

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 IN OPPOSITION

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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iii
INTRODUCTION.....	1
P E R T I N E N T C O N S T I T U T I O N A L P R O V I S I O N S A N D S T A T U T E S.....	2
STATEMENT OF THE CASE	3
I. Factual Background	3
II. The First Circuit’s Decision.....	9
REASONS FOR DENYING THE WRIT	12
I. The Alleged Protocol Does Not, in Fact, Exist	12
II. This Matter is Not the Right Vehicle for the Question Presented.....	13
III. Petitioners Present Only An As-Applied Challenge to the Alleged Protocol, Which Should Limit Their Claims	14
IV. Petitioners Rely Upon Conclusory Allegations and Implausible Inferences.....	15

Table of Contents

	<i>Page</i>
V. Petitioners Have Failed to Identify an Actual Conflict Among the Courts of Appeals.....	17
A. The First and Third Circuits Are Not in Conflict.....	17
B. There is No Split Among the Third Circuit and the Ninth, Seventh, and Sixth Circuits.....	21
C. Petitioners Have Not Identified a Circuit Split Concerning Curricular and Administrative Decisions	25
D. Coercion and Restraint	26
E. The Amended Complaint’s Conclusory Allegations Will Not Support a Circuit Split Concerning Health Care.....	28
CONCLUSION	29

TABLE OF CITED AUTHORITIES

Page

CASES:

<i>Anspach ex rel. Anspach v.</i> <i>City of Phila., Dep't of Pub. Health,</i> 503 F.3d 256 (3d Cir. 2007)	11, 17, 20, 21
<i>Arnold v. Bd. of Educ. of Escambia Cnty. Ala.,</i> 880 F.2d 305 (11th Cir. 1989).	25, 26
<i>Ashcroft v. Iqbal,</i> 556 U.S. 662 (2009).	29
<i>Blau v. Fort Thomas Pub. Sch. Dist.,</i> 401 F.3d 381 (6th Cir. 2005)	24
<i>C.N. v. Ridgewood Bd. of Educ.,</i> 430 F.3d 159 (3d Cir. 2005)	17-19, 22, 23
<i>California Parents for the Equalization of</i> <i>Educ. Materials v. Torlakson,</i> 973 F.3d 1010 (9th Cir. 2020), <i>cert. denied</i> 141 S. Ct. 2583 (2021).	23, 24
<i>City of Huntington Beach v. Newsom,</i> No. 8:24-CV-02017-CBM-JDE, 2025 WL 1720210 (C.D. Cal. June 16, 2025)	14
<i>Crowley v. McKinney,</i> 400 F.3d 965 (7th Cir. 2005)	24

Cited Authorities

	<i>Page</i>
<i>Doe by and through Doe v. Boyertown Area Sch. Dist.</i> , 897 F.3d 518 (3d Cir. 2018)	23
<i>Doe v. Delaware Valley Reg'l High Sch. Bd. of Educ.</i> , No. CV 24-00107 (GC) (JBD), 2024 WL 5006711 (D.N.J. Nov. 27, 2024)	14
<i>Fields v. Palmdale Sch. Dist. (PSD)</i> , 447 F.3d 1187 (9th Cir. 2006), <i>cert. denied</i> 5127 S. Ct. 725	22
<i>Fields v. Palmdale School District</i> , 427 F.3d 1197 (9th Cir. 2005), <i>amended on denial</i> <i>of reh'g</i> , 447 F.3d 1187 (9th Cir. 2006)	19
<i>Gruenke v. Seip</i> , 225 F.3d 290 (3d Cir. 2000)	17-19
<i>J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.</i> , 650 F.3d 915 (3d Cir. 2011).....	11
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923).....	22, 27
<i>Parents for Priv. v. Barr</i> , 949 F.3d 1210 (9th Cir. 2020), <i>cert. denied</i> 141 S. Ct. 894	20, 23
<i>Parham v. J.R.</i> , 442 U.S. 584 (1979).....	28

Cited Authorities

	<i>Page</i>
<i>Pierce v. Society of Sisters</i> , 268 U.S. 51 (1925)	22, 27
<i>Pittsley v. Warish</i> , 927 F.3d 3 (1st Cir. 1991)	18
<i>Regino v. Staley</i> , 133 F.4th 951 (9th Cir. 2025)	14, 21
<i>Short v. New Jersey Dep’t of Educ.</i> , No. 23-CV-21105-ESK-EAP, 2025 WL 984730 (D.N.J. Mar. 28, 2025)	14
<i>Vernonia Sch. Dist. v. Acton</i> , 515 U.S. 646 (1995)	18
<i>Vitsaraki v. Skaneateles Cent. Sch. Dist.</i> , 771 F. Supp. 3d 106, 5:24-CV-155 (N.D.N.Y. 2025) . . .	14
<i>Willey v. Sweetwater Cnty. Sch. Dist. No. 1</i> <i>Bd. of Trs.</i> , 680 F. Supp. 3d 1250, 23-CV-069-SWS (D. Wyo. 2023)	14

STATUTES AND OTHER AUTHORITIES:

U.S. Const. amend. XIV	11, 18, 23, 24, 26, 27
U.S. Const. amend. XIV, § 1	2, 27
M.G.L. c. 4, § 7 (59)	2

Cited Authorities

	<i>Page</i>
M.G.L. c. 76, § 5	2, 3, 13, 15, 16
Fed. R. Civ. P. 12(b)(6).	1, 3, 12
603 CMR § 23.01	7
603 CMR § 26.00	2, 3, 13, 15
603 CMR § 26.03(4).	16
Sup. Ct. R. 10	1

INTRODUCTION

There are no “compelling reasons” as to why Petitioners’ Petition for a Writ of Certiorari should be granted. See Sup. Ct. R. 10. While for purposes of analysis pursuant to Federal Rule of Civil Procedure 12(b)(6), Respondents have assumed the existence of Petitioners’ so-called Protocol, it does not actually exist outside of Petitioners’ amended complaint. This matter does not provide an appropriate vehicle for deciding the question presented by Petitioners. There are a number of pending cases that present real policies that are similar to the alleged Protocol and that may come to this Court upon developed records.

Even assuming the existence of the Protocol, Petitioners have brought a relatively narrow as-applied challenge to it that is limited by their decision not to challenge the Massachusetts law and regulations with which it is consistent. See App.38a. This as-applied challenge to a non-existent local school district policy is further weakened by the Petitioners’ reliance on the conclusory allegations in their amended complaint. The lower courts properly sorted the amended complaint’s conclusions from its factual allegations and Petitioners do not assert that they erred in doing so.

Finally, there is no conflict among the circuits that merits this Court’s attention. Petitioners have relied on *dicta* to assert, primarily, that there is a conflict between the First and Third Circuits. Curiously, they often focus on Ninth Circuit precedent and ignore the First Circuit’s decision in this case altogether. In fact, there is no conflict between the First Circuit’s decision in this matter and

the precedent of the Third Circuit. The First Circuit relied heavily on the Third Circuit in its decision here. Petitioners have also failed to identify a broader conflict among the circuits that is relevant to the issue(s) presented by this matter. The petition should be denied.

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

Respondents agree with Petitioners that the Fourteenth Amendment to the United States Constitution and, specifically, its guarantee of substantive due process is pertinent. See U.S. Const. amend. XIV, § 1.

However, Petitioners have omitted reference to the Massachusetts statutes and regulations that require nondiscrimination. M.G.L. c. 76, § 5, bars discrimination on the basis of gender identity in public schools. It provides, in part:

No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, gender identity, religion, national origin or sexual orientation.

M.G.L. c. 76, § 5 (emphasis added). See also, M.G.L. c. 4, § 7 (59) (defining “gender identity”).

603 CMR 26.00, *et seq.* was “promulgated to insure that the public schools of the Commonwealth do not discriminate against students on the basis of race, color,

sex, gender identity, religion, national origin or sexual orientation and that all students have equal rights of access and equal enjoyment of the opportunities, advantages, privileges and courses of study at such schools.”

STATEMENT OF THE CASE

I. Factual Background

Respondents have accepted as true the facts, as opposed to conclusions, alleged in Petitioners’ Amended Complaint for Injunctive Relief, Declaratory Judgment, and Damages for purposes of Petitioners’ appeal from the district court’s order allowing Respondents’ motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).¹

The Massachusetts Department of Elementary and Secondary Education (“DESE”) has issued non-binding guidance to school districts to assist them in implementing the provisions of M.G.L. c. 76, § 5 and 603 CMR 26.00 that bar discrimination on the basis of gender identity in Massachusetts public schools, Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment² (the “DESE Guidance”). See App.73a-76a at ¶¶ 22-30.

1. Substantively, both the conclusory and factual allegations contained in the amended complaint are inaccurate and misleading. Respondents have accepted them only for purposes of Rule 12(b)(6) analysis.

2. Available at: <https://www.doe.mass.edu/sfs/lgbtq/genderidentity.html> (last visited October 17, 2025).

The amended complaint alleges that the Town of Ludlow (“Ludlow”), through its school committee adopted a “Protocol,” based on its interpretation of the DESE Guidance, that “parents are not to be informed of their child’s transgender status and gender-affirming social transition . . . unless the child, of any age, consents.” See App. 77a at ¶ 36. See also, *Id.* at ¶¶ 34-35. It alleges that the children of Petitioners, Stephen Foote and Marissa Silvestri, “G.F.” and “B.F.,” were 11 and 12 years old, respectively, at the time of the alleged events. See App.83a at ¶ 58; App.91a at ¶ 93; App.92a at ¶ 97; App.95a at ¶ 111. Both were enrolled in a Ludlow middle school. See *Id.*

In December of 2020, B.F. told a teacher, Bonnie Manchester, that B.F. was “experiencing insecurity, low self-esteem, poor self-image, and a perceived lack of popularity.” See App.83a at ¶ 59. B.F. also told Manchester that B.F. was depressed and needed help but was unsure how to ask B.F.’s parents, Silvestri and Foote, for help. See App.84a at ¶ 62. Manchester offered to contact B.F.’s parents and B.F. accepted the offer. See *Id.* at ¶ 63. Manchester “contacted Ms. Silvestri and informed her of the conversation with B.F. and concerns about B.F. feeling depressed.” See App.84a at ¶ 65. “Ms. Manchester also told Ms. Silvestri that B.F. had said that she might be attracted to the same sex and was having trouble with self-image.” See *Id.* at ¶ 66. Silvestri then emailed Respondents, Principal Stacy Monette and Superintendent Todd Gazda, B.F.’s teachers, and the members of the Ludlow School Committee:

It has been brought to the attention of both Stephen and myself that some of B’s teachers are concerned with her mental health. I appreciate your concern and would like to let

you know that her father and I will be getting her the professional help she needs at this time. With that being said, we request that you do not have any private conversations with B. in regards to this matter. Please allow us to address this as a family and with the proper professionals.

See App.85a at ¶ 70.

On February 28, 2021, without the knowledge of Silvestri and Foote, B.F. sent an email to Respondents, Superintendent Todd Gazda and School Counselor Marie-Claire Foley, and teachers at B.F.'s middle school, asserting:

Hello everyone, If you are reading this you are either my teacher or guidance counselor. I have an announcement to make and I trust you guys with this information. I am genderqueer. Basically, it means I use any pronouns (other than it/its). This also means I have a name change. My new name will be R****. Please call me by that name. If you deadname me or use any pronouns I am not comfortable with I will politely tell you. I am telling you this because I feel like I can trust you. A list of pronouns you can use are: she/her he/him they/them fae/faerae/aer ve/ver xe/xem ze/zir. I have added a link so you can look at how to say them. Please only use the ones I have listed and not the other ones. I do not like them. Thank you. R**** F****.

See App.88a at ¶ 81.

On March 1, 2021, Foley met with B.F. and then sent an email to school staff, “R**** [B****] is still in the process of telling his . . . parents and is requesting that school staff refer to him . . . as B**** and use she/her pronouns with her parents and in written emails/letters home.” See App.89a at ¶ 83. Following the email, some teachers began using B.F.’s preferred name and changed name tags to reflect it. See *Id.* at ¶ 85.

According to the original complaint, “On or about March 1, 2021, Mr. Foote and Mrs. Silvestri were sent a copy of B.F.’s email by Ms. Manchester.” See 3:22-cv-30041, Dkt. No. 1 at ¶ 60 (D. Mass.). As alleged in the amended complaint, sometime before March 8, 2021, Ms. Manchester told Silvestri and Foote about B.F.’s February 28, 2021, email. See App.90a at ¶¶ 87-88. On March 8, 2021, Foley sent another email to school staff “informing them of B.F.’s request to be called ‘R****’ and explicitly instructing staff that [B.F.’s] parents were not to be told.” See *Id.* at ¶ 88.

At or about this time, G.F. also began using a preferred name; staff did not inform Petitioners. See *Id.* at ¶¶ 90-91.

During a meeting on March 10, 2021, Foley told teachers “that ‘the law’ says that school staff do not have to tell parents about their children’s requests to change their name or otherwise be socially affirmed in an asserted transgender identity.” See *Id.* at ¶ 91. On March 11, 2021, Foley told B.F. that B.F. could use the boys’ bathroom, girls’ bathroom, or a gender-neutral bathroom and offered to show B.F. where the school’s gender-neutral bathrooms were located. See App.91a-92a at ¶ 96.

On March 18, 2021, Petitioners met with Principal Monette. See App.92a at ¶ 99. Petitioners attempted to convey that Respondents had disregarded Petitioners' parental rights and Petitioners' instructions that staff not engage with Petitioners' children regarding mental health issues. See *Id.* at ¶¶ 99-100. Petitioners also complained, or attempted to complain, that they had not been notified of their children's assertion of their gender identities and preferred names. See *Id.* at ¶ 100. Principal Monette refused to discuss these issues and ended the meeting abruptly. See App.93a at ¶ 101.

On March 21, 2021, Silvestri informed Superintendent Gazda that Petitioners objected to staff's disregard of their rights "to make decisions regarding their children's mental health and upbringing." See *Id.* at ¶ 102. Silvestri also said that the fact that Petitioners' children "want to be called by a different name (of the opposite sex) is something that will follow the children through school and not be forgotten by classmates." See *Id.* at ¶ 103. She stated that excluding Petitioners from decision-making with respect to decisions with long-term effects was unacceptable. See *Id.* at ¶ 104. Silvestri reminded Superintendent Gazda that her December email had not received a response and stated that Petitioners' instructions that staff should not engage in conversations with their children regarding their mental health had been disregarded. See App.93a-94a at ¶ 105. Superintendent Gazda told Petitioners that staff, particularly Foley, had properly followed the DESE Guidance in not notifying Petitioners of B.F.'s February 28, 2021, email and instructing others not to do so. See App.94a-95a at ¶¶ 107-110. Superintendent Gazda also stated that there had been no violation of 603 CMR § 23.01, which governs student records. See App.95a at ¶ 111. In a

subsequent meeting on March 26, 2021, Superintendent Gazda repeated his positions, without explaining how the school committee's interpretation of the DESE Guidance was correct. See *Id.* at ¶ 113. Petitioners repeated their demands that staff not talk to their children about gender identity and that staff not use their children's preferred names but received no response. See *Id.* at ¶ 114.

School Counselor Foley met with B.F. throughout the spring of 2021. See App.96a at ¶ 118. Foley was supportive of B.F.'s expression of B.F.'s gender identity. See *Id.* On one occasion Foley told B.F. that she was worried about B.F. and wanted B.F. to speak to another counselor. See App.96a-97a at ¶¶ 119-120. Foley also questioned whether B.F. was as comfortable speaking with a counselor chosen by Petitioners as B.F. was speaking to Foley. See App.97a at ¶ 122. Foley stated she believed B.F. "needed to get help and support." See *Id.* at ¶ 124. On some occasions, Foley "asked B.F. whether the counselor chosen by her parents was providing adequate care," stated she was behind B.F., and asked "whether B.F. could keep herself safe when she was feeling down." See App.97a-98a at ¶¶ 125-126.

B.F. also discussed gender identity with school librarian Jordan Funke. See App.95a-96a at ¶ 115. Funke directed B.F. to the website of an organization Funke is affiliated with, [translategender.org](https://www.translategender.org). See *Id.* at ¶¶ 115-116.

At the May 25, 2021, meeting of the Ludlow School Committee, Superintendent Gazda read a statement in rebuttal to a public comment that had been submitted by a tenth-grade student (not Petitioners). See App.100a-101 at ¶¶ 136-137; App.150a-151a.

II. The First Circuit's Decision.

The First Circuit's ultimate conclusion in this matter was that, "the Protocol of nondisclosure as to a student's at-school gender expression without the student's consent does not restrict parental rights in a way courts have recognized as a violation of the guarantees of substantive due process." App.42a.

In reaching this decision, the First Circuit first concluded that the alleged Protocol constituted legislative, as opposed to executive, conduct. See App.16a-21a.

It then considered whether Petitioners amended complaint sufficiently identified the "fundamental right to direct the care, custody, and upbringing of one's children" as the right at issue and concluded that it did. See App.21a-23a. The First Circuit correctly identified the three ways in which Petitioners asserted that their parental rights had been violated:

- (1) Ludlow performed "medical treatment" on the Student through accepting the Student's social transition without parental consent;
- (2) Ludlow facilitated the Student's social transition to alternate genders via curricular and administrative decisions without parental consent; and
- (3) Ludlow implemented the Protocol, which deprived the Parents of information about the Student's expression of gender.

App.24a. The First Circuit found that Petitioners had not alleged facts, as opposed to conclusions, that plausibly

supported the claim that Respondents had provided medical care without parental consent. See App.27a (“Solely as pled here, we do not believe that using the Student’s chosen name and pronouns – something people routinely do with one another, and which requires no special training, skill, medication, or technology – without more, can be reasonably viewed as evidencing some indicia of medicalization”).

The First Circuit next held that Petitioners’ claims failed to state a claim upon which relief can be granted to the extent that they challenge curricular and administrative decisions. See App.27a-32a.

To the extent the Parents oppose certain academic assignments, the use of a student’s pronouns in the classroom, decisions about bathroom access, and a guidance counselor speaking to a student, none of those concerns restrict parental rights under the Due Process Clause. Rather, the Parents are challenging how Baird Middle School chooses to maintain what it considers a desirable and fruitful pedagogical environment.

App.31a. According to the First Circuit, “Because public schools need not offer students an educational experience tailored to the preferences of their parents . . . the Due Process Clause gives the Parents no right to veto the curricular and administrative decisions identified in the complaint.” App.31a (citation omitted).

The First Circuit then turned directly to whether the implementation of the alleged Protocol violated Petitioners’

rights. See App.32a-39a. It correctly recognized that the Protocol is described in the amended complaint as providing that “parents are not to be informed of their child’s transgender status and gender-affirming social transition to a discordant gender identity unless the child, of any age, consents.” See App.32a.

The First Circuit rejected the proposition that the Protocol violated Petitioners’ parental rights for two primary reasons. First, “Ludlow’s Protocol of deference to a student’s decision about whether to disclose their gender identity to their parents lacks the ‘coercive’ or ‘restraining’ conduct that other courts have found to restrict parental rights in this context.” See App.32a, citing *J.S. ex rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F.3d 915, 934 (3d Cir. 2011), quoting *Anspach ex rel. Anspach v. City of Phila., Dep’t of Pub. Health*, 503 F.3d 256, 266 (3d Cir. 2007).

The First Circuit also found that a failure to disclose a student’s gender expression at school does not violate a parent’s Fourteenth Amendment rights because the Due Process Clause “does not require governments to assist parents in exercising their fundamental right to direct the upbringing of their children, and the Parents’ objections to the Protocol here in large part take issue with that principle as we understand it to be.” See App.38a.

REASONS FOR DENYING THE WRIT

I. The Alleged Protocol Does Not, in Fact, Exist.

The alleged policy at the heart of this action does not exist except as alleged by Petitioners.³ Petitioners allege that the Ludlow School Committee and the individual Respondents “establish[ed] and implement[ed] a protocol (hereinafter sometimes ‘Protocol’) that parents are not to be informed of their child’s transgender status and gender-affirming social transition to a discordant gender identity unless the child, of any age, consents.” See App.77a at ¶ 36.

In fact, the individual Respondents attempted to implement governing Massachusetts law and regulations, and the DESE Guidance on an ad hoc basis. This occurred in response to requests from Petitioners’ child that they be referred to by a specific name and pronouns and that Petitioners not be told because the child was “still in the process” of telling their parents. See App.88a-89a at ¶¶ 81, 83.

The DESE Guidance, which Petitioners have not challenged, recommends that:

There is no threshold medical or mental health diagnosis or treatment requirement that any student must meet in order to have his or her

3. Respondents recognize that Federal Rule of Civil Procedure 12(b)(6) controls the substantive analysis of Petitioners’ claims here. Respondents submit that whether the alleged Protocol exists is relevant to the separate issue of whether the Court should deny the writ.

gender identity recognized and respected by a school.

Some transgender and gender nonconforming students are not openly so at home for reasons such as safety concerns or lack of acceptance. School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, e.g., appropriate pronoun use, in written communication to the student's parent or guardian.

Both the alleged Protocol and Respondents' alleged conduct were consistent with the DESE Guidance, which was issued by the state to assist schools in complying with M.G.L. c. 76, § 5 and 603 CMR 26.00.

II. This Matter is Not the Right Vehicle for the Question Presented.

The Court should deny the petition here because it has been asked to render an advisory opinion on a policy that does not exist. Even if the Court were to determine that the alleged Protocol unconstitutionally interferes with Petitioners' rights, the case will have to be remanded on issues including but not limited to: whether the alleged Protocol exists; whether, assuming that the Protocol does not exist, this case involves executive as opposed to legislative conduct such the Petitioners will bear the burden of proving that Respondents' conduct "shocks

the conscience;”⁴ and the application of the doctrine of qualified immunity.

There are several pending cases that involve actual school district policies and that present the issue of the scope of parental rights. See, e.g. *Regino v. Staley*, 133 F. 4th 951, 956 (9th Cir. 2025) (“This appeal concerns the Chico Unified School District’s Administrative Regulation #5145.3”); *Vitsaxaki v. Skaneateles Cent. Sch. Dist.*, 771 F. Supp. 3d 106, 5:24-CV-155 (N.D.N.Y. 2025); *Short v. New Jersey Dep’t of Educ.*, No. 23-CV-21105-ESK-EAP, 2025 WL 984730, at *2 (D.N.J. Mar. 28, 2025); *Doe v. Delaware Valley Reg’l High Sch. Bd. of Educ.*, No. CV 24-00107 (GC) (JBD), 2024 WL 5006711, at *1 (D.N.J. Nov. 27, 2024); *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trs.*, 680 F. Supp. 3d 1250, 23-CV-069-SWS (D. Wyo. 2023). See also, *City of Huntington Beach v. Newsom*, No. 8:24-CV-02017-CBM-JDE, 2025 WL 1720210 (C.D. Cal. June 16, 2025).⁵ Respondents submit the Court’s scarce resources are better addressed to other matters.

III. Petitioners Present Only An As-Applied Challenge to the Alleged Protocol, Which Should Limit Their Claims.

Even assuming the existence of the Protocol, this case presents only a very narrow question regarding whether a local school district policy, as applied, violated

4. The district court held that, as alleged, Respondents’ conduct does not shock the conscience. See App.57a-65a.

5. *Vitsaxaki* is currently on appeal to the Second Circuit, Docket No. 25-952, and *City of Huntington Beach* is on appeal to the Ninth Circuit, Docket No. 25-3826.

the asserted right of the Petitioners to be immediately informed by public employees of their child's gender expression at school despite their child's request that the child be given time to inform Petitioners. See App.38a. Petitioners were explicit that their claims do not challenge the constitutionality of Massachusetts anti-discrimination statutes and regulations or the DESE Guidance before both the First Circuit and the district court. See, e.g., App.14a, n.9. Given that M.G.L. c. 76, § 5 and 603 CMR 26.00 are presumptively constitutional – and Petitioners have not challenged them – all of Respondents' alleged conduct that is required by them should be barred as a basis for liability in this action.

IV. Petitioners Rely Upon Conclusory Allegations and Implausible Inferences.

Petitioners ignore that the First Circuit and the district court undertook the task of separating the amended complaint's conclusory allegations from the facts alleged. See App.25a, n.16; App.46a, n.2; App.54a-56a. They do not challenge and have not asked this Court to review the lower courts' determinations. Instead, they rely on the conclusory allegations contained in the amended complaint and draw factually unsupported inferences from both the amended complaint's conclusory and factual allegations.

For example, Petitioners combine the conclusory allegation that respecting a student's chosen name and pronouns is a mental health treatment with the content of Ms. Silvestri's December 2020 email to assert that Respondents acted contrary to Petitioner's instructions. As set forth above, that email states, in part:

It has been brought to the attention of both Stephen and myself that some of B's teachers are concerned with her mental health . . . her father and I will be getting her the professional help she needs at this time. With that being said, we request that you do not have any private conversations with B. in regards to this matter. Please allow us to address this as a family and with the proper professionals.

See App.85a at ¶ 70. Ms. Silvestri's email does not reference chosen names or pronouns, and the amended complaint does not allege that B.F. was diagnosed with gender dysphoria. See App.55a. Respondents' alleged response to B.F.'s February 2021 request did not violate Ms. Silvestri's directive.

Further, in order to conclude that Silvestri's email constitutes an instruction not to accept B.F.'s request to use a different name and pronouns, one would have to assume that being transgender is itself a mental health condition or necessarily implies the existence of a mental health condition. That is not an assumption that a Massachusetts educator can make; it is inconsistent with Massachusetts law and regulations. See M.G.L. c. 76, § 5; 603 CMR 26.03(4).

Petitioners also stretch the conclusory allegations in the amended complaint. The facts alleged are that Petitioners' child announced to school administrators and staff that they were "genderqueer," asked to be addressed by a specific name and pronouns, and asked for time to talk to Petitioners. See App.88a at ¶ 81. There is no factual allegation that can support an inference that any

Respondent encouraged B.F.’s announcement, encouraged B.F. to come out as “genderqueer,” or attempted to dissuade B.F. from speaking with Petitioners. Petitioners’ reliance on conclusory allegations and unsupported inferences militates against a grant of certiorari.

V. Petitioners Have Failed to Identify an Actual Conflict Among the Courts of Appeals.

Petitioners focus on what they perceive to be a conflict among the First, Ninth, Seventh and Sixth Circuits, on the one hand, and the Third Circuit, on the other. The First Circuit’s decision in this matter does not conflict with any decision of the Third Circuit identified by Petitioners. More broadly, there is no conflict between the Third Circuit and the Ninth, Seventh and Sixth Circuits that is significant in the context of this case. Petitioners have failed to identify a valid circuit split.

A. The First and Third Circuits Are Not in Conflict.

This case does not pose a split between the First and Third Circuits. In *Gruenke v. Seip*, 225 F.3d 290 (3rd Cir. 2000), the Third Circuit “concluded that the parents of a public school student forced to take a commercial pregnancy test by her high school swim coach who later discussed the positive result with others (but notably not the student’s parents), had stated a claim for violation of the familial right to privacy.” *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 183 (3d Cir. 2005) (emphasis added). Notably, *Gruenke*, “did not . . . recognize a parent’s constitutional right to notification by school officials with regard to a minor’s reproductive health.” *Anspach ex rel. Anspach v. City of Philadelphia, Dep’t of Pub. Health*,

503 F.3d 256, 270–71 (3d Cir. 2007). *Gruenke* is factually inapposite and does not pose a conflict with the First Circuit’s decision here.

The Third Circuit also recognized that parental rights as currently recognized are not absolute. See *Gruenke*, 225 F.3d at 304. “[T]he Court has also recognized that for some portions of the day, children are in the compulsory custody of state-operated school systems. In that setting, the state’s power is ‘custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults.’” *Id.*, quoting *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 655 (1995).

In *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159 (3d Cir. 2005), the Third Circuit held that a survey given in school that included questions related to drug and alcohol use, sexual activity, suicide, and parental relationships did not violate parents’ Fourteenth Amendment rights. “[E]ven if the survey was involuntary, the conduct at issue does not rise to the level of a constitutional violation.” *Id.* at 184. According to the Third Circuit, “[w]e read *Gruenke* to recognize a distinction between actions that strike at the heart of parental decision-making authority on matters of the greatest importance and other actions that, although perhaps unwise and offensive, are not of constitutional dimension.” *Id.* It noted that other circuits “have recognized a similar distinction” and identified the First Circuit as one such court. See *Id.*, citing *Pittsley v. Warish*, 927 F.3d 3, 8 (1st Cir. 1991).

The Third Circuit explained its reasoning:

[W]hile it is true that parents, not schools, have the primary responsibility “to inculcate moral

standards, religious beliefs, and elements of good citizenship,” *Gruenke*, 225 F.3d at 307, a myriad of influences surround middle and high school students everyday, many of which are beyond the strict control of the parent or even abhorrent to the parent. We recognize that introducing a child to sensitive topics before a parent might have done so herself can complicate and even undermine parental authority, but conclude that the survey in this case did not intrude on parental decision-making authority in the same sense as occurred in *Gruenke*. A parent whose middle or high school age child is exposed to sensitive topics or information in a survey remains free to discuss these matters and to place them in the family’s moral or religious context, or to supplement the information with more appropriate materials. School Defendants in no way indoctrinated the students in any particular outlook on these sensitive topics; at most, they may have introduced a few topics unknown to certain individuals.

Id. at 185. Nothing in the foregoing conflicts with the First Circuit’s decision in this case.

It is true that *C.N. v. Ridgewood* distinguished the basis for its conclusion from the rationale employed by the Ninth Circuit’s original, unamended, decision in *Fields v. Palmdale School District*, 427 F.3d 1197 (9th Cir. 2005), *amended on denial of reh’g*, 447 F.3d 1187 (9th Cir. 2006). See *C.N.*, 430 F.3d at 185 n.26. However, in this matter, the First Circuit also rejected the more categorical approach taken by the Ninth Circuit. “In our determinations in

this dispute, we emphasize that our analysis here is not intended to categorically preclude parental challenges to policies of public schools under the Due Process Clause. *But see Parents for Priv. v. Barr*, 949 F.3d 1210, 1232 (9th Cir. 2020).” App.39a, n.20.

In Anspach ex rel. Anspach v. City of Philadelphia, Dep’t of Pub. Health, 503 F.3d 256 (3d Cir. 2007), the plaintiffs alleged, among other things, that the city violated parental rights by providing emergency contraception to a minor without notifying her parents or encouraging her to confer with them. The Third Circuit rejected the claim. After noting that parents’ fundamental right with respect to the care, custody and control of children “is neither absolute nor unqualified,” the Third Circuit held, “[t]he type of ‘interference’ that the Anspachs assert would impose a *constitutional* obligation on state actors to contact parents of a minor or to encourage minors to contact their parents. Either requirement would undermine the minor’s right to privacy and exceed the scope of the familial liberty interest protected under the Constitution.” *Id.* at 262 (emphasis in original). See also, *Id.* at 269 (“We also hold that there is no constitutional right to parental notification of a minor child’s exercise of reproductive privacy rights”).

Notably, in this matter, the First Circuit relied heavily on the Third Circuit’s decision in *Anspach*. See App.32a-37a. For example, it relied on *Anspach* for the conclusion that:

[T]he challenged governmental action (the Protocol) merely instructs teachers not

to offer information -- a student's gender identity -- without a student's consent. In the instant matter, the Parents remain free to strive to mold their child according to the Parents' own beliefs, whether through direct conversations, private educational institutions, religious programming, homeschooling, or other influential tools. See Anspach, 503 F.3d at 266.

App.37a. The First Circuit's reliance on *Anspach* makes it clear that the two circuits are not in conflict.

B. There is No Split Among the Third Circuit and the Ninth, Seventh, and Sixth Circuits.

This matter does not contribute to a more general conflict among the circuits. *Regino v. Staley*, 133 F. 4th 951 (9th Cir. 2025), precludes the possibility of any conflict with the Ninth Circuit, which has not taken a final position on the issue presented by this case. *Regino* involves facial and as-applied challenges to a school district policy pursuant to which a school district began using a student's preferred name and pronouns without notifying their parent. See *Id.* at 956-959. The Ninth Circuit reversed dismissal of the plaintiff parent's substantive due process claim in light of the district court's misapplication of the doctrine of qualified immunity and what it perceived to be the parties' shifting positions, including as to the exact nature of the right claimed by the parent. See *Id.* at 962-964. It remanded for a determination of whether the parent has alleged a violation of a fundamental right. See *Id.* at-964. *Regino* makes it clear that the Ninth Circuit

has not taken a final position on the central issue presented by this case and precludes the conclusion that the Ninth Circuit is in conflict with other circuits.

The cases relied on by Petitioners do not establish a relevant circuit split. In *Fields v. Palmdale Sch. Dist. (PSD)*, 447 F.3d 1187, 1190–91 (9th Cir. 2006), *cert. denied* 5127 S. Ct. 725, which like the Third Circuit’s opinion in *C.N.* dealt with an in-school survey, the Ninth Circuit amended its original opinion to delete the sentence “In sum, we affirm that the *Meyer–Pierce* right does not extend beyond the threshold of the school door,” in order to “make our holding more precise.” See *Id.* at 1190. As amended, *Fields* held:

In sum, we affirm that the *Meyer–Pierce* due process right of parents to make decisions regarding their children’s education does not entitle individual parents to enjoin school boards from providing information the boards determine to be appropriate in connection with the performance of their educational functions, or to collect monetary damages based on the information the schools provide.

Fields v. Palmdale Sch. Dist. (PSD), 447 F.3d 1187, 1190–91 (9th Cir. 2006). As amended, the holding of *Fields* does not create a conflict with the Third Circuit’s decision in *C.N.* The two circuits came to substantially the same conclusion in analogous cases even if their reasoning was not identical.

In this matter, the First Circuit cited *Fields*, as well as decisions of the Second, Fourth, Fifth, Seventh, and

Tenth Circuits, for the well-accepted proposition that, once parents choose to send their children to public school, “they do not have a constitutional right to ‘direct how a public school teaches their child.’” App.29a & n.19 (emphasis in original). As discussed above, the First Circuit’s statement is not inconsistent with the Third Circuit’s position on the issue. See *C.N.*, 430 F.3d at 185.

In *Parents for Priv. v. Barr*, 949 F.3d 1210 (9th Cir. 2020), *cert. denied* 141 S.Ct. 894, the Ninth Circuit considered, amongst other things, whether a policy of allowing transgender students to use bathroom and locker room facilities that match their gender identities violated the rights of parents of cisgender students who opposed the policy “to direct the education and upbringing” of their children. See *Id.* at 1217-128. As relevant, the Ninth Circuit held, “the Fourteenth Amendment does not provide a fundamental parental right to determine the bathroom policies of the public schools to which parents may send their children, either independent of the parental right to direct the upbringing and education of their children or encompassed by it.” *Id.* at 1217-1218.

Notably, in *Doe by and through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018), the Third Circuit held, like the Ninth Circuit in *Barr*, that “the presence of transgender students in the locker and restrooms is no more offensive to constitutional or Pennsylvania-law privacy interests than the presence of other students who are not transgender. Nor does their presence infringe on the plaintiffs’ rights under Title IX.” *Id.* at 521.

California Parents for the Equalization of Educ. Materials v. Torlakson, 973 F.3d 1010 (9th Cir. 2020), *cert.*

denied 141 S. Ct. 2583 (2021), does not create a circuit split here. There, the Ninth Circuit rejected, among other claims, a Fourteenth Amendment substantive due process claim challenging state curricular materials concerning Hinduism. See *Id.* at 1020. *Torlakson* has no application here.

The Seventh Circuit decision relied on by Petitioners also does not establish a circuit split. In *Crowley v McKinney*, the Seventh Circuit was dealing with circumstances where the defendants were “not even denying *the parents* the opportunities that parents commonly enjoy to participate in the education of their children; they [were] denying these opportunities only to one parent, and that the one who has no custodial rights.” See 400 F.3d 965, 969 (7th Cir. 2005) (emphasis in original). Any holdings relative to those facts can hardly be said to create a circuit split, either with the Third Circuit precedent identified by Petitioners or with respect to the issues that are implicated in the instant matter.

In *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381 (6th Cir. 2005), a father of a middle school student sued a middle school for adopting a dress code for its students alleging, among other things, a violation of his substantive-due-process right to control the dress of his child. The court concluded that the father did not have a fundamental right to exempt his child from the school dress code. See *Id.* at 396. *Blau* does not establish a circuit split here.

Since Petitioners rely primarily on the supposed existence of a split between the Third Circuit and the First Circuit that does not exist, certiorari should be denied. The other circuit court opinions at issue do not create a

conflict with either the First or Third Circuit. Petitioners have failed to identify a conflict among the circuits that merits review.

C. Petitioners Have Not Identified a Circuit Split Concerning Curricular and Administrative Decisions.

The First Circuit identified four allegations in the amended complaint as touching on “curricular and administrative decisions:”

librarian Funke’s request that students state their pronouns as part of an academic, biographic video assignment, the teachers’ use of the Student’s requested name and pronouns at school, counselor Foley’s permitting the Student to use the bathroom of their choice, and Foley’s discussion of gender identity-related concerns with the Student.

128 F.4th at 350–51; App. 27a-28a. As to these allegations, it concluded, “[b]ecause public schools need not offer students an educational experience tailored to the preferences of their parents . . . the Due Process Clause gives the Parents no right to veto the curricular and administrative decisions identified in the complaint.” App.31a. The First Circuit’s decision is not in conflict with the other courts of appeal. See App.29a & n.19.

Arnold v. Bd. of Educ. of Escambia Cnty. Ala., 880 F.2d 305 (11th Cir. 1989), does not conflict with the First Circuit’s opinion in this matter. In *Arnold*, the Eleventh Circuit reversed, in part, a district court order

dismissing the plaintiffs' complaint and held that the complaint sufficiently alleged a violation of the familial right to privacy. "Coercing a minor to obtain an abortion or to assist in procuring an abortion and to refrain from discussing the matter with the parents unduly interferes with parental authority in the household and with the parental responsibility to direct the rearing of their child." *Id.* at 313 (emphasis added).

Notably, in *Arnold*, the Eleventh Circuit made it clear:

[W]e are not . . . constitutionally mandating that counselors notify the parents of a minor who receives counseling regarding pregnancy. We hold merely that the counselors must not coerce minors to refrain from communicating with their parents. The decision whether to seek parental guidance, absent law to the contrary, should rest within the discretion of the minor.

Id. at 314 (emphasis added). *Arnold* does not contribute to any circuit split that is relevant to this matter and Petitioners have failed to identify any circuit that has interpreted the Fourteenth Amendment as giving parents the right to control curriculum and school administration.

D. Coercion and Restraint.

The central conclusion reached by the First Circuit is that existing Fourteenth Amendment jurisprudence "does not require governments to assist parents in exercising their fundamental rights to direct the upbringing of their children." App.38a. It relied on this Court's precedent and decisions of the Third and Sixth Circuits in reaching this

conclusion. See App.34a-37a. The text of the Fourteenth Amendment strongly suggests that its approach was correct and that the amendment does not require the government to take affirmative steps to foster or facilitate the exercise of any right. See U.S. Const. amend. XIV, § 1.

It is hardly surprising in this context that the First Circuit considered whether the alleged Protocol of deferring to student wishes constitutes coercion or restraint, as other courts have done. See App.32a-33a. Governmental action requiring or prohibiting conduct is a common feature of substantive due process claims involving parental rights. See, e.g., *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 51 (1925). As the First Circuit found, “Ludlow’s Protocol of deference to a student’s decision about whether to disclose their gender identity to their parents lacks the ‘coercive’ or ‘restraining’ conduct that other courts have found to restrict parental rights in this context.” App.32a.

Here, the conduct of Petitioners’ child drove the sequence of alleged events. B.F.’s February 28, 2021, email to school officials and staff requested the use of a specific name and pronouns. See App.88a at ¶ 81. The next day,⁶ a guidance counselor met with B.F. and then sent an email to school staff, “R**** [B****] is still in the process of telling his . . . parents and is requesting that school staff refer to him . . . as B**** and use she/her pronouns with her parents and in written emails/letters home.” See App.89a at ¶ 83 (emphasis added). Respondents then

6. According to the original complaint, Manchester forwarded B.F.’s email to Petitioners on March 1, 2021, and according to the amended complaint they were aware of it within a week. See 3:22-cv-30041, Dkt. No. 1 at ¶ 60 (D. Mass.); App. 90a at ¶¶ 87-88.

acted in conformity with the alleged Protocol and the state issued DESE Guidance by respecting B.F.'s wishes. This did not prevent Petitioners from obtaining information about their child in the normal course of raising B.F. "Outside school, parents can obtain information about their children's relationship to gender in many ways, including communicating with their children and making meaningful observations of the universe of circumstances that influence their children's preferences, such as in clothing, extracurricular activities, movies, television, music, internet activity, and more." App.37a-38a (emphasis added).

Petitioners complain that in this matter children's rights have been allowed to supersede parents' rights. Even if they were correct, they have not proposed how a school district should cope with conflicting parental and child rights. They appear to assume that a child's constitutional and statutory rights become irrelevant when a parent demands that those rights be ignored. This Court has never endorsed that view.

E. The Amended Complaint's Conclusory Allegations Will Not Support a Circuit Split Concerning Health Care.

The First Circuit recognized that parents' fundamental rights include the right to "to seek and follow medical advice' concerning one's children." App.24a, quoting *Parham v. J.R.*, 442 U.S. 584, 602 (1979). It agreed with the district court that, after identifying and discarding the conclusory allegations in Petitioners' amended complaint, the facts alleged will not support an inference that Respondents usurped Petitioners' rights to make medical

and mental health decisions for their children. See *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); App.24a-27a. “Although the Parents described the decisions made by Ludlow educators as ‘mental health treatment,’ their labeling, without more, cannot transform the alleged conduct into a medical intervention.” App.25a. The determination that the amended complaint rests on conclusory allegations to support its allegations that Respondents engaged in medical treatment is not inconsistent with any decision of this Court and does not create a circuit split.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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