 S. Ct. 298, 223 L. Ed. 2d 122

(2025) (concluding that "once parents make the choice as to which school their children will attend, their fundamental right to control the education of their children is, at the least, substantially diminished.") (citation modified); *Doe No.1 v. Bethel Loc. Sch. Dist. Bd. of Educ.*, No. 23-3740, 2025 WL 2453836, at *10 (6th Cir. Aug. 26, 2025) (concluding that a school district did not violate parental rights by failing to answer parents' questions about the district's implementation of a gender-identity-based bathroom policy); *City of Huntington Beach v. Newsom*, 790 F. Supp. 3d 812, 837 (C.D. Cal. 2025), *appeal filed*, No. 25-3826 (9th Cir. Jun. 18, 2025) (concluding that parents challenging a state withholding law did not have a fundamental right to information about their children's gender identity); *Short v. N.J. Dep't of Educ.*, 2025 WL 984730 (D.N.J. Mar. 28, 2025) (upholding withholding policies).

When school systems adopt withholding policies on matters central to a child's religious upbringing and welfare, they displace parental authority and frustrate state laws that presume parental primacy in health and education decisions. Certiorari should be granted to reaffirm that parental rights follow children into public schools and to recognize that those rights include notice sufficient for parents to exercise their constitutional role.

B. The First Circuit's avoidance underscores the need for review.

The First Circuit avoided answering the important constitutional question presented here. *Amici* States have a direct interest in clarity on this question so that legislatures, state boards of education, and local

school districts can conform policies to federal law. Persistent avoidance by lower courts leaves States without binding guidance while disputes proliferate. *See Lee v. Poudre Sch. Dist. R-1*, 135 F.4th 924 (10th Cir. 2025), *cert. denied*, 146 S. Ct. 26 (2025); *Parents Protecting Our Child., UA v. Eau Claire Area Sch. Dist.*, 95 F.4th 501 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 14 (2024); *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622 (4th Cir. 2023), *cert. denied sub nom. Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 144 S. Ct. 2560 (2024).

As noted by Justices Alito, Thomas, and Gorsuch, these decisions represent a growing tendency to use jurisdictional doctrines to "avoid confronting a 'particularly contentious constitutional questio[n]': whether a school district violates parents' fundamental rights 'when, without parental knowledge or consent, it encourages a student to transition to a new gender or assists in that process.'" *Lee v. Poudre Sch. Dist. R-1*, 146 S. Ct. 26, 26 (2025) (Alito, Thomas, and Gorsuch, JJ., respecting denial of certiorari) (quoting *Parents Protecting Our Children, UA* v. *Eau Claire Area School Dist.*, 145 S.Ct. 14, 14 (2024) (Alito, J., dissenting from denial of certiorari)).

These divergent rulings disrupt state efforts to adopt clear notice standards and guide school personnel regarding parental communications. Avoidance perpetuates a vacuum that invites inconsistent local practices and serial litigation.

This is such a case. After discovering that her child's local school withheld information about her child's gender identity and gender transition, the Petitioner tried to exercise her parental rights. The First

Circuit erred in affirming the dismissal of the Petitioner's claim against the school board, prematurely foreclosing her opportunity to vindicate her "fundamental liberty interests."

After the Petitioner brought the school's conduct to the attention of the school board, the board allegedly issued a statement defending the conduct, citing students' "right to privacy"—a theory that, as noted above, is often invoked to justify withholding policies. App. 67. The statement, which was attached to the Complaint, added that the board had "policies" in place to respond to parental or student concerns that "comply with Maine law, which protects the rights of all students and staff, regardless of gender/gender identity, to have equal access to education, the supports and services available in our public schools, and the student's right to privacy regardless of age." App. 88. In a second statement, the board insisted that all relevant policies were followed. App. 68.

The allegations implicate the constitutional rights of the Petitioner—namely her fundamental right to direct the upbringing and education of her child. *See Troxel*, 530 U.S. at 65. Although the lower courts purported to sidestep the question of constitutionality, they disregarded this Court's repeated admonition that no "heightened pleading rule" exists for constitutional cases. *See Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014).

C. This Court should grant certiorari to resolve an entrenched conflict among lower courts as to the scope of fundamental parental rights.

This Court should resolve the circuit split over whether a parent's right to control and direct her child's education ends at the schoolhouse gate or whether the right extends beyond simply choosing between public and private education.

One side of this split is occupied by the First, Second, Fifth, Ninth, and Tenth Circuits. *See Parker v. Hurley*, 514 F.3d 87, 102 (1st Cir. 2008); *Leebaert v. Harrington*, 332 F.3d 134, 141 (2d Cir. 2003); *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 291 (5th Cir. 2001); *Hartzell*, 130 F.4th at 744; *Swanson ex rel. Swanson v. Guthrie Indep. Sch. Dist.*, 135 F.3d 694, 699 (10th Cir. 1998). The Third Circuit has a different approach. *Gruenke v. Seip*, 225 F.3d 290 (3d Cir. 2000); *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159 (3d Cir. 2005); *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915 (3d Cir. 2011).

In the States' experience, this divergence produces materially different obligations for schools and rights for families depending on geography, frustrating statewide policy coherence and inter-district consistency. Only this Court can restore uniformity.

D. The constitutional question is nationally consequential.

Parental rights follow children into public schools and require notice to enable meaningful parental decision-making. *Pierce*, 268 U.S. at 534–35 (recognizing the "liberty of parents and guardians to direct the

upbringing and education of children under their control"); *Troxel*, 530 U.S. at 65 (parental rights are "fundamental"); *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923) (acknowledging "the power of parents to control the education of their own.").

This Court recently reiterated that "the right of parents to direct the religious upbringing of their children would be an empty promise if it did not follow those children into the public school classroom." *Mahmoud v. Taylor*, 606 U.S. 522, 547 (2025) (citation modified). And this Court also concluded that a school board's "decision to withhold notice to parents and to forbid opt outs" of "LGBTQ+-inclusive" instruction "substantially interfere[d]" with that right. *Id.* at 550. Those principles fit this case like a glove.

States rely on parental rights principles to craft notice and consent frameworks across education and health contexts. But school policies that withhold information from parents about actions and decisions that school officials take about their children's education, mental health, and physical well-being hinder parents' ability to make conscientious parental decisions. And where schools adopt withholding policies directly bearing on a child's religious upbringing, mental health, or physical well-being, those rules undercut parents' ability to discharge responsibilities the Constitution recognizes as fundamental.

This Court should grant certiorari to reiterate the right of parents to be informed and involved in their children's education.

CONCLUSION

Withholding policies have proliferated around the country, threatening to undermine the family unit by infringing parental rights. In this case, the lower courts prematurely closed the door on a parental rights claim. Considering the lower courts' errors, this Court should grant certiorari.

Respectfully submitted,

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