NO. 25-77

IN THE
Supreme Court of the United States

STEPHEN FOOTE, Individually and as Guardian and Next Friend of B.F. and G.F., Minors, et al.,

Petitioners,

v.

LUDLOW SCHOOL COMMITTEE, et al.,

Respondents.

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

REPLY BRIEF FOR PETITIONERS

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Petitioners ask the Court to uphold what has always been true: parents—not public schools—have the power to make key decisions about their children's upbringing, education, and healthcare. Pet.3. At a minimum, this means that parents have a right to notice and opt out before a public school "encourages a student to transition to a new 'gender' or participates in that process." Pet.i.

Ludlow now insists it has no secret social-transition protocol. Opp.1, 12 n.3, 13–14. But the school district explained the protocol's parameters to the lower courts, and the First Circuit expressly recognized that protocol as district policy. So this case is an ideal vehicle for resolving the question presented. The vehicle's desirability is enhanced—not harmed—by Petitioners' choice to bring only an as-applied challenge to the protocol. And answering the question presented depends on no conclusory allegations or implausible inferences.

The "nearly 6,000 public schools" with similar policies and the "'great and growing national importance' of the question" necessitates immediate review. *Lee* v. *Poudre Sch. Dist. R-1*, 607 U.S. __, 2025 WL 2906469 (2025) (Statement of Alito, J., joined by Thomas and Gorsuch, J.J.) (quoting *Parents Protecting Our Children* v. *Eau Claire Area Sch. Dist.*, 145 S. Ct. 14, 14 (2025) (Alito, J., joined by Thomas, J., dissenting from the denial of certiorari; Kavanaugh, J., would have granted the petition)). As the 16 supporting amici briefs starkly illustrate, time is of the essence. The petition should be granted.

ARGUMENT

I. The First Circuit accepted Ludlow's representations about its protocol.

Ludlow acknowledges (p.12 n.3) that under Federal Rule of Civil Procedure 12(b)(6), courts must assume the truth of Petitioners' allegations about Ludlow's protocol, i.e., "that parents are not to be informed of their child's transgender status and gender-affirming social transition to a discordant gender identity unless the child … consents," Pet.App.77a. Yet Ludlow's counsel remarkably insists that no such policy exists. Opp.12. That disregards the assumption of truth and the lower courts' conclusions based on Ludlow's prior representations.

Ludlow officials discussed the protocol at a May 25, 2021 Ludlow School Committee meeting. Pet.App. 100a. The Committee met in an empty room and invited only emailed public comments. Pet.App.100a; 5/25/21 Meeting Video, https://bit.ly/3JuvpdL. A student alleged that Ludlow staff were "pushing" an "agenda," trying to persuade 11-to-14-year-olds to "change" their gender without parental notice. Pet.App.100a–101a; Video, 45:35–47:32. Superintendent Gazda responded with a prepared statement. Pet.App.101a; Video, 47:38. He said that Ludlow was "pushing" a "message of acceptance and inclusion," and maintained that its actions were "in compliance with" state law and the DESE Guidance. Video, 47:57–48:35. Going further, he bragged that Ludlow takes these actions "*not because we are required to*, but because … we celebrate the diversity of our student and staff population." Video, 48:35–48:49 (emphasis added).

Gazda maintained that opposition to the protocol "is being thinly veiled behind a camouflage … of parental rights." Video, 48:50–49:02. The "controversy" was about "identity" and Ludlow's commitment to recognizing its students "in the manner they wish to be identified." *Id.* 49:12–49:59.

Ludlow's filings with the district court conceded the basics of the protocol: (1) "[i]t is impossible to comply with the [state] statu[t]e without recognizing and respecting a student's stated gender identity"; (2) the DESE Guidance "does not contemplate that a school will confer with a student and then notify their parents of their gender identity against their wishes"; (3) the Guidance "plainly suggests that a student may be referred to by one set of pronouns in school and another set when communicating with parents"; and (4) Ludlow "complied with" the Guidance. Defs.' Mem of Law in Support of Defs.' Mot. To Dismiss 12, 14–15, No. 3:22-cv-30041 (July 29, 2022), R.26-1. On appeal, Ludlow reiterated that it cannot comply with state law "without recognizing and respecting a student's preferred name and pronouns"—with no "exception" when a parent objects. Appellees.Br. 36, No. 23-1069 (June 20, 2023).

Accordingly, the First Circuit recognized the protocol, Pet.App.11a., and said Ludlow's staff implemented it, Pet.App.20a. Ludlow's new claim of no protocol defies Rule 12(b)(6), Gazda's statements, Ludlow's representations below, and the First Circuit's opinion. The Court should emphatically reject this 11th-hour attempt to evade review.

II. This case is an ideal vehicle for resolving the question presented.

The petition presents a clean question: whether parents' rights are violated when a public school, without parental knowledge or consent, encourages a student to transition to a new "gender" or participates in that process. Pet.i. No further factual development is necessary or appropriate at the pleadings stage. That Petitioners' claims were dismissed before discovery simplifies review because there are no factual disputes. The Court must simply assess whether Petitioners plausibly state a constitutional claim. That hardly undermines the petition: this Court often resolves threshold questions of law, then remands for application of its ruling. It should do so here.

The slew of similar pending cases, Opp.14, underscores the need for immediate review. *Lee*, 607 U.S. __, 2025 WL 2906469 (Statement of Alito, J.). So does the harm. About 90% of children who experience gender dysphoria before puberty resolve those feelings and live consistent with their sex with no issues. Devita Singh et al., *A Follow-Up Study of Boys with Gender Identity Disorder*, 12 Frontiers in Psychiatry 632784 (2021), perma.cc/58FQ-TK6U. But 97.5% of children who begin social transition persist in their dysphoria. Kristina R. Olson et al., *Gender Identity 5 Years After Social Transition*, 150 Pediatrics e2021056082 (2022), perma.cc/ZLZ3-X3PW.

Every day that passes means harm for more children like B.F. The Court should not wait.

III. The vehicle's desirability is enhanced by Petitioners' choice to bring only an as-applied challenge.

Ludlow attempts to minimize Petitioners' claim as "only a very narrow question." Opp.14. That conflates the *scope* of the question presented with the *importance* of resolving it. Resolution of the narrow and concrete question presented will settle entrenched conflicts, answer a question of substantial significance to families across the country, and prevent imminent harm. That's reason to grant review—not withhold it.

Indeed, an as-applied posture makes this case a better vehicle. Contra Opp.14–15. This Court deems it "undesirable" to "consider every conceivable situation which might possibly arise" and favors "as-applied challenges" as "the basic building blocks of constitutional adjudication." *Gonzales* v. *Carhart*, 550 U.S. 124, 168 (2007) (citation modified). Deciding the question presented requires no speculation and no facial invalidation of state statutes or regulations. Petitioners' decision not to launch a facial challenge does not weaken their request for this Court to intervene and vindicate their parental rights.

Finally, state law cannot immunize constitutional violations. Contra Opp.15. No matter how Ludlow applies Massachusetts law, that application must yield to the U.S. Constitution. *Cooper* v. *Aaron*, 358 U.S. 1, 18 (1958).

IV. Resolution of the question presented depends on no conclusory allegations or implausible inferences.

Ludlow makes a convoluted argument: Petitioners did not adequately plead that social transition "is a mental health treatment," so the school's transitioning of B.F. did not violate her parents' requests to defer to the mental-health treatment they had arranged. Opp.15–16. But the American Psychological Association confirms that social transition *is* "treatment." APA, *Guidelines for Psychological Practice With Transgender and Gender Nonconforming People* 842, American Psychologist (Dec. 2015), bit.ly/47yd1Zr. So does the American Academy of Pediatrics: the "recommended *treatment* for transgender people" includes "social transition," defined as "publicly identifying oneself as that gender; adopting a new name; using different pronouns; grooming and dressing in a manner typically associated with one's gender identity; and using restrooms and other single-sex facilities consistent with that identity." Am. Acad. Ped. Amicus Br. 13–14, *Doe* v. *Boyertown Area Sch. Dist.*, No. 17-3113 (3d Cir. Jan. 23, 2018) (emphasis added). As the American Medical Association puts it, "social transition is a critically important part of *medically necessary treatment*." AMA Issue Brief, *Transgender individuals' access to public facilities* 1 (2025), perma.cc/T8P7-VC5R (emphasis added). On this point, there is no dispute.

Ludlow also says there are no factual allegations supporting an inference that the district "encouraged B.F.'s announcement, encouraged B.F. to come out as 'genderqueer,' or attempted to dissuade B.F. from speaking with" her parents. Opp.16–17. Not so.

Petitioners pled that, pursuant to the protocol, Respondent Funke (1) directed incoming sixth-graders "to create biographic videos in which they were to state their 'gender identity' and preferred pronouns"; (2) "regularly communicated privately with … children one-on-one to discuss their gender identity"; (3) "provide[d] materials promoting exploration of alternate gender identities"; and (4) sent B.F. ideological websites like translategender.org, Pet.App.81a–82a, 86a, 96a, which promotes events like a "queer kids fest," perma.cc/7MXZ-JSJV, and "queer" yoga, perma.cc/UG32-D2SS. Petitioners also pled that Ludlow "teachers, counselors[,] and staff" "introduce[d] and promote[d]" to students "the concepts of experimenting with discordant gender identities and engaging in gender-affirming social transitioning." Pet.App.83a.

Beyond that, Petitioners pled that Respondent Foley signaled "to B.F. that her parents were not 'safe'"; suggested that her parents' choice of counselor "might not be in her best interest"; indicated "to B.F. that her parents could not be trusted to provide help and support"; and questioned "whether B.F.'s parents were providing B.F. with appropriate care." Pet.App. 97a–98a. These allegations are specific and concrete, not "conclusory" or "unsupported." Contra Opp. 17.

V. The First Circuit's decision created or exacerbated multiple splits in authority.

Ludlow mixes and matches circuit decisions to argue there is no conflict. Opp.17–29. Those arguments fail.

A. The circuits are divided over whether nonreligious parents' rights are limited to the initial school-enrollment decision.

Ludlow says the First and Third Circuits are "not in conflict" over whether parents have a right to know about their child's health issues. Opp.17–21. That's not the conflict Petitioners identified. The split is over whether nonreligious parents' rights are limited to the initial enrollment decision—as the First, Sixth, Seventh, and Ninth Circuits have held—or whether parental rights continue after enrollment, especially on deeply personal or private child-rearing matters—as the Third Circuit has held. Pet.19–22.

Ludlow's cited Third Circuit cases (pp. 17–21) do not say otherwise. *Gruenke* v. *Seip* emphasized that it "is not educators, but parents who have primary rights in the upbringing of children." 225 F.3d 290, 307 (3d Cir. 2000). "School officials have only a secondary responsibility and must respect these rights." *Ibid. C.N.* v. *Ridgewood Board of Education* similarly recognized that parents may challenge public-school "actions that strike at the heart of parental decision-making authority on matters of the greatest importance." 430 F.3d 159, 184 (3d Cir. 2005) (citing *Gruenke*). And *Anspach* v. *City of Philadelphia Department of Public Health* acknowledged but distinguished *Gruenke* because in *Anspach* there was no compulsion of a child. 503 F.3d 256, 266 (3d Cir. 2007). Whether parents must show "compulsion" to state a claim for violation of their parental rights presents a different circuit split. Section V.C, *infra*. But the circuit conflict over whether parental rights continue after enrollment remains unrebutted.

Next, Ludlow says the Sixth, Seventh, and Ninth Circuits do not add to this split. Opp.21–25. Ludlow begins with *Regino* v. *Staley*, 133 F.4th 951 (9th Cir. 2025). Opp.21–22. But *Regino* creates a split on the compulsion issue, Pet.29, *not* whether parental rights end at enrollment. So Ludlow turns to *Fields* v. *Palmdale School District*, 427 F.3d 1197 (9th Cir. 2005), amended by 447 F.3d 1187 (9th Cir. 2006), and alleges that the Ninth Circuit's amended opinion changed the holding by deleting a critical sentence. Opp.22. But Ludlow misses that in a later opinion, the Ninth Circuit resurrected the deleted language: "As we said in *Fields*, the substantive due process right 'does not extend beyond the threshold of the school door.'" Pet.20 (quoting *California Parents for the Equalization of Educ. Materials* v. *Torlakson*, 973 F.3d 1010, 1020 (9th Cir. 2020) (citation modified)).

Ludlow then tries to limit *Crowley* v. *McKinney*, 400 F.3d 965 (7th Cir. 2005), to its facts because the plaintiff mother lacked custodial rights. Opp.24. But the Seventh Circuit hypothesized that even if the mother had "sole custody of the children," her *only* parental right was "to choose the [child's] school." 400 F.3d at 971. Likewise, Ludlow tries to limit *Blau* v. *Fort Thomas Public School District*, 401 F.3d 381 (6th Cir. 2005), to a dress-code dispute. Opp.24. But the Court's holding was unequivocal: "While parents may have a fundamental right to decide *whether* to send their child to a public school, they do not have a fundamental right generally to direct *how* a public school teaches their child." 401 F.3d at 395–96; but see *Mahmoud* v. *Taylor*, 145 S. Ct. 2332, 2351 (2025); Pet.22. The First Circuit agrees. Pet.App.29a–30a & n.19. So the circuit split stands.

B. The circuits are split over how broadly to define school authority over "curriculum and administrative decisions."

Some courts—like the First, Seventh, and Ninth Circuits—define curriculum and administration so broadly that it swallows nearly any activity. Pet.23–24. Other courts—like the Third and Eleventh Circuits and a New York appellate court—disagree and hold that topics that go to the heart of parental decision-making authority cannot be recast as curriculum and management. Pet.24–25.

Ludlow does not address the Third Circuit's holding in *Gruenke* that parents sufficiently allege a constitutional violation when "[s]chool-sponsored counseling and psychological testing … pry into private family activities." 225 F.3d at 307. Pet.24–25. Nor does Ludlow discuss the New York appellate court's holding in *Alfonso* v. *Fernandez*, that supplying condoms to students far exceeds the boundaries of curriculum. 195 A.D.2d 46, 52 (N.Y. App. Div. 1993). Pet.24.

As for *Arnold* v. *Board of Education*, 880 F.2d 305 (11th Cir. 1989), a case Ludlow does address, Opp.25–26, the court held unambiguously that "a parent's constitutional right to direct the upbringing of a minor is violated when the minor is coerced to refrain from discussing with the parent an intimate decision such as whether to obtain an abortion." 880 F.2d at 312. Petitioners allege the same undue influence here, where Respondent Foley repeatedly suggested that B.F. could not trust her parents or their mental-health plan for her. Pet.App.97a–98a. Again, the split remains.

C. There is a circuit conflict over whether parents must show coercion or restraint to establish a parental-rights violation.

Ludlow endorses the First Circuit's holding that parental-rights claims fail in the absence of "coercive" or "restraining" conduct. Opp.27 (quoting Pet.App. 32a). But that disregards this Court's fit-parent presumption. *Parham* v. *J.R.*, 442 U.S. 584, 602–03 (1979). Pet.26–27. It is in deep tension with decisions of the Third, Seventh, Ninth, and Eleventh Circuits. Pet.27–28. And it conflicts directly with *Mann* v. *County of San Diego*, which eschewed a coercion or restraint requirement and held that parents had a right to notice and consent about their children's healthcare. 907 F.3d 1154, 1162 (9th Cir. 2018); Pet.28; accord Pet.29 (noting further conflict with *Regino*, *Alfonso*, *Doe* v. *Uthmeier*, 407 So. 3d 1281 (Fla. Dist. Ct. App. 2025), and *Deanda* v. *Becerra*, 645 F. Supp. 3d 600, 627–28 (N.D. Tex. 2022), aff'd in part, rev'd in part on other grounds, 96 F.4th 750 (5th Cir. 2024) (rejecting a "voluntary-compulsory distinction" as conflicting with "controlling precedent" and "the history of parental rights")).

Ludlow does not deny this conflict. Instead, it grouses that it is difficult for school districts to "cope with conflicting parental and child rights." Opp.28. But this Court has never said that an 11-year-old may override her parents' decisions on how best to address her mental-health struggles. That's especially so when the parents' plan likely results in B.F. growing comfortable with her body, and the contrary plan almost certainly will cause B.F. to persist in her dysphoria, leading to puberty blockers, cross-sex hormones, and life as a permanent medical patient.

D. There remains a split over parents' right to direct their child's mental-health care.

Ludlow does not dispute that parental decision-making extends to a child's "mental health." *Parham*, 442 U.S. at 603; Pet.30. Instead, it rehashes its unsupported claim that social transition is not mental-health treatment. Opp.28–29. But the major medical associations agree with Petitioners. Section IV, *supra*. And there is also now a fully ripe circuit split over the applicable test when parents seek to direct the upbringing and care of their children in public schools, given the Eleventh Circuit's egregious application of a shocks-the-conscience standard in a similar case currently pending before the Court. *Littlejohn* v. *Sch. Bd. of Leon Cnty.*, 132 F.4th 1232, 1242–43 (11th Cir. 2025), cert. pending, No. 25-259.

VI. The Court should promptly grant review.

Review is warranted now to save thousands of public-school children from harm when their parents have moral, medical, and scientific objections to social transitions rather than religious ones. Pet.32–33; Montana.Amicus.Br.1–4. Given the ongoing injury, the Court should not delay. That includes denying any undue extension request that would prevent the Court from conferencing *Littlejohn* in December or early January. This ensures that both cases can be granted and heard together this Term, allowing the Court to provide comprehensive guidance in dozens of cases. Petitioners and countless other parents across the country cannot wait for an argument in the 2026 Term and likely decision sometime in 2027. Every day that passes risks more irreparable—and lifelong—harm to children.

CONCLUSION

For the foregoing reasons, and those discussed in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

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