No. 23-1280

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

BRIEF OF THE COMMONWEALTH OF VIRGINIA AND 15 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

JASON S. MIYARES
Attorney General of Virginia

BRENDAN T. CHESTNUT
Deputy Solicitor General

ERIKA L. MALEY
Solicitor General
Counsel of Record

KEVIN M. GALLAGHER
Principal Deputy Solicitor General

OFFICE OF THE VIRGINIA ATTORNEY GENERAL
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071
emaley@oag.state.va.us

Counsel for Amicus Curiae *the Commonwealth of Virginia*

(Additional Counsel listed on Signature Page)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTERESTS OF *AMICI CURIAE* [1]

Amici curiae are the Commonwealth of Virginia, the State of Alaska, the State of Florida, the State of Georgia, the State of Idaho, the State of Louisiana, the State of Missouri, the State of Montana, the State of Nebraska, the State of North Dakota, the State of Oklahoma, the State of South Carolina, the State of South Dakota, the State of Texas, the State of Utah, and the State of West Virginia (collectively, the *Amici* States). *Amici* States have a compelling interest in protecting parents' fundamental right to make decisions about "the care, custody, and control of their children." *Troxel* v. *Granville*, 530 U.S. 57, 65 (2000) (plurality op.). In fact, many *Amici* States have constitutional or legal protections for parents' rights enshrined in state law. This case presents the opportunity for this Court to reiterate that government officials cannot interfere with this right—"perhaps the oldest of the fundamental liberty interests recognized by" this Court—just because the government officials believe that they know better. *Ibid.* *Amici* States have a compelling interest in ensuring that their political subdivisions and school boards refrain from violating foundational protections for parents.

INTRODUCTION AND SUMMARY OF ARGUMENT

Article III's standing requirement has been "memorably" distilled to requiring plaintiffs "to first answer a basic question: 'What's it to you?'" *Food & Drug*

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[1] Under Supreme Court Rule 37.2(a), *amici curiae* notified counsel of record of their intent to file this brief at least 10 days prior to the due date for the brief.

Admin. v. *Alliance for Hippocratic Med.*, 602 U.S. 367, 379 (2024) (quoting A. Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 882 (1983)).

The answer in this case is plain. Parents have a deep and abiding interest in their right to "make decisions concerning the care, custody, and control of their children." *Troxel* v. *Granville*, 530 U.S. 57, 66 (2000) (plurality op.). When school officials interfere with that right, the parents are injured.

The Seventh Circuit below concluded otherwise. The court held that the parents challenging a school's gender transition policy had not asserted a concrete injury because they did not allege that the policy had been applied to their students. This conclusion, however, is based on an erroneously cramped view of parental rights and this Court's precedents. The parent-child relationship is directly harmed when a school district tells "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." App. 7. The district's policy also hopelessly conflicts with constitutionally protected parental rights. Parents, not administrators, have the responsibility and right to raise their children.

The Seventh Circuit's decision thus contributes to a rapidly-expanding—and increasingly confusing—area of law. Gender transition policies like the one at issue in this case have proliferated around the country. Unsurprisingly, so has litigation over these policies. Judicial decisions arising from these challenges are a jumbled mess, with many courts evicting parents from the courthouse on standing grounds, and

few reaching the merits to protect parents' rights. This Court's intervention is needed to bring clarity, before more parents and children are injured.

BACKGROUND

Respondents issued Administrative Guidance for Gender Identity Support in 2021. The guidance allowed children to change their "gender identity" at school without notifying their parents and without their parents' consent, meaning that students could change names, pronouns, and which locker room and bathroom they use—all without their parents' knowledge. App. 43–59. The guidance required 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." App. 67. According to the policy, "gender identity" can differ from the student's biological sex. App. 64.

The school district claims that it "recognizes its responsibility to keep parents informed of student welfare and progress in school." Policy 5420, Reporting Student Progress, https://tinyurl.com/2wrdrxtc. It also admits that parents "have rights in the school system to know about their student's educational experience." Policy 5780, Student/Parent Rights, https://tinyurl.com/4x3sadxv. Yet Respondents' Gender Identity Support guidance blocks parents from learning more about certain aspects of their children's conduct in school. Because, according to the guidance, "[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," Respondents allowed students to make

changes to their gender identity, names, and pronouns without parental notice or consent. App. 16.

In doing so, Respondents made clear that they would not keep parents informed about this aspect of the student's welfare without the student's consent. The guidance provides that staff will "develop a specific Student Gender Support Plan when appropriate to address [the student's] needs." App. 14–15. If students say that "they do not want parents to know," staff would explain to the students "that this plan is a student record and will be released to their parents when [the parents] request it." App. 17. Thus, the guidance looked for workarounds: for instance, it emphasized that a "court-ordered name or gender change is not required, and the student need not change their official records," App. 67, likely because federal law requires parental consent to change a child's name in official records, App. 68; see also 34 CFR §§ 99.20(a); 99.3 (definition of "eligible student"); *id.* § 99.4 ("rights of parents").

Further, Respondents' training on the guidance claims that "teachers are often put in terrible positions caught between parents and their students," but staff "cannot let parents' rejection of their children guide teachers' reactions and actions and advocacy for our students." App. 19. The training then shifts to targeting religious parents for special condemnation, claiming that the "weaponization of religious beliefs against marginalized people is the problem." App. 19; see also *ibid.* ("Bigotry as ideology is the problem."). "[P]arents are not entitled to know their kids' identities," the training concludes: "That knowledge must be earned." App. 18.

After Respondents adopted and implemented this policy, Petitioner—an organization comprised of parents residing in the school district with children who attend district schools—filed a complaint seeking injunctive relief, alleging that the policy violates its members' rights as parents. See App. 4, 40. The district court dismissed the complaint because it concluded that the parents lacked standing due to their failure to allege an injury in fact. App. 2. On appeal, the Seventh Circuit affirmed, concluding that the parents had not alleged that the policy injured them or created an imminent risk of injury. App. 1–10.

ARGUMENT

I. Parents have standing to challenge school policies that interfere with their relationships with their children

The Court should grant the petition to clarify that parents have standing when school administrators enact policies that interfere in the parent/child relationship. Decisions like the Seventh Circuit's below close the courthouse doors to parents when school officials threaten to make incredibly consequential decisions about those parents' children without their consent. Parents should not have to wait until public schools have trampled their rights before they can seek a remedy in federal court; rather, this Court's standing doctrine allows parents to vindicate their rights in this important area of law.

1. Parents and schools are increasingly facing the question of how best to respond to children when they indicate that they "struggle with their gender identity." App. 48. From 2017 to 2022, the number of high

schoolers identifying as transgender doubled from 0.7% to 1.43%. See Jody L. Herman et al., *Age of Individuals Who Identify as Transgender in the United States*, Williams Inst. (2017), https://tinyurl.com/29tvbdbk; Jody L. Herman et al., *How Many Adults and Youth Identify As Transgender In The United States*, Williams Inst. (2022), https://tinyurl.com/345tyu65. The increase has been especially high for younger students. See Azeen Ghorayshi, *Report Reveals Sharp Rise in Transgender Young People in the U.S.*, N.Y. Times (June 10, 2022), https://tinyurl.com/3anymcs3.

Children "questioning their gender identity often present with other comorbidities, including depression, anxiety, and suicidal thoughts, and may urgently need professional support." App. 52; see also *Mirabelli* v. *Olson*, 691 F. Supp. 3d 1197, 1203 (S.D. Cal. 2023) ("If untreated, gender dysphoria may lead to anxiety, depression, eating disorders, substance abuse, self-harm, and suicide."). Many experts thus recommend that the first response to transgender-identifying children should be to help them "process and understand what they are feeling and why." App. 48 (collecting sources). Appropriate responses can also include providing therapy or other professional supports. App. 48; Laura Edwards-Leeper & Dr. Erica Anderson, *The mental health establishment is failing trans kids*, Washington Post (Nov. 24, 2021), https://tinyurl.com/2xw8fbbu. It is thus crucial that parents, who are responsible for a child's medical and mental health decisions, know about these issues.

Authorities around the world have struggled with the best policy to help children wrestling with gender identity issues. See, *e.g.*, *Questioning America's*

approach to transgender health care, The Economist (July 28, 2022), https://tinyurl.com/mrxj9c4f (noting that medical groups in Sweden and Finland are "moving in the opposite direction" from "the 'affirmative model,'" and instead "now prioritis[ing] therapy"); Jasmine Andersson & Andre Rhoden-Paul, *NHS to close Tavistock child gender identity clinic*, BBC News (July 28, 2022), https://tinyurl.com/4hw3p24j (governmental review found that a gender identity clinic was "not a safe or viable long-term option" for children, in part due to its "unquestioning affirmative approach," and instead recommended a more "holistic" approach).

As this Court has held, parents have a fundamental right to make decisions for their children, including medical and mental health decisions. *Parham* v. *J.R.*, 442 U.S. 584, 604 (1979). "Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments." *Ibid.* But some in the education establishment reject the "very notion of parental rights" as "illegitimate." 12 James G. Dwyer, *Religious Schools v. Children's Rights* 63 (New York: Cornell University Press, 1998). Others call for a "new model" wherein the government steps in when it believes "state involvement is warranted to further children's important interests in areas such as personal identity, relationships, or activities outside the home." Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 Duke L.J. 75, 82 (2021).

Against this backdrop, school policies addressing gender-identity issues have proliferated. See Leor Sapir, *The 'T' Piggybacking on the 'LGB*,' City Journal (Sept. 27, 2022), http://tinyurl.com/5n7ut997

(providing statistics). Unfortunately, a growing number of school boards have adopted policies that aim to exclude parents from these life-altering decisions. More than 1,000 districts, including over 19,000 schools and more than 11 million students across 37 States and the District of Columbia, have instituted these parental-exclusion policies. See *List of School District Transgender - Gender Nonconforming Student Policies*, Parents Defending Educ., https://tinyurl.com/2p8twbe8 (last updated June 17, 2024). Too often these policies do not engage with parents to work through the thorny issues together; instead, schools have decided to institute policies that block parents out. In fact, groups like the Human Rights Campaign and the National Education Association have advocated for schools to do just that. See GLSEN, *Model Local Education Agency Policy On Transgender And Nonbinary Students*, https://tinyurl.com/yrjefsm6 (2020); Michael Torres, *Whether You Like It or Not*, City Journal (July 18, 2023), https://tinyurl.com/33z27shc.

Pursuant to these policies, teachers have encouraged students to "obtain medical care, housing and legal advice without the parents' knowledge." Katie Baker, *When Students Change Gender Identity, and Parents Don't Know*, N.Y. Times (Jan. 22, 2023), https://tinyurl.com/2m99ey9h. Others have allowed young students to "secretly change[] names and pronouns without" informing the parents. *Ibid.* But this process of changing the child's name, pronouns, or gender expression—known as "social transitioning"—is a "major and potentially life-altering decision that requires parental involvement, for many reasons." *Ibid.* When children hide the process of social transition from their parents, for instance, living a double

life is likely to create damaging "concealment stress." See, *e.g.*, James S. Morandini et al., *Is Social Gender Transition Associated with Mental Health Status in Children and Adolescents with Gender Dysphoria?*, 52 Archives Of Sexual Behavior 1045, 1057 (2023). This has made "the transgender student parental notification debate . . . one of the most prevalent and complex issues that states and educational institutions must address." Stephen McLoughlin, *Toxic Privacy: How the Right to Privacy Within the Transgender Student Parental Notification Debate Threatens the Safety of Students and Compromises the Rights of Parents*, 15 Drexel L. Rev. 327, 331 (2023).

2. The decisions by schools to exclude parents have led to widespread litigation over violations of parental rights. See, *e.g.*, Ronna Greff Schneider, *School Matters*, 92 U. Cin. L. Rev. 1, 8 (2023) (noting numerous "lower court decisions" analyzing "the role of parents or parental consent in school gender support plans"); Elizabeth R. Kirk, *Parental Rights: In Search of Coherence*, 27 Tex. Rev. L. & Pol. 729, 730 (2023) (explaining that lawsuits "about the nature and scope of parental rights" related to their children's sexual identities are "proliferat[ing]"). There have been a wide range of challenges to various types of policies addressing gender-identity issues. See, *e.g.*, *Tatel* v. *Mt. Lebanon Sch. Dist.*, 675 F. Supp. 3d 551, 568–69 (W.D. Pa. 2023) (summarizing cases). As one would expect, those cases have yielded "starkly divergent results." Ryan Bangert, *Parental Rights in the Age of Gender Ideology*, 27 Tex. Rev. L. & Pol. 715, 724 (2023).

For instance, this case involves parents' right to know about their children's alleged interest in gender

transition. Courts have reached diametrically opposed conclusions on even this narrower question. Compare, *e.g.*, *Willey* v. *Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees*, 680 F. Supp. 3d 1250, 1277 (D. Wyo. 2023) (parents have a right to know), and *Ricard* v. *USD 475 Geary Cnty., KS Sch. Bd.*, No. 5:22-cv-4015, 2022 WL 1471372, at *8 (D. Kan. May 9, 2022) (same), with *Regino* v. *Staley*, No. 2:23-cv-32, 2023 WL 4464845, at *3 (E.D. Cal. July 11, 2023) (no right to know); cf. *Doe No. 1* v. *Bethel Loc. Sch. Dist. Bd. of Educ.*, No. 3:22-CV-337, 2023 WL 5018511, at *13 (S.D. Ohio Aug. 7, 2023) (no right to know about "non-academic instruction of their children" on controversial topics).

Courts have not only split on the underlying merits issue, however, but also on whether parents even have standing to challenge parental exclusion policies like the one Respondents used here. Compare, *e.g.*, *Kaltenbach* v. *Hilliard City Sch.*, No. 2:23-CV-187, 2024 WL 1831079, at *1, 5 (S.D. Ohio Apr. 19, 2024) (concluding parents had standing for damages claims); *Doe No. 1*, 2023 WL 5018511, at *11 (concluding that "the Parent Plaintiffs have standing to allege their Fourteenth Amendment claim"), with *Parents Defending Educ.* v. *Linn-Mar Cmty. Sch. Dist.*, 629 F. Supp. 3d 891, 907 (N.D. Iowa 2022) (concluding that parents lacked standing), *dismissed as moot*, 83 F.4th 658 (8th Cir. 2023); *John & Jane Parents 1* v. *Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 626 (4th Cir. 2023) (holding that parents lacked an injury in fact that would support Article III standing).

3. The decision below is just the latest in this confused morass of case law. This Court's intervention is necessary to bring much-needed clarity to this jumbled—and highly consequential—area of law.

The Seventh Circuit incorrectly held that Petitioner had not adequately alleged an imminent injury. Parents have standing to challenge school gender transition policies because the policies themselves cause an injury that satisfies the requirements of Article III standing. "As this Court has recognized, 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* v. *Ramirez*, 594 U.S. 413, 435 (2021) (cleaned up). "Imminence," this Court has explained, is "concededly a somewhat elastic concept." *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 564 n.2 (1992)); see also *id.* at 414 n.5 (this Court does not always or "uniformly require plaintiffs to demonstrate that it is literally certain" parties will suffer the alleged harm). It is meant to bar challenges that do not meet Article III's case-or-controversy requirement; it does not erect an impenetrable wall for any pre-enforcement challenge.

Instead of holding that this case was "analogous" to *Clapper*, App. 7–8, the Seventh Circuit should have relied on this Court's far more apposite ruling in *Parents Involved in Community Schools* v. *Seattle School District No. 1*, 551 U.S. 701 (2007). *Parents Involved* shows that parents have standing to challenge mandatory, systemic school policies. See, *e.g.*, Robin Kundis Craig, *Administrative Law in the Roberts Court: The First Four Years*, 62 Admin. L. Rev. 69, 84 (2010) (*Parents Involved* gave parents standing "even though it was far from clear that the school district would ever apply th[e] system to any of their children"). The parents in *Parents Involved* challenged a racially

discriminatory policy that could have affected a student's admission to certain schools. *Parents Involved*, 551 U.S. at 718. The school district argued that the parents lacked standing because there was no imminent injury. *Ibid.* The lower courts agreed: it was "too speculative" that a student would try to enroll in an oversubscribed school and be rejected based on the racial tiebreaker. *Ibid.* This Court rejected that argument, holding instead that because the parents had "children in the district's elementary, middle, and high schools," the mere "possib[ility] that children of group members will not be denied admission to a school based on their race" did not "eliminate the injury claimed." *Id.* at 718–19.

So too here. As Judge Niemeyer explained in analyzing a similar policy aimed at hiding students' gender identity information from parents: "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). Those features mean that the injury is not based on a "highly attenuated chain of possibilities." *Clapper*, 568 U.S. at 410. Rather, as in *Parents Involved*, the plaintiff parents here are injured by policies that "mandate or direct" school staff to interfere with the parent-child relationship; *Clapper*, by contrast, dealt with a program that "at most authorizes" the allegedly injurious surveillance. *Clapper*, 568 U.S. at 412 ("Moreover, because [the statute] at most authorizes—but does not mandate or direct—the surveillance that respondents fear, respondents' allegations are necessarily conjectural.").

Moreover, the Seventh Circuit's ruling rests on a failure to recognize the scope of the constitutional right. See, *e.g.*, *NAACP* v. *Alabama*, 357 U.S. 449, 459 (1958) (showing that each case's standing analysis should carefully consider how standing affects underlying rights). The parents alleged that the "existence of the policy alone directly harms" the parent-child relationship and teaches their children that "secrets from their parents—including an entire double life at school—are not only acceptable, but will be facilitated by the District." App. 7. The parents also pleaded that Respondents' "policy and practices" "encourag[ed]" this rift. App. 51. One teacher, for instance, posted flyers telling students that "[i]f your parents aren't accepting of your identity, I'm your mom now." App. 39. This overt interference in the parent-child relationship is an injury in fact. This Court "has made clear that when considering whether a plaintiff has Article III standing, a federal court must assume *arguendo* the merits of his or her legal claim." *Parker* v. *District of Columbia*, 478 F.3d 370, 377 (D.C. Cir. 2007), *aff'd sub nom. District of Columbia* v. *Heller*, 554 U.S. 570 (2008); see also *Warth* v. *Seldin*, 422 U.S. 490, 501–02 (1975) (assuming factual allegations and legal theory of complaint for purposes of standing analysis).

Further, the parents in this lawsuit claim the right to be informed of fundamental decisions involving their children. See, *e.g.*, App. 39. One of the reasons they need that information is because children "often present with other comorbidities" that parents need to be aware of. See, *e.g.*, App. 52. This Court has recognized that school-aged children are a vulnerable group. *Abington Sch. Dist.* v. *Schempp*, 374 U.S. 203 (1963). So "[w]here a school district or its employees affirmatively act to prevent a parent from having

information necessary to make informed decisions about their child's safety, the parent has standing to bring their own claims." *Posey* v. *San Francisco Unified Sch. Dist.*, No. 23-cv-2626, 2023 WL 8420895, at *6 (N.D. Cal. Dec. 4, 2023).

The Seventh Circuit's decision is especially troubling here because of the *nature* of the injury asserted: the injury to parental rights from the school's policy of concealing information. Parents can show standing only if they overcome Respondents' secrecy efforts and discover their child is transitioning. That may be an impossibility, particularly where schools alter documentation to hide that information. See, e.g., Compl. ¶¶ 114-36, *Mead* v. *Rockford Pub. Sch. Dist.*, No. 1:23-cv-1313 (W.D. Mich. Dec. 18, 2023), ECF No. 1 (alleging that school altered documents to hide that child was socially transitioning). But even if the parents do find out enough information to show standing under the Seventh Circuit's test, then their secrecy injury dissipates in the same moment. This Court should reject this result. See *NAACP*, 357 U.S. at 459 (rejecting a standing theory that would "nullif[y]" the claimed "right" the "moment" the plaintiff asserts it).

Failing to recognize this injury puts many parents in an untenable position. Wisconsin, along with every other State, requires that parents send their children to school. See, *e.g.*, Wis. Stat. Ann. § 118.15; *Free and Compulsory School Age Requirements*, Education Commission of the States, https://tinyurl.com/33tenjv9. Many parents cannot afford to send their children to private school (assuming one is even available) or to homeschool their children. See, *e.g.*, Pet. 10. That leaves their children stuck in schools with these secrecy policies.

What matters in standing is if the party has a "personal stake" in the matter. *United States Parole Comm'n* v. *Geraghty*, 445 U.S. 388, 403 (1980). Here, Respondents' policy specifically targets the parents challenging the policy. This is not a "generalized grievance[]" that is "undifferentiated and common to all members of the public." *Lujan*, 504 U.S. at 573–74 (quotation marks omitted). Instead, the policy harms parents of children subject to the policy who want to raise their children as they see fit, free from government officials encouraging their children to lie and conceal information from them. They are injured by the very existence of the policy.

This Court should grant the petition to make clear that parents have standing to enforce their right to make decisions about their children's mental and physical health and wellbeing.

II. Parents' rights to raise and educate their children should be protected

Parents in the United States have long had the fundamental right to raise and educate their children as they see fit, but decisions like the one below threaten this foundational role. This Court should clarify that parental rights are not "'mere second-class rights but belong in the catalog of indi[s]pensable freedoms.'" *Almeida-Sanchez* v. *United States*, 413 U.S. 266, 274 (1973) (quoting *Brinegar* v. *United States*, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting)).

The "interest of parents in the care, custody, and control of their children [ ] is perhaps the oldest of the fundamental liberty interests recognized by" this Court. *Troxel* v. *Granville*, 530 U.S. 57, 65 (2000)

(plurality op.). The fundamental rights of parents "deriv[e] from their natural duties" and are "protected by, but not created by, the Constitution." Elizabeth R. Kirk, *Parental Rights: In Search of Coherence*, 27 Tex. Rev. L. & Pol. 729, 732 (2023). Indeed, decades before the Founding, Blackstone identified parental rights as "the most universal relation in nature." 1 William Blackstone, Commentaries on the Laws of England (1753); see also *Wisconsin* v. *Yoder*, 406 U.S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children."). This Court's jurisprudence has thus "reflected Western civilization concepts of the family as a unit with broad parental authority over minor children." *Parham*, 442 U.S. at 602.

The "primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Yoder*, 406 U.S. at 232. "In a long line of cases," this Court has held that "the 'liberty' specially protected by the Due Process Clause includes the right[] . . . to direct the education and upbringing of one's children." *Washington* v. *Glucksburg*, 521 U.S. 702, 720 (1997) (quotation marks omitted); see also *Moore* v. *City of East Cleveland*, 431 U.S. 494, 503–04 (1977) ("[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition."); *Stanley* v. *Illinois*, 405 U.S. 645, 651 (1972) ("The rights to conceive and to raise one's children have been deemed 'essential,' 'basic civil rights of man,' and '[r]ights far more precious . . . than property rights[.]'" (citations omitted)).

Indeed, this Court held almost one hundred years ago that "[t]he child is not the mere creature of the State." *Pierce* v. *Society of Sisters*, 268 U.S. 510, 535 (1925). There exists a "private realm of family life which the state cannot enter." *Prince* v. *Massachusetts*, 321 U.S. 158, 166 (1944). The "custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Ibid.* For that reason, "[t]he fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children" through public schooling. *Pierce*, 268 U.S. at 535. Parents—not governments—"have the right, coupled with the high duty, to recognize and prepare [a child] for additional obligations." *Ibid.*

Ultimately, the fundamental interest of parents in the care, custody, and control of their children recognizes that children lack the "maturity, experience, and capacity for judgment required for making life's difficult decisions." *Parham*, 442 U.S. at 602. The law thus "assumes that [children] do not yet act as adults do." *Thompson* v. *Oklahoma*, 487 U.S. 815, 825 n.23 (1988). Because of that, laws often "restrict[] certain choices that . . . [children] are not yet ready to make." *Ibid.* At the same time, the "natural bonds of affection lead parents to act in the best interests of their children." *Parham*, 442 U.S. at 602. Thus, parents are responsible for raising their child, and also have the corresponding right to do so.

Recognizing the importance of parental rights, States too have sought to protect such rights from undue encroachment. "Numerous states have recognized parental rights as fundamental and require a

heightened standard of review." Kirk, *Parental Rights*, *supra*, at 732 n.14 (citing *Protecting Parental Rights at the State Level*, Parental Rights, https://parentalrights.org/states/ (summarizing state laws)). Virginia law, for instance, provides that a parent "has a fundamental right to make decisions concerning the upbringing, education, and care of the parent's child." Va. Code § 1-240.1. And when States have already taken steps to ensure greater parental protections, transparency and parental involvement have been keystones for those efforts. For instance, the vast majority of States "provide either 'opt-out' or 'opt-in' provisions" in their laws regulating sex education in public schools. Melody Alemansour et al., *Sex Education in Schools*, 20 Geo. J. Gender & L. 467, 477 (2019). But because many States do not provide as robust protections for parents as this Court has recognized at the federal level, this Court's role in protecting fundamental parental rights remains crucial to parents around the country.

Finally, this Court's precedents make clear that parental rights are not absolute. States have a strong interest in protecting children against abuse or neglect, and parental rights do not include such misconduct. See *Parham*, 442 U.S. at 602–04. For instance, some parental decisions concerning a child's medical care may be "subject to a physician's independent examination and medical judgment." *Id.* at 604. But parents "retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse, and

that the traditional presumption that the parents act in the best interests of their child should apply." *Ibid.*[2]

Respondents' policy makes no attempt to meet this standard. The parental exclusion policy is not based on a finding of abuse or neglect; rather, it is simply a prophylactic measure that interferes in the parent-child relationship without any actual showing of "safety concerns." App. 66. School districts have no interest, compelling or otherwise, in wholesale concealment of children's gender transitions from parents, absent any evidence of abuse or neglect. "Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state." *Parham*, 442 U.S. at 603.

* * *

The parents here have explained that "no matter what their children might believe about their gender," they "will never stop loving their children, or love them any less." App. 56. This Court should not allow schools to continue excluding parents from core decisions about their children.

CONCLUSION

This Court should grant the petition.

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[2] Further, parents do not have a constitutional right to obtain reasonably banned treatments for their children. "[A] state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized." *Parham*, 442 U.S. at 603–04.

July 8, 2024

Respectfully submitted,

JASON S. MIYARES
Attorney General
of Virginia

BRENDAN T. CHESTNUT
Deputy Solicitor
General

ERIKA L. MALEY
Solicitor General
Counsel of Record

KEVIN M. GALLAGHER
Principal Deputy Solicitor
General

OFFICE OF THE VIRGINIA
ATTORNEY GENERAL
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071
emaley@oag.state.va.us

Counsel for Amicus Curiae *the Commonwealth of Virginia*

Counsel for Additional Amici *States*

TREG TAYLOR
Attorney General
State of Alaska

ASHLEY MOODY
Attorney General
State of Florida

CHRISTOPHER M. CARR
Attorney General
State of Georgia

RAÚL R. LABRADOR
Attorney General
State of Idaho

LIZ MURRILL
Attorney General
State of Louisiana

ANDREW BAILEY
Attorney General
State of Missouri

AUSTIN KNUDSEN
Attorney General
State of Montana

MICHAEL T. HILGERS
Attorney General
State of Nebraska

DREW WRIGLEY
Attorney General
State of North Dakota

GENTNER F. DRUMMOND
Attorney General
State of Oklahoma

ALAN WILSON
Attorney General
State of South Carolina

MARTY JACKLEY
Attorney General
State of South Dakota

KEN PAXTON
Attorney General
State of Texas

SEAN D. REYES
Attorney General
State of Utah

PATRICK MORRISEY
Attorney General
State of West Virginia