


No. \_\_\_\_\_

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**In the  
Supreme Court of the United States**



MIRANDA STOVALL,

*Petitioner,*

v.

JEFFERSON COUNTY BOARD OF EDUCATION, ET AL.,

*Respondents.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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May 14, 2026

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## QUESTION PRESENTED

Respondent Jefferson County Public Schools (JCPS) relied on federal copyright law, and federal copyright law alone, to reject Petitioner Miranda Stovall's Kentucky Open Records Act request for a copy of a survey it administered to her child. JCPS claimed that giving Mrs. Stovall a copy of the survey would violate Respondent NCS Pearson, Inc.'s copyright. However, under the Copyright Act, giving her that copy is a fair use, not copyright infringement. *See* 17 U.S.C. § 107.

This situation has arisen in other states. Plaintiffs have sued for access to documents withheld due to copyright under open records acts in state courts, including in Missouri, Connecticut, Pennsylvania, and Illinois. State courts in these four refused to decide whether the proposed copying was a fair use, citing federal courts' exclusive jurisdiction over copyright questions. *See* 28 U.S.C. § 1338(a).

So, Mrs. Stovall did the logical thing: she sued in federal court, in the Western District of Kentucky. The court held it lacked jurisdiction to answer her question. App.22a. She appealed, and the Sixth Circuit upheld the district court, holding that a state court *can* (and a federal court *cannot*) answer her question. App.8a–9a.

### The Question Presented Is:

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.

## **PARTIES TO THE PROCEEDINGS**

### **Petitioner and Plaintiff-Appellant below**

- Miranda Stovall

### **Respondents and Defendants-Appellees below**

- Jefferson County Board of Education,  
d/b/a Jefferson County Public Schools
- Brian Yearwood, in his official capacity  
as Superintendent of Jefferson County  
Public Schools
- Amanda Herzog, in her official capacity  
as Assistant General Counsel to  
Jefferson County Public Schools
- NCS Pearson, Inc., a Minnesota  
Corporation, d/b/a Pearson VUE

**LIST OF PROCEEDINGS**

U.S. Court of Appeals for the Sixth Circuit

No. 25-5357

Published: 164 F.4th 554

Miranda Stovall, *Plaintiff-Appellant*, v.  
Jefferson County Board of Education, et al.,  
*Defendants-Appellees*.

Opinion: January 14, 2026

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U.S. District Court for the Western District of Kentucky

No. 3:24-cv-336

Miranda Stovall, *Plaintiff*, v. Jefferson County  
Board of Education, et al., *Defendants*.

Memorandum Opinion: March 18, 2025

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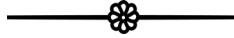
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The Sixth Circuit's opinion, 164 F.4th 554, is reproduced at App.1a–13a.



## JURISDICTION

The Sixth Circuit entered its opinion and judgment on January 14, 2026. App.1a–15a. Justice Kavanaugh extended the time to file a petition to May 14, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).



## STATUTORY PROVISIONS INVOLVED

Congress's Act giving exclusive jurisdiction over claims arising under federal copyright laws to federal courts states, in relevant part:

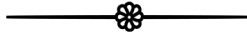
The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights.

28 U.S.C. § 1338(a).

The federal Declaratory Judgment Act states, in relevant part:

In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a).



## INTRODUCTION

This case presents the important question 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. Put differently, does Congress's grant of exclusive federal jurisdiction over cases arising under the Copyright Act, 28 U.S.C. § 1338(a), prohibit a state court from deciding whether a copying pursuant to a state open records request is a "fair use," *see* 17 U.S.C. § 107, or prohibited copyright infringement? The Court should take up this question because of the strong national interest in the uniform interpretation of federal copyright law, the nationwide forum selection problem faced by open records requesters, and the split of authority now dividing the Sixth Circuit from the Connecticut Supreme Court and lower state courts in several other states. Sup. Ct. R. 10(a), (c).

Perhaps most importantly, the very existence of this question creates an intractable problem for parents who just want to know what learning materials public schools are giving to their children. When public schools refuse to turn over materials in response to an open records request because turning over the materials would somehow be copyright infringement, parents do not know where to file suit. Without clarity about in which court they must file suit, parents are forced to play a jurisdictional shell game. Defendants can ask the forum court to send the case to its federal or state counterpart and tie up parents in expensive jurisdictional litigation for years. Justice delayed in these circumstances is justice denied. By the time jurisdiction over the lawsuit is decided, the parents' children may have long since graduated or the material in question may no longer be in use. Worse still, parents can be put into a jurisdictional black hole with neither the state nor the federal court accepting jurisdiction. Or a state court could rule on the copyright question only to have a federal court later rule that the state court lacked jurisdiction to do so, voiding the state court's ruling and making it non-preclusive.

This jurisdictional shell game is unfair. But more importantly, this shell game flouts the Constitution's grant of copyright lawmaking power to Congress, *see* U.S. Const. art. I, § 8, cl. 8, and Congress's determination that federal courts should decide what is a fair use under the Copyright Act. 28 U.S.C. § 1338(a). Confusion over which court citizens must go to threatens the national uniformity that Congress sought when it passed the Copyright Act. *See, e.g., Ritchie v. Williams*, 395 F.3d 283, 287 (6th Cir. 2005) ("We agree with the

Second and Fourth Circuits. Congress has indicated that ‘national uniformity’ in the strong sense of ‘complete preemption’ is necessary in [the copyright] field.”).

Yet the boundary between federal and state jurisdiction over questions involving copyright has confused the lower courts—both state and federal—for decades. The leading treatise on federal copyright law admits that “the division between jurisdiction in the federal courts, on the one hand, and jurisdiction in the courts of the various states, on the other, poses among the knottiest procedural problems in copyright jurisprudence.” 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 12.01[A] (2026) (footnotes omitted) (citing *T.B. Harms Co. v. Eliscu*, 339 F.2d 823, 828 (2d Cir. 1964) (Friendly, J.), as “the best statement” of the jurisdictional law).

The strength of the constitutional and federal statutory interests in play here makes the question presented worthy of the Court’s attention. Both federal and state courts have been consistently confused by whether a copyright case is within exclusive federal jurisdiction. The byproduct of that confusion is a failure of federalism: neither sovereign knows whether it has authority to resolve a case. This kind of confusion demands this Court’s attention.

Beyond the importance of the question, it has now formally split the Court of Appeals for the Sixth Circuit and Connecticut’s highest court. The Sixth Circuit held that a state court *does* have jurisdiction to resolve whether a copying pursuant to a state open records request is infringement or fair use under the Copyright Act. App.8a–9a; *Stovall v. Jefferson Cnty. Bd. of Educ.*, 164 F.4th 554, 561 (6th Cir. 2025). But the Connecticut

Supreme Court held it *lacked* jurisdiction to resolve exactly the same question. *Pictometry Int'l Corp. v. Freedom of Info. Comm'n*, 59 A.3d 172, 192 (Conn. 2013) (“Neither the commission nor this court, however, 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. Rather, that determination must be made in federal court.”). And even before the Sixth Circuit formalized the split, courts wrestled with this question for decades with no consistent answer.

Indeed, the body of opinions shows that lower courts are so uncertain about the answer that they are afraid to even attempt to answer it. Instead, courts around the country resort to creative methods to avoid having to decide the scope of their jurisdiction.

That jurisdictional confusion is a problem. It creates bad law. Worse still, it creates bad law by state courts that lack the jurisdiction to construe—or misconstrue—federal copyright at all. This Court’s intervention is needed to resolve the confusion and determine the boundaries of exclusive federal jurisdiction over fair use issues in federal copyright law.



## STATEMENT OF THE CASE

Petitioner Miranda Stovall is a Kentucky resident and mother of four children. Respondent Jefferson County Public Schools (JCPS), her local public school, gave one of her children a survey that concerned her. When Mrs. Stovall spoke with her child about it, she was worried because she thought the survey sounded inappropriate and intrusive. She knew that schools around the country routinely administer surveys that ask children questions about their sexual orientation, sexual activity, drug and tobacco use, and mental health without parental consent or knowledge. She was concerned this was happening at JCPS. Wanting to know exactly what the survey asked her child, Mrs. Stovall requested a copy of it. *See App.2a.*

JCPS refused. It cited an exemption from the Kentucky Open Records Act for disclosures “prohibited by federal law,” and claimed that the survey was the “copyrighted intellectual property of Pearson,” referring to Respondent NCS Pearson, Inc. App.2a–3a (quotation marks omitted). In other words, JCPS invoked Pearson’s copyright—and thus the implicit threat of a copyright suit by Pearson should it disclose the survey—as its sole basis for refusing to provide a copy of the survey to Mrs. Stovall in response to her open records request.

All Mrs. Stovall wants is a copy of the same survey JCPS required her child to take. She wants a copy so that she can review the survey herself and discuss it with her child in the privacy of her own home, and so that she can show other parents the potentially intrusive and inappropriate questions JCPS

is asking their children. Mrs. Stovall's view is that federal copyright law's fair use exception allows JCPS to provide her a copy of the survey without infringing Pearson's copyright. And because of the confusion among courts about who has jurisdiction over such claims, Mrs. Stovall asked a federal district court to declare that JCPS giving her a copy of the survey is a quintessential fair use—not copyright infringement. *See* App.3a.

After Mrs. Stovall sued in the Western District of Kentucky, Respondent Pearson, who was included in the suit as a necessary party as the copyright holder, moved to dismiss for lack of subject matter jurisdiction. App.3a, 16a. The district court granted Pearson's motion and dismissed the case, holding that it lacked subject matter jurisdiction. App.24a. Mrs. Stovall timely appealed.

The Sixth Circuit affirmed the district court's ruling, holding that a state court—not a federal court—has jurisdiction to determine whether JCPS giving Mrs. Stovall a copy of the survey is copyright infringement or fair use. *See, e.g.,* App.8a–9a.



## REASONS FOR GRANTING THE PETITION

Congress spoke unambiguously when it vested exclusive jurisdiction over claims arising under the Copyright Act in the federal courts and stripped jurisdiction over such claims from state courts. 28 U.S.C. § 1338(a). Giving effect to Congress’s grant of exclusive jurisdiction is important. So too is ensuring that Congress’s purpose—creating a uniform national system of copyright—is fulfilled. The Sixth Circuit’s holding in this case undermines both of those critical goals.

Without this Court’s intervention, state courts in the Sixth Circuit will believe they are empowered to decide whether a particular copying pursuant to a state open records act request is a fair use or copyright infringement. But there are still two critical problems here. First, the Sixth Circuit’s holding is not binding precedent for state courts in Kentucky. A state court in Kentucky could follow the Connecticut Supreme Court and decide it lacks jurisdiction, leaving Mrs. Stovall in a jurisdictional black hole with no court willing to adjudicate her dispute. Second, state courts in Connecticut remain under binding precedent from their highest court *preventing* them from adjudicating fair use disputes under their state open records act. That fractured jurisdiction leads to piecemeal precedent. Piecemeal precedent threatens to undermine the uniformity Congress sought in enacting 28 U.S.C. § 1338(a). Kentucky might call fair use what Tennessee calls copyright infringement, while courts in other Sixth Circuit states like Michigan might hold they lack jurisdiction altogether, leading to three states in

the same circuit with different scopes of copyright protection and different views about their jurisdiction.

This is far from speculative—no further percolation is needed or desirable. The lower state and federal courts have struggled to make sense of this jurisdictional puzzle for decades now. This has resulted in nearly twenty rulings just on open records requests that are all over the map of messy, confused law. State courts have ruled on fair use without considering whether they have jurisdiction. State courts have declined to rule on the fair use question because they decide they lack jurisdiction. State and federal courts have removed and remanded cases to each other, both believing they lack jurisdiction. And tellingly, courts have developed increasingly creative methods of avoiding resolving the copyright question—from holding that their state open records law ignores copyright protection to searching for waiver of jurisdictional issues or any plausible reason to avoid deciding the question of jurisdiction. These state court holdings undermine the Copyright Act’s protections and its uniformity and are the result of jurisdictional confusion. This Court should step in to clear up that confusion.

**I. Whether Federal Courts Must, or State Courts May, Determine If It Is a Fair Use, Under the Copyright Act, to Request and Obtain a Copyrighted Document Under a State Open Records Law Is an Important Question That This Court Should Decide.**

This case presents an important federal question the Court should settle. Sup. Ct. R. 10(c). The question concerns the scope of Congress’s grant of exclusive jurisdiction over claims arising under the Copyright Act to the federal courts: Does “exclusive” really mean

“exclusive” when it comes to federal jurisdiction over federal copyright issues?

Resolving this question is critical for two reasons. First, under current unsettled law, parents like Mrs. Stovall are stuck in a jurisdictional Catch-22: no forum seems to be the right one, as neither state nor federal courts believe they have jurisdiction to answer questions like hers. Commentators have long lamented this procedural nightmare. *See, e.g.*, 3 Nimmer & Nimmer, *Nimmer on Copyright* § 12.01[A] (“ . . . among the knottiest procedural problems in copyright jurisprudence.”); 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, 189 (2021) (same quotation (quoting *Bassett v. Mashantucket Pequot Tribe*, 204 F.3d 343, 347 (2d Cir. 2000))). Second, effecting Congress’s grant of exclusive jurisdiction is necessary to Congress’s intent in enacting 28 U.S.C. § 1338(a): nationwide uniformity in copyright law. *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 231 n.7 (1964).

*First*, there is no clear forum for parents or other requesters to challenge dubious assertions of copyright like that of Respondents here. And because there is no clear forum, when governments deny open records requests based on copyright, requesters do not know what to do. It is daunting enough for the average citizen to file a lawsuit. That task becomes Herculean when there might be two lawsuits to file. And it is made even worse when one considers that their litigation opponents have carte blanche—using their own tax dollars—to entangle them in jurisdictional arguments

only lawyers could love, at great expense to the requester.

Clarifying this uncertainty is doubly important because the confusion burdens parents' right to know what their kids are learning in school, or what private information schools are extracting from them. This Court has demonstrated a keen interest in ensuring that parents' fundamental right to raise their children in the way they see fit is not ensnared by bureaucratic smokescreens. *See, e.g., Mahmoud v. Taylor*, 606 U.S. 522, 560 (2025) (noting the difficulty for "parents to obtain specific information about how a particular book was used or is planned for use at a particular time"); *Mirabelli v. Bonta*, 146 S.Ct. 797, 803 (2026) (holding that policies which "conceal . . . information from parents . . . likely violate parents' rights to direct the upbringing and education of their children"). If schools can hide intrusive surveys about sex administered to students by claiming fear of potential copyright suits against them, parental rights are at serious risk.

Even though jurisdictional shell games undermine these important interests, the available history of open records litigation like this case is littered with them. It took nearly six years to determine jurisdiction was lacking in one Connecticut case. *See Pictometry Int'l Corp.*, 59 A.3d at 177, 192. A similar case in Missouri concerning a request for copies of syllabi took more than two years from request to a refusal to consider the fair use question purely on jurisdictional grounds. *See Nat'l Council of Tchrs. Quality, Inc. v. Curators of the Univ. of Mo.*, 446 S.W.3d 723, 724, 729 (Mo. Ct. App. 2014) ("[T]his court lacks the authority to determine whether a particular use of copyrighted materials constitutes fair use, as federal courts have

‘original jurisdiction of any civil action arising under [the Federal Copyright Act].’” (quoting 28 U.S.C. § 1338, and citing *Pictometry Int’l Corp.*, 59 A.3d at 192)). In both cases, the lack of clear jurisdictional law robbed the plaintiffs of any hope of obtaining meaningful relief.

Nor is that the end of the problems faced by those plaintiffs. Even had they gone to federal court, a federal court is not bound by a state court’s interpretation of Congress’s grant of exclusive jurisdiction in 28 U.S.C. § 1338(a). After all, that section affirmatively strips state courts of jurisdiction to entertain claims arising under the Copyright Act. A Missouri or Connecticut federal court could simply disagree with its respective state court, sending the plaintiff into a jurisdictional black hole, with no court willing to stake a jurisdictional claim on the plaintiff’s case. Indeed, an even wider split on this question is inevitable. Once a federal Connecticut case reaches the Second Circuit or a federal Missouri case reaches the Eighth, that court will face an impossible choice: it must either disagree with the Sixth Circuit and create a split among the United States courts of appeals or disagree with state courts within its region, depriving plaintiffs in either Missouri or Connecticut of any avenue of relief at all.

This case puts this problem on display. Mrs. Stovall saw what went wrong in *Pictometry* and *National Council of Teachers Quality* and went to federal court. Just like the state courts in those cases, the Sixth Circuit told her to head to a different sovereign after eighteen months of litigation. App.13a. This Court’s intervention is the only way to clear up this jurisdictional uncertainty. And that alone is reason enough to grant certiorari and stop the spreading confusion. *See*

Stephen G. Breyer, *Reflections on the Role of Appellate Courts: A View From the Supreme Court*, 8 J. APP. PRAC. & PROCESS 91, 92 (2006) (explaining that “the Supreme Court is charged with providing a uniform rule of federal law in areas that require one”).

*Second*, until this Court clarifies that only federal courts may resolve questions like Mrs. Stovall’s, Congress’s goals in enacting 28 U.S.C. § 1338(a) are thwarted. Congress said clearly that federal courts are the exclusive forum in which to litigate Copyright Act questions. But when no one knows where to go, state courts have proven they will inevitably act without jurisdiction. This defeats the plain meaning of “exclusive.”

Congress affirmatively granted jurisdiction to federal courts to construe federal copyright law and stripped states of any jurisdiction to do the same:

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to . . . copyrights. . . . 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).

Despite this clear language stripping states of jurisdiction over cases arising under federal copyright law, the Sixth Circuit rested its decision that state courts are an available forum for construing the meaning of federal copyright law on one Wisconsin Supreme Court decision. *See* App.9a; *Stovall*, 164 F.4th at 562 (citing *Zellner v. Cedarburg Sch. Dist.*, 731 N.W.2d 240 (Wis. 2007)). But that court did not even consider whether it had jurisdiction to resolve the fair

use question presented. *Zellner*, 731 N.W.2d at 247. It just decided the merits of the copyright issues before it without considering its jurisdiction over the question. *See id.* That manner of adjudication threatens both Congress's grant of exclusive jurisdiction to federal courts and the uniformity it sought in constructions of the Copyright Act. In Wisconsin, a records request may be fair use, decided by state court; in Missouri or Connecticut, one would have to go to federal court, and who knows what would happen. By surrendering an area of exclusive federal jurisdiction to state courts, the decision below threatens the uniformity Congress wanted when it enacted 28 U.S.C. § 1338(a). This Court should step in to clarify this jurisdictional provision and preserve Congress's intent.

## **II. The Sixth Circuit Created a Split of Authority with the Connecticut Supreme Court.**

The Sixth Circuit's opinion conflicts with the decision of the Connecticut Supreme Court (the state's court of last resort) on the question presented, requiring this Court's intervention. Sup. Ct. R. 10(a); App.8a–9a; *Stovall*, 164 F.4th at 561; *Pictometry Int'l Corp.*, 59 A.3d at 192.<sup>1</sup> The Sixth Circuit held that a state court is the only court with jurisdiction to consider whether a copying is a fair use or copyright infringement in the context of state open records requests; the Connecticut Supreme Court held that it—a state court—lacked jurisdiction over that same question.

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<sup>1</sup> This Court has resolved splits where just one state supreme court is on one side of the ledger. *See, e.g., Bravo-Fernandez v. United States*, 580 U.S. 5, 18 n.6 (2016) (Michigan Supreme Court versus First Circuit, Second Circuit, Fifth Circuit, D.C. Circuit, and New Jersey Supreme Court).

The Sixth Circuit's view is that Congress vesting "federal courts with exclusive jurisdiction over copyright-infringement actions does not divest state courts of authority to consider incidental copyright questions." App.8a; *Stovall*, 164 F.4th at 561. The court continued by explaining that state courts may exercise jurisdiction over this claim, because it does not "arise under" federal copyright law. App.9a; *Stovall*, 164 F.4th at 562. The court cited one state court case that interpreted federal fair-use doctrine in the context of an open records request. *See id.* (citing *Zellner*, 731 N.W.2d at 247). It never mentioned the state courts who have held the opposite. Even so, the Sixth Circuit held that a state court may consider fair use in the context of an open records dispute. *Id.*

This holding conflicts with the Connecticut Supreme Court's holding in *Pictometry*. *See Pictometry Int'l Corp.*, 59 A.3d at 192. There, the Connecticut Supreme Court held, in reference to the state public records commission's attempt to interpret the Copyright Act, that "[n]either the commission nor this court, however, 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. Rather, that determination must be made in federal court." *Id.* (citing *Penguin Grp. USA, Inc. v. Am. Buddha*, 640 F.3d 497, 498 n.3 (2d Cir. 2011)).

As a result, in Connecticut, a records requester must go to federal court to bring an action like Mrs. Stovall's and hope that the District of Connecticut and Second Circuit do not follow *Stovall*, since the Connecticut Supreme Court does not bind the Second Circuit. In Kentucky, a requester has to go through

the Kentucky state-law process and hope the Kentucky state courts do not follow *Pictometry*, since the Sixth Circuit decision does not bind Kentucky courts.

This direct conflict requires this Court's intervention to resolve. Either the federal courts must determine fair use in cases like this one, or state courts may. The Sixth Circuit held that a state court, if presented with this question, could answer it. The Connecticut Supreme Court, when presented with this question, held it could not answer it. As this Court has explained in the past, preserving and clarifying the uniform rule of federal law is its principal responsibility. *See, e.g., City of San Francisco v. Sheehan*, 575 U.S. 600, 610 (2015) (“[C]ertiorari jurisdiction exists to clarify the law. . . .”); *Kansas v. Marsh*, 548 U.S. 163, 183 (2006) (Scalia, J., concurring) (“Our principal responsibility under current practice . . . is to ensure the integrity and uniformity of federal law.”); Breyer, *Reflections on the Role of Appellate Courts: A View From the Supreme Court*, 8 J. App. Prac. & Process at 92 (“[T]he Supreme Court is charged with providing a uniform rule of federal law in areas that require one.”). This Court should step in to provide exactly that to one of the murkiest jurisdictional areas remaining.

### **III. The Sixth Circuit Furthered the Widespread Confusion in the Lower Courts Over Who Must Decide This Question.**

Lower courts have given no consistent answer when asked whether a state court may determine fair use in the context of an open records request. This Court should settle this question because of the confusion persisting across lower courts on the issue.

Lower courts (typically state courts) have done one of three things when addressing copyright law questions presented to them: (1) decided them without considering whether they have jurisdiction; (2) refused to decide them for jurisdictional reasons; or (3) creatively interpreted state law or the situation to prevent copyright from being relevant. In the last situation, courts often either enlarge or diminish the scope of federal copyright protections. That, too, is outside the scope of state court jurisdiction.

In the first category, courts from five different states—Wisconsin, Minnesota, Utah, California, and Ohio—decided the fair use question and assumed their jurisdiction without questioning it. *See Zellner*, 731 N.W.2d at 246–48 (Wisconsin); *Nat’l Council on Tchr. Quality v. Minn. State Colls. & Univ.*, Case No. 62-CV-12-4789, 2012 Minn. Dist. LEXIS 186, at \*30–32 (Minn. Dist. Ct. Oct. 31, 2012) (Minnesota); *ACLU of Utah Found. v. Davis County*, Case No. 180700511, 2021 Utah Dist. LEXIS 1, at \*8–16 (Utah Dist. Ct. Mar. 25, 2021) (Utah); *People v. Szarvas*, 142 Cal. App. 3d 511, 517–21 (Cal. Ct. App. 1983) (California); *State ex rel. Rea v. Ohio Dep’t of Educ.*, 692 N.E.2d 596, 601–02 (Ohio 1998) (Ohio); *Wengerd v. E. Wayne Fire Dist.*, 2017-Ohio-8951, ¶¶ 24, 30–35 (Ohio Ct. Cl. 2017) (Ohio); *Fravel v. Columbus Rehab. & Subacute Inst.*, 53 N.E.3d 953, 959–60 (Ohio Ct. App. 2015) (Ohio).

Critically, in *none* of these cases did the court question its jurisdiction to decide whether the copying was a fair use. For example, in *Zellner*, the Wisconsin Supreme Court identifies the fair use question raised by the Milwaukee Journal Sentinel: “The Journal argues that the fair use doctrine applies to the CD and

memo in this case . . . .” 731 N.W.2d at 246. The court then launches into a discussion of fair use without considering whether fair use is a question it can answer: “Applying the ‘fair use’ factors outlined in 17 U.S.C. § 107 in this case, we are satisfied that the CD and the memo do not fall within the copyright exception under Wis. Stat. § 19.32(2).” *Id.* at 247. The Sixth Circuit relied on *Zellner* alone for support that state courts could decide fair use questions. App.9a; *Stovall*, 164 F.4th at 562. But *Zellner* and the other state cases like it directly threaten the uniformity of federal copyright law. And they threaten to nullify Congress’s grant of exclusive jurisdiction over the Copyright Act to federal courts.

In the second category, in contrast, every state court to consider whether it had jurisdiction to decide fair use issues—Connecticut, Missouri, Pennsylvania, and Illinois—has held that it does not have jurisdiction. *Pictometry Int’l Corp.*, 59 A.3d at 192 (Connecticut); *Nat’l Council of Tchrs. Quality, Inc.*, 446 S.W.3d at 729 (Missouri); *Ali v. Phila. City Plan. Comm’n*, 125 A.3d 92, 104–05 (Pa. Commw. Ct. 2015) (Pennsylvania); *Garlick v. Naperville Township*, 84 N.E.3d 607, 622 (Ill. Ct. App. 2017) (Illinois). For example, in *Pictometry*, the Connecticut Supreme Court was blunt: “Neither the commission nor this court, however, 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. Rather, that determination must be made in federal court.” *Pictometry Int’l Corp.*, 59 A.3d at 192.

These opinions directly conflict with the Sixth Circuit. The result of this conflict is substantial additional confusion for any potential plaintiffs in these states. The resulting split also creates additional confusion for district courts in Connecticut, Missouri, Pennsylvania, and Illinois, home to over thirty-five million people, who are left with the unenviable choice of disagreeing with state court decisions in the state in which they sit or disagreeing with the Sixth Circuit decision below.

In the third category, courts from five other states—Washington, New York, Georgia, Tennessee, and Florida—creatively avoided the jurisdictional question. See *Lindberg v. Kitsap County*, 948 P.2d 805, 814 (Wash. 1997); *Pennington v. Clark*, 791 N.Y.S.2d 774, 776 (2005); *Spencer v. Cherokee Cnty. Sch. Dist.*, 916 S.E.2d 746, 752 (Ga. Ct. App. 2025); *Brewer v. Metro. Gov’t of Nash.*, No. M2024-01139-COA-R3-CV, 2026 Tenn. App. LEXIS 53, at \*62 (2026); *Microdecisions, Inc. v. Skinner*, 889 So.2d 871, 873 (Fla. Dist. Ct. App. 2004). The ways each of these courts avoided the jurisdictional question deserves brief explanation. Their “creativity” detracts from federal uniformity and shows why this Court should grant certiorari here and resolve the jurisdictional confusion.

In *Lindberg*, the Washington Supreme Court held that it need not decide whether there was jurisdiction because the jurisdictional issue was not raised below. *Lindberg*, 948 P.2d at 814. In *Pennington*, the court stated without explanation that disclosure of records pursuant to an open records request cannot cause a copyright violation. 791 N.Y.S.2d at 776. This holding presents substantive federalism concerns as it is

essentially a state court negating federal law where its open records act is concerned. *Cf. id.*

In *Spencer*, the Georgia Court of Appeals avoided the copyright question entirely by holding that the Copyright Act did not preempt the Georgia records law and that the Georgia records law had no “implicit or explicit” exemption for copyrighted materials. 916 S.E.2d at 752. Like *Pennington*, the *Spencer* decision functionally held that copyright law does not apply to requests to copy materials under the Georgia records law, which diminishes the scope of federal copyright protections. *Cf. id.*

In *Brewer*, the Tennessee Court of Appeals avoided the question by holding it was not yet ripe for decision. *See* 2026 Tenn. App. LEXIS 53, at \*62. In the process, the court surveyed existing law to try to determine whether it would have jurisdiction and found no weight of authority on either side. *See id.*

In *Microdecisions*, the case went on a confusing saga, bouncing between Florida federal and state courts. Early in the case, the defendant claiming copyright protection removed the case to the federal Middle District of Florida, which held that the case arose under state public records law and remanded it to state court. *Microdecisions, Inc. v. Skinner*, No. 2:02-cv-639-FTM-29DNF, 2003 U.S. Dist. LX 14846, at \*6 (M.D. Fla. Feb. 5, 2003). Then, the Florida state trial court granted summary judgment to the defendant who had sought removal to federal court—partially because “federal courts had exclusive jurisdiction over copyright actions.” *Microdecisions, Inc.*, 889 So. 2d at 874. The plaintiff there was, for the moment, caught in the jurisdictional black hole that Mrs. Stovall warns of here. But then the Florida state appeals

court reversed that grant of summary judgment, holding that the case arose under the state public records law, not the federal copyright law. *Id.* But even then, the state appellate court “creatively” resolved the case without construing the Copyright Act: it did not need to decide the copyright question presented because the state public records law prevented the asserted rights-holder from having formed the copyright. *Id.* at 876.

These cases show that, contrary to the Sixth Circuit’s breezy declaration and singular citation to *Zellner*, there is much uncertainty in the state courts over whether they have jurisdiction to decide fair use questions. That uncertainty is evident both in the split of decisions and in the legal logic pretzels state courts have twisted themselves into to avoid deciding whether they have jurisdiction. This is neither an isolated problem nor a minor one. Critically, precisely zero state courts have ever considered whether they have jurisdiction to decide fair use and decided that they do. This Court should grant certiorari to provide clarity to state and lower federal courts about the proper forum for this question.



## CONCLUSION

Petitioner Miranda Stovall asks the Court to grant the petition for a writ of certiorari.

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