

No. 23-1280

IN THE
Supreme Court of the United States

PARENTS PROTECTING OUR CHILDREN, UA,
Petitioner,

v.

EAU CLAIRE AREA SCHOOL DISTRICT,
WISCONSIN, *et al.*,
Respondents.

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

**MOTION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF AND BRIEF OF AMICI CURIAE ADVANCING
AMERICAN FREEDOM; WISCONSIN FAMILY ACTION,
INC.; AFA ACTION; ALABAMA POLICY INSTITUTE;
ALASKA FAMILY COUNCIL;**
(Brief Title continued on inside cover)

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THE FAMILY FOUNDATION (KENTUCKY); THE FAMILY
FOUNDATION (VIRGINIA); THE JUSTICE FOUNDATION;
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MIDWEST LAW CENTER; WOMEN FOR DEMOCRACY IN
AMERICA, INC.; YOUNG AMERICA'S FOUNDATION;
AND YOUNG CONSERVATIVES OF TEXAS
IN SUPPORT OF PETITIONERS**

**MOTION FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF PETITIONERS**

Pursuant to Supreme Court Rule 37.2(b), Advancing American Freedom respectfully moves for leave to file an amicus curiae brief in support of petitioners. The brief follows immediately after this motion. Advancing American Freedom presents this motion for leave of the Court to file the appended brief amicus curiae. All parties received notice of Advancing American Freedom's intent to file the appended brief on July 2, 2024. All parties consented to Advancing American Freedom's filing of a brief of amici curiae. Advancing American Freedom is a nonprofit organization that promotes and defends policies that elevate traditional American values, including the uniquely American idea that all men are created equal and endowed by their Creator with unalienable rights to life, liberty, and the pursuit of happiness. American freedom has created the greatest and most prosperous country in the history of the world, and if future generations are going to enjoy those blessings, we must secure individual rights in our own time.

This case is important to amici Advancing American Freedom; Wisconsin Family Action, Inc.; AFA Action; Alabama Policy Institute; Alaska Family Council; AMAC Action; American Association of Senior Citizens; American Encore; American Values; Americans for Limited Government; E. Calvin Beisner, PhD, Memphis, TN; Shawna Bolick, Arizona State Senator, District 2; Better Together New Mexico; Catholics Count; Center for Political Renewal (CPR); Center for Urban Renewal and Education (CURE); Christian Law Association; Coalition

for Jewish Values; Concerned Women for America; Defense of Freedom Institute for Policy Studies; Delaware Family Policy Council; Eagle Forum; Faith & Freedom Coalition; Family Council in Arkansas; Family Institute of Connecticut; Focus on the Family; Frontline Policy; Charlie Gerow; Global Liberty Alliance; Allen J. Hebert, Chairman, American-Chinese Fellowship of Houston; International Conference of Evangelical Chaplain Endorsers; Tim Jones, Fmr. Speaker, Missouri House, Chairman, Missouri Center-Right Coalition; Leadership Institute; Louisiana Family Forum; MacIver Institute for Public Policy; Maryland Family Institute; Men and Women for a Representative Democracy in America, Inc.; Moms for Liberty; National Apostolic Christian Leadership Conference; National Association of Parents, Inc. dba ParentsUSA; National Center for Public Policy Research; Nevada Policy; New Tolerance Campaign; New Jersey Family Foundation; William O'Brien, Former Speaker, NH House of Representatives; Melissa Ortiz, Principal & Founder, Capability Consulting; Palmetto Promise Institute; Project 21 Black Leadership Network; Rio Grande Foundation; Roughrider Policy Center; Russell Kirk Center for Cultural Renewal; Setting Things Right; John Shadegg, Frm. Member of Congress; 60 Plus Association; Stand for Georgia Values Action; Students for Life Action; Texas Values; The Family Action Council of Tennessee, Inc.; The Family Foundation (Kentucky); The Family Foundation (Virginia); The Justice Foundation; Nicole Theis, President, Delaware Family Policy Council; Tradition, Family, Property, Inc.; Upper Midwest Law Center; Women for Democracy in America, Inc.; Young America's Foundation; and Young Conservatives of Texas In Support of Petitioners because they believe that the rights of parents, which are an essential element of the

freedom the Constitution exists to protect, are being violated around the country, often without a meaningful opportunity for judicial redress. The proposed amicus brief seeks to bring before the Court arguments informed by amici's experience in studying and briefing the issues presented. Movant believes that this brief will assist the Court in its consideration of the petition. The significant issues concerning the fundamental rights of parents to direct the upbringing of their children warrant the granting of this motion. Movant therefore requests that its motion be granted.

Respectfully submitted,

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QUESTION PRESENTED

When a school district adopts an explicit policy to usurp parental decision-making authority over a major health-related decision—and to conceal this from the parents—do parents who are subject to such a policy have standing to challenge it?

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including equal treatment before the law.¹ AAF “will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,”² and believes that parents have a fundamental right to direct the upbringing of their children, as it has argued repeatedly in other amicus briefs.³ AAF represents 11,573

1. All parties received notice of the filing of this brief on July 2, 2024. Both parties consented to the filing of this amicus brief. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

2. Edwin J. Feulner, Jr., *Conservatives Stalk the House: The Story of the Republican Study Committee*, 212 (Green Hill Publishers, Inc. 1983).

3. Brief amicus curiae of Advancing American Freedom et al., *M.C. and J.C. v. Ind. Dept. of Child Servs.*, No. 23-450 <https://advancingamericanfreedom.com/m-c-and-j-c-v-indiana-department-of-child-services/>; brief amicus curiae of Advancing American Freedom et al., *Mahmoud v. McKnight*, No. 23-1890 <https://advancingamericanfreedom.com/mahmoud-v-mcknight/>; brief amicus curiae of Advancing American Freedom et al., *Littlejohn v. Sch. Bd. of Leon Cnty. Fla.*, No. 23-10385-HH (11th Cir.) <https://advancingamericanfreedom.com/littlejohn-v-school-board-of-leon-county-florida/>; brief amicus curiae of Advancing American Freedom et al., *Foote v. Ludlow*, No. 23-1069 (1st Cir.) <https://advancingamericanfreedom.com/aaf-et-amici-foote-v-ludlow-parental-rights-1st-circuit/>; brief amicus curiae of Advancing American Freedom et al., *Parents Defending Education v. Linn-Mar Cmty. Sch. Dist.*, No. 22-2927 (8th Cir.).

members residing in the Seventh Circuit with 2,971 of those members living in Wisconsin.

Wisconsin Family Action's mission is to advance Judeo-Christian principles and values by strengthening, preserving, and promoting marriage, family, the sanctity of human life, and religious liberty. Given that mission, Wisconsin Family Action strongly supports the rights of parents. We have supported state legislation to secure the right of parents regarding this issue and others, and have worked with individuals, including some school board members, who have encountered these situations in their public schools. The Eau Claire Area School district policies in question trample parents' inherent, God-given rights. By aiding a student's gender transition without the knowledge or consent of parents, the Eau Claire Area School District is inconsistent with its own policies that require parents to provide consent for distributing aspirin. This inconsistency can cause much more harm for that child's life. As a result, these parents shouldn't have to wait for their children to experience irreparable harm before the Court will hear their concerns.

Amici Advancing American Freedom; Wisconsin Family Action, Inc.; AFA Action; Alabama Policy Institute; Alaska Family Council; AMAC Action; American Association of Senior Citizens; American Encore; American Values; Americans for Limited Government; E. Calvin Beisner, PhD, Memphis, TN; Shawna Bolick, Arizona State Senator, District 2; Better Together New Mexico; Catholics Count; Center for Political Renewal (CPR); Center for Urban Renewal and Education (CURE); Christian Law Association; Coalition for Jewish Values; Concerned Women for America; Defense of Freedom

Institute for Policy Studies; Delaware Family Policy Council; Eagle Forum; Faith & Freedom Coalition; Family Council in Arkansas; Family Institute of Connecticut; Focus on the Family; Frontline Policy; Charlie Gerow; Global Liberty Alliance; Allen J. Hebert, Chairman, American-Chinese Fellowship of Houston; International Conference of Evangelical Chaplain Endorsers; Tim Jones, Fmr. Speaker, Missouri House, Chairman, Missouri Center-Right Coalition; Leadership Institute; Louisiana Family Forum; MacIver Institute for Public Policy; Maryland Family Institute; Men and Women for a Representative Democracy in America, Inc.; Moms for Liberty; National Apostolic Christian Leadership Conference; National Association of Parents, Inc. dba ParentsUSA; National Center for Public Policy Research; Nevada Policy; New Tolerance Campaign; New Jersey Family Foundation; William O'Brien, Former Speaker, NH House of Representatives; Melissa Ortiz, Principal & Founder, Capability Consulting; Palmetto Promise Institute; Project 21 Black Leadership Network; Rio Grande Foundation; Roughrider Policy Center; Russell Kirk Center for Cultural Renewal; Setting Things Right; John Shadegg, Frm. Member of Congress; 60 Plus Association; Stand for Georgia Values Action; Students for Life Action; Texas Values; The Family Action Council of Tennessee, Inc.; The Family Foundation (Kentucky); The Family Foundation (Virginia); The Justice Foundation; Nicole Theis, President, Delaware Family Policy Council; Tradition, Family, Property, Inc.; Upper Midwest Law Center; Women for Democracy in America, Inc.; Young America's Foundation; and Young Conservatives of Texas believe that protecting the fundamental right of parents to direct the upbringing of their kids is essential for freedom and the wellbeing of children.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

“If your parents aren’t accepting of your identity I’m your mom now *#freemomhugs*,” reads the sign in one teacher’s Eau Claire School District (“the District”) classroom.⁴ App. 47-48. On what authority does this teacher presume to displace parents? The sign only makes explicit what is implicit in the District’s policy at issue in this case: in the view of these self-assured ideologues, parental authority exists at their pleasure, and their pleasure only extends so far as their novel and extreme social theory.

When the state inserts itself between loving parents and their children, parents find themselves in “a nightmare;” one that threatens to “completely destroy[their lives].”⁵ When the state hides its intervention from parents, potentially for months or years, parents may find themselves waking up deep into a nightmare in progress that will have lifelong, destructive consequences. We used

4. This idea that state schools “should assume many of the socializing functions once performed by the family, the workplace, and the community,” goes back at least to John Dewey who “believed that the school could become ‘a fundamental lever of social progress.’” Lee Edwards, *Educating for Liberty: The First Half-Century of the Intercollegiate Studies Institute* 9 (2003).

5. These are the words of Dennis Hannon, a father who alleges courts have deprived him of authority to make medical decisions for his son who identified for years as a girl with the support of Mr. Hannon’s ex-wife. Caitlin Tilley, *New York Father Loses Legal Battle to Stop His Son, 8, From Taking Puberty Blockers to Change Gender*, Daily Mail (12:17PM Feb. 2, 2024) <https://www.dailymail.co.uk/health/article-13030699/gender-transition-custody-battle.html>.

to know that when someone told a child, “don’t tell mommy and daddy about this,” something bad was almost certain to follow.

In this case, the Eau Claire School District in Wisconsin adopted a policy under which schoolteachers and administrators will facilitate students’ social gender transition (using a different name and pronouns inconsistent with the family’s usage) without informing parents or seeking their consent. Petition for Certiorari at 8-9, *Parents Protecting Our Children, UA, v. Eau Claire Area School District, Wisconsin*, No. 23-1280. At the child’s request, the school will exclude his or her parents from the gender support plan process. *Id.*

When it comes to aspirin, though, the Eau Claire School District knows the importance of parental notification and consent. In the Eau Claire Family Handbook of 2023-2024, staff and faculty are instructed that “[n]o medication shall be given to a student by any employee of the District” without “written instructions for dispensing prescribed medication, signed by the prescribing physician/licensed prescriber, along with written authorization from the family authorizing school personnel,” to administer the medication at the prescribed dose.⁶

6. Family Handbook for the 2023-2024 School Year at 36, Eau Claire Area School District <https://www.ecasd.us/getattachment/District/About/Parent-Student-Handbook/ECASD-Family-Handbook-2023-2024-MASTER-final-revised-3.pdf?lang=en-US>. The consent form makes clear that this applies not just to prescribed medication but to over-the-counter drugs as well. Medication Consent Form, Eau Claire Area School District [https://www.ecasd.us/getattachment/District/Departments/Student-Services/School-Nurses/Medication-Consent-Form-\(OTC\)-\(1\).pdf?lang=en-US](https://www.ecasd.us/getattachment/District/Departments/Student-Services/School-Nurses/Medication-Consent-Form-(OTC)-(1).pdf?lang=en-US).

Yet under the policy at issue, the Eau Claire School District will administer significant psychological intervention without the same level of care and caution observed in the administration of an aspirin. If a twelve-year-old girl were feeling discomfort with her body and had heard on TikTok that her discomfort may indicate that her gender does not align with her sex, and she expressed this feeling to a teacher or administrator, the school could institute a gender transition, all, if she so desires, without ever consulting her parents. The negative consequences of such a policy could be lifelong.

The Seventh Circuit, in describing this case, notes that “Unless th[e policy at issue] operates to impose an injury or to create an imminent risk of injury, however—*a worry that may never come to pass*—the association’s concerns do not establish standing to sue and thus do not create a Case or Controversy.” App. 2 (emphasis added). But the parents’ knowledge and agency is the harm. A hypothetical bears this out. If the school’s policy were that a child with arrested development of his left arm should have it amputated without consulting with his parents, surely the parents would not have to wait until their child came home missing a limb to challenge the school’s assertion that their child was “all right.”

While not quite so dramatic, if and when policies such as the one at issue here are enforced, they cause irreversible damage to the children swept up in the “craze” of the moment.⁷ As this Court has recognized

7. See, generally, Abigail Shrier, *Irreversible Damage: The Transgender Craze Seducing Our Daughters* (2021). See also Douglas Murray, *The Madness of Crowds* (2019).

and as the parents in this case argue in their Petition for Certiorari, the rights of both parents and their children can be injured by a policy that, if enforced, would itself violate those rights. *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718-19 (2007); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (“[T]he interest of parents in the care, custody, and control of their children—is perhaps the oldest fundamental liberty interest recognized by this Court.”).

Because this issue has arisen in virtually every circuit and in states around the country, a circuit split on this issue is virtually inevitable, and the consequences to parents and children of the implementation of these policies in any case will be harmful and irremediable, the Court should grant certiorari and find that the parents in this case do indeed have standing.

ARGUMENT

I. The Fundamental Rights of Parents to Control the Upbringing of Their Children Are Being Challenged Throughout the Country.

This case is one instance of a nationwide campaign to deprive parents of their authority over their children and to give to children the authority to make decisions the life-altering consequences of which they cannot understand. This issue has become one of the most litigated questions in American courts over the last several years. Cases have been brought before state or federal courts in at least ten of the twelve circuits addressing questions related to schools’ gender policies and their impact on parental

rights.⁸ As the National Committee on Excellence in Education concluded in its 1983 report, “[i]f an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today,

8. Such cases have arisen in the First Circuit, *Lavigne v. Great Salt Bay Comty. Sch.*, No. 2:23-cv-00158-JDL, 2024 U.S. LEXIS 80828 (D. Maine 2024); *Foote v. Ludlow Sch. Comm.*, No. 22-30041-MGM, 2022 U.S. Dist. LEXIS 236102 (D. Mass. 2022), the Second Circuit, *Vitsaxaki v. Skaneateles Cent. Sch. Dist.*, case no. 5:24-CV-00155 (Jan. 31, 2024), the Third Circuit, *Doe v. Del. Valley Reg’l High Sch. Bd. of Educ.*, No. 24-00107, 2024 U.S. Dist. LEXIS 29292 (D.N.J. 2024); *Platkin v. Marlboro Twp. Bd. of Educ.*, case no. MON-C-000078-23 (Aug. 14, 2023); *Jane Doe v. Pine-Richland Sch. Dist.*, No. 2:24-cv-51, 2024 U.S. Dist. LEXIS 83241 (W.D. Pa. 2024), the Fourth Circuit, Complaint, *Figliola v. Harrisonburg City Pub. Sch. Bd.*, case no. CL22-1304 (June 1, 2022); Complaint, *Thomas v. Loudoun Cnty. Pub. Schs.*, case no. 22003556-00 (June 29, 2022), the Sixth Circuit, *Mead v. Rockford Pub. Sch. Dist.*, 1:2023cv01313 (Dec. 18, 2023); *Kaltenbach v. Hilliard City Sch.*, case no. 2:23-CV-00187 (Jan. 16, 2023), the Seventh Circuit, *Vesely v. Illinois Sch. Dist. 45*, No. 22 CV 2035, 669 F. Supp. 3d 706 (No. D. Ill., E. Div. 2023); *McCord v. South Madison Cmty. Sch. Corp.*, case no. 1:23-cv-866 (May 18, 2023); *T.F. v. Kettle Moraine Sch. Dist.*, No. 2021CV1650, LEXIS 8 (Wis. Cir. Ct. June 1, 2022); *Doe v. Madison Metro. Sch. Dist.*, case no. 20-CV-454 (Feb. 18, 2020), the Eighth Circuit, *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, No. 4:23-cv-00474, 4:23-cv-00478, 2023 U.S. Dist. LEXIS 231840 ¶ 1, 3 (So. D. Iowa 2023); *Parents Defending Educ. v. Lin Mar Cmty. Sch. Dist.*, 83 F.4th 658 (8th Cir. 2023), the Ninth Circuit, *Regino v. Staley*, No. 2:23-cv-00032-JAM-DMC, 2023 U.S. Dist. LEXIS 118967 (E.D. Cal. 2023), the Tenth Circuit, *Wiley v. Sweetwater Cnty. Sch. Dist. No. 1. Bd. of Trs.*, No. 23-CV-0069-SWS, 2023 U.S. Dist. LEXIS 235296, 680 F. Supp. 3d 1250 (D. Wyoming 2023), and the Eleventh Circuit, *Littlejohn v. Sch. Bd. of Leon Cnty.*, No. 4:21cv415-MW/MJF, 647 F. Supp. 3d 1271 (No. D. Fla. 2022).

we might well have viewed it as an act of war.”⁹ In the intervening decades, things have only gotten worse for America’s children and families.

Examples from these circuits are startling.¹⁰ In the First Circuit, a mom found that her daughter had received from school a “chest binder,” a device intended to hide her daughter’s breasts to make her appear more masculine. Complaint at 1-2, *Lavigne v. Great Salt Bay Cmty. Sch.*, No. 2:23-cv-00158-JDL, 2024 U.S. LEXIS 80828 (D. Maine 2024). In the Second Circuit, a school district concealed its facilitation of a twelve-year-old girl’s social gender transition from her mother despite the mother’s repeated requests for information that might shed light on her daughter’s anxiety which was causing her to want to avoid school. Complaint at 1-2, *Vitsaxaki v. Skaneateles Central School District*, case no. 5:24-CV-00155 (Jan. 31, 2024). In the Third Circuit, when a mother, concerned about her child’s school district’s secret gender transition policy, gave written notice of her right and expectation to be notified and consulted about any gender related interventions with her child, the school district responded that it would not do so. Complaint at 5-6, *Doe v. Pine-*

9. National Commission on Excellence in Education, *A Nation at Risk* at 6 (1983) <https://www.reaganfoundation.org/media/130020/a-nation-at-risk-report.pdf>.

10. Nor is it surprising that so many such cases are decided in favor of schools in light of efforts to push this novel gender agenda. See, e.g., *Pride Justice Resource Center Provides Training, Resources to Ensure Equity for Justice-Involved LGBTQ2S+ Youth*, Office of Juvenile Justice and Delinquency Prevention (Oct. 3, 2023) <https://ojjdp.ojp.gov/newsletter/ojjdp-news-glance-septemberoctober-2023/pride-justice-resource-center-provides-training-resources-ensure-equity-justice-involved-lgbtq2s>.

Richland School District, No. 2:24-cv-51, 2024 U.S. Dist. LEXIS 83241 (W.D. Pa. 2024).

In the Fourth Circuit, a school district adopted a policy of not informing parents about their children’s social transition and included in that policy direction to deceptively revert to using the child’s actual name and accurate pronouns whenever speaking with the child’s parents. Petition for Writ of Certiorari at 3-4, *John and Jane Parents 1 v. Montgomery Cnty. Bd. of Ed.*, No. 23-601, *petition for certiorari denied* (May 20, 2024). In the Sixth Circuit, a school hid its facilitation of one couple’s autistic daughter’s social gender transition, only inadvertently revealing that fact to them when an official failed to remove the male pronouns and masculine name from one part of a document, the rest of which had been doctored to hide that material from the parents. Complaint at 1-2, *Mead v. Rockford Public School District*, 1:2023cv01313 (Dec. 18, 2023). In the Seventh Circuit, a teacher was fired for speaking out about her school’s secret gender transition policy. Complaint at 1, *McCord v. South Madison Community School Corporation*, case no. 1:23-cv-866 (May 18, 2023).

In the Eighth Circuit, several parents, including parents of children with developmental disabilities, challenged a school district’s secret transition rule. *Parents Defending Education v. Lin Mar Cmty. Sch. Dist.*, 83 F.4th 658 (8th Cir. 2023). A case in the Tenth Circuit challenges a school’s “gender support plan” policy and the school’s hosting, without notifying parents, after-school meetings for the Genders and Sexualities Alliance. *Lee v. Poudre Sch. Dist. R-1*, Civil Action 23-cv-01117-NYW-STV at 3-4 (D. Colo. May. 16, 2024). After

attending these meetings, one child became depressed and ultimately attempted suicide. *Id.* In the Eleventh Circuit, parents sued over the school's use of inaccurate pronouns and a new name for their daughter and for withholding information from them. *Littlejohn v. Sch. Bd. of Leon Cnty. Fla.*, 647 F. Supp. 3d 1271, 1273-74 (N.D. Fla. 2022).

The importance of the Court's granting of certiorari in this case is further demonstrated by a case out of the Ninth Circuit.¹¹ There, the parents in a California community voted for school district officials who would represent their values. As a result, the school board adopted a policy that protected parents' right to know.¹² However, the state used its power to cram down its view of the issue on the school, demanding that it reverse the policy so that parents would remain in the dark.¹³

These lawsuits represent just a few of the families broken by courts around the country which have taken it upon themselves to deprive parents of their rights. According to Parents Defending Education, 19,606

11. For a case in the federal district court in the Ninth Circuit, see also *Mirabelli v. Olson*, 3:23-cv-00768-BEN-WVG (S.D. Cal. Sep. 14, 2023).

12. Sophie Austin, *California School District Changes Gender-Identity Policy After Being Sued by State*, Associated Press (7:15 PM Mar. 8, 2024) <https://apnews.com/article/california-chino-gender-pronouns-school-board-a8d3f17ec89b2ec8a2e946da37284e5c>.

13. *Id.* See Motion for Summary Judgement, *California v. Chino Valley Unified Sch. Dist.*, Case No. CIVSB2317301, <https://libertyjusticecenter.org/wp-content/uploads/Chino-Valley-Motion-for-Summary-Judgment.pdf>.

schools educating approximately 11,480,581 students have adopted policies that would prevent teachers and staff from informing parents about their child’s claimed gender identity.¹⁴

That the circuits will come to varied conclusions on the questions at the heart of these cases is likely, if not inevitable and the rights of parents everywhere will be at risk until it is made clear that policies like those challenged in the cases discussed above and numerous others unconstitutionally usurp the rights of parents.

Nor are these efforts to undermine parental rights limited to schools’ gender policies. Parents in Indiana had their son removed after the state alleged abuse but then the state did not return him despite dropping its abuse claim. Petition for Certiorari at 2-4, *M.C. and J.C. v. Ind. Dept. of Child Servs.*, No. 23-450 (certiorari denied Mar. 18, 2024). In Ohio in 2018, a juvenile court stripped parents of their legal right to make a life-altering medical decision for their daughter because they would not support her taking a course of hormones nor would they call her by an alternative name. *In re: JNS*, No. F17-334 X (Hamilton County Juvenile Court Feb. 16, 2018).¹⁵ In that case, “the

14. *List of School District Transgender-Gender Nonconforming Student Policies*, Parents Defending Education (Mar. 07, 2023) (updated July 1, 2024) <https://defendingeducation.org/investigations/list-of-school-district-transgender-gender-nonconforming-student-policies/>.

15. A copy of the *In re: JNS* order has been republished at <https://www.wcpo.com/news/local-news/hamilton-county/cincinnati/transgender-boy-from-hamilton-county-wins-right-to-transition-before-college> (last accessed July 3, 2024).

allegations of abuse and neglect were withdrawn,” per an agreement between the parents and the state. *In re: JNS* at 1. Nonetheless, the court granted the daughter’s grandparents, who supported her efforts at gender transition, “the right to determine what medical care shall be pursued at Children’s Hospital and its Transgender Program.” *In re: JNS* at 4.

Similarly, in divorce custody disputes, it has repeatedly been the case that the parent who opposed gender transition was disfavored while the parent seeking to encourage or advance the gender transition of the child in question was favored. For example, in 2019 in Illinois, Jeannette Cooper had enjoyed custody of her twelve-year-old daughter six days and seven nights a week.¹⁶ However, in July of 2019, Ms. Cooper’s ex-husband would not return her daughter after a regular visit because her daughter had begun to identify as transgender and felt “unsafe” with her mother.¹⁷ According to Ms. Cooper, as of August 2022, she had spent less than 10 hours with her daughter since July of 2019, and was only allowed to communicate with her daughter via mail.¹⁸ All this despite her efforts to comply with the government’s demands like attending “support group sessions for parents of transgender-identifying children,” and trying to schedule appointments with a court-ordered therapist, though that therapist had no openings and a full waitlist as of August 2022.¹⁹

16. Kelsey Bolar, *Chicago Mother Loses Custody of Her Daughter-For Insisting that Her Daughter is a Girl*, Independent Women’s Forum, <https://www.iwf.org/identity-crisis-jeannette/>.

17. *Id.*

18. *Id.*

19. *Id.*

The most dramatic of such cases occurred in California in 2022 in which a father named Ted Hudacko lost custody of his son because he was deemed insufficiently supportive of his son's gender identity.²⁰ The details of Mr. Hudacko's ordeal are shocking. Before denying Mr. Hudacko custody of his son, the judge initially presiding over the case, Judge Joni Hiramoto, asked him a series of patronizing questions.²¹ These questions included whether Mr. Hudacko believed being transgender is a sin and whether he preferred to think that his son was just going through a phase.²² After this line of questioning, Judge Hiramoto granted Mr. Hudacko's ex-wife full legal custody of his gender dysphoric son.²³ However, she granted Mr. Hudacko and Ms. Hudacko joint custody of one of their sons,²⁴ and suggested that the only reason he was not awarded partial custody of the other son was his lack of total support for that son's transgender self-identification. Judge Hiramoto was eventually replaced on the case because of her failure to disclose to the parties that she was a parent to, and vocal supporter of, a son who identifies as a woman.²⁵ As of July of 2023, Mr. Hudacko said he had not seen his son in three years.²⁶

20. Abigail Shrier, *Child Custody's Gender Gauntlet*, City Journal (Feb. 07, 2022) <https://www.city-journal.org/article/child-custodys-gender-gauntlet>.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Brandon Showalter, *Inside a Father's Fight to Save His Son in 'Trans Sanctuary State' of California*, Christian Post (July

Custody cases revolving around the gender identity of a child often take years to resolve and thus the opportunity to review a future case might only come after the parents and their child have already been forcefully separated for a significant amount of time. Further, there is no indication that this pressure on families will let up. The distinction between permanent and temporary removal of custody is specious. Any parent knows that being forced to spend years separated from one's child with no knowledge of when it might end is no less painful or harmful because the word "temporary" is stamped on the order.

Likewise, the rights of parents not to have their authority undermined and displaced in schools is being undermined around the country. One court has referred to these as "thorny constitutional issues."²⁷ In fact, the constitutional issues are straightforward. Rather, the organized and vociferous opponents of parents' rights make these issues socially and politically thorny. Parents have the right to direct the upbringing of their children. When the state undermines that control by inserting itself in any but the most extreme circumstances, the parents have suffered a cognizable injury sufficient to grant standing.

17, 2023) <https://www.christianpost.com/news/fathers-fight-to-save-son-in-trans-sanctuary-state-of-california.html>.

27. Willey v. Sweetwater Cnty. Sch. Dist. No 1 Bd. of Trs., No. 23-CV-069-SWS | Casetext Search + Citator

II. Parents' Desire to be Actively Involved in the Question of Their Children's Gender is Imminently Justified.

Parental rights are among the most fundamental of rights. As this Court recognized in *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (emphasis added), “The *fundamental theory of liberty* upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction . . . The child is not the mere creature of the State.” Parental rights have been “established beyond debate as an enduring American tradition.” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). Further, the rights of parents are natural rights that preexist government. As the Court explained, “The liberty interest in family privacy has its source, and its contours are ordinarily to be sought, not in state law, but in intrinsic human rights, as they have been understood in ‘this Nation’s history and tradition.’” *Smith v. Org. of Foster Fams.*, 431 U.S. 816, 845 (1977) (quoting *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977)). Further, “the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.” *Moore*, 431 U.S. at 503. For these reasons, the state may not “unreasonably interfere[] with the liberty of parents and guardians to direct the upbringing and education of children under their control.” *Pierce*, 268 U.S. at 534-35.

Parents of adolescents today face an unprecedented threat to their authority over their own children. An increasing number of teachers, school administrators, child protective agencies, and courts see parents as a danger to their children when they attempt to exercise their best judgment for their children in ways that,

just a matter of years ago, would have been not only unobjectionable, but expected. The first offensive against parental rights is a threat, sometimes tacit, sometimes explicit: if parents fail to act as though their adolescent child has complete self-awareness of both his current and future needs and desires, their child may commit suicide and, darkest of insult to greatest of injury, it will be their fault.²⁸ If this emotional manipulation does not provide the desired results, state intervention is the potentially devastating plan B. In light of the evidence, parental hesitation in the face of a child's sudden expression of gender-related distress is justified. The point of what follows is not that this Court should decide that the spike in adolescent transgender identity is, in fact, a product of social contagion. Rather, it is to show that those state officials who so aggressively claim the moral high ground in fact do not have a basis for replacing, with their own judgment, that of parents who know their children better than anyone else, and certainly better than representatives of the state.

In the past, identification as transgender was very rare.²⁹ Around the mid-2000s, however, there was a significant increase in those seeking treatment for gender dysphoria. To take one example, the number of patients

28. See, e.g., @HHS_ASH, X (Feb. 24, 2022 9:58 AM) https://twitter.com/HHS_ASH/status/1496862186664341505 (“Gender affirming care for transgender youth is essential and can be life-saving.”).

29. See Kaltiala-Heino, Riittakerttu et al., *Gender dysphoria in adolescence: current perspectives*, at 32 (Mar. 2, 2018) (available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5841333/pdf/ahmt-9-031.pdf>).

treated at the Doernbecher Children’s Hospital’s gender clinic in Portland, Oregon, increased by 4,500 percent from 2013 to 2021.³⁰

Such a significant increase suggests that, rather than an organic development, the change is the product of influence by teachers, school administrators, friends or peers, and social media. That influence is leading more young people to conclude that they are transgender as an explanation for, or solution to, other difficulties they are facing, be they the normal emotional and social difficulties of adolescence or other psychological difficulties like depression or anxiety. As Dr. Lisa Littman concludes in an early study of what she termed rapid onset gender dysphoria (“ROGD”), the data,

[S]uggests that not all [adolescents and young adults] presenting at these vulnerable ages are correct in their self-assessment of the cause of their symptoms; some may be employing a drive to transition as a maladaptive coping mechanism; and that careful evaluation is essential to protect patients from the clinical harms of overtreatment and undertreatment.³¹

30. Chad Terhune, Robin Respaut, Michael Conlin, *As more transgender children seek medical care, families confront many unknowns*, Reuters (Oct. 6, 2022) <https://www.reuters.com/investigates/special-report/usa-transyouth-care/>.

31. Lisa Littman, *Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria*, PLoS One at 37 (Aug. 16, 2018) (available at <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0202330&type=printable>).

Dr. Littman also notes, “[a]dolescent-onset gender dysphoria is sufficiently different from early-onset of gender dysphoria that persists or worsens at puberty.”³²

Despite the sudden increase in the numbers of those experiencing symptoms of gender dysphoria, many in the United States, including schools, courts, and professional organizations have adopted an approach to treating those with this condition known as “gender-affirmative care.” This approach depends on the assumption that transgender identity is an innate personal characteristic, and that children and adolescents can know with confidence that they are transgender with no professional assessment.³³

For many adolescents who begin to experience gender dysphoria for the first time, the progression of so-called “treatment” is from “social transition” (dressing as, and using the pronouns of, the opposite sex and using a different name) to chemical and potentially surgical transition. “Social transition,” which is supposed to help a child feel more comfortable with himself or herself, may in fact produce the opposite result. Social transition may well reinforce a psychological state that, on its own, would

32. *Id.* at 39.

33. As Dr. Megan Mooney said in an interview, “[I]t’s believing children. That is the purest essence of gender-affirming care. When a child tells you who they are, you believe them.” Katelyn Burns, ‘*When a Child Tells You Who They Are, You Believe Them*’: *The Psychologist Taking on Texas’ Anti-trans Policies*, *The Guardian* (Mar. 2, 2022) <https://www.theguardian.com/world/2022/mar/02/megan-mooney-texas-psychologist-taking-on-anti-trans-policies>.

likely resolve.³⁴ According to Dr. Riittakerttu Kaltiala, “the top expert on pediatric gender medicine in Finland,” “sees [social transition] as a powerful intervention in a young person’s psychosocial development,” that “can solidify what is otherwise likely to be a passing phase into a more permanent state or mind . . . and put the minor on the path to drugs and surgeries.”³⁵ Such interventions can have permanent effects, such as medically unnecessary mastectomies for young women.³⁶

34. See, Leor Sapir, *Finland Takes Another Look at Youth Gender Medicine*, Tablet (Feb. 21 2023) <https://www.tabletmag.com/sections/science/articles/finland-youth-gender-medicine>.

35. *Id.* See also, Ilya Shapiro, Leor Sapir, John Ketcham, *Correcting the Record on Social Transition*, City Journal (Mar. 23, 2023) <https://www.city-journal.org/article/correcting-the-record-on-social-transition>.

36. Another intervention with permanent physical consequences is the administration of puberty blockers: hormones that interrupt and prevent the normal physical maturation of the child taking them. As the Cass Review out of England notes, the evidence that suppressing puberty leads to positive outcomes is poor. On the other hand, it notes that because of the emotions experienced by many children, especially girls, around the time of puberty, it is unsurprising that suppressing the hormones necessary to pubertal progression would also lead to a temporary reduction in emotional discomfort. *The Cass Review: Independent Review of Gender Identity Services for Young People* at 179 <https://cass.independent-review.uk/home/publications/final-report/>. That fact does not indicate that the long term mental and physical consequences of arresting a young person’s natural psychological and physiological development will have anything other than damaging long-term consequences.

Parents have ample reason not only to doubt their child's sudden assertion of gender identity but also to doubt the reliability of medical professionals in this area given its politicization. Thus, parental concern about gender transition is not only reasonable; it is warranted. Yet parents who object to their child's sudden claims to be transgender face not merely disagreement but vindictive and vicious opposition from multiple directions. Their child, their child's schools, doctors and therapists, and, in some cases, state bureaucrats and courts, will accuse the parents of transphobia and of engaging in behavior that will drive their child to suicide. Faced with such charges, many parents may simply give in and hope for the best. Those with the audacity to stay the course may then face the power of the state and the threat of the removal of their child. Parents should be able, as the greatest experts on their own children, to make decisions about what is best for them, especially when the stakes are so high. These are complicated issues and parents have a right to plant their feet on the ground rather than allowing their families to be swept along by whatever critical theory is asserted by the state.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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