NO. 25-89

IN THE
SUPREME COURT OF THE UNITED STATES

JONATHAN LEE, ERIN LEE, NICOLAS JURICH, AND LINNAEA JURICH,

Petitioners,

v.

POUDRE SCHOOL DISTRICT R-1,

Respondent.

On Petition for Writ of Certiorari to
The United Stated Court of Appeals for
The Tenth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioners Jonathan Lee, Erin Lee, Nicolas Jurich, and Linnaea Jurich (the "parents") seek an advisory opinion on a moot issue of the scope of their fundamental rights as parents that will not change the dismissal of their case at the pleading stage. According to the parents' narrow claim, two public school employees allegedly discouraged their children from telling them about discussion of gender identity and expression, which they say occurred at school-sponsored club meetings, as well as their children's feelings about their own gender identity and expression, which the parents attribute to the club meetings. The Court of Appeals and the District Court ruled that even if true, the parents' allegations failed to establish municipal liability because they had not plausibly alleged that the school district's official policy was the moving force behind their alleged injuries. There was no ruling below on the implication of the parents' claimed fundamental right to control their children's education for this Court to review, and the parents do not address municipal liability at all in their petition for certiorari. Even if this Court is interested in the parents' arguments, this is the wrong case to consider whether public school employees' alleged discouraged disclosure regarding gender identity and expression implicates a fundamental right.

I. Summary of the Parents' Factual Allegations.

This case has not proceeded past the pleadings stage, and it has been resolved on the parents' factual allegations. As it must, Respondent Poudre School District R-1 (the "School District") accepts that well-pleaded allegations must be assumed as true and construed most favorably to the parents, but it does not concede the veracity of their allegations. While the Court of Appeals provided an ample summary of the parents' allegations in its opinion (*see generally* App. A, pp. 4a–13a), the School District emphasizes the following allegations for ease of reference, which are most salient to the parents' arguments in their petition for certiorari. As divided below, the parents' allegations fall within two distinct categories: (A) allegations about their children's attendance at after-school club meetings; and (B) allegations about School District policies.

A. The Parents Allege Their Children Attended Genders and Sexualities Alliance Club Meetings at School.

The parents' children C.L. and H.J. attended middle school in the School District during the 2020–21 school year. (App. G, pp. 150a, 161a). They allege the District sponsored an after-school organization called the Genders and Sexualities Alliance ("GSA"), at which "sex, sexualities, mental health, suicide, sexual orientation, gender identities, and other topics" were regularly addressed "in discussions,

lectures, and distributed materials." (*Id.* at 168a, 181a–182a).

The parents alleged C.L., then a 12-year-old sixth grader, was invited by a teacher to attend an art club meeting after school, and C.L. did so on May 4, 2021. (*Id.* at 151a, 153a). According to the parents, this was actually a GSA meeting, and a substitute teacher gave a talk addressing polyamory, suicide, puberty blockers, gender identity, sexualities, changing names or pronouns, and "[k]eeping the discussions at GSA secret from parents." (*Id.* at 148a, 153a, 155a–156a). The same teacher who allegedly invited C.L. to the meeting also allegedly discouraged disclosure by telling C.L. that she did not have to tell her parents about her gender identity and shouldn't feel pressured to do so. (*Id.* at 156a). Yet, when C.L. got home, she announced to her mother that "she would be transitioning." (*Id.* at 158a). "[A] months-long emotional decline of gender and sexuality confusion" followed, which allegedly "required counseling and included suicidal thoughts." (*Id.*).

Similarly, the parents alleged H.J., who then also was a 12-year-old sixth grader at WMS, attended GSA meetings on May 11 and May 18, 2021. (*Id.* at 161a–162a). H.J. also allegedly was taught about gender fluidity and advised that the meetings "should be confidential" and that she did not have to say anything if asked about the meetings. (*Id.* at 163a). The same teacher allegedly told H.J. and the other meeting attendees, that they did not have to tell their parents about the discussions in the meetings or their gender identity and expression. (*Id.* at 164a). After

attending the meetings, H.J. "began to have her first suicidal thoughts." (*Id.* at 165a). In the summer, she began leaving notes to her parents that she is "aromantic" and "asexual"; she also began leaving notes about transgenderism. (*Id.* at 166a). That fall, H.J. began to question her gender identity, "underwent a significant emotional decline," and attempted suicide. (*Id.*).

The parents withdrew C.L. and H.J. from the School District. (*Id.* at 159a, 167a).

B. The Parents Allege the School District Had a Policy of Discouraging Disclosure Regarding Student Gender Identity and Expression to Parents.

From the parents' perspective, what their children allegedly experienced at the club meetings evidenced a pattern and practice of keeping individual student gender identity and expression secret from parents, which they have dubbed "the District Secrecy Policy." (*Id.* at 149a). As elements of this alleged "Policy," the parents pointed to written Guidelines for Supporting Transgender and Non-Binary Students, which they say "require that, within their communications, school staff deliberately deceive parents of potentially transgender students who refer to their child by that child's birth name." (*Id.* at 174a; App. J).[1]

[1] The Guidelines are from 2023, but the School District has not disputed their use in evaluating the parents' claim.

The parents also referenced: an online set of Frequently Asked Questions, which "announces that school staff will not inform a parent or guardian of conversations that school staff privately have with their child regarding sex, sexual orientation, or gender identity"; a toolkit for Supporting Transgender and Gender Expansive Nonconforming Students, which states that "'[p]rior to notification of any parent/guardian or guardian [sic] regarding the transition process, school staff should work closely with the student to assess the degree, if any, the parent/guardian will be involved in the process' of the child's gender transition"; and gender support forms, which may memorialize a child's gender identity or expression and may be completed wholly by a child without parental notice or consent. (App. G, pp. 176a–180a).

In addition, the parents alleged there was a "common practice" amongst District staff to discuss the best means of circumventing parental notice when students seek to use alternative names and pronouns in school. (*Id.* at 184a). To that end, the parents alleged that School District officials consistently directed personnel to avoid revealing the divergent name and pronoun use to parents. (App. v. 2 at 241). The parents referenced examples of unnamed staff providing guidance, including deferring to a student's use of their preferred name and pronouns in school, while using their given name and pronouns in communications with parents. (*Id.* at 185a).

II. Procedural History.

The parents' initial complaint claimed a substantive due process violation of parental interests in directing the education and upbringing of children. (*See* App. E, pp. 72a–73a). The District Court granted the School District's motion to dismiss without prejudice, concluding, among other things, that the parents did not adequately allege a violation of their fundamental right to direct the upbringing of their children. (*Id.* at 100a–101a).

The parents moved to amend their complaint to proceed on a single substantive due process claim (App. F, p. 125a), asserting that they were deprived of their "fundamental right to make decisions regarding the best interest and education of their children by, *inter alia*, [being] prevent[ed] . . . from being fully informed as to the District's curriculum and efforts to control the best interests of their children" (App. G, pp. 190a–191a). The School District opposed the amendment as futile. (*See generally* App. H).

The District Court agreed and denied leave to amend. (*See generally* App. D). This time, the District Court resolved the parents' parental rights claim on municipal liability grounds, concluding the parents had "failed to allege sufficient facts—as opposed to conclusory allegations—to establish that the Guidelines, along with other informal actions, amount to a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law."

(*Id.* at 64a (internal quotation omitted). Although it needed to go no further, the District Court observed the parents' allegations "appear insufficient to satisfy the third element of a *Monell* claim"—deliberate indifference. (*Id.* at 64a–65a). The District Court also noted the "core" of the parents' claim "remains the assumption that they have a right to receive notice and information about topics discussed within an after-school, voluntary extracurricular club and the manner in which school employees address students," but there is no Supreme Court, Tenth Circuit, or other authority demonstrating that the Fourteenth Amendment requires disclosure of such information. (*Id.* at 54a). The parents sought appellate review.

Following oral argument, a unanimous panel of the Tenth Circuit Court of Appeals affirmed the District Court, agreeing that the parents failed to plausibly allege municipal liability against the School District. *See generally Lee v. Poudre Sch. Dist. R-1*, 135 F.4th 924 (10th Cir. 2025) (slip op. reprinted in App. A). The Court of Appeals concluded that "the parents don't identify a formal regulation of the district requiring the GSA meetings or [the teacher's] and [the substitute teacher's] statements at them." (App. A, p. 21a). While the parents argued the School District's policies "'promote[d]' the idea that the district knew better than the parents and that approval of this idea authorized the GSA meetings and the teachers' statements and activities at the meetings," the Court of Appeals determined this did not plausibly allege that policy was the moving force behind their alleged constitutional injury because "[t]he parents don't explain how policies that presume

the district knows better than parents, or that discourage disclosure, directly caused district staff to," among other things, "recruit students to attend GSA meetings" and "tell students that they didn't have to tell their parents about what happened at the meeting, and that it might be unsafe to talk with their parents about gender-identity issues." (*Id.* at 21a–22a). The Court of Appeals also "note[d] that the parents have not plausibly alleged deliberate indifference—that is, the parents have not alleged that the district was on 'actual or constructive notice' that its policies or customs were substantially certain to cause constitutional violations but still deliberately chose to disregard that risk." (*Id.* at 23a).

Notably, the Court of Appeals did not decide whether the parents sufficiently identified a fundamental right that would afford them relief. (*Id.* at 19a). This was because a majority of the panel, Circuit Judges Matheson and Phillips, "remain[ed] uncertain about what the parents assert qualifies to meet their asserted fundamental right." (*Id.* at 18a). From the parents' briefs and oral argument, the majority understood the parents to assert a "right against 'discouraged disclosure' (that is, the teachers' cautioning the GSA attendees against telling their parents about the meetings)," but "only 'on the transgender issue.'" (*Id.* at 18a–19a). However, since the parents "cite[d] no authority for what 'the transgender issue' includes, and fail[ed] to argue why the right would apply only to that information," the majority went no further and resolved the case on municipal liability as just discussed. (*Id.* at 19a).

Circuit Judge McHugh wrote separately to explain why she thought "the parents have alleged that the district's policies implicate a cognizable substantive due process right." (*Id.* at 24a). Even so, Judge McHugh expressed her agreement that the parents failed to allege facts establishing the School District infringed this or any other fundamental right or that the alleged policy caused their alleged injuries. (*Id.* at 28a–29a).

REASONS FOR DENYING THE PETITION

I. Whether the Parents Have Identified a Fundamental Right is Moot and Does Not Merit Certiorari Review.

The parents' petition for certiorari reads as if they have been denied a day in court for not alleging a violation of a fundamental constitutional right. That is wrong. The Court of Appeals did not "hold[] that no fundamental right was implicated . . . ." (Pet. For Cert., p. 21). Both the Court of Appeals and the District Court denied the families leave to amend their complaint because their allegations, even if true, failed to establish municipal liability against the School District. (App. A, pp. 19a–23a, 28a–29a; App. D, pp. 55a–65a). Indeed, while one judge on the appellate panel felt a fundamental right was implicated (App. A, pp. 24a–28a), the majority expressly disclaimed deciding the issue (*id.* at 18a–19a), and all three agreed that the parents' claim cannot proceed because their alleged policy of discouraged disclosure was not plausibly alleged to be

the moving force of their claimed constitutional injury (*id.* at 22a, 29a).

The only issue in this case that is not moot is municipal liability, but the families do not ask this Court to review it. Nor do they make any argument about the correctness of the Court of Appeals' conclusions that the elements of municipal liability had not been established. This should be fatal to the parents' request for certiorari review. Federal court jurisdiction is over cases and controversies, and this Court "is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it." *St. Pierre v. United States*, 319 U.S. 41, 42 (1943) (per curiam), *quoted in Moore v. Harper*, 600 U.S. 1, 40 (2023) (Thomas, Gorsuch, and Alito, JJ., dissenting). The parents neither request nor provide this Court any basis for a determinative ruling in their favor. Their best possible result under the question they present is a holding that they have asserted a cognizable fundamental right, but that alone would not even warrant a remand to the Court of Appeals. The parents' failure to seek review of the municipal liability issue and offer any argument on it means the outcome would be the same.

If this Court were to grant certiorari, it would do so on an issue that is completely moot. Even if the Court were to agree with the parents that a fundamental right to control their children's education was implicated, the parents would be in no different place than they were before the Court of Appeals, and their proposed claim would still fail to

plausibly allege municipal liability. This is the epitome of an advisory opinion that lies outside federal court jurisdiction and does not warrant the limited availability of the Supreme Court of the United States. Regardless of how this Court may feel about further examining the contours of a parent's right to control their children's education, certiorari is not warranted in this case because the limited ruling the families seek would reverse nothing.

II. The Parents' Vaguely Identified Fundamental Right and Narrow Allegations Preclude Any Broad Application of this Case.

Even if this Court is interested in the parents' arguments, there are other reasons this is the wrong case to consider whether a public school employee's alleged discouraged disclosure regarding gender identity and expression implicates a fundamental right. The parents' legal theory has shifted throughout this case, and it remains unclear how the parents' narrow allegations implicate the fundamental right they assert.

As the Court of Appeals noted and is still evident in the parents' petition for certiorari, they rely almost entirely on broad descriptions of a parental right to direct their children's education and to not be usurped in making decisions concerning the care, custody, and control of their children, as described in *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Soc'y of Sisters of Holy Name of Jesus & Mary*, 268 U.S. 510

(1925), *Santosky v. Kramer*, 455 U.S. 745 (1982), and *Troxel v. Granville*, 530 U.S. 57 (2000). From these cases, the parents extrapolate that public schools may not "discourage disclosure" "on the transgender issue," even though as the majority noted below, "the parents cite no authority for what 'the transgender issue' includes, and fail to argue why the right would apply only to that information." (App. A, pp. 18a–19a).[2] Despite several opportunities, the parents seem to still be unable or unwilling to describe the fundamental right they insist is at stake below a high level of generality. This is not much substance on which to decide an issue the parents maintain is so important.

As confirmation, consider how the parents' arguments have shifted throughout this case. Before the District Court, the parents seemed to focus on an alleged lack of prior notice and an opportunity to have opted out of GSA meetings. (App. E, p. 92a). But they have never alleged that they asked District personnel about GSA meetings or their children's gender identity, expression, or use of pronouns at school and were denied such information. They even admitted as much when they assumed they "were deprived of the opportunity to be lied to by a PSD counselor . . . ."

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[2] In contrast, this Court's recent decision in *Mahmoud v. Taylor*, 145 S.Ct. 2332 (2025), which the parents cite in their petition, involved an assertion that LGBTQ+-inclusive storybooks in elementary schools, combined with the withholding of notice to parents of when the books would be taught and the disallowance of any opportunity to opt out of the instruction, burdened the First Amendment right of parents to free exercise of their religious beliefs.

(App. G, p. 176a). Such an attack was, at best, a nonjusticiable facial challenge to the Guidelines that has since been abandoned. In their opening brief on appeal, the parents suggested their claim was similar to an infringement of medical autonomy, even though there has been no allegation that C.L. or H.J. were subjected to medical treatment without parental consent.

By oral argument, the parents had settled on characterizing the Guidelines and other alleged practices as embedding an impermissible presumption that government actors are more likely than parents to act in the best interests of their children. (*See* App. A, p. 18a). But this extension of *Troxel* goes beyond its facts. As the District Court recognized, "*Troxel* concerned parental visitation rights; it did not discuss a right of parents to direct the policies of or lessons taught in public schools or a right to receive notice about topics planned for discussion." (App. E, p. 96a). This is not a case where the state, acting through a school, has improperly taken away control over parenting time or even full parental authority. Finally, in their petition for certiorari, the parents make one more move, invoking their own "deeply held religious beliefs." (Pet. for Cert., p. 29).

The point is not to contest the seriousness of the parents' stated concerns. The School District certainly takes its responsibility for public education seriously. Each of the above-cited cases marks limits, however, and this Court has "expressly acknowledged 'the power of the State reasonably to regulate all

schools, to inspect, supervise and examine them, their teachers and pupils . . . .'" *Runyon v. McCrary*, 427 U.S. 160, 178–79 (1976) (quoting *Pierce*, 268 U.S. at 534); *see also Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 594 U.S. 180, 187 (2021) (recognizing one "special characteristic of the school environment . . . is the fact that schools at times stand *in loco parentis*, *i.e.*, in the place of parents") (citing cases). Like districts in other states, the School District must consider specific requirements of Colorado law, as well as those clearly established under federal law, when determining guidelines for handling various issues with students.

The School District has a strong interest in providing a safe and supportive environment for all students, including those who are transgender or gender nonconforming. *See, e.g.*, *New York v. Ferber*, 458 U.S. 747, 756–57 (1982) ("It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is 'compelling.'") (quoting *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 607 (1982)). Schools are places of public accommodation, and gender identity and expression are protected under both federal and state anti-discrimination law. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1741–42 (2020) (analyzing Title VII); C.R.S. § 24-34-601(2)(a) (prohibiting discrimination by places of public accommodation on basis of "sex, sexual orientation, gender identity, [and] gender expression"); 3 Colo. Code Reg. 708-1, Rule 81.6 (2023) (stating prohibited conduct includes "intentionally causing distress to an individual by disclosing to others the individual's

sexual orientation."). School districts in Colorado are even required to adopt policies prohibiting discrimination on the basis of gender identity or gender expression. C.R.S. § 22-32-109(1)(ll)(I)(A). As the District Court recognized, complying with these laws is a legitimate government interest. (App. v. 1 at 163–64).

In any event, and despite the parents' widespread catastrophizing, drawing such lines here would not provide much help for lower courts, school officials, or parents because there are only a couple of ripe concerns. The parents identify just two specific instances of discouraged disclosure: (1) the teacher's and the substitute teacher's alleged discouraging GSA attendees from telling their parents what was discussed at the meetings; and (2) the teacher's alleged private conversations with C.L., during which C.L. was told she could reject feminine pronouns. (App. A, p. 16a). The parents conceded below "that their parental rights do not require the school to disclose information." (*Id.* at 18a) (emphasis omitted). As the Court of Appeals explained, [n]ot implicated in this appeal are other categories of what might fall into a category of "discouraged disclosure," including the district's use of a student's affirming name and pronouns at school but use of the student's legal name with parents, along with all other efforts to conceal that from the parents." (*Id.* at 16a).

Consequently, the parents cherry-picked quotations from the Guidelines amount to nothing more than a distraction. The Guidelines actually state, "[i]f a school counselor receives questions from

a parent/guardian, they should use their professional judgment to determine how best to follow up with the student and then the parent/guardian." (App. J, p. 232a). The Guidelines expressly recognize that school personnel may be "legally required" to reveal a student's transgender or non-binary status to parents. (*Id.* at 231a). Indeed, the Guidelines "recognize the importance of involving the student's parent(s)/guardian(s) to promote congruent and affirming environments through the student's daily experiences" (*Id.* at 249a), and "[t]he school counselor will work with the student in coming out to their family and others, as appropriate, and collaborate with families to promote consistent gender support . . ." (*Id.* at 232a). The Guidelines further emphasize parents "have the right under FERPA to view all education records of their student upon request . . . ." (*Id.*).[3]

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[3] Of course, this discussion illustrates why municipal liability has been a critical issue in this case and why its absence from the parents' petition is so glaring. The School District cannot be liable for any civil rights violations by the teacher and the substitute teacher simply by *respondeat superior*. *E.g.*, *Monell v. N.Y. City Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). There are several reasons why the parents' allegations fail to establish municipal liability, as detailed in the School District's answer brief and the Court of Appeals' opinion below. The most obvious is a lack of causation. *See, e.g.*, *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 404 (1997) (requiring "direct causal link between the municipal action and the deprivation of federal rights"). The teacher's and the substitute teacher's alleged discouragement clearly had no effect, as both C.L. and H.J. are alleged to have come out to their parents either right after or shortly after the GSA meetings. (App. G, pp. 158a, 162a, 166a).

Whether there really are school districts acting "with impunity in a brazen campaign to commandeer parental authority for themselves," as the parents boldly write in their petition (Pet. for Cert., p. 24), is not the issue in this case. Argument aside, the merits of their claim were rejected below based on their allegations, and the specific conduct they have challenged falls well short of their pitch of a bellwether opportunity to resolve a national emergency. Certiorari review is for real, justiciable issues—not hypothetical ones involving other parties. *See, e.g.*, *St. Pierre*, 319 U.S. at 42.

CONCLUSION

For the foregoing reasons, the parents seek an advisory opinion that would fail to afford them any relief from the rulings below, and this is the wrong case to consider whether a public school employee's alleged discouraged disclosure regarding gender identity and expression implicates a fundamental right. The School District respectfully requests that the parents' petition for certiorari be denied.

Dated this 22nd day of August, 2025.

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