No. 22-2927

In the United States Court of Appeals for the Eighth Circuit

PARENTS DEFENDING EDUCATION, *et al.*,
Plaintiff–Appellants,
v.
LINN-MAR COMMUNITY SCHOOL DISTRICT, *et al.*,
Defendants–Appellees.

On Appeal from the United States District Court for N.D. Iowa, No. 22-CV-78 CJW

BRIEF OF *AMICI CURIAE* WISCONSIN FAMILY ACTION, ILLINOIS FAMILY INSTITUTE, MINNESOTA FAMILY COUNCIL, DELAWARE FAMILY POLICY COUNCIL, HAWAII FAMILY FORUM, THE FAMILY FOUNDATION, ETHICS AND RELIGIOUS LIBERTY COMISSION OF THE SOUTHERN BAPTIST CONVENTION, BAPTIST CONVENTION OF IOWA, CONCERNED WOMEN FOR AMERICA, ETHICS AND PUBLIC POLICY CENTER, NATIONAL LEGAL FOUNDATION, AND PACIFIC JUSTICE INSTITUTE IN SUPPORT OF THE APPELLANTS

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November 10, 2022

CORPORATE DISCLOSURE STATEMENT

None of the *Amici Curiae* have issued shares to the public, and none have a parent company, subsidiary, or affiliate that has issued shares to the public. Thus, no publicly held company can own more than 10% of stock of any *Amicus Curiae*.

TABLE OF CONTENTS

Table of Authorities

Cases

Statutes

Interests of *Amici Curiae*[1]

Wisconsin Family Action, Illinois Family Institute, Minnesota Family Council, Delaware Family Policy Council, Hawaii Family Forum, and The Family Foundation are all non-profit organizations whose mission is to advance strong family values. They further this mission by educational, political, and legal action. Each of these organizations have engaged with issues involving parental rights at public schools in their respective states.

The Ethics and Religious Liberty Commission ("ERLC") is the moral concerns and public policy entity of the Southern Baptist Convention ("SBC"), the nation's largest Protestant denomination, with over 46,000 churches and 15.2 million members. The ERLC is charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and ethics. The proper regard for parental rights and responsibilities is an indispensable, bedrock value for Southern Baptists. The Constitution's guarantee of freedom from governmental interference in matters of faith is a crucial protection upon which SBC members and adherents of other faith traditions depend as they follow the dictates of their conscience in the practice of their faith, including in their family relationships. The Baptist Convention of Iowa is a state convention

[1] No counsel for any party authored this brief in whole or in part. No person or entity other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

entity in partnership with the SBC and over 100 affiliated churches and 15,000 worshipers in the state, and it shares the values of the ERLC and other Southern Baptists.

Concerned Women for America ("CWA") is the largest public policy organization for women in the United States, with approximately half a million supporters in all 50 states. CWA encourages policies that strengthen families and advocates for traditional values that are central to America's cultural health and welfare.

The Ethics & Public Policy Center ("EPPC") is a non-profit research institution dedicated to applying the Judeo-Christian moral tradition to critical issues of public policy, law, culture, and politics. EPPC's programs cover a wide range of issues, including specifically bioethics and human flourishing, governmental and judicial restraint, and personhood and identity. EPPC has a strong interest in promoting the Judeo-Christian vision of the human person and responding to the challenges of gender ideology, particularly as these challenges relate to education and parental rights. The rise of gender ideology has sown confusion, undermined personal well-being, and created an urgent need for clarity, education, and compassionate guidance. EPPC's research, policy, and educational efforts directly engage school administrators, teachers, and parents who are concerned about the spread of gender ideology in schools and the need to protect the irreplaceable role parents play in the lives of their children.

The National Legal Foundation ("NLF") and Pacific Justice Institute ("PJI") are non-profit, public interest legal organizations dedicated to the defense of fundamental liberties foundational to our Republic. Both NLF and PJI have represented clients regarding the parental rights issues involved in this case, including in pending litigation.

Summary of Argument

The transgender policy of the Linn-Mar Community School District in part hides from parents that their children are expressing as transgender at school. Those challenged portions, which we denominate the "Parental Preclusion Policy," violate the rights of parents in two principal respects not addressed in detail by the Plaintiff Parents. First, their fundamental right to direct the care and education of their children includes the right to decide where the child will attend school, but the Parental Preclusion Policy improperly denies them critical information to inform that decision, without suitable justification. Second, by withholding such sensitive information, the school denies the parents applicable due process procedural protections. Both of these constitutional violations provide irreparable injury that fully supports the requested injunctive relief.

Argument

Your *Amici* concur with the Plaintiff Parents that the district court's opinion regarding standing contravenes well established law. A party does not have to wait until constitutional harm has occurred to him—especially when, by design, the injury is being hidden and lied about—before challenging the state action. *See MedImmune, Inc. v. Genentech, Inc.,* 549 U.S. 118, 128-29 (2007). But we will leave it to others to explicate that point further. We focus on the violations of the fundamental substantive and procedural due process rights of parents by those portions of the LMCSD transgender policy that preclude parental involvement, notice, and control.

I. The Parental Preclusion Policy, by Depriving Parents of Important Information, Violates Their Fundamental Right to Care for and Educate Their Children, Including Determining Which School They Attend

The Constitution protects parental interests as fundamental. In this section, we emphasize that denying parents important information they need to determine whether their child should continue to attend a public school, as the Parental Preclusion Policy does, is a violation of those rights. This policy's underlying rationales—that parents do not

act in their children's best interest and schools may trump parental authority when they suspect they might disagree with parental decisions—provide no permissible justification whatsoever.

LMCSD's defense of its Parental Preclusion Policy is premised on the fact that whether a minor will exhibit as transgender is a matter of significant importance to that child. *A fortiori*, it is an issue of significant importance to the *parents* of that child. Indeed, the Parental Preclusion Policy itself, by instructing school personnel to conceal information from parents about it, implicitly recognizes that parents have a substantial interest in their children's transgender behavior. *See H.L. v Matheson,* 450 U.S. 398, 410 (1982) (holding that parent's rights include counseling their children on "important decisions").

The Parental Preclusion Policy has a direct effect on familial relationships. It permits students and schools to determine the name and pronouns that a student will use at school, to decide the gender of those that the child will sleep with on school trips, to select which restroom and locker room to use at school, and to determine which gender sports teams to join, all without parental notification or consent. It is obvious that permitting a child to present one way at school and

another at home creates an emotional distance from the parents and threatens alienation from them after they discover that this behavior has been kept secret from them. The Parental Preclusion Policy does not deal with just internal "school matters." *See C.N. v Ridgewood Bd. of Educ.,* 430 F.3d 159, 184 (3d Cir. 2005); *see also Hensler v. City of Davenport*, 790 N.W.2d 569, 581 (Iowa 2010) (applying federal law, ruling that state actors infringe upon fundamental parental rights when they "directly and substantially intrude into [a parent's] parental decision-making authority over her child").

It has long been established that a key component of the parents' constitutionally protected responsibilities is to decide whether or not to send their children to public schools. *See Wis. v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925). That right is not extinguished as soon as parents put their child in public kindergarten. At any point, and based on ever-changing circumstances unique to their own situation and their child's needs and interests, they may revisit their decision to send their child to a public school, even mid-term. *See Yoder*, 406 U.S. at 213-15. For parents to be able to make the determination of whether attending a LMCSD school is in their child's

best interest, they cannot be denied information that all concede may be important to that decision. LMCSD personnel cannot, on their own motion, freely withhold relevant information to the very parents who may wish to withdraw their child due to the school's "philosophy" and its application to their own child. Plaintiff Parents have fundamental interests threatened here that cannot be shut out by the schoolhouse door. It is parents, not schools, who have a fundamental liberty interest "to direct the education and upbringing of [their] children." *Glucksberg v. Wash.*, 521 U.S. 702, 720 (1997).

While gender dysphoria, like other medical conditions, may need to be addressed while the child is in school, it is not part of the primary educational mission for which parents have entrusted their children to the public schools. It is a core parental issue involved in the care, health, and welfare of their children. The curricular exception is simply a recognition that parents have voluntarily handed over certain authority to a school to set general rules and curricula as necessary to allow it to function. It has never been held to allow schools to hide those rules or curricula (or anything else) from parents. For example, a school certainly could not refuse to disclose student grades to their

parents because the students were afraid of the parents' reaction, even though grades are central to the educational function of the school. Much less can a school withhold information from parents about their child's transgender behavior, which is not.

And the challenged portions of the transgender policy are those which preclude information from parents, portions which focus and are admittedly formulated not so much to govern what happens at school as to regulate what *might* happen at *home*. The words of the United States Court of Appeals for the Third Circuit in an analogous case are apt here:

> School-sponsored counseling and psychological testing that pry into private family activities can overstep the boundaries of school authority and impermissibly usurp the fundamental rights of parents to bring up their children, as they are guaranteed by the Constitution. Public schools must not forget that "*in loco parentis*" does not mean "displace parents."
>
> It is not educators, but parents who have primary rights in the upbringing of children. School officials have only a secondary responsibility and must respect these rights. State deference to parental control over children is underscored by the [Supreme] Court's admonitions that the child is not the mere creature of the State, and that it is the parents' responsibility to inculcate moral standards, religious beliefs, and elements of good citizenship.

Gruenke v. Seip, 225 F.3d 290, 307 (3d Cir. 2000) (internal citations and quotations omitted).

To the extent compelling interests are involved, they also support providing this information to the parents. It is profoundly wrong for the district court to imply, just because complaining parents challenge the school's preclusion policies, that they want their own children to be bullied. *See Santi v. Santi,* 633 N.W.2d 312, 320-21 (Iowa 2001) (reciting federal and state laws' "presumption that fit parents' decisions will benefit their children, not harm them"). Parents undoubtedly share the goal to prevent their children from suffering harassment or bullying, and they obviously wish to provide the support and comfort that the child needs to resist and recover from any such behavior they may experience. But parents cannot do that if they are kept in the dark. And one solution to such harassment may be to remove the child from the entire situation by changing schools. Providing a safe school environment does not allow schools to dictate how *parents* treat or instruct their children, even if school personnel might happen to disagree. Much less does it allow schools to alter information provided by parents to the school and hide that fact from them, preventing

parents from providing additional assistance, tailored to their children, to minimize the difficulties and noted dangers of a child contemplating a gender transition.

Another stated purpose of the Parental Preclusion Policy is to protect the child's privacy. Your *Amici* agree that minor children have privacy rights vis-à-vis governmental school officials. But minor children have no right to keep secrets from their own parents, which is what is involved here. And children cannot manufacture any such "right" by disclosing matters first to school personnel. As the United States Court of Appeals for the Fifth Circuit noted in a related context, it "has never held that a person has a constitutionally-protected privacy interest in her sexual orientation, and it certainly has never suggested that such a privacy interest precludes school authorities from discussing with parents matters that relate to the interests of their children." *Wyatt v. Fletcher*, 718 F.3d 496, 505 (5th Cir. 2013). The same applies to gender identity.

In the recent case of *Ricard v. USD 475 Geary County, KS School Board*, 2022 WL 1471372 (D. Kan. May 9, 2022), the district court expressed amazement that a school would even believe it permissible to

violate parental rights by having a policy preventing teachers from telling parents that the school was using names and genders other than those given by the parents for their children:

> It is difficult to envision why a school would even claim—much less how a school could establish—a generalized interest in withholding or concealing from the parents of minor children[ ] information fundamental to a child's identity, personhood, and mental and emotional well-being such as their preferred name and pronouns.

Id. at *8 (footnote omitted).

II. LMCSD Has No Permissible Justification for the Parental Preclusion Policy

LMCSD's infringement of fundamental parental rights in the Parental Preclusion Policy is without permissible justification. It states neither a rational nor compelling interest for the State to adopt a policy on the basis either that a minor child is fully competent to make major life decisions or that it understands the child's best interests better than do the parents.

Nor can the Parent Preclusion Policy be justified by generalized resorts to "privacy" and "safety." *See Brown v. Entertainment Merchants Ass'n,* 564 U.S. 786 (2011); *see also R.A.V. v. St. Paul,* 505 U.S. 377 (1992). The Supreme Court in *Gonzales v. O Centro Espirita*

Beneficente Uniao Do Vegetal, 546 U.S. 418 (2006), interpreting the Religious Freedom Restoration Act ("RFRA") but explaining that Congress "expressly adopted the compelling interest test of *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972)" in RFRA, held that, in *Sherbert* and *Yoder*, "this Court looked beyond broadly formulated interests justifying the general applicability of government mandates, scrutinized the asserted harms, and granted specific exemptions to particular religious claimants." *Id.* at 430-31 (citing *Yoder*, 406 U.S. at 213, 221, 236; *Sherbert*, 374 U.S. at 410). And the Court went on to point out that this rule requiring particularity applies broadly when any fundamental rights are involved: "Outside the Free Exercise area as well, the Court has noted that '[c]ontext matters' in applying the compelling interest test, and has emphasized that strict scrutiny's fundamental purpose is to take 'relevant differences' into account," *id.* at 431-32 (quoting *Grutter v. Bollinger*, 539 U.S. 306, 327 (2003), and *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 228 (1995)). For instance, the Supreme Court in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), in considering whether there was a compelling interest supporting the challenged HHS regulation rejected

HHS's articulation of interests in very broad terms such as promoting "public health" and "gender equality," requiring instead a focus on the interests served by the particular application to the plaintiffs. *Id.* at 2779; *accord Fulton v. Phila.,* 141 S. Ct. 1868, 1881 (2021) (applying to First Amendment violation).

It is not just "privacy" that is involved here; it is, more particularly, an asserted right of children to keep information private *from their parents*. And it is not just "safety" that is involved; it is, more particularly, an asserted right by school personnel to decide unilaterally when parents may be abusive to their children. While the Parental Preclusion Policy's attack on the parents' fundamental rights must properly be justified under strict scrutiny, here LMCSD cannot even satisfy rational basis review, because none of its asserted interests is properly focused or legally sufficient.

At its base, the "interests" asserted by LMCSD are nothing more than a statement that the school might not agree with what the parents might say to or instruct their children. Thus, this situation is directly analogous to a governmental entity justifying a restriction on speech by arguing that it does not like the substance of what is being said. This,

of course, is not a legitimate interest, but a repudiation of a fundamental right: "We have said time and again" that speech may not be prohibited "merely because the ideas are themselves offensive to some of their hearers." *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) (citations omitted) (Alito, J.). Similarly, a school may not subvert parental rights merely because the school prognosticates that it may disagree with how parents will exercise their fundamental rights with their minor children. Paraphrasing *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 579 (1995), a public school "is not free to interfere with [parental rights] for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." The district court in *Ricard* applied this teaching directly in this context:

> Presumably, the [school] District may be concerned that some parents are unsupportive of their child's desire to be referred to by a name other than their legal name. Or the District may be concerned that some parents will be unsupportive, if not contest, the use of pronouns for their child that the parent views as discordant with a child's biological sex. But this merely proves the point that the District's claimed interest is an impermissible one because it is intended to interfere with the parents' exercise of a constitutional right to raise their children as they see

> fit. And whether the District likes it or not, that constitutional right includes the right of a parent to have an opinion and to have a say in what a minor child is called and by what pronouns they are referred.

2022 WL 1471372 at *8 (footnote omitted). LMCSD's purported "interests" are illegitimate because they are simply attempted justifications for wanting to displace parents as the ones primarily responsible for the care and nurturing of the parents' children.

The Parental Preclusion usurps the parental role concerning children exhibiting as transgender. Without a discussion with his or her parents on this sensitive subject, a child very likely will not know the parents' views, concerns, or thoughts with respect to transgenderism. LMCSD personnel, out of imagined fear for the child's safety, may lead the child not to bring this matter to the parents' attention, as long as there is any perceived ambivalence about the parents' support. What is also very clear is that the LMCSD employee involved with surveying the child likely is not professionally qualified to counsel on gender transformation. Nor does the LMCSD Policy provide that the school district is going to pay for professional assistance for the child, despite the fact that adolescents acting out gender transformation roles are much more prone to suicide and that the vast majority of

children who experience gender dysphoria ultimately find comfort with their biological sex as they mature. Does the school's supposed "right" to decide what's best for minors go so far as to allow school personnel to hide from parents that their child is considering or has attempted suicide? *See Perez v. Broskie*, No. 3:22-cv-0083-TJC-JBT (M.D. Fla., amended complaint filed Mar. 11, 2022) (parents alleging school violated parental rights by assisting their child to transition at school without informing them of such counseling or suicide attempts). This Parental Preclusion Policy raises the not insubstantial specter of parents suing for wrongful death of their minor children because their parental rights were violated and their children were deprived of counseling, both parental and professional, that parents would have provided but for the LMCSD policy of secrecy and dissembling. *See, e.g., Littlejohn v. Sch. Bd. of Leon Cnty. Fla.,* No. 4:2021cv004-15 (N.D. Fla., complaint filed Oct. 18, 2021) (action by parents of minor child for secretly aiding their child to exhibit as transgender in middle school); *Konen v. Caldiera,* http://libertycenter.org/cases/konen/ (admin. claim filed against California public school and its officials by parent and her minor child for secretly counseling and assisting minor to exhibit as

trans at middle school; *cf. Arnold v. Bd. of Educ. of Escambia Cnty., Ala.*, 880 F.2d 305, 311-12 (11th Cir. 1989) (finding school violated parental rights by keeping daughter's pregnancy secret from them). The Policy has no legitimate justification.

III. The Parental Preclusion Policy Also Violates the Procedural Due Process Rights of Parents by Presuming They Are Neglectful or Abusive

Some of the implied assumptions on which the Parental Preclusion Policy relies are these:

1. Minor children know what is best for themselves on all occasions, at least when sexual matters are concerned.
2. Minor children always know when their parents should be consulted on matters related to gender.
3. School personnel will never unduly influence minor children when helping a child to determine whether parents should be consulted on a matter related to the child's gender.

None of these assumptions are reasonable, and, both individually and in combination, they are obviously inadequate to overcome the fact that the care and nurture of the minor child lies first and foremost with the parents. *See Parham,* 442 U.S. at 602. These supporting assumptions,

like the "privacy" rationale, are nothing but bald presumptions that minors and school personnel know better than parents what is best for their minor children. The law begs to differ. As the Supreme Court instructed in *Parham*, the fact that "the decision of a parent is not agreeable to a child or . . . involves risks" "does not diminish the parents' authority to decide what is best for the child," nor does it "automatically transfer the power to make that decision from the parents to some agency or officer of the state." 442 U.S. at 603–04; *see also Doe v. Heck,* 327 F.3d 492, 521 (7th Cir. 2003) (finding a violation of parents' rights when state actors "not only failed to presume that the plaintiff parents would act in the best interest of their children, they assumed the exact opposite").

The Parental Preclusion Policy is bottomed on another, thinly veiled assumption that parents might expose their children to harm and abuse if the potential gender dysphoria of their child is revealed to them. Even if there were evidence of abuse occurring in some situations, it does not permit a broad, prophylactic abridgement of constitutional rights. An individual's fundamental rights may not be

foreclosed, without notice, based on a generalized suspicion of some of the members of the class to which the individual belongs.

The Supreme Court has repeatedly applied this principle in parental rights settings. For example, in *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982), the Court held that the State must find that a parent is guilty of neglect by clear and convincing evidence before abridging parental rights; and in *Stanley v. Illinois*, 405 U.S. 645, 656-58 (1972), the Court held that due process requires a natural parent to be given a hearing prior to a determination of neglect. The Supreme Court has summarized, "The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition." *Parham v. J.R.*, 442 U.S. 584, 603 (1979) (emphasis in original); *see also In re Winship*, 397 U.S. 358, 365-66 (1970) (remarking that "labels and good intentions do not themselves obviate" due process safeguards); *Santi*, 683 N.W.2d at 320-21 (statute overriding parents' decision on grandparent visitation found unconstitutional under state constitution with same due process protections as the Fourteenth Amendment because "it does not require a threshold finding of parental unfitness").

Consonant with these federal constitutional requirements, the Iowa legislature has enacted specific procedures for dealing with abusive and neglectful parents. If there is a particularized concern that parents may abuse their own child, those laws set out the process to be followed, a process that includes full notice to parents of any suspected abuse or neglect and the right to respond before a neutral judicial officer. *See, e.g.*, Iowa Code §§ 232.82 (requiring judicial hearing to determine if a child should be removed from parents suspected of physical abuse); 232.95, 232.104 (hearing required before temporarily or permanently removing a child from the parents due to suspected child abuse); 231.71C (hearing required before guardian *ad litem* appointed in the case of potential child abuse); *see also* Iowa Code §§ 600A (outlining extensive parental due process rights under the Judicial Procedures section before a court may terminate parental rights); 232.C (allowing emancipation of children over 16 only after parental notification, a hearing, and a finding by the court of "clear and convincing" evidence that such is in the best interest of the child).

Notification, hearing, judicial fact-finding, following statutory requirements, and a heightened standard of proof are all procedural due

process protections required before parents may be deprived of their fundamental liberty interest in the care of their children. *See Santosky,* 455 U.S. at 747-48; *Stanley,* 405 U.S. at 656-58. And far from Iowa law attempting to circumvent any such constitutional protections, as the district court impliedly asserts, it fully recognizes and enforces them. *See, e.g., In the Interest of P.L.,* 778 N.W.2d 33, 38 (Iowa 2010); *In re Dameron,* 306 N.W.2d 743, 745 (Iowa 1981); *In the Interest of C.F.-H.*, 889 N.W.2d 201 (Iowa 2016) (reversing termination of parent rights on ground that state had not demonstrated full compliance with statutory requirements). Parental rights may not be eliminated in secret by a school policy.

Recently, the Wisconsin Supreme Court had before it a school transgender policy including provisions very much like that of LMCSD in the Parental Preclusion Policy. While the majority of the court in *John Doe 1 v. Madison Metropolitan School District*, 2022 Wis. 65, did not reach the merits, the three justices who did recognized that parental rights cannot be abridged without affording parents their established, procedural due process protections:

> The constitutional presumption is that parents will act in the best interest of their child. *Troxel*, 530 U.S. at

> 69. Allowing a school to reassign a child's gender, flips this constitutional presumption on its head by assuming that parents will not act in their child's best interest. Both the United States Constitution and the Wisconsin Constitution support the conclusion that MMSD's Policies cannot deprive parents of their constitutional rights without proof that parents are unfit, a hearing, a court order, and without according parents due process. Instead, under MMSD's explicit guidelines, parents are affirmatively excluded from decision-making unless their child consents.

Id. ¶ 89 (Roggensack, J., dissenting). The same applies for LMCSD and its substantively identical policy.

School personnel (who have undoubtedly in almost all cases spent much less time with the child than the parents have) have no right to withhold from parents (or allow minor children to withhold) that their child is exhibiting as transgender in school. Allowing them to do so, in their sole discretion and without any requirement that any grounds for that decision be proffered and without any indication of what the parental response might be, unconstitutionally usurps the parents' role. It is parents that the law presumes know their own children best and are best positioned and motivated to protect and counsel them. *See Parham*, 442 U.S. at 602-04. It is parents who are given the primary right to care for their child, not school counselors, teachers, or principals. *See Stanley*, 405 U.S. at 651; *Gruenke*, 225 F.3d

at 307. Of course, there are instances in which parents, in exercising their rights, fall woefully short of their responsibilities to act in their child's best interest. But fundamental parental rights, like other fundamental rights, may only be curtailed or withheld after notice and due process. They may not be withheld utilizing amorphous standards interpreted solely in a government official's discretion. School officials by the expedient of publishing their own "policy" cannot give themselves authority to bypass the due process protections set up to regulate neglect and abuse by parents—implementing their own standards, in their own ways, on an unreviewable, case-by-case basis.

Conclusion

This Court should reverse with instruction to enter a preliminary injunction in the Plaintiff Parent's favor.

Respectfully submitted, this 10th day of November, 2022,

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CERTIFICATE OF COMPLIANCE AND VIRUS SCANNING

I certify that this brief complies with the type-volume limitations of F.R.A.P. 32(a)7(B)(i) and F.R.A.P. 29(a)(5). Exclusive of the exempted portions, this brief contains 4,671 words, including footnotes, in 14-point Century Schoolbook font. This total was calculated with the Word Count function of Microsoft Office Word 365.

The electronic version of the brief has been scanned for viruses and is virus-free.

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2022, I served the foregoing Brief *Amici Curiae* of Wisconsin Family Action, *et al.*, on all parties or their counsel of record through the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service on those participants will be accomplished by the CM/ECF system.

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