25-952

United States Court of Appeals for the Second Circuit

JENNIFER VITSAXAKI,
PLAINTIFF-APPELLANT,

v.

SKANEATELES CENTRAL SCHOOL DISTRICT;
SKANEATELES CENTRAL SCHOOLS' BOARD OF EDUCATION,
DEFENDANTS-APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK, NO. 24-CV-155, HON. DAVID N. HURD, PRESIDING

BRIEF OF DEFENDING EDUCATION AS *AMICUS CURIAE* SUPPORTING APPELLANT AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Defending Education does not have a parent corporation, it is not a publicly traded company, and no publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*

Defending Education is a national, nonprofit membership association. Its members include many parents with school-aged children. Launched in 2021, it uses advocacy, disclosure, and litigation to combat the increasing politicization and indoctrination of K-12 and postsecondary education. It has a substantial interest in this case. The Fourteenth Amendment protects the fundamental right of parents to direct the upbringing and education of their children. The logic of the district court's decision deprives parents, including members of Defending Education, of this fundamental right on intensely personal matters of gender identity.[1]

[1] Pursuant to Fed. R. App. P. 29(a)(4)(E), no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than the *amicus curiae*, its members, or its counsel—contributed money intended to fund preparing or submitting the brief.

INTRODUCTION

Facing parents of public school children is an explosion of policies that allow school personnel to socially transition their young children—giving children new names, pronouns, restrooms, and field trip bunks—in secret. Defending Education has found that nearly a quarter of the nation's students are subject to these policies. These "social transitions" are not neutral interventions. While the overwhelming majority of children with gender incongruity grow out of it, most children who are socially transitioned do *not*. Rather, they go on to increasingly invasive and irreversible interventions—puberty blockers, sterilizing cross-sex hormones, and experimental genital surgeries. Yet schools are refusing to even tell parents that they are setting their children on this dangerous pathway.

If the fundamental parental right to direct a child's upbringing protects anything, it protects against state-sanctioned transition of a child without parents' knowledge. But courts are leaving parents with no way to vindicate this right. When parents challenge a school's policy, they are often told that their concerns are too speculative so they lack standing. And when parents challenge a school's application of its policy to their child, some courts—like the one below—say they are impermissibly challenging school "instruction"—even though the school's secret transition of Mrs. Vitsaxaki's child had nothing to do with any classroom instruction. To correct this deprivation of parents' rights, the Court should reverse.

ARGUMENT

I. Secretly transitioning children is a widespread problem in public schools.

The phenomenon of public schools secretly socially transitioning young children has exploded in recent years. Defending Education keeps track of school districts with policies stating that district personnel can or should keep a student's transgender status hidden from parents. At last count, 1,215 school districts nationwide were reported to have such policies—and the actual figure is likely higher. These districts cover over 12.3 million students, roughly a quarter of the public school student population.[2] These policies draw on ideological guidance from groups like the National Education Association, which instructs school personnel not to "disclose a student's actual or perceived sexual orientation, gender identity, or gender expression to" "parents" "unless required to do so by law."[3] The NEA urges schools "to have a plan in place to help avoid any mistakes or slip-ups" that might clue in "unsupportive parents" about what schools are doing to their children.[4] Likewise, New York encourages its school districts to lie to parents: children "may

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[2] *See* Defending Education, *List of School District Transgender–Gender Nonconforming Student Policies*, https://defendinged.org/investigations/list-of-school-district-transgender-gender-nonconforming-student-policies/ (last updated Apr. 21, 2025); National Center for Education Statistics, *Fast Facts*, https://perma.cc/RZ4B-MWU7.

[3] *Legal Guidance on Transgender Students' Rights* 6 (June 2016), https://perma.cc/26N8-23D5.

[4] *Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools* 16, https://perma.cc/US5J-6AZW.

begin their transition at school without parent/guardian knowledge," and "if a parent calls the school and asks if their child is using a different name/pronouns/gender identity in school," "[t]he student is in charge" of what the school says.[5]

Thus, schools across the country are socially transitioning young students and concealing it from parents. The stories shared by families like the Vitsaxakis are heartbreaking. In Florida, Wendell and Maria Perez said that they found out that a school "employee had been counseling their 12-year-old about 'gender confusion' for months" "only after their child made two suicide attempts."[6] An Ohio school district apparently "encouraged young children to become transgender—then lied to parents about what was happening"—and one of those children also "attempted to commit suicide."[7] One mother in California "went two years without knowing her sixth grader had transitioned at school."[8]

What's more, no one can pretend that social transitions are some neutral intervention. As the United Kingdom's Cass Report—a seminal review of evidence

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[5] *Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices* 6–7 (June 2023), https://perma.cc/EMS2-LF29.

[6] Katie J. M. Baker, *When Students Change Gender Identity, and Parents Don't Know*, N.Y. Times (Jan. 22, 2023), https://www.nytimes.com/2023/01/22/us/gender-identity-students-parents.html.

[7] Order 2, *Kaltenbach v. Hilliard City Schs.*, No. 24-3336, Dkt. 59 (6th Cir. Mar. 28, 2025) (Thapar, J., concurring).

[8] Donna St. George, *Gender Transitions at School Spur Debates*, Wash. Post (July 18, 2022), https://perma.cc/BVZ5-T3PK.

about childhood gender transition—explained, "it is important to view [social transition] as an active intervention because it may have significant effects on the child or young person in terms of their psychological functioning and longer-term outcomes."[9] And "[t]he importance of what happens in school cannot be under-estimated."[10] Absent interventions like social transitioning, the vast majority of "children with gender dysphoria grow out of it."[11] But one "study found that 93% of those who socially transitioned between three and 12 years old continued to identify as transgender" five years later.[12] Another "study looking at transgender adults found that lifetime suicide attempts and suicidal ideation in the past year was higher among those who had socially transitioned as adolescents compared to those who had socially transitioned in adulthood."[13]

Social transition is the start of a conveyor belt that sends a child through the medical transition pathway. According to the Endocrine Society—a proponent of medically transitioning children—"[i]f children have completely socially transitioned, they may have great difficulty in returning to the original gender

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[9] Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People* 158 (Apr. 2024), https://perma.cc/74EA-L76V.
[10] *Id.*
[11] *Eknes-Tucker v. Governor of Alabama*, 114 F.4th 1241, 1268 (11th Cir. 2024) (Lagoa, J., concurring).
[12] Cass, *supra* note 9, at 162.
[13] *Id.* (internal quotation marks omitted).

role."[14] The Society even admitted that "there are currently no criteria to identify" when gender dysphoria could be reduced by early social transitions.[15] Social transitions are thus likely to usher children to dangerous, unproven, and sterilizing sex hormones and surgeries.[16]

Even state laws purporting to ban these policies may not solve the problem. The ACLU has a threatening "open letter" to schools claiming that it is somehow unconstitutional "to disclose a student's sexual orientation or gender identity" "to a student's parents."[17] The Biden Administration took a similar position, suggesting that secret transitioning policies are required under Title IX and FERPA.[18] School districts commonly make similar claims about FERPA—the district's policy here cites it, JA84—even though rights to educational records under FERPA are the *parents'* until the student turns 18. 20 U.S.C. § 1232g(d). Though the Department of Education is now investigating schools with secret transitioning policies for

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[14] Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102(11) J. Clinic. Endocrinology & Metabolism 3879 (Nov. 1, 2017).
[15] *Id.*
[16] *See Eknes-Tucker*, 114 F.4th at 1260–61, 1268–70 (Lagoa, J., concurring).
[17] ACLU, *Open Letter to Schools About LGBTQ Student Privacy* (Aug. 26, 2020), https://perma.cc/KM2H-2MT3.
[18] *See* Kate Anderson et al., *The Biden Administration's Proposed Changes to Title IX Threaten Parental Rights*, Federalist Soc'y (Jan. 5, 2023), https://fedsoc.org/commentary/fedsoc-blog/the-biden-administration-s-proposed-changes-to-title-ix-threaten-parental-rights.

violating FERPA,[19] all this confirms the need for parents to be able to defend their fundamental right to direct their children's upbringing. Policies that let school officials transition children in secret undermine parents' ability to provide for their children's wellbeing and harm children.

II. The decision below leaves parents without meaningful recourse to vindicate their constitutional rights.

Judicial recourse was already elusive for the many parents seeking to vindicate their constitutional right to direct their children's upbringing against schools secretly trying to transition their children. Courts confronting similar cases have often denied standing to parents of children who have not yet been covertly transitioned by their schools. In effect, these courts have told parents to wait until their child is secretly socially transitioned—no matter if, by design, they will not know that. Yet parents are now told by the district court's decision that even once that happens, and they bring an appropriate lawsuit, they cannot prevail because they are "challeng[ing] the manner of instruction employed by the" school. *Vitsaxaki v. Skaneateles Cent. Sch. Dist.*, No. 5:24-CV-155, 2025 WL 874838, at *10 (N.D.N.Y. Mar. 20, 2025); *see also Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 352 (1st Cir. 2025) (similar). That characterization is wrong, and it would make it impossible for

[19] U.S. Department of Education, *Press Release: U.S. Department of Education Directs Schools to Comply with Parental Rights Laws* (Mar. 28, 2025), https://perma.cc/K87Q-L96U.

parents to vindicate their constitutional rights—depriving them of the fundamental ability to guide their children's upbringing and education.

A. Courts have denied standing to challenge secret transition policies.

Courts routinely—and wrongly—deny standing to parents who challenge similar secret transition policies before they are imposed on their child. Typical is one Fourth Circuit decision, which held that such parents lack a current injury because their children did not yet have "any discussions with school officials about gender-identity or gender-transition issues"—so "no information is being withheld." *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 629 (4th Cir. 2023). The Fourth Circuit also said that no impending injury existed because the parents had "not alleged that they suspect their children might be considering gender transition." *Id.* at 630. The obvious response is that the *point* of these policies is to deny parents that knowledge, but the Fourth Circuit swept that aside. The court held it irrelevant whether "the government hides information" that would let the parents "determine whether they had been injured" enough for the court's liking. *Id.* at 631.

Other courts have come to the same conclusion. One held that parents' "worry and concern do not suffice to show that any parent has experienced actual injury." *Parents Protecting Our Child., UA v. Eau Claire Area Sch. Dist.*, 95 F.4th 501, 506 (7th Cir. 2024). Another went further, holding that "[e]ven if the child" "identifies

as transgender," "standing still does not exist unless [the] child has some interaction with the District pursuant to its gender policy." *Doe v. Pine-Richland Sch. Dist.*, 2024 WL 2058437, at *9 (W.D. Pa. May 7, 2024). Similar decisions abound. *See Kaltenbach v. Hilliard City Schs.*, 730 F. Supp. 3d 699, 703 (S.D. Ohio 2024) (holding that parents lack standing because they "offer no allegations that their children have told or will tell the school that they are (or may be) LGBTQ+"); *Lee v. Poudre Sch. Dist.*, 2023 WL 8780860, at *7 (D. Colo. Dec. 19, 2023) (parents of "disenrolled" student lack standing for prospective relief). Even the district court here denied standing for declaratory relief, reasoning that Mrs. Vitsaxaki had disenrolled her child. *See Vitsaxaki*, 2025 WL 874838, at *6.

To be sure, denying standing to parents whose children are subject to secret transition policies is wrong. These policies "specifically encourage school personnel to keep parents in the dark about the 'identities' of their children, especially if the school believes that the parents would not support what the school thinks is appropriate." *Parents Protecting Our Child., UA v. Eau Claire Area Sch. Dist.*, 145 S. Ct. 14, 14 (2024) (Alito, J., dissenting from denial of certiorari). Under these policies, "parents' fear that the school district might make decisions for their children without their knowledge and consent is not 'speculative'"—parents "are merely taking the school district at its word." *Id.* But the reality is that many courts

deny standing in these circumstances, perhaps "as a way of avoiding some particularly contentious constitutional questions." *Id.* at 14–15.

Defending Education experienced the use of standing to insulate these harmful policies from judicial review. On behalf of parent members, it sued the Linn-Mar Community School District in Iowa for a "parental exclusion policy" depriving parents of students in seventh grade and up the right to know their child's gender identity at school. The district court refused to find standing for this claim, reasoning that "no one has been denied information related to their child's gender identity or Gender Support Plan"—*yet*. *Parents Defending Educ. v. Linn-Mar Cmty. Sch. Dist.*, 629 F. Supp. 3d 891, 908 (N.D. Iowa 2022). The court also noted that one parent "has freely withdrawn their child from the school district," and held that "the harm of being 'forced' out of the school district is self-inflicted." *Id.* On appeal, the Eighth Circuit declined to reach the issue, holding that it was moot. *Parents Defending Educ. v. Linn-Mar Cmty. Sch. Dist.*, 83 F.4th 658, 665–66 (8th Cir. 2023).

Here, however, Mrs. Vitsaxaki (largely) navigated Article III's waters, which can be uniquely treacherous for disfavored or controversial rights. The Defendants were caught hiding from her that for *months* "the district had been referring to [her child] by" the child's "preferred name and pronouns and had created a Gender Support Plan for" the child. *Vitsaxaki*, 2025 WL 874838, at *3. Mrs. Vitsaxaki had specifically been "told that nothing out of the ordinary was happening at school that

might be affecting" her child's "mental health"—a blatant misrepresentation. *Id.* Yet even though Mrs. Vitsaxaki overcame jurisdictional hurdles—because the school had successfully started secretly transitioning her child—the district court held that the lawsuit was an impermissible "challenge [to] the manner of instruction employed by the district." *Id.* at *10. As discussed next, that holding was error, but the point here is that it would make it impossible for parents to challenge secret transition policies.

B. Secret transition policies are not school instruction.

The district court's dismissal of Mrs. Vitsaxaki's complaint was based on its view that "a school district is entitled to implement" "the subject and manner of instruction" "for its students." *Id.* According to the court, the school's secret transition policy is a "manner of instruction," "like a civility code." *Id.* And, the court said, parents have no "right to direct [their child's] upbringing" when it comes to school instruction. *Id.* This holding was error.

First, secret transitioning policies are not "instruction": they are internal rules applied by district employees—usually not even teachers—and involve no general "instruction" to students. *Second*, even if these policies were somehow classified as "instruction," the district court was wrong to think that school instruction can never implicate parents' fundamental right to direct their children's education and upbringing.

1. Secret social transitions are not classroom instruction.

The district court's characterization of the district's secret transitioning policy as classroom instruction is far-fetched. Mrs. Vitsaxaki's complaint here is not with any classroom instruction. No students were "instructed" about gender identity via this child's gender plan. Secretly transitioning the child was not some classroom experiment. The school authorities who led the secret transition were a guidance counselor, psychologist, and social worker—not any teacher. *See Vitsaxaki*, 2025 WL 874838, at *2. And even the psychologist recognized that the policy was affecting the "mother's right to know what has been going on here at school" with "name and pronoun changes"—not with, say, grammar or math. JA80.

The district's policy and gender support plan confirm that "instruction" is not at issue. The first heading of the policy pertains to school "records," which are generally internal and confidential—the opposite of "instruction." JA83. All the other headings refer to topics that relate to the school's relationship with a single child—names, restrooms, sports, dress code—not instruction. *Id.* And the "gender support plan" is labeled "CONFIDENTIAL," and says that the student would "inform teachers"—not that teachers would instruct the student (or other students) about anything. JA78.

The district court reasoned that the policy "operates more like a civility code that extends the kind of decency students should expect at school: such as being

called the name they ask to be called." *Vitsaxaki*, 2025 WL 874838, at *10. One can wonder at the "civility" of lying to parents about their young children. *See* JA80 (noting the school psychologist's "relief" after finally informing Mrs. Vitsaxaki because the school "does not have to dance around the issue" "any longer"). At any rate, even a "civility code" is not "instruction"—any more than an honor code or school handbook would be "instruction."

The Supreme Court has long rejected school efforts to shield non-instruction from constitutional scrutiny by labeling it instruction. For instance, though schools may "require teaching by instruction and study of all in our history and in the structure and organization of our government," they may not force students to salute the flag. *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 631 (1943). As the Supreme Court recognized, students were "not merely made acquainted with the flag salute so that they may be informed as to what it is or even what it means." *Id.* Rather, the salute affects "a right of self-determination in matters that touch individual opinion and personal attitude." *Id.* So too here. The district's actions were directed at the parental-child relationship between Mrs. Vitsaxaki and her child, not general instruction.

A broad exemption for anything labeled "instruction" from constitutional review could "be easily manipulated in dangerous ways." *Morse v. Frederick*, 551 U.S. 393, 423 (2007) (Alito, J., concurring, joined by Kennedy, J.). Because the

"'educational mission' of the public schools is defined by the elected and appointed public officials with authority over the schools and by the school administrators and faculty," too many "public schools have defined their educational missions as including the inculcation of whatever political and social views are held by the members of these groups." *Id.* Letting schools label any action as "instruction" "would give public school authorities a license" to trample constitutional rights. *Id.*

The district court's dismissal of the school's secret transition as "instruction" also elides the focus of Mrs. Vitsaxaki's complaint: that the school *concealed* its transition of her child from her. In other words, the school would face liability not for anything it "taught" her child or other children—or even how it administered the school—but for concealing information central to the parent-child relationship. As other courts have explained, even if "parents do not have the right to manage the operations of a school or even the courses and curriculum," "they do have a right to direct their minor child's education which cannot be accomplished unless they are accurately informed." *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trs.*, 680 F. Supp. 3d 1250, 1277 (D. Wyo. 2023). And even courts rejecting similar claims have recognized the obvious reality that "knowing that the Student had requested the use of an alternative name and pronouns in school might inform how the Parents respond to and direct their child's gender expressions outside of school." *Foote*, 128 F.4th at

355. Mrs. Vitsaxaki's claim is based on deprivation of that knowledge—not the school's curricular instruction.

2. School instruction can violate parents' fundamental right.

The district court's underlying assumption—that parents "may not broadly assert [their] right to direct [their children's] upbringing to challenge the manner of instruction employed by the district"—is also suspect. *Vitsaxaki*, 2025 WL 874838 at *10. To be sure, this Court's precedents have broadly said that "there is not a parental right" "to 'direct how a public school teaches their child.'" *We The Patriots USA, Inc.* v. *Connecticut Off. of Early Childhood Dev.*, 76 F.4th 130, 159 (2d Cir. 2023) (quoting *Skoros v. City of New York*, 437 F.3d 1, 41 (2d Cir. 2006))); *see Leebaert v. Harrington*, 332 F.3d 134, 141 (2d Cir. 2003). Related issues are pending before the Supreme Court in *Mahmoud v. Taylor*. As Defending Education explained in detail there, a broad rejection of *any* parental right with respect to public school instruction contradicts precedent and history. *See* Brief as *Amicus Curiae* in Support of Petitioners, *Mahmoud v. Taylor*, No. 24-297, 2025 WL 814157 (U.S. Mar. 10, 2025).

A century ago, the Supreme Court recognized that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

Pierce v. Soc'y of Sisters, 268 U.S. 510, 535 (1925). The Constitution confers a fundamental right "to direct the upbringing and education of children." *Id.* at 534.

"Until the middle of the nineteenth century, the duty to educate one's child remained firmly placed with the child's parents." M.S. Katz, *A History of Compulsory Education Laws* 14 (1976). Mandatory public schools are a recent development. The Supreme Court has characterized "school authorities [as] acting *in loco parentis*," *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 684 (1986), drawing on Blackstone's description:

> A parent "*may* . . . delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, *as may be necessary to answer the purposes for which he is employed*."

Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 655 (1995) (emphases added) (quoting 1 William Blackstone, *Commentaries on the Laws of England* 441 (1769)).

In loco parentis does not mean "displace parents." *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000). Rather, the doctrine rests on a theory of delegation: parents delegate parental authority to the school while their children are not in their custody—but only partial delegation based on educational purpose. On this doctrine, teachers have incidental authority to teach and ensure order to the extent necessary to educate the child. But the parent, not the teacher, retains overall authority over the child's education. "It is a dangerous fiction to pretend that parents simply delegate

[all] their authority—including their authority to determine what their children may say and hear—to public school authorities." *Morse*, 551 U.S. at 424 (Alito, J., concurring).

The common law never envisioned that schools could override parental authority and teach whatever they pleased. When schools took actions that exceeded the bounds of parents' partial delegation, courts held the schools liable. *See, e.g.*, *Hailey v. Brooks*, 191 S.W. 781, 783 (Tex. Civ. App. 1916) (delegation is "limited" and school has only "reasonably necessary" powers); *Vanvactor v. State*, 15 N.E. 341, 342 (Ind. 1888) (teacher's delegation is "restricted to the limits of his jurisdiction and responsibility as a teacher"); *Guerrieri v. Tyson*, 24 A.2d 468, 469 (Pa. Super. 1942) (school could not dictate how to treat student's injury); *State v. Bd. of Educ. of City of Fond du Lac*, 23 N.W. 102, 104 (Wis. 1885) (school could not punish student for failing to collect firewood); *Hardy v. James*, 5 Ky. Op. 36, 1872 WL 10621, at *1 (1872) (school could not punish child for "trivial" playground disagreement); *State v. Ferguson*, 144 N.W. 1039, 1044 (Neb. 1914) (school could not force student to take a cooking class).

"If *in loco parentis* is transplanted from Blackstone's England to the 21st century United States, what it amounts to is simply a doctrine of inferred parental consent to a public school's exercise of a degree of authority that is commensurate with the task that the parents ask the school to perform." *Mahanoy Area Sch. Dist.*

v. B.L., 594 U.S. 180, 200 (2021) (Alito, J., concurring). That task is education of the student—not overriding parental choices about their child's upbringing, or ideological indoctrination on intensely personal topics of gender and sexuality. Though schools "may require teaching" in subjects like history and government, *Barnette*, 319 U.S. at 631, it is a stretch to say that parents have delegated to schools instruction about anything pertaining to modern gender identity. "The concept of 'gender identity' did not [even] enter the English lexicon until the 1960s." *Gore v. Lee*, 107 F.4th 548, 562 (6th Cir. 2024). And the school district's view that a child's "actual . . . sex" *is* their subjective gender identity (JA82) was unfathomable until the last few years. It is an even greater stretch to think that parents have delegated authority to schools to transition their own child's gender—and withhold the knowledge that is happening from the parents whose power the schools are purporting to exercise.

Especially when it comes to these types of intensely personal matters, notice and opt-out rights for parents should be the baseline. They *are* the baseline for sexual education in most districts nationwide. Such rights recognize the reality that children are heavily influenced by what they are taught at school. "The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987); *see*

also Johnson v. Texas, 509 U.S. 350, 367 (1993) (explaining that youth "is a time and condition of life when a person may be most susceptible to influence"). In a world in which schools "routinely send notes home to parents about lesser matters," such as "playground tussles, missing homework, and social events,"[20] there is no justification for withholding information about the child's preferred name and identity from parents.

Last, schools cannot condition fundamental rights on actions, like sending one's children to public school, that are "a virtual necessity" of life in society. *Wooley v. Maynard*, 430 U.S. 705, 715 (1977). The district court emphasized its belief that "parents 'remain free to strive to mold their child according to the [their] own beliefs, whether through direct conversations, private educational institutions, religious programming, homeschooling, or other influential tools.'" *Vitsaxaki*, 2025 WL 874838, at *11 (quoting *Foote*, 128 F.4th at 355). But that is irrelevant. The school district is *burdening* parents' rights. Forcing parents to try to work around or counteract that burden is a constitutional injury.

The Supreme Court's foundational parental right cases reject the district court's logic. For instance, the Court in *Meyer v. Nebraska*, 262 U.S. 390 (1923), invalidated a state statute that prohibited the teaching of a foreign language to children in school. It made no difference that parents remained free to "teach[] [a]

[20] St. George, *supra* note 8.

[foreign] language on Saturday or Sunday," or outside school hours. *Nebraska Dist. of Evangelical Lutheran Synod of Missouri, Ohio, & Other States v. McKelvie*, 104 Neb. 93, 175 N.W. 531, 535 (1919). Rather, the Court recognized "the power of parents to control the education of their own." *Meyer*, 262 U.S. at 401.

Likewise, the district court's suggestion to enroll in private school or homeschool does not eliminate the constitutional injury from this burden on parental rights. That suggestion also defies reality. New York requires parents to send their children to school, on pain of fine or imprisonment. *See* N.Y. Educ. Law §§ 3205, 3233. And "[m]ost parents, realistically, have no choice but to send their children to a public school." *Morse*, 551 U.S. at 424 (Alito, J., concurring). On top of that, "parents could not make a reasonable choice regarding the type of education—public, private, or home schooling—if they are unaware of circumstances that have a significant bearing on that decision because of the school's withholding of information or active deception." *Willey*, 680 F. Supp. 3d at 1277–78 (citation omitted).

In short, even if the school district's concealment of information from parents were transmogrified into classroom instruction, it is not immune from constitutional review. The school district violated Mrs. Vitsaxaki's right to direct the upbringing of her child.

CONCLUSION

For these reasons, the Court should reverse.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 29(a)(5) and Local Rule 29.1(c) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this brief contains 4,670 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman font.

Dated: June 11, 2025

/s Christopher Mills
Christopher Mills

CERTIFICATE OF SERVICE

I, Christopher Mills, an attorney, certify that on this day the foregoing Brief was served electronically on all parties via the Court's ACMS system.

Dated: June 11, 2025

s/ Christopher Mills
Christopher Mills