

No. 25-759

IN THE
Supreme Court of the United States

AMBER LAVIGNE,

Petitioner,

v.

GREAT SALT BAY COMMUNITY SCHOOL BOARD,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

This Court has long held that “parents—not the State—have primary authority with respect to ‘the upbringing and education of children.’” *Mirabelli v. Bonta*, No. 25A810, 2026 WL 575049, at *3 (U.S. Mar. 2, 2026) (citations omitted).¹ This “primary authority” includes the right to know what a public school is doing to one’s child. Otherwise, parents would be unable to exercise their rights.

So it is no surprise that this Court has held that a public school’s policy of withholding information from parents regarding the school’s actions to support and recognize the assertion of a transgender identity likely violates parents’ fundamental rights to direct their children’s upbringing and education. *Id.*

Here, Respondent violated Petitioner’s *Meyer-Pierce* rights by following a policy of withholding information from parents; specifically, a policy which allowed a public-school social worker to give a 13-year-old child chest binders, and school officials to call the child by a different name and different pronouns without ever informing the child’s mother.

1. This brief refers to the parent’s fundamental right to direct the education of her child as “*Meyer-Pierce* rights.” See *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Respondent’s brief in opposition contains no reference to *Meyer*, *Pierce*, or even this Court’s relatively recent decision in *Troxel v. Granville*, 530 U.S. 57 (2000) applying the *Meyer-Pierce* rights to hold unconstitutional Washington’s third-party visitation statute.

Respondent School Board offers two general arguments against certiorari. First, it argues that its written Guidelines for addressing the needs of transgender students require parental involvement, so it cannot be liable for violating the Constitution—an argument that ignores both Petitioner’s theory of the case and the plain facts. Second, Respondent argues that there are “obvious alternative explanations” for Respondent’s failure to follow its written Guidelines, and that these disprove the possibility that Respondent has a different unwritten policy that supersedes the written Guidelines which permit what Respondent admits the written Guidelines forbid: the withholding of information from parents. Neither argument is persuasive.

While there is no dispute that the Board has a written policy (the Guidelines, requiring parental involvement) Petitioner’s Complaint plausibly alleges that Respondent’s actions—including repeatedly asserting that no Board policy was violated here—prove that the Board *actually* follows an *unwritten* policy of *withholding* this information from parents.

Yet the court below affirmed dismissal of the Complaint, doing so under a rationale over which the circuits are split: whether an “alternative explanation” for the well-pleaded allegations in a complaint can justify dismissal under the *Twombly/Iqbal* rule. Respondent’s efforts to show that there is no such split is unpersuasive.

The bottom line here is simple: the Board can be held liable if it follows an unconstitutional policy. This case therefore turns on the nature of that policy. Respondent *claims* its policy requires parental involvement in matters

of this sort, but the policy it *actually* follows is one of withholding vital information from parents, in violation of Petitioner’s right to guide the education and upbringing of her child. That is a plausible enough allegation that Petitioner should have her day in court.

ARGUMENT

I. The First Circuit’s “obvious alternative explanation” approach conflicts with *Twombly*, *Iqbal*, *Vullo*, and the Second, Sixth, and Seventh Circuits.

Petitioner argues that the Board follows a policy that violates her fundamental constitutional right to direct the education of her child. Respondent *claims* to have a policy requiring parental involvement. But the reality is that it follows a different, unwritten policy—a policy that allows the withholding of information from parents. To prove the existence of this unwritten policy, Petitioner pointed to the fact that the Superintendent told her that no policy was violated, and the School Board repeatedly and publicly declared that its employees violated no policy, and even rewarded employees who withheld the information in question. App. 17a-19a. These facts show that, whatever Respondent may *say* its written Guidelines require, its *actual* policy is to withhold such information—which violates Petitioner’s parental rights.

That is Petitioner’s theory of the case as presented in her well-pleaded, non-conclusory Complaint. But the First Circuit upheld dismissal of that Complaint on the theory that there are “alternative explanations” for these facts that dispensed with the need to independently determine the plausibility of Petitioner’s explanations as contained

in her Complaint. *Id.* 20a. That not only conflicts with the laws of other circuits, but also conflicts with this Court's own precedents as discussed below.

In the Board's Brief in Opposition ("BIO"), the Board stresses that its written guidelines require parental involvement. *See* BIO 2, 19, 23, 25. Petitioner does not disagree. The question is, why did school employees then *not* involve her with, or notify her of, their decisions to give her child chest binders and to call her child by a different name and pronouns? The answer is that, despite the written Guidelines, the Board actually follows a different policy; one that permits the withholding of information from parents. That explains why the Superintendent and the Board determined and publicly stated, repeatedly (and still), that *no policy was violated*. Indeed, Respondent unanimously approved a second-year contract for the social worker who gave Petitioner's child the chest binders.

This is the logical and certainly plausible explanation. To put the point syllogistically:

1. To follow the written Guidelines would require parental involvement.
 2. In fact, the parent was not involved, and Respondent says this did not violate the policy.
- ∴ The Guidelines are *not* actually the policy; Respondent follows a policy of non-involvement, instead.

Respondent never addresses this logic except to say that the Guidelines require parental involvement, BIO 3-4, except when they don't. *Id.* at 5. Respondent also faults Petitioner for “[n]ever ask[ing] the School for any of [the] information that she alleges was intentionally withheld from her,” *id.* at 4, but never explains how Petitioner would have known that she should ask whether a social worker gave her child chest binders or other officials called her child by a different name and pronouns because the whole point of information-withholding is that she would not know that information is being kept from her.

Yet although Petitioner's contentions are wholly plausible, the First Circuit said this plausibility was defeated by “alternative explanations.” App. 20a. In other words, the touchstone of the court's inquiry was not the plausibility of Petitioner's claims, but instead whether Petitioner's claim was *more likely than other explanations* for the facts. But that approach to the 12(b)(6) motion not only contradicts what this Court said in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), it's also in direct conflict with how other circuits deal with the “plausibility” question.

Twombly said that a complaint survives a 12(b)(6) motion “even if it strikes a savvy judge that actual proof of those facts is improbable, and ‘that a recovery is very remote and unlikely,’” as long as the allegations plausibly make out a cause of action. 550 U.S. at 556 (citation omitted). It made clear that a District Court must *not* impose “a probability requirement at the pleading stage.” *Id.* *Iqbal* reiterated that point: the *Twombly* plausibility rule requires a complaint to “contain sufficient factual

matter” to enable a court to “draw the reasonable inference that the defendant is liable for the misconduct alleged.” 556 U.S. at 678.

The rule is not a front-loaded merits determination. It is improper for courts to ask, at that pre-discovery point, whether there’s some other explanation of the facts that might relieve the defendant of liability. *See also NRA v. Vullo*, 602 U.S. 175, 195 (2024) (declining to “simply credit [the defendant’s] assertion that ‘pursuing conceded violations of the law’ is an ‘obvious alternative explanation’ for her actions that defeats the plausibility of any coercive threat raising First Amendment concerns.” (citation omitted)).

The Petition shows (at 22-25) that other circuits, honoring *Twombly* and *Iqbal*, have said—in direct contradiction to the court below—that “it is not the district court’s province to dismiss a plausible complaint because it is not as plausible as the defendant’s theory,” *Palin v. New York Times Co.*, 940 F.3d 804, 815 (2d Cir. 2019), and that “the mere existence of an ‘eminently plausible’ alternative, lawful explanation for a defendant’s allegedly unlawful conduct is not enough to dismiss an adequately pled complaint because pleadings need only be ‘plausible, not probable.’” *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 613 (6th Cir. 2012).

But, as the Petition also shows (at 17-22), there are other circuits that agree with the approach used below; the First Circuit’s decision is no aberration. *See, e.g., Pickett v. Texas Tech Univ. Health Sci. Ctr.*, 37 F.4th 1013, 1034 (5th Cir. 2022) (explaining that plausibility “requires that there is no ‘obvious alternative explanation’ for the decision,”

thereby making an obvious alternative explanation itself sufficient to grant a motion to dismiss). This division among the circuits warrants this Court's intervention.

Respondent tries to argue that there is no real circuit split, but it does so by focusing on results instead of the process courts have used to arrive at those results. Yet it is *methodology* with which this Court is concerned, not outcomes. The question is not whether other circuits would have dismissed this particular Complaint, but whether a plaintiff's plausible allegations can be overcome at the pleading stage simply because a court thinks some contrary explanation is more likely. The First Circuit says yes, see *Frith v. Whole Foods Market, Inc.*, 38 F.4th 263, 276 (1st Cir. 2022), as do some other circuits, see, e.g., *Doe v. Emory University*, 110 F.4th 1254, 1258-60, 1262-63 (11th Cir. 2024) (affirming dismissal where allegations were "consistent with" an "obvious alternative explanation" suggesting lawful conduct). Other circuits say no. See *Hughes v. Nw. Univ.*, 63 F.4th 615, 629-30 (7th Cir. 2023) (when "alternative inferences are in equipoise—that is, where they are all reasonable based on the facts—the plaintiff is to prevail on a motion to dismiss," because a plaintiff need not conclusively overcome those alternative explanations); *Palin*, 940 F.3d at 815 ("[t]he test is whether the complaint is plausible, not whether it is less plausible than an alternative explanation."). This division over procedure is cert-worthy.

The Board also claims that the circuit split is not properly before the Court because Petitioner didn't employ before the First Circuit the precise formulation presented in the first question presented here. BIO at 11. That argument fails. First, as Respondent admits,

Petitioner *did* directly dispute Respondent’s invocation of the “alternative explanation” theory in her Reply Brief before the First Circuit. *Id.*² Second, this Court distinguishes between claims/issues on one hand, and arguments in support of claims and issues on the other. As *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992), put it: “[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.” *Yee* explained that once a claim is properly raised below, “petitioners could have formulated any argument they liked in support of that claim here.” *Id.* at 535. The same is true here.

This Court should grant the Petition to answer whether courts can weigh the probabilities of competing explanations of facts at the 12(b)(6) stage or whether the touchstone of the analysis in ruling on a 12(b)(6) motion is whether a plaintiff’s explanation is independently plausible.

II. This case presents an issue that four Justices and nineteen states have called a critical issue of nationwide importance: whether a public school’s policy of withholding information from parents violates a parent’s constitutionally protected right to control and direct the education of her child.

This case presents the Court with the opportunity to resolve a pressing question of nationwide importance

2. Respondent’s reliance on *Warner Chappell Music, Inc. v. Nealy*, 601 U.S. 366, 371 n.1 (2024), is therefore misplaced; there, the petitioner acknowledged that he did not raise the issue below or in the petition for certiorari.

over which the circuits are split: whether a parent’s right to control her child’s education extends beyond choosing between public or private-school alternatives, or whether that right is exercised and extinguished with that single decision.

Some lower courts have indeed said that once a parent chooses to send a child to public school, the parent’s *Meyer-Pierce* rights are either extinguished or “substantially diminished,” *Hartzell v. Marana Unified Sch. Dist.*, 130 F.4th 722, 744 (9th Cir. 2025), *cert. denied*, 146 S. Ct. 298 (2025), whereas others have said that parents do not cease to have the right to direct their children’s upbringing just because they have chosen to send their children to public school. *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 185 n.26 (3d Cir. 2005) (“Nor do we endorse the categorical approach to this right taken by the [Ninth Circuit], wherein it appears that a claim grounded in *Meyer-Pierce* will now trigger only an inquiry into whether or not the parent chose to send their child to public school and if so, then the claim will fail.”).

This Court recently clarified that a school likely violates a parent’s *Meyer-Pierce* rights when it follows a policy that permits school officials to withhold information about employees’ decisions to affirm a child in asserting a gender identity that differs from the child’s biological sex. *Mirabelli*, 2026 WL 575049, at *3. This is in line with the Court’s recent decision in *Mahmoud v. Taylor*, 606 U.S. 522, 559 (2025). Both cases provide a roadmap for this Court to decisively conclude that a parent’s right to direct the education and upbringing of her child does not end at the schoolhouse gate.

This question continues to be exceptionally important—and pressing—as multiple Justices have noted. Earlier this term, Justices Alito, Thomas, and Gorsuch noted that questions involving the application of a parent’s constitutionally protected rights in situations where public school officials encourage a child to transition gender are questions of growing nationwide importance. *Lee v. Poudre Sch. Dist.*, No. 25-89, 2025 WL 2906469 (U.S. Oct. 14, 2025).³ Justice Kavanaugh has noted that he would have granted certiorari in a case presenting similar questions about the scope of parental rights. *See Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.*, 145 S. Ct. 14 (2024) (mem).

Indeed, this Court has recently been asked to take action as more and more school districts choose to conceal information from parents that is vital to the viability of their *Meyer-Pierce* rights. *See, e.g., Littlejohn v. Sch. Bd. of Leon Cnty.*, No. 25-259 (U.S. Sept. 5, 2025); *Footte v. Ludlow Sch. Comm.*, No. 25-77 (U.S. July 22, 2025). The fact that almost half the states have urged this Court to take this case speaks for itself. *Br. of South Carolina, et al., Lavigne v. Great Salt Bay Cmty. Sch. Bd.*, No. 25-759 (Feb. 23, 2026).

Respondent attempts to dissuade this Court from granting certiorari by arguing that Petitioner is asserting “a right to proactive notice from the school” about her child’s gender-identity issues, an issue it says was never raised below. BIO at 24-25. That’s just not true—Petitioner

3. This first question presented here “fixes” the problem in *Lee*, where petitioners did not challenge the basis for the ruling below. 2025 WL 2906469 at *1. The opposite is true here.

does *not* claim a right to “proactive notice.” She claims a right not to have the Board withhold information from her when its employees choose to take actions with respect to her child’s gender identity.⁴

True, failure-to-notify and concealment or withholding can blend together in some cases; information can be withheld both passively and actively. To treat them as separate legal causes of action for preservation purposes would be bizarre hair-splitting and would require parents to anticipate every action school employees might take and hide from them. That would obviously be impossible. But in any event, such overly technical framing is out of place here. The question presented is simply whether the Petitioner has plausibly alleged a violation of her *Meyer-Pierce* rights.

Finally, although the First Circuit refused to “pass upon” the *Meyer-Pierce* rights question for reasons of “constitutional avoidance,” App. 15a, that question is still properly before the Court, despite Respondent’s claims to the contrary. BIO 20. This Court’s “traditional rule . . . precludes a grant of certiorari only when ‘the question presented was not pressed or passed upon below.’” *United States v. Williams*, 504 U.S. 36, 41 (1992) (citation omitted). This question is “disjunctive,” meaning that a claim may be considered if it has “been *either* raised or squarely considered and resolved.” *Illinois v. Gates*, 462 U.S. 213, 218 n.1 (1983) (emphasis in original). Thus,

4. Even if Petitioner was arguing a “notice” theory here and a “concealment” theory earlier, this Court has long held that arguments in support of claims are different from the claims themselves; as long as a petitioner brought a claim below, that’s sufficient for preservation purposes. *See Yee*, 503 U.S. at 534.

a grant of certiorari is well within this Court's standard process. This Court should take this opportunity to address the second question presented and answer the question preliminarily addressed in *Mirabelli*.

CONCLUSION

The Court should *grant* the Petition.

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