



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141
414-727-WILL (9455)
Fax 414-727-6385
www.will-law.org

Testimony in Favor of Assembly Bill 510
Assembly Committee on Family Law
November 8, 2023

Chairwoman Rozar and Members of the Assembly Committee on Family Law: Thank you for the opportunity to testify today in favor of Assembly Bill 510. My name is Luke Berg. I am an attorney with the Wisconsin Institute for Law & Liberty, and our lead attorney on our parental rights litigation. I am going to focus my remarks on the portion of the bill that addresses children’s names and pronouns in schools. My colleague, Cory Brewer, will testify on the remainder of the bill.

As you are probably aware, multiple school districts in Wisconsin, including some of the largest—Madison, Milwaukee, Eau Claire, and Oshkosh, just to name a few—have adopted policies to allow and facilitate a child’s social transition to a different gender identity at school, without notifying the parents or obtaining their consent. Some districts will even keep a transition at school secret from the parents. Imagine discovering one day that, for months, school staff have been treating your daughter as if she is your son, or your son, as if he is your daughter, without you knowing about it. I’ve received that call from half a dozen Wisconsin parents in the last few years. Unfortunately, this is happening more and more frequently, because the number of children struggling with this has exploded in recent years.

These policies violate parents’ constitutional right to raise their own children, and we have brought lawsuits against three Wisconsin school districts on that basis. I am pleased to report that we recently won one of those lawsuits against the Kettle Moraine School District. But other school districts continue to have these poorly thought-out policies. The Legislature has a chance to correct this issue statewide, to protect parents and their children, and it should do so, as other states have done.

Now, I want to acknowledge here that this feeling—of being born in the wrong body—is a real experience that some people have. I cannot imagine what that must feel like, and I have only the deepest sympathy for those who go through that. Kids who struggle with this deserve love and support, just like every other human being made in the image of God. But the question is *how* best to help a child who goes through this.

The premise of these policies is that the only appropriate response is to immediately and without question “affirm” that the child really is the opposite sex. Think about how bizarre that is for a moment. We don’t treat any other issue that way. No good parent gives their child anything and everything they want, no questions asked. Nor do we make medical decisions based solely on a child’s self-diagnosis. Part of our job as

parents is to protect our children from themselves, sometimes. And it is a common part of human experience that people can come to believe false things, even about themselves. I know I have. Why should gender be any different?

Moreover, a robust body of research has shown that the vast majority of children who struggle with this ultimately “desist”—they return to comfort with their biological sex. But desistance rates drop dramatically for kids who transition. Because of this, many mental health experts believe that transitioning too early, and having adults treat children as if they are the opposite sex, day-in-and-day-out, can actually do long-term harm by reinforcing a false belief. In fact, for that very reason, many countries in Europe are quickly moving away from the so-called “affirmative care” model, and instead recommend a slower, more cautious approach, where the first step is psychotherapy to help children process what they are feeling and why. These school district policies effectively take that option away from parents.

But whatever you think about this issue, it’s beyond dispute at this point that transitioning is not the right answer for *everyone*, and that for some, it does harm. We know that’s true because more and more young people—especially young girls—are telling us that this is their personal story. You’re going to hear from one of them in a moment. Many of these girls transitioned, later come to deeply regret that decision, and explain how it harmed them. And if you listen to their stories, often what you’ll hear them say is, I wish someone had the courage not to just say what I wanted to hear, but to tell me the truth about who I really am.

Unlike the school district policies I mentioned, the bill does not prescribe a one-size-fits-all approach to this issue—it simply allows parents to decide, for their own children, whether a transition is best for them. That’s consistent with the norm that parents expect when they send their children to school. As any parent of school-age children knows, anything out of the ordinary requires a parental consent form: field trips, sports, taking an aspirin at school. These are far less significant than changing gender identity, yet all require parental consent. As Judge Maxwell put it in our Kettle Moraine case: “The School District could not administer medicine to a student without parental consent. The School District could not require or allow a student to participate in a sport without parental consent. Likewise, the School District cannot change the pronoun of a student without parental consent.”

I would hope this would be a bipartisan issue. We can disagree about when and whether a transition is the right response for children struggling with their gender. But we should all be able to agree that parents, who know and love their children a thousand times more than anyone else in the world, should be the ones to decide what is best for their children. Not school staff who barely know them. I would urge your support for the bill.

Luke Berg

luke@will-law.org

Wisconsin Institute for Law & Liberty

Good afternoon, and thank you for the opportunity to testify. My name is Cory Brewer and I am also an attorney at the Wisconsin Institute for Law & Liberty (WILL), a nonprofit law and policy organization. Over the last several years, we have represented public school parents fighting for the best interests of their children.

AB 510 creates a statutory and legal right for parents and guardians to make the best decisions for the upbringing and education of their individual children. Parents want to have a voice in their children's education. My testimony today will focus both on issues involving WILL representation of public school parents and also the impact of this legislation, which is critical to ensure that parents are empowered and their rights are respected.

Right to Review Educational Materials and Access to Learning Materials

Luke has already discussed the right of parents to determine the names and pronouns used for the child while at school. This legislation also empowers parents to have access to the learning materials used in the education of their child. Parents have this right under Wisconsin public records laws and the federal Protection of Pupil Rights Amendment. But parents encounter obstacles regularly when attempting to obtain information from their local school districts. Their requests are routinely delayed, denied, not taken seriously, or they are told they need to pay exorbitant fees.

WILL also wrote a letter to the Sun Prairie Area School District related to a violation of girls' privacy in a school locker room. We submitted an open records request at that time, requesting limited communications, records pertaining to district policies and locker room guidance, a copy of the district organizational chart, and information related to the Title IX coordinator for the district. In response to our letter, counsel for the district said WILL would have to pay approximately \$11,000 before any records would be released. To date, neither WILL nor our clients in that matter have been provided with any of the public records requested.

Back in July, WILL represented a public school parent from Eau Claire who had to file a lawsuit to obtain a document withheld by the school district. On the second-to-last day of the school year, a statement about the gender transition of one of the district teachers was read aloud to students in several classrooms and was concealed from parents. Parents simply wanted to know what was read to their children, but they were kept in the dark. Both WILL and our client asked for a copy of the script read to students under state open records law, and our requests were denied. After WILL filed a lawsuit against the district, and the day before the first court hearing, the requested documents were produced.

This legislation ensures that parents have access to materials related to the education of their children.

Right to Opt-Out and Be Notified about Educational Topics

In Wisconsin, as well as other states around the country, parents have been leading the discussion about age-appropriate and academically proven curricula. This legislation does not require the removal of controversial curricula. Rather it provides parents with options to decide the educational experience and learning experience for their own child.

When we hear from parents about concerns with curriculum, the phrase we hear most often is: age-appropriate. This is entirely reasonable. But when parents ask questions, they are often silenced, mocked, or intimidated. It is not partisan to assert that children do better when families know what is going on in their lives. The more information parents have, the better they can support their kids emotionally and academically. Far too many schools keep families at arm's length, which could not come at a worse time. Kids would benefit if the adults in their lives worked together in their best interest.

Existing law gives parents a limited ability to opt their child out of some requirements. For example, parents have a right to be notified about their chance to opt out of human growth and development courses, which is essentially the sex education curriculum for Wisconsin. Districts may have an additional policy that allows parents to opt out of classes, but that is not a consistent policy across the state. AB 510 provides all parents access to information about what is being taught in the classroom and the ability to decide whether it is appropriate for their child.

Right to Engage with School Board Members

During the pandemic, parents had a window into what their children were learning, or not learning, and they were disappointed. A rift was created between districts and parents. Since then, there has been a wave of parental activism. Parents have the best interest of their children at heart. Some districts have positive relationships with parents and guardians, but unfortunately many do not.

Parents should be equal partners in the education of their children, not the enemy. This requires engagement. We need to set the expectation that parents and families in the community should be *and will be* involved with the local public school district and the school district should create as many opportunities as possible to have that sort of engagement. It is important to remember that parents do indeed have a right to engage school board members in the district where their child attends school. While parents

do not have an unlimited right to speak at all times or in all places, they have this right to engage, and this provision ensures that districts meet this requirement.

Right to Be Notified about Student Safety and Incidents of Violence

AB 510 addresses the important issue of school safety. Specifically, the legislation requires a school to notify parents about security updates, disciplinary actions taken against their child, and if crimes or acts of violence occur on a school campus.

Ultimately, AB 510 creates a legal standard for state infringement of fundamental rights of parents and guardians through specific items enumerated in the bill. It also gives parents and guardians a way to hold the district accountable for their actions if the district is found to fail to meet the requirements of this legislation. While the hope is that local school districts would be responsive to parents' questions and concerns, the reality is that the provisions in the legislation are not being met today.

We hope the Legislature takes this opportunity to protect parental rights and do what is best for children. We respectfully ask that you support Assembly Bill 510. Thank you for your time today. Luke and I would be happy to answer any questions.

Cory Brewer

cbrewer@will-law.org

Wisconsin Institute for Law & Liberty