Case No. 23-1069

In the United States Court of Appeals
For the 1st Circuit

STEPHEN FOOTE, individually and as Guardian and next friend of B.F. and G.F., minors; MARISSA SILVESTRI, individually and as Guardian and next friend of B.F. and G.F., minors,

Plaintiffs – Appellants,

JONATHAN FELICIANO; SANDRA SALMERON,

Plaintiffs,

v.

LUDLOW SCHOOL COMMITTEE; TODD GAZDA, former Superintendent; LISA NEMETH, Interim Superintendent; STACY MONETTE, Principal, Baird Middle School; MARIE-CLAIRE FOLEY, school counselor, Baird Middle School; JORDAN FUNKE, former librarian, Baird Middle School; TOWN OF LUDLOW,

Defendants – Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, SPRINGFIELD THE HONORABLE MARK G. MASTROIANNI CASE NO. 3:22-cv-30041-MGM

CORRECTED BRIEF OF *AMICUS CURIAE* PARENTAL RIGHTS FOUNDATION IN SUPPORT OF PLAINTIFFS – APPELLANTS AND IN SUPPORT OF REVERSAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

TREATISES

OTHER AUTHORITY

INTEREST OF AMICUS CURIAE

The Parental Rights Foundation (PRF) is a national, nonprofit, nonpartisan advocacy organization with supporters in all fifty states.

PRF seeks to preserve the legal protection afforded to loving and fit parents to raise, nurture, and educate their children without undue state interference. Concerned with the erosion of this legal protection, PRF seeks to protect children by preserving the liberty of their parents. PRF furthers this mission by educating those in government and the public about the need to roll back intrusive state mechanisms that harm more children than they help, and about the need to strengthen fundamental parental rights at all levels of government.

The United States Supreme Court has repeatedly held that parents have a fundamental right to direct the care, custody, education, and control of their children, most recently in *Troxel v. Granville*, 530 U.S. 57 (2000). Yet parents continue to encounter obstacles in exercising those rights—in schools, in hospitals, in their communities, and in the family court system. When government authorities refuse to recognize the Constitution as a limit on the exercise of its power, the problem exacerbates. PRF submits this amicus brief because this case represents what we believe is rapidly becoming all too-common: schools and school personnel forgetting that parental rights are fundamental, and believing that they can encourage minor children to hide key components of who they are from their parents, while

actively encouraging children to disobey and ignore their parents' wishes, and while actively deceiving parents and hiding information about their own children from them.

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 this brief; and no person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting this brief. All parties have consented to the filing of this brief.

INTRODUCTION

The interest of parents "in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by [the U.S. Supreme] Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (internal punctuation removed). The issues before the Court in this case are not difficult. The District Court's conclusion that the case should be dismissed because "[p]laintiffs' right to direct the upbringing of their children allows them to choose between public and private schools, but does not give them a right to interfere with the general power of the state to regulate education[]" (*Foote v. Town of Ludlow*, 2022 WL 18356421 *9 (D. Mass. Dec. 14, 2022)) fundamentally misunderstands the history of parental rights in our nation, and how the federal courts have recognized this right.

U.S. Supreme Court precedent and this Court's precedent make it clear that public schools may not actively attempt to hide information from a parent about the parents' eleven- and twelve-year-old children.

Other federal courts hold that an eleven-year-old is too young to consent to a vaccine without parental consent, even if the public school provided appropriate information to the child. *See, e.g., Booth v. Bowser*, 597 F. Supp. 3d 1 (D.D.C. March 18, 2022). Certainly, an eleven-year old's name, pronouns, choice of bathroom, and gender identity should involve the child's parents, and not be hidden from the parent by the public school. Case law is clear that public schools do have broad authority – to adopt curriculum, to adopt or not adopt books, to administer surveys (after notifying parents), and to teach children about controversial topics, even including sexuality and gender. But case law is likewise clear that public schools may not attempt to deceive parents and hide key information about their own child from them.

This brief examines the history of parental rights case law before the U.S. Supreme Court and examines relevant First Circuit precedent.

ARGUMENT

I. U.S. Supreme Court Precedent Shows that Parental Rights are Fundamental, Well-Established, and Well-Understood

The U.S. Supreme Court first examined the issue of parental rights in the context of state action infringing upon that right 100 years ago, in the case of *Meyer*

v. Nebraska, 262 U.S. 390 (1923). Prior to this, the lack of controversy between the state and parents was due to the historical understanding, as described by John Locke and others who influenced our Founders, that the family was the backbone of society. For example, John Locke, wrote the following in 1690:

> "Adam was created a perfect man, his body and mind in full possession of their strength and reason, and so was capable, from the first instant of his being, to provide for his own support and preservation, and govern his action according to the dictates of the law of reason which God had implanted in him. From him the world is peopled with his descendants, who were all born infants, weak and helpless, without knowledge or understanding: but to supply the defects of this imperfect state, till the improvement of growth and age hath removed them, Adam and Eve, and after them all parents were, by the law of nature, under an obligation to preserve, nourish, and educate the children they had begotten; not as their own workmanship, but the workmanship of their own maker, the Almighty, to whom they were to be accountable for them….
> This is that which puts the authority into the parents' hands to govern the minority of their children. God hath made it their business to employ this care on their offspring, and hath placed in them suitable inclinations of tenderness and concern to temper this power, to apply it, as his wisdom designed it, to the children's good, as long as they should need to be under it."

John Locke, Second Treatise of Civil Government, 1690, Sec. 56, Sec. 63.

It wasn't until the early 20th century, with the rise of industrialization, post-World War I political shifts, rising xenophobia, and other societal pressures, that the historic views on family and government began to shift. And this directly led to *Meyer v. Nebraska.*

The state of Nebraska passed a law prohibiting parents from having their children taught in another language. Robert Meyer, a teacher at a small Lutheran private school, was convicted of violating the law.

The Supreme Court held in its decision that "it is the natural duty of the parent to give his children education suitable to their station in life." *Id.* at 400. This reasoning hearkened back to the Declaration of Independence, in which our Founders recognized two crucial ideas: 1) our rights come not from government, but from "the Laws of Nature and of Nature's God," and 2) that "all men are created equal [and] that they are endowed by their Creator with certain unalienable Rights[.]" *Declaration of Independence*, at 1.

In *Meyer*, the Supreme Court explained that "[t]he individual has certain fundamental rights which must be respected. ... [The individual] cannot be coerced by methods which conflict with the Constitution — a desirable end cannot be promoted by prohibited means." *Meyer*, at 401.

And then, the Court did something spectacular: it went back to the family as the building block of society. As classically trained people, the justices on the Court rejected the Greek philosopher Plato's musing that "children are to be common" as contrary to our own nation's founding:

> "Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest, and it hardly will be affirmed that any legislature could impose such

> restrictions upon the people of a State without doing violence to both letter and spirit of the Constitution."

Meyer, at 402.

Importantly, the Court found that parental rights are a substantive due process right within the Fourteenth Amendment. *Meyer*, at 398.

Two years later, in *Pierce v. Society of The Sisters of The Holy Names of Jesus And Mary*, 268 U.S. 510 (1925), in a case challenging an Oregon law standardizing education of children in public schools and centralizing it within state power, the Court unanimously again found that parental rights are a substantive due process right within the Fourteenth Amendment, building upon the foundation laid in *Meyer:* "[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*, at 535.

Less than twenty years later, the U.S. Supreme Court again took up a parental rights case, *Prince v. Massachusetts*, 321 U.S. 158 (1944), this time dealing with a woman who was the guardian of a nine-year-old girl, and who was convicted of allowing her to sell Jehovah's Witness publications in violation of a state law protecting children from labor violations. While the Court narrowly upheld the woman's conviction, it affirmed a key concept of parental rights: "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state

can neither supply nor hinder. . . . It is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter." *Id.* at 166. Four Justices dissented from the Court's decision and would have overturned the woman's conviction. Indeed, Justice Murphy wrote in his dissent, foreshadowing the Court's ruling twenty-eight years later in *Wisconsin v. Yoder*, the following: "Nor can parents or guardians be subjected to criminal liability because of vague possibilities that their religious teachings might cause injury to the child. The evils must be grave, immediate, substantial." *Prince*, at 175 (J. Murphy, dissenting).

Then came 1972, and perhaps the most well-known Supreme Court decision affirming parental rights, *Wisconsin v. Yoder*, 406 U.S. 205 (1972), when the Court overturned the convictions of members of the Old Order Amish religion and the Conservative Amish Mennonite Church who were convicted of violating Wisconsin's compulsory attendance statute by not sending their children to public school after the eighth grade. The Court said, "[t]he values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society. Even more markedly than in *Prince*, therefore, this case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the

upbringing of their children is now established beyond debate as an enduring American tradition." *Yoder*, 406 U.S. 205, 232 (1972).

It is worth pointing out that in this case, there is no way that the Supreme Court's decision and wording in *Yoder* can be squared with the District Court's decision in this case. If school officials are knowingly contradicting the parents and hiding something as important as an eleven-year-old child's name (given to that child at birth by the parents) and who that child is from the parents, there is no way that the parents can "guide the religious future and education of their children." *Id.* There is no way that the parents can exercise "parental concern for the nurture and upbringing of their children." *Id.* The District Court's reasoning undermines the Supreme Court's decision in *Yoder*, and the Supreme Court's recognition that parents, not government officials (even public-school teachers) are the ones with the "primary role … in the upbringing of their children…" *Id.*

Two years after *Yoder* came *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974). While this case was not strictly a parental rights case (it dealt with school board policies requiring pregnant teachers to take involuntary maternity leave), the Supreme Court once again reaffirmed that "[t]his Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Id.* at 639-640.

In 1977, in a case dealing with who exactly constitutes a family in the context of a local housing ordinance, the Supreme Court again reiterated that "[o]ur decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." *Moore v. East Cleveland*, 431 U.S. 494, 503-504 (1977).

Also in 1977, in a case dealing with New York State and New York City's policies regarding the removal of foster children from foster homes, the Supreme Court again reaffirmed the family as the building block of society that predates the government of the United States:

> "But there are also important distinctions between the foster family and the natural family. First, unlike the earlier cases recognizing a right to family privacy, the State here seeks to interfere, not with a relationship having its origins entirely apart from the power of the State, but rather with a foster family which has its source in state law and contractual arrangements. The individual's freedom to marry and reproduce is older than the Bill of Rights. Accordingly, unlike the property interests that are also protected by the Fourteenth Amendment, the liberty interest in family privacy has its source, and its contours are ordinarily to be sought, not in state law, but in intrinsic human rights, as they have been understood in this Nation's history and tradition."

Smith v. Organization of Foster Families, 431 U.S. 816, 845 (1977) (internal citations and quotations omitted).

This decision from the Supreme Court once again stands in stark contrast with the District Court's opinion in this case. The District Court was clearly uncomfortable with the Ludlow School Committee's policy and actions,[1] and under a proper understanding of Supreme Court precedent, should have held for the parents.

Returning to Supreme Court precedent, in the 1978 case of *Quilloin v. Walcott*, 434 U.S. 246 (1978), a family law case dealing with a natural father's challenge to the adoption of his child by the child's stepfather, the Court stated, "[w]e have recognized on numerous occasions that the relationship between parent and child is constitutionally protected. We have little doubt that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing

[1] *See, Foote v. Town of Ludlow*, 2022 WL 18356421 *7 (D. Mass. Dec. 14, 2022) ("On its face, the Massachusetts non-discrimination statute does not require such a policy and it is disconcerting that school administrators or a school committee adopted and implemented a policy requiring school staff to actively hide information from parents about something of importance regarding their child. Indeed, in an earlier case, this court recognized that deception by school officials could shock the conscience where the conduct obscured risks to a person's bodily integrity and was not justified by any government interest."); *Id.* *8 ("The court agrees that the policy, as described by Plaintiffs, was based on a flawed interpretation of the DESE Guidance and ignored the plain language advising that parents be informed after the student is advised that such communication will occur."); and *Id.* ("…the court is apprehensive about the alleged policy and actions of the Ludlow Public Schools with regard to parental notification …").

of unfitness and for the sole reason that to do so was thought to be in the children's best interest." *Id.* at 255.

That is exactly what is happening here and, in this case, no showing of parental unfitness – or even an allegation of such – has been shown.

Also in 1978, in another family law case dealing with a dependency proceeding, the Supreme Court decided *Stanley v. Illinois*, 405 U.S. 645 (1978). The Supreme Court held for the unwed father and once again reaffirmed the importance of parental rights:

> "The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed essential, basic civil rights of man, and rights far more precious than property rights. It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, the Equal Protection Clause of the Fourteenth Amendment, and the Ninth Amendment."

Id. at 651 *(cleaned up).*

One year later came *Parham v. J. R.*, 442 U.S. 584 (1979), where the Supreme Court made this ringing pronouncement that stands in stark contrast to the District Court's decision in this case:

> "Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course; our constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents

> generally have the right, coupled with the high duty, to recognize and prepare their children for additional obligations. … The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children. 1 W. Blackstone, Commentaries * 447; 2 J. Kent, Commentaries on American Law * 190. … The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition. Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state. … Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments. … We cannot assume that the result in *Meyer v. Nebraska*, and *Pierce v. Society of Sisters*, would have been different if the children there had announced a preference to learn only English or a preference to go to a public, rather than a church, school. The fact that a child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parents' authority to decide what is best for the child. Neither state officials nor federal courts are equipped to review such parental decisions."

Id. at 602-604 *(cleaned up).*

In 1982, in a child neglect case from New York, the Supreme Court again reaffirmed the importance of parental rights, saying, "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of

their family life. … [U]ntil the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Santosky v. Kramer*, 455 U.S. 745, 753, 760 (1982).

Eleven years later, the Supreme Court decided a case dealing with non-resident immigrant juveniles who were detained by the federal government, *Reno v. Flores,* 507 U.S. 292 (1993). A particular line of the case is exceedingly helpful in reminding the lower courts that parental rights must be respected as a constitutional limit on the exercise of state power, even if nonparents believe they would do a better job making decisions for a child than the child's parents:

> "'The best interests of the child,' a venerable phrase familiar from divorce proceedings, is a proper and feasible criterion for making the decision as to which of two parents will be accorded custody. But it is not traditionally the sole criterion—much less the sole constitutional criterion—for other, less narrowly channeled judgments involving children, where their interests conflict in varying degrees with the interests of others. Even if it were shown, for example, that a particular couple desirous of adopting a child would best provide for the child's welfare, the child would nonetheless not be removed from the custody of its parents so long as they were providing for the child adequately. Similarly, 'the best interests of the child' is not the legal standard that governs parents' or guardians' exercise of their custody: So long as certain minimum requirements of child care are met, the interests of the child may be subordinated to the interests of other children, or indeed even to the interests of the parents or guardians themselves."

Id. at 303-304 (internal citations omitted).

In the 1997 case of *Washington v. Glucksburg*, 521 U.S. 702 (1997), the Supreme Court upheld Washington State's law banning assisted suicide. The Court

in that case reaffirmed that parental rights are a fundamental right, and that strict scrutiny should be utilized in reviewing governmental actions infringing upon parental rights: "In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the rights . . . to direct the education and upbringing of one's children. … The Fourteenth Amendment forbids the government to infringe 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Id.* at 720 – 721 (cleaned up).

And most recently, in the grandparent visitation case of *Troxel v. Granville*, 530 U.S. 57 (2000), the Supreme Court summed up almost a century's worth of precedence, stating, "[t]he liberty interest at issue in this case—the 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. … In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. … The Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a 'better' decision could be made." *Id.* at 65-66, 73.

In this case the Ludlow School District, Ludlow School District personnel, and the District Court believed that a "better" decision could be made concerning the names, pronouns, and personal decisions of eleven- and twelve-year-old minor children than the decisions made by the children's parents. Under clear Supreme Court precedent, such interference with the fundamental rights of parents violates the Due Process Clause of the Fourteenth Amendment.

II. Strict Scrutiny is the Correct Standard of Review for Fundamental Parental Rights

As demonstrated *supra*, parental rights are fundamental. And as a fundamental right, the correct standard of review is strict scrutiny: "The Fourteenth Amendment forbids the government to infringe 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Washington v. Glucksburg*, 521 U.S. 702, 720 – 721 (1997) (cleaned up). In *Reno v. Flores*, 507 U.S. 292, 301-302 (1993) the Court said "the Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." Using different terminology, but still standing for strict scrutiny, the Supreme Court explained this in *Wisconsin v. Yoder:* "The essence of all that has been said and written on the subject is that only those interests of the highest order and those not

otherwise served can overbalance legitimate claims to the free exercise of religion. We can accept it as settled, therefore, that, however strong the State's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests." *Id.* at 215.

While some have criticized the Supreme Court in *Troxel* for not specifying a strict-scrutiny standard in the context of nonparental visitation cases decided under state law,[2] the Court held for the parent and found Washington's nonparental visitation statute was unconstitutional without needing to reach a strict scrutiny determination: "[Washington's nonparental visitation statute] unconstitutionally infringes on that fundamental parental right. The Washington nonparental visitation statute is breathtakingly broad." *Id.*at 67. And the Supreme Court made it clear prior to its declaration that parental rights are a fundamental right that "[t]he [Fourteenth Amendment's Due Process] Clause also includes a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests.'" *Id.* at 65.

[2] "Because we rest our decision on the sweeping breadth of [Washington's nonparent visitation statute] and the application of that broad, unlimited power in this case, we do not consider the primary constitutional question passed on by the Washington Supreme Court—whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation. We do not, and need not, define today the precise scope of the parental due process right in the visitation context." *Troxel*, at 73.

Parental rights are fundamental rights. As such, they require strict scrutiny analysis.

III. This Court's Past Precedent Supports Parents' Position

The District Court relied upon this Court's decision in *Parker v. Hurley*, 514 F.3d 87 (1st Cir. 2008) in dismissing parents' suit. This reliance is misplaced, as *Parker* actually supports parents' claims.

A. *Parker* is factually distinct from this case

First, *Parker* dealt with curricular decisions. This case is not rooted in any curricular decisions. Instead, it concerns a public school's attempt to substantially interfere with the parents' direction and control of the upbringing of their children, by hiding from the parents a child's decision regarding gender identity.

Second, the plaintiff parents in *Parker* objected to the school's curricular decisions (specifically certain books) due to their religious beliefs toward gay marriage, and specifically claimed "that the public schools are systematically indoctrinating … young children contrary to the parents' religious beliefs and that the defendants held a specific intention to denigrate the [families'] sincere and deeply-held faith." *Id.* at 93 (cleaned up). There is no evidence in the District Court's decision that there is any religious objection driving the parents' objection to the school's attempt to hide information from them; indeed, there is not even any evidence in the District Court's decision that the parents object to their minor

children's gender identity at all. Instead, the District Court found that the mother sent an email to her children's teachers stating that she and her husband "were aware of the teacher's concerns about [her child's] mental health, they would be getting [her child] professional help, and requested that no one receiving the email 'have any private conversations with [her child] in regards to this matter.'" *Foote, supra*, at *2.

Third, *Parker* examined "how strong the school's interest must be to justify the denial of the parents' request for an exemption" using the standard of review established by the Supreme Court in *Employment Division v. Smith*, 494 U.S. 872 (1990). *Parker*, at 95. This standard of review – and even a request for an exemption – is not even an issue in this case, making *Parker* inapplicable to this case.

These three key differences establish how *Parker* is factually distinguishable from this case.

B. *Parker* supports the parent plaintiffs' position

Contrary to the District Court's holding, this Court's decision in *Parker* supports the parents' contention, and should lead this Court to overrule the District Court.

First, this Court stated in *Parker* that "[t]he age of the student has also been identified as relevant in the context of parental due process rights. *See C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 185 (3d Cir. 2005) (recognizing that

"introducing a child to sensitive topics before a parent might have done so herself can complicate and even undermine parental authority")." *Parker*, at 101. This is our argument. The age of the children in this case is precisely why this case is not a difficult one for this Court. A public school has absolutely no business hiding critical information regarding an eleven-year-old from the child's parents. It is antithetical to Supreme Court precedent. It is harmful to the child. It hurts family integrity. It weakens the critical relationship between public schools and the parents who choose to utilize them. And it is directly contrary to this Court's decision in *Parker.*

Second, this Court held in *Parker* that parents "do not have a constitutional right to direct *how* a public school teaches their child," and that such a "proposition is well recognized." *Parker*, at 102 (cleaned up, emphasis in original). The parents in this case are not seeking to direct *how* the school teaches their child, or what books their children read, or anything regarding their children's education. They simply do not want to be kept in the dark about critical personal decisions affecting their child.

Third, the Court held in *Parker* that

> "[g]enerally, the fundamental parental control/free exercise claims regarding public schools have fallen into several types of situations: claims that failure to provide benefits given to public school students violates free exercise rights, claims that plaintiffs should not be subjected to compulsory education, demands for removal of offensive material from the curriculum, and, as here, claims that there is a constitutional right to exemption from religiously offensive material." *Parker*, at 104.

This case is distinct from all of the scenarios referenced in *Parker.* The parents simply ask that they not be kept in the dark.

Fourth, this Court said in *Parker*, "the mere fact that a child is exposed on occasion in public school to a concept offensive to a parent's religious belief does not inhibit the parent from instructing the child differently. A parent whose child is exposed to sensitive topics or information at school remains free to discuss these matters and to place them in the family's moral or religious context, or to supplement the information with more appropriate materials. The parents here did in fact have notice, if not prior notice, of the books and of the school's overall intent to promote toleration of same-sex marriage, and they retained their ability to discuss the material and subject matter with their children." *Parker*, at 105-106 (cleaned up). In this case, such a distinction is impossible, as the parents were deliberately kept in the dark about what was happening with their minor children at school. Such discussion would be impossible.

Fifth, this Court noted in *Parker* that "…there is a continuum along which an intent to influence could become an attempt to indoctrinate …" *Parker*, at 106. Examining this "continuum," this Court concluded in *Parker* that "[t]he reading by a teacher of one book, or even three, and even if to a young and impressionable child, does not constitute 'indoctrination.'" *Id.* This case, however, is not about curricular matters like book reading. It is about a systemic, concerted, intentional, and blatant

attempt by the public school to cut the parents out of not just decision-making, but even knowledge of what was happening with their eleven-year-old child during the school day. Such conduct does seem to be indoctrination. Such a substantial infringement of the parent's right to direct and control the upbring of their children must not stand.

CONCLUSION

This Court should reverse the District Court and enter a preliminary injunction in favor of the parents.

Respectfully submitted this 21st day of March, 2023,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(a)(5) because:

This brief contains 5,340 words, including footnotes, but excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief 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 brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

DATED: March 21, 2023

/s/ William A. Estrada
Counsel for Amicus Curiae Parental Rights Foundation

VIRUS CHECK CERTIFICATION

The electronic version of the addendum has been scanned for viruses and is virus-free.

DATED: March 21, 2023

/s/ William A. Estrada
Counsel for Amicus Curiae Parental Rights Foundation

CERTIFICATE OF SERVICE

I hereby certify that on March 21st, 2023, I electronically filed the foregoing brief with the Clerk for filing and transmittal of a Notice of Electronic Filing to the participants in this appeal who are registered CM/ECF users.

DATED: March 21, 2023

/s/ William A. Estrada
Counsel for Amicus Curiae Parental Rights Foundation