No. 25-1302

In the Supreme Court of the United States

MIRANDA STOVALL,

Petitioner,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, ET AL.,

Respondents.

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

BRIEF OF THE MANHATTAN INSTITUTE AND MACKINAC CENTER FOR PUBLIC POLICY AS *AMICI CURIAE* SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether federal courts must, or state courts may, decide whether it is a fair use, under the Copyright Act, to request and obtain a copyrighted document under state open records law.

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INTEREST OF *AMICI CURIAE*[1]

The **Manhattan Institute** (MI) is a nonprofit public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility.

The **Mackinac Center for Public Policy** (Mackinac) is a Michigan-based nonpartisan research and educational institute advancing policies fostering free markets, limited government, personal responsibility, and respect for private property.

Government transparency is vital to a democratic society. MI and Mackinac scholars depend on freedom of information laws in many areas of study and advocacy. Moreover, MI has often defended parental rights in this Court and other federal courts. This case presents a confluence of both issues.

SUMMARY OF ARGUMENT

Miranda Stovall wanted to know what questions her child was being asked on a survey given by a public school. Perhaps she would have been okay with the questions, or perhaps she would have objected, but the first barrier was simply requesting, accessing, and being able to copy the survey. The result was complex litigation and a petition to this Court.

The ultimate resolution of her case is still unclear, even if the petition is granted. She merely asks this Court to decide which court gets to decide the question of fair use of public records that are used by

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[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amici*, their members, or their counsel funded its preparation or submission.

governments and created by private entities. That question is recurring, unresolved, and worthy of cert.

Moreover, states are increasingly using third-party vendors to produce a variety of public documents that are important to government policy—particularly in the areas of education, prisons and corrections, and environmental regulation. Access to those documents—or at least clear jurisdictional rules on how and whether those documents can be accessed—is important to democratic governance.

Mrs. Stovall has gone through a lot of litigation for a mother of four from Kentucky. If she did not have *pro bono* representation, she would likely have six figures in legal fees to merely get to the point that she can ask this Court to decide in which court she should have initially filed her case.

ARGUMENT

I. THE QUESTION PRESENTED IS RECURRING AND IMPORTANT BECAUSE MODERN GOVERNMENTS INCREASINGLY ACT THROUGH PRIVATE VENDORS

A. Public Records Often Include Vendor-Created or Vendor-Licensed Materials

The public record of government action is no longer confined to documents drafted by public employees. It increasingly includes materials created, licensed, or maintained by private vendors. As one scholar of this problem has explained, government agencies have become creators or accumulators of many commercially valuable works, including databases and geographic mapping data. Frank D. LoMonte, *Copyright Versus the Right to Copy: The Civic Danger of Allowing Intellectual Property Law to Override State Freedom of*

Information Law, 53 Loy. U. Chi. L.J. 159, 161 (2021). A particularly difficult category arises where the government is merely the custodian of works created by commercial third parties. *Id.* at 204–05.

This case illustrates the pattern in the educational context. Jefferson County Public Schools (JCPS) refused to produce a copy of a student survey, citing Kentucky's exemption for records "prohibited by federal law or regulation," KRS § 61.878(1)(k), and asserting that the survey was the copyrighted intellectual property of its publisher, NCS Pearson, Inc. *Stovall v. Jefferson Cnty. Bd. of Educ.*, 164 F.4th 554, 559 (6th Cir. 2026). The same dynamic recurs across the administrative state. In criminal justice, contractor-drafted manuals, medical protocols, and risk-assessment instruments are held by public agencies and routinely sought by those seeking to understand how those agencies operate. *See, e.g.*, *ACLU of Utah Found. v. Davis County*, No. 1807005112021, Utah Dist. LEXIS 1 (Utah Dist. Ct., Mar. 25, 2021). In the management of public data, geographic, mapping, and analytical databases—like the images at issue in *Pictometry Int'l Corp. v. Freedom of Information Comm'n*, 59 A.3d 172 (Conn. 2013)—are typical examples of vendor-licensed records held by government. These materials are often essential to evaluating how public programs operate. They are also the records likely to generate a private copyright objection.

Moreover, many records that are most important to public oversight are those most likely to carry private copyright claims, including records relating to education, as in the instant case. The two phenomena are not coincidental. The more the government relies on private vendors to administer public programs, the

more public accountability depends on access to privately authored materials held by the government. The public records that reveal how a program actually functions—*e.g.*, the assessment instrument a school district uses, the vendor protocols a prison or corrections institution follows, the database through which an agency analyzes regulated activity—are frequently the very materials a third-party contractor may claim copyright over. As Mr. LoMonte observes, the public needs access to records obtained by the government from the private sector when those records are central to the policymaking process, or when those records become government policy. LoMonte, *supra*, at 205; *see Microdecisions, Inc. v. Skinner*, 889 So. 2d 871, 873 (Fla. Dist. Ct. App. 2004) (vendor claimed copyright in county geographic-mapping data sought as a public record). A rule that lets copyright defeat copying therefore reaches precisely the records on which public oversight most depends.

B. Forum Uncertainty Defeats Access Before Any Court Reaches the Issue of Fair Use

The harm that arises from cases like Mrs. Stovall's is not merely that requesters may ultimately lose due to a copyright claim. Rather, under the current state of the law, litigants like Mrs. Stovall don't know which court to bring the question at all. Federal jurisdiction over copyright is exclusive: "No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to . . . copyrights." 28 U.S.C. § 1338(a). Yet the boundary between federal and state competence over copyright questions has, in the words of the leading treatise, "pose[d] among the knottiest procedural problems in copyright jurisprudence." 3 Melville B. Nimmer & David Nimmer, *Nimmer on*

Copyright § 12.01[A] (2026); *see also Bassett v. Mashantucket Pequot Tribe*, 204 F.3d 343, 347 (2d Cir. 2000). When that uncertainty attaches to a time-sensitive records request, the practical consequence is foreclosure. A requester who must litigate for years simply to learn which court may decide the federal question will often abandon the request before any court reaches it.

The question here is not whether Stovall should ultimately prevail on fair use. Nor need the Court decide whether every fair-use dispute in this setting is ripe at the moment a requester files suit. The question worthy of certiorari is antecedent: when copyright is invoked as the reason for denial, the lower courts disagree about which court may decide whether federal law prohibits the copying.

II. LOWER COURTS ARE DIVIDED OVER WHO MAY DECIDE FAIR USE WHEN COPYRIGHT IS INVOKED TO DENY PUBLIC-RECORDS COPIES

The decisions confronting the same issue as this case do not merely reach different outcomes; they assign the same federal question to different decisionmakers. Some courts hold or assume that state tribunals may decide fair use. The decision below adopts this position.

The Sixth Circuit held that state courts have authority to consider incidental copyright questions and that a state court "may exercise jurisdiction over this claim, because it does not arise under federal copyright law." *Stovall*, 164 F.4th at 561–62. In support, the court relied on a single state-court decision that had applied federal fair-use doctrine to a public-records

request. *See id.* (citing *Zellner v. Cedarburg Sch. Dist.*, 731 N.W.2d 240, 247 (Wis. 2007)). In *Zellner*, the Wisconsin Supreme Court applied the statutory fair-use factors and held that the requested records did not fall within the state's copyright exemption. *Zellner*, 731 N.W.2d at 247–48. Under this approach, the meaning and application of a federal statute is committed to the courts of each state.

But the Connecticut Supreme Court held the opposite. In *Pictometry*, addressing a state commission's effort to apply the Copyright Act, the court held that neither the commission nor the court had jurisdiction to determine whether a particular use of copyrighted materials is fair use or infringes the copyright holder's rights. That determination, the court held, must be made in federal court. 59 A.3d at 192. Other state courts have reached the same conclusion. *See Nat'l Council of Tchrs. Quality, Inc. v. Curators of the Univ. of Mo.*, 446 S.W.3d 723, 729 (Mo. Ct. App. 2014) (state court "lacks the authority to determine whether a particular use of copyrighted materials constitutes fair use, as federal courts have original jurisdiction" over copyright claims) (cleaned up); *Ali v. Phila. City Plan. Comm'n*, 125 A.3d 92, 104–05 (Pa. Commw. Ct. 2015); *Garlick v. Naperville Township*, 84 N.E.3d 607, 622 (Ill. App. Ct. 2017) (state appellate court "is not the proper forum for copyright claims"). Under this approach, the federal fair-use question is unavailable in state court—and, under the rule below, equally unavailable in federal court.

A third group of decisions sidesteps the jurisdictional question, resolving these disputes on grounds that vary from court to court. *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871 (Fla. Dist. Ct. App. 2004) is

illustrative. There, a vendor invoked copyright to refuse copies of public geographic-mapping data. The case moved between federal and state court before a state appellate court ultimately disposed of it by holding that the county had no authority to claim copyright in the maps in the first place. *Id.* at 873–76. That resolution avoided the federal fair-use question rather than answering it, leaving the underlying problem unresolved for the next requester.

Other courts have taken similar paths. *See, e.g.*, *Lindberg v. Kitsap County*, 948 P.2d 805, 814 (Wash. 1997) (declining to reach the jurisdictional question because it had not been raised below); *Pennington v. Clark*, 791 N.Y.S.2d 774, 776 (N.Y. App. Div. 2005) (rejecting, without meaningful copyright analysis, the contention that court-ordered disclosure of a videotape under the state's freedom of information law would violate copyright law); *Spencer v. Cherokee Cnty. Sch. Dist.*, 916 S.E.2d 746, 752 (Ga. Ct. App. 2025) (holding that the Copyright Act did not preempt Georgia's Open Records Act and that the act contained no copyright exemption, without deciding fair use); *Brewer v. Metro. Gov't of Nashville & Davidson Cnty.*, No. M2024-01139-COA-R3-CV, 2026 WL 296584, at *20–21 (Tenn. Ct. App. Feb. 4, 2026) (declining to resolve the fair-use issue where the record did not permit a determination of copyrightability or infringement and where inspection could proceed without copying, distribution, or public display).

These cases reflect that the lower courts cannot agree on a threshold question of federal law: which forum is competent to decide whether copying a public record is permitted under § 107 of the Copyright Act. Until this Court resolves that question, requesters

cannot know where to file, and federal copyright law cannot be applied uniformly in the public-records setting where it is most often invoked.

III. FEDERAL JURISDICTION IS PROPER BECAUSE THE SIXTH CIRCUIT MISIDENTIFIED THE RELEVANT COERCIVE ACTION

1. Federal jurisdiction is proper under § 1338 and settled declaratory-judgment doctrine. But the deeper problem warranting review is that, under the current patchwork, no forum is reliably available to decide the federal copyright question that public agencies invoke to deny records access.

The Declaratory Judgment Act is "procedural only" and does not itself create federal-question jurisdiction. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950); *see* 28 U.S.C. § 2201(a). To determine whether a declaratory action presents a federal question, a court looks through the declaratory posture to a hypothetical coercive suit. As the court below has elsewhere framed the inquiry, "whether a federal question exists is determined by reference to a hypothetical non-declaratory suit (*i.e.*, a suit for coercive relief) between the same parties; if a federal question would appear in the complaint in this hypothetical suit, federal jurisdiction exists over the declaratory-judgment action." *Chase Bank USA, N.A. v. City of Cleveland*, 695 F.3d 548, 554 (6th Cir. 2012); *accord Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 19 (1983). The federal-question inquiry is thus not controlled by the state-law setting in which the controversy arose. It asks whether the coercive

action mirrored by the declaratory suit would arise under federal law.

The relevant coercive action is the copyright holder's infringement suit, not a state-records appeal. But the court below treated the case as though Stovall were asserting a federal defense to a state-law obligation—as though the relevant hypothetical suit were an open-records enforcement action under Kentucky law. But Stovall does not need a defense to the Kentucky Open Records Act. The legal threat that prevented disclosure was the asserted threat that copying the survey would infringe Pearson's federal copyright. The mirror-image coercive action is therefore Pearson's infringement suit—a suit that would unquestionably arise under federal copyright law. 28 U.S.C. § 1338(a).

That conclusion follows from the structure of the Copyright Act and from settled doctrine on what claims arise under it. The exclusive rights of a copyright owner, including the reproduction right, are expressly "[s]ubject to" the limitations of §§ 107 through 122. 17 U.S.C. § 106. Fair use is the first of those limitations: it defines conduct that is not infringement at all, not merely conduct that is excused. *See* 17 U.S.C. § 107; *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 433 (1984) (one who makes fair use "is not an infringer of the copyright"). A suit to enforce or to disclaim that federal right arises under the Copyright Act. As Judge Friendly explained in a decision widely regarded as the leading statement of the rule, an action arises under the act where the complaint seeks a remedy expressly granted by the act or "asserts a claim requiring construction of the Act." *T.B. Harms Co. v. Eliscu*, 339 F.2d 823, 828 (2d Cir. 1964). And § 1338(a) places such claims within the exclusive

jurisdiction of the federal courts, "expressly withdraw[ing] from the state courts any jurisdiction to enforce the provisions of the Act." *Ritchie v. Williams*, 395 F.3d 283, 286 (6th Cir. 2005).

The error below was thus not a misunderstanding of the coercive-action test in the abstract, but a misidentification of the relevant copyright controversy. The federal right being asserted as the obstacle to disclosure is Pearson's copyright. The mirror-image coercive action is therefore a federal copyright action by Pearson against the party who would make or distribute the copy—JCPS—and potentially against Stovall if she later copied or redistributed the survey. That is the controversy Stovall sought to resolve: whether providing the copy would infringe Pearson's copyright or instead fall within § 107. That any such infringement action would run against JCPS as the disclosing agency does not change the analysis—the coercive-action test asks whether the hypothetical suit would arise under federal law, not whether it would name this particular declaratory plaintiff as defendant. The hypothetical coercive action arises under federal copyright law, and the declaratory action mirroring it belongs in federal court.

The Sixth Circuit separately commented that Stovall lacked Article III standing because Pearson's infringement suit was too speculative. *Stovall,* 164 F.4th at 562–63. That holding does not make the forum problem less worthy of this Court's review. In public-records cases like this one, the copyrightholder's infringement suit ordinarily will not materialize until after disclosure, while disclosure is precisely what the copyright objection prevents. If that posture is too speculative for federal declaratory relief, and if

state tribunals remain divided over whether § 1338(a) permits them to decide fair use, the federal copyright question becomes practically unreviewable. The requester is left without a reliable forum, the agency is left without a definitive answer, and the copyright holder's assertion controls without any court deciding whether federal law actually prohibits copying.

2. The decision below treated the federal copyright question as merely incidental to a state-law dispute, holding that Stovall's claim does not "necessarily raise" a copyright question under *Gunn v. Minton*, 568 U.S. 251 (2013). *Stovall*, 64 F.4th at 560–61. But the substantial-federal-question framework confirms federal jurisdiction here; it does not defeat it. Under that framework, federal jurisdiction lies over a state-law claim where a federal issue is "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn*, 568 U.S. at 258; *see Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005).

In *Gunn*, the Court held the issue insubstantial because resolving it could not "change the real-world result of the prior federal patent litigation" and would not "undermine the development of a uniform body of patent law." 568 U.S. at 261 (cleaned up). Here, by contrast, the federal copyright question is not embedded, hypothetical, or backward-looking. It is the whole dispute: whether copying the survey is prohibited by § 106 or permitted by § 107.

Each *Grable* factor is satisfied. The federal issue is *necessarily raised*: the school district denied the request by invoking Kentucky's exemption for records "prohibited by federal law or regulation," KRS §

61.878(1)(k), and by identifying Pearson's copyright as the federal-law obstacle. *Stovall*, 164 F.4th at 559. It is *actually disputed*: as JCPS framed the denial, the only basis for refusing to provide a copy was federal copyright law. JCPS invoked Kentucky's exemption for records whose disclosure is "prohibited by federal law" and identified Pearson's copyright as the federal-law obstacle. The controversy, therefore, turns on whether providing the copy would infringe the federal reproduction right or instead fall within federal fair use. It is *substantial*: the substantiality inquiry asks about "the importance of the issue to the federal system as a whole," *Gunn*, 568 U.S. at 260, and ensuring the uniform construction of the fair-use provision is a quintessentially federal interest, *see T.B. Harms*, 339 F.2d at 828. And resolution in federal court is *consistent with the federal-state balance*; indeed, it is the balance Congress struck. Section 1338(a) expressly allocates copyright jurisdiction to the federal courts and withdraws it from state courts. A federal forum for a question Congress reserved for the federal courts cannot disrupt a balance Congress itself established.

In fact, § 1338(a) reflects Congress's judgment that copyright requires national uniformity. *See Ritchie*, 395 F.3d at 287 (noting that Congress has indicated that "national uniformity" is necessary in copyright). A regime in which the same fair-use question is decided by a state court in one state, refused by a state court in the next, and refused by a federal court in a third defeats that design. The boundary problem the treatises have lamented, *see* Nimmer, *supra*, § 12.01[A], is not merely academic; it has produced a patchwork in which the governing federal standard depends on the accident of where a record happens to be held. Whatever the ultimate rule, the present

uncertainty defeats the uniformity Congress sought and makes fair use practically unavailable in recurring public-records disputes.

IV. CERTIORARI IS WARRANTED BECAUSE THE SPLIT WILL NOT RESOLVE ITSELF AND STATE REFORMS CANNOT ANSWER THE FEDERAL FORUM QUESTION

This Court grants certiorari to resolve a conflict between a federal court of appeals and a state court of last resort on an important question of federal law. Sup. Ct. R. 10(a), (c). That standard is met. The Sixth Circuit holds that state courts may decide whether copying a record under state open-records law constitutes fair use; the Connecticut Supreme Court holds that neither a state administrative tribunal nor a state court may make that determination. *Stovall*, 164 F.4th at 561–62; *Pictometry*, 59 A.3d at 192 ("[N]either the commission nor this court . . . has jurisdiction to determine whether a particular use of copyrighted materials infringes on the copyright holder's rights under federal copyright law or, instead, constitutes a fair use of the materials."). The Court has granted review to resolve conflicts resting on a single state court of last resort. *See Bravo-Fernandez v. United States*, 580 U.S. 5, 18 n.6 (2016). This conflict will not resolve itself. The lower courts do not merely disagree about outcomes—they disagree about their own institutional competence to reach an outcome at all. As Part II, *supra*, demonstrates, courts in at least nine states have produced incompatible answers, and each new case deepens rather than narrows the divide.

Some states have begun to clarify by statute that copyright is not a valid basis for withholding public records. Such reforms are valuable as a matter of

transparency policy. But they cannot resolve the question presented. A state may declare that copyright is not an open-records exemption, but it cannot answer the antecedent federal question that arises once an agency or vendor asserts that copying is "prohibited by federal law." Whether the Copyright Act in fact prohibits the copying, or whether the copying is fair use under § 107, is a question that arises under federal law, *see T.B. Harms*, 339 F.2d at 827–28, and § 1338(a) controls who may answer it.

CONCLUSION

The question presented recurs wherever government relies on private vendors to administer public programs, and it will only become more common as that reliance deepens. Lower courts have produced irreconcilable answers, and the Sixth Circuit's decision ensures that federal courts will not fill the gap. The result is a jurisdictional vacuum in which copyright can be invoked to defeat public-records access without any court ever deciding whether federal law actually requires that result. The petition should be granted.

Respectfully submitted,

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