**No. 25-259**

# In the United States Supreme Court

JANUARY LITTLEJOHN and
JEFFREY LITTLEJOHN,
*Petitioners*,

v.

SCHOOL BOARD OF LEON COUNTY,
FLORIDA *et al.*,
*Respondents*.

*On Petition for Writ of Certiorari to the United States Circuit Court for the Eleventh Circuit*

## BRIEF *AMICI CURIAE* OF THE NATIONAL LEGAL FOUNDATION, ETHICS AND RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION, THE FAMILY FOUNDATION, ILLINOIS FAMILY INSTITUTE, CONCERNED WOMEN FOR AMERICA, and PACIFIC JUSTICE INSTITUTE *in Support of Petitioners*


Frederick W. Claybrook, Jr.
(*Counsel of Record*)
Claybrook LLC
655 15th St., NW, Ste. 425
Washington, D.C. 20005
(301) 622-0360
rick@claybrooklaw.com

Steven W. Fitschen
James A. Davids
National Legal Foundation
524 Johnstown Road
Chesapeake, Va. 23322
(757) 463-6133
sfitschen@nationallegalfoundation.org

Counsel for *Amici Curiae*

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## STATEMENT OF INTERESTS[1]

The **National Legal Foundation** (NLF) is a public interest law firm dedicated to the defense of First Amendment liberties (including the freedoms of speech, assembly, and religion) and parental rights. The NLF and its donors and supporters, in particular those from Florida, are vitally concerned with the outcome of this case because of its effect on religion-based parental rights.

The **Ethics and Religious Liberty Commission** (ERLC) is the moral concerns and public policy entity of the Southern Baptist Convention (SBC), the nation's largest Protestant denomination, with nearly 13 million members in more than 45,000 churches and congregations. The ERLC is charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and ethics. The ERLC affirms that God has established the family as the first and most foundational institution of society and has an interest in ensuring that parents have the freedom to make decisions regarding the upbringing, education, and healthcare of their children.

**The Family Foundation** (TFF) is a non-partisan, non-profit organization committed to promoting strong family values and defending the sanctity of

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[1] No counsel for any party authored this brief in whole or in part. No person or entity other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief. *Amici* have given notice to both parties.

human life in Virginia through its citizen advocacy and education. TFF serves as the largest pro-family advocacy organization in Virginia, and its interest in this case is derived directly from its members throughout Virginia who seek to advance a culture in which children are valued, religious liberty thrives, and marriage and families flourish.

The **Illinois Family Institute** (IFI) is a non-profit educational and lobbying organization based in Tinley Park, Illinois, that exists to advance life, faith, family, and religious freedom in public policy and culture from a Christian worldview. A core value of IFI is to uphold religious freedom and conscience rights for all individuals and organizations.

**Concerned Women for America** (CWA) is the largest public policy organization for women in the United States, with approximately half a million supporters from all 50 States. Through its grassroots organization, CWA encourages policies that strengthen women and families and advocates for the traditional virtues that are central to America's cultural health and welfare, including religious liberties. CWA actively promotes legislation, education, and policymaking consistent with its philosophy. Its members are people whose voices are often overlooked—everyday, middle-class American women whose views are not represented by the powerful elite.

The **Pacific Justice Institute** (PJI) is a non-profit legal organization established under section 501(c)(3) of the Internal Revenue Code. Since its founding in 1997, PJI has advised and represented in court and administrative proceedings thousands of individuals, businesses, and religious institutions,

particularly in the realm of First Amendment rights. As such, PJI has a strong interest in the development of the law in this area. PJI often represents teachers, parents, and their children to vindicate their constitutional rights in the public schools. PJI has an office and operates in Florida.

## SUMMARY OF THE ARGUMENT

This case merits consideration by this Court for two principal reasons. First, the issue of what standard of review governs when violations of fundamental rights are alleged is of critical importance, and the majority of the panel below resolved it inconsistently with precedent of this Court and other circuit courts. The circuit court's resolution produces an irrational result, applying the normal, three-tiered standard of review when a school policy is prospectively or facially challenged, but easing the burden for the State when that policy is actually applied to a violation of fundamental rights.

Second, public schools throughout the country are hiding from parents that they are assisting the gender transition of the parents' children, to the detriment of parent-child relations and the children themselves. This widespread usurpation of the fundamental rights and duties of parents to direct the care and upbringing of their minor children should be addressed by this Court as soon as possible.

## ARGUMENT

### I. The Circuit Court Majority's Decision Conflicts with This Court's and Other Circuits' Precedents by Applying the "Shocks the Conscience" Test to Violations of Fundamental Rights

The Leon County School Board, like many other public schools throughout the country, has established a "gender transition" policy that violates parental rights. It instructs teachers and other school personnel to assist minor students in transitioning genders at school but to hide that fact from parents at the child's request or if the school believes that the parents may not be supportive. Aggrieved parents challenged this policy below, and the panel majority, over the dissent of Judge Tjoflat, applied the "shock the conscience" standard, labeling the actual application of the challenged policy an executive action. *Littlejohn v. Sch. Bd. of Leon Cnty.*, 132 F.4th 1232, 1239-43 (11th Cir. 2025).

The majority relied on *County of Sacramento v. Lewis*, 523 U.S. 833 (1998),[2] but it misapplied that decision. As Judge Tjoflat noted, *Lewis* did not involve, as here, violations of fundamental rights, but, instead, was a tort case in which the plaintiff argued that the police officer's conduct was so egregious that it denied the injured individual substantive due process. *Id.* at 1291-1301 (Tjoflat, J., dissenting); *see Lewis*, 523 U.S. at 848-50. Accordingly, *Lewis* does not dictate the

[2] The Petitioners short-cite this case as *Lewis*, and so your *Amici* follow that convention. The circuit court short-cited it as *Sacramento*.

appropriate standard of review for this fundamental rights case.

In *Lewis*, this Court was activated by the risk of converting the Fourteenth Amendment's guarantees into a national tort law. *See id.* at 848. This case presents no such risk. It deals with fundamental rights that long predate the Constitution itself and that the Fourteenth Amendment has long protected: "The liberty interest . . . of parents in the care, custody, and control of their children [ ] is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.). Indeed, in *Washington v. Glucksberg*, 521 U.S. 702 (1997), this Court, after identifying parental rights as among the most fundamental of liberty interests protected by the Fourteenth Amendment, noted that no infringement of them is permitted "*at all*" unless it "is narrowly tailored to serve a compelling state interest." *Id.* at 721 (emphasis in original; punctuation conformed) (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

Moreover, this Court long ago established that school board actions like those challenged here are deemed legislative in nature. For example, in *Harrah Independent School District v. Martin*, 440 U.S. 194 (1979), this Court, in addressing a substantive due process challenge to a school board's rule, stated that it was "endowed with a presumption of *legislative* validity" and decided which of the three levels of scrutiny to apply, rather than applying the "shock the conscience" standard for executive actions that do not involve fundamental rights. *Id.* at 198-99 (emphasis added).

That the majority below misapplied *Lewis* is also obvious from the counterintuitive result that its ruling engenders. The majority admitted that, consistent with this Court's precedent, if the parents had challenged the *potential* application of the policy itself, the normal, three-tiered standard of review would apply. *Littlejohn*, 132 F.4th at 1243 & n.8; *see Mass. Bd. of Retirement v. Murgia,* 427 U.S. 307, 312-14 (1976) (applying normal standard of review to legislative actions). If anything, a challenge to the *actual* application of a policy to an individual deprived of fundamental rights should command a *higher* standard of review than a facial challenge. But under the panel majority's reasoning, the opposite occurs: if injured parties complain about a policy's actual application to them, the State's burden is lessened by use of the "shocks the conscience" standard. This obviously is neither logical nor just.

Finally, as the petition has noted, the majority's decision below is also in conflict with rulings of other circuit courts, most notably the First Circuit's recent ruling in *Foote v. Ludlow School Committee*, 128 F.4th 336, 345-47 (1st Cir. 2025), *pet. for cert. pending*, No. 25-77. *Foote* is a case factually nearly identical to this, and the First Circuit held that application of a school's gender identity policy to hide how school officials were treating the parents' minor child was more akin to legislative than executive action, rejecting the applicability of the "shock the conscience" test. As that court held in a prior case, "[G]enerally speaking, under the federal Due Process Clause, a state action will be reviewed for strict scrutiny . . . where it interferes with a fundamental right . . . ." *Kenyon v. Cedeno-Rivera*, 47 F.4th 12, 24 (1st Cir. 2022). Other circuits recognize that application of a broad-based policy, even if

done by a specific government official to a specific individual, requires application of the normal, three-tiered test, not the "shocks the conscience" test. *See, e.g.*, *Abdi v. Wray*, 942 F.3d 1019, 1027-28 (10th Cir. 2019) (declining to apply the "shocks the conscience" test when a plaintiff challenged the FBI's "No-Fly List," an executive policy akin to a legislative act); *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1202-03 (10th Cir. 2003) (reversing district court's use of "shock the conscience" standard when parents challenged application of regulation); *see also Tatel v. Mt. Lebanon Sch. Dist.,* 2022 WL 15523185 (W.D. Pa. Oct. 27, 2022) (applying level of scrutiny analysis in challenge to application of school policy on gender transition).

At a minimum, this Court should grant the petition to address the appropriate standard of review for these cases. It should also grant this petition, together with that in *Foote*, to vindicate parental rights that public schools across the country are trampling with their "Parental Preclusion Policies" when addressing the "gender identity" of minor children.

## II. This Court Should Grant the Petition to Vindicate Fundamental Parental Rights Trampled by Parental Preclusion Policies

No matter the standard applied, this case also involves a situation that demands plenary review by this Court. Justice Alito, when dissenting from denial of the petition for certiorari in *Parents Protecting Our Children, UA v. Eau Claire Public School District*, 145 S. Ct. 14 (2024), noted that school policies that hide

from parents that the schools are helping their children transition genders, even disregarding parental instructions about how to deal with conditions that affect their children's mental health, have proliferated across the country. *Id.*

Violating fundamental parental rights in this way cannot satisfy strict scrutiny, which is the appropriate test. *See Glucksberg*, 521 U.S. at 721. But it also shocks the conscience. *See Willey v. Sweetwater Cnty. Sch. Dist. No. 1*, 680 F. Supp. 3d 1250, 1279-80 (D. Wyo. 2023) (finding similar gender policy shocks the conscience). Parents have "broad parental authority over minor children," and this Court has "rejected any notion that a child is the mere creature of the state." *Parham v. J.R.* 442 U.S. 584, 602 (1979) (internal quotes omitted).

This Court in *Lewis* described the "shock the conscience" test in various scenarios and emphasized that the test is met when state actors have time to consider their actions or inactions and yet act with deliberate indifference to the rights of those affected. *See* 523 U.S. at 848-54. This case and others like it fit in exactly that mold: the public school officials not only had time to deliberate about whether to violate parental rights, they crafted Parental Preclusion Policies to do just that. Their actions were deliberate and calculated to substitute their opinions on how to best care for the minor children involved for those of the children's parents.

It bears emphasis that neither the Petitioner nor these *amici* are asking this Court in this case to weigh the competing opinions roiling our country about the wisdom of gender transitioning and to

decide whether the decision the school has made for a minor is in the realm of reason, as if the schools and the parents were on equal footing when it comes to deciding the proper care for minors. Such decisions are for *parents* to make for their minor children. When schools decide they will usurp that parental role, federal judges must apply the *law*, which provides that it is *parents* who are charged to make such decisions for their minor children. *Parham*, 442 U.S. at 602. The *law* provides that a State official's disagreement with a fit parent's decision on such matters is entitled to *no weight whatsoever*. As Justice Thomas stated in *Troxel*, second-guessing a fit parent's decision about socialization of their child is not a legitimate governmental interest. 530 U.S. at 80 (Thomas, J., concurring); *see also Littlejohn*, 132 F.4th at 1287 (Tjoflat, J., dissenting).

The interest being proffered by the school district is to protect the students from their parents at home and to insulate the child's decision at school from the parents at home. This does not state a legitimate interest, because parents are the ones with the responsibility to make decisions for their minor children and are assumed, *as a matter of law*, to act in their children's best interests. *See id.* at 65-66 (plurality op.); *Parham*, 442 U.S. at 602-04; *Doe v. Heck*, 327 F.3d 492, 521 (7th Cir. 2003); *Ricard v. USD 475 Geary Cnty., KS Sch. Bd.*, 2022 WL 1471372 at *8 (D. Kan. May 9, 2022). This usurpation of parental rights by the school board blatantly violates over 100 years of this Court's precedent, shocks the conscience, and cannot be justified under even a rational basis test.

## CONCLUSION

This Court should grant the petition.

Respectfully submitted,
this 6th day of October, 2025

/s/ Frederick W. Claybrook, Jr.
Frederick W. Claybrook, Jr.
(*Counsel of Record*)
Claybrook LLC
655 15th St., N.W., Ste. 425
Washington, D.C. 20005
(301) 622-0360

Steven W. Fitschen
James A. Davids
National Legal Foundation
524 Johnstown Road
Chesapeake, Va. 23322
(757) 463-6133
sfitschen@nationallegalfoundation.org

Counsel for *Amici Curiae*