No. 23-601

IN THE

Supreme Court of the United States

JOHN AND JANE PARENTS 1, *et al.*,
Petitioners,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, *et al.*,
Respondents.

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

BRIEF IN OPPOSITION

BRUCE M. BERMAN
JEREMY W. BRINSTER
WILMER CUTLER PICKERING HALE AND DORR LLP
2100 Pennsylvania Ave., NW
Washington, DC 20037
(202) 663-6000

SIMON B. KRESS
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State St.
Boston, MA 02109
(617) 526-6000

ALAN SCHOENFELD
Counsel of Record
EMILY BARNET
THOMAS K. BREDAR
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich St.
New York, NY 10007
(212) 230-8800
alan.schoenfeld@wilmerhale.com

QUESTIONS PRESENTED

1. Whether the court of appeals correctly applied this Court's precedent in concluding that Petitioners lack standing to challenge school guidelines because they have not alleged that the guidelines have been or are likely to be applied to their children.

2. If Petitioners have standing, whether this Court should be the first appellate court to address the merits of their due-process claim, which the Fourth Circuit did not reach.

3. If so, whether the district court, in its now-vacated decision, correctly applied this Court's cases declining to recognize a fundamental right of parents who have chosen to send their children to public school to dictate how a public school teaches their child.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

DOCKETED CASES

STATUTES AND RULES

OTHER AUTHORITY

INTRODUCTION

Petitioners are three parents who challenge guidelines adopted by the Montgomery County, Maryland, Board of Education ("MCBE"). Petitioners do not allege that the challenged guidelines have been applied, or are likely to be applied, to their children. The sole basis for the Fourth Circuit's dismissal of Petitioners' claim was its conclusion that Petitioners did not plausibly allege Article III standing. That straightforward application of this Court's precedent does not warrant review. And regardless of whether the merits of Petitioners' due-process claim implicate "one of the most pressing issues of our day," Pet.1, this Court could not address that claim unless it rejected the Fourth Circuit's standing conclusion. Even then, this Court would have to address the due-process issue without the benefit of a decision on that question from the Court of Appeals.

In any event, the Fourth Circuit's conclusion is consistent with decisions of this Court and other circuits. In 2020, MCBE—which seeks to ensure a safe and respectful school environment for all its students—adopted guidelines that include a range of best practices to be applied on a case-by-case basis for encouraging the full participation of students in school life. Petitioners, parents of children who attend Montgomery County public schools, oppose a part of the guidelines that they allege permits school officials to (1) develop support plans for children who are transgender or are struggling with issues of gender identity and (2) respect the students' wishes to keep certain information confidential. Petitioners did not allege that their children have gender-support plans or have had any discussions with school officials about gender-identity or gender-transition

issues. Nor did Petitioners allege that they suspect their children might be considering gender transition.

These circumstances, the Fourth Circuit concluded, did not plead an injury-in-fact. As Judge Quattlebaum, joined by Judge Rushing, explained, Petitioners' claim involves a "hypothetical chain of events," Pet.App.19a, "the occurrence of which requires guesswork as to actions of others," Pet.App.14a. Specifically, for Petitioners to even conceivably be injured, the following events would have to occur: (1) their minor children must determine they identify as transgender or gender nonconforming, (2) those children must decide they want to approach school officials about a gender-support plan, (3) officials must deem the parents unsupportive, and (4) officials must decide to keep information about a child confidential. *See id.* As the Fourth Circuit concluded, this chain is "far more attenuated than what the Supreme Court has allowed." Pet.App.13a. That conclusion is correct under this Court's well-settled precedent, and it implicates no lower-court division. The same is true of the district court's now-vacated decision rejecting Petitioners' due-process claim (which, as noted, this Court could not reach unless it rejected the Fourth Circuit's standing holding). The petition should be denied.

STATEMENT

A. The Guidelines

MCBE developed *Guidelines for Student Gender Identity in Montgomery County Public Schools* ("Guidelines") in accordance with the longstanding commitment of Montgomery County Public Schools ("MCPS") to foster "a safe, welcoming school environment." Pet.App.150a. The Guidelines are "aligned with the Montgomery County Board of Education's core

values, guidance from the Maryland State Department of Education, and the Montgomery County Board of Education Policy … which prohibits discrimination, stigmatization, and bullying based on gender identity, as well as sex, gender, gender expression, and sexual orientation, among other personal characteristics." *Id.* The Guidelines are intended to support students so they may participate in school life consistent with their asserted gender identity, foster social integration and cultural inclusiveness, and provide support for MCPS staff members. *Id.*

The Guidelines—one of many ways MCBE seeks to ensure that schools provide safe educational environments for all students—cover a range of issues, including bullying, harassment, intimidation, and interscholastic athletics. Pet.App.153a-162a. They also address development of "gender-support plans" for transgender and gender-nonconforming students. Such a plan, the Guidelines explain, is meant "to ensure that the student has equal access and equal opportunity to participate in all programs and activities at school and is otherwise protected from gender-based discrimination at school." Pet.App.153a. The Guidelines further explain that each plan should be developed "in collaboration with the student and the student's family (if the family is supportive of the student)." *Id.*

The Guidelines are not intended to be inflexibly applied to every transgender and gender-nonconforming student; to the contrary, the Guidelines recognize that they "cannot anticipate every situation which might occur" and therefore instruct that "the needs of each student must be assessed on a case-by-case basis." Pet.App.150a. The Guidelines also contemplate both situations where parents are supportive of the child's gender identity and situations where they are not, and they

supply guidance for each. In particular, the Guidelines include a section on "communication with families," which provides that staff members should speak with students to determine how much support the student receives or anticipates receiving from home, and should support the development of a plan that "works toward inclusion of the family, if possible, taking safety concerns into consideration" and recognizing that providing support for a student is critical. Pet.App.153a-154a.

In accordance with their goals of supporting and respecting students, and preventing stigmatization and marginalization, the Guidelines also address "privacy and disclosure of information" and "staff communication." These provisions note that schools should ensure that all medical information is kept confidential in accordance with applicable state, local, and federal privacy laws; that the fact that students choose to disclose information to staff members or other students does not authorize school staff to disclose a student's information to others; and that staff members should use a student's legal name when contacting parents unless the student or parents have specified otherwise. Pet.App.154a-155a.

The Guidelines further provide that staff members should use a form to support this process and assist the student in participating in school. Pet.App.153a.

Through these provisions, the Guidelines seek to ensure a "safe, welcoming school environment where students are engaged in learning and are active participants in the school community because they feel accepted and valued." Pet.App.150a. The Guidelines recognize that parental involvement is critical whenever possible and therefore repeatedly suggest that schools work towards sharing information with parents to the extent it is safe to do so. Pet.App.153a-154a. The Guidelines also

acknowledge the reality that, "[i]n some cases, transgender and gender-nonconforming students may not openly express their gender identity at home because of safety concerns or lack of acceptance," and, in light of that reality, indicate that student support and safety is an overarching goal. Pet.App.154a.

B. Proceedings Below

1. Petitioners sued in the Circuit Court for Montgomery County, Maryland, asserting violations of: (I) Maryland family law; (II) the Maryland Code of Regulations; (III) the Maryland Constitution; (IV) the federal Family Educational Rights and Privacy Act, as purportedly incorporated by Maryland law; (V) the federal Protection of Pupil Rights Amendment, as purportedly incorporated by Maryland Law; (VI) the Due Process Clause; and (VII) 42 U.S.C. §1983. Pet.App.123a-143a. MCBE removed the case to federal court and moved to dismiss.

The district court dismissed Petitioners' complaint in its entirety for failure to state a claim. Pet.App.51a-52a. The court disagreed with Petitioners' reading of the Guidelines, explaining that their text indicates they: are to be applied on a "case-by-case basis," Pet.App.63a, actively encourage family involvement, Pet.App.64a-65a, and were developed in furtherance of MCPS's commitment to a safe and welcoming school environment for all students, Pet.App.66a. As relevant to Petitioners' due-process claim, the court concluded that the Guidelines are subject to rational-basis review, which they satisfy. Pet.App.67a. The court then explained that if the Guidelines "*were* subject to strict scrutiny (they are not)," it would conclude that they survive such scrutiny because they further compelling state interests (including

ensuring student safety) and are narrowly tailored to further those interests. Pet.App.84a.

The district court further concluded that Petitioners failed to plead an as-applied challenge because their papers were "devoid of any specific factual allegations" and contained only "insufficient" and "generalized" averments about "any specific application of the Guidelines relating to them." Pet.App.87a-88a. Because Petitioners had an opportunity to amend their complaint to address these deficiencies and did not indicate that they needed "further investigation or discovery" for "their allegations related to the application of the Guidelines," *id.*, the district court dismissed with prejudice.

2. The Fourth Circuit vacated and remanded with directions to dismiss without prejudice for lack of standing. Pet.App.26a. The majority—Judges Quattlebaum and Rushing—acknowledged that Petitioners' objections to the Guidelines "may be quite persuasive," but explained that "the parents' opposition … reflects a policy disagreement," and "policy disagreements should be addressed to elected policymakers at the ballot box, not to unelected judges in the courthouse." Pet.App.5a.

The Fourth Circuit first clarified that "the parents' focus [wa]s narrow." Pet.App.8a. In particular, the court quoted Petitioners' own characterization of their challenge as "only insisting that they be informed of their own, individual children's behavior when it deviates from the prior instruction about the naming and gender of their child." *Id.*

To determine whether Petitioners alleged injury under that narrow theory, the court applied this Court's standing precedent, noting that the appeal specifically before it "concerns the injury-in-fact requirement of standing," which "requires either a current injury, a

certainly impending injury, or a substantial risk of a future injury." Pet.App.10a-11a.

The Fourth Circuit then reviewed the complaint's allegations, explaining that Petitioners allege the Guidelines are currently in place, apply to all students, and that under the Guidelines MCPS has withheld from parents information concerning over 300 gender-support plans of students. Pet.App.11a-12a. "[T]hose allegations," the court reasoned, "are insufficient to create standing," as they do not constitute a current injury, a certainly impending injury, or substantial risk of a future injury. Pet.App.12a.

As to a current injury, the court reasoned that Petitioners "have not alleged any of their children have gender support plans," nor "alleged that their children have had any discussions with school officials about gender-identity or gender-transition issues," and therefore, "according to their allegations, no information is being withheld from them" under the Guidelines. Pet.App.12a. As to a certainly impending injury or a substantial risk of future harm, the court explained that Petitioners "have not alleged that they suspect their children might be considering gender transition or have a heightened risk of doing so." *Id.* Given that, the Fourth Circuit concluded that "any risk of future injury alleged by the parents is far more attenuated than what the Supreme Court has allowed." Pet.App.12a-13a.

Judge Niemeyer, in dissent, found fault with the majority for "read[ing] the Parents' complaint in this case in an unfairly narrow way" and "overlook[ing] material allegations of the complaint about the Parents' injury." Pet.App.27a-28a. In Judge Niemeyer's view, the majority's "restrictive view of the scope of the complaint,"

Pet.App.34a, led it to err in concluding that the Petitioners lack standing.

The court identified several problems with the dissent's view. *First*, the court explained that Petitioners themselves had disavowed the dissent's interpretation of their claims. Pet.App.16a-17a.

Second, the court explained that the dissent misconstrued Petitioners' allegations as purportedly challenging the Guidelines as a whole, rather than specifically challenging the withholding of information (which Petitioners and the Fourth Circuit refer to as the "Parental Preclusion Policy"). Pet.App.17a-18a.

Third, the court explained that "none of the harms the dissent argues are described in the complaint occur until a child identifies as transgender or gender nonconforming and has approached the school for a gender support plan," and even after that, "the school must also deem the parents unsupportive and decide to keep the information about their child from them." Pet.App.19a. The court noted that this "leaves these parents at the end of a 'hypothetical chain of events' that the Supreme Court has told us precludes standing." Pet.App.19a.

Fourth, the court explained that although it agreed with the dissent that Petitioners allege the Guidelines are mandatory and apply to all students, such allegations are not enough to confer standing. Pet.App.19a. "[J]ust because a policy or practice exists and is unconstitutional," the court reasoned, "does not mean a particular plaintiff has been injured and has standing to challenge it." *Id.*

Finally, the court carefully explained why *Parents Involved in Community Schools* v. *Seattle School District No. 1*, 551 U.S. 701 (2007), is distinguishable. That

case, the court noted, involved an equal-protection challenge, and thus implicated a unique injury, namely, "being forced to compete in a race-based system." Pet.App.22a. "[N]othing about *Parents Involved* nor subsequent Supreme Court decisions," the court continued, "indicate the standing standard from *Parents Involved* applies beyond the context of equal protection claims." Pet.App.22a. And *Parents Involved* "do[es] not … abrogat[e] the certainly-impending-or-substantial-risk test that applies in cases involving standing for future injuries." Pet.App.23a.

In sum, the court stated, although Petitioners "make compelling arguments," "they do not allege a current injury, a certainly impending injury or a substantial risk of future injury." Pet.App.26a. Given that, "they have not alleged Article III standing," and hence the federal courts lack jurisdiction over Petitioners' due-process claims. *Id.*

REASONS FOR DENYING THE PETITION

I. THE FOURTH CIRCUIT'S STRAIGHTFORWARD APPLICATION OF THIS COURT'S STANDING PRECEDENTS DOES NOT WARRANT REVIEW

A. The Fourth Circuit's Sole Holding Was That Petitioners Lack Standing Under This Court's Precedents

Applying settled standing principles, the Fourth Circuit concluded that Petitioners did not plausibly plead an injury-in-fact because they did not allege that they had been, or were likely to be, denied information about their children under the Guidelines. Pet.App.11a-12a. In the Petitioners' view, it was enough for them to allege that the Guidelines exist and that they *could* be injured under the Guidelines *if* MCPS were to

implement a gender-support plan for their children without informing them. Pet.11. As the Fourth Circuit held, however, such allegations are insufficient to establish "a current injury, a certainly impending injury or a substantial risk of future injury" under this Court's precedent. Pet.App.12a.

1. Petitioners' asserted injury cannot confer standing to challenge the Guidelines because it hinges on a string of hypothetical events that they have not pleaded are likely to occur. "To establish Article III standing, an injury must be 'concrete, particularized, and actual or imminent[.]'" *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). This Court has "repeatedly reiterated" that any "'threatened injury must be *certainly impending* to constitute injury in fact' and that '[a]llegations of *possible* future injury' are not sufficient." *Id.* (alterations in original). The Fourth Circuit thus correctly concluded that Petitioners could not challenge the Guidelines based on their speculative fears that MCPS would "implement[] a gender support plan and withhold[] information about such a plan" from Petitioners. Pet.App.11a.

a. Petitioners did not plead a current injury because, as the Fourth Circuit held, according to their own allegations, "no information is being withheld from them" under the Guidelines. Pet.App.12a. Petitioners did not allege that any of their children either spoke to school officials about gender identity or had a gender-support plan in place. *Id.* Indeed, Petitioners did not allege that they had any basis even to *suspect* that they are being denied information under the Guidelines. Because Petitioners "present[ed] no concrete evidence to substantiate their fears" that MCPS is keeping information from them, *Clapper*, 568 U.S. at 420, the Fourth

Circuit correctly held that they cannot "establish a current injury," Pet.App.12a.

b. Petitioners also did not "allege[] any facts that indicate they have a certainly impending injury or a substantial risk of future harm" from the Guidelines. Pet.App.12a. The Fourth Circuit explained that "any risk of future injury" Petitioners alleged was "far more attenuated than what the Supreme Court has allowed." Pet.App.13a. As in *Clapper*, Petitioners put forward claims that "depend on a speculative fear, the occurrence of which requires guesswork as to actions of others." Pet.App.14a. In particular, the Fourth Circuit explained, Petitioners would never sustain an injury under the Guidelines unless the following series of "future events" were to occur:

> (1) their minor children must determine they identify as transgender or gender nonconforming, (2) their minor children must decide they want to approach the school about a gender support plan, (3) the school must deem the parents unsupportive and (4) it must then decide to keep the information about their children from them.

Id. It would thus require "guesswork as to both their children's actions and the actions of" MCPS to determine that *any* of the events necessary to bring about Petitioner's feared injury was likely to occur. Pet.App.15a.

Nor did it make a difference that the Guidelines might "hinder[] plaintiffs' ability to determine whether they had been injured." Pet.App.15a. This Court has held that plaintiffs failed to establish an imminent injury even where secrecy surrounding the challenged government program forced them to "speculate and make assumptions" about whether they would be injured. *Clapper*, 568 U.S. at 411. Courts thus cannot "toss out the

injury requirement because the government hides information." Pet.App.15a. Because Petitioners' "theory of standing … relies on a highly attenuated chain of possibilities," *Clapper*, 568 U.S. at 410—one "far more attenuated than what the Supreme Court has allowed," Pet.App.13a—the Fourth Circuit appropriately determined that they failed to plead injury-in-fact.

2. None of Petitioners' arguments establishes that the Fourth Circuit departed from this Court's standing precedent. Each argument either misreads or seeks a wholesale reimagination of this Court's standing principles.[*]

a. Contrary to Petitioners' assertions (Pet.11), they do not have a present injury because their children are "subject" to the Guidelines. The Fourth Circuit correctly held that Petitioners could not establish a current injury merely because they are "subject to a law they believe to be unconstitutional." Pet.App.20a. As the court observed, "just because a policy or practice exists and is unconstitutional does not mean a particular plaintiff has been injured and has standing to challenge it." Pet.App.19a. To challenge a policy that applies to plaintiffs but has not yet been enforced against them, they must plead that "threatened enforcement [is] sufficiently imminent." *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 159 (2014). This requires establishing a "credible threat" that the policy will be applied to them

[*] Even if the Fourth Circuit had misapplied this Court's precedent, "[e]rror correction … is outside the mainstream of the Court's functions and … not among the 'compelling reasons' … that govern the grant of certiorari." Shapiro et al., *Supreme Court Practice* § 5.12(c)(3) (11th ed. 2019).

in a manner that arguably affects their constitutional rights. *Id.*

Petitioners claim (Pet.12) that *Parents Involved* suggests they can establish "a *current*, *immediate* injury" based on allegations that they are "subject to a policy that, on its face, violates their constitutional rights." Pet.12. They cite the Fourth Circuit dissent's argument that, because of the Guidelines, "the dynamics and dialogue between parent and child have been changed on an ongoing basis." Pet.15; *see also* Pet.App.38a. The Fourth Circuit carefully considered and correctly rejected this argument.

Parents Involved held that parents had standing to challenge a student assignment plan based on a distinct "form of injury under the Equal Protection Clause" that Petitioners do not allege here: "being forced to compete in a race-based system that may prejudice" them. 551 U.S. at 719. As the Fourth Circuit explained here, this form of injury stems from the "inherent nature" of an equal-protection claim and has not been applied beyond that context. Pet.App.24a-25a n.6. In the equal protection context, this Court has recognized, even before harm results from the discriminatory denial of a benefit, the plaintiff may be injured by the discriminatory system that prevents him "from competing on an equal footing." *Adarand Constructors, Inc.* v. *Pena*, 515 U.S. 200, 211 (1995). Petitioners cannot simply import that theory of standing to support their due-process claims, as "the Supreme Court has repeatedly established and acknowledged different standing requirements for different alleged constitutional violations." Pet.App.24a n.6.

Petitioners cite no case establishing that government action "immediately harms family relations" by "teach[ing] children to hide important matters from

their parents" and "trust school personnel" over their parents, or "requir[ing] parents to ask their children whether they are hiding" information. Pet.14-15. In any event, as the Fourth Circuit recognized, Petitioners did not allege these injuries in their complaint. Pet.App.17a-19a. And there can be no plausible allegation that MCPS has interfered with Petitioners' care for their children unless and until "a child identifies as transgender or gender nonconforming and has approached the school for a gender support plan," and the school has "decide[d] to keep the information" from Petitioners. Pet.App.19a.

The state amici's arguments do not support Petitioners' claim of a current injury under *Parents Involved*. It makes no difference that this Court recently cited *Parents Involved* in an APA case. *See* Amicus Br. of West Virginia et al. 13-14. What matters is that this Court has not suggested that plaintiffs have a present due-process injury based on the existence of a policy under which, they allege, the government may infringe their liberty rights. Nor does the district court decision that amici identify move the needle, as it merely cited *Parents Involved* to hold that a particular plaintiff *had* pleaded a sufficiently likely "future injury," *see Martinez* v. *Malloy*, 350 F. Supp. 3d 74, 88 (D. Conn. 2018), which Petitioners have not done here, *see* Pet.App.14a-15a.

Petitioners also string-cite to cases in which they claim "this Court … found standing to challenge school policies simply on the basis that the parents' children attended the school and so were subject to the policy or practice." Pet.12-13. None of these Establishment Clause cases supports Petitioners' claim to standing here. In *Lee* v. *Weisman*, this Court held a parent had standing to challenge a school's policy of reciting a prayer at graduation when it was "likely, if not certain" that the prayer would be conducted at his daughter's

graduation and that the policy would therefore injure her. 505 U.S. 577, 584 (1992). In *School District of Abington Township* v. *Schempp*, parents had standing to challenge required Bible readings in their children's public-school classes. 374 U.S. 203, 223-225 & n.9 (1963). None of the other cases Petitioners cite discussed standing expressly, but each involved parents suing over similar efforts to advance religion in public school, and each explained why those parents experienced an actual or imminent Establishment Clause injury. *See Santa Fe Indep. Sch. Dist.* v. *Doe*, 530 U.S. 290, 313-317 (2000) (school's prior conduct established that its policy had an unconstitutional purpose of establishing religion and thus injured plaintiffs upon enactment); *Edwards* v. *Aguillard*, 482 U.S. 578, 584-585 (1987) (similar); *Wallace* v. *Jaffree*, 472 U.S. 38, 42 (1985) (plaintiffs' children "had been subjected to various acts of religious indoctrination" under a school-prayer policy).

These cases simply stand for the proposition that parents can challenge a public-school policy that actually affects their children's rights. In *Lee* and *Schempp*, the students' ability to opt out of forced participation in a religious observance did not obviate the Establishment Clause violation because the students still experienced coercion under the policy. *See Lee*, 505 U.S. at 595; *Schempp*, 374 U.S. at 224-225. But here, Petitioners do not challenge a policy that coerces their children to take any action; their children must instead *opt in* to a gender-support plan before Petitioners' feared injury could ever come about. *See* Pet.App.14a-15a.

b. Petitioners next argue that the Fourth Circuit misinterpreted standing cases by "essentially adopt[ing] a rule that denies standing any time a hypothetical chain of events is involved to show impending injury." Pet.15-16. That is wrong; the Fourth Circuit faithfully applied

this Court's many decisions establishing that plaintiffs can challenge a policy only if they plead "a credible threat" of its future enforcement against them. Pet.App.20a.

No such credible threat exists here. Unlike in *Babbitt* v. *United Farm Workers National Union*, 442 U.S. 289, 301 (1979), Petitioners have not alleged that they (or their children) intend to engage in conduct that will "inevitabl[y]" result in MCPS withholding information from them under the Guidelines. And unlike in *Susan B. Anthony List*, 573 U.S. at 164, or *Steffel* v. *Thompson*, 415 U.S. 452, 459 (1974), Petitioners have not alleged that MCPS has previously applied the Guidelines against *them* or that MCPS is particularly likely to deny *them* information under the Guidelines.

Instead, just like in *Clapper*, Petitioners point to "a highly attenuated chain of possibilities," which "does not satisfy the requirement that threatened injury must be certainly impending." 568 U.S. at 410. Petitioners' attempt to rely on their "speculative fear[s]" about future events meant that the Fourth Circuit's conclusion was not even a close call—the "risk of future injury" Petitioners alleged was "far more attenuated than what the Supreme Court has allowed" to confer standing. *See* Pet.App.13a. The fact that MCPS personnel see their children "five days a week" and "may freely discuss sexual identity issues" with them, Pet.20, does not make their asserted injury any less speculative. Petitioners do not allege that school personnel have ever discussed sexual identity issues with their children, or that what Petitioners (incorrectly) attempt to portray as inevitable discussions about sexual identity are even traceable to the Guidelines they challenge. As the Fourth Circuit held, Petitioners' complaint points to nothing suggesting MCPS is likely to withhold information from them under

the Guidelines. Because their allegations of future injury "rest on mere conjecture about possible government actions," they lack standing under settled law. *Clapper*, 568 U.S. at 420.

c. Finally, the Fourth Circuit appropriately declined to consider the inapposite cases Petitioners cited concerning standing to sue for statutory harms. *See* Pet.22-23. In both *FEC* v. *Akins*, 524 U.S. 11 (1998), and *Public Citizen* v. *U.S. Department of Justice*, 491 U.S. 440 (1989), this Court held that plaintiffs alleged a sufficiently concrete and particularized injury when a government agency refused to provide information that the plaintiffs were entitled to receive under a statutory scheme. In *Akins*, a group of voters pleaded a concrete injury by alleging they were unable to obtain information that a federal statute required the FEC to disclose and that they needed to "evaluate candidates for public office." 524 U.S. at 21. In *Public Citizen*, a legal nonprofit had standing to sue the Justice Department after "they sought and were denied specific agency records" that a federal statute required the Department to provide. 491 U.S. at 449. These cases stand for the proposition that "a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *Akins*, 524 U.S. at 21. They do not suggest that Petitioners—who did not allege that MCPS is withholding any records to which Petitioners (or members of the public) have a statutory entitlement—have standing to sue here.

B. The Fourth Circuit's Standing Decision Is Consistent With Those Of Other Circuits

The Fourth Circuit's holding that Petitioners lack standing accords with the decisions of other circuits.

1. Petitioners cite no case in which a court has found that parents have standing to challenge a school policy absent allegations that the parents have been, or are likely to be, injured under the policy.

a. Petitioners point (Pet.20) to an Eighth Circuit decision holding that parents had standing to challenge a school's antiharassment policy based on allegations that the policy was likely to be enforced against their children. *See Parents Defending Education* v. *Linn Mar Community School District*, 83 F.4th 658, 666-667 (8th Cir. 2023). In *Linn Mar*, a parent alleged that her son wanted to state his opinions about gender identity at school but instead "remain[ed] silent" for fear that his speech would violate the school's broadly worded antiharassment policy. *Id.* at 664. These fears of punishment were credible, the court held, because his intended course of action was "within the plain text of [the] policy." *Id.* at 667.

Linn Mar is consistent with the Fourth Circuit's decision below because *Linn Mar* involved the very allegations that the Fourth Circuit noted were missing here: allegations that Petitioners' children intended to engage in conduct that would activate the Guidelines (i.e., approaching MCPS about a gender-support plan) and that MCPS was likely to apply the Guidelines in a way that injured Petitioners (i.e., deeming Petitioners unsupportive and withholding information from them). *See* Pet.App.14a. And contrary to the argument of amicus Jewish Coalition for Religious Liberty (Br.10-11), *Linn Mar*'s observation that "[p]arents have standing to sue when the practices and policies of a school threaten the rights and interests of their minor children," 83 F.4th at 666, does not help Petitioners because Petitioners sue to vindicate their own asserted rights—not the rights of their children—and in any case do not allege that the

Guidelines threaten their children's rights or interests. *See* Pet.App.16a-17a.

b. Nor does Petitioners' throwaway citation (Pet.20) to *Armstrong* v. *Davis*, 275 F.3d 849 (9th Cir. 2001), help them. In *Armstrong*, the Ninth Circuit affirmed a district court's "'explicit' and 'specific' findings" that members of a plaintiff class, who had previously been injured by the denial of reasonable accommodations under the ADA, could demonstrate that they were likely to be injured again by showing that "the harm alleged is directly traceable to a written policy." *Id.* at 861. It was the existence of the policy *plus* the district court's specific factual findings that the plaintiffs had already been injured under the policy that conferred standing to sue for prospective injunctive relief. *See id.*; *see also id.* at 862-863 & nn.19-21 (detailing injuries suffered by members of plaintiff class). There are (and could be) no similar findings here.

2. Petitioners also claim that "[t]he Eighth and Fifth Circuits have recently resolved similar cases … in tension with" the Fourth Circuit here. Pet.21. But neither court came close to holding that plaintiffs face a certainly impending injury sufficient to confer standing under the circumstances presented here. In *Religious Sisters of Mercy* v. *Becerra*, 55 F.4th 583 (8th Cir. 2022), and *Franciscan Alliance, Inc.* v. *Becerra*, 47 F.4th 368 (5th Cir. 2022), the courts held that medical providers faced a credible threat of enforcement because the challenged regulation arguably proscribed conduct that the providers were already engaging in. *See Religious Sisters of Mercy*, 55 F.4th at 605 (plaintiff "refus[ed] to perform or cover gender-transition procedures"); *Franciscan Alliance*, 47 F.4th at 377 (plaintiff "already refuses to offer gender-reassignment surgeries or abortions"). And in each case, the court determined that the government's

equivocal representations that it might or might not penalize the plaintiffs for their conduct did not eliminate the credible threat of enforcement. *See Religious Sisters of Mercy*, 55 F.4th at 605-606; *Franciscan Alliance*, 47 F.4th at 377. Petitioners cannot rely on these cases to establish a future injury based on MCBE's refusal to disavow the Guidelines because Petitioners have not alleged that their children have engaged, or are likely to engage, in any conduct to which the Guidelines apply. *See* Pet.App.15a.

3. The state amici essentially concede (Br.9-13) that there is no circuit conflict over the standing question here. They instead urge this Court to grant review because they believe that "[w]hether the Parents have standing is … an important question of federal law not yet settled." *Id.* at 9. But the Fourth Circuit's determination that these Petitioners failed to plead "a current injury, a certainly impending injury or substantial risk of future injury" did not raise an important, unsettled question for this Court to decide—it was instead a straightforward application of settled law. Pet.App.12a.

4. Finally, the Fifth Circuit's recent decision in *Deanda* v. *Becerra*, 2024 WL 1058721 (5th Cir. Mar. 12, 2024), is consistent with the Fourth Circuit's analysis. In *Deanda*, a father had standing to challenge a federal policy that "nullif[ied] … his right" under state law "to consent to his children's medical care." *Id.* at *6. The challenged policy prohibited "any Title X project staff [from] notify[ing] a parent or guardian before or after a minor has requested and/or received Title X family planning services." *Id.* The policy resulted in a present injury to the father's concrete interests because it "purport[ed] to obliterate the parental rights he now enjoys under Texas law," including his "existing right to consent to his children's receiving contraceptives." *Id.* at *4. Given

that the father's "assert[ed] injury to his state-secured parental rights to notice and consent" alone established injury-in-fact, the father was not required to further allege that his children were likely to obtain family planning services from a Title X provider. *Id.* at *6. The challenged policy in *Deanda*, moreover, expressly forbade the government from revealing information about a child's medical care to parents in all circumstances. *See id.* That meant the father's asserted injury did not depend on a highly attenuated chain of events like the one that Petitioners allege here, and that this Court found insufficient to confer standing in *Clapper*. *See* Pet.App.14a-15a.

C. The Fourth Circuit Read Petitioners' Complaint Liberally And Nonetheless Held That They Lacked Standing

Petitioners seize on the dissenting opinion to make a fallback argument that the Fourth Circuit held that Petitioners lacked standing based on an erroneously "restrictive" reading of their complaint. But the Fourth Circuit's refusal to draw unsupported inferences from Petitioners' complaint does not justify this Court's review. Petitioners do not even argue that whether the Fourth Circuit read their complaint liberally enough presents an important question of federal law, or that there is any split of authority on this issue. Even if the Fourth Circuit *had* incorrectly applied the law to Petitioners' complaint—and it did not—this Court should not grant review to correct such an error.

In any event, the Fourth Circuit's reading of the complaint was far from "stingy." Pet.24. As the court explained, Petitioners asserted a single injury: "lack of access to information about their children." Pet.App.16a-17a; *see* Pet.App.107a ("Plaintiff Parents

have brought this action to enforce their rights to access certain information generated and retained about their minor children[.]"). Petitioners did not allege any facts from which a court could infer that such an injury is present or certainly impending. The court carefully considered and rejected the dissent's argument that Petitioners brought a "broader" challenge with additional (implicit) allegations of injury. Pet.App.16a-19a. And it concluded that "none of the harms the dissent argues are described in the complaint occur" until "the end of a 'hypothetical chain of events' that the Supreme Court has told us precludes standing." Pet.App.19a.

Petitioners do not even adopt the dissent's view of why the Fourth Circuit purportedly read their complaint too narrowly. Instead, they argue (Pet.23-24) that their "general allegations" of harm sufficed under *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555 (1992), and suggest that the bar to establish standing is lower because they seek injunctive relief. Neither is true. First, their "general allegations" cannot be read to "embrace those specific facts that are necessary to support the claim here." *Id.* at 561. As the Fourth Circuit held, Petitioners would not be injured unless a string of specific future events ensue, Pet.App.14a, and Petitioners' complaint cannot be read—however liberally—to embrace those specific future events (i.e., that *their* children will seek out gender-support plans and that MCPS will respond by withholding information from *them*). Second, this Court made clear in *TransUnion LLC* v. *Ramirez* that a plaintiff seeking injunctive relief must demonstrate that "the risk of harm is sufficiently imminent and substantial." 594 U.S. 413, 435 (2021) (citing *Clapper*, 568 U.S. at 414). As the Fourth Circuit held, and this Court's precedent makes clear, Petitioners have not alleged such an injury.

II. THE MERITS OF PETITIONERS' DUE-PROCESS CLAIM DO NOT WARRANT REVIEW

This Court is "a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U.S. 709, 719, n.7 (2005). It therefore regularly declines to address claims not addressed by the court of appeals. *Id.*; *see also, e.g.*, *Johnson* v. *Arteaga-Martinez*, 596 U.S. 573, 583 (2022); *Brownback* v. *King*, 592 U.S. 209, 214 (2021). Here, the Fourth Circuit did not reach the due-process claim because of its standing holding. Pet.App.4a-5a, 10a.

Nevertheless, Petitioners ask this Court to reverse on standing and review the merits of their due-process claim—whether the Guidelines violate their "fundamental parental rights." Pet.i. Petitioners contend that the district court's decision is inconsistent with this Court's precedents regarding parental rights and reflects a division among district courts on whether so-called "Parental Preclusion Policies" are subject to rational-basis review. Moreover, Petitioners argue, this case presents a matter of widespread and exceptional importance. Neither of these arguments (alone or in combination) justifies this Court's review.

A. The District Court's Opinion Is Consistent With This Court's Precedent And Does Not Implicate Any Circuit Split

Petitioners seek this Court's review based on two purported errors in the district court's decision. *First*, they argue that the district court improperly expanded a so-called "curricular exception" to parents' due-process right, relying on this Court's cases applying rational-basis review to challenges to public school policy decisions. *Second*, they argue that the district court's conditional conclusion that MCPS's interests in "student privacy and security" would satisfy strict scrutiny

conflicts with decisions of this Court and the courts of appeals. Neither purported error justifies the Court's review. The district court's decision is consistent with decisions of this Court and other circuits, which themselves are not in conflict.

1. The District Court's Application Of Rational-Basis Review Is Consistent With This Court's Precedent Regarding Parental Control Over The Classroom

The district court was correct to apply rational-basis review to Petitioners' due-process claim because parents have no fundamental right to be informed by public-school personnel when their child's "behavior … deviates from the prior instruction about the naming and gender of their child—and not [be] lied to about it by school personnel." Pet.App.8a. No court has recognized such a right. On the contrary, courts have consistently refused to recognize such a sweeping expansion of parental rights in the context of public education. *See* Pet.App.67a-81a (reviewing relevant case law).

a. The due-process right of parents to make decisions concerning the care, custody, and control of their children, *Troxel* v. *Granville*, 530 U.S. 57, 66 (2000) (plurality), is not absolute or unqualified. While the Due Process Clause protects a parent's right to decide whether to send their children to public school, *see Pierce* v. *Soc'y of Sisters*, 268 U.S. 510, 535 (1925), it does not confer on parents who have chosen public school a general right to superintend those schools or claim exemptions from reasonable school policies and practices. As made clear in *Runyon* v. *McCrary*, 427 U.S. 160 (1976), "*Pierce* … len[ds] no support to the contention that parents may replace state educational requirements with their own idiosyncratic views of what

knowledge a child needs to be a productive and happy member of society." *Id.* at 177. To grant parents such a right would eviscerate the states' interest in educating their citizens. *Ambach* v. *Norwick*, 441 U.S. 68, 76 (1979) (collecting authority on the preeminence of the states' interest in public education).

Over decades, courts have tried to strike a balance between protecting the rights of parents and students and deferring to the reasoned judgments of educators on how to provide a safe and supportive learning environment. *See Board of Educ., Island Trees Union Free Sch. Dist. No. 26* v. *Pico*, 457 U.S. 853, 863-864 (1982) ("[L]ocal school boards have broad discretion in the management of school affairs" and "must be permitted 'to establish and apply their curriculum in such a way as to transmit community values.'"). As the Fourth Circuit articulated in a prior case, "it is not a court's obligation to determine which messages of social or moral values are appropriate in a classroom. Instead, it is the school board, whose responsibility includes the well-being of the students, that must make such determinations." *Lee* v. *York Cnty. Sch. Div.*, 484 F.3d 687, 700 (4th Cir. 2007). While states may not "completely foreclos[e] the opportunity of individuals and groups to choose a different path of education," *Brown* v. *Hot, Sexy & Safer Prods., Inc.*, 68 F.3d 525, 533 (1st Cir. 1995), parents hold no "fundamental right … to tell a public school what his or her child will and will not be taught," *Leebaert* v. *Harrington*, 332 F.3d 134, 141 (2d Cir. 2003).

Reflecting this considered approach, courts have routinely upheld school regulations on the grounds that they do not implicate parents' rights to control the upbringing of their children and are, therefore, subject to rational-basis review only. *See, e.g.*, *Herndon ex rel. Herndon* v. *Chapel Hill Carrboro City Bd. of Educ.*, 89

F.3d 174 (4th Cir. 1996) (mandatory community service); *Hall* v. *Tawney*, 621 F.2d 607, 610 (4th Cir. 1980) (school discipline); *Leebaert*, 332 F.3d at 134 (mandatory health curriculum); *Fields* v. *Palmdale Sch. Dist.*, 427 F.3d 1197 (9th Cir. 2005) (sex-education programs); *Brown*, 68 F.3d at 534 (compulsory sex-education assembly); *Blau* v. *Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 398-400 (6th Cir. 2005) (school dress codes).

Consistent with this well-established case law, the district court held here that the Guidelines do not implicate a fundamental right protected by the Due Process Clause and, so, are subject to rational-basis review. Pet.App.81a.

b. Petitioners are wrong that their claim falls outside the realm of deference owed to public schools because it "does not deal with curriculum taught to all students." Pet.26. As just discussed, courts have held that a range of school policies, from mandatory community service to school dress codes, do not implicate parents' fundamental right to choose how to raise their children. And Petitioners identify no decision, from this Court or any other, indicating an exception for school policies simply because those policies may, in some instances, involve "secrecy." Pet.26-27.

c. Implicitly conceding that there is no circuit split, Petitioners argue that *district courts* are "divided." Pet.25. But division among district courts is not a "compelling" reason to grant certiorari. S. Ct. R. 10(a). Regardless, even this putative division among district courts is illusory.

None of the cases Petitioners cite in support of a supposed district-court split addressed a claim like Petitioners'. Two cases concerned preliminary injunctions brought by teachers claiming violations of their First

Amendment rights. *Ricard* v. *USD 475 Geary County, KS School Board*, 2022 WL 1471372 (D. Kan. May 9, 2022); *Mirabelli* v. *Olson*, 2023 WL 5976992 (S.D. Cal. Sept. 14, 2023). So, while both cases challenged policies limiting disclosure of students' transgender status to parents, neither afforded the courts an occasion to rule on whether the policies violated *parental* rights under the Due Process Clause—which is the claim Petitioners raise. And another case is factually far afield because it concerned the actions of a single teacher "pursu[ing] her own agenda outside the curriculum" to "inculcate [her] beliefs about transgender topics in Plaintiffs' own children." *Tatel* v. *Mt. Lebanon Sch. Dist.*, 637 F. Supp. 3d 295, 302 (W.D. Pa. 2022), *clarified on denial of reconsideration*, 2023 WL 3740822, at *10 (W.D. Pa. May 31, 2023). The teacher allegedly "t[old] the children that [their parents] may be wrong about the child's gender, t[old] a child she would never lie (implying the parents may be lying about the child's identity), t[old] the children to keep the discussions about transgender topics secret, and groom[ed] a student to become a transgender child," *id.* at 335. Petitioners allege no attempts to indoctrinate any children, to coerce children into transitioning, or to persuade them to keep discussions of transgender topics a secret. The Guidelines are student-driven, as Petitioners note, Pet.26, and expressly encourage "work[ing] toward inclusion of the family," Pet.App.154a.

In short, Petitioners have not even identified a division among district courts deciding on "the same important matter." S. Ct. R. 10(a). Petitioners simply seek the Court's review of a one-of-a-kind district court opinion—one that has already been vacated by the Court of Appeals.

2. The District Court's Strict Scrutiny Analysis Is Consistent With This Court's Precedent And The Decisions Of The Courts Of Appeals

a. The district court's conditional conclusion that the Guidelines would survive strict scrutiny is consistent with this Court's precedent. "[A]ssuming momentarily that the Guidelines were subject to strict scrutiny," the court stated, the Guidelines are narrowly tailored to further MCBE's compelling interests in: (1) "protecting their students' safety and ensuring a 'safe, welcoming school environment where students ... feel accepted and valued'"; (2) "not discriminating against transgender and gender nonconforming students"; and (3) "protecting student privacy." Pet.App.82a.

These interests are well-established in this Court's case law. Indeed, the Court has found it "evident beyond the need for elaboration that a State's interest in safeguarding the physical and psychological well-being of a minor is compelling," and as a result has "sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights." *New York* v. *Ferber*, 458 U.S. 747, 757 (1982). MCBE's concerns about the safety and well-being of transgender students, moreover, is amply justified. Research shows that transgender students are substantially more likely to be bullied or harassed than their cisgender peers, are at a heightened risk of suicide, and often feel unsafe at school to the point of leaving school entirely. Pet.App.83a-84a. And this Court has held that transgender individuals are protected from discrimination under Title VII. *Bostock* v. *Clayton County*, 590 U.S. 644, 651-652 (2020). That holding informed the Fourth Circuit's extension of this non-discrimination

principle to Title IX. *Grimm* v. *Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616-617 (4th Cir. 2020).

MCBE also has a compelling interest in protecting student privacy. As courts have recognized in cases weighing families' privacy rights, students retain "the right not to have intimate facts concerning one's life disclosed without one's consent." *C.N.* v. *Ridgewood Bd. of Educ.*, 430 F.3d 159, 179 (3d Cir. 2005); *see also Anspach ex rel. Anspach* v. *City of Philadelphia*, 503 F.3d 256, 271 (3d Cir. 2007) ("[M]inors … enjoy constitutional rights of privacy under substantive due process."); *Planned Parenthood of Cent. Mo.* v. *Danforth*, 428 U.S. 52, 74 (1976) ("Constitutional rights do not … come into being magically only when one attains the state-defined age of majority.").

Petitioners dismiss these interests as "nothing more than a statement that the school might not agree with what the parents might instruct their children." Pet.29. But this misses the mark. Petitioners may well disagree with the viewpoint they believe the Guidelines reflect. But, critically, the Guidelines impose no limits on how Petitioners may counsel their children on gender identity or expression. The Guidelines do not reach inside the family home and do not restrict anything that parents may discuss with their children outside school. As such, Petitioners' invocation of *Matal* v. *Tam*, 582 U.S. 218 (2017), and *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995), is misplaced. The Guidelines do not interfere with—much less prohibit—Petitioners' speech.

b. Petitioners rely on family law precedent concerning the care and custody of children *outside* the schooling context. Pet.28-33 (citing *Stanley* v. *Illinois*, 405 U.S. 645 (1972); *Parham* v. *J.R.*, 442 U.S. 584 (1979); *Lassiter*

v. *Department of Soc. Servs. of Durham Cnty.*, 452 U.S. 18 (1981); *Santosky* v. *Kramer*, 455 U.S. 745 (1982); *Troxel*, 530 U.S. 57; *Croft* v. *Westmoreland Cnty. Children & Youth Servs.*, 103 F.3d 1123 (3d Cir. 1997); *Brokaw* v. *Mercer Cnty.*, 235 F.3d 1000 (7th Cir. 2000); and *Doe* v. *Heck*, 327 F.3d 492 (7th Cir. 2003)). Those cases are inapposite because there is a long-standing and meaningful distinction between the custody of children—which goes to the very core of the parent-child relationship—and parents' control over their children's *schooling*. *See Parker* v. *Hurley*, 514 F.3d 87, 101-102 (1st Cir. 2008); *Leebaert*, 332 F.3d at 141-142. The "best interests of the child" standard used in custodial cases is not the same standard that applies to determine the scope of parental rights with respect to school operations. For good reason: Parents retain their custodial control while sending their children to school for several hours a day—even if, for those hours, parents necessarily cede some of their control to school officials. Given this critical distinction, the district court rightly gave little weight in its analysis to Petitioners' child-custody cases.

Petitioners' argument that the Guidelines "implicate[] the procedural due process rights of parents," Pet.31, misses the mark for the same reason. The procedural requisites that Petitioners enumerate represent the "process constitutionally due a natural parent at a State's parental rights termination proceeding." *Santosky*, 455 U.S. at 753. Again, nothing in the Guidelines bears on parents' custodial care of their children and Petitioners cite no case law that would justify importing this process into the school context.

B. This Case Is A Poor Vehicle For Addressing This Issue, Which Warrants Further Percolation

Even if the Court wished to take up the due-process issues Petitioners raise, this is not the right the case and Petitioners are not the right plaintiffs. As explained, Petitioners do not claim to have transgender or gender-nonconforming children, do not claim that their children have devised a support plan that excludes Petitioners, and do not contend that any information about their children's gender transition is being withheld from them.

Petitioners suggest (Pet.11) that this Court should review the Fourth Circuit's decision because "[t]his issue is not going away," and the state amici similarly urge the Court to weigh in (Br.7) because "lawsuits 'about the nature and scope of parental rights' related to their children's sexual identities are 'proliferat[ing].'" But the purported salience of this issue underscores exactly why there is no need for the Court to grant review here, where plaintiffs who lack any injury ask it to issue a mere "advisory opinion[.]" *See* Pet.App.10a. If Petitioners and amici are correct that similar cases are percolating through the lower courts, then the Court should address these issues, if at all, in litigation that presents an actual case or controversy.

The examples of related cases cited by Petitioners and amici underscore the vehicle problems present here: In each of those cases, parents suing the school board alleged that they were actually denied information about their child's gender transition. *See Willey* v. *Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trustees*, 2023 WL 4297186, at *1-2 (D. Wyo. June 30, 2023) (parents alleged that a school district began using the new preferred name and pronouns for their child without informing them);

Regino v. *Staley*, 2023 WL 4464845, at *1 (E.D. Cal. July 11, 2023); Second Am. Compl. ¶¶ 1-3, *Perez* v. *Clay Cnty. Sch. Bd.*, No. 3:22-cv-0083-TJC-JBT (M.D. Fla. May 31, 2023); Compl. ¶¶ 1-5, *Mead* v. *Rockford Pub. Sch. Dist.*, No. 1:23-cv-01313-PLM-RSK (W.D. Mich. Dec. 18, 2023); *see also Ricard*, 2022 WL 1471372, at *5 (teacher alleged that a school policy prohibiting disclosure to parents of students' gender transitions affected her because she communicated with parents of transgender student). The same is true of other recent cases that Petitioners and amici do not cite. *See, e.g.*, *Littlejohn* v. *School Bd. of Leon Cnty.*, 647 F. Supp. 3d 1271, 1273-1274 (N.D. Fla. 2022) (parents alleged that a school did not notify them of their child's gender support plan); *Foote* v. *Town of Ludlow*, 2022 WL 18356421, at *2 (D. Mass. Dec. 14, 2022) (similar).

MCBE takes no position on whether the plaintiffs in those cases or any others have standing to challenge the school policies described. But the fact remains that there is no shortage of cases in which parents have asserted that a school denied *them* information about *their children*. This is not that case.

CONCLUSION

The petition should be denied.

Respectfully submitted.

BRUCE M. BERMAN
JEREMY W. BRINSTER
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave., NW
Washington, DC 20037
(202) 663-6000

SIMON B. KRESS
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State St.
Boston, MA 02109
(617) 526-6000

ALAN SCHOENFELD
Counsel of Record
EMILY BARNET
THOMAS K. BREDAR
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich St.
New York, NY 10007
(212) 230-8800
alan.schoenfeld@wilmerhale.com

MARCH 2024