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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

It is hard to overstate the importance of this case. School districts everywhere are brazenly disregarding parental rights, causing long-lasting harm to children and families, while far too many federal courts are "stay[ing] on the sidelines," App.10, in large part by misapplying standing law.

This case presents an ideal vehicle to address this nationwide plague head-on. Because it was dismissed on a 12(b)(1) motion, the facts are as alleged in the complaint. Thus, it cleanly presents the question of whether parents subject to school policies that openly usurp parental decision-making authority have standing to challenge them.

Respondents, understandably, attempt to muddle the issue and redirect attention away from the District's Policy. But they have no persuasive response to the significance of this case to parents around the country, the cleanness of the vehicle, or the disconnect between this Court's standing precedents and the lower courts' decisions. Only four of their arguments warrant a short response.

I. The District's Policy Does Exactly What Petitioner Alleges; Respondents Have Never Argued Otherwise.

To obfuscate this case, Respondents assert that Petitioner "grossly mischaracterizes" the District's Policy, BIO.1, but they do not explain how. They have never disputed that the District's Policy does exactly what it says and what Petitioner primarily challenges: it requires staff to facilitate a gender-identity transition at school (changing a child's name, pronouns, and facility use) without notifying the

parents or obtaining their consent, solely upon the child's request. Indeed, that is how *they* characterized the Policy to the District Court below. *E.g.*, Dkt.12:17 ("[T]he [Policy] … encourag[es] parental involvement *unless directed not to do so by the student*.") (emphasis added); *id*. at 3 (similar statement). Indeed, one of the questions on the "Gender Support Plan" form the District uses is whether the parents are "aware of their child's gender status" and "requests at school," App.73, proving the point. And the District has trained their staff that "parents are not entitled to know their kids' identities." App.45 ¶36, App.80.

Respondents emphasize that parents can obtain a Gender Support Plan form *after the fact*, if they ask for it, as though that eliminates the harm. BIO.2. There are multiple problems with this argument. First, the Policy does not require a Gender Support Plan for a transition at school.[1] If there is no such plan, parents have no way to determine if the Policy is currently being applied to their child, as they allege. App.53–54 ¶¶75, 82. More fundamentally, parents would not know to ask for a Gender Support Plan if they were excluded from the meeting where one was adopted, and by then, significant harm has already occurred. Pet.6–7. Petitioner's ultimate claim is that

[1] The Policy states, twice in one sentence, that a plan should be developed only "when appropriate." App.65. And separate sections of the Policy give students the "right" to change their name and pronouns and use opposite-sex facilities at school and do not make a "Gender Support Plan" a prerequisite. Pet.8. The warning at the top of the form—that it "will be released to the[ ] parents when they request it"—appears designed to allow students who "do not want [their] parents to know" to ask that the form not be filled out to prevent parents from learning what is happening at school. App.72.

parents are entitled to *prior* notice (and the opportunity to withhold their consent) *before* staff begin treating their child as the opposite sex. Pet.23–25.

Finally, forcing parents to repeatedly and periodically check whether a Gender Support Plan has been secretly implemented for their child is *itself* a present and ongoing injury that can be remedied by a court order requiring prior parental notice. Such requests are time-consuming and would breed distrust with staff. They are also impractical. Any child may begin experiencing gender dysphoria at any time, seemingly out of the blue, as the complaint alleges and cases nationwide illustrate. App.51 ¶¶58–59; Pet.3–4.

Even if there were some ambiguity in how the Policy works as a factual matter—and there is not, especially given the District's training—it must be resolved in Petitioner's favor at this stage of the litigation, which the lower courts failed to do. The complaint alleges that the Policy "requires administrators and staff … to address a child by his or her chosen name and gender pronouns regardless of parental notice or consent." App.44 ¶33. Eliminating parents' involvement in this critical decision is the violation of parental rights that Petitioner challenges in this case.

II. Respondents Assert Facts Outside the Record That Contradict the Complaint.

In another attempt to downplay the harm from their policy, Respondents assert that "the [Policy] has never been applied to any of Petitioner's members' children." BIO.2–3. That has not yet been established in this case, and that assertion even conflicts with

some of the allegations of the complaint, which must be taken as true at this stage.

The complaint alleges that the Policy "prevent[s] [Petitioner's] members from knowing if the school has already applied this policy to their children." App.54 ¶82; *id*. ¶75 ("The secrecy with which schools are to operate pursuant to the Gender Identity Policy necessarily means there is no way for each member parent to determine if their child has been targeted by the school."). Again, this case was dismissed on a Rule 12(b)(1) motion. Discovery has not been completed, and Respondents have not submitted any evidence in the record establishing that the Policy *has not* been applied to one of Petitioner's members' children. One of the goals of this lawsuit is to, at a minimum, require *notice* to parents so that they can know whether the District has or is treating their children as if they are the opposite sex while they are at school.

III. Respondents Ignore the Many Ways the Policy Presently Harms Parents.

The major theme of Respondents' brief in opposition is to recast Petitioner's standing as based solely on "possible future harm." *E.g.*, BIO.3, 12–15. They repeat this theme throughout, arguing that this case is resolved entirely by *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013). Yet this response completely ignores the multiple *present* injuries to Petitioner's members that were identified in the Petition and briefing below, as well as the cases finding standing where parties faced similar kinds of injuries. These present harms include:

(1) the loss of a claimed exclusive decision-making authority, recognized by this Court as sufficient for standing in *Arizona State Legislature v. Arizona*

Independent Redistricting Comm'n, 576 U.S. 787, 800 (2015), Pet.19–22;

(2) the harm caused by subjecting parents and their children to a facially unconstitutional policy, as recognized in *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718–20 (2007), Pet.22–23;

(3) the inability to obtain information to which one is entitled, as recognized in *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 21 (1998) and related cases, Pet.23–24;

(4) the harm to parent-child relationships by inviting minor students to live a secret double life at school, kept hidden from their parents, Pet.25–26.

Most significantly, Respondents have no response—and do not even cite—to *Arizona State Legislature*, 576 U.S. 787, which directly mirrors this case. This Court held in that case that the transfer of "redistricting authority" from the Arizona Legislature to an independent commission was an injury sufficient for standing (even though the claim ultimately failed on the merits), because it could be remedied by a court order restoring that authority to the Legislature. Likewise, here, the transfer of parental decision-making authority to school staff is a present injury that courts can and should redress.

In any event, as Petitioners pointed out, even if this case is viewed through the lens of the "substantial risk" cases, the allegations in the complaint are, at the very least, sufficient to make it past a motion to dismiss to develop evidence about the likelihood and magnitude of the risk of harm from a secret transition

at school. Pet.26–28. Respondents have no meaningful response to this point.

IV. Petitioners Do Not Seek a "New Rule for Standing," But Rather the Application of Existing Principles to a New and Recurring Fact Pattern.

Finally, Respondents assert throughout their response that Petitioner is asking this Court to "change" or "relax" the law of standing to favor certain "social and political agendas." BIO.10. Nothing could be further from the truth. This Court's existing standing precedents, if properly applied, make clear that parents who have had their parental authority stripped from them and given to school staff have standing to come to federal courts to redress the obvious harm to them. As already noted, *Arizona State Legislature* is directly analogous to one of the arguments for standing here.

The problem is that federal courts are failing to properly apply this Court's precedents in this new context. Ordinarily, one misapplication of this Court's standing precedents would not warrant this Court's review. But as the Petition demonstrated, this is a nationwide problem; the Federal courts are deciding important cases (like this one) in ways that conflict with numerous decisions of this Court, which warrants this Court's involvement. The Policy at issue—to hide gender identity transitions at school from parents—is a fact pattern that exists throughout the country, already generating nearly 30 lawsuits and affecting millions of minor children and their parents. This case is not a one-off, not by a long shot. This Court's review is urgently needed to clarify for lower courts that parents affected by these policies

can come to court to recover their parental decision-making authority.

CONCLUSION

This Court should grant the Petition.

Dated: July 22, 2024.

Respectfully submitted,

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