STATE OF WISCONSIN CIRCUIT COURT BRANCH 8 DANE COUNTY

JOHN and JANE DOE 1, et al.,

Plaintiffs,

v. Case No. 20-CV-454

MADISON METROPOLITAN SCHOOL DISTRICT,

Defendant.

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR A TEMPORARY INJUNCTION

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TABLE OF CONTENTS

INTRODUCTION

This action seeks to vindicate parents' constitutional right to direct the upbringing of their children. The Madison Metropolitan School District (the "District") has violated this fundamental right by adopting a policy designed to circumvent parental involvement in a pivotal decision affecting their children's health and future. The policy enables children of *any age* to transition to a different gender identity at school, by adopting a new name and pronouns to be used at school, without parental notice or consent, and then prohibits staff from communicating with parents about this change without the child's consent. Even worse, the policy directs staff to actively deceive parents in some circumstances by reverting to the child's birth name and corresponding pronouns when the child's parents are nearby.

Whether a child with gender dysphoria should socially transition to a different gender identity is a highly controversial and consequential decision, and is therefore the type of decision that falls squarely within parental decision-making authority. In fact, many mental health and psychiatric professionals believe that children with gender dysphoria should *not* immediately transition and that transitioning may actually do significant harm. Plaintiffs seek an injunction to prevent the District from facilitating potentially life-altering changes to their children's identities without Plaintiffs' involvement while this lawsuit is pending. And an injunction will not harm the District or children in any way; it will simply require the District to do what has long been the constitutionally-protected rule for decisions of this magnitude—defer to parents.

BACKGROUND

A. Background on Gender Dysphoria and Treating Children with Dysphoria

"Transgender" individuals believe they have a "gender identity" that does not match their biological sex. Levine Aff ¶ 13. "Gender dysphoria" refers to the psychological distress frequently

associated with a mismatch between a person's biological sex and his or her self-perceived or desired gender identity. Levine Aff. ¶ 13. Gender dysphoria is a serious condition that typically requires treatment and support from mental health professionals. Levine Aff. ¶¶ 16, 19–20, 41, 54–59, 73, 79, 80–82, 114.

The origins and causes of transgenderism and gender dysphoria are still largely unknown. Levine Aff. ¶¶ 10, 29, 85–89. Some mental health and psychiatric professionals believe that gender dysphoria is driven primarily by social and environmental factors. Levine Aff. ¶¶ 10, 25–27. Others believe that "gender identity" has a biological basis, such that a person can be born with a gender identity different from his or her biological sex. Levine Aff. ¶¶ 10, 23, 26. Regardless of who is correct about the underlying causes, a robust body of research has shown that the vast majority of children (roughly 80–90%) who experience gender dysphoria ultimately find comfort with their biological sex and cease experiencing gender dysphoria as they age (unless they transition, as discussed further below). Levine Aff. ¶ 60 (listing studies); *see* World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* at 2 (version 7, 2012), available at https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care_V7%20Full%20Book_English.pdf (listing studies), Berg Aff.[1] Ex. 6 ("WPATH Guidelines").

Given this evidence, and the uncertainty surrounding the underlying causes, there is significant disagreement within the mental health and psychiatric community over how to treat gender dysphoria in children. Levine Aff. ¶¶ 22–44; *see also* Jesse Singal, *How the Fight Over Transgender Kids Got a Leading Sex Researcher Fired*, The Cut (Feb. 7, 2016), https://www.thecut.com/2016/02/fight-over-trans-kids-got-a-researcher-fired.html, Berg Aff. Ex. 7.

[1] Submitted with Plaintiffs' motion to proceed anonymously.

Many mental health professionals believe that children experiencing gender dysphoria can learn to find comfort with their biological sex and therefore support psychotherapy to help identify and address the underlying causes of the dysphoria. Levine Aff. ¶¶ 32–37. Plaintiffs' expert, Dr. Stephen B. Levine, has over forty years of experience working with transgender individuals, Levine Aff. ¶ 4, and has "seen children desist even before puberty in response to thoughtful parental interactions and a few meetings of the child with a therapist." Levine Aff. ¶ 37. Another prominent example of this approach is Dr. Kenneth Zucker, a clinical psychologist who for over three decades operated "one of the most well-known clinics in the world for children and adolescents with gender dysphoria" and treated numerous children using this approach, with many positive testimonies from parents. Berg Aff. Ex. 7 (Singal article recounting some parents' stories). A different group of health professionals believe that the best response is to "affirm" a child's perceived gender identity. Levine Aff. ¶¶ 38–44. In between these two approaches is a "watchful waiting" or "hands off" approach that allows the child's gender identity to evolve on its own without any intervention in either direction (while possibly treating any associated psychological distress, without an emphasis on gender). Levine Aff. ¶¶ 30–31.

One particularly controversial issue is whether children with gender dysphoria should socially transition to living under a different gender identity (i.e. adopt a new name and pronouns). Levine Aff. ¶ 68. Many health professionals believe that children should *not* socially transition early because transitioning may cause them to solidify and retain a transgender identity when the dysphoria might otherwise have resolved itself. Levine Aff. ¶¶ 63–69. Dr. Zucker, for example, has publicly argued that "affirming" an alternate gender identity too early may cause gender dysphoria to "become self-reinforcing" because "messages from family, peers, and society do a huge amount of the work of helping form" a child's gender identity. Berg Aff. Ex. 7 (Singal

article); Kenneth J. Zucker, *The Myth of Persistence: Response to "A Critical Commentary on Follow-Up Studies & 'Desistance' Theories about Transgender & Gender Non-Conforming Children" by Temple Newhook et al.*, 19:2 Int'l J. of Transgenderism 231 (2018) ("I would argue that parents who support, implement, or encourage a gender social transition (and clinicians who recommend one) are implementing a psychosocial treatment that will increase the odds of long-term persistence."), available at https://www.researchgate.net/publication/325443416. Recent research supports this concern, suggesting that social transition "dramatically changes outcomes" in desistance rates. Levine Aff. ¶¶ 63–64. The findings from one study showed that fewer than 20% of boys who socially transitioned prior to puberty ultimately reverted to living with an identity consistent with their biological sex, compared to the 80-90% desistance rates shown in prior studies. Levine Aff. ¶ 64.

Even the World Professional Association for Transgender Health ("WPATH")—an advocacy organization that endorses an "affirming" approach, *see* Levine Aff. ¶¶ 45–53—acknowledges that "[s]ocial transitions in early childhood" are "controversial," that "health professionals" have "divergent views," that "[f]amilies vary in the extent to which they allow their young children to make a social transition to another gender role," and that there is insufficient evidence at this point "to predict the long-term outcomes of completing a gender role transition during early childhood." *See* WPATH Guidelines at 17. WPATH therefore encourages health professionals to *defer to parents* as "as they work through the options and implications," *even* "[i]f parents do not allow their young child to make a gender-role transition." *Id*.

In other words, when a child begins to wrestle with gender dysphoria, there is a critical fork in road: should the child immediately transition to a different gender identity? Or could consultation with a professional help the child identify the origins of the dysphoria and learn to

embrace his or her biological sex? Or would a "watchful waiting" approach be best? There are no easy answers to these questions, but the debate over these alternatives shows that socially transitioning to a different gender identity is a significant and controversial psychotherapeutic intervention that has the potential to dramatically alter outcomes for children with gender dysphoria.

While the questions in this area are far from settled, there is significant consensus on one thing: that children with gender dysphoria and their parents can substantially benefit from professional assistance and counseling "as they work through the options and implications." *See* WPATH Guidelines at 13–17; Levine Aff. ¶¶ 41–44; 54–59, 73, 80.

B. The Madison School District's Policy

In April 2018, the Madison School District adopted a set of policies pertaining to transgender students, in a document entitled "Guidance & Policies to Support Transgender, Non-binary & Gender-Expansive Students." Berg. Aff. Ex. 1 (cited hereafter as "Policy"). In a section entitled "Gender 101," the Policy explains the District's view that each person has a "gender identity" distinct from his or her biological sex, which "can be the same as or different from their sex assigned at birth." Policy at 13. According to the Policy, a person's gender identity can be "male, female, a blend of both or neither" and is determined entirely by "a person's internal sense of self." Policy at 13. The Policy repeatedly emphasizes that the Madison School District is committed to "affirm[ing]" each student's self-perceived gender identity, Policy at 1, 13, effectively choosing a side in the debate among healthcare professionals described above.

The District's policy declares that Madison schools "will strive to … disrupt[ ] the gender binary," and will pursue this "disruption" through "books and lessons," "limit[ing] gendered and binary language," and interrupting and correcting "misconceptions about gender or language that

reinforces the gender binary." Policy at 24. For example, the District recommends the book "I am Jazz" for classroom use for grades K–5, a book that teaches children that some people are "born with" "a girl brain, but a boy body." *See* Books and Lessons, MMSD Welcoming Schools, https://sites.google.com/madison.k12.wi.us/mmsd-welcoming-schools/home/for-educators/books-lessons?authuser=0 (last visited Feb. 11, 2020). Just a few weeks ago, as part of a "Black Lives Matter week," *see Black Lives Matters*, Madison Metropolitan School District, https://studentservices.madison.k12.wi.us/black-lives-matter, the District provided teachers, including kindergarten teachers, with a "Black Lives Matter" coloring book to distribute to their students that includes a page teaching children that "Everyone has the right to choose their own gender by listening to their own heart and mind. Everyone gets to choose if they are a girl or a boy or both or neither or something else, and no one else gets to choose for them." Compl. Ex. 6. And last May, a Madison elementary school played a teacher's gender transition video to the entire school, kindergarten through fifth grade. *See* Caleb Parke, *Wisconsin parents outraged after teacher gives transgender lesson to K-5th grade without permission*, Fox News (June 4, 2019), https://www.foxnews.com/us/wisconsin-teacher-transgender-parents-lesson. The teacher read the book "They call me Mix" to the children, including statements like: "Are you a boy or a girl? How can you be both? Some days I am both. Some days I am neither. Most days, I am everything in between," and "Many people understand that my gender is something for only me to decide." *Id*.

The Policy contains a number of specific provisions that interfere with the rights of parents to be fully involved in addressing these issues with their children. Consistent with federal law, the Policy requires parental consent before students may change their name or gender in the District's *official* records. Policy at 18; 34 CFR §§ 99.3; 99.4; 99.20(a). Nevertheless, the Policy enables children, of any age, to socially transition to a different gender identity at school by selecting a

new "affirmed name and pronouns" to be used at school "regardless of parent/guardian permission to change their name and gender in [the District's] systems." Policy at 18. While the Policy instructs that this name change is to be carefully kept out of the District's *official* systems, it is still very much an official change—the Policy requires all teachers and district staff to "refer to students by their affirmed names and pronouns" (as opposed to their actual legal names) and failure to do so is considered "a violation of the [District's] non-discrimination policy." Policy at 18. The Policy then prohibits teachers and other staff from "reveal[ing] a student's gender identity"—including the student's new "affirmed name and pronouns" being used at school—"to … parents or guardians … unless legally required to do so or unless the student has authorized such disclosure." Policy at 9 (emphasis added); *see also* Policy at 11 (instructing staff "not to 'out' students while communicating with family[ ]"). Furthermore, the Policy directs staff to take affirmative steps to deceive parents, by "us[ing] the student's affirmed name and pronouns in the school setting, and their legal name and pronouns with family." Policy at 16.

The District provides teachers with a form, entitled "Gender Support Plan," to use if a student expresses a desire to change gender identity at school. Berg Aff. Ex. 2 at 1. The first two questions on the form are, "What affirmed name and pronouns will the student use?" and "Is the student using a different name / different pronouns at home?" Berg Aff. Ex. 2 at 1. The form notes that parental consent is required to change name or gender in the *official* records and directs teachers to a different form for that purpose, but then states that "[s]tudents can still use their affirmed name and pronouns in MMSD without parent/legal guardian permission." Berg Aff. Ex. 2 at 1. In a section entitled "family support," the form asks, "Will the family be included in developing a gender support plan?" with a blank space for teachers to fill in after making this critical decision. Berg Aff. Ex. 2 at 1. The only guidance for teachers in deciding whether to

include parents in developing the "gender support plan" is the question, "Does this student have family support around their gender identity?" Berg Aff. Ex. 2 at 1. The form does not contain any definition of what qualifies as "support," but leaves to teachers, District administrators, or the child to decide whether families are sufficiently "supportive" to be consulted. Finally, to evade the state law that requires Wisconsin schools to give parents access to all education records, Wis. Stat. § 118.125, the form directs teachers to keep this paperwork "in your confidential files, not in student records." Berg Aff. Ex. 2 at 1.

The Madison School District has trained its teachers about these policies. Berg Aff. Ex. 3. The training walked teachers through a hypothetical scenario in which a student named "Jadyn" informs a teacher that he or she would like to change gender at school. Berg Aff. Ex. 4 at 10. The training video states that "Jadyn has the right to use their affirmed name and pronouns in school, even without changes in Infinite Campus [the official records] *or family permission*." Berg Aff. Ex. 5 at 3 (emphasis added); Berg Aff. Ex. 4 at 11. A section on the next slide entitled "Involving Families" explains that teachers in this situation should "[f]ind out from Jadyn if family is supportive of their [Jadyn's] gender identity" and "*if so*, then involve them [the parents] in the gender support planning process." Berg Aff. Ex. 4 at 12 (emphasis added). But if the family is not "supportive" of a gender transition (as determined by the District's, teacher's, or child's view of what counts as "supportive"), the training emphasizes that teachers must "[m]ake sure not to disclose information about Jadyn's gender identity without their [Jadyn's] permission." Berg Aff. Ex. 4 at 12. The narration reiterates the point: "It is crucial not to disclose any information about Jadyn's gender identity *to family* without their [Jadyn's] permission." Berg Aff. Ex. 5 at 4 (emphasis added).

The training also reinforces that the District's Policy applies to students *of any age*. Early in the video, the narrator explains that "[m]ore and more students from *elementary* through high school are transitioning, and we should assume that we have students who are transgender in *every classroom*." Berg Aff. Ex. 5 at 2 (emphases added).

C. Background on Plaintiffs

Plaintiffs are all parents of children in the Madison Metropolitan School District, with children at Crestwood, Emerson, Frank Allis, Lindbergh, Lowell, Midvale, and Thoreau elementary schools, Georgia O'Keefe middle school, and East, La Follette, and James Madison Memorial high schools. John Doe 1 Aff. ¶ 2[2]; Jane Doe 1 Aff. ¶ 2; John Doe 2 Aff. ¶ 2; Jane Doe 2 Aff. ¶ 2; Jane Doe 3 Aff. ¶ 2; Jane Doe 4 Aff. ¶ 2; John Doe 5 Aff. ¶ 2; Jane Doe 5 Aff. ¶ 2; John Doe 6 Aff. ¶ 2; Jane Doe 6 Aff. ¶ 2; John Doe 7 Aff. ¶ 2; Jane Doe 7 Aff. ¶ 2; John Doe 8 Aff. ¶ 2; Jane Doe 8 Aff. ¶ 2. Plaintiffs do not share the District's views about how to properly respond if their children experience gender dysphoria. *E.g.*, John Doe 1 Aff. ¶¶ 6–13.[3] If any District staff learn that Plaintiffs' children may be experiencing gender dysphoria or questioning their gender identity, Plaintiffs want to be notified so that they can help their children work through this issue, consult with mental health professionals to determine the best treatment for their children from a mental health standpoint, and provide any additional professional support their children may need. *E.g.*, John Doe 1 Aff. ¶ 7. Plaintiffs object to any policy that would interfere in any way with District employees providing them with such notice. *E.g.*, John Doe 1 Aff. ¶ 8.

[2] Plaintiffs' affidavits were submitted with their motion to proceed anonymously.

[3] From here forward, for brevity's sake, this brief will cite only the affidavit of John Doe 1. Except where otherwise indicated, every Plaintiff's affidavit contains similar paragraphs.

Plaintiffs also do not consent to the District usurping their parental role and enabling their children to change gender identity at school without their involvement. *E.g.*, John Doe 1 Aff. ¶ 9.[4] And Plaintiffs do not consent to District staff referring to their children by names other than their given names or referring to them using pronouns inconsistent with their biological sexes. *E.g.*, John Doe 1 Aff. ¶ 10. If Plaintiffs' children ever begin to experience gender dysphoria, Plaintiffs would not immediately "affirm" their children's beliefs about their gender identity and allow them to transition to a different gender role, but would instead pursue a treatment approach to help them identify and address the underlying causes of the dysphoria and learn to embrace their biological sex. *E.g.*, John Doe 1 Aff. ¶ 11. Plaintiffs also do not want or consent to District staff making any decisions relating to their children's medical or mental health issues without Plaintiffs' full knowledge and consent. *E.g.*, John Doe 1 Aff. ¶ 12–13.

ARGUMENT

Temporary injunctions in Wisconsin are governed by Wis. Stat. § 813.02(1). To obtain an injunction, the movant must show "a likelihood of success on the merits, a likelihood of irreparable harm, and an inadequate remedy at law." *Kocken v. Wisconsin Council 40, AFSCME, AFL-CIO*, 2007 WI 72, ¶ 22, 301 Wis. 2d 266, 732 N.W.2d 828; *Spheeris Sporting Goods, Inc. v. Spheeris on Capitol*, 157 Wis. 2d 298, 306, 459 N.W.2d 581 (Ct. App. 1990) (citing *Werner v. A. L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 519–20, 259 N.W.2d 310 (1977)).[5] The purpose of a

[4] Plaintiffs John and Jane Doe 6 may or may not allow their child to transition, depending on the circumstances and the recommendations of mental health professionals, but, like the other Plaintiffs, they want to be involved in the process so they can carefully evaluate the options and make the best treatment decision for their child. John Doe 6 Aff. ¶¶ 9–14; Jane Doe 6 Aff. ¶¶ 9–14.

[5] Some cases state a fourth factor—that a temporary injunction must be "necessary to preserve the status quo." *E.g.*, *Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee Cty.*, 2016 WI App 56, ¶ 20, 370 Wis. 2d 644, 883 N.W.2d 154; *Werner*, 80 Wis. 2d at 520. This Court should not consider this a requirement, for reasons explained in detail below, but even if this is a requirement, Plaintiffs meet it. *Infra* Part III.

temporary injunction is to "mitigate the damage that can be done during the interim period before a legal issue is finally resolved on its merits," *see In re A & F Enterprises, Inc. II*, 742 F.3d 763, 766 (7th Cir. 2014), so the temporary injunction statute requires courts to weigh both the potential "injury" to the plaintiffs "during the litigation" if an injunction is denied, Wis. Stat. § 813.02(1), and the potential "damage" to the defendants "if the temporary injunction … is granted," *id*. § 813.02(1). And, as the Wisconsin Supreme Court recognized long ago, "when the granting of the injunction will be of little or no injury to the defendant, and the refusal to grant it will be of great and irreparable damage to the plaintiff, courts usually grant the injunction pending the litigation." *Pioneer Wood Pulp Co. v. Bensley*, 70 Wis. 476, 36 N.W. 321, 323 (1888).

A preliminary injunction is warranted here because Plaintiffs have a significant likelihood of success, because the District's Policy may do substantial harm to Plaintiffs or their children while this lawsuit is pending for which Plaintiffs have no adequate remedy at law, and because an injunction will do no harm whatsoever to the District, but will simply require the District to include parents in significant decisions involving their children, which was the norm until the District created this anomalous exception for gender identity transitions.

I. Plaintiffs Are Likely to Succeed on the Merits

A. The District's Policies Violate Plaintiffs' Rights as Parents Under Article 1, Section 1 of the Wisconsin Constitution

1. Parents Have a Constitutional Right to Direct the Upbringing of Their Children

Article 1, Section 1 of the Wisconsin Constitution provides that "[a]ll people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness." The Wisconsin Supreme Court has interpreted Article 1, Section 1 as providing "the same equal protection and due process rights afforded by the Fourteenth

Amendment to the United States Constitution." *See Mayo v. Wisconsin Injured Patients & Families Comp. Fund*, 2018 WI 78, ¶ 35, 383 Wis. 2d 1, 914 N.W.2d 678.[6]

A long line of cases from both the Wisconsin Supreme Court and the United States Supreme Court establishes that parents have a constitutional right under both Article 1, Section 1 and the Fourteenth Amendment "to direct the upbringing and education of [their] children." *Matter of Visitation of A.A.L.*, 2019 WI 57, ¶ 15, 387 Wis. 2d 1, 927 N.W.2d 486 (quoting *Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925)); *Barstad v. Frazier*, 118 Wis. 2d 549, 567, 348 N.W.2d 479 (1984); *In Interest of D.L.S.*, 112 Wis. 2d 180, 184, 332 N.W.2d 293 (1983); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality op.). This is "perhaps the oldest of the fundamental liberty interests recognized by" the courts. *Troxel*, 530 U.S. at 65 (plurality op.). Over the years, the Supreme Court has described this right as "essential," *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), "commanding," *Santosky v. Kramer*, 455 U.S. 745, 759 (1982), a "basic civil right[ ] of man," *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), "far more precious … than property rights," *May v. Anderson*, 345 U.S. 528, 533 (1953), and "established beyond debate as an enduring American tradition," *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). Likewise, the Wisconsin Supreme Court has "long [ ] recognized" the rights of parents "to rear their children according to their own system of beliefs," *City of Milwaukee v. K.F.*, 145 Wis. 2d 24, 43, 426 N.W.2d 329 (1988), describing parents' rights as "substantial," *In Interest of D.L.S.*, 112 Wis. 2d 180, 184, 332 N.W.2d 293 (1983), and "of constitutional magnitude," *K.F.*, 145 Wis. 2d at 43; *see also Jackson v. Benson*, 218 Wis. 2d 835, 879, 578 N.W.2d 602 (1998). The Wisconsin Supreme Court

[6] Two Justices recently suggested that, as an original matter, Article 1, Section 1 might provide *even more* protection than the Fourteenth Amendment. *See Matter of Visitation of A. A. L.*, 2019 WI 57, ¶ 60–61 and n. 16, 387 Wis. 2d 1, 927 N.W.2d 486 (Justice R.G. Bradley, concurring, joined by Justice Kelly).

unanimously reaffirmed parents' rights just last summer, holding that any government action that "directly and substantially implicates a fit parent's fundamental liberty interest in the care and upbringing of his or her child" is "subject to strict scrutiny review." *A. A. L.*, 2019 WI 57, ¶ 22.

This line of cases establishes four important principles with respect to parents' rights.

First, parents are the primary decision-makers with respect to their minor children—not their school, or even the children themselves. *Parham v. J. R.*, 442 U.S. 584, 587 (1979) ("Our jurisprudence historically has reflected … broad parental authority over minor children."); *Yoder*, 406 U.S. at 232 ("This *primary* role of the parents … is now established beyond debate." (emphasis added)); *Jackson*, 218 Wis. 2d at 879 ("Wisconsin has traditionally accorded parents the *primary* role in decisions regarding the education and upbringing of their children." (emphasis added)). Parental decision-making authority rests on two core presumptions: "that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions," *Parham*, 442 U.S. at 602, and that parents are "in the best position and under the strongest obligations to give [their] children proper nurture, education, and training" because parents "hav[e] the most effective motives and inclinations" towards their children, *Jackson*, 218 Wis. 2d 835, ¶ 57 (quoting *Wis. Indus. Sch. for Girls v. Clark Cty.*, 103 Wis. 651, 79 N.W. 422, 428 (1899)); *Parham*, 442 U.S. at 602 ("natural bonds of affection lead parents to act in the best interests of their children."); *Yoder*, 406 U.S. at 232 ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children.").

Second, parental rights reach their peak, and thus receive the greatest constitutional protection, on "matters of the greatest importance." *See C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 184 (3d Cir. 2005) (calling this "the heart of parental decision-making authority"); *Yoder*,

406 U.S. at 233–34. One such area traditionally reserved for parents is medical care, as the Supreme Court recognized long ago: "Most children, even in adolescence, simply are not able to make sound judgments concerning … their need for medical care or treatment. Parents can and must make those judgments." *Parham*, 442 U.S. at 603; Levine Aff. ¶¶ 134–38. Indeed, the "general rule" in Wisconsin "requir[es] parents to give consent to medical treatment for their children." *See In re Sheila W.*, 2013 WI 63, ¶¶ 16–24, 348 Wis. 2d 674, 835 N.W.2d 148 (Prosser, J., concurring) (noting that Wisconsin has not adopted a "mature minor doctrine," which allows older minors to make independent medical decisions in some circumstances). Another category of decisions at "the heart of parental decision-making authority" are those "rais[ing] profound moral and religious concerns." *Bellotti v. Baird*, 443 U.S. 622, 640 (1979); *Arnold v. Bd. of Educ. of Escambia Cty. Ala.*, 880 F.2d 305, 314 (11th Cir. 1989); *C.N.*, 430 F.3d at 184.

Third, a child's disagreement with a parent's decision "does not diminish the parents' authority to decide what is best for the child." *Parham*, 442 U.S. at 603–04. *Parham* illustrates how far this principle goes. That case involved a Georgia statute that allowed parents to voluntarily commit their minor children to a mental hospital (subject to review by medical professionals). *Id*. at 591–92. A committed minor argued that the statute violated his due process rights by failing to provide him with an adversarial hearing, instead giving his parents substantial authority over the commitment decision. *Id*. at 587. The Court rejected the minor's argument, confirming that parents "retain a substantial, if not the dominant, role in the [commitment] decision" because "parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." *Id*. at 603–04. Thus, "[t]he fact that a child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parents' authority." *Id*.

Fourth, the fact that "the decision of a parent is not agreeable to a child or … involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state." *Parham,* 442 U.S. at 603. Likewise, the unfortunate reality that some parents "act[ ] against the interests of their children" does not justify "discard[ing] wholesale those pages of human experience that teach that parents generally do act in the child's best interests." *Id*. at 602–03. The "notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children" is "statist" and "repugnant to American tradition." *Id*. at 603 (emphasis in original). Thus, as long as a parent is fit, "there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Troxel*, 530 U.S. at 68–69 (plurality op.).

This constitutional commitment to parental authority is reflected in many state and federal laws. For example, state and federal law require schools to provide parents with access to all records about their children. Wis. Stat. § 118.125(2)(a), (b); 20 U.S.C. § 1232g(a)(1)(A). Under the federal Family Education Rights and Privacy Act (FERPA), only parents can request to amend education records. 34 CFR §§ 99.3; 99.4; 99.20(a). State law "prohibits a name change for a minor under fourteen unless both parents consent." *Jocius v. Jocius*, 218 Wis. 2d 103, 119, 580 N.W.2d 708, 715 (Ct. App. 1998); Wis. Stat. § 786.36. And, as already noted, parental consent is required for most medical procedures in Wisconsin. *See*, *e.g.*, *Sheila W.*, 2013 WI 63, ¶¶ 16–24 (Prosser, J., concurring).

In accordance with these principles, courts have recognized that a school violates parents' constitutional rights if it attempts to usurp their role in significant decisions. In *Gruenke v. Seip*, 225 F.3d 290 (3d Cir. 2000), for example, a high school swim coach suspected that a team member

was pregnant, and, rather than notifying her parents, discussed the matter with other coaches, guidance counselors, and teammates, and eventually pressured her into taking a pregnancy test. *Id*. at 295–97, 306. The mother sued the coach for a violation of parental rights, explaining that, had she been notified, she would have "quietly withdrawn [her daughter] from school" and sent her to live with her sister until the baby was born. *Id*. at 306. "[M]anagement of this teenage pregnancy was a family crisis," she argued, and the coach's "failure to notify her" "obstructed the parental right to choose the proper method of resolution." *Id*. at 306. The court found that the mother had "sufficiently alleged a constitutional violation" against the coach and condemned his "arrogation of the parental role": "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." *Id.* at 307. The court also suggested that the guidance counselors may have violated the mother's parental rights, even though she had not sued them: "We need not consider the potential liability of school counselors here, although we have considerable doubt about their right to withhold information of this nature from the parents." *Id*. at 307.

2. The District's Policy Directly and Substantially Infringes Plaintiffs' Rights as Parents and Is Therefore Subject to Strict Scrutiny

The District's Policy infringes Plaintiffs' rights as parents in at least four ways.

First, the Policy violates parents' constitutional right to make important decisions involving their children by requiring District staff to facilitate a child's social transition to a different gender identity at school without parental consent. Policy at 18. When a child experiences gender dysphoria, the decision whether he or she should socially transition is a significant and controversial healthcare decision that falls squarely within "the heart of parental decision-making authority," *C.N.*, 430 F.3d at 184; *Parham*, 442 U.S. at 603. As described in more detail above, there is an ongoing debate among mental health professionals over how to respond when a child

experiences gender dysphoria, and, in particular, whether children should socially transition by being addressed as though they were the opposite sex. Levine Aff. ¶¶ 22–44, 60–69; *supra* pp. 2–4. Given the evidence that most children with gender dysphoria resolve it (assuming they do not transition), Levine Aff. ¶ 60; WPATH Guidelines at 11, many mental health professionals believe that children should *not* immediately transition, but instead recommend treatment designed to give children time and perhaps some assistance to embrace their biological sex. Levine Aff. ¶¶ 63–69. Even WPATH, an advocacy organization that pushes for an "affirming" approach, admits that "[s]ocial transitions in early childhood" are "controversial" and that "health professionals" have "divergent views" on this issue and therefore recommends deferring to *parents* even "[i]f [they] do not allow their young child to make a gender-role transition." WPATH Guidelines at 17; *see also* Levine Aff. ¶ 68.

The District's Policy disregards these professionals and instead takes this potentially life-altering decision out of parents' hands and places it with educators and young children, children who lack the "maturity, experience, and capacity for judgment required for making life's difficult decisions." *Parham*, 442 U.S. at 587. By enabling children to transition without parental involvement, the District is effectively making a treatment decision to affirm an alternate gender identity without the legal authority to do so and without informed consent from the parents. *See Sheila W.*, 2013 WI 63, ¶¶ 16–24 (Prosser, J., concurring); Levine Aff. ¶¶ 83, 121–39. Given the significance of changing gender identity, especially at a young age, parents "can and must" make this decision. *Parham*, 442 U.S. at 603; Levine Aff. ¶¶ 134–39. The Policy therefore "directly and substantially" interferes with parents' right to make this critical decision. *A.A.L.*, 2019 WI 57, ¶ 22.

Second, the Policy violates parental rights by prohibiting staff from communicating with parents about a subject directly involving their children, Policy at 9, 11, and, in some cases, even

requiring teachers to actively deceive parents, Policy at 16 (directing staff to "us[e] the student's affirmed name and pronouns in the school setting, and their legal name and pronouns with family"). If a child expresses a desire to transition to a different gender identity at school, these policies prohibit District staff from even *notifying* parents (without the child's consent), since doing so would "reveal a student's gender identity to … parents." Policy at 9; *see also* Policy at 11. These policies violate parents' rights by circumventing parental involvement altogether on this sensitive issue. *See H. L. v. Matheson*, 450 U.S. 398, 410 (1981) (parents' rights "presumptively include[ ] counseling [their children] on important decisions"); *Arnold*, 880 F.2d at 313 (parents' rights protect "the opportunity to counter influences on the child the parents find inimical to their religious beliefs or the values they wish instilled in their children."). Parents cannot guide their children through difficult decisions without knowing what their children are facing. That is why state and federal law give parents complete access to all of their children's education records. Wis. Stat. § 118.125(2)(a), (b); 20 U.S.C. § 1232g(a)(1)(A). By prohibiting staff from communicating with parents about this one issue, the District's Policy cuts off an important channel of information—teachers and school staff—and effectively substitutes them for parents as the primary source of input for children navigating these difficult waters. *See Gruenke*, 225 F.3d at 306–07.

Third, the Policy interferes with parents' ability to provide professional assistance their children may urgently need. Gender dysphoria can be a serious psychological issue that requires support from mental health professionals. Levine Aff. ¶¶ 16, 19–20, 41, 54–59, 73, 79, 80–82, 114. Indeed, the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders contains an official diagnosis for gender dysphoria that is *defined* by "significant distress" associated with the mismatch. *See What Is Gender Dysphoria?*, American Psychiatric

Association, https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria; Levine Aff. ¶ 13. And children with gender dysphoria often present other psychiatric co-morbidities, including depression, anxiety, suicidal ideation and attempts, and self-harm. Levine Aff. ¶¶ 57; 78–79, 114; *see*, *e.g.*, Keck Aff. ¶¶ 4–5, 14–15. Thus, a child who expresses a desire to change gender identity should, "[a]t the very least," be "evaluated for psychiatric co-morbidities." Levine Aff. ¶ 97. Few, if any, mental health professionals would take the position that children with gender dysphoria do not need any professional assistance whatsoever. *See* Levine Aff. ¶¶ 41–44; 54–59, 73. Even WPATH, for example, recognizes that mental health professionals can "alleviat[e] distress related to [ ] gender dysphoria, and ameliorat[e] any other psychosocial difficulties." WPATH Guidelines at 14.

Teachers and staff do not have the training and experience necessary to properly diagnose children with gender dysphoria or to opine and advise on the treatment options, Levine Aff. ¶¶ 19–20, 100, 127, nor is the District offering to arrange professional assistance. Even if it were, the District cannot provide informed consent on behalf of children, and parents cannot provide it if they do not know their child is dealing with this issue. *See* Levine Aff. ¶¶ 83, 121–139. Thus, parents must be notified and involved not only to decide which treatment approach to pursue, but also to select the best mental health professional for their child. For this reason, the District's Policy prohibiting teachers from "revealing a child's gender identity … to parents," Policy at 9, violates parents' rights whether or not a child transitions, or even wants to transition. If a teacher learns that a child may be dealing with gender dysphoria, the teacher must be able to notify parents so that they can assess whether their child needs professional help.

Fourth, the District's Policy conflicts with multiple state and federal rules and laws designed to protect the parental role, further illustrating that this is the type of decision that requires

parental involvement and that the exclusion of parents "directly and substantially" interferes with their constitutionally protected role. For example, as noted above, the "general rule" in Wisconsin is that parents must "give consent to medical treatment for their children." *See*, *In re Sheila W.*, 2013 WI 63, ¶ 16 (Prosser, J., concurring); Levine Aff. ¶¶ 121–139. While there are different views about its wisdom and efficacy, there is widespread agreement among mental health professionals that social transition is a form of psychotherapeutic intervention for children with gender dysphoria. Levine Aff. ¶¶ 38–44, 68. Indeed, the first item on WPATH's list of "treatment options" for gender dysphoria is "[c]hanges in gender expression and role." WPATH Guidelines at 9. Not only that, but many psychiatric professionals consider social transition to be "an experimental procedure" with "highly unpredictable effects" and the potential for "changing the life path of the child." Levine Aff. ¶¶ 68–69. Experimental procedures typically require "far more rigorous" informed consent. Levine Aff. ¶ 131–32. Yet the District's Policy requires a uniform treatment approach in every case by enabling children with gender dysphoria to make this consequential decision without any parental involvement whatsoever, even though most children do not have the capacity to understand the "complex issues" and "life implications" of transitioning. Levine Aff. ¶¶ 134–38.

Allowing children to change gender identity at school without parental consent also conflicts with state and federal laws pertaining to name changes. As noted above, state law "prohibits a name change for a minor under fourteen unless both parents consent." *Jocius*, 218 Wis. 2d at 119; Wis. Stat. § 786.36.[7] And FERPA allows only parents and students over 18 to

[7] While the statute allows minors over 14 to seek to change their legal name, they must petition a court and provide a public notice, allowing parents to appear and object. Wis. Stat. § 786.36(1) (creating a "sufficient cause" standard); *id.* § 786.37. Neither the statute nor the case law addresses what happens if the parents object to a minor's petition to legally change his or her name.

request an official change to education records, which includes changing a student's name or gender. 34 CFR §§ 99.3; 99.4; 99.20(a). The District's Policy violates the import of these provisions, further demonstrating that changing identity is a significant decision traditionally reserved for parents. The name change that the District allows without parental consent is an official change, even if unwritten—it's enforced, after all, by the District's non-discrimination policy. Policy at 18 ("Refusal to respect a student's name and pronouns is a violation of the MMSD Non-discrimination policy.").

The District's implementation of its policy also reveals a blatant attempt to evade—indeed, violate—the state and federal laws giving parents access to their children's education records. Wis. Stat. § 118.125(2)(a), (b); 20 U.S.C. § 1232g(a)(1)(A). Parents generally have access to "all records relating to [their child] maintained by a school," Wis. Stat. § 118.125(1)(d), (2),[8] and "record" is broadly defined to include "any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics," *id*. § 118.125(1)(e). There is a narrow exception for "[n]otes or records maintained for *personal use* by a teacher … if such records and notes are not available to others." *Id*. § 118.125(1)(d)1. The District's "gender support plan," a form that teachers are supposed to fill out if a child expresses a desire to transition to a different gender identity at school, directs staff to "keep this interview in your confidential file, not in student records," Berg Aff. Ex. 2—a clear attempt to use the narrow personal-notes exception to prevent parents from accessing this form.

[8] "Pupil records" are divided into two categories: "progress records," which include grades, courses taken, attendance records, and the like, Wis. Stat. § 118.125(1)(c), and "behavioral records," which include "psychological tests, personality evaluations, records of conversations," "physical health records," and, importantly, "any other pupil records that are not progress records," *id*. § 118.125(1)(a). Parents have full access to both "progress records," *id*. § 118.125(2)(a), and "behavioral records," *id.* § 118.125(2)(b).

But this is an abuse of the exception; the gender support plan obviously is *not* solely for a teacher's "personal use," given that *all* staff must use the student's new "affirmed name and pronouns" or be considered in "violation of the [District's] non-discrimination policy." Policy at 18.

The Policy is also a striking aberration from the District's normal practices. District schools require parental consent for athletics,[9] field trips,[10] medication at school,[11] school dances,[12] internship programs,[13] special education programs,[14] music classes,[15] photographing or recording students,[16] publicly displaying a student's artwork,[17] and allowing students to leave school during study halls.[18] Yet the Policy does not even require parental *notice* for gender identity transitions.

Because the District's Policy directly and substantially interferes with the rights of parents, it is subject to strict scrutiny.

3. The District's Policy Fails Strict Scrutiny

The District's Policy fails both halves of strict scrutiny: it does not serve a compelling government interest, and even if it does serve a compelling interest in certain rare situations, it is not narrowly tailored to those situations. *A.A.L.*, 2019 WI 57, ¶ 18.

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[9] https://west.madison.k12.wi.us/athleticparticipation

[10] https://lafollette.madison.k12.wi.us/files/lafollette/uploads/parentalpermissionform_11.04.19.pdf; https://sennett.madison.k12.wi.us/files/sennett/FieldTripBackUpPermissionForm2012English.pdf

[11] https://studentservices.madison.k12.wi.us/Medication

[12] https://west.madison.k12.wi.us/prom-2020

[13] https://science.madison.k12.wi.us/internship

[14] https://govprograms.madison.k12.wi.us/files/govprograms/2017-18_permission_slip.pdf

[15] https://finearts.madison.k12.wi.us/files/finearts/String%20Parents%20Permission%20Slip.English.2015.pdf

[16] https://accountability.madison.k12.wi.us/ercguidelines

[17] https://finearts.madison.k12.wi.us/files/finearts/Art%20Work%20Display%20Permission%20slip%20ENGLISH_1.docx

[18] https://lafollette.madison.k12.wi.us/welcome-back-family-letter-2019

The Policy's primary stated justification is protecting children's privacy, *see* Policy at 9, but this is not a compelling interest, at least with respect to parents, because children do not have privacy rights vis-à-vis their parents. In *Bellotti v. Baird*, 443 U.S. 622 (1979), the Supreme Court recognized that "parental notice and consent are qualifications that typically may be imposed by the State on a minor's right to make important decisions," because the "parental role implies a substantial measure of authority over one's children." *Id*. at 638–40. "[T]he constitutional rights of children cannot be equated with those of adults," the Court explained, due to the "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing." 443 U.S. at 634.

Thus, multiple lower federal courts have rejected minors' claims to privacy against their parents. The Fifth Circuit, for example, recently rejected a student's constitutional claim against her school for revealing her sexual orientation to her mother, holding that "there is no clearly established law holding that a student in a public secondary school has a privacy right under the Fourteenth Amendment that precludes school officials from discussing *with a parent* the student's private matters, including matters relating to sexual activity of the student." *Wyatt v. Fletcher*, 718 F.3d 496, 499 (5th Cir. 2013) (emphasis in original). And the Eastern District of New York rejected a privacy-based challenge to a school policy requiring parental notification of student pregnancies because "[n]o Court has created such a right to privacy for minors." *Port Washington Teachers' Ass'n v. Bd. of Educ. of Port Washington Union Free Sch. Dist.*, No. 04-CV1357TCPWDW, 2006 WL 47447, at *6 (E.D.N.Y. Jan. 4, 2006), aff'd in part, 478 F.3d 494 (2d Cir. 2007).

The many state and federal laws giving parents access to their children's records provide further evidence that children do not generally have privacy rights against their parents. Both state and federal law, for example, require schools to provide parents with access to all of their

children's education records. Wis. Stat. § 118.125(2)(a), (b); 20 U.S.C. § 1232g(a)(1)(A). And state and federal law also give parents access to their children's healthcare records, Wis. Stat. §§ 146.81(5); 146.82(1); 146.83(1c); 45 CFR §164.502(c), which is especially relevant in cases such as this one which involve the mental health of a child.

The Policy also suggests that notifying parents may cause "imminent safety risks," such as "losing family support and housing," Policy at 16, but this does not provide a compelling justification for the Policy for a number of reasons. First, the state "has no interest in protecting children from their parents unless it has some definite and articulable evidence giving rise to a reasonable suspicion that a child has been abused or is in imminent danger of abuse." *Brokaw v. Mercer Cty.*, 235 F.3d 1000, 1019 (7th Cir. 2000). In other words, the District cannot *assume* that parents will do harm to justify a policy of excluding parents. Doing so directly violates the "presumption that fit parents act in their children's best interest." *Troxel*, 530 U.S. at 58 (plurality op.); *see also Doe v. Heck*, 327 F.3d 492, 521 (7th Cir. 2003) (finding a violation of parents' rights where 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."). As discussed below, nebulous, subjective conclusions that a family may not be "supportive" do not rise to this stringent standard.

Second, there is already a system in place to address those rare situations involving "imminent safety risks" from parents, namely Wisconsin's Child Protective Services program. *See generally* Wisconsin Department of Children and Families, *Wisconsin Child Protective Services (CPS) Process*, https://dcf.wisconsin.gov/cps/process. Indeed, the CPS statutes already allow local law enforcement to "take any necessary action" if there is "reason to believe that the health or safety of [a] child … is in immediate danger," Wis. Stat. § 48.981(3)(b)(1), and teachers and other school staff are mandated CPS reporters, Wis. Stat. § 48.981(2)(a)(14)–(16). Unlike the District's

policy, the CPS process sets a high standard for displacing parents ("abuse or neglect"), *id*. § 48.981(2), and provides robust procedural protections, such as notice and a hearing and, ultimately, court review. *E.g.*, Wis. Stat. §§ 48.981(3)(c); 48.13; 48.27; 48.30.

Furthermore, the Policy is a far cry from one that would be narrowly tailored to protecting children from "imminent safety risks"; it enables gender identity transitions at school without parental consent, and prohibits staff from notifying parents about this, without requiring *any* evidence of an "imminent safety risk" to the child. Instead, the District has trained its staff that the criteria they should use for deciding whether to involve parents is whether the parents "support"—as determined by the District or the child—a gender identity transition. Berg Aff. Ex. 2 at 1; Ex. 4 at 12; *supra* pp. 7–8. In other words, unless the parents agree with the approach the District believes is best, critical facts about their child's mental health and the school's interaction with their child will be concealed from them. The Supreme Court has made clear that is not a sufficient basis for excluding parents from a decision of this magnitude: "Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to … the state." *Parham*, 442 U.S. at 603.

And even if the District's Policy to exclude parents *were* limited to situations involving "imminent safety risks," the Policy does not contain any of the procedural protections that are typically required to displace a parent. In *A.A.L.*, for example, the Wisconsin Supreme Court addressed the "standard of proof required for a grandparent to overcome the presumption that a fit parent's visitation decision is in the child's best interest," and held that the parents' decision may be supplanted only with "clear and convincing evidence that the [parents'] decision is not in the child's best interest." 2019 WI 57, ¶¶ 1, 37. The Court explained that this "elevated standard of proof is necessary to protect the rights of parents" and to prevent lower courts from "substitut[ing]

its judgment for the judgment of a fit parent." *Id*. ¶¶ 35; *see also Troxel*, 530 U.S. at 69 (plurality op.) (courts "must accord at least some special weight to the parent's own determination" when reviewing a visitation decision). And in the visitation context, parents receive "notice" and a "hearing." *See A.A.L.*, 2019 WI 57, ¶ 13 (quoting Wis. Stat. § 767.43(3)). Likewise, the CPS process described above requires notice, a hearing, and court review. *Supra* pp. 24–25. The District's Policy, by contrast, does not give parents any opportunity to weigh in or defer in any way to their judgment about what is best for their child.

Astonishingly, the Policy also does not contain any age limit of any kind. So, if a six year old begins to question his or her sex—perhaps due to what he or she is hearing at school, *see supra* pp. 5–6—and is persuaded to adopt a different gender identity but fears what his or her parents might think, teachers are required to keep parents in the dark as their child processes this sensitive issue, even if the *teachers believe* it would be in the child's best interest to communicate with parents. Such a policy is not "narrowly tailored" in any sense.

Given that the Policy "directly and substantially" interferes with parents' fundamental right to raise their children and flunks strict scrutiny, the Policy is unconstitutional under Article 1, Section 1 of the Wisconsin Constitution.

B. The District's Policies Violate Plaintiffs' Rights to Raise Their Children in Accordance with Their Religious Beliefs Under Article 1, Section 18 of the Wisconsin Constitution

1. Parents Have a Constitutional Right to Raise Their Children in Accordance with Their Religious Beliefs

Article 1, Section 18 of the Wisconsin Constitution provides: "The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; … nor shall any control of, or interference with, the rights of conscience be permitted." The Wisconsin Supreme Court has held that Article I, Section 18 provides even "broader protections for religious

liberty than the First Amendment." *Coulee Catholic Sch. v. Labor & Indus. Review Comm'n, Dep't of Workforce Dev.*, 2009 WI 88, ¶ 66, 320 Wis. 2d 275, 768 N.W.2d 868; *DeBruin v. St. Patrick Congregation*, 2012 WI 94, ¶ 37, 343 Wis. 2d 83, 816 N.W.2d 878 (plurality op.).

Parents thus have a fundamental right under Article 1, Section 18 to raise their children in accordance with their religious beliefs. *See*, *e.g.*, *City of Milwaukee v. K.F.*, 145 Wis. 2d 24, 42–43, 426 N.W.2d 329 (1988); *State v. Yoder*, 49 Wis. 2d 430, 438, 182 N.W.2d 539 (1971); *State v. Kasuboski*, 87 Wis. 2d 407, 416, 275 N.W.2d 101 (Ct. App. 1978); *see also Yoder*, 406 U.S. at 213–14, 230–34; *Prince v. Massachusetts*, 321 U.S. 158, 165–66 (1944); *Pierce*, 268 U.S. 510. This right is similar to, but distinct from, parents' right under Article 1, Section 1, in that it protects parental decision-making authority over significant decisions involving their children that implicate religious beliefs. *E.g.*, *Pierce*, 268 U.S. 510 (where children go to school); *Yoder*, 406 U.S. 205 (whether children attend school past eighth grade). In *Yoder,* the Supreme Court emphasized that the parental role is especially important "when the interests of parenthood are combined with a free exercise claim." *Yoder*, 406 U.S. at 233; *see also Bellotti*, 443 U.S. at 640 (noting that "[parental] consultation is particularly desirable" for issues "rais[ing] profound moral and religious concerns.").

As with an infringement of parents' rights under Article 1, Section 1, any "interference with" religious freedom rights protected by Article 1, Section 18 is subject to strict scrutiny. *See*, *e.g.*, Wis. Const. art 1, § 18; *Coulee Catholic Schools*, 2009 WI 88, ¶ 61; *Yoder*, 49 Wis. 2d at 434.

2. The District's Policy Infringes Parents' Right to Raise Their Children in Accordance with Their Religious Beliefs

The District's Policy violates parents' constitutional right to raise their children in accordance with their religious beliefs in two ways. First, by enabling children to transition to a different gender identity at school without parental consent, the Policy interferes with parents'

right to select a treatment approach that, consistent with their religious beliefs, does not involve a social transition. Second, the policies designed to keep information secret from parents, and even to actively deceive parents, interfere with their ability to teach and to guide their children through this issue in accordance with their religious beliefs.

For many parents, gender identity issues "raise[ ] profound moral and religious concerns." *Bellotti*, 443 U.S. at 640. Plaintiffs John and Jane Doe 1, John and Jane Doe 2, Jane Doe 3, John and Jane Doe 5, John and Jane Doe 7, and John and Jane Doe 8 are active Christians who seek to apply their beliefs to everything they teach their children, including about their sex. *E.g.*, John Doe 1 Aff. ¶ 15. These Plaintiffs believe that the two sexes are a core part of God's intended design for humanity, that the sex each of us is born with is a gift, not an arbitrary imposition, *see* Genesis 1:27 ("male and female he created them"); Matthew 19:4 ("the Creator made them male and female"); Mark 10:6, and that, as a result of a fallen and broken world, humans can acquire false beliefs, even about their own identity, *e.g.*, Jeremiah 17:9. ("the heart is deceitful above all things."); *e.g.*, John Doe 1 Aff. ¶¶ 16–17.[19] Given these beliefs, these Plaintiffs disagree with the notion, wholly endorsed by the Madison School District, that each person has an innate gender

[19] Multiple religious leaders and organizations have issued statements on this topic expressing similar beliefs. For example, the Catholic Church's Congregation for Catholic Education recently issued a statement that "the Creator's design … has assigned as a task to man his body, his masculinity and femininity," and that proper Catholic education "must involve each person in a process of learning with perseverance and consistency, the meaning of his or her body in the full original truth of masculinity and femininity." Congregation for Catholic Education, *Male and Female He Created Them*, ¶¶ 32, 35 (citations omitted) *available at* http://www.educatio.va/content/dam/cec/Documenti/19_0997_INGLESE.pdf. Similarly, the Nashville Statement, signed by thousands of pastors and religious leaders, states that "divinely ordained differences between male and female reflect God's original creation design and are meant for human good and human flourishing" and that a "transgender self-conception is [in]consistent with God's holy purposes in creation and redemption." The Council on Biblical Manhood and Womanhood, *Nashville Statement*, Articles 4, 7, *available at* https://cbmw.org/nashville-statement/. *See also* Southern Baptist Convention, *On Transgender Identity*, *available at* http://www.sbc.net/resolutions/2250/on-transgender-identity.

identity distinct from his or her "sex assigned at birth," which may be "male, female, a blend of both or neither." *See* Policy at 13; *e.g.*, John Doe 1 Aff. ¶ 18. Thus, if these Plaintiffs' children ever experience gender dysphoria, these Plaintiffs would not immediately "affirm" whatever beliefs their children might have about their identity, but would instead remind them that they were "fearfully and wonderfully made," *see* Psalm 139:14, and seek to help them identify and address the underlying causes of the dysphoria and learn to accept and embrace their God-given sex. *E.g.*, John Doe 1 Aff. ¶ 19. By allowing their children to transition without their consent, the Policy directly interferes with these Plaintiffs' right to choose a treatment approach that, consistent with their religious beliefs, does not involve a social transition. *E.g.*, John Doe 1 Aff. ¶ 19.

Additionally, the policies prohibiting open communication with parents, and even directing staff to actively deceive them, Policy at 9, 11, 16, prevent parents from teaching and guiding their children through gender identity issues, in accordance with their religious beliefs, should their children begin to struggle with gender dysphoria. *See H. L.*, 450 U.S. at 410 (parents' rights "presumptively include[ ] counseling [their children] on important decisions"); *Arnold*, 880 F.2d at 313 (parents' rights protect "the opportunity to counter influences on the child the parents find inimical to their religious beliefs or the values they wish instilled in their children."). Parents cannot fulfill their guiding role if kept in the dark as their children face these difficult choices.

The Policy fails strict scrutiny for the same reasons described above. The District does not have a compelling interest in excluding parents from the decision about whether their child should transition or keeping their child's gender dysphoria secret from them because children do not generally have privacy rights against their parents. *See Wyatt*, 718 F.3d at 499; *Port Washington Teachers' Ass'n*, No. 04-CV1357TCPWDW, 2006 WL 47447, at *6; Wis. Stat. § 118.125(2). As for those rare situations in which there is a genuine threat of harm to a child, *see* Policy at 16,

adequate systems already exist to address those situations, and, regardless, the Policy is not narrowly tailored because it is not limited to those situations, nor does it have any of the normal procedural protections required to supplant a parent's decision about their child's best interest. *Supra* pp. 24–25. Finally, the Policy does not contain an age limit of any kind. *Supra* p. 25.

II. A Temporary Injunction Is Necessary to Prevent Irreparable Harm to Plaintiffs and/or Their Children, and an Injunction Will Not Harm the District in Any Way

The purpose of a temporary injunction is to "mitigate the damage that can be done during the interim period before a legal issue is finally resolved on its merits." *See A & F Enterprises*, 742 F.3d at 766. There are two possible harms for the court to consider: the potential "injury" to the plaintiffs "during the litigation" if an injunction is denied, Wis. Stat. § 813.02(1), and the potential "damage" to the defendants "if the temporary injunction … is granted," *id*. § 813.02(1). Or, as the Seventh Circuit has helpfully explained, the goal is "to minimize" the potential costs of two possible "errors": "the error of denying an injunction to one who will in fact … go on to win the case on the merits, and the error of granting an injunction to one who will go on to lose." *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 388 (7th Cir. 1984). The assessment of these two possible harms is relative; "[t]he judge must try to avoid the error that is more costly in the circumstances." *Id.*; Wis. Stat. § 813.02(2) (a court must consider the "equities between the parties."). Thus "when the granting of the injunction will be of little or no injury to the defendant, and the refusal to grant it will be of great and irreparable damage to the plaintiff, courts usually grant the injunction pending the litigation." *Pioneer Wood Pulp Co.*, 36 N.W. at 323.

An injunction is warranted here because the District's Policy creates a potential for significant harm to Plaintiffs and/or their children without an injunction, whereas an injunction will not harm the District in any way. The District's Policy causes four different types of harm that warrant a temporary injunction: (1) it interferes with Plaintiffs' right to choose a course of

treatment for their children, should they experience gender dysphoria; (2) it may cause Plaintiffs' children to solidify and retain a transgender identity when they otherwise would have found comfort with their biological sex, leading them down the challenging path of living with a transgender identity; (3) it may prevent Plaintiffs from providing professional mental health support that their children may urgently need; and (4) it violates Plaintiffs' constitutional rights as parents, which courts have recognized is an irreparable harm on its own. On the other side, there is no harm from an injunction requiring the District to involve parents in significant decisions directly involving their children.

First, the District's Policy harms Plaintiffs (and all parents) by interfering with their right to choose a course of treatment for a child with gender dysphoria. As already explained, an affirmed social transition is just one of multiple alternative treatment paths for children experiencing gender dysphoria; other approaches include "watchful waiting" or psychotherapy to help a child identify and address the underlying causes of the dysphoria and so return to comfortable identification with his or her biological sex. *Supra* pp. 2–5; Levine Aff. ¶¶ 29–44. And the choice over which treatment path to pursue is a significant fork in the road given that these approaches are directly at odds with one another. Levine Aff. ¶¶ 29–44, 60–69. By enabling a social transition at school without parental consent, the Policy significantly limits, and may even render impossible, Plaintiffs' ability to select a treatment path that does not include a social transition.

Second, a social transition during childhood could have significant lifelong consequences for the child involved. Many experts, including Plaintiffs' expert, Dr. Levine, believe that social transitions during childhood may cause children to solidify and retain a transgender identity when they otherwise would have found comfort with their biological sex. Levine Aff. ¶¶ 60–67. If these

experts are right that "messages from family, peers, and society do a huge amount of the work of helping form" a child's gender identity, "affirming" an alternate gender identity too early can "become[ ] self-reinforcing." Berg Aff. Ex. 7 at 6–7 (Singal article); Zucker, *Myth of Persistence*, *supra*. A robust body of research has shown that the vast majority of children who experience gender dysphoria (roughly 80–90%) ultimately resolve the dysphoria in favor of their biological sex—that is, if they do *not* transition. WPATH Guidelines at 11; Levine Aff. ¶ 60. But if children *do* transition at a young age, the desistance rate drops off a cliff; some recent studies suggest that fewer than 20% of boys who socially transitioned prior to puberty ultimately reverted to their biological sex. Levine Aff. ¶¶ 63–64 (citing, among others, Zucker, *Myth of Persistence*, *supra*). So, by enabling and encouraging children to transition at school without parental consent, the District may be pushing children down that path, causing gender dysphoria to persist when it otherwise would have desisted.

There are many potential lifelong consequences if a child's transgender identity persists as a result of changing gender identity at school. First, and most obvious, is the inherent difficulty of living life feeling trapped in the wrong body. A transgender identity, by definition, is the belief that one's "true" "gender identity" does not match one's biological sex, and it is well recognized that this mismatch is frequently associated with psychological distress. Levine Aff. ¶¶ 16, 78, 91, 95, 99.

There are also many long-term physical challenges associated with transitioning, given that it is not physically possible to change biological sex. Levine Aff. ¶ 12. Transitioning *socially* is just the first step towards a full transition; later steps include puberty blockers, hormone treatment, sex reassignment surgery, and a variety of other cosmetic surgeries. Levine Aff. ¶ 12, 56, 102–104; *see* WPATH Guidelines at 18–19. The long-term effects of these physical interventions are

still largely unknown, Levine Aff. ¶¶ 88–90, 104–05, but some negative side effects are well known: sex-reassignment surgery, for example, guarantees infertility, and puberty blockers and cross-sex hormones are also known to affect fertility and sexual response. Levine Aff. ¶¶ 102–04. Not all transgender individuals pursue a full transition, but many do, and an early social transition sets a child on a path toward that end. Levine Aff. ¶¶ 64–67, 102.

It is also well recognized that transgender individuals experience significantly worse mental health outcomes than the general population. Levine Aff. ¶¶ 78, 95, 99, 114; Kenneth J. Zucker, *Adolescents with Gender Dypshoria: Reflections on Some Contemporary Clinical and Research Issues*, 48 Archives of Sexual Behavior at 2 (listing studies) *available at* https://www.researchgate.net/publication/334552874_Adolescents_with_Gender_Dysphoria_Reflections_on_Some_Contemporary_Clinical_and_Research_Issues. The underlying causes of this disparity are debated, of course, but the disparity itself is not. Levine Aff. ¶ 78, 95, 99, 114. One of the most robust long-term studies in this area found that a group of 324 Swedish individuals who had fully transitioned (including sex-reassignment surgery) were still 19.1 times more likely to commit suicide than the general population over an extended period, showing that transgender individuals continue to deal with significant mental health issues even after transitioning. Levine Aff. ¶ 91 (discussing Cecilia Dhejne et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6:2 PLOS ONE e16885 (2011)). There is also a growing number of "detransitioners" who come to deeply regret transitioning, further reinforcing that transitioning does not automatically resolve the underlying issue. Levine Aff. ¶¶ 115–20.

There are a variety of other risks associated with transitioning. A child that undergoes hormone therapy or puberty blockers, for example, in addition to facing all the physical risks

described above, may feel socially isolated from his or her peers who are undergoing puberty while he or she is not. Levine Aff. ¶ 111. Transgender individuals also face a greatly diminished pool of individuals interested in sexual and romantic relationships. Levine Aff. ¶ 110. There are likely other risks that are not yet known—even WPATH acknowledges that there is little evidence at this point "to predict the long-term outcomes of completing a gender role transition during early childhood." WPATH Guidelines at 17.

Given all this, it is preferable, if at all possible, from the perspective of long-term mental and physical health, for children to become comfortable with an identity that corresponds to their biological sex. Levine Aff. ¶¶ 67–69. Accordingly, many mental health professionals recommend against an early social transition precisely to give children time to learn to embrace their biological sex and potentially avoid the difficulties of a life feeling trapped in the wrong body. And if certain experts are correct that an early transition can become self-reinforcing, *supra* pp. 3–4, the District's Policy may be the direct cause of these harms.

Third, the District's Policy harms Plaintiffs by interfering with their ability to provide treatment their children may urgently need. The Policy prohibits teachers and other staff from notifying parents, without the child's consent, that their child may be dealing with gender dysphoria, and in some circumstances even requires staff to actively deceive parents. *Supra* pp. 6–7. But gender dysphoria can be a serious psychological issue that requires professional assistance, whether or not a child transitions. Levine Aff. ¶¶ 16, 19–20, 41, 54–59, 73, 79, 80–82, 114. The District is not offering to locate and pay for—and it *cannot* provide informed consent for—professional assistance to help a child cope with the psychological distress and co-morbidities often associated with gender dysphoria. Levine Aff. ¶¶ 83, 121–139. And if, due to the District's Policy, parents are delayed in learning that their child is dealing with this issue, the child's needs

for professional psychiatric care may go unmet, with possibly devastating consequences. Levine Aff. ¶¶ 57, 91, 93, 95, 114.

Fourth, and finally, the District's violation of Plaintiffs' constitutional rights is itself an irreparable harm. Indeed, "[w]hen an alleged deprivation of a constitutional right is involved … most courts hold that no further showing of irreparable injury is necessary." Wright & Miller, 11A Fed. Prac. & Proc. § 2948.1 (3d. ed.). The Seventh Circuit, for example, has held that irreparable harm "is presumed" for both First Amendment violations, *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006) and violations of abortion rights under the Fourteenth Amendment, *Planned Parenthood of Indiana & Kentucky, Inc. v. Adams*, 937 F.3d 973, 990 (7th Cir. 2019). Plaintiffs bring constitutional claims under Article 1, Section 1 and Article 1, Section 18 of the Wisconsin Constitution, the state analogues to the First and Fourteenth Amendments. Therefore, irreparable harm should be presumed.

Any of Plaintiffs' children could begin to question their sex at any time, and Plaintiffs have no way to know in advance whether this will be an issue for their children or when it will come up. Levine Aff. ¶¶ 26, 61–62 & n.10, 78; *see*, *e.g.*, Keck Aff. ¶¶ 3–7. Recent statistics have shown a dramatic increase in the number of children seeking help with gender identity issues in the past few years, Levine Aff. ¶ 26, Zucker, *Adolescents with Gender Dysphoria*, *supra*, perhaps as direct result of the messages children are being told at school and elsewhere (like the District's concerted efforts to "disrupt[ ] the gender binary," Policy at 24; *supra* pp. 5–6). The UK government, for example, reported a "4,400 per cent increase in girls being referred for transitioning treatment in the past decade." Gordon Rayner, *Minister orders inquiry into 4,000 per cent rise in children wanting to change sex*, The Telegraph (Sept. 16, 2018), https://www.telegraph.co.uk /politics/2018/09/16/minister-orders-inquiry-4000-per-cent-rise-children-wanting/. Clinics in

Canada have seen similar "exponential growth in demand." Jen Beard, *Spike in demand for treatment of transgender teens*, CBC (Mar. 4, 2019), https://www.cbc.ca/news/canada/ottawa/trans-teens-ottawa-cheo-demand-1.5026034. In the United States, "solid numbers are harder to come by," but "clinicians are reporting large upticks in new referrals." Jesse Singal, *When Children Say They're Trans*, The Atlantic (July 2018), https://www.theatlantic.com/magazine/archive/2018/07/when-a-child-says-shes-trans/561749/.

A recent study also documented a new phenomenon, which it called "rapid onset gender dysphoria," in which multiple adolescents within the same social group (usually teenage girls) all decide they are transgender within a short period of time. Levine Aff. ¶ 26 (discussing Lisa Littman, *Parent Reports of Adolescents & Young Adults Perceived to Show Signs of a Rapid Onset of Gender Dysphoria*, 13:8 PLOS ONE e0202330 (2018)). An organization formed in 2017 to support parents of children affected by this phenomenon reported that, within just nine months of launching their website, they were contacted by "over 600 desperate parents whose children suddenly decided they were transgender." *See Parents of ROGD Kids Organization Supports Dr. Littman's Findings and Calls for Action*, Parents of ROGD Kids (Sept. 19, 2018), https://www.parentsofrogdkids.com/press-releases/2018/9/19/parents-of-rogd-kids-organization-supports-dr-littmans-findings-and-calls-for-action.

Thus, if one of the Plaintiffs' children begins to wrestle with gender dysphoria while this lawsuit is pending, the Madison School District may, according to its Policy, "affirm" a new gender identity and enable them to socially transition, all while actively working to keep this information from Plaintiffs, causing all of the irreparable harms described above. Plaintiffs cannot wait to seek an injunction until one of their children begins to experience gender dysphoria precisely because the District's policy is designed to keep this information secret from them.

This is not just an imagined risk; this exact scenario happened recently to parents in Illinois. *See* Keck Aff. ¶¶ 1–19. Jay Keck's daughter, during childhood, "showed no discomfort whatsoever with being a girl or any interest in being a boy." Keck Aff. ¶ 3. But she met a girl during high school who came out as transgender and "[w]ithin 24 hours decided that she was also a boy trapped in a girl's body and wanted to pick out a new male name." Keck Aff. ¶ 7. When she told her school this, the school promptly "affirmed" her new identity and began using her new male name and pronouns, all without notifying her parents (and even attempting to hide this from them). Keck Aff. ¶¶ 8–9. When they eventually learned about this, they asked the school to use her legal name and female pronouns instead, because they did not believe that transitioning was best for their daughter, especially in light of some pre-existing mental health issues. Keck Aff. ¶¶ 4–6, 10–11. They consulted "over 12 mental health professionals," and the consensus among them was that their daughter's "sudden beliefs about being transgender were driven by her underlying mental health conditions." Keck Aff. ¶ 14. Some professionals even told them that "affirming" her beliefs about being transgender "would be against [their] daughter's long-term best interest." Keck Aff. ¶ 15. Even after sharing this information with the school, the school continued to refer to their daughter using a male name and male pronouns, and did so until she graduated, including at the graduation ceremony. Keck Aff. ¶¶ 16–17. Keck believes that by reinforcing his daughter's beliefs about being transgender, her school "did significant harm to [his] daughter." Keck Aff. ¶¶ 18–19. This is not an extreme or irrelevant "scare story": this is exactly how the challenged Policy *requires* District schools to behave.

On the other side, there is no harm from granting a temporary injunction here; the injunction will simply require the District to involve parents if their child begins to struggle with gender dysphoria. Parental involvement in such significant issues is the norm; it is, as the Supreme

Court put it, "established beyond debate as an enduring American tradition." *Yoder*, 406 U.S. at 232. Any harm the District may assert is necessarily based on the blanket assumption that parents will make a wrong decision or will respond in a harmful way to their child's gender dysphoria. *See* Policy at 16 (suggesting that "[d]isclosure to families" could "pose imminent safety risks"). But such an assumption is directly at odds with the "traditional presumption that a fit parent will act in the best interest of his or her child," *Troxel,* 530 U.S. at 69 (plurality op.), and will be far more zealous in doing so than anyone else, including teachers and government bureaucrats, *Jackson*, Wis. 2d 835, ¶ 57; *Gruenke*, 225 F.3d at 307 ("It is not educators, but parents who have primary rights in the upbringing of children."). The idea that the District can "supersede parental authority" because some parents might act against their children's best interests is "statist" and "repugnant to American tradition." *Parham*, 442 U.S. at 603.

III. A Temporary Injunction Is Necessary to Preserve the Status Quo

As noted above, some cases state a fourth requirement, that a preliminary injunction must be "necessary to preserve the status quo." *E.g.*, *Milwaukee Deputy Sheriffs' Ass'n*, 2016 WI App 56, ¶ 20; *Werner*, 80 Wis. 2d at 520. Although, as discussed below, an injunction would preserve the status quo here, there are multiple reasons this Court should not consider this a requirement. First, such a requirement has no foundation in the text of the temporary injunction statute. Wis. Stat. § 813.02. Second, the basis for this as a requirement appears to be two brief (and not thoroughly analyzed) statements from two old Wisconsin Supreme Court opinions, *see Werner*, 80 Wis. 2d at 520, and *Pure Milk Prod. Co-op. v. Nat'l Farmers Org.*, 64 Wis. 2d 241, 219 N.W.2d 564 (1974), but *subsequent* opinions from that court have not treated this as a strict requirement, *see Browne v. Milwaukee Bd. of Sch. Directors*, 83 Wis. 2d 316, 337, 265 N.W.2d 559 (1978) (noting that temporary injunctions are "usually" issued to preserve the status quo); *Kocken*, 2007

WI 72, ¶ 22 (listing the requirements for a temporary injunction without mentioning the status quo). Third, the court of appeals has not always treated this as a requirement, even when citing *Werner*. *See*, *e.g.*, *Spheeris Sporting Goods, Inc.*, 157 Wis. 2d at 306 (listing only the three basic requirements); *see also Nursing Centers, Inc. v. Cherubini*, 2009 WI App 158, ¶ 11 (unpublished) (same). Finally, as the Seventh Circuit has explained, identifying the "status quo" is often a matter of characterization and is therefore not a useful construct for determining whether to grant a temporary injunction, which should focus instead on preventing harm while a potentially meritorious lawsuit is pending. *E.g.*, *Am. Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 590 n.1 (7th Cir. 2012); *Praefke Auto Elec. & Battery Co. v. Tecumseh Prod. Co.*, 255 F.3d 460, 464 (7th Cir. 2001); *Roland Mach. Co.*, 749 F.2d at 383.

However, even if this Court does consider this a distinct requirement, a temporary injunction here would preserve the status quo in two important ways.

First, the primary goal of this lawsuit is to prevent the District from enabling children to *change* gender identity at school without parental notice and consent. The "status quo" for children in the District is their current identity—the legal name given by their parents at birth and their biological sex. The District's new Policy disrupts the status quo by enabling children to reject the name their parents gave them and adopt a new gender identity inconsistent with their biological sex. The Plaintiffs seek a preliminary injunction to preserve their children's identities, as they are today, in case their children begin to wrestle with gender dysphoria while this lawsuit is pending.

Second, parental involvement in significant decisions, and especially healthcare decisions, is, and has long been, the status quo. *Parham*, 442 U.S. at 603–04. Indeed, the "right of parents to make decisions concerning the care, custody, and control of their children" is not only a longstanding norm, it is "perhaps the oldest of the fundamental liberty interests recognized by [the

Supreme] Court." *Troxel*, 530 U.S. at 65 (plurality op.). The District's new Policy disrupts the status quo by carving out a novel and unprecedented exception from the "traditional presumption" of parental decision-making authority, *id*. at 70, for one specific—and particularly controversial—healthcare decision, namely whether a child with gender dysphoria should socially transition. This exception is completely anomalous; Plaintiffs' counsel are not aware of any analogue in which a school district excludes parents from a serious healthcare issue involving their child. An injunction is therefore necessary to restore the "enduring American tradition" of the "primary role of the parents." *Yoder*, 406 U.S. at 232.

CONCLUSION

Plaintiffs therefore respectfully ask this Court to enter a temporary injunction prohibiting the District from: (1) enabling children to socially transition to a different gender identity at school by selecting a new "affirmed named and pronouns," without parental notice or consent; (2) preventing teachers and other staff from communicating with parents that their child may be dealing with gender dysphoria, or that their child has or wants to change gender identity, without the child's consent; and (3) deceiving parents by using different names and pronouns around parents than at school.

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