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

BRIEF OF *AMICUS CURIAE* DEFENDING EDUCATION IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[*]

Defending Education is a national, nonprofit, grassroots association. Its members include many parents with school-aged children. DE uses advocacy, disclosure, and litigation to combat the increasing politicization and indoctrination of K-12 and postsecondary education.

The bond between parent and child is "the most universal relation in nature." 1 Blackstone's Commentaries 446 (10th ed. 1787). Accordingly, the common law "recognized that natural bonds of affection lead parents to act in the best interests of their children." *Parham v. J.R.*, 442 U.S. 584, 602 (1979). In turn, as parents are bound to care for their children and guarantee their well-being, "the law has given them a right to such authority." 2 James Kent, *Commentaries on American Law* 203 (12th ed. 1873). And the Constitution enshrines that right in the Fourteenth Amendment. Indeed, "the interest of parents in the care, custody, and control of their children" is "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

DE exists to defend that right. It has a significant interest in eliminating policies (like Ludlow's) that take responsibility for critical decisions about a child's mental and physical well-being *away* from parents

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[*] Per Rule 37.2, *Amicus Curiae* gave sufficient notice of its intention to file this brief to counsel for all parties. 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.

and give it instead to public-school bureaucrats. To that end, DE has monitored the rise of policies that allow schools to secretly transition students' genders without parental notification, and it has litigated to end such policies.

SUMMARY OF ARGUMENT

Ludlow's conduct in this case—facilitating an eleven-year-old girl's gender transition in direct contravention of her parent's wishes—is shocking, but the district is not alone. According to Defending Education's research, thousands of school districts, covering millions of students, have adopted policies that empower school officials to secretly transition students from one gender to another, bucking the historical consensus that parents are in the best position to make such decisions. *See* Pet.17-19.

Those policies undermine public trust in the school system, and they inflict serious harm on the families whose children are swept up in secret gender transitions. *See infra* I.B. When parents are kept in the dark, they can't provide the emotional support or secure the medical care that their children need. *See Kaltenbach v. Hilliard City Schools*, 2025 WL 1147577, at *2 (6th Cir. Mar. 27) (Thapar, J., concurring) (schools, through "deception," "stri[p] them of that possibility"). Instead, many parents learn about their child's transition only after the child has been the victim of bullying or suffered a mental health emergency like attempted suicide. On top of those immediate risks, children who are socially transitioned

are likely to pursue more invasive and sometimes irreversible "treatments," like hormones and puberty blockers, in the future.

But according to the First Circuit, the Constitution has nothing to say about this. Schools can give a student new pronouns and a new name, let the student use opposite-sex facilities, and hide it from the student's parents—because, the court says, that is all part of the "educational experience." Pet.App.31a. And parents who object have no leg to stand on. *Id.*

That's wrong. If the right to direct their child's upbringing means anything, it means that parents get to decide whether their child takes the medically consequential step of socially transitioning to a different gender. At the very least, it means that parents deserve to *know* when their child's school has made that decision for them. This Court should say so, and it should say so now.

Absent judicial recourse, many parents will have no way to vindicate their constitutional rights. Legislation provides, at best, only a patchwork solution—in fact, at least one State has adopted a law *prohibiting* schools from disclosing gender identity information to parents—and usually invites further litigation. *E.g.*, First Am. Compl. ¶¶69-79, 625-41, *Iowa Safe Schools v. Reynolds*, No. 4:23-cv-00474 (S.D. Iowa Oct. 18, 2024), ECF No. 113-2. In the meantime, many families lack the financial resources for alternative schooling options like private or homeschool. So they "have no choice but to send their children to a public school," but "little ability to influence what occurs in the school." *Morse v. Frederick*, 551 U.S. 393, 424 (2007)

(Alito, J., concurring). Allowing the First Circuit's decision to stand would render the constitutional principle of parental rights a hollow promise for these families. This Court should grant the petition.

ARGUMENT

I. More and more schools are secretly transitioning children without parental consent.

Petitioners' experience with Ludlow is far from an isolated incident. School districts across the country are adopting policies that allow school officials to socially transition students without informing parents. And those policies have invited litigation from families who want to protect their children and vindicate their Fourteenth Amendment rights. Indeed, as the petition notes, there are at least 38 pending lawsuits across the country on this very issue. Pet.32; Pet.App.152a-155a. No one can doubt that this is an issue "of great and growing national importance." *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.*, 145 S. Ct. 14, 14 (2024) (Alito, J., dissenting).

A. Defending Education is at the front of the issue, tracking the proliferation of secret transition policies across the United States. According to the most recent figures, at least 12,360,787 students, in 21,314 schools, across 1,215 districts, were subject to such policies. *See List of School District Transgender – Gender Nonconforming Student Policies*, DE (updated Apr. 21, 2025), bit.ly/4lxd9gL. That's up from the roughly "1,000 districts" that had adopted such policies when this Court considered a related petition *just one year ago*. *Eau Claire*, 145 S. Ct. at 14 (Alito, J.,

dissenting). To put those figures in context, that means that a *quarter* of American students currently live in districts where they can be socially transitioned without their parents ever knowing. *See Fast Facts*, Nat'l Ctr. for Educ. Statistics (archived Aug. 17, 2025), perma.cc/G9M6-CTV7.

And that figure includes only those districts bold enough to adopt a policy that "openly state[s] that district personnel can or should keep a student's transgender status hidden from parents." *List of Policies*, bit.ly/4lxd9gL. There are likely many other districts with an unwritten practice of facilitating student gender transitions. *E.g.* Order at 15-18, *T.F. v. Kettle Moraine Sch. Dist.*, No. 2021-cv-001650 (Wis. Cir. Ct. Oct. 3, 2023), perma.cc/H8VZ-5DRX ("Rather than d[o] what the voters have elected them to do" and "promulgate a policy" that allows "for public input," the school board hid behind "the actions of their employee.").

That more and more schools are secretly transitioning students is especially troubling given the simultaneous rise in the number of American children who experience gender dysphoria. *See Gender Dysphoria Statistics In The United States*, Bright Path Behavioral Health (updated Apr. 7, 2025), perma.cc/542H-YFD8 (noting a "nearly threefold increase in diagnoses of gender dysphoria among children and adolescents in the U.S." from "2017 to 2021"). When more students experience confusion about their body, and more school officials *hide* that fact from parents, that is a recipe for a mental health crisis.

It also undermines public confidence in the school system. Secrecy does not inspire trust, so when schools tell parents that they are not allowed to know critical health information about their child, parents are rightfully worried. After all, the overwhelming majority of Americans agree that parents, not school bureaucrats, are in the best position to make decisions about their children's well-being. *Survey: Voters Overwhelmingly Support Parents' Rights*, Parental Rights Foundation (May 31, 2022), perma.cc/G6J2-3M8S. They also agree that schools shouldn't withhold information from parents about a child's gender identity. *Parents Defending Education Poll*, DE (Mar. 21, 2023), bit.ly/41KAUeb. But "[s]chool officials" like those in Ludlow think "they kn[o]w better." Pet.2.

To be clear, the explosion in secret transition policies, while real, is not organic. It is driven from the top down by activist groups that encourage schools to hide students' gender information from their parents and—relying on spurious readings of laws like FERPA and Title IX—threaten legal liability for schools that disagree. The National Education Association, for example, partnered with a coalition of LGBT activist groups to produce a guide that instructs schools to work around "unsupportive parents." *Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools*, NEA et al., at 2 (archived Aug. 17, 2025), perma.cc/JX43-R8ZN. The guide tells schools to "educate" "misguided" parents who would prefer to affirm their child's biological sex. *Id.* at 32. It warns schools to "have a plan in place to avoid" disclosing a child's transgender identity to such parents. *Id.* at 16. It even encourages school officials

to testify in child custody proceedings against "biase[d]" parents. *Id.* at 34.

B. The sheer quantity of schools with secret transition policies is alarming enough. But the individual stories behind the statistics highlight the serious and often irreparable harm that such policies can inflict on families. DE is well aware of those harms because, in addition to tracking the proliferation of secret transition policies across the country, DE has litigated the issue before. *See Parents Defending Educ. v. Linn-Mar Cmty. Sch. Dist.*, 629 F. Supp. 3d 891 (N.D. Iowa 2022).

Consider Florida parents Wendell and Maria Perez, whose 12-year-old daughter "had never expressed any concerns or exhibited any signs of distress about her gender identity at home." MTD.Opp.1-2, *Perez v. Broskie*, No. 3:22-cv-00083 (M.D. Fla. Apr. 4, 2022), ECF No. 30. Unbeknownst to them, however, their daughter's elementary school counselor had been socially transitioning their daughter for months, treating her as a boy. *Id.* The counselor assured her that the school would not notify her parents. *Id.* at 2. But the school apparently did not maintain the same confidentiality with her peers, who bullied her when they learned of her transition. *Id.* at 3. Still, her parents were not informed. *Id.* In fact, the Perezes learned of their daughter's situation only after she attempted suicide at school, *twice*. *Id.* at 2. When they subsequently met with school officials, they were told that the school had deliberately concealed their daughter's transition because of the family's Catholic faith. *Id.*

A family in one Ohio school district faced similarly disturbing treatment. When an eighth-grade girl began suffering mental health difficulties, her teachers concluded that she was "experiencing so-called 'gender dysphoria.'" *Kaltenbach*, 2025 WL 1147577 at *2 (Thapar, J., concurring). They decided, without consulting her parents, that they would treat her as a male, "'convinced [her] she was a boy in a girl's body,'" and had her "'adopt a new name and identity.'" *Id.* All the while, they "lied to [her] parents about what was happening." *Id.* at *1. Because they considered her parents insufficiently "supportive" and therefore "unsafe," school officials "treated [her] as a girl whenever she was around her parents, hoping to hide … the new identity [they] had concocted for her." *Id.* at *2. Again, "the school's decision had tragic consequences: [the girl] attempted suicide at school." *Id.* And the parents found out about the school's deception only by accident, when the school mistakenly "sent [their daughter] a postcard using a male name." *Id.* The case was, as Judge Thapar noted, "beyond troubling." *Id.* at *1.

One California couple learned that their 15-year-old child, a biological girl, had been socially transitioned at school when they "glimpsed a homework assignment with an unfamiliar name scrawled at the top." Katie Baker, *When Students Change Gender Identity, and Parents Don't Know*, N.Y. Times (June 26, 2024), bit.ly/4ltnDxB. School officials had concealed the transition for six months, even though the parents, once informed, "*accepted* their teenager's new gender identity." *Id.* (emphasis added). Understandably, though, the parents were unsettled by the school's deception. Doctors had previously diagnosed their

child with autism, ADHD, PTSD, and anxiety. *Id.* The teen also struggled with "loneliness" and had "repeatedly changed" names and sexual orientations. *Id.* But the parents weren't able to address *any* of these issues because they were kept in the dark. Instead, the school had put their "teenager, a minor, on a path the school wasn't qualified to oversee." *Id.* Indeed, their child eventually "asked for hormones and [breast removal] surgery." *Id.*

The list of equally troubling examples goes on. *See* Pet.App.152a-155a (cataloguing active litigation). But the theme is clear. Schools are putting students in danger by concealing critical mental health information from the people who care most about them: their parents. In some cases, schools are even sending students for medical treatment without informing parents. *E.g.*, Jack Panyard, *Her child used transgender name, pronouns at school. Mom blasts Dover for not telling her*, York Daily Record (Sept. 21, 2022), perma.cc/BUZ7-FPBC (one child's social transition "culminated with the school sending the child to the hospital for an evaluation with inpatient therapy," though the "school still did not inform the mother").

Social transitions, in other words, are *not* neutral interventions. Indeed, the best available evidence suggests there is no mental health benefit associated with social transitions. *E.g.*, James Morandini et al., *Is Social Gender Transition Associated with Mental Health Status in Children and Adolescents with Gender Dysphoria?*, 52 Archives of Sexual Behavior 1045, 1045 (2023), perma.cc/ 6EKW-26V8. On the other hand, as the examples above demonstrate, there are significant

downsides. Not only does socially transitioning place a child at greater risk of bullying or suicide; it also has a profound and often irrevocable impact on a child's psyche and self-perception.

Proving the point, while the vast majority of children "with gender dysphoria grow out of it," *Eknes-Tucker v. Governor of Alabama*, 114 F.4th 1241, 1268 (11th Cir. 2024) (Lagoa, J., concurring), most children who are socially transitioned do not. In one study, "93% of those who socially transitioned between three and 12 years old continued to identify as transgender" 5 years later. *Independent Review of Gender Identity Services for Children and Young People*, The Cass Review, at 162 (Apr. 2024), perma.cc/74EA-L76V.

And children who are socially transitioned usually do not stop there. Instead, they go on to seek increasingly invasive "treatments," like puberty blockers, sterilizing cross-sex hormones, and medically controversial genital surgeries. *See* Benjamin deMayo et al., *Stability and Change in Gender Identity and Sexual Orientation Across Childhood and Adolescence*, 90 Monographs Soc'y for Research in Child Dev. 7, 39-40 (2025), bit.ly/45kQTC2. Those "treatments" can have lasting harmful effects, including loss of bone density, impaired brain development, increased cardiovascular risk, altered vocal chords, and loss of fertility. *See United States v. Skrmetti*, 145 S. Ct. 1816, 1841-43 (2025) (Thomas, J., concurring).

Even *supporters* of social transitioning agree that it is a medically consequential intervention. Often, that is precisely why they promote it. The World Pro-

fessional Association for Transgender Health, for example, considers "social transition" part of a broader process of "gender-related medical treatment" that includes "hormonal or surgical treatment." *Standards of Care for the Health of Transgender and Gender Diverse People*, WPATH, at S39 (Sept. 15, 2022), bit.ly/45rwgEh. And the American Psychiatric Association labels social transition a "[t]rans-affirming treatment" that is "not a neutral decision." *Position Statement on Treatment of Transgender (Trans) and Gender Diverse Youth*, APA (July 2020), perma.cc/44GT-W7BU.

II. The First Circuit's decision leaves parents with no meaningful recourse to vindicate their constitutional rights.

"Social transitioning is a 'powerful psychotherapeutic intervention.'" Order at 3, *Kettle Moraine Sch. Dist.*, No. 2021-cv-001650. The Constitution recognizes that the authority to make decisions about a child's physical and mental well-being rests with the child's parents, not with the government. *Troxel*, 530 U.S. at 65. But the First Circuit's decision leaves parents without any judicial recourse to vindicate that constitutional right. This Court should step in to remedy that error.

A. The Constitution, through the Fourteenth Amendment's Due Process Clause, "guarantees more than fair process." *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997). It also protects certain "fundamental," even if unenumerated, "rights and liberty interests." *Id.* at 720. To qualify for such protection, a

right must be "'objectively, deeply rooted in this Nation's history and tradition.'" *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 239 (2022).

This Court has often been "'reluctant' to recognize rights that are not mentioned in the Constitution." *Id.* But one right that it has never been reluctant to acknowledge is the "fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel*, 530 U.S. at 66. In fact, the parental right "is perhaps the oldest of the fundamental liberty interests recognized by this Court," *id.* at 65, with deep roots in the common law and the Western legal tradition. *E.g.*, *Parham*, 442 U.S. at 602 ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children."); Thomas Aquinas, *Summa Theologica* II-II, q.10, a.12, bit.ly/471Azr2 ("[I]t would be contrary to natural justice" if anything were "done to [a child] against its parents' wish."); John Locke, *Second Treatise of Government*, Ch.VI, §71, bit.ly/4oJsH3N ("[P]arents in societies … retain a power over their children.").

Equally clear is that a parent's rights include the right to make decisions about their child's "need for medical care and treatment." *Parham*, 442 U.S. at 603. That makes sense. "Parents can and must make those judgments" because "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning" their medical condition. *Id.*; *Schall v. Martin*, 467 U.S. 253, 265 (1984) ("Children, by definition, are not assumed to have the capacity to take care of themselves.").

Powerful psychotherapeutic interventions like social transitions strike at the core of this parental authority. Indeed, federal courts have recognized violations of constitutionally protected parental rights in similar situations. For example, when state social workers failed to notify parents of, and give them the opportunity to attend, their child's medical examination that included a genital inspection, *Benavidez v. San Diego*, 993 F.3d 1134, 1150 (9th Cir. 2021), and when school counselors persuaded a minor to disclose a reproductive health condition and then "with[e]ld information of this nature from the parents," *Gruenke v. Seip*, 225 F.3d 290, 306-07 (3d Cir. 2000).

The First Circuit's contrary rationales fall flat. It says that transitioning does not involve "clinical" medical treatment and therefore does not implicate the Fourteenth Amendment. Pet.App.27a. But that argument ignores the real and enduring psychological—and sometimes physical—effects of transitioning. *See supra* I.B. The panel also declined to find a violation in this case because, as they saw it, Petitioners' daughter *wanted* to transition and agreed to conceal that fact from her parents. *See* Pet.App.32a (suggesting Ludlow simply "defer[red] to [the] student's decision"). But the "fact that a child may balk at" her parent's decision to affirm her biological sex rather than her non-biological gender identity "does not diminish the parents' authority to decide what is best for the child." *Parham*, 442 U.S. at 604.

At bottom, when school officials encourage young, impressionable children to question and ultimately "transition" their gender—and then *hide* that fact

from their parents—they threaten the very harm that the Fourteenth Amendment's guarantee of parental rights is meant to avoid: "Pitting the parents and child" against each other "as adversaries." *Id.* at 610.

B. Absent this Court's intervention, however, parents in the First Circuit and elsewhere will have little hope of vindicating their constitutional rights.

Legislative and administrative solutions to the secret transition problem are inadequate and uncertain. If anything, the political battle over secret transition policies has grown *more* intense—and offered *less* clarity—over time. At least one State, California, has passed a law that actually "bar[s] school districts from requiring staff to notify parents of their child's gender identification change." Sophie Austin, *California is 1st state to ban school rules requiring parents get notified of child's pronoun change*, The Associated Press (July 15, 2024), bit.ly/45LUKXH . But the Trump Administration says that rule violates federal law. *See* Dana Goldstein & Laurel Rosenhall, *Trump Challenges California on Transgender Parental Notification*, N.Y. Times (Mar. 27, 2025), bit.ly/3JEIVek. On the opposite side of the coin, several States have adopted laws that *do* require schools to notify parents. *Id.* But activist groups have threatened legal liability for schools that disclose gender identity information "to a student's parents." *Open Letter to Schools About LGBTQ Student Privacy*, ACLU (Aug. 26, 2020), perma.cc/G3VW-7X3U.

"In this country, … the doctrine of judicial review protect[s] individuals who cannot obtain legislative change." *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2360

(2025). When schools violate parents' right to direct their children's upbringing, those parents have "every right to file suit to protect that right." *Id.*

It is no answer to say, as the district and circuit courts did here, that parents who object to secret transition policies should instead simply remove their children from the public school system and send them to a private school. *See* Pet.App.28a (First Circuit); Pet.App.67a (district court). For many families, that is not an option. "[E]ducation is an expensive endeavor," private schools especially. *Mahmoud*, 145 S. Ct. at 2359. "[H]omeschooling comes with a hefty price as well" and "requires at least one parent to stay home during the normal workday to educate children." *Id.* at 2360. And in Massachusetts, where Petitioners reside, the State does not offer any meaningful financial assistance for families who choose private school (despite the fact that the average private school tuition in Massachusetts is the third highest in the country). *Average Cost of Private School*, Education Data Initiative (updated Aug. 29, 2024), perma.cc/NTN6-5SUF. Students in Massachusetts can't even transfer to a different *public* school district without the permission of their home school district. *See* Mass. Gen. Laws c.76 §12. So in a State like Massachusetts, where education is compulsory, *id.* c.76 §1, the only practical option for many parents is "'to send their children to a public school.'" *Mahmoud*, 145 S. Ct. at 2351.

Practicalities aside, parents shouldn't have to choose between sending their child to the public schools that their taxes fund or protecting their child from clandestine gender transition policies. States

"may not 'condition the availability of [public] benefits upon a recipient's willingness to surrender'" their constitutional rights. *Id.* at 2359. Which is why this Court already rejected the private-school-alternative argument last term in *Mahmoud*. But that is what Ludlow has done, and what the First Circuit has sanctioned, here. On their view, parents are functionally required to turn their children over to the State and simply hope that school officials won't transition those children behind their backs.

That is wrong, and this Court should say so. "[T]he right of parents to direct the upbringing of their children" does not end at the schoolhouse door. *Id.* at 2351.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

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