No. 25-77

In the Supreme Court of the United States

STEPHEN FOOTE, INDIVIDUALLY AND AS GUARDIAN AND NEXT FRIEND OF B. F. AND G. F., MINORS, ET AL.,
Petitioners,
v.
LUDLOW SCHOOL COMMITTEE, ET AL.,
Respondents.

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

BRIEF FOR SAMARITAN'S PURSE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*

Samaritan's Purse is a nondenominational, evangelical Christian organization formed in 1970 to provide spiritual and physical aid to hurting people around the world. The organization seeks to follow the command of Jesus to "go and do likewise" in response to the story of the Samaritan who helped a hurting stranger. Samaritan's Purse operates in over 100 countries providing crisis relief, sharing the hope and love of Jesus Christ with those in the gutters and ditches of the world in their darkest hour of need. The ministry operates relief programs around the world for vulnerable women who are victims of war, famine, and disaster and through maternal and child healthcare. Samaritan's Purse's concern arises when concepts of Biblical and scientific reality are threatened by executive, legislative, or judicial action compelling ideologies that diminish common grace related to safety, fairness, privacy, speech, and religious free exercise.*

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* Under Rule 37.2, the parties' counsel of record received timely notice of the intent to file this brief. Under Rule 37.6, 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

This Court has held that the Constitution protects parents' rights "to direct the education and upbringing of [their] children." *Washington* v. *Glucksberg*, 521 U.S. 702, 720 (1997). "[S]o long as a parent adequately cares for his or her children," the government generally may not "inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Troxel* v. *Granville*, 530 U.S. 57, 68–69 (2000) (plurality opinion). Yet here, Baird Middle School let its nonbinary librarian and a guidance counselor transition an 11-year-old girl, then withheld that information from her parents based on its hostile assumption that parents by default cannot be trusted to properly raise children who face gender identity issues. The Constitution's assumption, however, is that *parents*—not nonbinary school librarians or other administrators—have the "primary function and freedom" to educate and raise their children. *Prince* v. *Massachusetts*, 321 U.S. 158, 166 (1944). The school's active, intentional deception about the child's critical educational and developmental information infringed these parents' constitutional rights.

This brief makes two points in support of certiorari. *First*, the First Circuit imposed an artificial coercion-or-restraint test, then gerrymandered those terms so that the conduct here purportedly fell outside of those terms. The Court has recently rejected similar efforts, see *Mahmoud* v. *Taylor*, 145 S. Ct. 2332, 2357–58 & n.9 (2025), and it should do so again here. Parents' rights, just like other constitutional rights, can be infringed by government actions short of narrowly-

defined coercion or restraint. A substantial burden on those rights suffices. Here, no matter how one articulates the necessary burden, the parents have shown that the school's action implicates their fundamental right to direct their child's education and upbringing. By deceiving the parents about their child's education and development, the school restrained the parents' ability to raise their child as they saw fit. The school's actions also coerced the child to depart from the parents' guidance, putting direct tension on the parent-child relationship. Though the complaint amply alleges these burdens, they are proved by the school's own defenses. The school considered it necessary for "safety" to deceive the parents—showing that the school's actions were designed to affect the parent-child relationship. The school cannot now pretend that its actions had no effect on the parents' ability to direct their child's upbringing.

Second, the parental right to direct their child's education and upbringing is unlike the novel right recently asserted in other cases for parents to obtain generally prohibited drugs and surgeries for gender transition. There is no American history or tradition of parents accessing specific medical treatments that are reasonably regulated by the government. Given that neither parents nor children have a right to access particular medical treatments, parents purportedly acting on behalf of their children do not either. That right does not exist and is unrelated to the deeply-rooted right of parents to make decisions on their child's behalf. But parents' ability to direct the education and upbringing of their children is within that right's heartland. The Court should reverse.

REASONS FOR GRANTING THE WRIT

I. The First Circuit erred in its understanding of the necessary coercion or restraint on parental rights.

The First Circuit's determination that the school's actions did not implicate the parents' fundamental right to direct their child's education and upbringing was egregiously wrong. First, like other constitutional rights, parental rights do not depend on a showing of direct coercion or restraint; a substantial burden easily suffices. Second, the parents here alleged *all* of these elements. The school's intentional deception of the parents about their child's identity at school restrained their ability to direct the child's upbringing. The school's encouragement of the child to deviate from the parents' guidance coerced the child as well as the parent-child relationship. These are easily substantial burdens. Indeed, burdening the parent-child relationship was the entire point of the school's actions, by the school's own account: the school considered it necessary for the child's "safety" to deceive the parents. This infringement of the parents' fundamental right requires strict scrutiny.

A. Parents need not show direct coercion or restraint.

According to the First Circuit and some other courts, a school's "[p]rotocol of deference to a student's decision about whether to disclose their gender identity to their parents lacks the 'coercive' or 'restraining' conduct" that is supposedly a prerequisite to the constitutional claim here. Pet. 32a; see, *e.g.*, *Doe* v. *Delaware Valley Reg'l High Sch. Bd. of Educ.*, 2024

WL 5006711, at *13 (D.N.J. Nov. 27, 2024) (claiming no "proactive, coercive interference with the parent-child relationship").

But the fundamental parental right to direct their children's upbringing can be infringed by actions short of direct coercion and restraint. This Court has recognized that many constitutional rights are triggered by government action that even indirectly burdens those rights. The Court should again reject the "alarmingly narrow" view of a constitutional "guarantee as nothing more than protection against compulsion or coercion." *Mahmoud*, 145 S. Ct. at 2357–58.

Across constitutional rights, this Court has recognized that indirect burdens can infringe rights. For instance, this Court just reiterated that "the Free Exercise Clause protects against policies that impose more subtle forms of interference," including "with the religious upbringing of children. *Id.* at 2352. That is consistent with a long line of Free Exercise cases. In *Thomas* v. *Review Board*, the Court held that a substantial burden exists "[w]here the state . . . denies [an important benefit] because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs." 450 U.S. 707, 717–18 (1981). "While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial." *Id.* at 718; see also, *e.g.*, *Carson* v. *Makin*, 596 U.S. 767, 778 (2022) ("The Free Exercise Clause of the First Amendment protects against indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." (cleaned up)).

Likewise, the Court has recognized in Free Speech cases that "indirect 'discouragements'" can "have the same coercive effect upon the exercise of [constitutional] rights as imprisonment, fines, injunctions or taxes." *Am. Commc'ns Ass'n* v. *Douds*, 339 U.S. 382, 402 (1950); see, *e.g.*, *Davis* v. *Fed. Election Comm'n*, 554 U.S. 724, 739–40 (2008); *Buckley* v. *Valeo*, 424 U.S. 1, 65 (1976) ("[S]crutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct . . . .").

The same rule applies in many other constitutional contexts. See, *e.g.*, *Saenz* v. *Roe*, 526 U.S. 489, 504 (1999) ("[T]he State's argument that its welfare scheme affects the right to travel only 'incidentally' is beside the point."); *Anderson* v. *Celebrezze*, 460 U.S. 780, 793 (1983) (asking "whether the challenged restriction unfairly or unnecessarily burdens 'the availability of political opportunity'").

The Court has applied the same rule to parents' fundamental rights. In *Meyer* v. *Nebraska*, 262 U.S. 390 (1923), the Court invalidated a Nebraska statute that restricted the teaching of a foreign language to children in school. The law did not directly restrain the parents or coerce students, at least in the sense of coercion and restraint seemingly adopted by the First Circuit here. The Nebraska law only applied "in any private, denominational, parochial or public school." *Id.* at 397. So under the binding interpretation of the law by the Nebraska Supreme Court, 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). In fact, the Nebraska Supreme Court concluded that even *schools* remained free to teach foreign languages outside of "school hours." *Id.* at 534.

So to use the First Circuit's language here, the parents in *Meyer* "remain[ed] free to strive to mold their child according to the Parents' own beliefs, whether through direct conversations, private educational institutions [outside school hours], religious programming, homeschooling, or other influential tools." Pet. 37a. The Nebraska Supreme Court said much the same thing: "there is nothing in the act to prevent parents, teachers, or pastors from conveying religious or moral instruction in the language of the parents." *McKelvie*, 175 N.W. at 534. But this Court held that the law burdened the parents' fundamental right to direct their upbringing, recognizing "the power of parents to control the education of their own." *Meyer*, 262 U.S. at 401.

Likewise, this Court's recent decision in *Mahmoud* directly rejected the First Circuit's rationale that a burden on parental rights could be excused because of the availability of "private educational institutions, religious programming, homeschooling, or other influential tools." Pet. 37a. These are "no answer[s]" because "[p]ublic education is a public benefit, and the government cannot condition its availability on parents' willingness to accept a burden on their" constitutional rights. *Mahmoud*, 145 S. Ct. at 2359 (cleaned up). The Court also rejected the notion that

"parents who send their children to public school must endure any instruction that falls short of direct compulsion or coercion and must try to counteract that teaching at home." *Id.* at 2360; compare Pet. 37a (the First Circuit emphasizing that "[o]utside school, parents can obtain information about their children's relationship to gender in many ways").

Last, though this Court's decision in *Wisconsin* v. *Yoder* focused on Free Exercise, it too recognized a burden when parents are forced to "submit their children to instruction that would 'substantially interfer[e] with the[ir] religious development.'" *Mahmoud*, 145 S. Ct. at 2359 n.10 (quoting 406 U.S. 205, 218 (1972)). Again, parents were *not* "prohibited" "from engaging in religious teaching at home," *ibid.*, "but that made no difference to the [constitutional] analysis," *id.* at 2360.

In sum, a school's active deception of parents burdens their right to direct their children's upbringing even if there is no direct coercion or restraint. This Court's consistent precedents across constitutional fields confirm that forcing parents to try to work around or counteract the school's deception implicates fundamental parental rights.

B. Secret transitioning policies *do* involve coercion and restraint.

At any rate, the First Circuit was wrong to think that the school's secret transitioning did not involve coercion or restraint. The whole point of the school's secrecy was to restrain the parents' ability to direct their children's upbringing—indeed, that's how the school itself explained the policy.

1. The school's actions restrained the parents' rights.

Begin with restraint. By intentionally depriving the parents of critical information about their child, the school restrained their ability to direct the child's upbringing. The school counselor "directed" staff to use the child's real name "and she/her pronouns when communicating with the Student's parents, but during school times, to address the Student" with the new name and pronouns. Pet. 8a; see Pet. 89a. The counselor "explicitly instruct[ed] staff that her parents were not to be told." Pet. 90a.

This intentional deception restrained the parents' ability to raise their children, as even the First Circuit recognized: "knowing that the Student had requested the use of an alternative name and pronouns in school might inform how the Parents respond to and direct their child's gender expressions outside of school." Pet. 38a; see Pet. 34a (agreeing that the policy "makes their parenting more challenging"). As another court put it, "[i]t is difficult to envision why a school would even claim—much less how a school could establish—a generalized interest in withholding or concealing from the parents of minor children, information fundamental to a child's identity, personhood, and mental and emotional well-being such as their preferred name and pronouns." *Ricard* v. *USD 475 Geary Cnty., KS Sch. Bd.*, 2022 WL 1471372, at *8 (D. Kan. May 9, 2022).

Yet the First Circuit paradoxically concluded that there was no restraint on the parents' rights here. The First Circuit agreed that, "[v]iewed in the light most favorable to the Parents," their allegations "arguably

challenge[] a restraining act by" the school—"deceptive communication to the Parents about a child's expression of gender in school." Pet. 33a. But the First Circuit said this "theory" "is unavailing here" because "[t]he complaint contains only general allegations" about "affirmative misrepresentation." Pet. 34a. And, according to the First Circuit, these allegations were "contradict[ed]" by the allegations that one teacher mailed a postcard with the child's new name. *Ibid.* The First Circuit also noted that "when the Parents tried to speak with school officials about the Student," the officials "just declined to discuss" the issue—they did not affirmatively "misrepresent[] the name." *Ibid.*

But none of that affects the conclusion that the school intended to—and did—use a different name in parental communications precisely to deprive the parents of information about their child. That one teacher slipped up and mailed a postcard with the new name says nothing about the school's overall effort. And that school officials did not repeat their lie when the parents tried to discuss the issue—instead evading it—says nothing about the school's other, overt deceptions. Even the district court found it "disconcerting that [the school] adopted and implemented a policy requiring school staff to actively hide information from parents about something of importance regarding their child." Pet. 61a. That active deception restrains the parents' exercise of their right to direct their child's upbringing. Indeed, as discussed below, the school said that was the whole point of the policy.

2. The school's actions coerced the parent-child relationship.

Next turn to coercion. The First Circuit claimed that "there are no allegations of coercive conduct towards the Student" here. Pet. 33a. Nonsense, especially in the context of a school environment, where "the inherent power asymmetry" between school officials and students amps up the coerciveness of even ordinary interactions. *Arizona Students' Ass'n* v. *Arizona Bd. of Regents*, 824 F.3d 858, 869 (CA9 2016).

The coercive baseline here is also heightened because of the student's age: 11, in sixth grade, "many years away from adulthood" (per the district court). Pet. 64a. This Court's precedents across a variety of doctrines reflect the susceptibility of young people to outside influence. See, *e.g.*, *Mahmoud*, 145 S. Ct. at 2355 ("Young children . . . are often impressionable and implicitly trust their teachers." (cleaned up)); *ibid.* ("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." (internal quotation marks omitted) (quoting *Edwards* v. *Aguillard*, 482 U.S. 578, 584 (1987)); *FCC* v. *Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009) ("[C]hildren mimic the behavior they observe—or at least the behavior that is presented to them as normal and appropriate."); *Johnson* v. *Texas*, 509 U.S. 350, 367 (1993) (youth "is a time and condition of life when a person may be most susceptible to influence"); *Yoder*, 406 U.S. at 211 (emphasizing the "crucial and formative adolescent period of life").

With this background coerciveness in mind, it is hard to credit the First Circuit's claim of "*no* allegations of coercive conduct towards the Student." Pet. 33a (emphasis added). The complaint alleges that school employees like the nonbinary librarian "promote[d] the concept of gender-affirming social transitioning" in various ways, including by "regularly communicat[ing] privately with their children one-on-one to discuss their gender identity (mental health) issues, provide materials promoting exploration of alternate gender identities, and otherwise encourage children to experiment with alternate gender identities without notifying parents." Pet. 81a, 82a.

The librarian told "children not to use the terms 'boys' and 'girls,' but to use alternative terms rooted in gender identity ideology." Pet. 82a. The librarian "directed 11-year-old B.F. to translategender.org, an organization with which [the librarian] is affiliated that 'works to generate community accountability individuals to self-determine their own genders and gender expressions.'" Pet. 96a. The librarian used this website and several of its workshops "to groom" the child away from traditional conceptions of gender and sex. *Ibid.* A typical Translate Gender offering is a video it posted publicly, in which a very young child celebrating "Trans Day of Visibility" advocates "mak[ing] more trans and non-binary people in our community." Translate Gender, https://www.facebook.com/reel/1453224735639289 (Mar. 31, 2025). The school's use of such material in regular, private encouragement from an authority figure to a minor, without parental knowledge, suggests a concerted effort to influence the child.

Likewise, the school counselor told the child, "'I can't be there to keep you safe,' thereby signaling to B.F. that her parents were not 'safe.'" Pet. 97a. With the child, she also questioned whether the child "was as comfortable discussing issues with [the parents'] counselor as she was discussing issues with" her. *Ibid.* These highly coercive tactics served to alienate the child from her parents and foster reliance on school staff.

The First Circuit claimed that "providing educational resources about LGBTQ-related issues to a child who has shown interest imposes no more compulsion to identify as genderqueer than providing a book about brick laying could coerce a student into becoming a mason." Pet. 33a. But across a variety of "contexts," this Court has "recognized the potentially coercive nature of classroom instruction of this kind." *Mahmoud*, 145 S. Ct. at 2355. The Court has focused on "the specific context in which the instruction or materials at issue are presented." *Id.* at 2353. "Are they presented in a neutral manner, or are they presented in a manner that is . . . designed to impose upon students a 'pressure to conform'?" *Ibid.*

Here, especially when the allegations are viewed in the light most favorable to the parents, there is no doubt that the school's actions tended to coerce the child to develop a non-traditional sense of gender, urged on by the nonbinary librarian via one-on-one interactions that are even more coercive than standard classroom instructions. Cf. *Mahmoud*, 145 S. Ct. at 2357 (referring to "direct, coercive interactions between the State and its young residents"). As the First Circuit said in a case relied on by the courts

below, "[i]t is a fair inference that" these materials were "precisely *intended* to influence the listening child[] toward" a certain value. *Parker* v. *Hurley*, 514 F.3d 87, 106 (CA1 2008). "That was the point of why [they] w[ere] chosen and used." *Ibid.*

The school's actions also tended to coerce the child to view her parents as obstacles, urged on by a skeptical school counselor and official policies that approved of intentionally deceiving parents. This was no career day talk by a brick mason; it was a coordinated, concentrated campaign to encourage the child to adopt certain gender theories and break with her parents. This "instruction" "carries with it" "objective danger" to the parents' exercise of their right to direct their child's upbringing. *Mahmoud*, 145 S. Ct. at 2356.

3. The school's own explanation confirms the point.

Beyond the allegations of the complaint, perhaps the best indicator that the school sought to coerce students to deviate from their parents' upbringing—and restrain the parents' ability to act—is that school officials said that was the whole point of their policy.

The school superintendent's core argument for the policy of affirmative deception was: "For many of our students school **IS** their only safe place and that safety evaporates when they leave the confines of our buildings." Pet. 151a. The school asserted that its policy was supported by "the goal of providing transgender and gender nonconforming students with a safe school environment," Pet. 65a, and that

opposition was rooted in "prejudice and bigotry," Pet. 151a.

In other words, the school thought that it *needed* to deceive parents because it viewed those parents as a danger to students. The point of the deception is precisely to deprive parents of information about their children—information critical to the children's identity and thus to the parents' upbringing. The First Circuit's disclaimer of any coercive or restraining effect cannot be squared with the school's own explanation of its policy. The policy could not support the school's conception of "safety" *unless* its point was to deceive parents—thereby coercing and restraining the parent-child relationship. But this Court has long rejected the "statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children" as "repugnant to American tradition." *Parham* v. *J.R.*, 442 U.S. 584, 603 (1979).

Though the school lately has tried to obscure the obvious point of its policy, its initial arguments were not so shy. The school's motion to dismiss opened with the sententious pronouncement that "[t]he proudest moments of the federal judiciary have been when we affirm the burgeoning values of our bright youth, rather than preserve the prejudices of the past." D. Ct. Dkt. 28, at 1 (quoting *Grimm* v. *Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 620 (CA4 2020)). The school said that parents have no right "to prior notice and an exemption from a school district's intent (and obligation) to not discriminate against a transgender student." *Ibid.* The school even portrayed the parents as attacking their own child's existence: "One cannot

'opt out' from having a transgender child." *Id.* at 16. So the school saw its deception of parents as necessary to the equal treatment, safety, and (somehow) existence of children. It cannot now pretend that its deception does not affect the parent-child relationship.

Likewise, when asked at the motion to dismiss hearing whether the school's view was that children "at the age of the students in this case[] could make their own decisions as to whether or not the parents should know," the school repeated: "Yes, your Honor. Yes, your Honor." D. Ct. Dkt. 48, at 39. As the school candidly explained, "the point" of the policy "is to accept [the student's] request" to "'please don't tell my mom or dad.'" *Id.* at 38. And significantly, the school conceded below that the information being withheld "is important information for parents to have." CA1 Oral Arg. at 28:10. Again, it is impossible to square these explanations with the claim that the policy has no meaningful effect on the parent-child relationship.

Confirming this is the defense of the policy offered by the school's allies. As *amicus* below, the ACLU argued that the policy would satisfy strict scrutiny because "[a]lthough many parents are supportive of their children, it is not uncommon for parents to reject their children's transgender or gender nonconforming identity, *leading to significant familial conflict*." Brief of *Amici Curiae* American Civil Liberties Union et al. 19, *Foote* v. *Ludlow Sch. Comm.*, No. 23-1069, 2023 WL 4558586 (CA1 July 6, 2023) (emphasis added). This emphasis on familial conflict reflects the reality that the policy actively interferes with the parent-child relationship; how else could a policy of

transparency lead to "familial conflict" and a purported threat to "the safety of students" (*id.* at 21)?

The ACLU also argued that transparency would interfere "with the trusting relationships between educators and students." *Id.* at 21. In the same way, active deception interferes with the relationship between the parents and children—which, unlike the ACLU's purported public school administrator-student relationship, is protected as a fundamental constitutional right.

Last, the ACLU defended the school's actions as an element of "awakening the child to cultural values." *Id.* at 22. Yet again, this defense gives away the game. It only "works" if the school's efforts have an element of coercion, pushing the child away from their parents' guidance and toward the school's (and its nonbinary librarian's) vision of gender and parental detachment.

The school and the ACLU cannot have it both ways: if the policy meaningfully affects the parent-child relationship, it should be subject to strict scrutiny. Everyone here—the parents, school officials, the ACLU, and the courts below—seems to agree that the purpose and effect of the school's policy is to affect the parent-child relationship by intentionally deceiving parents.

This interference by the school with the parents' right to direct their child's upbringing could be characterized in many ways. It could be described as coercion: it coerces the ordinary parent-child relationship and encourages the child to depart from the parents' guidance. It could be described as restraint: it intentionally deprives the parents of

critical knowledge about their child's development. Or it could simply be described as a substantial burden on the parents' right to raise their child. No matter how it is described, the implication is the same: the parents here state a violation of their fundamental right to direct their child's education and upbringing. The First Circuit egregiously erred in holding otherwise.

II. The parental right properly asserted here is unlike any claimed right to access prohibited medical interventions.

This Court has said that the Constitution generally "protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel*, 530 U.S. at 66 (plurality opinion). As shown above, core parental decisions over education and upbringing are protected by this right. But parents do *not* have a constitutional right to everything that could conceivably bear on a child's "care, custody and control." *Ibid.* "[R]ights of parenthood are [not] beyond limitation," and "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare." *Prince*, 321 U.S. at 166–67. Here, as in other constitutional fields, the permissibility of a government action depends on whether it "is consistent with the [historical] principles that underpin our regulatory tradition." *United States* v. *Rahimi*, 602 U.S. 680, 692 (2024).

Recently, some district courts have held that parents "have a fundamental right to treat their children with transitioning medications subject to medically accepted standards" for purported gender

dysphoria. *Eknes-Tucker* v. *Marshall*, 603 F. Supp. 3d 1131, 1144 (M.D. Ala. 2022), *vacated*, *Eknes-Tucker* v. *Governor of Alabama*, 80 F.4th 1205 (CA11 2023). Indeed, the ACLU has argued for this position—that parents have a deeply-rooted right to access experimental treatments prohibited by the government because of permanently sterilizing effects and no proven benefits—while simultaneously arguing here that parents have *no* right not to be deceived about their child's gender identity at school. See generally Pet. for Writ of Cert., *L.W.* v. *Skrmetti*, No. 23-466 (U.S. Nov. 1, 2023). This gets it backwards: the real parental right asserted here—not to be deceived about critical parts of their child's education and development—is unlike the novel asserted right to access generally prohibited medical treatments. Parents have never had the right to demand access to illegal medical procedures. Deeply-rooted parental rights revolve around who makes decisions on a child's behalf, not whether a parent gets special access to reasonably banned treatments on their child's behalf.

"In deciding whether a right" is fundamental and thus protected by the Constitution, "the Court has long asked whether the right is 'deeply rooted in [our] history and tradition' and whether it is essential to our Nation's 'scheme of ordered liberty.'" *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 237 (2022). "[A] careful analysis of the history of the right" is necessary, and the right must not be defined "at a high level of generality." *Id.* at 238, 257; see *Glucksberg*, 521 U.S. at 722 (courts must "carefully formulat[e] the interest at stake"). Courts look for "historical analogue[s]" to decide whether a particular regulation

is consistent with the constitutional right. *Rahimi*, 602 U.S. at 700–01.

As Chief Judge Sutton explained, this country "does not have a 'deeply rooted' tradition of preventing governments from regulating the medical profession in general or certain treatments in particular, whether for adults or their children." *L.W.* v. *Skrmetti*, 83 F.4th 460, 473 (CA6 2024). "Quite to the contrary in fact." *Ibid.* The "Nation's history and tradition" show that "states can prohibit medical treatments for adults and children." *Brandt* v. *Griffin*, ___ F.4th ___, No. 23-2681, 2025 WL 2317546, at *9 (CA8 Aug. 12, 2025); see, *e.g.*, *Dent* v. *West Virginia*, 129 U.S. 114, 122 (1889) (recognizing state power to regulate the medical profession to "provide for the general welfare").

Courts have repeatedly rejected the proposition that the Constitution guarantees a fundamental right to a particular medical treatment. See *Abigail All. for Better Access to Developmental Drugs* v. *Eschenbach*, 495 F.3d 695, 711 (CADC 2007) (en banc) (no "right to procure and use experimental drugs"); *Raich* v. *Gonzales*, 500 F.3d 850, 864–66 (CA9 2007) (no right to medical marijuana); *Rutherford* v. *United States*, 616 F.2d 455, 456 (CA10 1980) (no right for terminally ill patients "to take whatever treatment they wished").

"A parent's right to demand [a medical intervention] for his child could not be stronger than the child's right to access it." *K.C.* v. *Individual Members of Med. Licensing Bd. of Indiana*, 121 F.4th 604, 627 (CA7 2024) (citing *Whalen* v. *Roe*, 429 U.S. 589, 604 (1977)). "The government has the power to reasonably limit the use of drugs," which is "true for

adults" and "assuredly true for their children." *Skrmetti*, 83 F.4th at 475. Given that neither the parent nor the child has a personal, fundamental right to access specific interventions, the parent acting on the child's behalf cannot access them, either. "This country does not have a custom of permitting parents to obtain banned medical treatments for their children and to override contrary legislative policy judgments in the process." *Ibid.*

No doubt, "our longstanding traditions may give individuals," including parents, "a right to refuse treatment" in some circumstances. *Id.* at 476; see *Cruzan* v. *Dir., Missouri Dep't of Health*, 497 U.S. 261, 270 (1990). But this parental right stems from the deeply-rooted right to make decisions on their child's behalf. When a State substitutes its judgment for a parent to make certain medical decisions, it may violate the Constitution. See, *e.g.*, *Kanuszewski* v. *Michigan Dep't of Health & Human Servs.*, 927 F.3d 396, 419 (CA6 2019) (striking down Michigan's choice to take children's blood samples without parental consent because "it is logically the parents who possess a fundamental right to direct the medical care of their children"); *Mann* v. *Cnty. of San Diego*, 907 F.3d 1154, 1158, 1161 (CA9 2018) (holding that a county violated parents' rights to "make important medical decisions for their children" when it performed "gynecological and rectal exams" without notifying parents or obtaining their consent).

Even in this sphere, though, "[p]arents do not have unlimited authority to make medical decisions for their children." *Brandt*, 2025 WL 2317546, at *8. For instance, "[e]very state, as well as the District of

Columbia, allows some minors to receive some medical treatments without the consent of their parents." *Ibid.* And "[e]very state, as well as the District of Columbia, includes failure to provide necessary medical care as child neglect or abuse." *Ibid.*

The *affirmative* right claimed by medical transitioning proponents is much different than a right to decline treatment, for it would entail more than a parental right to make decisions on their child's behalf. It would mean a parental right to access treatments that the child could not. But "there is no historical support for an affirmative right to specific treatments." *Skrmetti*, 83 F.4th at 476. Many courts in a variety of contexts "have drawn the same sensible line, noting a material distinction between the State effectively sticking a needle in someone over their objection and the State prohibiting the individual from filling a syringe with prohibited drugs." *Ibid.* (collecting cases). And this Court has said nothing about what medical procedures a State must affirmatively make available to a child—or anyone else. Cf. *Gonzales* v. *Carhart*, 550 U.S. 124, 157 (2007) ("[I]t is clear the State has a significant role to play in regulating the medical profession."). Affirmative access to a particular medical treatment lacks historical grounding.

Even less is there support for the "more precise" (*Glucksberg*, 521 U.S. at 723) claimed right to access gender transitioning drugs and surgeries. See *Eknes-Tucker*, 80 F.4th at 1220–21; *K.C.*, 121 F.4th at 625–26. "The mere novelty of such a claim is reason enough to doubt that 'substantive due process' sustains it," and "the alleged right certainly cannot be considered

so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Reno* v. *Flores*, 507 U.S. 292, 303 (1993) (cleaned up).

Thus, "[a]s long as it acts reasonably, [the government] may ban even longstanding and nonexperimental treatments for children." *Skrmetti*, 83 F.4th at 477. "[A] parent's right to control a child's medical treatment does not give the parent a right to insist on treatment that is properly prohibited on other grounds." *Doe* v. *Ladapo*, 737 F. Supp. 3d 1240, 1287 (N.D. Fla. 2024). Holding otherwise would lead to chaos. "If parents could veto legislative and regulatory policies about drugs and surgeries permitted for children, every such regulation—there must be thousands—would come with a springing easement: It would be good law until one parent in the country opposed it." *Skrmetti*, 83 F.4th at 475. "At that point, either the parent would take charge of the regulation or the courts would." *Ibid.* "And all of this in an arena—the care of our children—where sound medical policies are indispensable and most in need of responsiveness to the democratic process." *Ibid.*

In sum, there is no fundamental parental right to access sterilizing hormones and surgeries for gender transition in minors. Parents' right to make informed decisions about crucial aspects of their child's upbringing has "been carefully refined by concrete examples involving fundamental rights found to be deeply rooted in our legal tradition." *Glucksberg*, 521 U.S. at 722. A supposed parental right to override the reasoned judgment of the state to access prohibited medical treatment has not. That is why the former is a constitutional right, while the latter falls within the

traditional power of state regulation. The parents' claim in this case fits squarely within the deeply-rooted right for parents to make decisions on their child's behalf by directing the child's education and upbringing.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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