No. 25-77

In the Supreme Court of the United States

STEPHEN FOOTE, Individually and as Guardian and Next Friend of B.F. and G.F., Minors, et al.,
Petitioners,

v.

LUDLOW SCHOOL COMMITTEE, et al.,
Respondents.

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

BRIEF OF *AMICI CURIAE* PENNSYLVANIA SCHOOL BOARD DIRECTORS IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici are 38 school board directors[2] from 12 Pennsylvania school districts that have passed policies to ensure that the fundamental right of parents to direct the upbringing of their children is protected. In addition to being school directors, most amici are also parents and grandparents.

Unlike the actions of the Ludlow School Committee in Massachusetts, which socially transitions children without their parents' notice or consent and even over the parents' objection, amici Pennsylvania school directors believe such actions violate the fundamental rights of both religious and non-religious parents.

Amici write not only to ask this Court to resolve the issue nationwide in favor of parental rights, but also to explain how easy it is for schools to do so, as the amici's school districts have already instituted policies that protect the fundamental rights of parents in this exact context.

SUMMARY OF ARGUMENT

Parents are uniquely equipped to guide their children through complex issues like gender identity, as they provide the care, wisdom, and responsibility that only parents can. Indeed, parents are the adults who best understand their children. Schools that

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[1] No party's counsel authored any part of this brief. No person other than *amici* and their counsel contributed any money intended to fund the preparation or submission of this brief. Counsel for all parties received timely notice of the intent to file this brief.

[2] See Appendix.

exclude parents from such decisions undermine this bond and assume an inappropriate role in familial matters. Amici's policies show that respecting parental rights is straightforward, requiring only that schools defer to parents' legal authority and involve them in decisions about their child's identity.

Schools like Ludlow that treat parents as wrongdoers without evidence of abuse violate the presumption that parents act in their children's best interests. Established legal processes, such as mandatory reporting laws, exist to address genuine concerns of abuse, and schools must not bypass these safeguards to conceal information from parents.

The First Circuit's contradictory reasoning below, downplaying the significance of social transitions with regard to parental involvement but declaring these issues as critical for student safety from the perspective of the school, highlights the need for review of this case. Moreover, the split that exists between the First Circuit, where parents have virtually no rights after they enroll their children in government-run schools, and the Third Circuit, which rejects that narrow view,[3] highlights the need for consistency among the circuits.

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[3] The schools amici direct are in the Third Circuit where parental rights are strongly protected. See *C.N.* v. *Ridgewood Bd. of Educ.*, 430 F.3d 159, 184 (3d Cir. 2005) (recognizing that parents may challenge a public school's "actions that strike at the heart of parental decision-making authority on matters of the greatest importance.") See also *Gruenke* v. *Seip*, 225 F.3d 290, 307 (3d Cir. 2000) ("It is not educators, but parents who have primary rights in the upbringing of children. School officials have only a secondary responsibility and must respect these rights.")

Granting certiorari is essential to provide nationwide guidance, ensuring schools can adopt policies that protect parental rights without fear of legal misinterpretation. This will safeguard the primacy of parental authority and promote the best interests of children.

ARGUMENT

I. Government schools not only must, but easily can protect parents' fundamental right to direct the upbringing of their children in this context.

A. Parents are uniquely equipped to care for their own children.

Amici are school board directors at school districts that have instituted policies to explicitly protect the well-established fundamental right of parents. These policies ensure that material information about a minor child, including "gender transition," is not concealed from parents and that the schools do not socially transition students against a parent's wishes.

Parents are the adults who care the most about their child, spend the most time with their child, and are responsible for rearing their child. Interference with that core parent-child relationship, particularly in areas one may view, rightly or wrongly, as part of the child's "identity," separates a child from the unique wisdom, care, and understanding in that relationship. When it comes to delicate familial matters, parents are the last people who should be cut out of their child's life. Amici recognize that parental involvement at the earliest possible time promotes the best outcomes for students' mental, emotional,

and physical health and contributes to better academic success.

Amici know, both as parents and as school directors, that there are many areas of potential conflict where children might prefer their parents to be kept in the dark—a failing grade, a fist-fight with another student, trials involving bulimia or anorexia, or struggles with what it means to be male or female. However, despite discomfort, difficult conversations, and potential for disagreement, it is not the school's role to usurp the fundamental right of parents to navigate their children through disappointment and discomfort. As much as individual board members or teachers care about all their students, they are not equipped to and must not be given the prerogative to interfere with that parent-child relationship.

Growth in any relationship occurs not because of the absence of tension or avoidance of disagreement on significant matters but when those in the relationship address the difficulty together. That importance is magnified tenfold in the parent-child relationship where the parents are responsible for caring for and nurturing an immature human being along with all the physical, emotional, and even spiritual trials along that path.

A default position that treats parents as the "other," as the dangerous enemy, that encourages distrust of parents, and that tells them that the government's agents, not parents, are the safe place, is as extreme and egregious a position a government school can take.

These truths, understood by most parents, are summed up in the common-sense way of Sheriff Andy

from the fictional town of Mayberry in an episode of the Andy Griffith Show. Another adult, David Browne, was, much like the Ludlow School here, attempting to justify his meddling with the Sheriff's son, Opie, by arguing that Opie himself should be able to decide without his parent how to live:

> David Browne: Who's to say that the boy would be happier your way or mine? Why not let him decide?
>
> Sheriff Andy: Nah, I'm afraid it don't work that way. You can't let a young 'un decide for himself. He'll grab at the first flashy thing with shiny ribbons on it, then when he finds out there's a hook in it, it's too late. The wrong ideas come packaged with so much glitter, it's hard to convince him that other things might be better in the long run and all a parent can do is say, "Wait. Trust me" and try to keep temptation away.[4]

This wisdom is consistent with what this Court has recognized about the important role parents play in guiding their children, even in the face of a child's desire. "Simply because the decision of a parent is not agreeable to a child" does not "transfer the power to make that decision from the parents to some agency or officer of the state." *Parham* v. *J.R*, 442 U.S. 584, 603 (1979).

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[4] ANDY GRIFFITH SHOW: *Opie's Hobo Friend*, Season 2, episode 6 (CBS, 1961), https://www.amazon.com/gp/video/detail/B00AWMCK36/ref=atv_dp_season_select_s2.

B. Drafting policy to protect parental rights in school is easy.

In the districts represented by the amici school directors, policies ensure that the fundamental right of parents to direct the upbringing of their children is respected. These policies prevent "gender transitions" from being concealed from parents and prevent schools from participating in social transition against a parent's wishes.

Ludlow socially transitioned children without their parent's consent or even knowledge. App.81a-82a, 94a, 103a-05a. The policies at amici's schools forbid such interference with parental prerogative.

Ludlow not only refused to tell the parents that one of their children wanted to use "genderqueer" names and pronouns, App.77a-79a, 100a, staff were required to intentionally deceive parents by using the children's legal names and sex-based pronouns when speaking to parents but use the child's "genderqueer" names and pronouns elsewhere, App.79a, 89a, 102a, 104a-06a. The policies at amici's schools recognize that parents have primary responsibility over these matters and explicitly prohibit concealing such information from parents.

Once the parents discovered what was happening, school officials at Ludlow ignored parents' request to not "have any private conversations" with their daughter regarding these matters so the parents could address them "as a family and with the proper professionals." App.84a-85a, 93a-95a, 103a, 105a-06a. The policies at amici's schools forbid this because they acknowledge that parents have primary

responsibility for making those decisions for their child.

Rushing ahead of parents, deceiving them, and defying their direction not only interferes with the vital parent-child relationship but also adds immense complications later when a parent discovers what the school has done behind their back. During the concealment stage, the school positions itself as not only safe but as the child's savior and paints parents as unsafe. These impacts go beyond just the core issue and negatively impact the relationship in other areas as well.

Ensuring that schools respect parents' rights and refrain from interfering with those rights is simple in this context. It is common sense. And it is a matter of constitutional importance.

II. Parents are presumed to act in the best interest of their children. Schools have a process to follow if they believe a parent is a danger to their child that includes guardrails to protect parental rights.

The school justified its deception and disregard of parental rights based on "safety." The Superintendent claimed that "safety evaporates when they leave" school and return home, and declared parental rights a "thinly veiled . . . camouflage" for "intolerance, prejudice and bigotry. . . ." App.150a-51a. Government schools should not treat a child's parents as guilty until proven innocent. But that is precisely what Ludlow's Protocol does. Amici have passed policies, on the other hand, that simultaneously protect the fundamental rights of parents and ensure that if there is real concern of abuse, then district

employees are to follow the state's mandatory reporter laws.

The few circumstances where the government may, for a short time, hide significant information from parents because of safety concerns are fiercely protected by a process designed to protect the fundamental rights of the parent. Child abuse investigations are an unfortunate reality but follow a process where reasonable suspicion of abuse can play out. "[A] state has no interest in protecting children from their parents unless it has some reasonable and articulable evidence giving rise to a reasonable suspicion that a child has been abused or is in imminent danger of abuse." *Croft* v. *Westmoreland Cnty. Child & Youth Servs.*, 103 F.3d 1123, 1126 (3d Cir. 1997).

If a student is believed to be in real danger, teachers and school staff are required to report it. Government schools do not have the right to bypass that entire process and instead treat parents as if they are guilty and proceed to indefinitely hide information from them. "The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition." *Parham*, 442 U.S. at 603. See also *Troxel* v. *Granville*, 530 U.S. 57, 68-69 (2000) (observing that absent any finding that parents are unfit, there is seldom a reason for the state to interfere with parental decision-making).

Schools have no compelling interest in socially transitioning minors, let alone doing so without parental consent, just as schools have no compelling

interest in hiding a child's eating disorder, concussion, or failing grade on a report card from the parent, regardless of whether the child prefers their parent not be involved. In fact, a child's anticipation of a parent's concern is actually good evidence that parents are involved with their child and would want to know this information.

Schools like Ludlow are not merely exercising a general authority to teach students. None of amici's districts would take children on a field trip to a protest without consent from the parents, and the school could no more claim a general authority to teach if it were taking the child to a protest over the objection of the parents. Yet taking a child on a field trip to a protest over the objection of the parent is less egregious than the violation of fundamental parental rights that occurs by a sustained attempt to hide or to engage in the social transition of the child over the parents' objection.

Schools should not be permitted to strike at the heart of parental authority and usurp the parents' rights as they have done here. "[A] school's policies might come into conflict with the fundamental right of parents to raise and nurture their child. But when such collisions occur, the primacy of the parents' authority must be recognized and should yield only where the school's action is tied to a compelling interest." *Gruenke* 225 F.3d at 305. In *Tatel* v. *Mt. Lebanon Sch. Dist.*, 752 F. Supp. 3d 512, 554 (W.D. Pa. 2024), which held that both religious and nonreligious parents possess fundamental parental rights, the court made the following admonition:

> [P]ublic schools must not forget that "in loco parentis" does not mean "displace parents." It is not educators, but parents who have primary rights in the upbringing of children. School officials have only a secondary responsibility and must respect these rights. State deference to parental control over children is underscored by the [Supreme] Court's admonitions that the child is not the mere creature of the State, and that it is the Parents' responsibility to inculcate moral standards, religious beliefs, and elements of good citizenship.

Id. at 554 (quoting *C.N.*, 430 F.3d at 183).

Amici contend that there is no rational basis for a policy that purposefully hides "gender transition" from parents. Further, if Ludlow believed the parents were such a danger that performing social transitions upon another person's child and concealment were somehow warranted, the school at a minimum would have been required to notify their state child abuse authorities and proper due process afforded to the parents. It is unconscionable for a government school to unilaterally treat the parent as dangerous and thereby hide important information about minor children from their parents.

III. Ludlow's conduct and Protocol squarely usurp the well-established parental right to direct the care, custody, and control of one's child; a child's desire to be treated as if they were the opposite sex is not a mere "preferred educational experience."

Put the word sex on a school board agenda, and you will see otherwise empty chairs filled up with

parents with strong opinions. Simply include the words "child's identity" and the board will have to move the meeting to a bigger venue. The reason is glaringly simple: these are sensitive familial issues that matter immensely to parents.

The First Circuit vacillates back and forth between two inconsistent positions. To discount any medical or mental importance to the parent, the lower court characterizes Ludlow's Protocol as no big deal—simply a curricular and educational decision with no medical or mental importance. On the other hand, when the Court addresses Ludlow's purported interest, it characterizes the Protocol as an extremely important one—necessary for "safety," avoiding "parental backlash," and avoiding the "psychological barriers" that parent involvement might cause. *Foote* v. *Ludlow Sch. Comm.*, 128 F.4th 336, 356-57 (1st Cir. 2025). The circuit court cannot have it both ways.

Amici, school board directors who have sat through numerous meetings listening to comments from people on both sides of this ideological issue, recognize one point of agreement. Both sides agree that we are dealing with core familial matters. In other words, there is agreement that the care, custody, and control of the child is squarely at issue.

Those who support telling children that their sex is irrelevant and that their bodies should be modified to conform to their thoughts believe it is important to encourage that belief. Others recognize that even if a child is drawn towards stereotypes associated with the opposite sex, it makes them no less of a male or female. To them, the child's health and safety would be compromised by encouraging them to adopt gender

ideology. And this group also believes it is important to encourage and affirm this belief.

Regardless of whether the parent falls into the former or latter category, they share in common a belief in the fundamental right not to have such important information about their minor child hidden from them by the government.

CONCLUSION

Amici ask this Court to grant the petition for a writ of certiorari.

DATED this 20th day of August, 2025.

Respectfully submitted,

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APPENDIX

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