No. 25-77

In the Supreme Court of the United States

**STEPHEN FOOTE, *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 *AMICI CURIAE* OF THE NATIONAL LEGAL FOUNDATION, HAWAII FAMILY FORUM, ILLINOIS FAMILY INSTITUTE, WISCONSIN FAMILY ACTION, ETHICS AND RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION, CONCERNED WOMEN FOR AMERICA, PACIFIC JUSTICE INSTITUTE, THE FAMILY FOUNDATION, and PROTECT OUR KIDS

***In Support of the Petitioners***

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## Statements of Interests[1]

**The National Legal Foundation** (NLF) is a public interest law firm dedicated to the defense of First Amendment liberties (including the freedoms of speech, assembly, and religion) and parental rights. The NLF and its donors and supporters, in particular those from Massachusetts, are vitally concerned with the outcome of this case because of its effect on religion-based parental rights.

**Hawaii Family Forum** (HFF) was established in 1998 to protect, preserve, and strengthen Hawaii's ohana (family). HFF is a non-profit, pro-family research and education organization that provides resources that equip citizens to make their voices heard on critical social policy issues involving the sanctity of human life, the preservation of religious liberties, and the well-being of the ohana as the building block of society.

**The Illinois Family Institute** (IFI) is a non-profit educational and lobbying organization based in Tinley Park, Illinois, that exists to advance life, faith, family, and religious freedom in public policy and culture from a Christian worldview. Core values of IFI include upholding parental rights and championing religious freedom and conscience rights for all individuals and organizations.

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[1] No counsel for any party authored this brief in whole or in part. No person or entity other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Timely notice of the filing of this brief was given to all parties.

**Wisconsin Family Action** (WFA) is a Wisconsin not-for-profit organization dedicated to strengthening, preserving, and promoting marriage, family, life and religious freedom. WFA has a unique and significant statewide presence with its educational and advocacy work in public policy and the culture. WFA's interest in this case stems directly from its core issues, in particular its long-sustained efforts to protect and promote the family.

**The Ethics and Religious Liberty Commission** (ERLC) is the moral concerns and public policy entity of the Southern Baptist Convention (SBC), the nation's largest Protestant denomination, with nearly 13 million members in more than 45,000 churches and congregations. The ERLC is charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and ethics. The ERLC affirms that God has established the family as the first and most foundational institution of society and has an interest in ensuring that parents have the freedom to make decisions regarding the upbringing, education, and healthcare of their children.

**Concerned Women for America** (CWA) is the largest public policy organization for women in the United States, with approximately half a million supporters from all 50 States. Through its grassroots organization, CWA encourages policies that strengthen women and families and advocates for the traditional virtues that are central to America's cultural health and welfare, including religious and familial liberties. CWA actively promotes legislation, education, and policymaking consistent with its philosophy. Its members are people whose voices are often overlooked—

everyday, middle-class American women whose views are not represented by the powerful elite.

**The Pacific Justice Institute** (PJI) is a non-profit legal organization established under section 501(c)(3) of the Internal Revenue Code. Since its founding in 1997, PJI has advised and represented in court and administrative proceedings thousands of individuals, businesses, and religious institutions, particularly in the realm of First Amendment rights. As such, PJI has a strong interest in the development of the law in this area. PJI often represents teachers, parents, and their children to vindicate their constitutional rights in the public schools. PJI operates in Massachusetts.

**The Family Foundation** (TFF) is a Virginia non-partisan, non-profit organization committed to promoting strong family values and defending the sanctity of human life in Virginia through its citizen advocacy and education. TFF serves as the largest pro-family advocacy organization in Virginia. Its interest in this case is derived directly from its concern to preserve religious freedom for all.

**Protect Our Kids** (POK) is a statewide coalition of California parents, community leaders, attorneys, pastors, teachers and concerned citizens who acknowledge that public schools have a role in educating children on matters of basic biology, anatomy and human reproduction, but not the promotion of controversial sexual ideas and other ideologies far exceeding the rightful boundaries of the public-school charter. POK exists to inform parents about the scope of these threats, their rights as parents, and to protect children from the harms of public-school indoctrination.

POK adheres to Biblical truth which teaches that God created mankind in His image, male and female, and that parents are the rightful guardians of their minor children's worldview.

## Summary of the Argument

The decision below allows the public schools to subvert parental rights. The petition should be granted and the decision reversed for multiple reasons.

Your *Amici* focus on three such reasons. First, the naming of children is not a scholastic matter, as the First Circuit held, but a parental one. Second, the First Circuit misapplied this Court's precedent in holding that schools have no duty to disclose to parents when their child decides to exhibit as transgender and change names and pronouns. And, third, the school's purported "interests" on which the lower courts relied are really just a nullification of parental rights and so do not support even a rational basis for the school's policy, much less a compelling one. This Court last term in *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025), recognized the importance of these rights in connection with the Free Exercise of Religion. Just as important are these parental rights in a non-religious context this case addresses.

## Argument

### I. The Petition Should Be Granted to Confirm That the Naming of Minor Children Is a Fundamental Parental Responsibility

The First Circuit found that parental rights, while fundamental and protected by the Fourteenth

Amendment, are not absolute and that schools may impose reasonable regulations about curricular and administrative matters. *Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 348-49 (1st Cir. 2025). From there, the circuit court assumed, without supporting analysis, that the name a child is called at school, along with associated pronouns, is up to the child and the school to determine simply by virtue of the fact that the school published a policy that says so. *Id.* at 351-52. This certainly must come as a surprise to parents, as it is they who name their children at birth, who register their children for attendance at school, who tell the school the sex of their child, and who instruct the school what name and nickname the school should use for their child. It is not "reasonable" for schools to subvert this parental responsibility, either by publishing a policy or otherwise.

A child announcing to a school a desire to adopt a new, transgender name does not convert that renaming by the child into the act or instruction of the school. It is not something initiated by the school, and it is not a classroom course of study or part of the curriculum. As Judge Niemeyer stated regarding a similar school "Parental Preclusion Policy,"

> While the science and medicine related to gender identification, gender dysphoria, and gender transitioning are, these days, being actively debated, it is clear that developing and implementing a gender transition plan for minor children without their parents' knowledge and consent do not simply implicate a school's curricular decisions but go much further to implicate the very personal decisionmaking about children's health, nurture, welfare, and

> upbringing, which are fundamental rights of the Parents. *See Troxel [v. Granville],* 530 U.S. [57,] 65 [(2002)]; *Parham v. J.R.,* 442 U.S. 584, 602 (1979); *Stanley v. Illinois,* 405 U.S. 645, 651 (1972); *Ricard v. USD 475 Geary Cnty. Sch. Bd.,* No. 5:22-cv-4015, 2022 WL 1471372, *8 (D. Kan. May 9, 2022).

*Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 646 (4th Cir. 2023) (Niemeyer, J., dissenting);[2] *see also United States v. Skrmetti*, 145 S. Ct. 1816, 1836-37 (2025) (noting scientific debate); *id.* at 1841-45 (Thomas, J., concurring) (reciting details of scientific debate).

It is unreasonable, if not foolish, to expect a child to make difficult and critically important decisions, especially ones that will have repercussions for

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[2] While Judge Niemeyer was writing in dissent, he was the only judge on the panel to reach the merits, as the majority held that the particular parents who sued lacked standing. Nevertheless, the majority went to some pains to remark that "this does not mean [the parents'] objections are invalid," *id.* at 626, and that the parents made "compelling arguments" that the "Parental Preclusion Policy" of hiding from parents that their child is changing names and exhibiting as transgender is unlawful. *Id.* at 636. Judge McHugh of the Tenth Circuit echoed Judge Niemeyer's analysis in *Lee v. Poudre School District R-1,* 135 F.4th 924, 937 (10th Cir. 2025) (McHugh, J., concurring). *See also Doe 1 v. Madison Metro. Sch. Dist.*, 2022 WI 65, 976 N.W.2d 584, 599 (2022) (Roggensack, J., dissenting) (while the four-member majority avoided addressing the merits of a similar parental preclusion policy on procedural grounds, three justices would have reached the merits and ruled that it violated the parents' federal constitutional rights).

the rest of the child's life, and social transitioning does not constitute any sort of an exception. It is well established that *parents* are to make such decisions for their minor children. As the Supreme Court explained in *Parham,* children lack the "maturity, experience, and capacity for judgment required for making life's difficult decisions." 442 U.S. at 602; *see also Skrmetti*, 145 S. Ct. at 1835-36 (finding reasonable a state's determination that minors lack the maturity to understand the consequences of medically transitioning); *id.* at 1846-47 (Thomas, J., concurring) (same). And in *Troxel,* the Court repeated that parents have a "fundamental right to make decisions concerning the care" of their minor children. 530 U.S. at 72 (plurality op.).

The Supreme Court elucidated in *Parham* that, even if the decision of the parents "is not agreeable to a child or . . . involves risks," it "does not diminish the parents' authority to decide what is best for the child." 442 U.S. at 603-04. The Court continued that a child's disagreement with the parents does not "automatically transfer the power to make that decision from the parents to some agency or officer of the state." *Id.* at 603. That is true even when the "agency or officer of the state" is a school district or its employee.

Properly understood, the curricular/administrative carve-out to parental control of the child's education deals only with internal school choices that must be applied uniformly to allow a school to function, such as the substance of classroom instruction (*e.g.*, what textbooks to use) and hours of operation. Transgenderism, like other medical or psychological conditions, may need to be addressed while the child

is in school. But treatment of a student's medical or psychological condition is, at most, ancillary to the primary mission of public schools. Parents entrust their children to the public schools not to name them, feed them, clothe them, or diagnose and medically treat them, but to *educate* them. Within its proper sphere, the school has considerable discretion, particularly within the area of what, when, and how subjects are taught (commonly called the "curricular exception"). Outside its proper sphere, schools must defer to parents for the care, nurturing, and upbringing of children.

Of course, there is a limit to the curriculum exception, even as to matters directly affecting education. For example, grades are central to the educational function of the school, but a school certainly could not refuse to disclose an individual student's grades to the parents because the student was afraid of the parents' reaction or wanted to keep them secret. Much less can a school withhold information from parents about their child's transgender behavior, which is not part of the school's delegated education function. *See Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025) (finding opt-out for parents when school's curriculum for their children violates their religious beliefs).

## II. This Court Should Grant the Petition to Confirm That Public Schools Have a Duty to Tell Parents That Their Children Are Taking Other Names and Socially Transitioning

The First Circuit held that the school was excused from failing to report the child's gender and name transition because the Constitution does not im-

pose a notice requirement in these circumstances, absent "coercion" or "affirmative deception" by the school. 128 F.4th at 352-56. The circuit court held it was sufficient that "the Parents remain free to strive to mold their child according to the Parents' own beliefs" at home or by sending their children to private schools. *Id.* at 355. This, too, was error.

When the government infringes constitutional rights, it does not suffice to argue that the individuals wronged may still exercise their rights at a different time or in a different place.[3] For example, when a city prohibits use of a public park by some denominations but not others, it is no defense to say that those foreclosed can still practice their religion elsewhere. *See Fowler v. R.I.*, 345 U.S. 67 (1953). Nor could the school district be excused for its sanctioning of Coach Kennedy for his praying on the field because he could have said the same prayer elsewhere. *See Kennedy v. Bremerton Sch. Dist.,* 597 U.S. 507 (2022). Similarly, just because the parents may exercise their free exercise and parental rights when their children are not at school does not excuse this school district's violation of parental rights while the children are at school. To paraphrase *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), the parents' rights to care for and make decisions for their minor children do not stop at the schoolhouse gate. *See id.* at 506 (noting that school actions may unconstitutionally interfere with parental rights).

The First Circuit's suggestion that parental

[3] Of course, this case does not involve a time, place, or manner restriction.

rights only come into play when coercion or affirmative deception is present doesn't hold water, either. *Any* infringement or hindrance of fundamental, parental rights violates them. *See Prince v. Mass.,* 321 U.S. 158, 166 (1944). In this connection, the circuit court could see no intrusion on parental rights as established by Supreme Court opinions and refused to "expand" them. *Foote*, 128 F.4th at 354. However, the parents here need go no further than demand recognition of their parental rights to manage the care and upbringing of their children. Far from asking for an expansion of parental rights in the school context, this case brings into play two, well-established features of parental rights.

First, for a century it has been recognized that parents have the right to decide whether their child should attend, or continue to attend, a public school. *See Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925); *see also Mahmoud*, 145 S. Ct. at 2351-52. Obviously, a key reason parents may wish to remove their child from public school, as the facts here demonstrate, is if the school is not cooperating with the parents on the issue of their child exhibiting as transgender. When a school keeps secret from parents that their child is transitioning, the school is preventing the parents from exercising their responsibilities. Thus, the school must provide *timely*, contemporaneous notification to them. *See id.* at 2364 (requiring school to provide parents notice when curriculum to be used with their children might violate parental religious beliefs).

Parents do not have the burden to keep asking the school if their child is exhibiting as transgender

(which the school by policy is hiding from them in any event). *See id.* at 2358 ("it is not realistic to expect parents to rely on after-the-fact reports by their young children to determine whether the parents' free exercise rights have been burdened"). The parents told the school what to call their child and what sex their child was when they registered their child. The school violates those parental instructions on this critically important, life-changing decision when it starts honoring a child's desire to exhibit as transgender and to hide that decision from the parents. Parents cannot carry out their constitutional responsibilities to decide whether their child should continue to attend the school without this basic information. *See id.; Ricard*, 2022 WL 1471372 at *8.

Second, the rights of parents to direct their children's education do not end with a right to remove their child from the school. As the First Circuit appears to recognize, 128 F.4th at 355, parents also have a constitutional right to supplement their children's education by instruction of their own, especially about subject matters touching on sexuality, and they have a right to do so with specificity, knowing when and what their child is being taught and how their child is being counseled at school. *See Winkelman v. Parma City Sch. Dist.,* 550 U.S. 516, 529 (2007) ("It is not a novel proposition to say that parents have a recognized legal interest in the education and upbringing of their child.); *Wis. v. Yoder,* 406 U.S. 205, 213-14 1972); *Prince,* 321 U.S. at 166. They can only properly fulfill these fundamental responsibilities if they know what is happening at school in a timely manner. Of course, sufficient information on this score is unavailable from the children themselves. Any parent knows that

most children are neither capable nor willing to provide a play-by-play of the school day to their parents. Family relations are also affected when parents have to probe their children repeatedly about sexual subjects. Plus, such probing is difficult on matters to which the parents do not yet wish to expose their children or if it suggests that parents suspect their children may be disrespecting their wishes, whether they actually are or not.

It is as simple as this: to be able to exercise their recognized, constitutional rights and responsibilities intelligently, parents need to know what is going on at school. "[I]t is illegitimate to conceal information from parents for the purpose of frustrating their ability to exercise a fundamental right." *Ricard*, 2022 WL 1471372 at *8. The Supreme Court's ruling in *Mahmoud* trumpets exactly the same message. A school hiding the ball by failing to disclose when it is violating the instructions parents have given about the name and gender of their child that the school is to use is an unconstitutional infringement of parental rights.

The First Circuit, in *Foote*, in support of its holding that the school had no affirmative obligation to inform parents that it was calling their child by another name cited *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989). *See Foote*, 128 F.4th at 354. Properly analyzed, *DeShaney* supports the parents here, not the school.

In *DeShaney*, a county's social service agency, despite indications that a child might be suffering

abuse from his father, did not promptly intervene, and the father subsequently seriously harmed the child. The child claimed this was a substantive due process violation by the agency, but this Court rejected that claim because "nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors." *Id.* at 195. This Court distinguished the abuse situation before it from a setting in which the State had compelled attendance, noting that such a circumstance creates a special relationship between the State and the individuals involved. *Id.* at 199-200.

Here, the situation is very different from *DeShaney*, at several levels. First, the State has not been passive; it has acted to deprive parents of their fundamental rights. The school is not just leaving matters alone; if it did that, it would continue to let parents decide the naming of their child and whether the child should exhibit as transgender. Instead, the school is taking affirmative steps to shield the child from the parents' authority and decision making. It plays it too clever by half to suggest that the school was not lying to parents when it hid from them what name they were using with the child, including by reverting to the child's given name when communicating with the parents. Certainly, constitutional rights do not rest on such subterfuge and ethical sophistry.

Second, the State has acted in its compulsory education laws to require that the child attend school. While some parents have the wherewithal to put their children in private schools or to home school them,

many do not. *See Mahmoud*, 145 S. Ct. at 2351; *Morse v. Frederick,* 551 U.S. 393, 424 (2007) (Alito, J., concurring). As a result, their only alternative to comply with the compulsory education laws is to send them to public school, and that generates an affirmative obligation upon the State to keep parents in the know about what is happening at school. The words of this Court in *Edwards v, Aguillard*, 482 U.S. 578 (1987), address the school situation and identify it as a special relationship:

> Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary.

*Id.* at 584; *see also Alfonso v. Fernandez*, 195 A.D.2d 46, 606 N.Y.S.2d 259 (N.Y. App. Div. 1993) (noting compulsory nature of schooling and finding the school violated parental rights when it distributed condoms to students upon their request without giving parents notice).

Third, a public school's authority is best understood as a conditioned consent or delegation from parents. Parents are primarily responsible for their children's education, particularly when religious beliefs come into play. *See Mahmoud*, 145 S. Ct. at 2351-53; *Yoder*, 406 U.S. at 413-18; *Meyer v. Neb.*, 262 U.S. 390, 401 (1923). When they sent their children to public school along with the children of other parents who

may well have other philosophical and religious beliefs, they consented in the main to a generalized, common instruction for their children. But that does not give a public school *carte blanche* to treat their children however the school wishes. *See Mahmoud*, 145 S. Ct. at 2361-62. It is also commonly understood that parental consent is conditioned on the school staying in its lane, teaching in accord with its central mission. *See generally* Douglas Laycock, *High-value Speech and the Basic Educ. Mission of a Pub. Sch.*: *Some Prelim. Thoughts*, 12 Lewis & Clark L. Rev. 111 (2008). Professor Laycock gives an "outside-its-lane" example of a public school teaching its students that they should all support the Democratic Party. *Id.* at 117. This would be improper even if the district's populace is heavily Democratic. The stakes are even higher with topics that implicate appropriate sexual lifestyles and religious beliefs about them and when behavioral, rather than curricular, matters are involved.

While writing in the context of free speech rights, what Professor Laycock says resonates here:

> Parents entrust the public schools with their children for important but particular purposes. Parents may expect the school to teach skills and values conducive to success in later life, and they may expect the schools to teach fundamental democratic values. But they do not expect the schools to indoctrinate their children on current political or religious questions that may be the subject of substantial disagreement among the parents themselves, either locally or nationally. Indoctrination on that sort of question is not part of the school's basic educational mission . . . .

*Id.* at 119; *see W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943) ("Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction.").

Parental consent to having the public school set behavioral policies is not unconditional. Schools can go too far and exceed that consent (or delegation). The school district has done so here, wading into a debate that is roiling our country and encroaching on the fundamental rights of parents to make decisions for their minor children.[4] Schools cannot leverage compulsory school attendance laws into permission to trample parental and religious rights at will. *See Mahmoud*, 145 S. Ct. at 2358-59.

In these circumstances, the school had an affirmative obligation to notify the parents that the school was assisting their minor child to exhibit as transgender. *See Lee*, 135 F.4th at 937 (McHugh, J., concurring). This is a matter at the heart of parental, not school, responsibilities, and the school violated the parents' fundamental rights by violating their instructions as to what to call their child and arrogating to

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[4] Justice Blacklock of the Texas Supreme Court has described the two sides in the great national debate over the wisdom and propriety of minors exhibiting as transgender as those holding to either the "Transgender Vision" or the "Traditional Vision." He notes that, at their core, the differences reflect moral, religious, and political beliefs. *State v. Loe*, 692 S.W.3d 215, 239-40 (Tex. 2024) (Blacklock, J., concurring). Of course, the differences between the views also involve contested social science, as demonstrated by this Court's decision in *Skrmetti*.

itself the decision of what was best for the child.

## III. The School Has No Legitimate Interests in Hiding Information from Parents, Much Less a Compelling One

The First Circuit applied (wrongly) a rational basis test and found that the stated purpose of cultivating a safe, inclusive, and educationally conducive environment for students adequately justifies the school's policy to hide from the parents the fact that their children are socially transitioning. *Foote,* 128 F.4th at 356. This purpose does not articulate legitimate state interests, but, rather, is a packaging of impermissible state action in nice-sounding phraseology.

Interests such as "cultivating a safe, inclusive, and educationally conducive environment for students" by keeping from parents that the school is facilitating their children exhibiting as another gender are illegitimate and, thus, cannot properly be accorded any weight.[5] They all have at their base the assumption that the schools may override the judgment of fit parents about how best to raise their children and what is in their children's best interests. As

[5] Nor can the school district claim, as other schools have done, that it is protecting the child's "privacy" interests. A minor child has no such interest vis-à-vis the parents. *See* Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (requiring schools to make available to parents all records regarding their children); *Wyatt v. Fletcher*, 718 F.3d 496, 505 (5th Cir. 2013).

Judge Niemeyer observed, this does not advance a proper interest, but, instead, nullifies parents' fundamental rights:

> [T]he district court erred in its strict scrutiny analysis by relying on the students' well-being and privacy interests to defeat the Parents' fundamental substantive due process right. Just as it is no defense to an alleged infringement of a plaintiff's First Amendment right to claim a compelling interest in not hearing disagreeable viewpoints, so also is it no defense to an alleged infringement of parental substantive due process rights to claim a compelling interest that is premised on a rejection of that right—in this case, the Board's claimed interest in having matters central to the child's well-being kept secret from and decided by a party other than the parents. In other words, the district court failed to recognize that its analysis was akin to holding there to be a *per se* interest in infringing on the Parents' rights by granting students a superior right to privacy and granting the school the prerogative to decide what kinds of attitudes are not sufficiently supportive for parents to be permitted to have a say in a matter of central importance in their child's upbringing. But that is effectively a nullification of the constitutionally protected parental rights.

*Parents 1*, 78 F.4th at 646 (Niemeyer, J., dissenting); *accord Lee*, 135 F.4th at 937 (McHugh, J., concurring). Other circuits have also held in related contexts that the State's second-guessing of the decision of fit parents about what is best for their children is illegitimate and entitled to no weight. *See Doe v. Heck,* 327

F.3d 492, 521 (7th Cir. 2003); *Croft v. Westmoreland Cnty. Children and Youth Servs.*, 103 F.3d 1123, 1126 (3d Cir. 1997); *Brokaw v. Mercer Cnty.,* 235 F.3d 1000, 1019 (7th Cir. 2000).

It does not assist the school to pretend that the policy only affects what happens at school. It doesn't. Just by asking a student at school the questions, "Do you want to tell your parents?" and "Are your parents supportive of your transition?," as the policy requires, school personnel encourage children to distrust their parents. It is just as obvious that a child living a "double life," exhibiting as transgender at school and not at home, creates an emotional distance from the parents and threatens alienation from them after the parents discover that this behavior has been kept secret from them. This is not just a "school matter," and it never can be.

Nor can the school justify its abrogation of parental rights by claiming students will "feel better" and "do better" at school if the school takes over these judgment calls for parents at the child's behest. That does not alter the basic point that *parents* are charged with making these decisions, not school employees or the children themselves. The law presumes that parents, not school boards, are principally responsible for their children and are in the best position to know their children's unique temperaments, circumstances, and needs and can best assess their long-term interests. *See Parham*, 442 U.S. at 602-03. As the Third Circuit put it, "It is not educators, but parents[,] who have primary rights in the upbringing of children. School officials have only a secondary responsibility and must respect these rights." *Gruenke v. Seip,* 225 F.3d 290, 307 (3d Cir. 2000). If the child feels some

discomfort at school due to the parents' decision, or even performs more poorly than the school thinks the child might otherwise, that is part and parcel of the parents' decision, one they are entrusted by law to make and that the school must honor. It does not justify the school overriding the parents' decision or collaborating with the student to counter the parents' instructions concerning the name and gender of their child.

This Court in *Bellotti v. Baird*, 443 U.S. 622 (1979), in the context of a minor's desire to abort, repeated its admonition in *Prince* that it "is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations *the state can neither supply nor hinder*." 321 U.S. at 166 (emphasis added). The Court then observed that parents have a constitutional role in making critical life decisions of a sexual nature for their children:

> Unquestionably, there are many competing theories about the most effective way for parents to fulfill their central role in assisting their children on the way to responsible adulthood. While we do not pretend any special wisdom on this subject, we cannot ignore that central to many of these theories, and deeply rooted in our Nation's history and tradition, is the belief that the parental role implies a substantial measure of authority over one's children. Indeed, "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct

> the rearing of their children is basic in the structure of our society." *Ginsberg v. New York, supra*, [390 U.S. 629], at 639 [(1968)].

433 U.S. at 637-39.[6]

The Supreme Court in *Troxel* held that, even after an evidentiary hearing, courts have no right to override the determination of fit parents about whether it would be in their children's best interests to see their grandparents; minor children do not get a "vote" on such matters. 530 U.S. at 64-70. If that is so, school boards certainly have no right to second-guess the determinations of parents about whether their children should "change genders," a decision with much greater complexity and risk for the children. *See id.* at 80 (Thomas, J., concurring) (stating that the State "lacks even a legitimate governmental interest—to say nothing of a compelling one—in second-guessing a fit parent's decision regarding visitation

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[6] In *Bellotti*, this Court was operating under the regime of *Roe*, requiring it to balance against parental rights the "need to preserve the constitutional right and the unique nature of the abortion decision." 433 U.S. at 642. This Court upheld a parental notification law provided it had a judicial bypass. *Id.* at 643. Of course, this Court overruled *Roe* in *Dobbs*, and, post-*Dobbs*, the intermediate appellate court of Florida held a similar parental bypass law to be unconstitutional: "any deprivation of parents' due-process rights to notice and opportunity to be heard can no longer be justified by their children's asserted constitutional right to obtain an abortion (much less a secret abortion that cuts presumptively fit parents out of the decision)." *Doe v. Uthmeier*, 2025 WL 1386707 at *7 (D. Ct. App. Fla., May 14, 2025).

with third parties"). The district court in *Ricard* put it this way: "It 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." 2022 WL 1471372 at *8 (footnote omitted). The short answer is that a school can't establish any such interest.

## Conclusion

The school district here has trampled on the fundamental rights of the parents of the minor child. Parental rights do not stop at the schoolhouse gate, and the naming and gender of a child are not educational matters nor matters best left to children. This Court should grant the petition and reverse the First Circuit.

Respectfully submitted,
this 21st day of August 2025,

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