No. _____

In the
Supreme Court of the United States

PARENTS PROTECTING OUR CHILDREN, UA,

Petitioner,

v.

EAU CLAIRE AREA SCHOOL DISTRICT, WISCONSIN, TIM NORDIN, LORI BICA, MARQUELL JOHNSON, PHIL LYONS, JOSHUA CLEMENTS, STEPHANIE FARRAR, ERICA ZERR, and MICHAEL JOHNSON,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Eau Claire, Wisconsin School District (the "District"), like over a thousand other school districts across the country, has adopted a policy to facilitate gender identity transitions at school and to keep this hidden from parents who would disagree that it is in their child's best interest to change gender identity. The District even trained all of its staff that "parents are not entitled to know their kids' identities. That knowledge must be earned." App.80.

The plaintiff and petitioner in this case is an association of parents, all of whom have children in the District and do not want school district staff making decisions about their own children that are kept secret from them. Although they are subject to this policy and directly harmed by it, the District Court dismissed the case for lack of standing before it even got off the ground, and the Seventh Circuit affirmed.

The question presented is: When a school district adopts an explicit policy to usurp parental decision-making authority over a major health-related decision—and to conceal this from the parents—do parents who are subject to such a policy have standing to challenge it?

PARTIES TO THE PROCEEDING

Petitioner Parents Protecting Our Children, UA, the plaintiff-appellant below, is an unincorporated association of parents with children in the Eau Claire Area School District.

Respondents, defendants-appellees below, are the Eau Claire Area School District, a public school district in Wisconsin; Tim Nordin, Lori Bica, Marquell Johnson, Phil Lyons, Joshua Clements, Stephanie Farrar, and Erica Zerr, the current or former members of the school board for the District*; and Michael Johnson, the superintendent of the District.

* Respondent Phil Lyons is no longer on the school board. He has since been replaced by Jarrett Dement.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist., Wis.*, No. 3:22-cv-508 (W.D. Wis.), judgment entered February 22, 2023.

- *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist., Wis.*, No. 23-1534 (7th Cir.), judgment entered March 7, 2024.

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PETITION FOR WRIT OF CERTIORARI

This case, and the many like it, represent one of the most significant failures of the federal judicial system in our lifetime. School districts across the country—by one count, over 1,000, covering nearly 11 million students[1]—have adopted policies to facilitate minor students, often of any age, changing their gender identity at school (names, pronouns, and bathroom use) in secret from their parents. Many of these policies, like the Eau Claire School District's, prohibit teachers from discussing with parents what is happening with their own child at school and even require staff to actively hide things from parents. School is now like Las Vegas: "What happens at school stays at school." These policies have already generated over two dozen lawsuits (listed below), with many more to come.

These cases should be easy on the merits. As this Court has recognized, parents have a "fundamental constitutional right to make decisions concerning the rearing of [their] own [children]," *Troxel v. Granville*, 530 U.S. 57, 70 (2000) (plurality op.), and any attempt by a government body to "supersede parental authority" is both unconstitutional and "repugnant to American tradition." *Parham v. J. R.*, 442 U.S. 584, 603 (1979). Parental rights are "perhaps the oldest of the fundamental liberty interests recognized by this Court," *Troxel*, 530 U.S. at 65 (plurality op.), having long been "established beyond debate," *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

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[1] *List of School District Transgender – Gender Nonconforming Student Policies*, Parents Defending Education, https://bit.ly/4aiLjPW (last updated May 7, 2024).

As any parent knows, parental authority includes the right (and the solemn responsibility) to say no to children's often short-sighted desires when necessary to protect them from themselves. Indeed, even the Biden administration's recent Title IX rule runs hard away from these policies, emphasizing that "nothing in the final regulations disturbs parental rights": "When a parent and minor student disagree"—about the "name or pronouns used at school," for example—"deference to the judgment of a parent … is appropriate."[2]

While a few Plaintiffs in similar cases have won so far, in the main, federal courts have gone every which way to avoid the merits. When parents sue preemptively to prevent the school district from making secret decisions about their children, courts have dismissed their claims for lack of standing, like in this case. But when parents have had such policies applied to their child, many other federal courts have held that the defendants have immunity, or that the district's actions are not egregious enough to "shock the conscience" (a misreading of this Court's decision in *County of Sacramento v. Lewis*, 523 U.S. 833 (1998)). Other courts have confined parental rights to the facts of prior cases. And even in those cases, parents *still* have any prospective claims dismissed for lack of standing, because, of course, no parent who discovers that their school has been secretly treating their child as the opposite sex leaves their child in the district long enough to litigate the issue.

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[2] Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474, 33,821–22 (April 29, 2024).

In the meantime, while federal courts "stay on the sidelines," App.10, children are being hurt by these policies—again, and again, and again. In Florida, a school district withheld from the parents that their 12-year-old was struggling with her gender identity, until she attempted suicide. Twice.[3] Same story in Ohio—a school district withheld from parents that their daughter was struggling with gender dysphoria and that school staff were addressing her as if she were a boy, until she attempted suicide.[4] In Colorado, a school district ran an after-school club that encouraged 12-year-olds to transition and to "keep[ ] the discussions [about this] secret from parents," leading multiple girls into a "months-long emotional decline." One attempted suicide.[5] In Virginia, a school district withheld from the parents that their 14-year-old daughter had adopted a male identity and had begun using the boys' bathroom at school, for which the boys harassed her. Due to the harassment, she ran away from home—and then was kidnapped, sex trafficked, and raped repeatedly.[6] In Maine, school staff secretly gave a 13-year-old girl a chest binder,[7]

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[3] Second Amended Complaint ¶¶54–63, *Perez v. Clay Cnty. Sch. Bd.*, No. 3:22-cv-83 (M.D. Fla., filed May 31, 2023).

[4] *Kaltenbach v. Hilliard City Schs.*, No. 2:23-cv-187, 2024 WL 1831079, at *1 (S.D. Ohio Apr. 19, 2024).

[5] *Lee v. Poudre Sch. Dist.*, No. 23-cv-1117, 2023 WL 8780860, at *1–*2 (D. Colo. Dec. 19, 2023).

[6] Amended Complaint ¶¶20–67, *Blair v. Appomattox Cnty. Sch. Bd.*, No. 6:23-cv-47 (W.D. Va., filed Jan. 24, 2024).

[7] *Lavigne v. Great Salt Bay Cmty. Sch. Bd.*, No. 2:23-cv-158, 2024 WL 1975596, at *1–*2 (D. Me. May 3, 2024).

which can cause serious physical damage.[8] In multiple cases in California, school districts secretly transitioned *11-year-old* girls, harming their relationships with their families and their mental health, which they allege has required ongoing counseling.[9] In Wisconsin, parents were forced to remove their 12-year-old daughter, who was struggling with various mental-health issues, from a school that refused to respect their decision about how their daughter should be addressed. After being removed from that environment, the daughter later reflected that the "affirmation" that she was actually a boy "really messed [her] up."[10] In Michigan, New York, New Jersey, and Pennsylvania, parents have been forced to withdraw their children from public school and shoulder the expense of private school, or, if they cannot afford it, rearrange their lives to home school, when they discovered, often months after the fact, that their school district had been secretly treating their child as the opposite sex. *Infra* n.12.

This Court can right this ship now and establish that federal courts are not so anemic, but can and

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[8] Peitzmeier, et al., *Health impact of chest binding among transgender adults: a community-engaged, cross-sectional study*, 19(1) Culture, Health & Sexuality 64–75 (2017), https://doi.org/10.1080/13691058.2016.1191675.

[9] Complaint ¶¶27–56, 68–70, *Konen v. Caldeira*, No. 5:22-cv-5195 (N.D. Cal., removed Sept. 12, 2022); Complaint ¶¶38–41, *Regino v. Staley*, No. 2:23-cv-32 (E.D. Cal., filed Jan. 6, 2023).

[10] Affidavit of T.F. ¶19, *T.F. v. Kettle Moraine Sch. Dist.*, No. 21-cv-1650 (Waukesha Cnty., Wis. Cir. Ct., filed Feb. 3, 2023), *available at* https://bit.ly/3QVds8H. The daughter shares her own story here: https://www.youtube.com/watch?v=PJJdq3vW21w&t=265s.

should protect parental decision-making authority when it is so flagrantly usurped—*before* children are hurt by such policies. This Court could allow the issue to "percolate" further, as it sometimes does, but the longer it waits, the more children and families will be harmed. When a school district has an explicit policy to supersede parental authority over a major and controversial health-related decision *and to conceal this from parents when the issue arises*, parents are immediately harmed; they have lost their control over this critical decision. Courts can remedy that harm by declaring such policies unconstitutional, enjoining school districts from applying them, and requiring schools to defer to parents, as they do for every other major decision involving a minor child.

This Court should take this case to establish that parents subject to such policies have standing to challenge them. If they do not, federal standing law has truly gone off the rails.

OPINIONS BELOW

The Seventh Circuit's opinion is reported at 95 F.4th 501 and reproduced at App.1–10. The district court's order dismissing the case is reported at 657 F.Supp.3d 1161 and reproduced at App.11–37.

JURISDICTION

The Seventh Circuit issued its opinion on March 7, 2024. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Article III, §2, cl. 1, provides, in relevant part, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution …"

The Fourteenth Amendment, §1, provides, in relevant part, "No state shall … deprive any person of life, liberty, or property, without due process of law …"

STATEMENT OF THE CASE

Because this case was dismissed on a motion to dismiss, the allegations of the complaint must be taken as true. *E.g.*, *Tyler v. Hennepin Cnty., Minnesota*, 598 U.S. 631, 636 (2023).

A. Secret Gender Identity Transitions Can Cause Long-Term Harm to Children

The complaint alleged that, for a variety of reasons, "[m]any experts believe that facilitating a transition and treating a child as if he or she is the opposite sex by using a different name and pronouns can do long-term harm to the child by reinforcing a false belief, causing that belief to set in and reducing the likelihood that the child will find comfort with his

or her body." App.49 ¶52. "[T]he vast majority of children who struggle with their gender identity or experience gender dysphoria ultimately resolve to comfort with their biological sex, *if* they do not transition." App.48 ¶50. Thus, "many experts recommend *against* 'affirmation' and an immediate transition, and instead believe the appropriate first response is to help children dealing with these issues to process and understand what they are feeling and why." App.48 ¶51.

Moreover, "[t]here is no good evidence at this point about the long-term implications of a transition during childhood," App.51 ¶62, so "treating children as if they are the opposite sex is effectively a psychosocial experiment on children," App.51 ¶63. It "is also a form of psychosocial medical/psychological treatment." App.51 ¶64.

"Parents have no way to know, in advance, if or when their children will begin to wrestle with their gender identity, experience discomfort with their biological sex, or experience gender dysphoria," App.51 ¶58, and "[t]he first indications … may arise at school, unbeknownst to parents," App.51 ¶59, as illustrated by the many cases around the country discussed above and below where those are the facts.

If this case ever makes it past a motion to dismiss, Petitioner will be able to support these allegations with expert evidence, as others have done in related cases. *E.g.*, *Mirabelli v. Olson*, __ F.Supp.3d __, No. 3:23-cv-768, 2023 WL 5976992, at *5–*7 (S.D. Cal. Sept. 14, 2023) (summarizing the testimony of Dr. Erica E. Anderson, a transgender psychologist and former board member of the World Professional Association for Transgender Health (WPATH)).

B. The District's Policy to Facilitate Secret Transitions at School

The Eau Claire Area School District's policy challenged in this case allows children to change their "gender identity" at school, including name, pronouns, and bathroom/locker room use, without notice to their parents or their consent. App.43–59 ¶¶31, 33, 44, 96, 113. And it applies to children of *any age*. App.44 ¶34. The policy defines "transgender" students as any who "assert[ ] a gender identity or gender expression at school … that is different from the gender assigned at birth." App.64. It allows children to select any "name and pronouns desired by the student," App.65, and requires all staff to "respect the right of [a child] to be addressed by a name and pronoun that correspond[ ] to [his or her asserted] gender identity," without parental notification or consent. App.67. The District further requires that "[a]ccess [to restrooms and locker rooms] should be allowed based on the *gender identity* … expressed by the student." App.66. (emphasis in original).

None of this requires parental notice or consent under the policy. App.43–44 ¶31; App.64–71. Indeed, the policy provides that "[s]ome transgender, non-binary, and/or gender-nonconforming students are not 'open' at home for reasons that may include safety concerns or lack of acceptance," and on that basis directs staff to "speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent/guardian." App.44 ¶32; App.66. The policy also emphasizes that "[p]rotecting the privacy of transgender, non-binary, and/or gender non-conforming students … must be a top priority for …

all staff" and that "[a]ll student … information shall be kept strictly confidential." App.67–68.

When a child expresses a desire to transition at school, the District's policy sets forth a process whereby school staff will meet with the child "to develop a specific Student Gender Support Plan," covering how the child will be addressed at school, what restrooms and locker rooms the child will use, and even where the child will sleep on overnight trips. App.65–67 (describing the process); App.72–77 (the "Gender Support Plan" form). Two of the questions on the form are whether the parents/guardians are "aware of their child's gender status" and their child's "requests at school," App.73, further demonstrating that the District has claimed for itself and its staff the ultimate authority to make these critical decisions without parental notice or consent.

The top of the form indicates that the only criteria for excluding parents from this process is a "student stat[ing] [that] they do not want [their] parents to know." App.72. In other words, if a child wants to keep their gender transition at school secret from their parents, the District will happily oblige; what happens at school stays at school.

The District has even trained its staff that "*parents are not entitled to know their kids' identities,*" but must "earn" that knowledge. App.45 ¶36, App.80. The same training is also overtly antagonistic toward religious parents. The facilitator's notes remind the facilitator that while parents' objections will most likely come from religious parents, not all religion is the problem. Instead, the "weaponization of religion against queer people" is the problem. App.45 ¶37, App.80–81. In another online training, the narrator states: "We

handle religious objections too often with kid gloves" and if parents have a "faith-based rejection of their student's queer identity," then staff "must not act as stand-ins for oppressive ideas/behaviors/attitudes, even and especially if that oppression is coming from parents." App.46 ¶39, App.82. In other words, the whole point of the secrecy policy is to circumvent parents who, based in part on their core religious beliefs, would not immediately affirm that their child is really the opposite sex.

Notably, the District *does* require parental consent to change a child's name in the District's *official* records. App.68 (Part IV.b of the policy). That is because, consistent with parental rights, federal FERPA regulations only allow *parents* (or students over 18) to request changes to education records. 34 CFR §§ 99.20(a); 99.3 (definition of "eligible student"), *see also id*. § 99.4 ("rights of parents"). But the policy emphasizes, in italics, that "*the student need not change their official records*" to change name and pronouns at school. App.44 ¶33; App.67. And the District will even change "no[n] legal documents," like "Student ID cards," without parental notice or consent. App.68.

In all other circumstances, the District recognizes that children cannot consent to significant decisions at school, like medication. Board Policy 5330,[11] entitled "Administration of Medication/Emergency Care," mandates prior written parental consent before medication may be provided to children by school staff. In other words, the District claims for itself and

[11] Available at https://go.boarddocs.com/wi/ecasd/Board.nsf/goto?open&id=CXDGED428BCB

its staff the power and discretion to secretly facilitate a child's gender transition, a powerful form of psychosocial medical/psychological treatment, App.50–51 ¶¶55, 64, but recognizes it cannot provide that same child with a dose of ibuprofen or Benadryl without parental consent.

C. Petitioner's Members Are the Primary Targets of the District's Policy

Petitioner is an unincorporated association of parents, all of whom have children in the Eau Claire Area School District and do not want the District "mak[ing] health-related decisions for their child." App.40, 54 ¶¶6, 83. Given how the policy is structured, Petitioner's members are "prevent[ed] … from knowing if the school has already applied this policy to their children." App.53–54 ¶¶75, 82.

Most of Petitioner's members also have sincerely held religious beliefs that there are only two sexes, that their children were born either male or female, and that sex is immutable and a gift from God. App.55 ¶¶90–91. As a direct result of these beliefs, these parents would not immediately "affirm" whatever beliefs their children might have about their gender but would instead remind them that they were "fearfully and wonderfully made," *see* Psalm 139:14, and seek to help them identify and address the underlying causes of their discomfort with their body and learn to accept and embrace their God-given sex. App.56 ¶92. While they would never stop loving their children no matter what their children might believe about their gender, these parents would select a treatment approach that is consistent with their beliefs and does not involve a social transition. App.56 ¶¶93, 96. As outlined above, the District's policy, and

its training on that policy, specifically targets religious parents, like Petitioner's members, who would not consent to socially transition their children to an opposite-sex identity.

D. Procedural Background

Petitioner filed this case on September 7, 2022, raising claims under the Fourteenth Amendment's due process clause, the First Amendment's free exercise clause, the state analogues to both, and the PPRA (Protection of Pupil Rights Amendment, 20 U.S.C. §1232h). App.53–62. On February 21, 2023, the District Court partially granted Respondents' motion to dismiss, concluding that Petitioner's members lacked standing, and entered judgment the following day. App.11–37. The court relied heavily on its view that there was no injury because the complaint does not allege that the District has yet secretly transitioned any of Petitioner's members' children—even though it does allege that Petitioner's members are prevented from knowing whether the policy has been applied to their children, due to the secrecy built into the policy. App.53–54 ¶¶75, 82.

Petitioner appealed, and the Seventh Circuit affirmed in a decision and order entered on March 7, 2024. App.1–10. The court did not engage with most of Petitioner's arguments for standing, but instead, like the District Court, relied entirely on the lack of any allegation that the policy has already been applied to one of Petitioner's members' children. App.8.

REASONS FOR GRANTING THE PETITION

I. This Issue Is Dividing Lower Courts Across the Country in Many Directions, and Standing Is One of the Main Obstacles Courts Are Using to Evade the Merits

As noted above, there have now been nearly 30 lawsuits with the same basic facts as this case—a challenge to a school district policy to hide gender identity transitions at school from parents.[12]

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[12] *Doe v. Madison Metro. Sch. Dist.*, No. 20-cv-454 (Dane Cnty., Wis., Cir. Ct., filed Feb. 18, 2020); *John and Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, No. 8:20-cv-3552 (D. Md., removed to federal court on Dec. 7, 2020); *Littlejohn v. Sch. Bd. of Leon Cnty., Fla.*, No. 4:21-cv-415 (N.D. Fla., filed Oct. 18, 2021); *T.F. v. Kettle Moraine Sch. Dist.*, No. 21-cv-1650 (Waukesha Cnty., Wis. Cir. Ct., filed Nov. 11, 2021); *Perez v. Broskie*, No. 3:22-cv-83 (M.D. Fla., filed Jan. 24, 2022); *Doe v. Manchester Sch. Dist.*, No. 216-2022-cv-117 (N.H. Sup. Ct., filed Mar. 3, 2022); *Ricard v. USD 475 Geary Cnty., KS Sch. Bd.*, 5:22-cv-4015 (D. Kan., filed Mar. 7, 2022); *Foote v. Ludlow Sch. Comm.*, No. 3:22-cv-30041 (D. Mass., filed April 12, 2022); *D.F. v. Sch. Bd. of the City of Harrisonburg, Va*, No. CL22001304-00 (Rockingham Cnty., Va., Cir. Ct., filed June 1, 2022); *Konen v. Caldeira*, No. 5:22-cv-5195 (N.D. Cal., removed to federal court on Sept. 12, 2022); *Thomas v. Loudoun Cnty. Pub. Schs.*, No. CL22003556-00 (Loudoun Cnty., Va., Cir. Ct., filed June 29, 2022); *Parents Defending Educ. v. Linn-Mar Cmty. Sch. Dist.*, No. 1:22-cv-78 (N.D. Iowa, filed Aug. 2, 2022); *Regino v. Staley*, No. 2:23-cv-32 (E.D. Cal., filed Jan. 6, 2023); *Kaltenbach v. Hilliard City Schs.*, No. 2:23-cv-187 (S.D. Ohio, filed Jan. 16, 2023); *Doe v. Washoe Cnty. Sch. Dist.*, No. 3:23-cv-129 (D. Nev., filed Mar. 27, 2023); *Lavigne v. Great Salt Bay Cmty. Sch. Bd.*,

A few of these cases have won or partially won preliminary injunctions.[13] And the reasoning in them is straightforward: As one court put it, "elevating a child's gender-related choices to that of paramount importance, while excluding a parent from knowing of, or participating in, that kind of choice, is as foreign to federal constitutional and statutory law as it is medically unwise." *Mirabelli*, 2023 WL 5976992 at *5–*9. Or, as another put it: "[W]hether the District likes it or not, that constitutional right includes the right of a parent to have an opinion and to have a say in what a minor child is called and by what pronouns they are referred." *Ricard*, 2022 WL 1471372 at *8.

Oddly, however, most of the successful cases so far were brought by *teachers*, who are compelled to lie to

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No. 2:23-cv-158 (D. Me., filed Apr. 4, 2023); *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees*, No. 1:23-cv-69 (D. Wyo., filed April 20, 2023); *Mirabelli v. Olson*, No. 3:23-cv-768 (S.D. Cal., filed April 27, 2023); *Lee v. Poudre Sch. Dist. R-1*, No. 1:23-cv-1117 (D. Co., filed May 3, 2023); *McCord v. S. Madison Cmty. Sch. Corp.*, No. 1:23-cv-866 (S.D. Ind., filed May 18, 2023); *Blair v. Appomattox Cnty. Sch. Bd.*, No. 6:23-cv-47 (W.D. Va., filed Aug. 22, 2023); *Short v. N.J. Dep't of Educ.*, No. 1:23-cv-21105 (D. N.J., filed Oct. 12, 2023); *Walden v. Mesa Unified Sch. Dist.*, No cv2023-018263 (Maricopa Cnty., Ariz. Super. Ct., filed Nov. 20, 2023); *Mead v. Rockford Pub. Sch. Dist.*, No. 1:23-cv-1313 (W.D. Mich., filed Dec. 18, 2023); *Doe v. Del. Valley Reg'l High Sch. Bd. of Educ.*, No. 3:24-cv-107 (D. N.J., filed Jan. 5, 2024); *Doe v. Pine-Richland Sch. Dist.*, No. 2:24-cv-51 (W.D. Pa., filed Jan. 12, 2024); *Vitsaxaki v. Skaneateles Cent. Sch. Dist.*, No. 5:24-cv-155 (N.D. N.Y., filed Jan. 31, 2024); *Landerer v. Dover Area Sch. Dist.*, 1:24-cv-566 (M.D. Pa., filed Apr. 3, 2024).

[13] *Mirabelli*, 2023 WL 5976992; *Ricard v. USD 475 Geary Cnty., KS Sch. Bd.*, No. 5:22-cv-4015, 2022 WL 1471372 (D. Kan. May 9, 2022); *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees*, 680 F. Supp. 3d 1250 (D. Wyo. 2023).

parents by these policies and who challenged them on First Amendment grounds.[14] That teachers have been more successful than parents should be the first sign that something is seriously off, given that parents are the primary injured parties.

But when parents have challenged these policies to ensure that they are not secretly excluded from decisions involving their own children, their cases are being dismissed for lack of standing.[15]

Parents who have had one of these policies applied to their child, on the other hand, are finding various other obstacles to vindicating their constitutional rights. Any prospective claims are *still* dismissed for lack of standing, because, of course, parents who discover that their school district has secretly transitioned their child immediately withdraw their child from the school district.[16] And, with respect to retrospective claims for damages, courts have held

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[14] *Mirabelli*, 2023 WL 5976992 at *1; *Ricard*, 2022 WL 1471372 at *1.

[15] *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 626 (4th Cir. 2023); *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist., Wisconsin*, 95 F.4th 501, 503 (7th Cir. 2024); *Kaltenbach v. Hilliard City Schs.*, No. 2:23-cv-187, 2024 WL 1831079, at *3–*4 (S.D. Ohio Apr. 19, 2024) (dismissing parent-plaintiffs who sued to stop the policy from being applied to their children) (on appeal to the Sixth Circuit); *Doe v. Pine-Richland School District*, No. 2:24-cv-51, 2024 WL 2058437, at *4–*5 (W.D. Pa. May 7, 2024); *see also Parents Defending Educ. v. Linn-Mar Cmty. Sch. Dist.*, 629 F. Supp. 3d 891, 907 (N.D. Iowa 2022) (denying preliminary injunction motion largely on standing grounds), *opinion vacated, appeal partially dismissed as moot due to new state law prohibiting such policies*, 83 F.4th 658 (8th Cir. 2023).

[16] *See, e.g.*, *Lee*, 2023 WL 8780860, at *7.

that hiding a school-facilitated gender transition from the parents is not egregious enough to "shock the conscience,"[17] or that the defendants are entitled to qualified immunity.[18]

A few courts have rejected parents' claims on the merits, but even these vary in rationale. One relied primarily on the lack of any case (yet) directly on point[19] (because, of course, school districts have never done this sort of thing until recently). Another compared secret gender-identity transitions at school to a "curriculum" decision, an obviously inapt analogy.[20] Still another narrowly interpreted parents' constitutional rights as limited to preventing the government from "'requiring or prohibiting some activity' by the parents"—but apparently still allowing the government to usurp parents' decision-making authority over significant decisions.[21]

Of the nearly 30 cases, only one case so far has reached a final decision on the merits protecting parental rights—and it was a state court (though it

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[17] *Littlejohn v. Sch. Bd. of Leon Cnty. Fla.*, 647 F. Supp. 3d 1271 (N.D. Fla. 2022) (on appeal to the Eleventh Circuit); *Foote v. Town of Ludlow*, No. 3:22-cv-30041, 2022 WL 18356421 (D. Mass. Dec. 14, 2022) (on appeal to the First Circuit).

[18] *Foote*, 2022 WL 18356421, *8; *Lavigne*, 2024 WL 1975596; *Lee v. Poudre Sch. Dist. R-1*, No. 23-cv-1117, 2024 WL 2212261, at *8–*11 (D. Colo. May 16, 2024).

[19] *Regino v. Staley*, No. 2:23-cv-32, 2023 WL 4464845, at *3 (E.D. Cal. July 11, 2023) (on appeal to the Ninth Circuit).

[20] *Lee*, 2023 WL 8780860, at *7–*12.

[21] *Doe v. Del. Valley Reg'l High Sch. Bd. of Educ.*, No. 3:24-cv-107, 2024 WL 706797, at *6–*12 (D. N.J. Feb. 21, 2024) (citation omitted).

invoked many federal cases and applied the same principles). *See* Decision and Order, *T.F. v. Kettle Moraine Sch. Dist.*, No. 21-CV-1650 (Waukesha Cnty., Wis. Cir. Ct., Oct. 3, 2022).[22] Again, the reasoning is straightforward and obviously correct: "The School District could not administer medicine to a student without parental consent. The School District could not require or allow a student to participate in a sport without parental consent. Likewise, the School District [cannot] change the pronoun of a student without parental consent without impinging on a fundamental liberty interest of the parents." *Id.* at 12.[23]

Are federal courts so inadequate to the task of addressing the most blatant and widespread violation of parents' constitutional rights in our time (perhaps ever)? Is federal standing law so constrained that when a school district openly declares what it will do when a child expresses a desire to transition—that it will not only make the decision for parents about whether that is in the child's best interest, but will also hide it from them—parents are powerless to challenge that policy until after their children have been harmed by it, hope they discover it, and even then, good luck overcoming all the other obstacles?

This Court should take this case to establish that parents subject to such a policy are harmed by it and

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[22] *Available at* https://will-law.org/wp-content/uploads/2023/10/94-2023-10-03-Decision-and-Order.pdf.

[23] Notably, the court relied in part on expert evidence from two well-renowned experts that socially transitioning a child is a "powerful psychotherapeutic intervention." *Id.* at 2–3; 9–10. When cases are dismissed at the pleading stage, as here, parents have no opportunity to present that kind of evidence.

have standing to challenge it. Doing so will have an immediate, nationwide impact, and will force lower courts to finally begin grappling with whether public schools can facilitate and hide social transitions at school from the parents. This Court can leave the merits for another day, but the standing question is critically important in its own right, because if parents do not have standing to challenge such policies until after their children are hurt by them, they have no way to protect their children and preserve their decision-making authority except to remove their children from public schools preemptively, which many parents cannot afford.

II. The Lower Courts' Decisions Are Inconsistent With Multiple Strands of This Court's Standing Jurisprudence

This Court has warned against "mak[ing] standing law more complicated than it needs to be." *Thole v. U. S. Bank N.A.*, 590 U.S. 538, 547 (2020). There are only three basic requirements: injury, causation, and redressability. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023). Petitioner's members[24] are presently injured by the District's policy, in multiple ways, as explained below; those injuries are directly caused by the District's policy; and declaratory and injunctive relief—prohibiting the District from applying its policy and requiring it to defer to parents about

[24] There are additional requirements for associational standing, *Students for Fair Admissions,* 590 U.S. at 199, but none are in dispute in this case. App.6–7. The only question is whether Petitioner's members, as parents of children in the District who are subject to the policy, have standing. *Id.*

gender-identity transitions—would redress those injuries.

Petitioner's members have standing under at least five different strands of this Court's standing jurisprudence:[25]

1. First, Petitioner's members are presently injured by the loss of control—the loss of their exclusive decision-making authority—over whether a gender identity transition is in their child's best interest. Petitioner's claim is that they have a constitutional right to make decisions with respect to their own minor children and that the District has transferred that authority to itself. This prevents Petitioner's members from saying "no" to a transition, because the District will always say "yes" and will hide that decision from the parents when it occurs. Put differently, if parental consent is a prerequisite, parents can prevent a transition by doing nothing. And they can have confidence that no transition at school has occurred. Without parental notice and consent, on the other hand, parents have no way to stop a transition at school.

This Court has long framed parental rights in terms of parents' decision-making authority over their own minor children. *Parham v. J. R.*, 442 U.S. 584, 602 (1979); *Troxel*, 530 U.S. at 72–73 (plurality op.); *Yoder*, 406 U.S. at 232. And it is the "decisional framework" that matters—the government must

[25] Petitioner raised all of these arguments before the Seventh Circuit, but this Court will not find any discussion of any of them in the Seventh Circuit's decision. *See* Appellant's Br. (App. Dkt. 23) 21–42, *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist., Wis.*, No. 23-1534 (7th Cir., filed May 1, 2023).

apply a "presumption that a fit parent will act in the best interest of his or her child," *Troxel*, 530 U.S. at 69 (plurality op.), and may only override parents after providing procedural due process and a sufficiently high substantive standard, such as "clear and convincing evidence" of harm or abuse, *id.*; *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). The government may not "transfer the power to make [a] decision from the parents to some agency or officer of the state," "[s]imply because the decision of a parent is not agreeable to a child or because it involves risks." *Parham*, 442 U.S. at 603.

Yet that is exactly what the District has done through its policy—it has "transfer[red] the power to make [the] decision" about whether a minor child should transition to a different gender identity from the parents to school staff and the children themselves. *Id.* That transfer of decision-making power violates the members' constitutional right and is sufficient injury, by itself, for Article III standing. It is a "harm[ ] specified by the Constitution itself." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021).

This Court has already recognized that the arrogation of an exclusive authority is an injury sufficient for standing. In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787, 800 (2015), the Arizona Legislature challenged an amendment to the Arizona Constitution that transferred "redistricting authority from the Arizona Legislature and vest[ed] that authority in an independent commission." 576 U.S. at 792. The Legislature's claim was that "the Elections Clause vests in it 'primary responsibility' for redistricting," such that the Legislature "must have at least the

opportunity to engage (or decline to engage) in redistricting before the State may involve other actors in the redistricting process." *Id*. at 800. Arizona's constitutional amendment, however, "g[ave] [an independent body] binding authority over redistricting, regardless of the Legislature's action or inaction, strip[ping] the Legislature of its alleged prerogative to initiate redistricting." *Id*. Although the Court ultimately rejected the claim on the merits, *id*. at 804–24, it held that the Arizona Legislature had standing to bring this claim because "th[e] asserted deprivation"—the loss of "'primary responsibility' for redistricting"—was an injury that "would be remedied by a court order enjoining the enforcement of [Arizona's constitutional amendment]." *Id*. at 800.

This case mirrors that one. The claim is that parents have the "primary responsibility" for decisions involving their own children, yet the District's policy "strip[s] [them] of [their] alleged prerogative" to decide whether a gender identity transition is in their child's best interest. *Id*. And the policy allows "other actors"—school officials—to make this decision for them, "regardless of the [parent]'s action or inaction," *id*., and then to hide it from them. And this transfer of decision-making authority "would be remedied by a court order enjoining the enforcement of [the District's policy]." *Id*.

Judge Niemeyer, in his dissent in *John & Jane Parents 1*, got it exactly right: These policies are "effectively a nullification of the constitutionally protected parental rights," by "granting the school the prerogative to decide what kinds of attitudes are not sufficiently supportive for parents to be permitted to have a say in a matter of central importance in their

child's upbringing." 78 F.4th at 646 (Niemeyer, J., dissenting).

2. Second, this Court has also recognized that parents have standing to challenge a school policy to which they and their children are subject. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718–20 (2007). The parents there challenged a racially discriminatory admission policy, and this Court held that they had standing even though there was no guarantee the policy would be applied to any particular child, because race only served as a tiebreaker for admission to certain "oversubscribed" schools. *Id.* at 718.

The school district argued the parents "can[not] claim an imminent injury," because they would "only be affected if their children seek to enroll in a Seattle public high school and choose an oversubscribed school that is integration positive," triggering the racial tiebreaker. *Id.* This Court brushed this argument aside as "unavailing." It emphasized, *first and foremost*, that the parents all "have children in the district's elementary, middle, and high schools," are subject to the policy, and therefore "may be 'denied admission to the high schools of their choice when they apply for those schools in the future,'" pursuant to the policy. *Id.* (emphasis added). The fact that "[some] children of group members will not be denied admission to a school based on their race—because they choose an undersubscribed school or an oversubscribed school in which their race is an advantage—does not eliminate the injury claimed." *Id.* at 718–19. Like there, Petitioner's members all have children in District schools and are subject to a policy that, on its face, violates parents' constitutional rights. *See also Zorach v. Clauson*, 343 U.S. 306, 309

n.4 (1952) (finding "[n]o [jurisdictional] problem" to a challenge to the New York City schools' "released time" program because the challengers were "parents of children currently attending schools subject to the released time program.").

The District Court distinguished *Parents Involved* as relying on a conclusion that "*every* student enrolled in the school district would be 'forced to compete in a race-based system that may prejudice' them." App. 29 (emphasis in original). But that reads the case too narrowly; that was an *alternative* and secondary injury sufficient for standing. 551 U.S. at 719 ("*Moreover*, Parents Involved *also* asserted an interest in not being forced to compete…"). The main point this Court emphasized relative to standing was that "the group's members have children in the district's elementary, middle, and high schools," and sought "declaratory and injunctive relief" against a policy they were subject to that "may" affect them "in the future." *Id.* at 718. The same is true here, except that Petitioner's members' standing is even more compelling than it was in *Parents Involved*, given the secrecy from parents, preventing them from knowing when the policy has been applied to their children.

Again, Judge Niemeyer got it exactly right: "As in *Parents Involved*, the [p]arents in this case have alleged (1) that the school has implemented a policy with systemic effects that reach all enrolled students and their families; (2) that the [p]arents are forced into this systemic policy; and (3) that the policy causes them constitutional injury." *John & Jane Parents 1*, 78 F.4th at 642 (Niemeyer, J., dissenting).

3. Third, in a series of cases, this Court has recognized that an "inability to obtain information" to

which one is entitled is a cognizable "injury in fact" for purposes of Article III standing. *See Fed. Election Comm'n v. Akins*, 524 U.S. 11, 21 (1998); *Spokeo v. Robins*, 578 U.S. 330, 342 (2016); *Public Citizen v. U.S. Dep't of Just.*, 491 U.S. 440, 449 (1989). Separate from the transfer of decision-making authority, the District's policy also directly—and presently—denies Petitioner's members' access to information about their own children to which they are entitled—namely *prior* notice before the District socially transitions their children or implements a Gender Support Plan for them.

It is firmly established that parents have a constitutional right to remove their children from public school. *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 531 (1925). Petitioner's members do not want the adults around their young children for most of the day treating their children as the opposite sex. App.56 ¶92. If this were happening, it would be directly relevant to whether they continue to send their children to public school; yet the District's policy denies parents information they need to make that decision. Petitioner's ultimate claim is that parents have a constitutional right to make the decision about whether a social transition is in their child's best interest. But parents *at the very least* have a right to be *notified* before District staff begin treating their child as the opposite sex so that they can pull their child from school if this is happening, as they indisputably have the right to do. Without prior notice, Petitioner's members cannot know if the policy has already been or is currently being applied to their children. App.53–54 ¶¶75, 82.

As they argued below, Petitioner's members have a right to prior notice not only as a constitutional

matter, but also under federal law, namely the Protection of Pupil Rights Amendment (or "PPRA"), 20 U.S.C. §1232h. The PPRA gives parents the right to notice before their child is subjected to a "survey" (defined in subsection (c)(6)(G) to also include an "evaluation") that reveals "mental or psychological problems of the student," "sex behavior or attitudes," or "critical appraisals" of "close family." *Id.* §§1232h(c)(1)(B), (c)(2)(C)(ii). The District's Gender Support Plan form fits squarely into this definition. The PPRA further requires school districts to allow parents to opt their children out of all such surveys. *Id.* §1232h(c)(2)(A)(ii). The policy facially deprives Petitioner's members of their statutory rights, which presently harms them by making it impossible for them to withhold consent from the application of the Gender Support Plan process to their children.[26]

The denial of this right to information, protected by the Constitution and by statute, constitutes concrete harm under *Spokeo*, *Public Citizen*, and *Akins*.

4. Fourth, the very existence of a policy inviting minor students to keep secrets from their parents harms the parent-child relationship, which this Court has held is constitutionally protected. *See Quilloin v. Walcott*, 434 U.S. 246, 255 (1978). Again, the District's policy "encourage[s]" "transgender, non-binary, and/or gender-nonconforming student[s]" to "contact a staff

[26] Parents may "presumptively" rely on § 1983 to enforce the informational and opt-out rights "unambiguously" conferred by the statute. *See Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 172 (2023).

member" about gender transitions. App.65. Undoubtedly this has been and is being communicated to students, as discovery will likely show if this case proceeds past a motion to dismiss. Indeed, consistent with its training to teachers that "parents are not entitled to know their kids' identities," App.80, at least one teacher has put up a sign in her classroom that reads, "[i]f your parents aren't accepting of your identity, I'm your mom now." App.47–48 ¶48.

As Petitioner alleges, the District's "policy and practices make [it] more likely [that] students struggling with these issues [will] come to teachers first," rather than their parents, by "openly encouraging" this. App.51 ¶60. The existence of the policy alone directly harms parent-child relationships by communicating to minor students that secrets from their parents—including an entire double life at school—are not only acceptable but will be facilitated by the District upon request.

5. Even if all of the above is wrong, this Court has not entirely foreclosed standing based on a future risk of harm. Rather, it has expressly recognized that "a person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial." *TransUnion LLC*, 594 U.S. at 435; *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013). Indeed, that is the very point of "forward-looking, injunctive relief"—to "prevent the harm from occurring." *TransUnion LLC*, 594 U.S. at 435.

If some "substantial risk" cases are justiciable, a complaint that alleges a substantial risk must be allowed to proceed past a motion to dismiss so that the plaintiff can present evidence to support the magnitude and likelihood of the risk. And Petitioner's complaint contains more than sufficient allegations of a substantial risk. Petitioner's complaint alleges that:

1. A secret gender-identity transition at school can cause "long-term harm" to children. App.49–51 ¶¶52, 61.

2. Social transitions are a "psychosocial experiment on children," with as-yet-unknown "long-term implications." App.51 ¶¶62–63.

3. Gender dysphoria can be a "serious mental-health condition" that "urgently need[s] professional support"—as demonstrated by the cases described above involving suicide attempts. App.52 ¶¶67–68.

4. A child's struggle with gender identity can "arise [first] at school, unbeknownst to parents," who have "no way to know, in advance, if or when their children" will experience this, App.51 ¶¶58–59, as has now happened in numerous cases around the country.

5. The District's "policy and practices make this more likely by openly encouraging students struggling with these issues to come to teachers first." App.51 ¶60.

6. The policy "prevent[s] [Petitioner]'s members from knowing if the school has already applied this policy to their children." App.53–54 ¶¶75, 82.

7. As outlined above, the District's policy, and training on its policy, specifically targets parents who would say no to a transition for religious reasons, like most of Petitioner's members would. *Supra* Background Part C.

If all of that is not enough to make it past a motion to dismiss on a "substantial risk" theory, it is hard to see what would be sufficient. Both the District Court and the Seventh Circuit failed to take these allegations as true and to "construe the complaint in favor of the complaining party," *Warth v. Seldin*, 422 U.S. 490, 501 (1975), as is required at the motion-to-dismiss stage.

CONCLUSION

This Court should grant the Petition.

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Respectfully submitted,

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