

No. 23-1280

In the Supreme Court of the United States

PARENTS PROTECTING OUR CHILDREN, UA,
Petitioner,

v.

EAU CLAIRE AREA SCHOOL DISTRICT, WISCONSIN,
TIM NORDIN, LORI BICA, MARQUELL JOHNSON, PHIL
LYONS, JOSHUA CLEMENTS, STEPHANIE FARRAR,
ERICA ZERR, and MICHAEL JOHNSON,
Respondents.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**BRIEF FOR PARENTS DEFENDING
EDUCATION AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Parents Defending Education is a national, non-profit membership association. Its members include many parents with school-aged children. Launched in 2021, it uses advocacy, disclosure, and litigation to combat the increasing politicization and indoctrination of K-12 education.

PDE has a substantial interest in this case. The Fourteenth Amendment protects the fundamental right of parents to direct the upbringing of their children. The Seventh Circuit's decision, however, will prevent parents, including PDE's members, from vindicating their fundamental right in court.

SUMMARY OF ARGUMENT

School districts across the United States have seized from parents the right to direct the upbringing of their children and handed this authority to teachers and school administrators. PDE has identified 1,086 school districts in the United States with parental-exclusion policies. *See List of School District Transgender-Gender Nonconforming Student Policies*, PDE (last updated June 17, 2024), perma.cc/5X7P-XDV7. These districts cover 19,598 schools that educate 11,475,493 students.

¹ Per Rule 37.2, *amicus curiae* provided timely notice of its intention to file this brief. No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

Eau Claire’s policy, like other parental-exclusion policies PDE has identified, authorizes school officials to secretly effectuate the “gender transition” of a child without ever informing the parents, getting their input, or obtaining their consent. Put another way, Eau Claire permits school officials—not parents—to make fundamental decisions about a child, like letting the child use different pronouns, name, and bathroom.

Displacing parents on these key issues harms children and violates the Constitution. Social transitioning is no neutral act. It has aided the surge of minors receiving gender-dysphoria diagnoses across the country. Social transitioning, spurred by parental-exclusion policies, often leads to medical interventions. These interventions include puberty blockers, cross-sex hormones, and sex-reassignment surgery—all of which are unproven and risky medical interventions with potentially irreversible effects on the child’s health and fertility. Society’s most vulnerable deserve far better than a school driving a wedge between children and their parents.

Parental-exclusion policies also violate parents’ constitutional rights. Parents’ interest “in the care, custody, and control of their childre[n] is perhaps the oldest of the fundamental liberty interests recognized by” the Supreme Court as protected by the Fourteenth Amendment. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality). And parents do not surrender these longstanding rights by sending their children to school. The doctrine of *in loco parentis* does not extend to fundamental decisions like those parental-exclusion policies invade. Especially when, as here, these

policies have nothing to do with the school’s state-mandated education missions.

No matter the scrutiny level, schools have no legitimate interest, let alone a compelling one, in secretly effectuating a child’s “gender transition” without any involvement from the child’s parents. Parental-exclusion policies are no “minor” or “everyday” matter, and schools’ attempts to trivialize them as such are remarkably wrong.

Finally, the harms from parental-exclusion policies are exacerbated by courts misinterpreting standing doctrine. These courts, including the Seventh Circuit here, are insulating harmful policies from judicial review and preventing parents from vindicating their constitutional rights. With the stakes so high, this Court should grant certiorari.

ARGUMENT

I. Parental-exclusion policies like Eau Claire’s are extremely harmful and are plaguing families across the country.

A. Schools across the country are adopting policies that facilitate “social transitioning”² for students and conceal that information from parents. These parental-exclusion policies authorize school officials to make fundamental decisions about a child—including

² Social transitioning refers to making “social changes to live as a different gender such as altering hair or clothing, name change, and/or use of different pronouns.” Cass, *Independent Review of Gender Identity Services for Children and Young People*, 30-31 (Apr. 2024) (Cass Final Report), perma.cc/74EA-L76V.

changing the child’s name and pronouns and determining which bathroom the child should use or on which sports team the child should play. And they prohibit school officials from notifying parents or obtaining their consent for any of this. These policies deny parents complete information about their children, undermine their ability to provide for their children’s wellbeing, and harm children everywhere.

Eau Claire’s policy fits this mold. *See* App.64-71. Its policy allows children of any age to choose any “name and pronouns desired,” App.65, permits access to bathrooms and locker rooms “based on the gender identity ... expressed by the student,” App.66, and requires all staff to “respect the [student’s] right ... to be addressed by a name and pronoun that corresponds to their gender identity,” App.67. The policy specifies that all of this should occur without parental notification or consent. *See* App.66 (directing school personnel to “speak with the student first” and ask whether they want their parent to know). The school’s training materials on the policy expressly instruct teachers that “parents are not entitled to know their kids’ identities” and that “th[is] knowledge must be earned.” App.18.

Parental-exclusion policies like Eau Claire’s are exploding across the United States. “In the past few years, school districts nationwide have quietly adopted policies requiring staff to facilitate and ‘affirm’ gender identity transitions at school without parental notice or consent—and even in secret from parents.” Berg, *How Schools’ Transgender Policies Are Eroding Parents’ Rights*, American Enter. Inst., 1 (Mar. 2022), bit.ly/39s1GQF. PDE has identified 1,086

school districts in the United States with parental-exclusion policies. See *List of School District Transgender-Gender Nonconforming Student Policies*, PDE (last updated June 17, 2024), perma.cc/5X7P-XDV7. These districts cover 19,598 schools that educate 11,475,493 students.

Parental-exclusion policies produce troubling results from coast to coast. One mother in California “went two years without knowing her sixth grader had transitioned at school.” St. George, *Gender Transitions at School Spur Debates Over When, Or If, Parents Are Told*, Wash. Post (July 18, 2022), perma.cc/BVZ5-T3PK. “Basically, I was the last one to find out,” she said. *Id.* She only made the discovery “when she took her child to the hospital one day and a doctor told her. She was stunned.” *Id.* In Michigan, parents learned that their daughter’s middle school had addressed her with a male name and pronouns for months without their knowledge. See Richardson, *Parents Sue Michigan School District for Hiding Daughter’s Gender Transition*, Wash. Times (Dec. 19, 2023), bit.ly/3LaF7z7. Only after the school psychologist “failed to change their daughter’s masculine name in one section of an evaluation that was sent home” did they discover the truth. *Id.* “The girl’s name had been changed back to her birth name in the rest of the document.” *Id.* And in Washington, immigrant parents were forced to move back to their home country after a teacher encouraged their 10-year-old daughter to transition and keep it from her parents. Torres, *Family Flees US After Teacher Spurs, Hides 10-Year-Old Daughter’s Gender ‘Transition,’* N.Y. Post (Feb. 1,

2024), perma.cc/P6AG-YF7E. The teacher also encouraged the child to set up a personal email so they could communicate without her parents knowing. *Id.* When the parents confronted the school, the principal informed them that the teacher “had done nothing wrong and was just following school policies.” *Id.*

These parental-exclusion policies outsource ultimate decisionmaking authority to children, often with input from a teacher or school employee who supplants a parent’s role in the process. Under these policies, educators and staff—not parents—work with minor students to determine what changes are needed to ensure their safety and wellbeing. GLSEN & Nat’l Ctr. for Transgender Equality, *Model Local Education Policy on Transgender and Non-Binary Students*, 7-9 (Sept. 2018), perma.cc/NK4G-2VCH. And parents are often cut out of the process, even though “[t]ransitioning at a young age poses special risks and complications.” Berg, *supra*, at 3.

B. Parental-exclusion policies like Eau Claire’s harm parents and children alike. To start, these policies prevent parents from knowing and helping their children. Parents across the political spectrum agree that “they can’t be supportive if no one tells them that their child” is suffering from “gender identity” issues. St. George, *supra*. According to Dr. Erica Anderson, a clinical psychologist who identifies as transgender and is the former president of the U.S. Professional Association for Transgender Health, “leaving parents in the dark is not the answer.” *Id.* “If there are issues between parents and children, they need to be ad-

dressed.” *Id.* Such secrecy “only postpones ... and aggravates any conflict that may exist.” *Id.* In a world in which schools “routinely send notes home to parents about lesser matters,” such as “playground tussles, missing homework, and social events,” there is absolutely no justification for withholding such important information from their parents. *Id.*

Nor do these policies help children thrive. Social transition “is not a neutral act.” Cass, *Independent Review of Gender Identity Services for Children and Young People: Interim Report*, 63 (Feb. 2022) (Cass Interim Report), perma.cc/G5WB-8VTE. This kind of intervention is “one of the most difficult psychological changes a person can experience.” *Mirabelli v. Olson*, 691 F. Supp. 3d 1197, 1208 (S.D. Cal. 2023) (quoting testimony of Dr. Erica Anderson). And parents “are often the only people who have frequently and regularly interacted with a child or adolescent throughout” his or her life who has a full “view of the child’s development over time.” *Id.* Parents often know better than anyone “how long the child or adolescent has been experiencing gender incongruence,” “whether there might be any external cause of those feelings,” and “how likely those feelings are to persist.” *Id.* “[T]o place teachers in the position of accepting without question” a minor’s gender preference and then “direct[ing] such teachers to withhold the information from parents concerning their minor children is hugely problematic.” *Id.*

On top of that, social transition often leads to medical interventions. Studies show that social transitions “lock gender-confused adolescents into the belief that they are born into the wrong body.” Parshall Perry & Jipping, *Public School Gender Policies that Exclude Parents are Unconstitutional*, Heritage Found., 5 (June 12, 2024), perma.cc/NT3Z-UE6Y; see *Early Social Gender Transition in Children Is Associated with High Rates of Transgender Identity in Early Adolescence*, Soc’y for Evidence Based Gender Med. (May 2022). Indeed, “[s]ocial transition is associated with the persistence of [gender dysphoria]/gender incongruence as a child progresses into adolescence.” Hembree, *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, *J. of Clin. Endocrinology & Metabolism*, Vol. 102, Iss. 11, 3879 (Nov. 1, 2017). And in a recent study of 317 individuals who had socially transitioned as youths, “most” were “living as binary transgender youth” five years later. Olson, *Gender Identity 5 Years After Social Transition*, *Pediatrics* (2022).

Once an adolescent’s belief that he or she is, in fact, the opposite sex has solidified, it can lead them to pursue other serious gender-related medical interventions designed to “affirm” that belief. See Olson, *supra*. These interventions include puberty blockers, cross-sex hormones, and sex-reassignment surgery. In other words, parental-exclusion policies lead to minors pursuing unproven and risky medical interventions with potentially irreversible effects on their health and fertility. “[N]o one disputes that these treatments carry risks or that the evidence supporting

their use is far from conclusive.” *L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 489 (6th Cir. 2023); accord *Eknes-Tucker v. Gov’r of Alabama*, 80 F.4th 1205, 1225 (11th Cir. 2023) (“[T]he record evidence is undisputed that the medications at issue present some risks,” including “loss of fertility and sexual function.”). In fact, “some of the same European countries that pioneered these treatments now express caution about them and have pulled back on their use.” *L.W.*, 83 F.4th at 477.

Today, gender medicine remains “an area of remarkably weak evidence.” Cass Final Report, *supra*, at 13. Last year, nearly two dozen clinicians and researchers from nine countries who are “involved in direct care for the rapidly growing number of gender-diverse youth,” emphasized that “[e]very systematic review of evidence to date ... has found the evidence for mental-health benefits of hormonal interventions for minors to be of low or very low certainty.” Kaltiala et al., *Youth Gender Transition is Pushed Without Evidence*, Wall St. J. (Jul. 14, 2023), perma.cc/7JFF-RSHL. “By contrast, the risks are significant and include sterility, lifelong dependence on medication and the anguish of regret.” *Id.*; see, e.g., Landén et al., *A Systematic Review of Hormone Treatment for Children with Gender Dysphoria and Recommendations for Research*, *Acta Paediatrica*, 2023;00:2,12 (Apr. 17, 2023), bit.ly/3XR8Dl5 (concluding that the “long-term effects of hormone therapy on psychosocial and somatic health are unknown”).

Moreover, minors often do not comprehend the long-term consequences of medical intervention on

their health and fertility. Hughes, *The WPATH Files: Pseudoscientific Surgical and Hormonal Experiments on Children, Adolescents, and Vulnerable Adults*, *Env'tl Prog.*, 10 (2024). While many medical professionals claim they advise their patients of all the fertility risks, children and adolescents simply “do not understand how they may come to want biological children of their own one day, nor do they even understand how adoption works or how arduous it can be to conceive a baby” using artificial technology. *Id.* at 12. As one endocrinologist put it, “it’s always a good theory that you talk about fertility preservation with a 14-year-old, but I know I’m talking to a blank wall.” *Id.* Today, “27% of ... young people who ha[ve] undergone early [medical interventions] ... regret sacrificing their fertility.” *Id.*

C. The surge of young people across many countries receiving gender-dysphoria diagnoses is astonishing. “The percentage of youth identifying as transgender has doubled from 0.7% of the population to 1.4% in the past few years, while the percentage of adults (0.5% of the population) has remained constant.” *L.W.*, 83 F.4th at 468 (cleaned up). For example, “2021 saw three times more diagnoses of gender dysphoria among minors than 2017 did.” *Id.*

This diagnosis is particularly prevalent among adolescent girls. *See* Cass Final Report, *supra*, at 93; Gentleman, ‘*An Explosion: What Is Behind the Rise in Girls Questioning Their Gender Identity?*’, *The Guardian* (Nov. 24, 2022), perma.cc/AL3P-66JY. In 2014, the number of gender clinic referrals in the UK grew “ex-

ponentially ... with a higher number of birth-registered females presenting in early teenage years.” Cass Final Report, *supra*, at 72. An explosion of referrals ensued in Sweden at the same time. In 2018, Sweden’s Board of Health and Welfare reported that among girls ages 13-17, “the number of diagnoses of gender dysphoria was 15 times higher” than a decade before. Socialstyrelsen, *Updated Recommendations for Hormone Therapy for Gender Dysphoria in Young People*, at 15 (Feb. 22, 2022). While it is hard to pinpoint the precise cause, the recent Cass Report found it “hard to separate the startling increase in trans-identifying children in recent years from the rise of social media, online pornography, and other factors that can weigh on young people’s mental health.” Editorial Board, *Helpful Transgender Lessons from Europe*, Wall St. J. (Apr. 10, 2024), shorturl.at/t2r1h.

At least some of this uptick may be the result of “rapid-onset gender dysphoria.” In a 2018 study, parents reported that their children—particularly teenage girls—were “express[ing] gender dysphoria” for the first time during puberty “despite never having done so when they were younger.” Paul, *As Kids, They Thought They Were Trans. They No Longer Do.*, N.Y. Times (Feb. 2, 2024), shorturl.at/McC0j; Littman, *Parent Reports of Adolescents and Young Adults Perceived to Show Signs of a Rapid Onset of Gender Dysphoria*, PLoS ONE, Vol. 13, No. 8 (2018). This often occurred when one or more members of a peer group identified simultaneously. Littman, *supra*. Or it occurred when an adolescent had “mental health issues unrelated to gender.” Paul, *supra*.

Parental-exclusion policies increase the likelihood of rapid-onset gender dysphoria. These policies “uniformly prohibit consideration of any medical diagnosis or treatment, documentation, or other objective evidence that may give a student’s subjective communication any context.” Parshall Perry & Jipping, *supra*, at 6. And by eliminating parental knowledge or input, “these policies foreclose the best source of information” about a student’s “medical history, temperament, habits, activities, or other factors that may provide a better and more accurate understanding of the student’s communication regarding gender identity.” *Id.*

Parental-exclusion policies also exploit vulnerable students with other health issues. They pose significant risks for parents of children on the autism spectrum. Children on the spectrum are three to six times more likely than other children to identify as “transgender” or “nonbinary.” *See, e.g.,* Warrier et al., *Elevated Rates of Autism, Other Neurodevelopmental and Psychiatric Diagnoses, and Autistic Traits in Transgender and Gender-Diverse Individuals* (Aug. 2020), perma.cc/QWM8-2EHB; Cass Final Report, *supra*, at 93. A 2020 study showed that up to a quarter of minors referred to gender clinics have been diagnosed with autism spectrum disorders. Thrower, *Prevalence of Autism Spectrum Disorder and Attention-Deficit Hyperactivity Disorder Amongst Individuals with Gender Dysphoria: A Systematic Review*, *J. of Autism & Dev. Disorders*, 695, 702 (2020). Strong parent-child relationships are critical for these students’ development, but parental-exclusion policies prevent what these children need the most.

The “primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). And rightly so: “Part of parents’ job is to help their children avoid making bad decisions.” *Mirabelli*, 691 F. Supp. 3d at 1208 (quoting testimony of Dr. Anderson). Parental-exclusion policies like Eau Claire’s undermine that important job and supplant the parent’s role with school officials. But “[c]oncealing from a parent the fact of a student’s transitioning at school is not in the best medical interests of a student.” *Id.* at 1209. Doing so may “drive a wedge between the parent and child” and force a child to live a double life—“present[ing] as transgender in some contexts” but not in others. *Id.* And “excluding parents from decisions about a social transition undermines the main support structure for a child or adolescent who desperately needs support.” *Id.* (cleaned up). Parental-exclusion policies like the one here are thus extremely harmful.

II. Parental-exclusion policies violate the Constitution.

Not only do parental-exclusion policies harm children and their families, but they also violate parents’ constitutional rights. “[E]xtensive precedent” establishes that parents must be involved in key decisions involving their children, including how to address “gender identity” issues like what pronouns, name, or bathroom their child uses. *Troxel*, 530 U.S. at 66 (collecting cases). Yet school districts across the country

are flouting parents' well-established rights by excluding them from decisionmaking when "gender identity" is involved.

The Fourteenth Amendment provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. "[T]he interest of parents in the care, custody, and control of their childre[n] is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court" as protected by the Fourteenth Amendment. *Troxel*, 530 U.S. at 65; *see id.* at 80 n.* (Thomas, J., concurring in the judgment) (showing interest in reevaluating the meaning of the Privileges or Immunities Clause in parental-rights case); *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 836-37 (2011) (Thomas J., dissenting) (similar).

Children are "not the mere creature of the state." *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 535 (1925). A parent's right, confirmed by the Fourteenth Amendment, "to raise one's children ha[s] been deemed 'essential'" and one of the "basic civil rights of man." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

These parental rights are rooted in the "historica[l] ... recogni[tion] that natural bonds of affection lead parents to act in the best interests of their children." *Parham v. J.R.*, 442 U.S. 584, 602 (1979). "The history clearly shows a founding generation that

believed parents to have complete authority over their minor children and expected parents to direct the development of those children.” *Ent. Merchs. Ass’n*, 564 U.S. at 834 (Thomas, J., dissenting); *see id.* at 795 n.3 (majority) (stating that this statement is “true enough”); *Bellotti v. Baird*, 443 U.S. 622, 638 (1979) (“[D]eeply rooted in our Nation’s history and tradition, is the belief that the parental role implies a substantial measure of authority over one’s children.”).

Thus, “[i]t is cardinal” that “the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” *Troxel*, 530 U.S. at 65-66. “This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” *Yoder*, 406 U.S. at 232; *see, e.g., McMurry v. Brunner*, 2022 WL 17493708, at *9 & n.2 (5th Cir. Dec. 7) (Oldham, J., concurring in the judgment) (collecting cases). “These repeated pronouncements from the Supreme Court are not simply platitudes or mere surplusage, which may be given lip service and brushed aside.” *Tatel v. Mt. Lebanon Sch. Dist.*, 637 F. Supp. 3d 295, 315 (W.D. Pa. 2022). To the contrary, “[t]he Supreme Court clearly recognized that the right of parents to control the upbringing and education of their children is fundamental. This right is deeply rooted in the nation’s history and implicit in the concept of ordered liberty.” *Id.* In short, it’s “well established that a parent has a [Fourteenth Amendment] right to direct the education and upbringing of his children.” *Kanuszewski v. Mich. HHS*, 927 F.3d 396, 418 (6th Cir. 2019) (cleaned up).

The right of parental control is particularly strong in circumstances involving “fundamental values,” such as “religious beliefs.” *Arnold v. Bd. of Educ. of Escambia Cnty.*, 880 F.2d 305, 312 (11th Cir. 1989). Parents’ rights “presumptively includ[e] counseling [their children] on important decisions.” *H.L. v. Matheson*, 450 U.S. 398, 410 (1981). In such circumstances, parents are presumed to be fit to make decisions for their children absent strong evidence to the contrary. *Troxel*, 530 U.S. at 68-69.

Parents’ right to make fundamental decisions for their children does not disappear at school. “Parents do not implicitly relinquish all [their parental rights] when they send their children to a public school.” *Mahanoy Area Sch. Dist. v. B.L. ex rel. Levy*, 594 U.S. 180, 202 (2021) (Alito, J., concurring); see, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923); *Pierce*, 268 U.S. at 534-35. “In our society, parents, not the State, have the primary authority and duty to raise, educate, and form the character of their children.” *Mahanoy*, 594 U.S. at 201-02 (Alito, J., concurring). “Public schools must not forget that ‘*in loco parentis*’ does not mean displace parents.” *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000). To the contrary, all the doctrine of *in loco parentis* “amounts to [today] is simply a doctrine of inferred parental consent to a public school’s exercise of a degree of authority that is commensurate with the task that the parents ask the school to perform.” *Mahanoy*, 594 U.S. at 200 (Alito, J., concurring). Whatever right is not delegated is still retained by the parent.

A school's *in loco parentis* status does not extend to fundamental issues like those parental-exclusion policies invade. The doctrine merely “treats school administrators as standing in the place of students’ parents under circumstances where the children’s actual parents cannot protect, guide, and discipline them.” *Mahanoy*, 594 U.S. at 189. Put another way, under the doctrine of *in loco parentis*, “parents are treated as having relinquished [or delegated] the measure of authority that the schools must be able to exercise in order to carry out their state-mandated educational mission, as well as the authority to perform any other functions to which parents expressly or implicitly agree.” *Id.* at 200 (Alito, J., concurring). Schools thus infringe the parents’ Fourteenth Amendment right by impinging that not-delegated authority.

Parental-exclusion policies invade parents’ not-delegated authority. Deciding how to address these gender issues—including what pronouns, name, or bathroom a child uses—“fall[s] within the zone of parental, rather than school-related, responsibility.” *Id.* at 189 (majority). A child’s “gender identity” implicates the most fundamental issues about the child, including the child’s religion, medical care, mental health, sense of self, and more. Parental-exclusion policies interfere with parents’ ability to make key decisions in several ways—any of which violate the Constitution.

To start, some parental-exclusion policies deprive parents of their right to know what actions the school is taking with regards to fundamentally important de-

cisions about their children. Parents across the country want to be told whether their children have requested or been given a “Gender Support Plan,” whether their children have made requests or actions have been taken concerning their children’s “gender identity,” and whether the school district has any other information that would reveal their children’s “gender identity status.” Parents, at a minimum, want to be able to regularly ask whether any of the above has happened and be told a truthful answer. Yet parental-exclusion policies prohibit school officials from telling parents this information, whether preemptively or in response to parents’ request for information. Failing to provide this key information itself violates parental rights: That’s because it’s impossible for parents to direct the “care, custody, and control of their children” when the government deliberately withholds such critical information from them. *Troxel*, 530 U.S. at 65.

Worse, parental-exclusion policies like Eau Claire’s deprive parents of the right to have *any* input or control over fundamental decisions on “gender identity”—even when the parents know what the school is allowing and the parents want a different action to happen. Without any parental input, schools can (1) require all employees and students to address the child by a new name; (2) require all employees and students to address the child through a new pronoun; (3) have the child’s name changed on many government documents, including identification cards, yearbooks, and diplomas; (4) allow the child to use the restrooms, locker rooms, and changing facilities that correspond with the child’s “gender identity”; (5) allow

the child to participate in physical education classes, intramural sports, clubs, and other events that correspond with the child’s “gender identity”; and (6) allow the child to room with other students who share the child’s “gender identity.” Again, many policies permit all of that *even if* the parents know what the school is allowing and ask the school to do something else.

In short, school districts with parental-exclusion policies “not only fai[l] to presume” that parents will “act in the best interest of their children, [they] assum[e] the exact opposite.” *Doe v. Heck*, 327 F.3d 492, 521 (7th Cir. 2003). In so doing, schools like Eau Claire exceed their authority under *in loco parentis* and violate parents’ constitutional rights.

Even if there were doubts that when schools adopt parental-exclusion policies, they exceed their authority and thus violate the Constitution, parental-exclusion policies could not survive any level of heightened scrutiny anyway. For good reason: Schools have no legitimate interest, let alone a compelling one, in effectuating a child’s “gender transition” without any involvement or consultation from the child’s parents. Nor do they have a sufficient interest in “withholding or concealing [this information] from the parents of minor children” or supplanting parents’ role in making fundamental decisions about their children. *Ricard v. USD 475 Geary Cnty.*, 2022 WL 1471372, at *8 (D. Kan. May 9). And though there could be a “particularized and substantiated concern that disclosure to a parent could lead to child abuse, neglect, or some other *illegal* conduct,” *id.*, parental-exclusion policies

are not remotely tailored to address these hypothetical circumstances.

Bottom line: Parental-exclusion policies snatch issues that are “fundamental to a child’s identity, personhood, and mental and emotional well-being,” *Ricard*, 2022 WL 1471372, at *8, and place them solely in the hands of the government. They bulldoze “the traditional presumption that a fit parent will act in the best interest of his or her child” and “fai[l] to provide any protection for [parents’] fundamental constitutional right to make decisions concerning the rearing of” their children. *Troxel*, 530 U.S. at 69-70. They significantly harm children, parents, and drive a wedge between families. *See supra* 3-13. They violate the Fourteenth Amendment.

CONCLUSION

This Court should grant certiorari.

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