No. _______

# 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**

## PETITION FOR A WRIT OF CERTIORARI

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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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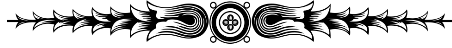

## OPINIONS BELOW

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.[1] 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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[1] 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. & Univs.*, 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.

Respectfully submitted,

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May 14, 2026

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## OPINION, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (JANUARY 14, 2026)

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RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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MIRANDA STOVALL,

*Plaintiff-Appellant,*

v.

JEFFERSON COUNTY BOARD OF EDUCATION,
dba 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, dba Pearson VUE,

*Defendants-Appellees.*

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No. 25-5357

Appeal from the United States District Court
for the Western District of Kentucky at Louisville.
No. 3:24-cv-00336—
Rebecca Grady Jennings, District Judge.

Before: SUTTON, Chief Judge; BOGGS and BLOOMEKATZ, Circuit Judges.

Argued: December 11, 2025

Decided and Filed: January 14, 2026

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## OPINION

SUTTON, Chief Judge. A Kentucky high school planned to administer a mental-health survey to its students. When a student's mother made a state public-records request for a copy of the survey, the school permitted her to see the survey but refused to make a copy of it, claiming that the public-records law did not extend to copyrighted materials. The mother declined to pursue state remedies. She instead sought a declaratory judgment in federal district court that the fair-use exception in copyright law covered her request. The district court dismissed the lawsuit for lack of jurisdiction. We agree and affirm.

## I.

Miranda Stovall is a Kentucky resident, mother, and parents' rights advocate. When she learned that Jefferson County Public Schools planned to administer a mental-health survey to her child's class, she suspected that the survey included questions about sexual orientation, sexual activity, and related topics. Hoping to distribute copies to fellow parents and news reporters, Stovall requested a copy of the survey under the Kentucky Open Records Act.

Jefferson County denied Stovall's public-records request. Noting that the Kentucky law does not apply to records "prohibited by federal law or regulation" from

disclosure, KRS § 61.878(1)(k), it claimed that the survey "is the copyrighted intellectual property" of NCS Pearson, the survey's publisher, R.1 ¶ 31. The County offered to let Stovall inspect the survey in person, but that did not satisfy her desire for a copy.

Under Kentucky law, Stovall had several avenues to appeal Jefferson County's denial. She could have requested review from the Kentucky Attorney General and, if he upheld the denial, she could have appealed the decision to state court. KRS §§ 61.880(2), 61.880(5), 61.882(3). In addition, she could have directly filed a lawsuit in state court. *Id.* § 61.882(2).

Stovall opted instead to file this lawsuit in federal court, naming Jefferson County and NCS Pearson as defendants. She sought a declaratory judgment to the effect that releasing the survey to her would qualify for the Copyright Act's fair-use exception.

NCS Pearson filed a motion to dismiss for lack of jurisdiction. The district court granted the motion on the ground that Stovall failed to state a claim that arose under federal law.

**II.**

Separation of powers is a two-way street. Just as the elected branches of government—the President and Congress—may not trespass on the plenary powers of the other branches, the federal courts may not do the same. As "courts of limited jurisdiction," federal courts "possess only that power authorized by Constitution and statute" and may not expand that power "by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A federal court that "pronounce[s] upon the meaning or the

constitutionality of a state or federal law when it has no jurisdiction" ignores "an essential ingredient of separation and equilibration of powers." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101-02 (1998).

The Declaratory Judgment Act does not change any of this. *Saginaw County v. STAT Emergency Med. Servs., Inc.*, 946 F.3d 951, 954 (6th Cir. 2020); *see Kokkonen*, 511 U.S. at 377. The Act authorizes federal courts to declare the rights of a party without granting any other relief. 28 U.S.C. § 2201. Before granting declaratory relief, however, a federal court must "have jurisdiction already under some other federal statute." *Toledo v. Jackson*, 485 F.3d 836, 839 (6th Cir. 2007) (quotation omitted); *see Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671-72 (1950). Put another way, the Act does not provide an "independent basis for federal subject matter jurisdiction." *Heydon v. MediaOne of Se. Mich., Inc.*, 327 F.3d 466, 470 (6th Cir. 2003).

At issue today is whether the Copyright Act, 28 U.S.C. § 1338(a), supplies an independent basis for federal jurisdiction. The statute vests federal courts with exclusive jurisdiction to hear cases "arising under" copyright law. *Id.* Because § 1338(a) uses the same language as 28 U.S.C. § 1331, the statute conferring general federal-question jurisdiction, we "apply the same test to determine whether a case arises under § 1338(a) as under § 1331." *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 829-30 (2002).

As with federal-question jurisdiction, three categories of cases "arise under" copyright law. The first category: claims that rely on a cause of action created by the Copyright Act. *See American Well*

*Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916). The second category: claims with state-law origins that "necessarily raise" a disputed and substantial question of copyright law and that a federal court may properly entertain. *Gunn v. Minton*, 568 U.S. 251, 259 (2013). As to this category, the claimant's right to relief under state law must "necessarily depend[] on resol[ving]" a legal question under the copyright laws. *Holmes*, 535 U.S. at 830 (quotation omitted). It does not suffice if the copyright question appears only by virtue of a "defense . . . anticipated in the plaintiff's complaint." *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 13-14 (1983). The third category: state-law claims asserting rights "that are equivalent to any of the exclusive rights within the general scope of copyright." 17 U.S.C. § 301(a). This category thus "preempts" state-law claims alleging infringement of a right created by federal copyright law. *Ritchie v. Williams*, 395 F.3d 283, 285 (6th Cir. 2005).

We do not have federal-question jurisdiction over Stovall's claim. Consider each of the three categories for establishing "arising under" jurisdiction and why each one falls short.

*First*, the Copyright Act does not create her cause of action. As the complaint acknowledges, her "entitle[ment] to copies of [the survey]" comes from "KRS § 61.874(1)," the Kentucky Open Records Act. R.1 ¶ 34. A state-law cause of action does not by itself establish a federal question. *See American Well Works*, 241 U.S. at 260.

*Second*, Stovall's state-law claim does not "necessarily raise" a copyright law question. *Gunn*, 568 U.S. at 259. The Kentucky Open Records Act

establishes a set of conditions, without reference to copyright law, entitling applicants to inspect and make copies of public records. KRS § 61.874(1), (4), (5). It is not clear, as an initial matter, precisely how the state-law exemption operates. The exemption creates a carve-out for records "prohibited by federal law or regulation" from disclosure, *id.* § 61.878(1)(k), which may or may not incorporate all of a given federal law or regulation. More to the point at hand, federal law becomes relevant only by way of a defense to the state-law obligation. In the words of the Kentucky Supreme Court: "The public agency that is the subject of an Open Records request, has the burden of proving that the document sought fits within an exception to the Open Records Act." *Hardin Cnty. Schs. v. Foster,* 40 S.W.3d 865, 868 (Ky. 2001). Federal copyright law came into the case only as a type of "federal law" that Jefferson County invoked as a defense to complying with the open-records request. Put similarly, "Federal copyright law is not an essential element of [Stovall's open-records] claim. The Board's exclusive rights under copyright law arise only as a defense to [Stovall's] claim." *Bd. of Chosen Freeholders of Burlington Cnty. v. Tombs*, 215 F. App'x 80, 82 (3rd Cir. 2006). An action "does not arise under the federal copyright laws merely because it relates to a product that is the subject of a copyright." *Severe Records, LLC v. Rich*, 658 F.3d 571, 581 (6th Cir. 2011) (quotation omitted). A claimant may not circumvent "arising under" jurisdiction by filing a declaratory-judgment action "merely to anticipate a defense that otherwise could be presented in a state action." *Vaden v. Discover Bank*, 556 U.S. 49, 70 n.19 (2009) (quotation omitted).

*Third*, Stovall's Kentucky Open Records Act claim is not a doppelganger of a federal copyright claim. Stovall asserts only that Jefferson County violated her state-law entitlement to inspect and copy eligible public records. Copyright law does not "provide[] the exclusive cause of action for the claim asserted" by Stovall, nor does it "set forth procedures and remedies governing that cause of action." *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003); *cf. Tombs*, 215 F. App'x at 82 ("Federal copyright law does not create an exclusive cause of action for access to public records and does not set forth procedures and remedies governing such actions."). Because Stovall's public-records claim does not resemble an infringement claim, it does not belong in federal court.

Stovall tries to rebut this conclusion on several grounds, each unconvincing. She argues that her state-law claim arises under federal law because it turns on a "substantial question" of federal law. But whether a state-law claim raises a "substantial question" of federal law is a necessary but not a sufficient basis for federal jurisdiction. *Gunn*, 568 U.S. at 258. Because copyright law serves only as a defense to a Kentucky Open Records Act claim, Stovall's complaint lacks (at the very least) a "necessar[y]" question of federal law. *Holmes*, 535 U.S. at 830 (quotation omitted); *see Ohio ex rel. Skaggs v. Brunner*, 549 F.3d 468, 476 (6th Cir. 2008) (per curiam). "The most one can say is that a question of federal law is lurking in the background." *Gully v. First Nat'l Bank*, 299 U.S. 109, 117 (1936). It is foreground questions of federal law, not background questions, that create federal-question jurisdiction.

Stovall maintains that federal courts have exclusive jurisdiction over her Kentucky Open Records Act claim because federal law preempts state courts from interpreting the Copyright Act. The Copyright Act, it is true, preempts a state-law claim that amounts to a copyright-infringement action. *Ritchie*, 395 F.3d at 287-88. This scheme ensures "national uniformity" for infringement actions, which Congress has deemed a "'national interest[].'" *Id.* (quoting *T.B. Harms Co. v. Eliscu*, 339 F.2d 823, 826 (2d Cir. 1964) (Friendly, J.)). But Stovall does not maintain that she or Jefferson County or NCS Pearson has used the Kentucky Open Records Act to bring a copyright-infringement action seeking money damages or injunctive relief. What she seeks to do is anticipate the use of copyright law as a defense to the open-records request. But "the defense of pre-emption" does not provide for federal jurisdiction "even if" that "federal defense is the only question truly at issue." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987); *see Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 809 (1988) (no federal jurisdiction based on "a federal patent-law defense").

That Congress has vested federal courts with exclusive jurisdiction over copyright-infringement actions does not divest state courts of authority to consider incidental copyright questions. For purposes of determining whether federal jurisdiction exists, § 1338 (federal jurisdiction for copyright claims) operates just like § 1331 (general federal-question jurisdiction). Under both statutes, the claim must arise under federal law. *Gunn*, 568 U.S. at 257 (explaining that the Supreme Court has "interpreted the phrase 'arising under' in both sections identically").

The only relevant difference between § 1331 and § 1338 is that claims arising under federal copyright law must go to federal court, whereas claims arising under other federal law (generally speaking) may go to federal court. *Id.* In other words, § 1338 claims operate like a subset of § 1331 claims. The sole consequence of a claim belonging to the narrower set of § 1338 rather than the broader set of § 1331 is the divestment of the option to pursue that claim in state court.

This means that where, as here, a claim does not arise under federal copyright law, state courts may exercise jurisdiction, even if that claim implicates a federal fair-use defense. Indeed, at least one state court has recognized its jurisdiction to interpret federal fair-use doctrine in the context of a state open-records request. *See Zellner v. Cedarburg Sch. Dist.*, 731 N.W.2d 240, 246-48 (Wis. 2007). To the extent that this state-court jurisdiction threatens uniformity in copyright law, the Supreme Court's jurisdiction to review judgments of apex state courts—available whenever federal law and preemption issues are merely "drawn in question"—offers a safeguard. 28 U.S.C. § 1257.

Stovall claims that *T.B. Harms Co. v. Eliscu* requires a different conclusion. 339 F.2d 823. Many circuits, including ours, have leaned on this decision penned by Judge Friendly. *See, e.g.*, *Ritchie*, 395 F.3d at 288; *Gener-Villar v. Adcom Grp., Inc.*, 417 F.3d 201, 203 (1st Cir. 2005); *Arthur Young & Co. v. City of Richmond*, 895 F.2d 967, 970 (4th Cir. 1990); *JustMed, Inc. v. Byce*, 600 F.3d 1118, 1123-24 (9th Cir. 2010). And we appreciate his remark that jurisdiction arises under the Copyright Act when a claim

"requir[es] construction of the Act" or when "federal principles control the disposition of the claim." *Eliscu*, 339 F.2d at 828. But the case does less for Stovall's cause than she imagines. For one, the holding of *Eliscu* is consistent with our disposition of today's case. There, as here, no jurisdiction existed. *Id.* at 829; *see Bassett v. Mashantucket Pequot Tribe*, 204 F.3d 343, 349-51 nn.3-4 (2d Cir. 2000). For another, *Eliscu* "essentially . . . reiterat[es]" the test later developed by the Supreme Court: asking whether a claim necessarily raises a copyright-law question or asserts what amounts to a copyright claim. *Scholastic Ent., Inc. v. Fox Ent. Grp., Inc.*, 336 F.3d 982, 986 (9th Cir. 2003); *see also Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808-09 & n.5 (1986); *Franchise Tax Bd.*, 463 U.S. at 9. That is the test we apply today.

Stovall raises the possibility that NCS Pearson might bring a copyright-infringement action against her if her request were granted. But that concern is just that: a possibility. No doubt, if NCS Pearson filed such an infringement action, it would arise under federal law. But this possibility does not solve the "arising under" defect in her complaint for at least two reasons.

This potential lawsuit, as an initial matter, does nothing to show that <u>her</u> complaint establishes a federal question. If NCS Pearson filed any such action, it would likely be against Jefferson County, the alleged infringer, not Stovall. The test is whether she has filed a federal claim, not whether someone might file one against her.

But even if we overlooked this problem, it is difficult to see how this potential lawsuit suffices to establish that Stovall suffered an injury cognizable in

federal court. The U.S. Constitution empowers federal courts to hear "Cases" and "Controversies." U.S. Const. art. III, § 2. The Constitution does not permit federal courts to decide "theoretical disputes that may or may not materialize and, if they do, may appear in a variety of forms." *Saginaw County*, 946 F.3d at 954. Before a claimant enters a federal court, she must establish standing—proof of an imminent or actual injury that a favorable decision will likely redress. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Mikel v. Quin*, 58 F.4th 252, 257 (6th Cir. 2023). The Declaratory Judgment Act does not alter these rules or otherwise enable federal courts to deliver "an expression of opinion" about the validity of laws. *Muskrat v. United States*, 219 U.S. 346, 362 (1911). The claimant seeking relief must plausibly allege facts showing "a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (quotation omitted).

The possibility that NCS Pearson might file a lawsuit against Stovall does not create the kind of "substantial controversy" needed to establish standing. *Id.* at 127. Her complaint does not identify a previous infringement action against her, the threat of a forthcoming lawsuit, or a claim that lawsuits from NCS Pearson "are not a rare occurrence." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014); *see also Severe Records*, 658 F.3d at 582 (noting that "[d]efendants persisted in accusing [plaintiff] of copyright infringement").

While Stovall claims that Jefferson County denied her request "thanks to the specter of [NCS] Pearson's

coercive copyright infringement action," Reply Br. 15, her complaint confirms that Jefferson County relied on an exception to Kentucky law rather than a concern about a lawsuit by NCS Pearson. The complaint, for that matter, does not even suggest that NCS Pearson knew of Stovall's existence before she filed this lawsuit. In the last analysis, Stovall pleads nothing more than a "speculative fear" that NCS Pearson might institute a lawsuit at some time in the future. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013). On this record, she does not have the requisite Article III standing to bring a declaratory action under the meaning of fair use in this setting. In the absence of any indication in the complaint that there is a risk of an infringement action, there is no Article III standing.

*Goodrich-Gulf Chemicals v. Phillips Petroleum* rejected a similar argument. 376 F.2d 1015 (6th Cir. 1967). As in the present case, claimant Goodrich-Gulf sought a declaratory judgment to forestall a possible intellectual-property claim—a patent-infringement suit. *Id.* at 1017. And as in the present case, the "complaint ma[de] no allegation of adversary action," no "charge of . . . infringement or threat of suit," nor "even alleged that any indirect or implicit or covert charge or threat had been made against plaintiff or anyone else." *Id.* at 1019. We rejected Goodrich-Gulf's attempt to enter federal court, reasoning that it failed to show a "justiciable" and "actual controversy." *Id.* at 1020. A similar conclusion applies here.

Stovall points to *Chase Bank v. City of Cleveland* for the proposition that "the question is whether [NCS] Pearson *could*, not *would*, bring a case." Reply Br. 14-15 (citing 695 F.3d 548, 554 (6th Cir. 2012)).

But *Chase Bank* never addressed constitutional standing. *Chase Bank*, 695 F.3d at 553-58. It thus has nothing to say about the point—and still less supports the broad proposition that a claimant can always enter a federal court upon alleging a "hypothetical coercive action." Reply Br. 15.

We affirm.

## JUDGMENT, U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT (JANUARY 14, 2026)

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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MIRANDA STOVALL,

*Plaintiff-Appellant,*

v.

JEFFERSON COUNTY BOARD OF EDUCATION, dba 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, dba Pearson VUE,

*Defendants-Appellees.*

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No. 25-5357

Appeal from the United States District Court for the Western District of Kentucky at Louisville.

Before: SUTTON, Chief Judge; BOGGS and BLOOMEKATZ, Circuit Judges.

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**JUDGMENT**

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Clerk

## MEMORANDUM OPINION AND ORDER, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY (MARCH 18, 2025)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

MIRANDA STOVALL,

*Plaintiff,*

v.

JEFFERSON COUNTY
BOARD OF EDUCATION, ET AL.,

*Defendants.*

Civil Action No. 3:24-cv-336

Before: Rebecca Grady JENNINGS,
United States District Judge.

## MEMORANDUM OPINION AND ORDER

Defendant NCS Pearson, Inc. (“Pearson”) moves to dismiss this action for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). [DE 12]. Plaintiff Miranda Stovall (“Stovall”) responded [DE 14], and Pearson replied [DE 15]. This matter is ripe.

For the reasons below, Pearson's motion to dismiss [DE 12] is **GRANTED**.[1]

## I. Background

In January 2023, Stovall learned that Jefferson County Public Schools ("JCPS") planned to administer a mental health survey to students in grades six through twelve. [DE 1 at 4]. Stovall's child is currently enrolled at a JCPS high school. [*Id.*]. Stovall filed an Open Record Act request to JCPS on January 17, 2023, asking JCPS to "provide a full digital copy of the 'BESS Social and Emotional Screener' or 'Mental Health Screener' or 'Screener Questionnaire' to be given in 6-12 grades during school." [*Id.* at 5]. Her intent was to "encourage[s] public discussion, criticism, comments, and news reporting about its contents." [*Id.*].

According to Stovall, Assistant General Counsel to JCPS, Amanda Herzog ("Herzog"), responded, denying Stovall's Open Records Act request because the screener "is the copyrighted intellectual property of Pearson" and "KRS 61.878(1)(k) prohibits from disclosure '[a]ll public records or information the disclosure of which is prohibited by federal law or regulation[.]' [thus,] we are not able to provide you with copies of copyrighted material." [*Id.*]. Yet Pearson asserts, and Stovall acknowledges, that JCPS only partially denied Stovall's request because JCPS would permit Stovall to "inspect" the copy in person but

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[1] Although the other defendants did not move to dismiss, for the reasons below the Court's lack of subject matter jurisdiction requires dismissal of the entire action.

would not send her a physical or virtual copy. [DE 12 at 58; DE 1 at 5].

As a result, Stovall filed this declaratory action in federal court again JCPS, Pearson, Herzog, and JCPS Superintendent Marty Polio ("Polio") (collectively "Defendants"). [DE 1]. Stovall asserts that she "is entitled to judgment declaring that Defendant JCPS providing the surveys to her is fair use that does not infringe on Defendant Pearson's copyright." [*Id.* at 7]. Stovall requests that this Court "[e]nter a declaratory judgment that the provision of copyrighted material pursuant to a public records request for non-commercial purposes as in this case, is a non-infringing fair use." [*Id.*]. In response, Pearson moved to dismiss, arguing that this Court "should dismiss [Stovall's] Complaint under Rule 12(b)(1)" because (1) the Court lacks subject-matter jurisdiction to decide Stovall's declaratory action, (2) Stovall's "fair use" and First Amendment rights to republish and publicly discuss Pearson's surveys arguments are unripe for review, and (3) if the other two arguments fail, the Court should exercise its discretion and decline to entertain this declaratory-judgment action. [DE 12 at 59].

## II. Discussion

### 1. Federal Question Jurisdiction

#### a. Standard

Federal courts are limited in their jurisdiction, and "possess only that power authorized by Constitution and statute . . . " *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "Congress has provided for removal of cases from state court to federal court when the plaintiff's complaint alleges a

claim arising under federal law." *Rivet v. Regions Bank*, 522 U.S. 470, 472 (1998). District courts have "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 USCS § 1331.

To determine whether federal jurisdiction exists, courts rely on the well pleaded complaint rule. Whether a claim arises under federal law, turns on the well-pleaded allegations of the complaint and ignores potential defenses. *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003); *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908).

"In cases in which the plaintiff seeks a declaratory judgment that he would have a valid defense to an anticipated claim, we consider whether a federal question would arise in a hypothetical non-declaratory suit in which the declaratory-judgment defendant is the plaintiff and the declaratory-judgment plaintiff is the defendant." *Chase Bank USA, N.A. v. City of Cleveland*, 695 F.3d 548, 554 (6th Cir. 2012) (citations omitted). "It is well settled that [a] defense that raises a federal question is inadequate to confer federal jurisdiction." *Nicodemus v. Union Pac. Corp.*, 318 F.3d 1231, 1236 (10th Cir. 2003) (quoting *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808 (1986)). "Federal-question jurisdiction is not present even if the [federal] defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case." *Id.* (quoting *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 14 (1983)).

In other words, as stated in *Chase Bank USA, N.A. v. City of Cleveland*, 735 F. Supp. 2d 773, 778 (N.D. Ohio 2010):

> The answer [that an anticipated defense cannot create jurisdiction] is the same if the defendant acts first and brings a declaratory judgment action in federal court seeking a declaration that its federal defense trumps the plaintiff's state law claim. Although the defendant has thereby become the plaintiff and ostensibly has pleaded a claim that is federal, there is still no federal jurisdiction.

(quoting *Penobscot Nation v. Georgia-Pac. Corp.*, 106 F. Supp. 2d 81, 82 (D. Me. 2000), *aff'd on other grounds,* 254 F.3d 317 (1st Cir. 2001)); *see also Vaden v. Discover Bank*, 556 U.S. 49 n.19 (2009) (quoting 10BWright & Miller § 2758, pp. 519-521) ("The Declaratory Judgment Act was not intended to enable a party to obtain a change of tribunal from a state court to a federal court, and it is not the function of the federal declaratory action merely to anticipate a defense that otherwise could be presented in a state action.").

**b. Analysis**

Stovall seeks a declaratory judgment from this Court, "that the provision of copyrighted material pursuant to a public records request for non-commercial purposes . . . is a non-infringing fair use." [DE 1 at 7]. Pearson argues that Stovall's action lacks subject matter jurisdiction because her claim "can only be characterized as anticipating and attempting to rebut a defense or justification that JCPS (or Pearson) might raise in an administrative or judicial appeal of

JCPS's denial." [DE 12 at 62]. In response, Stovall asserts that "[t]his case presents a federal question because the disagreement between the parties is about JCPS's application of federal copyright law." [DE 14 at 5].

Generally, when a party disagrees with the outcome of an open records request, "[t]he Kentucky Open Records Act provides for an adjudicatory process where an individual who receives an unsatisfactory response to an open records request may appeal to the Attorney General." *Taylor v. Maxson*, 483 S.W.3d 852, 857 (Ky. App. 2016). The Attorney General then issues an opinion, "which if not appealed to the circuit court, has the 'force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.'" *Id.* (quoting KRS 61.880(5)(b)).

Here, the crux of Stovall's action is that if JCPS "had not withheld the survey due to its copyright status, Mrs. Stovall would have been entitled to copies of it under KRS § 61.874(1)." [DE 1 at 5]. In other words, Stovall wants access to a copy of the survey that was given to her child, and she is petitioning this Court to find that JCPS's potential defense in the appeals process is not a violation of the Copyright Act. Thus, Stovall is attempting to bypass a state court action, by anticipating Defendants' defense in the potential state court proceeding which would commence if she were to appeal JCPS's decision.

However, "[t]he Declaratory Judgment Act was not intended to enable a party to obtain a change of tribunal from a state court to a federal court, and it is not the function of the federal declaratory action

merely to anticipate a defense that otherwise could be presented in a state action." *Vaden*, 556 U.S. at n.19. And that is exactly what Stovall is attempting to do here, as she is merely anticipating a defense that otherwise could be presented in a state action. *See id.* Moreover, she is asking this Court to find the defense without merit to end run the filing of a state court action. Under the case law, this is not enough to raise federal question jurisdiction in declaratory actions. *See*, e.g., *Vaden v. Discover Bank*, 556 U.S. at n.19; *Chase*, 735 F. Supp. 2d at 778.

Therefore, this Court lacks subject matter jurisdiction in this case and Pearson's Motion to Dismiss [DE 12] is GRANTED.

**2. Discretion**

Even if this Court had subject matter jurisdiction over this declaratory action, it would decline to exercise it. It is "well-settled that district courts have discretion 'in determining whether and when to entertain an action under the Declaratory Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional prerequisites.'" *Acuity v. Jade Enterprises*, No. CIV.A. 13-409-KSF, 2014 WL 345411, at *1 (E.D. Ky. Jan. 30, 2014) (quoting *Wilton v. Seven Falls Co.*, 515 U.S. 277, 282 (1995)). A court considers five factors to determine whether to exercise this discretion:

> (1) [W]hether the declaratory action would settle the controversy; (2) whether the declaratory action would serve a useful purpose in clarifying the legal relations in issue; (3) whether the declaratory remedy is being used merely for the purpose of "procedural

> fencing" or "to provide an arena for a race for res judicata;" (4) whether the use of a declaratory action would increase friction between our federal and state courts and improperly encroach upon state jurisdiction; and (5) whether there is an alternative remedy which is better or more effective.

*United Specialty Ins. Co. v. Cole's Place, Inc.*, 936 F.3d 386, 396 (6th Cir. 2019) (quoting *Grand Trunk W. R. Co. v. Consol. Rail Corp.*, 746 F.2d 323, 326 (6th Cir. 1984)). The weight of the factors depends on "underlying considerations of efficiency, fairness, and federalism" considering the facts of the case. *W. World Ins. Co. v. Hoey*, 773 F.3d 755, 759 (6th Cir. 2014).

Here, all five factors favor declining to exercise jurisdiction. *See Grand Trunk*, 746 F.2d at 326. First, this action would not settle the controversy as Stovall would still not have her own copy of the survey once this action concluded because conclusion of this action would not give Stovall a copy of the survey, and Stovall would still need to file an open records appeal in Kentucky state court to receive one. *See id.* (The first two *Grand Trunk* factors assess "(1) whether the declaratory action would settle the controversy" and "(2) whether the declaratory action would serve a useful purpose in clarifying the legal relations in issue" and the inquiries by these two factors often overlap substantially). Second, Stovall's declaratory remedy is merely "procedural fencing" as she is attempting to get a favorable decision in federal court prior to filing an open records appeal in Kentucky state court. *See id.* Third, this declaratory action would increase friction with the Kentucky state court and improperly

encroach on state jurisdiction, because although disguised as a federal question, Stovall's action is an attempt to bypass a state court open records appeal. *See id.* And finally, the state court appeals process is more effective alternative remedy for Stovall to appeal her open records decision. *See id.*

Thus, even if the Court did have subject matter jurisdiction to hear this case, the Court would exercise its discretion and decline to entertain this declaratory-judgment action.

## CONCLUSION

Accordingly, the Court, having considered the parties' motions and related filings and being otherwise sufficiently advised, **IT IS ORDERED**:

(1) Pearson's Motion to Dismiss [DE 12] is **GRANTED**.

(2) A separate judgment will be entered by the Court.

/s/ Rebecca Grady Jennings
United States District Judge

March 18, 2025

## JUDGMENT, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY (MARCH 18, 2025)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

MIRANDA STOVALL,

*Plaintiff,*

v.

JEFFERSON COUNTY
BOARD OF EDUCATION, ET AL.,

*Defendants.*

Civil Action No. 3:24-cv-336

Before: Rebecca Grady JENNINGS,
United States District Judge.

### JUDGMENT

In accordance with the Order entered this same date and pursuant to Rule 12(b)(1) and Rule 58 of the Federal Rules of Civil Procedure it is ORDERED and ADJUDGED as follows:

(1) The Court lacks subject-matter jurisdiction.

(2) This action is DISMISSED without prejudice and STRICKEN from the Court's docket.

(3) This is a FINAL and APPEALABLE Judgment, and there is no just cause for delay.

/s/ Rebecca Grady Jennings
United States District Judge

March 18, 2025