No. 25-77

In the Supreme Court of the United States

STEPHEN FOOTE, INDIVIDUALLY AND AS GUARDIAN AND NEXT FRIEND OF B.F. AND G.F, MINORS, *ET AL.*,

Petitioners,

v.

LUDLOW SCHOOL COMMITTEE, *ET AL.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF OF *AMICI CURIAE* STATE OF MONTANA, STATE OF WEST VIRGINIA, STATE OF FLORIDA, 18 OTHER STATES & GUAM SUPPORTING PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici are the States of Montana, West Virginia, Florida, Alabama, Alaska, Georgia, Idaho, Indiana, Iowa, Louisiana, Kansas, Kentucky, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, Virginia, and the Territory of Guam ("Amici States"). Amici States seek to ensure that parents retain their fundamental right to direct the upbringing of their minor children—a right this Court has described as "essential" and "far more precious … than property rights." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 299 (1923) and *May v. Anderson*, 345 U.S. 528, 533 (1953)).

SUMMARY OF ARGUMENT

This Court should grant certiorari to restore a proper understanding of public schools' authority and its relationship to American families. Respondent Ludlow School Committee ("Ludlow") led B.F., an eleven-year-old girl, to share intimate thoughts; encouraged and implemented a new name, pronouns, and bathroom; and cast doubt on the medical care that her parents thought best. Petitioners, B.F.'s parents, were already providing and actively caring for B.F, but Ludlow orchestrated discussions with B.F. about gender identity behind the parents' back. Altogether,

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[1] Pursuant to Rule 37.2, counsel for *amici* notified counsel of record for all parties of its intent to file this brief more than ten days before its due date.

Ludlow socially transitioned B.F. while taking deliberate steps to hide it from her parents.

The First Circuit shrugged off these actions—actions that go to a child's very core—as a valid use of state power over "curricular or administrative decisions" involved in "providing educational resources." App.28a, 33a. The court thought parents' rights disappeared once parents decided to place their children in public schools, App.28a-29a, and the court minimized concerns over gender transition because they were (mistakenly) thought not to implicate health concerns, App.27a. Worse yet, the court approved schools to take just about any action short actual "coercion" over the student, App.33a, including deceiving the parents, App.37a.

Ludlow's actions should trigger alarm bells. These secret acts, which contravened the parents' express instructions, violated the constitutionally sacrosanct parent-child relationship. But rather than answering the alarm, the First Circuit greenlit further public intrusions into that relationship, empowering schools to seize control.

The First Circuit's sweeping understanding of the scope and purpose of state power in public schools upends hundreds of years of jurisprudence to boot. Public schools wield both *in loco parentis* power *and* state power, *see New Jersey v. T.L.O.*, 469 U.S. 325, 336 (1985)—with the former exercised after delegation of power by parents primarily for the good of the child and the latter exercised primarily for the good of society. *See Ambach v. Norwick*, 441 U.S. 68, 77 (1979).

These "two spheres of control," Frances Williamson, *The Meaning of "Public Meaning": An Originalist Dilemma Embodied by Mahanoy Area School District*, 46

HARV. J.L. & PUB. POL'Y 257, 283 (2023), often overlap and work together to benefit both families and society. However, when a school disobeys a direct command from a parent regarding a child it forfeits its delegated *in loco parentis* power and may only rely on state power to justify its actions.

Since schools cannot make decisions rooted in parental power without parental consent, courts must evaluate whether a particular decision is rooted in parental or state power. The First Circuit's conclusion that the decision to socially transition B.F. was well-grounded in state power was fundamentally wrong and at odds with centuries of history and tradition. *See Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 655 (1995).

The analysis of whether a decision is based in state power or *in loco parentis* power begins with strong presumption in favor of parental rights. With that in mind, courts should consider: (1) the underlying issue's level of importance; (2) how long effects are felt; (3) where the effects are felt; (4) whether the topic is sensitive and/or socially controversial; (5) individual versus communal focus; (6) the student's age. Here, each of these factors militate against Ludlow.

Unfortunately, Ludlow isn't the only school in America acting outside its delegated authority. In fact, an alarming number of schools have engaged in similar conduct over the last few years. The lower courts have, unfortunately, erected procedural and substantive road blocks for parents seeking to vindicate their fundamental rights. These courts have refused to properly recognize parental rights when schools have socially transitioned students.

Although some states have taken affirmative steps to protect parental rights, it's not sufficient. Fundamental rights don't end at any state line. The Fourteenth Amendment exists "to enforce constitutionally declared rights against the States." *McDonald v. City of Chicago, Ill.,* 561 U.S. 742, 833 (2010) (Thomas, J., concurring). It's wholly insufficient that some parents may have the option to move to states like Florida. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925) (affirming parental rights under "[t]he fundamental theory of liberty upon which all governments in this Union repose"). Our Constitution places the burden on States to respect fundamental rights, not on citizens to search for safe harbors. The decision below inverts this constitutional reality.

ARGUMENT

I. The First Circuit Misconceived The Relationship Between Parents, Children, and Schools.

A. Parental rights have always been at the centerpiece of American Society.

Family liberty interests are grounded "in intrinsic human rights" as "understood in 'this Nation's history and tradition.'" *Smith v. Org. of Foster Fams. for Equal. & Reform*, 431 U.S. 816, 845 (1977). Our tradition has long recognized that "[t]he parent-child relationship is a sacred, pre-political bond that preexists" the United States, as well as any local law. *Raskin on behalf of JD v. Dallas Indep. Sch. Dist.*, 69 F.4th 280, 298 (5th Cir. 2023) (Oldham, J., concurring). Accordingly, our government recognizes "parental rights"; it doesn't create them. Lawson B. Hamilton, *Parent, Child, and State: Regulation in A*

New Era of Homeschooling, 51 J.L. & EDUC. 45, 69 (2022).

Our Anglo-American legal tradition has always understood this pre-political parental authority as flowing from the natural order of things—especially the inherent vulnerabilities of children. Children don't understand "how to govern themselves." 2 Samuel Pufendorf, *The Whole Duty of Man According to the Law of Nature* 202 (1735). Their "wants and weaknesses" thus "render it necessary that some person maintains them" until adulthood. 2 *James Kent, Commentaries on American Law* 190 (1873); *see also* 1 William Blackstone, Commentaries on the Laws of England 447 (1753); Pufendorf, *supra*, at 202; *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 828–29 (2011) (Thomas, J., dissenting).

Parents have traditionally been understood as "the most fit and proper person[s]" for that task. Kent, Commentaries at 190. Because duties imply rights, JOHN SALMOND, JURISPRUDENCE 224 (1924), those with the awesome responsibility of raising children have a correspondingly great latitude to do so. *See Pierce*, 268 U.S. at 535.

At common law, for example, "household heads" were empowered to "speak for their dependents in dealingwith the larger world," Toby L. Ditz, *Ownership and Obligation: Inheritance and Patriarchal Households in Connecticut*, 1750-1820, 47 WM. & MARY Q. 235, 236 (1990), and parents enjoyed the "right … to govern their children's growth," *Brown*, 564 U.S. at 828 (Thomas, J., dissenting).

Our Constitution and this Court's decisions have continued to enshrine these principles under law. *Parham v. J.R.*, 442 U.S. 584, 602-03 (1979) (nothing

that since children cannot "make sound judgments," our Constitution incorporates "Western civilization concepts of … broad parental authority over minor children"). The law empowers parents to "to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (plurality op.). In fact, these parental rights are "perhaps the oldest of the fundamental liberty interests recognized by th[e] Court." *Id.* at 65.

This legal authority is far-reaching. It includes a parent's right to direct children's religious upbringing, *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972); dictate the relationship between children and parents, *Stanley*, 405 U.S. at 651; determine and address "their [children's] need for medical care or treatment," *Parham*, 442 U.S. at 603; and afford them education, *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923); *Pierce*, 268 U.S. at 535.

This authority is long-standing, too. From 18th century tutors to 19th century one-room schoolhouses to the public classrooms of the early 20th century, Anglo-American scholars and courts understood teachers' and schools' control over children through a lens of delegated parental power: *in loco parentis*. *See, e.g.*, Blackstone, *supra*, at 452-53*; Steber v. Norris*, 206 N.W. 173, 175 (Wis. 1925); *Lander v. Seaver*, 32 Vt. 114, 123 (1859); *Cooper v. McJunkin*, 4 Ind. 290, 293 (1853); *State v. Pendergrass*, 31 Am. Dec. 416 (N.C. 1837). By the late 1800s, this understanding was the national norm. S. Ernie Walton, In Loco Parentis*, the First Amendment, and Parental Rights-Can They Coexist in Public Schools?*, 55 TEX. TECH L. REV. 461, 469,

476 (2023). This Court said the same: "school authorities ac[t] in loco parentis." *Bethel School District v. Fraser*, 478 U.S. 675, 684 (1986).

In the late 1800s and early 1900s, however, the education landscape shifted. States, which had long offered free public education, began making school attendance compulsory. MISES INSTITUTE, EDUCATION: FREE AND COMPULSORY, https://bit.ly/3GTtI8q (last accessed July 24, 2025). Much later, this Court began saying that an in loco parentis-only theory of school authority was "not entirely 'consonant with compulsory education laws.'" *Vernonia*, 515 U.S. at 655-56 (1995) (quoting *T.L.O.*, 469 U.S. at 336); *accord Ingraham v. Wright*, 430 U.S. 651, 662 (1977). And it began "treating school officials" not just as parental extensions, but "as state actors" in constitutional litigation. *Vernonia*, 515 U.S. at 655; *see W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943). After all, compulsory education meant parents could no longer claim absolute, exclusive authority over whether and how their children were educated. Thus, much of *in Loco Parentis*'s philosophical underpinning—like contract, voluntariness, and a parent-directed agenda—was compromised. Walton, *supra*, at 490; *accord* Linda J. Salfrank, *It Takes A Village: The Evolution of Blackstone's Doctrine of in Loco Parentis*, 58 CREIGHTON L. REV. 37, 46-47 (2024).

Following this evolution, "[t]oday's public school[s]" wield both *in loco parentis* power and state power—implementing both the "authority voluntarily conferred on [schools] by individual parents" and "publicly mandated educational and disciplinary policies."

T.L.O., 469 U.S. at 336; *see also* Salfrank, *supra*, at 49 (noting these two "source[s] of authority").

This framework—which the First Circuit undermined—remains crucial because it acknowledges the reality that multiple nested and interlocking communities have an interest in a child's education. Williamson, *supra,* at *283* (calling them "two spheres of control"). Children's primary, base unit community is the family. Melissa Moschella, *Natural Law, Parental Rights, and the Defense of "Liberal" Limits on Government*, 98 NOTRE DAME L. REV. 1559, 1572 (2023). This community is sovereign in its own sphere and mission—the common good of the family and individuals in it. Melissa Moschella, *Natural Law, Parental Rights and Education Policy*, 59 AM. J. JURIS. 197, 212-13 (2014). This higher status is why parents hold the "primary rights" to direct every aspect of their child's life. *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000).

Society has an interest in a well-formed citizenry. An educated, virtuous, and wise citizenry is "necessary to the maintenance of [our] democratic political system," *Ambach*, 441 U.S. at 77, and "indispensable to the practice of self-government in the community and the nation," *Fraser*, 478 U.S. at 681. Courts and scholars agree that a public school achieves its end—serving the "common good of all," *Bush v. Oscoda Area Sch.*, 275 N.W.2d 268, 276 (Mich. 1979)—when it acts as an "arena for molding visons of what constitutes the good life … as an American society," Sacha M. Coupet, *Valuing All Identities Beyond the Schoolhouse Gate: The Case for Inclusivity As A Civic Virtue in K-12*, 27 MICH. J. GENDER & L. 1, 5 (2020).

So while the family forms the child primarily for the sake of that child and secondarily for the sake of society, public schools do the inverse: they form the child chiefly for the sake of society and only secondarily for the sake of the child herself. *See* Josh Chafetz, *Social Reproduction and Religious Reproduction: A Democratic-Communitarian Analysis of the Yoder Problem*, 15 WM. & MARY BILL RTS. J. 263, 291 (2006) ("[S]chools are meant to inculcate large-scale social values."). And that's why public "[s]chool officials have only a secondary" and narrower authority over children, limited to providing guardrails for communal learning in a democratic society. *Gruenke*, 225 F.3d at 307.

B. The First Circuit misunderstood the limitations on state power over children in schools

i. State power is distinct from *in loco parentis* power

Parental and state powers usually exist in harmony. But sometimes troubles arise because parents' power over their child's education and state power over public education "are intertwined and" "overlap." Salfrank, *supra*, at 69; *see, e.g.*, *Webb v. McCullough*, 828 F.2d 1151, 1157 (6th Cir. 1987). And when, as here, parents tell a public school not to take certain action regarding their child—thereby revoking express or implied *in loco parentis* power—the only other font of authority the school can rely on is state power.

The First Circuit held that the decision to socially transition B.F. was well-grounded in state power. App.28a-29, 33a. That conclusion plainly was wrong.

Courts must consider whether that decision is rooted in parental power or state power. To decide whether a public school's action is rooted in state power or improperly intrudes into the family space, courts must begin with a strong default assumption that every decision properly belongs to the parents. Parental rights are fundamental and sweeping.[2]

This Court describes *in loco parentis* authority with broad "custodial and tutelary authority" language. *Vernonia*, 515 U.S. at 655. Yet *in loco parentis* is a limited delegation—a fraction of parents' total control. *See* Salfrank, *supra*, at 65. It doesn't "displace parents," *Gruenke*, 225 F.3d at 307, but is limited to "the task that the parents ask the school to perform"—that is, the "authority that the schools must be able to exercise in order to carry out their state-mandated educational mission," *Mahanoy Area School Dist.* v. *B. L.*, 594 U.S. 180, 200 (2021) (Alito, J., concurring). Such a broad delegation can rightly be considered "limited" only because it derives from a truly vast body of raw parental power.

Public schools' state or "administrative authority," on the other hand, "is severely limited," Tyler Stoehr, *Letting the Legislature Decide: Why the Court's Use of in Loco Parentis Ought to Be Praised, Not Condemned*, 2011 B.Y.U. L. REV. 1695, 1720 (2011)—

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[2] Even the First Circuit acknowledged this general rule, before inexplicably defining the parental rights at issue with "microscopic granularity." *Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 348 (1st Cir. 2025).

though within its sphere it is effectively absolute, taking shape as "rules and standards of conduct," *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2357 (2025) (calling these "direct, coercive interactions"). This state authority serves schools' need "to maintain order" and enforce "publicly mandated educational and disciplinary policies." *T.L.O.*, 469 U.S. at 336, 341. Public schools must be able to "[s]ecur[e] order in the school environment" without assessing express and implicit parental delegations in every case. *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822, 831 (2002). Still, these "supervisory powers" are tightly restricted to "the amount of physical control reasonably necessary to … maintain proper and appropriate conditions conducive to learning." 78 C.J.S. SCHOOLS AND SCHOOL DISTRICTS § 244.

ii. Deciding to socially transition a child is an in loco parentis power that is not delegated to schools

Courts should evaluate whether a decision is grounded in parental or state power by considering the "totality of the circumstances." 28 AM. JUR. PROOF OF FACTS 2D 545 (1981). After all, public schools and their teachers exercise *in loco parentis* power and state power to varying degrees in innumerable and infinitely varied scenarios—so there can be no easy brightline test. *See* Williamson, *supra*, at 279 (saying *Mahanoy* employed a "spectrum" or sliding scale in its in loco parentis analysis); *Lander*, 32 Vt. at 120 (doing the same). Caselaw and legal scholarship, however, offer several factors that help answer the question.

First, the underlying issue's level of importance. "[P]arents, not schools, have the primary responsibility" to handle the big questions of life—like "moral standards, religious beliefs, and" other key "elements of good citizenship." *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 185 (3d Cir. 2005) (cleaned up); *accord Yoder*, 406 U.S. at 233 (same). The closer a school gets to unauthorizedly rearranging a child's view of the central questions of life—that is, the deeper it reaches into the child's conception of reality in opposition to the parents' beliefs—the more likely it violates parental rights. *See Mahmoud*, 145 S. Ct. at 2361. These big, "difficult decisions" are what belong in the "private sphere of family life." 78 C.J.S. SCHOOLS AND SCHOOL DISTRICTS § 244.

Determining gender identity is a textbook example of a consequential, difficult decision. It "is a matter of great importance," *Tatel* v. *Mt. Lebanon Sch. Dist.*, 637 F. Supp. 3d 295, 320 (W.D. Pa. 2022), directly implicating a person's "deep-core sense of self," *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 522 (3d Cir. 2018). Few questions are more important to a child than whether they view themselves as a boy or girl. Indeed, even the First Circuit has said that "self-conceptions" of gender identity are akin to other fundamental aspects of a child's identity like "religion, race, sex, or sexual orientation." *L.M. v. Town of Middleborough*, 103 F.4th 854, 881 (1st Cir. 2024). So because this issue "goes to the heart of parenting," it falls outside what schools may do through state power. *Tatel*, 637 F. Supp. 3d at 320.

Second, how long effects are felt. In weighing whether someone acts with in loco parentis authority, courts have always considered how long the effects of their decisions last. 28 AM. JUR. PROOF OF FACTS 2D 545 (1981) (saying "time" generally is a "significant factor" in *in loco parentis* analyses). A decision whose consequences will cascade down the years is qualitatively different from an action that has no meaningful long-term ramifications.

Encouraging and facilitating a child's social transition causes long-term effects. Commonsense suggests that the emotional, physical, and psychological ripple effects of Ludlow's decision to socially transition B.F. will last for many years—likely the rest of B.F.'s life. Experts say the same. *See*, *e.g.*, H. Cass, *Independent Review of Gender Identity Services for Children and Young People* 32 (2024) ("[I]t is possible that social transition in childhood may change the trajectory of gender identity development for children with early gender incongruence."); Stephen B. Levin & E. Abbruzzese, *Current Concerns About Gender-Affirming Therapy in Adolescents*, 15 CURRENT SEXUAL HEALTH REPS. 113, 116 n.62 (2023) (reading "recent research" to "suggest[] that social gender transition may not be a neutral act but is a psychosocial intervention that promotes the consolidation of an otherwise-transient transgender identity"); James S. Morandini, et al., *Is Social Gender Transition Associated with Mental Health Status in Children and Adolescents with Gender Dysphoria?*, 52 ARCH SEX. BEHAV. 1045, 1057 (2023) ("Some authors have warned of possible 'iatrogenic' effects of early social transition, based on data suggesting childhood social transition is associated

with an increased likelihood of persistence of gender dysphoria into adolescence and adulthood." (internal citation omitted)).

Third, where the effects are felt. Justice Alito explained in *Mahanoy* that only "express or implied" in loco parentis "consent" can justify schools' regulation of behavior off school grounds. *Mahanoy*, 594 U.S. at 197-98 (Alito, J., concurring). The underlying principle relevant here is that *where* things happen matters to the parental-versus-state-power analysis. The more a school's decisions—especially child-specific decisions—will affect a child's life away from school, the more likely that decision is an expression of parental power, not state power. *See* 28 AM. JUR. PROOF OF FACTS 2d 545 (noting breadth of in loco parentis power).

It's true that Ludlow's social transition actions took place almost exclusively at school. But a secret, school-created double life will affect an eleven-year-old child's emotions, thought life, self-identity, and psychology at home and, indeed, *anywhere* the child goes. A day may be temporally split into school time and out-of-school time, but as States know all too well, a child's home life deeply affects and cannot be hermetically separated from their school life. And a lack of empirical data on "school-only" social transition means the effects of this split-gender approach might manifest in troubling and unexpected ways. That the effects of a child's secret social transition pervade every aspect of their life suggests this isn't state power.

Fourth, sensitive, socially controversial topics. The more sensitive an issue—that is, the more likely it is to create embarrassment, awkwardness, uncertainty, confusion, or similar emotions in an individual child—the more likely it is that resolving that issue for the child is a parental, not state, power. Indeed, simply "introduc[ing] a child to sensitive topics before a parent" okays it can "undermine parental authority." *C.N.*, 430 F.3d at 185.

It's exponentially worse when a school raises and *resolves* a sensitive topic for a child, as Ludlow did with B.F. here. "[S]exually explicit, indecent, or lewd" content are good examples of sensitive topics. *Bethel*, 478 U.S. at 684. Gender identity questions are sensitive because they instantiate and concretize questions about sex and sexuality within the center of child's self-identity. Further, gender identity and the wisdom of social transitions are still debated. *United States v. Skrmetti*, 145 S. Ct. 1816, 1837 (2025) (calling these "fierce scientific and policy debates"). Even advocates like the World Professional Association for Transgender Health recognize that "current standards" and "understanding of "understanding of gender identity development in adolescence is continuing to evolve." *Id.* at 1825. So parents of good will—like B.F.'s parents—can "raise sincere concerns" and disagree with schools about these issues. *Id.* at 1837.

Fifth, individual versus communal focus. The more the primary reasons for and effects of the public school's decision are individual-focused, not community-focused, the more likely the decision is rooted in

parental power. *See* Stoehr, *supra*, at 1731-32 (highlighting this institutional-versus-individual distinction).

Providing individual-focused services like medical and psychological services is textbook *in loco parentis* power. *See Earls*, 536 U.S. at 840 (Breyer, J., concurring). Vital decisions regarding healthcare are intimate, important decisions that belong within the family. *Parham*, 442 U.S. at 603. Remarkably, the First Circuit maintains that social transitioning is not a medical treatment. *Ludlow*, 128 F.4th at 349–50. But this is false: social transitioning is considered a form of psychological treatment. *Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1274 (11th Cir. 2020). And it's a massively risky treatment at that. When fighting the reality of a child's biological sex,[3] recent reports reveal that social transitioning "can concretize gender dysphoria" and may not even "improve[] mental health status in the short term."[4] Parents are best suited to assess these personal risks and rewards, not school administrators.

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[3] *See Green v. Miss United States of Am.*, 52 F.4th 773, 806 n.1 (9th Cir. 2022) (VanDyke, J., concurring) (collecting sources).

[4] Jorgensen, *S.C.J. Transition Regret and Detransition: Meanings and Uncertainties*, *Arch Sex Behav.* 52, 2173–84 (2023), https://doi.org/10.1007/s10508-023-02626-2; *see also* Leor Sapir, *A Cause, Not a Cure*, City Journal (May 10, 2022) https://www.city-journal.org/new-study-casts-doubt-on-gender-affirming-therapy (noting that a new study on the efficacy of "gender affirming" therapy "provides further evidence that 'gender-affirming' therapy creates or prolongs the very problem it purports to solve").

Whereas maintaining "group discipline" and a "proper education[al]" environment, *Ingraham*, 430 U.S. at 662 (cleaned up)—through, for example, banning class-trip speech promoting "illegal drug use," *Morse v. Frederick*, 551 U.S. 393, 409 (2007)—is textbook state power. The more a school's "act[ion]" towards a child is done "for a third person," and not for the child herself, the less parental power is in play. *Phillips v. Johns*, 12 Tenn. App. 354, 357 (1930). For example, because forcibly searching a student to recover another's money is done for another, it's an exercise of state power, not *in loco parentis* power. *Id.*; *cf. Marlar v. Bill*, 178 S.W.2d 634, 634-35 (Tenn. 1944).

Here, Ludlow justified socially transitioning B.F. with solely B.F.-centric reasons—like B.F.'s safety and ability to learn. App.10a-11a, 41a. Ludlow offered no community-based reasons—like maintaining order, protecting other students or teachers, or enforcing disciplinary policies. This focus effectively admits that Ludlow was seeking to displace B.F.'s parents.

Sixth, student age. The younger the student, the more likely the school authority is using parental power, not state power. As Justice Breyer explained in his *Earls* concurrence, *in loco parentis* power is normally used with "younger students" as opposed to "older high school students." 536 U.S. at 840. Younger children "lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them," *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (plurality opinion). The younger the child, the "more vulnerable or susceptible to … outside pressures." *Roper v. Simmons*, 543 U.S. 551 (2005); *see also Mahmoud*, 145 S. Ct. at 2361.

This factor also favors Petitioners. B.F. was only eleven years old. So when Ludlow staff chose to "persuade" B.F. into socially transitioning, that "course of action" regarding "certain health decisions" was an expression of parental power. *Anspach* v. *City of Philadelphia, Dep't of Pub. Health*, 503 F.3d 256, 270 (3d Cir. 2007). And it puts the lie to the First Circuit's comparison of social transition and providing a book on bricklaying. App.33a.

Taken together, these factors show the First Circuit erred. Socially transitioning B.F. cannot be justified by pointing to state power. Ludlow secretly resolved an important, sensitive, and controversial issue on behalf of the young B.F. in ways that will reverberate throughout B.F.'s entire life. Parents, not States, should make those calls. *See Tatel*, 637 F. Supp. 3d at 335. By assuming custody of the child, the "school owes a duty of care not only to its students, but also to parents" to disclose the information those decisionmakers need. *R.N. by & through Neff v. Travis Unified Sch. Dist.*, 2020 WL 7227561, at *8 (E.D. Cal. Dec. 8, 2020). It isn't true, as the First Circuit claims, that the "parents can obtain information about their children's relationship to gender" elsewhere. *Ludlow*, 128 F.4th at 355.

All these same factors appear in cases like *Gruenke*, 225 F.3d at 307, where, after a swimming coach forced a swimmer to take a pregnancy test, the court held that school officials had no right to withhold pregnancy information from parents and whether a girl was pregnant was a "private family" affair. Or *Arnold* v. *Board of Education*, 880 F.2d 305 (11th Cir.

1989), where the court held that school officials coercing a student into having a secret abortion and hiding it from her parents violated parental rights. Whether B.F. identifies as a boy or girl is no less a "private family" affair than teen pregnancy or abortions.

II. The Lower Courts Are Relying on Myriad Incorrect Legal Approaches that Leave Parents Without Recourse to Protect Their Rights or Their Children.

The First Circuit's approach—defining away parents' fundamental rights to the point of nothingness—isn't an isolated occurrence. Indeed, courts have avoided recognizing a parent's right to direct the upbringing and education of children using a number of different legal approaches. Notwithstanding that right being "the oldest of the fundamental liberty interests recognized by this Court," *Troxel*, 530 U.S. at 65 (citing *Meyer*, 262 U.S. 390, and *Pierce*, 268 U.S. 510), some lower courts have asserted insufficient historical or legal precedent to support heightened scrutiny. Others have concluded parents lack standing to challenge schools' gender policies or that such policies are executive action and don't "shock the conscious" as would be required to violate parents' due process rights.

Refusal to Recognize Fundamental Parental Rights

A number of lower courts have dismissed parental rights cases on the grounds that the plaintiff-parents had not alleged a fundamental right when challenging gender-related school policies. These courts have mischaracterized the right at issue as relating to curriculum or administration issues as a way to avoid

recognizing parents' fundamental rights when it comes to schools secretly transitioning children.

1. In *Doe v. Delaware Valley Regional High School Board of Education*, No. 24-00107, 2024 WL 706797 (D.N.J. Feb. 21 2024), a parent challenged a school district's policy of accepting a student's asserted gender identity without parental consent and continuing to use a "preferred" name and pronouns even if the student's parent objected. The school district had begun using a masculine name for the plaintiff's daughter and took efforts to conceal her social transition from her family. The district court denied the father's request for a preliminary injunction on the grounds that he hadn't provided any precedent demonstrating that his substantive due process right "is deeply rooted in our Nation's 'history and tradition' and 'concept of ordered liberty.'" The district court narrowly defined the asserted right not as the long-recognized and fundamental parental right to make decisions concerning the care, custody, and control of their children but as the unduly specific right to "consent prior to [a school] recognizing and referring to [his daughter] as to her preferred gender." The court held that the plaintiff hadn't shown that the school board had engaged in "proactive, coercive interference" with the parent-child relationship that precedent required for finding a violation of parental constitutional rights.

2. In *Regino v. Staley*, 133 F.4th 951 (9th Cir. 2025), the Ninth Circuit was similarly reticent to recognize parents' due process rights to stop a school from secretly socially transitioning their child. Although the Ninth Circuit remanded to the trial court for a "nuanced assessment of existing precedent concerning fundamental rights for parents," the court emphasized

that a parent's right to make decisions about the care of their children "does not reside exclusively with parents and is subject to regulation by the State 'in the public interest.'" *Id.* at 965-66. The court also alluded favorably to the erroneous view adopted by other courts that gender policies are related to curriculum decisions and school administration that belong to schools and outside the realm of parental rights. *Id.* at 966.

Incorrect Standard of Review

Another way in which courts have circumvented parental rights is by applying an incorrect standard of review.

1. One example is *Littlejohn v. School Board of Leon County*, 132 F.4th 1232 (11th Cir. 2025). There, the parents sued the school board for violations of their due process rights after their daughter's school developed a "gender support plan" for her without their knowledge or consent. The plan involved using a different name and pronouns for their daughter at school while concealing this fact from the parents. A divided panel of the Eleventh Circuit held that because the school board's actions were executive in nature, the proper analysis was whether the actions "shocked the conscience"—even though a fundamental right was at issue and even though, within the "mess" of case law, there is conflicting precedent requiring a higher standard for constitutional rights. The majority opinion found the school board's actions didn't meet this standard because the defendants had not forced the child to do anything and hadn't acted with intent to injure. That a three-judge panel issued four fractured opinions reveals the unsettled nature of this area of the law.

2. *Vitsaxaki v. Skaneateles Central School District*, 771 F. Supp. 3d 106 (N.D.N.Y. 2025), is another example of how courts apply the wrong level of scrutiny to deny parents' constitutional rights, as well as mischaracterize the right at issue and misapply the standing doctrine. In *Vitsaxaki*, the district court dismissed a mother's complaint against a school district that had secretly transitioned her then-12-year-old daughter and hid that information despite the mother's repeated communications with teachers and school staff as she tried to learn why her daughter resisted going to school, was increasingly negative about herself, and was suffering anxiety. The mother switched her daughter to online schooling after finding out the truth, and the school promised there would be more open communication going forward. The school continued the deception, however, and the mother had no option but to withdraw her daughter from the school district.

The district court incorrectly applied rational basis scrutiny to reject Mrs. Vitsaxaki's free exercise claim, using a confused analysis that relied on Establishment Clause- rather than Free Exercise Clause-based reasoning and a misreading of the school's policy. The court also rejected the mother's due process claim by mischaracterizing the parental right at issue as the right "to direct *how* a public school teaches their child"—even though Mrs. Vitsaxaki didn't challenge any instruction at all. The district court's incorrect holding was ultimately based on its shocking characterization of the policy as merely akin to a "civility code."

Standing Analyses that Misconstrue the Harm

As referenced above, standing is another tool that lower courts have used to avoid ruling on or recognizing the right of parents when it comes to gender issues in the school setting.

1. In *Parents 1 v. Montgomery County Board of Education*, 78 F.4th 622 (4th Cir. 2023) (cert. denied), for example, the Fourth Circuit affirmed the district court's dismissal of a lawsuit brought by parents challenging guidelines for gender identity adopted by the Montgomery County Board of Education. The guidelines "invite[d] all students in the Montgomery County public schools to engage in gender transition plans with school Principals *without the knowledge and consent of their parents*." *Id.* at 636 (Niemeyer, J., dissenting). The majority held that the parents, whose children attended Montgomery County public schools, lacked standing. In effect, parents would never have standing to challenge the guidelines until they learned that their own children were *actually* considering gender transition. The court seemed unbothered that the guidelines hid that information from parents and applied to their children systemically.

2. Similarly, in *Parents Protecting Our Children v. Eau Claire Area School District*, 95 F.4th 501 (7th Cir. 2024) (cert. denied), the Seventh Circuit affirmed the district court's dismissal on standing grounds of a challenge brought by a group of parents to a school district policy that required teachers and school administrators to hide from parents that their children were "socially transitioning" to a new gender identity. The court found that the parents' concern over the policy wasn't an actual injury, particularly as there were no

"concrete facts" about the new policy's implementation. Again, the court's ruling requires parents to wait until after they learn that their children have suffered irreparable mental and/or physical harm under their school's policy before they can do anything. These policies are particularly insidious because they require hiding the harm from parents, enabling a greater impact on children before their parents can take action to protect them.

* * *

The lack of a coherent approach and the extraordinary disregard for parental rights underscores why this Court's guidance is needed. Parents cannot prepare for every possible game that opposing parties will play and that lower courts will adopt. More critically, the status quo leaves parents without recourse when schools seek to commandeer the parental role at times when their children most need the wisdom, guidance, and values that only parents—who know and love their children best—can provide.

CONCLUSION

Parental rights—like all fundamental rights—aren't contingent on a family's income, school district, or state of residence. The grave consequences of the First Circuit's errors "presents a question of great and growing … importance" that this Court should answer by granting certiorari. *Parents Protecting Our Children v. Eau Claire Area Sch. District*, 145 S. Ct. 14, 14 (2024) (Alito, J., joined by Thomas, J., dissenting from denial of certiorari).

Respectfully submitted, AUGUST 21, 2025

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