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*Via electronic mail only to:*  
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Investigator Arnott,

We represent Marissa Darlingh, a public school counselor who you recently threatened with losing her educator license for her speech opposing gender identity policies at a feminist rally at the state capitol on April 23, 2022.

During that rally, Ms. Darlingh publicly expressed that she “oppose[s] gender ideology” in elementary schools and that young children should not be “exposed to the harms of gender identity ideology” or given “unfettered access to hormones—wrong-sex hormones—and surgery.” She argued passionately that she “exist[s] in this world to serve children” and “to protect children,” and does not support social or medical transition of young children. In the passion of the moment, Ms. Darlingh at one point said “fuck transgenderism,” referring to the “gender identity ideology” that she believes harms children. The entire rally, including Ms. Darlingh’s short speech, were posted on YouTube.<sup>1</sup>

A week later, on April 29, Ms. Darlingh received a letter from you stating that DPI had “opened an investigation to determine whether to initiate educator license revocation proceedings against [her]” for “immoral conduct.” The only so-called “immoral conduct” your letter pointed to was her public speech on April 23. In addition to her use of the f-word, you pointed to her statements “oppos[ing] gender identity ideology from entering [her] school building” and her statements that she “do[es] not believe children should have access to hormones or surgery” as examples of her “immoral conduct.”

Not only did you threaten her with “license revocation proceedings,” you also attempted to strongarm her into surrendering her license. Your letter stated that she has “the option to voluntarily surrender [her] license and bring the DPI’s

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<sup>1</sup> <https://www.youtube.com/watch?v=4jB70PN0JeI> (Ms. Darlingh’s speech starts at 12:34).

investigation of this matter to a close,” and you included a two page “Agreement to Surrender License” for her to sign and return. You gave her 30 days to respond.

Ms. Darlingh declines your “offer” to surrender her license.

As for responding to your allegations of “immoral conduct,” we would like to remind you and DPI of the First Amendment. As you may recall, government officials have “no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Nat’l Inst. of Fam. & Life Advoc. v. Becerra*, 138 S. Ct. 2361, 2371 (2018). And “speech by public employees on subject matter related to their employment holds special value” because they “are uniquely qualified to comment on matters concerning government policies that are of interest to the public at large.” *Lane v. Franks*, 573 U.S. 228, 240 (2014). Teachers, in particular, are “the members of a community most likely to have informed and definite opinions as to [school-related issues],” so “it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal.” *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty., Illinois*, 391 U.S. 563, 572 (1968). Ms. Darlingh’s speech was on her own time (a Saturday), spoken as a private citizen on a matter of public concern. Indeed, it’s hard to think of any more quintessential protected speech than speech at a public rally at a state capitol.

Even if the First Amendment did not exist, the “immoral conduct” statute is clearly targeted to *conduct*, not speech. Wis. Stat. § 115.31(1)(c). The only two examples given are use of pornography in schools and knowingly assisting a child-sex predator to obtain a job in a school—it should go without saying that speaking at a public rally is not remotely close to this. Moreover, the kind of *conduct* covered by the statute is that which “endangers the health, safety, welfare, or education of any pupil.” Wis. Stat. § 115.31(1)(c)1. Ms. Darlingh was not only not endangering anyone, she was doing the opposite—advocating her strong belief as to the best ways “to *protect* children,” as she even stated during her speech. The “immoral conduct” statute plainly does not apply here.

Ms. Darlingh’s use of profanity—something she would not do in a professional setting—was caused by the depth of her feeling and her distress at the harm that gender identity ideology can do to children. But its use in a political setting cannot form the basis for license revocation. You do not initiate license revocation proceedings for immoral conduct every time a teacher uses profanity when speaking on their own time, even in a publicly accessible forum. We suspect that there are hundreds, if not thousands, of DPI licensed professionals who have done so without action on your part. And, while Ms. Darlingh always has and will love and professionally serve every child in her charge, she fully stands behind her statements and her view that gender identity ideology is harmful to young children and has no place in elementary schools.

Your threat to revoke Ms. Darling's license for her public speech is as clear of a First Amendment violation as one can imagine. If you do "initiate educator license revocation proceedings," we can assure that you will face a federal lawsuit.

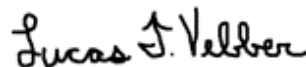
Indeed, your letter is such a blatant and troubling violation of First Amendment rights that it immediately makes one wonder how often DPI is wielding the "immoral conduct" statute to stifle speech it opposes. Therefore, please also consider this letter an open records request for any DPI records, including emails, letters, and other communications from DPI employees, from January 1, 2019, to the present, referencing "immoral conduct" or Wis. Stat. § 115.31(1)(c) in the context of a third party's license.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Luke Berg  
Deputy Counsel



Lucas Vebber  
Deputy Counsel