No. 23-1280

IN THE
Supreme Court of the United States

PARENTS PROTECTING OUR CHILDREN, UA,
Petitioner,
v.
EAU CLAIRE AREA SCHOOL DISTRICT, WISCONSIN,
ET AL.,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

Brief *Amici Curiae* of America's Future, Public Advocate of the United States, U.S. Constitutional Rights Legal Def. Fund, LONANG Institute, and Conservative Legal Def. and Education Fund in Support of Petitioner

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July 8, 2024

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INTEREST OF THE *AMICI CURIAE*[1]

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STATEMENT OF THE CASE

Petitioner is an unincorporated association of concerned parents adversely affected by a transgender policy that was adopted by the Eau Claire Area School District ("ECASD") to apply to students of all ages and all grades who in any way question their sexual identity. The policy is entitled "Administrative Guidance for Gender Identity Support" ("Guidance"). *See Parents Protecting Our Child, UA v. Eau Claire Area Sch. Dist.*, 657 F. Supp. 3d 1161, 1165 (W.D. Wis. 2023) ("*Parents Protecting I*").

The facts are not in dispute. ECASD's Guidance mandates creation of a "Student Gender Support Plan"

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[1] It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

which shall address, as appropriate: "1. the **name and pronouns** desired by the student; 2. **Restroom** and **locker room use**; 3. Participation in athletics and extracurricular activities; 4. Student **transition plans**, if any ... can include social, **medical, surgical, and/or legal** processes...." *Id.* at 1165-1166 (emphasis added). The Guidance trains school personnel to guide children of all ages in addressing their sexuality while making every effort to exclude parents.

ECASD has established this secret curriculum designed specially for children exhibiting any sign of gender dysphoria, using "a 'Facilitator Guide' [which] reminds facilitators that '**[P]arents are not entitled to know** their kids' identities. That knowledge **must be earned**.'" *Id.* at 1167 (emphasis added). An ECASD online training session titled "Safe Spaces Part Two" demonstrates overt hostility toward parents with traditional religious or moral values at odds with homosexuality or sexual transitioning. Revealing what teachers are taught by this ECASD program, a flyer posted by one teacher at North High School in ECASD states: "'**If your parents aren't accepting of your identity, I'm your mom now**.'" Petition for Certiorari ("Pet.") at 26 (emphasis added).

The district court dismissed Petitioner's complaint on standing grounds, asserting that they did not allege that actual harm has yet been visited upon specific children. *Id.* at 1169-72. The Seventh Circuit affirmed. *Parents Protecting Our Child. v. Eau Claire Area Sch. Dist.*, 95 F.4th 501, 505-07 (7th Cir. 2024) ("*Parents Protecting II*").

STATEMENT

The Petitioner parents group seeks review of the rulings below that they do not have standing, preventing the merits of their case from being considered and the possibility of judicial resolution of a very real controversy. That "hands-off" approach appears to be based in large part on a flawed understanding of the Article III, Section 2 cases and controversies requirement and a misapplication of this Court's decision in *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013). This *amicus* brief responds to the reasons on which the courts relied, but begins by describing the tragic, real world effects of the school policy to put the decisions below into context.

The Seventh Circuit's decision prevents parents from protecting their children from the great fad of our time fully embraced by the Eau Claire school district — the notion that a boy or girl may have been born in the wrong body, and that a "he" can become a "she," or a "she" can become a "he" given sufficient compassionate counseling, hormones, and surgical disfigurement. Parents are considered an impediment to facilitating sexual reassignment. This irrationality constitutes the unspoken premise of the Eau Claire Guidance and both opinions below.

The courts below treat the current transgender craze as legitimate, but as the *Journal of Sex & Marital Therapy* recently pointed out, the "gender-affirming care" push stems from a "highly politicized and fallacious narrative, crafted and promoted by clinician-advocates, [and] has failed to

withstand scientific scrutiny internationally, with public health authorities in Sweden, Finland, and most recently England doing a U-turn on pediatric gender transitions...."[2]

Both Holy Writ and established science are in full agreement that male or female sex is an immutable characteristic. Sex is not "assigned" at birth. Courts cannot be afraid to stand against the tide, to protect impressionable, vulnerable, minor children from radical woke school systems. Requiring the courts below to hear the merits of the case would be the first step to restore order.

Increasing numbers of parents are realizing that school administrators often have their own agendas, and are choosing private schools, Christian schools, or home schooling. However, for many parents, none of these alternatives is possible.

Parents have the responsibility to rear their children through their entire childhood to successful adulthood and have the authority to make decisions on subjects of this magnitude, not teachers and administrators for whom children are at most temporary charges. Blackstone asserts "[t]he duty of parents to provide for the maintenance of their children is a principle of **natural law**; an obligation, ... laid on them ... by nature herself.... The municipal

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[2] E. Abbruzzese, S. Levine, and J. Mason, "The Myth of 'Reliable Research,' in Pediatric Gender Medicine: A critical evaluation of the Dutch Studies — and research that has followed," *Journal of Sex & Marital Therapy* at 673 (Jan. 2, 2023).

laws of **all well-regulated states** have taken care to **enforce this duty**...." Blackstone Commentaries on the Laws of England, Book 1, Chapter 16 (emphasis added). The Eau Claire policy undermines this duty, violating the natural rights of both parents and children, and is *ultra vires*. There is no Article III requirement that a court wait for a child to be injured or placed in imminent harm to provide a remedy. A parent organization should not be denied standing to now challenge politicized pop psychology masquerading as an anti-bulling rule where its application will be concealed from them by the school.

SUMMARY OF ARGUMENT

The Seventh Circuit dismisses the risk parents see before their eyes as "a worry that may never come to pass," denying that "any parent has experienced **actual injury** or faces any **imminent harm**." *Id*. at 503, 06. In other words, the court tells the parents: you may come back to court only after you have inadvertently discovered that the school policy has been undermining **your** religious faith and the scientific realities of sex, and is about to harm your child — if you happen to find out in time.

These types of policies are being implemented across the nation and should be addressed. If it was properly applied here, the requirement of "actual" or "imminent" harm may need re-examination. Parents are entitled to the information being withheld from them under the Family Educational Rights and Privacy Act. Courts have a duty to decide cases properly brought before them. Transgendermism is an

ancient religious practice foreign to this country. Parents who cannot afford alternative schooling should not be forced to put their children at risk.

ARGUMENT

I. THE QUESTION PRESENTED IS ARISING ACROSS THE NATION.

What the Eau Claire, Wisconsin, school system is doing to promote transgenderism is not limited to one outlier jurisdiction, but is happening across America. *See* Pet. at 3-4. Therefore, the question presented is of national and great importance.

The district court dismissed Petitioner's complaint on standing grounds because "plaintiff does not allege (1) that any of its members' children are transgender or gender nonconforming, (2) that the district has applied the gender identity support Guidance or Plan with respect to its members's children or any other children, or (3) that any parent or guardian has been denied information related to their child's identity." *Parents Protecting I* at 1169-1170. The Seventh Circuit affirmed the dismissal on identical grounds, *Parents Protecting II* at 505.

The circuit court agreed with the district court that the Guidance never expressly "**mandated the exclusion** of parents or guardians from discussions or decisions regarding a student's gender expression." *Id*. at 504 (emphasis added). However, the court never bothered to address the many ways that the policy

excludes parents from the school's decisions about their child's sexuality:

- The "meeting to discuss the student's needs and to develop a specific Student Gender Support Plan" does not require the participation of parents. That Plan includes changing the child's name, pronouns, using an opposite sex bathroom, using an opposite sex locker room, participating in opposite sex athletics and extracurricular activities, and transition plans that may include "social, medical, surgical, and/or legal processes." *Parents Protecting I* at 1165-66.

- School personnel are instructed to ask "the student first before discussing a student's gender nonconformity or transgender status with the student's parents/guardian" (*id.* at 1166), implying that the child has veto power over his or her parents learning of the potentially life changing sexual developments.

- The rule requires that "Protecting the privacy of transgender, non-binary, and/or gender non-conforming students and employees must be a top priority.... All student and personnel information shall be kept strictly confidential...." *Id.*

- The Facilitator Guide directs: "we cannot let parents' rejection of their children guide teachers' reactions and actions and advocacy of our students.... [if the parents have a] faith-

based rejection of their student's queer identity [then the school staff] must not act as stand-ins for **oppressive ideas/behaviors/attitudes**, even and **especially if that oppression is coming from parents**" *Id*. at 1167 (emphasis added).

- The **only** instance in which a parent has the right to this information is if the parent suspects school personnel involvement in their child's sexual development and makes a **specific request**. *Id*. at 1167.

The circuit court asserts that the plaintiffs have not identified "any instance of the School District applying the policy in a way concerning of or detrimental to parental rights." *Id*. at 503. However, the court does not explain how the application of a policy which involves strangers coaching children **as young as kindergarten** on matters of their sexuality while hiding the matter from parents could possibly be done in a manner which is not "detrimental to parental rights."

Petitioner's members who are the parents of these children of all ages are most certainly "presently injured by the loss of control — the loss of their exclusive decision-making authority. Pet. at 19, 24. Despite the school's policy being predicated on its usurpation of parental authority, based on the corrupt assumption that the school system knows best for all children, better than the parents who birthed and raised the child, the courts found no "injury in fact."

A recent dissenting opinion by Justice Thomas explained that it was not until "'180 years after the ratification of Article III — that this Court even introduced the 'injury in fact' (as opposed to injury in law) concept of standing." *TransUnionLLC v. Ramirez*, 594 U.S. 413, 450 (2021) (citation omitted). The case referred to by Justice Thomas, *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970), stated that the:

> first question is whether the plaintiff alleges that the challenged action has caused him **injury in fact**, economic or otherwise.... The "legal interest" test goes to the merits. The question of standing is different. [*Id.* at 152-53.]

At that point in his opinion for the Court, Justice Douglas paused to explain that those interests went well beyond financial:

> That interest may reflect "**aesthetic**, **conservational**, and **recreational**" as well as economic values.... A person or a family may have a **spiritual** stake in First Amendment values sufficient to give standing.... [*Id.* at 154 (emphasis added) (citations omitted).]

Parents certainly have a spiritual stake in the well being of their children. It would be a perverse result indeed if a 1970 opinion written by Justice Douglas — who only two years later would assert that trees

should have standing[3] — would provide the judicial foundation for a ruling that parents may not have the chance to challenge the merits of a school system policy which violates their religious convictions, their parental responsibilities, and could lead to the emotional and physical harm and even death of their children.[4]

Recently, this Court determined that a parents group similar to Petitioner had standing to challenge student assignment plans that rely on race even though the injuries were not imminent, and might never be suffered. This Court ruled: "[t]he fact that [some] children of group members will not be denied admission to a school based on race ... does not eliminate the injury claimed." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718-19 (2007).

To bolster its position on standing, the district court went far afield to find support in relying on *Clapper*, involving the constitutionality of electronic eavesdropping for foreign intelligence purposes. The plaintiffs there could not show "the Government will imminently target communications to which respondents are parties." *Clapper* at 411. The plaintiffs there had "no actual knowledge of the

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[3] *See Sierra Club v. Morton*, 405 U.S. 727, 741 (1972) (Douglas, J. dissenting).

[4] *See, e.g.,* numerous case studies in A. Shrier, Irreversible Damage: The Transgender Craze Seducing Our Daughters (Regnery: 2020).

Government's ... targeting practices...." *Id*. Plaintiffs could "only speculate as to whether the Government will seek to use ... authorized surveillance...." *Id*. at 412. Plaintiffs could "only speculate as to whether the [FISC] will authorize such surveillance." *Id*. at 413. Then, "even if the Government were to obtain FISC's approval to target respondents' foreign contacts ... it is unclear whether the Government would succeed in acquiring the communications." *Id.* at 414. Lastly, speculation was required as to "whether *their own communications* with their foreign contacts would be incidentally acquired." *Id*.

No such speculation is required here. The plaintiffs are parents of children of all ages at the school which is subject to the challenged policy which challenges their natural rights as parents. Rather than five types of speculation required in *Clapper*, there is only one precondition operating here, as the policy is triggered whenever any child questions his or her own sexuality in the view of school personnel. Given the pro-transgender ideology of many teachers and administrators, most any behavior could meet this test.

This policy can be expected to lead to the victimization of children. Sweden's Christopher Gillberg, a world leader in child psychiatry, has called unproven medical interventions on "trans-identifying"

children "possibly one of the greatest scandals in medical history."[5]

II. PETITIONER HAS STANDING DUE TO DENIAL OF INFORMATION TO WHICH PARENTS ARE LEGALLY ENTITLED.

Petitioner correctly notes that "this Court has recognized that an 'inability to obtain information' to which one is entitled is a cognizable 'injury in fact' for purposes of Article III standing." Pet. at 23-24. The importance of the information Petitioner parents are denied is enshrined in federal law, and its denial itself constitutes injury.

The Family Educational Rights and Privacy Act ("FERPA") guarantees parents and guardians the right of access to student records. FERPA provides that "No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students ... the right to inspect and review the education records of their children." 20 U.S.C. § 1232g.

If there were any doubt as to the intent of Congress, the language of FERPA makes clear that the rights of parents to be informed of their children's educational information was a key component of the Act. FERPA provides that "[a]n educational agency or

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[5] J. Van Maren, "World-renowned child psychiatrist calls trans treatments 'possibly one of the greatest scandals in medical history,'" *The Bridgehead* (Sept. 25, 2019).

institution shall give full rights under the Act to either parent...." 34 C.F.R. § 99.4.

The implementing regulations make these protections even more clear: "An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 [consent of the student or a parent] if the disclosure meets one or more of the following conditions...." 34 C.F.R. § 99.31(a). Section (a)(8) provides that one such condition is when "[t]he disclosure is to parents...." 34 C.F.R. § 99.31(a)(8). Thus, **parents are by law entitled to education records with or without the consent of the student**.[6]

Despite FERPA's requirements, as Petitioner notes, ECASD's "Gender Support Plan" form "indicates that the only criteria for excluding parents from this process is a "student stat[ing] [that] they do not want [their] parents to know." Pet. at 9. ECASD has trained its staff that "[**P]arents are not entitled to know their kids' identities. That knowledge must be earned**...." *Parents Protecting I* at 1167 (emphasis added).

ECASD's policy of willfully keeping parents uninformed of issues critically affecting their children's mental and physical health constitutes a "policy of denying, or which effectively prevents, the parents of

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[6] It is likely that the only reason the Eau Clare District allows for staff to admit their actions in response to direct questions from parents is to avoid violation of this regulation.

students ... the right to inspect and review the education records of their children," in violation of FERPA. 20 U.S.C. § 1232g.

This Court long ago ruled that "[t]he actual or threatened injury required by Art. III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing." *Warth v. Seldin*, 422 U.S. 490, 500 (1975) (internal quotation omitted). One such statutorily created right which creates standing is the right to obtain information. *See, e.g., Spokeo, Inc. v. Robins*, 578 U.S. 330, 342 (2016); *Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 449-450 (1989). This Court has been clear that "[a] plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *FEC v. Akins*, 524 U.S. 11, 21 (1998). A statute which "establishes an enforceable right to truthful information [creates] standing to maintain a claim for damages." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-374 (1982) (abrogated by statute on other grounds).

In *Spokeo*, this Court recognized that where Congress creates a statutory right that is violated, standing is easier to demonstrate:

> In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles.... [B]ecause Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is also instructive and important. Thus, we said in

> *Lujan* that Congress may "elevat[e] to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law." [*Spokeo* at 340-341 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 578, 580 (1992)).]

Congress' repeated recognition in FERPA of the critical rights of parents acknowledges the same fundamental rights this Court has long recognized — that "is the natural duty of the parent to give his children education ..." and government may not interfere with "**the power of parents to control the education of their own**." *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923) (emphasis added). *See also Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925). "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). FERPA acknowledges and protects the same basic "right and duty" of parents, by preserving full parental access to education records. Denial of that information in itself, without need to show more, constitutes injury.

This Court recognized in *Yoder* the reality that schools pursuing an agenda adversarial to that of a parent, with regard to life's most basic questions, risks driving permanent wedges between parents and children and destroying parents' fundamental rights entirely. "[I]t seems clear that if the State is

empowered, as parens patriae, to 'save' a child from himself or his Amish parents by requiring an additional two years of compulsory formal high school education, the State will in large measure influence, if not determine, the religious future of the child." *Id*.

The same applies here. Where a school arrogates to itself the right to literally treat a child of one sex as belonging to another, without ever even informing the parent, "to 'save' a child from himself or his religious parents" (to paraphrase *Yoder*), then "the State will in large measure influence, if not determine, the mental and emotional health future of the child." ECASD's own training claims that "[w]e handle religious objections too often with kid gloves" and if parents maintain a "faith-based rejection of their student's queer identity," then staff "must not act as stand-ins for oppressive ideas/behaviors/attitudes, even and especially if that oppression is coming from parents." Pet. at 10. ECASD cannot willfully create an adversarial situation with religious parents, then argue that Petitioner has failed to show adverseness.

Meanwhile, due to the school's information blockade, the parents are doomed not to even know, or be able to interject their own preferred mental and emotional health care plans for their children, until after the fact. This implicates *Spokeo*'s teaching that "even if their harms may be difficult to prove or measure" (*Spokeo* at 341), due entirely to the school's policy of stonewalling, the denial of information as to whether the school is promoting to some children a "transgender" agenda anathema to their parents is itself sufficient to create standing.

Petitioner has shown "the risk of real harm" to a statutorily protected interest, and thus "satisf[ied] the requirement of concreteness." *Id.*

III. THIS COURT HAS A "VIRTUALLY UNFLAGGING OBLIGATION" TO TAKE JURISDICTION WHERE IT EXISTS.

After surveying the numerous and generally unsuccessful challenges to government school transgender policies, Petitioner correctly observes that: "federal courts have gone every which way to avoid the merits" of cases challenging school policies designed to hide children's "gender transitions" from their own parents. Pet. at 2.

The Seventh Circuit describes the issue of "gender transitions" and the interplay between the rights and responsibilities of parents and schools toward children with gender dysphoria as one of "sensitivity, delicacy, and difficulty" that is "challenging, frustrating, and messy...." *Parents Protecting II* at 506. It is unclear if this is offered as a reason not to find standing. If so, it is not only unpersuasive, it is unjudicial. This Court should instruct the lower courts not to use standing to circumvent their responsibility to decide cases and controversies , no matter how "delicate" and "messy" it may be. The principle applicable here is well established, as over two hundred years ago, Chief Justice John Marshall stated the obligatory nature of the judicial duty:

> [i]t is most true that this Court ... must take jurisdiction if it should.... With whatever

> doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. **We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.** Questions may occur which we would gladly avoid; but we cannot avoid them. [*Cohens v. Virginia*, 19 U.S. 264, 404 (1821) (emphasis added).[7]]

Over one hundred years ago, this Court reiterated that solemn responsibility: "When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction...." *Willcox v. Consolidated Gas Co.*, 212 U.S. 19, 40 (1909).

Both commentators and some of this Court's justices have pointed out over the years that too often courts' standing determinations have been used to "transform[] standing law from a doctrine of judicial modesty into a tool of judicial aggrandizement." *TransUnion LLC* at 461 (Kagan, J., dissenting). *See also id.* at 446-47 (Thomas, J., dissenting, joined by Justices Breyer, Sotomayor, and Kagan) ("Key to the scope of the judicial power, then, is whether an individual asserts his or her own rights.... Where an

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[7] More recently, this Court reminded the lower courts of Justice Marshall's warning, noting that the "obligation of the federal courts to exercise the jurisdiction given them" is "**virtually unflagging**." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (emphasis added).

individual sought to sue someone for a violation of his private rights, such as trespass on his land, the plaintiff needed only to allege the violation.... Courts typically did not require any showing of actual damage.") As Professors Solove and Citron point out, too often "standing is not a shield that deflects but a sword that slices away parts of laws the judiciary dislikes. Far from passive, standing now is weaponized, a tool to achieve political ends."[8]

This is precisely the effect of the lower courts' apparently widespread desire to avoid weighing in on the constitutional question raised by Petitioners. Where courts desire to address the merits, such as cases involving the free speech and free exercise of teachers challenging requirements to adhere to similar Gender Guidance policies, they have found standing. Pet. at 14-15.[9] But parents, who are without question the most-injured parties, continue to be denied access to the courts by unsympathetic judges, on "standing" grounds. *Id.* at 15. The glaring stonewalling by the lower courts of the constitutional right of parents to direct the upbringing of their children cries out for this Court's intervention.

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[8] D. Solove and D. Citron, "Standing and Privacy Harms: A Critique of *TransUnion v. Ramirez*," 101 B.U. L. REV. ONLINE 62, 70 (2021).

[9] *See, e.g., Mirabelli v. Olson*, 2023 U.S. Dist. LEXIS 163880, at *54 (S.D. Cal. 2023); *Ricard* v. *USD 475 Geary Cnty., KS Sch. B*, 2022 U.S. Dist. LEXIS 83742 (D. Kan. 2022).

Plaintiffs have offered a litany of examples, from across the nation, of children irreparably damaged by schools' overt concealment of their "gender transitions" from loving parents who wanted to help. *See* Pet. at 3-4. They have demonstrated that the defendant school district has a policy of intentionally keeping the parents in the dark and substituting the judgment of teachers for that of parents in the most intimate areas of their children's lives. But perversely, because the schools are actively keeping the parents in the dark, the parents have been unable in the pre-discovery phases to prove that the schools have urged their particular children to "transition." Accordingly, the lower courts have accepted the easy route of dismissing on standing grounds. The blanket refusal of lower courts to hear parental challenges, despite Petitioner's proof of the schools' active concealment, demands this Court's intervention.

Further, the lower courts' blanket refusals to intervene demonstrate the use of standing to impose a judicial bias in favor of Gender Guidance policies that alienate parents from children. While the courts below attempt to take credit for "restraint," Professor Gunther noted 60 years ago that, instead of restraint, denials of standing too often represent a "virulent variety of free-wheeling interventionism."[10] Justice Scalia echoed the theme in a 2014 concurrence, lamenting that this Court had "shirked our duty and distorted the law" to avoid reaching a constitutional

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[10] G. Gunther, "The Subtle Vices of the Passive Virtues-A Comment on Principle and Expediency in Judicial Review," 64 COLUM. L. REV. 1, 25 (1964).

question. *Bond v. United States*, 572 U.S. 844, 882 (2014) (Scalia, J., concurring).

As Petitioner notes, this Court has long recognized parents' "fundamental constitutional right to make decisions concerning the rearing of [their] own [children]." *Troxel v. Granville*, 530 U.S. 57, 70 (2000) (plurality op.). This Court has made clear that government efforts to "supersede parental authority" are both unconstitutional and "repugnant to American tradition." *Parham v. J. R.*, 442 U.S. 584, 603 (1979). The rights of parents to direct the upbringing of their children are "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel* at 65 (plurality op.). These rights have long since been "established beyond debate." *Yoder* at 232.

The Seventh Circuit makes little effort to disguise its disdain for this fundamental right, arguing that "[l]ife often deals challenging, frustrating, and messy hands. Allowing solutions to be sought — or perhaps at times impasses to be reached — student by student and circumstance by circumstance most respects the role and position of the Eau Claire School District." *Parents Protecting II* at 506. It should go without saying that without court intervention, those "impasses" inevitably mean that parents' fundamental rights are subjugated to the "superior wisdom" of school elites.

The courts below have "shirked their duty" under the excuse of standing and the guise of "judicial restraint," and this Court should require them to perform it. As Petitioners note, if parents subject to

such policies do not have standing to challenge them, "federal standing law has truly gone off the rails." Pet. at 5. This Court should grant the petition and clarify the law of standing.

IV. TRANSGENDERISM IS CLOSELY ASSOCIATED WITH THE ANCIENT RELIGION OF PAGANISM.

Petitioner alleged a violation of parents' free exercise of religion under the First Amendment and the Wisconsin Constitution. While the school could have taken the position that its pro-inclusive policy was secular, the record demonstrates that the policy was grounded in a "religion" that is making a comeback in America.

The policy's hostility to the religious views of parents is palpable. The Facilitator Guide has no problem with certain religion — "after all, there are millions of queer people of various faith traditions," but it has contempt for what it calls "the **weaponization of religion against queer** people." *Parents Protecting I* at 1167 (emphasis added). One of the religions that these school officials must find particularly annoying is Biblical Christianity which stands at odds with the entire ECASD policy. Compare Transgenderism with Holy Writ: "In the day that God created man, in the likeness of God made he him; Male and female created he them; and blessed them, and called their name Adam, in the day when they were created." *Genesis* 5:1-2. "I will praise thee; for I am fearfully and wonderfully made...." *Psalm* 139:14. Compare the policy to keep information from

parents with the teaching "Children, obey your parents in the Lord: for this is right." *Ephesians* 6:1-4.

With people who question or oppose Transgenderism and homosexuality, the Guide states: "[if the parents' have a] **faith-based rejection** of their student's queer identity [then the school staff] must not act as stand-ins for **oppressive** ideas/behaviors/attitudes, even and especially if that oppression is coming from parents." *Parents Protecting I* at 1167 (emphasis added).

Thus, the Guide reveals an important truth: the school's policy favoring Transgenderism is neither a new, nor a secular phenomenon. It has ancient spiritual roots. Without even knowing it, many have adopted a pagan worldview. One of the "gods" of the pagan world was Ishtar, the "goddess of war and sexual love." *See* "Ishtar," *Britannica.* "An ancient Mesopotamian tablet records.... 'When I sit in the alehouse, I am a woman, and I am an exuberant young man.'" *See* J. Cahn, The Return of the Gods (Frontline: 2022) at 118.

The goddess Ishtar had summertime festivals and parades. "The parades of the goddess featured men dressed as women, women dressed as men, each dressed as both, male priests parading as women, and cultic women acting as men. They were public pageants and spectacles of the transgendered, the cross-dressed, the homosexual, the intersexual, the cross-gendered." *Id*. at 181.

While the term "transgender" may have been coined only in 1965, those ancient pagan roots confirm what Solomon explained: "there is no new thing under the sun." *Ecclesiastes* 1:9. The Bible also makes clear that what may appear to only be a political or cultural dispute, has an important spiritual component. "For we wrestle not against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places." *Ephesians* 6:12.

The courts below have empowered the School District to implement a policy based on an ancient pagan religious belief that by adopting the appearance and mannerisms of biological females, biological men can become women and must be treated as such. Such ancient pagan religious beliefs are not constitutionally neutral, and should not be tolerated by any court.

The school policy is reminiscent of a lawless time that "there was no king in Israel: every man did that which was right in his own eyes." *Judges* 21:25. As professor, writer, feminist, and student of the history of sex and culture, Camille Paglia, has explained:

> **[T]ransgender phenomena** multiply and spread in "late" phases of culture, as religious, political, and family traditions weaken and **civilizations begin to decline**. [C. Paglia, Free women, free men: sex, gender, feminism at 237-38 (Vintage Books: 2018) (emphasis added).]

Paganism is the dangerous religious underpinning of the challenged policy which the courts below believe parents should have no ability to challenge until potentially irreversible harm is visited upon their children. If this truly is the law of standing as currently understood, it is time for it to be corrected by this Court.

V. THE SCHOOL'S POLICY FORCES PARENTS TO SURRENDER RIGHTS TO PARTICIPATE IN GOVERNMENT SCHOOLING.

Seen as a matter of faith, Transgenderism certainly cannot be forced upon students any more than the Board of Regent's Prayer. *See Engel v. Vitale*, 270 U.S. 421 (1962). However, even if somehow deemed a purely secular matter, it still puts children at risk and cannot be inserted into the school curriculum to be offered to certain students secretly. As Petitioner explains: "if parents do not have standing to challenge such policies until after their children are hurt by them, they have no way to protect their children and preserve their decision-making authority **except to remove their children from public schools preemptively**, which many parents cannot afford." Pet. at 18 (emphasis added). And where "parents who discover that their school district has secretly transitioned their child immediately withdraw their child from the school district" to stop and prevent further harm to their child, those parents are also denied standing to challenge those school policies. *Id*. at 15.

To avoid the risk of injury, parents are forced to choose between removing their children from the Respondent's schools or sacrificing their right to an education in government schools which are paid for with their tax dollars. This is not a choice any parent in the United States should be forced to make. In *Perry v. Sindermann*, 408 U.S. 593 (1972), this Court ruled that government may not deny a person a benefit "on a basis that infringes his constitutionally protected interests.... For if the government could deny a benefit to a person because of his constitutionally protected [rights], his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to 'produce a result which [it] could not command directly.' ... Such interference with constitutional rights is impermissible." *Id.* at 597. Government schools cannot operate independently of the Bill of Rights. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943) (emphasis added).

This Hobson's choice is analogous to the constitutional principle that a citizen cannot be required to surrender one constitutional right for exercising another. That principle was applied, for example, in *Simmons v. United States*, 390 U.S. 377 (1968): "this Court has always been peculiarly sensitive" to such constitutional deprivations, prohibiting such a Catch-22, holding that it is "intolerable that one constitutional right should have to be surrendered in order to assert another." *Id.* at 393-94. The choices faced by the Eau Claire parents are not unlike those protected in *Simmons*.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

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July 8, 2024