No. 23-1534

In the United States Court of Appeals For The Seventh Circuit

PARENTS PROTECTING OUR CHILDREN, UA,
Plaintiff-Appellant,

v.

EAU CLAIRE AREA SCHOOL DISTRICT, WISCONSIN; Tim Nordin; Lori Bica; Marquell; Phil Lyons; Joshua Clements; Stephanie Farrar; Erica Zerr; and Michael Johnson,
Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Wisconsin, Case No. 3:22-CV-508,
the Honorable Stephen L. Crocker, Magistrate Judge

BRIEF *AMICI CURIAE* OF WISCONSIN FAMILY ACTION, ILLINOIS FAMILY INSTITUTE, NEBRASKA FAMILY ALLIANCE, HAWAII FAMILY FORUM, THE FAMILY FOUNDATION, ETHICS AND RELIGIOUS LIBERTY COMMISSION, MINNESOTA-WISCONSIN BAPTIST CONVENTION, CONCERNED WOMEN FOR AMERICA, PACIFIC JUSTICE INSTITUTE, AND NATIONAL LEGAL FOUNDATION

in support of Appellant and urging reversal

Steven W. Fitschen
Counsel of Record for Amici Curiae
National Legal Foundation
524 Johnstown Road
Chesapeake, Va. 23322
sfitschen@nationallegalfoundation.org

Save As Clear Form

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 23-1534

Short Caption: Parents Protecting Our Children, UA v. Eau Claire Area School District

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☑ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Wisconsin Family Action, Illinois Family Institute, Nebraska Family Alliance, Hawaii Family Forum, The Family Foundation, Ethics and Religious Liberty Commission, Minnesota-Wisconsin Baptist Convention, Concerned Women for America, Pacific Justice Foundation, National Legal Foundation

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

National Legal Foundation

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

for all corporate amici--none

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

for all corporate amici--none

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: s/ Steven W. Fitschen Date: 5/8/2023

Attorney's Printed Name: Steven W. Fitschen

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: 524 Johnsown Road

Chesapeake, VA 23322

Phone Number: 757-463-6133 Fax Number: 757-296-0010

E-Mail Address: sfitschen@nationallegalfoundation.org

Table of Contents

Table of Authorities

Cases

Statutes

Interests of *Amici Curiae*[1]

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

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

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

protection upon which SBC members and adherents of other faith traditions depend as they follow the dictates of their conscience in the practice of their faith, including in their family relationships. The Minnesota-Wisconsin Baptist Convention is a state convention entity in partnership with the SBC; it has over 200 affiliated churches in those states, and it shares the values of the ERLC and other Southern Baptists.

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

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

Summary of the Argument

Under the school district's theory, adopted by the court below, to

have standing, parents would have to know that the school had already *secretly* prepared a transitioning plan for their child, i.e., they would have to find out that they had already been subjected to the constitutional deprivation of which they complain before they could complain of it. That makes no sense, and it is not the law. The Constitution does not require someone targeted by adverse government action to wait to sue until the threatened harm has occurred. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007).

The threatened target group here is defined by the school district's "Parental Preclusion Policy"[2] itself—parents of children attending the district's schools. Thus, all parents have standing to complain that they may be subject to the policy. As the Supreme Court instructed in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992),

> [w]hen the suit is one challenging the legality of government action or inaction, standing depends considerably upon whether the plaintiff is himself an object of the action (or forgone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.

---

[2] *Amici* refer to the challenged portions of the school district's gender transition guidelines as the "Parental Preclusion Policy."

Id. at 561-62. So it is here. Parents are not restricted to bringing suit after the fact when they discover information and actions that have been unconstitutionally kept from them, perhaps with distressing results for their child. *See, e.g., Perez v. Broskie*, No. 3:22-cv-0083-TJC-JBT (M.D. Fla., amended complaint filed Mar. 11, 2022) (parents alleging that school assisted their child to transition at school without informing them of such counseling or their child's suicide attempts).

The Supreme Court has repeatedly made this clear. In *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967), it instructed that a court must "evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Id.* at 149. The Plaintiff Parents[3] certainly satisfy both prongs of that test: the Parental Preclusion Policy is in place and is being staunchly defended, and Plaintiff Parents will suffer substantial hardship if the policy is applied to them without their knowledge. The Plaintiff Parents suffer injury from the policy now, and they suffer as well from imminent, threatened injury.

---

[3] As the Plaintiff is a collective organization of parents, *Amici* refer to it as "Plaintiff Parents."

Argument

The Plaintiff Parents complain that the school district has established a policy that allows the schools to withhold from them the critically important information that their child, with the school's assistance, is transitioning to the opposite gender by changing name, pronouns, and apparel. This information does not deal directly with the child's education. Rather, it pertains to the child's physical, emotional, mental, and spiritual health, areas at the core of parents' rights and responsibilities to make important life decisions for their minor children. *See Parham v. J.R.,* 442 U.S. 584, 602-04 (1979).

The school district does not recognize the parents' constitutionally protected rights in this regard, instead indulging in the presumptions, as a matter of policy, that it is *always* best for a child, no matter how young, to transition if the child expresses an interest in doing so and that this justifies keeping it secret from the child's parents if the child and school believe the parents might disagree. Although this withholding of information does not occur in every instance, there is no question that the policy allows the school to counsel and aid a child to transition to another gender (complete with a new name, pronouns, and clothes), all

without the knowledge and consent of the child's parents.

The question before this Court is whether the Plaintiff Parents, because they have not been able to allege with certainty that any of their children are in the process of being transitioned by the schools, lack standing to challenge the Parental Preclusion Policy. Of course, the Plaintiff Plaintiffs don't know with *certainty* if their children are transitioning because the school district may be intentionally withholding that information under its challenged policy. That very fact causes anxiety and tension in the family relationship, and such harm is real and immediate. At the very least, the injury to the Plaintiff Parents' constitutionally protected rights is substantially threatened by this policy that targets them, which confirms their standing to challenge the Parental Preclusion Policy.

I. The Allegations Are More Than Sufficient to Demonstrate Injury.

The district court repeatedly relied on the following formula: the policy does not *require* school personnel to hide from parents that they are assisting their child to exhibit as transgender, so parents have no standing to complain. That formula looks through the wrong end of the telescope and is beset with both legal and factual infirmities.

The initial legal infirmity is that the district court did not properly apply legal presumptions when considering standing on a motion to dismiss. "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" *Lujan*, 504 U.S. at 561 (quoting *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990)).

Plaintiff Parents more than meet this standard. Considering only the recitation of the facts in the district court opinion, it is clear that the school district has adopted a policy that precludes parents, as the Plaintiff Parents allege. The district's Guidance defines the process as student-initiated and school-driven, without any requirement to notify or involve the parents. (RSA 4-5.) Although parents *may* be involved in developing the Gender Support Plan, the plan guidance specifically contemplates that parents will *not* be involved if the "student states they [sic] do not want parents to know." (RSA 5.) The plan document requires information from the student about whether the parents are aware of "their child's gender status," but, if the "No" box is checked, it does not require school personnel to take any action to inform them. (RSA 6.)

Indeed, the staff training materials boldly instruct that "parents are not entitled to know their kids' identities. That knowledge must be earned. . . . In ECASD, our priority is supporting the student." (RSA 6.)

A second legal infirmity is the district court's assumption that, because it is not clear that the Plaintiff Parents' children will decide to secretly transition at school, they do not have standing to complain of a potential application of the Parental Preclusion Policy against them. It has been established over and again that *potential* harm is sufficient to provide standing.

For example, in *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014), the Court explained that injury in fact is satisfied when "threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." *Id.* at 158 (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 401, 414 n.5 (2013)) (cleaned up); *see also TransUnion LLC v. Ramirez*, 141. S. Ct. 2190, 2210 (2021). A credible threat of future enforcement exists so long as the threat is not "imaginary or wholly speculative," *Babbitt v. Farm Workers Nat'l Union*, 442 U.S. 289, 302 (1979), "chimerical," *Steffel v. Thompson*, 415 U.S. 452, 459 (1974), or "wholly conjectural." *Golden v. Zwickler*, 394 U.S. 103, 109 (1969).

The rationale of the district court that the Plaintiff Parents have no standing because they can't show that they will be denied notice of their child transitioning is like saying a contractor can't complain of racially biased selection criteria because he doesn't know if it will cause him to lose the competition. That type of reasoning was rejected in *Northeast Florida Chapter v. Jacksonville*, 508 U.S. 656 (1993). The Court emphasized that merely impairing the contractors' opportunity to compete was sufficient injury to confer standing: "When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing." *Id.* at 665-66. Here, the school district forecloses some parents from the opportunity of providing their children with the care, counseling, and support that is recognized as a fundamental right under the common law and the Constitution, and the Plaintiff Parents have a substantial concern that they would be considered part of that class.

Two recent courts of appeals decisions also demonstrates that the standing of targeted individuals to complain in advance is not defeated

because the application of a challenged policy is not certain. In *Franciscan Alliance v. Bacerra*, 47 F.4th 368, 376 (5th Cir. 2022), and *Religious Sisters of Mercy v. Bacerra*, 55 F.4th 583 (8th Cir. 2022), doctors challenged a federal regulation threatening to penalize them if they failed to provide certain medical services to transgender youth, even if they had religious objection to doing so. DOJ argued in both cases that the doctors lacked standing because the agency had not yet decided whether it would apply the regulations to them in that situation. The Fifth and Eighth Circuits both found that the doctors had standing to complain—by very virtue of DOJ saying the issue was unresolved, it conceded a credible threat of enforcement, providing sufficient injury in fact to the doctors. *Franciscan Alliance*, 47 F.4th at 376; *Religious Sisters of Mercy*, 55 F.4th at 602-07. Here, the allegations are more than sufficient to demonstrate that the school board will enforce the Parental Preclusion Policy against the Plaintiff Parents if their children request it. That is all that is necessary to establish their standing.

II. The Injury of Plaintiff Parents Is Real and Imminent, Not Remote.

This is not a situation in which the threat of injury by application of the challenged policy is remote. The Supreme Court instructed in

Susan B. Anthony List that the most obvious way to demonstrate a credible threat in the future is to show application of the challenged policy in the past, especially when defendants have not "disavowed enforcement." 573 U.S. at 164-65; *see also Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020) (finding plaintiff in constant threat of enforcement despite executive order not currently being enforced); *O'Shea v. Littleton,* 414 U.S. 488, 496 (1974). This mandates the conclusion that the Plaintiff Parents have standing: the school district is currently applying the Parental Preclusion Policy, and it is staunchly defending its desire to continue to do so as more minors express a desire to transition gender at school.

The Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701(2007), controls here. There, parents challenged a racially discriminatory admissions policy of a public school district, and the school district argued the parents lacked an imminent injury because they would "only be affected if their children seek to enroll in a Seattle public high school and choose an oversubscribed school that is integration positive," such that the racial tiebreaker was triggered. *Id.* at 718-20. The Court rejected this

argument, noting that the parents all had "children in the district's elementary, middle, and high schools" that were subject to the policy and, therefore, pursuant to the challenged policy, "*may be* 'denied admission to the high schools of their choice when they apply for those schools in the future.'" *Id.* at 718 (emphasis added; citation omitted).

The Court explained that the fact that "[some] children of group members will not be denied admission to a school based on their race . . . does not eliminate the injury claimed." Rather, the injury was real and immediate, as the violation of constitutional rights was apparent on the face of the policy—"being forced to compete in a race-based system." This case has the same posture—Plaintiff Parents have children in the district's schools and are subject to a policy that, on its face, violates their constitutional rights. *See also TransUnion*, 141 S. Ct. at 2204 (noting that intangible, constitutional harms are concrete and confer standing).

Indeed, Plaintiff Parents have an even stronger case than the parents in *Parents Involved*: if they cannot preemptively challenge the policy, then they will be *required* to suffer the harm before they are capable of challenging the policy, because the school district will hide the harm from them. In fact, under the district's theory, the Plaintiff Parents

may *never* be able to challenge the harms imposed on them, if the district successfully implements its Parental Preclusion Policy with one of their children, as it is likely currently doing with an untold number of minor children. The Plaintiff Parents have standing to complain about this situation now.

With due respect, the district court's attempted distinction of *Parents Involved* is no distinction at all. (RSA 14-15.) The Supreme Court's rationale was that, just by being subject to the challenged policy, children and their parents had a *present* injury and standing to complain, even though they could not prove the policy would actually be applied to them to deny the students their preferred school. That is exactly the situation here. All students and their parents are currently subject to the district's Parental Preclusion Policy, and the fact that particular parents do not know for sure that it will be applied to their child in the future does not defeat their standing to complain of its application now.

Nor can the fact that the Parental Preclusion Policy might only be applied to a small subset of students and their parents distinguish *Parents Involved.* The relative number affected was not a implicated by the Court's rationale in that case, and this is not a situation like *Clapper,*

in which the plaintiffs had no evidence that they were targeted for surveillance from among the hundreds of millions of individuals who could be. 568 U.S. at 411-14. Here, the targeted individuals are specifically spelled out in the policy itself—parents of current, minor school children.

Finally, standing is not defeated, as the school district and the district court argue, by the fact that some events must happen before application of the challenged policy. A street preacher may preemptively challenge an ordinance that outlaws preaching in a public park but allows other speech, and his standing is not defeated because (a) he has not yet preached, (b) if he did a policeman might not show up, and (c) if the policeman did show up he might use his discretion not to arrest the preacher. In *Parents Involved*, the parents could preemptively challenge the policy even though the school district had not yet applied it to their children and despite the fact that their kids may have been admitted to the schools of their choice notwithstanding the policy. The same reasoning applies here.[4]

---

[4] The district court relies on two decisions involving similar school gender transition policies challenged on parental rights grounds, *John and Jane Parents 1 v. Montgomery County Board of Education*, 2022

Even if the Parental Preclusion Policy is not being currently applied to one of the Plaintiff Parents' children (although, by design, it could be without their knowing it) the Plaintiff Parents have standing because the policy acts immediately to the detriment of the parent-child relationship. Just by virtue of being in place, the Parental Preclusion Policy prompts parents to question whether their child is transitioning without their knowledge. The dialogue is easy to imagine: "Are you transitioning at school, dear?" asks the mother of her middle-schooler. "No, mother," her daughter responds. "Are you telling me the truth, or are you and the school just keeping this secret from me because you think I might not be supportive?" the mother continues, and continues, and, so on. Obviously, the Parental Preclusion Policy spawns an immediate, deleterious effect on family relationships.[5] The same happens whenever a school teacher

---

WL 3544256 (D. Md., Aug. 18, 2022), which did *not* find that the parents lacked standing to complain when ruling against them, and *Parents Defending Education v. Linn-Mar Community School District*, 2022 WL 4356109 (N.D. Iowa, Sept. 20, 2022), which did question the parents' standing in the context of deciding a motion for preliminary injunction. Both decisions are on appeal.

[5] It is no answer to suggest that the parent could request a gender support plan from the school and find out that way, even though the Guidelines say such a request will be honored. A parent has no duty to make such requests, and to suggest that they be made frequently is burdensome to both the parents and the school, a burden that itself

or counselor asks a student, "Can you trust your parents about this? Are you sure you want to tell them?"

III. The Plaintiff Parents Have Informational Standing and Standing to Complain of Violations of PPRA.

This case is also controlled by the Supreme Court's decision in *FEC v. Akins*, 524 U.S. 11 (1998). In *Akins*, the Court held that voters had standing to challenge the FEC's failure to disclose contributions made to an organization and distributions made by that organization to candidates for office. *Id.* at 13-14. It explained that the voters suffered an "injury in fact" because of "their inability to obtain information" that would "help them . . . evaluate candidates for public office." *Id.* at 21; *see also Nat'l Vets. Legal Servs. Program v. United States*, 990 F.3d 834 (4th Cir. 2021) (applying informational standing when a non-profit agency alleged the government's failure to disclose information did not allow it

---

is injury in fact sufficient to support standing of the parents. Moreover, the school may begin transitioning the child before the parent requests a plan, allowing the harm to both the child and the parent-child relationship of which the Plaintiff Parents complain. In any event, the Supreme Court held in *Cruz* that the fact that a Plaintiff could avoid the challenged penalty does not deprive him of standing to challenge the regulation's constitutionality if applied to him. *FEC v. Cruz,* 142 S. Ct. 1638, 1647-48 (2022).

to perform its services promptly). It is just the same here. The Plaintiff Parents assert that they are injured by the schools withholding information from them to which they are legally entitled that would allow them better to carry out their constitutional, parental responsibilities.

The district court brushes this aside with its familiar argument that the challenged policy doesn't *require* students to complete a support plan without their parents' consent. (RSA 19-20.) But it certainly *permits* it, and that is sufficient for standing purposes. And at this stage, the law requires full credit be given to the allegations (fully supported by the policy documents) that the policy requires parents not to be notified if that is what the child requests. *See Lujan*, 504 U.S. at 561.

Moreover, the district court layers on another inaccurate statement, i.e., that the Plaintiff Parents have "not alleged that defendants have required any child to submit to any type of survey, analysis, or evaluation" that would be covered by the PPRA, 20 U.S.C. § 1232h, and its implementing regulations, 34 C.F.R. § 98.4(a). (RSA 20.) The Plaintiff Parents have clearly alleged, as the district court recites when setting out their allegations, that any examination of their children about gender identify without their notice and consent would violate

PPRA. (RSA 19.) Any fair reading of PPRA and its regulations leads only to the conclusion that school personnel filling out a gender transition plan with a student is covered as a "survey, analysis, or evaluation" of sexual matters under PPRA. Thus, the Plaintiff Parents have standing to complain on this ground as well.[6]

The Supreme Court applied the same principles recently in *FEC v. Cruz,* 142 S. Ct. 1638 (2022), in which Senator Cruz challenged the constitutionality of a fundraising regulation. The government claimed he had no standing because he voluntarily made himself subject to the regulation, arguing that this brought him within the holding of *Clapper*. Not so, the Court held, explaining that, in *Clapper*, the plaintiffs "could not show that they had been or were likely to be subjected to" the policy they challenged, but that Senator Cruz's "injuries are directly inflicted by the FEC's threatened enforcement of the provisions they now challenge. That appellees chose to subject themselves to those provisions does not change the fact that they *are* subject to them, and will face

[6] If the district court simply was repeating that the Plaintiff Parents had not alleged that they know for certain that a gender support plan has yet been adopted for their children, the argument fails to eliminate standing for the Plaintiff Parents for the reasons stated above.

genuine legal penalties if they do not comply." *Id.* at 1647. Similarly here, the Plaintiff Parents are the direct targets of the challenged Parental Preclusion Policy. They have standing to complain about it. *See id.* at 1647-48 (holding that allegations of constitutional violations show current injury and must be accepted for standing purposes). The fact that Plaintiff Parents voluntarily sent their children to public school does not eliminate their injury.

IV. The Plaintiff Parents' Standing Is Also Buttressed by the Unconstitutional Conditions Doctrine

That the Plaintiff Parents have standing is also buttressed by the unconstitutional conditions doctrine. A generally available public benefit to parents—in this case, a free public school education—cannot be conditioned on their surrendering a constitutionally protected right of being kept informed of how the school is treating their children. The Supreme Court stated a half-century ago, "For at least a quarter-century, this Court has made clear that even though a person has no 'right' to a valuable government benefit . . . [the government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests. . . . Such interference with constitutional rights is

impermissible." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). More recently, in *Carson v. Makin,* 142 S. Ct. 1987 (2022), the Court held that a receipt of a generally applicable benefit cannot be conditioned on a school surrendering the right to exercise its religion as it sees fit, and in *Agency for International Development v. Alliance for Open Society International, Inc.,* 570 U.S. 205 (2013), it held that conditioning a grant on compelled speech is unconstitutional. The targeted parents here suffer a *present* injury that conditions their use of public schools for their children on their forfeiting their right to know how the schools are treating their children when it comes to gender transformation. They have a right to complain *now* of a policy that places an unconstitutional condition on their *current* use of the public schools.

It is no answer for the district court to assert that the unconstitutional conditions doctrine does not, standing alone, state a cause of action. (RSA 18.) Whatever the validity of that contention, the Plaintiff Parents do not make a bare unconstitutional conditions complaint here. They allege freestanding constitutional violations regarding parental rights, and the unconstitutional conditions about which they complain are attached to and part and parcel of those

constitutional rights that they allege have been violated. The unconstitutional conditions doctrine simply confirms their showing that the violations of their parental rights are not hypothetical and distant, but real and immediate. They have standing to complain about those violations.

Conclusion

For these multiple reasons, the Plaintiff Parents have standing to bring this action. They have both present and imminent, threatened injuries that cannot be calculated by monetary damages and that may well occur without their knowledge because of the deliberate action of the school district. Their relationship with their children and their use of the public schools are put under a cloud by the challenged policy, and their request for declaratory and injunctive relief provides the only effective remedy for them to eliminate the threat that their opportunity to perform their parental responsibilities will not be damaged. Indeed, as the Supreme Court emphasized in *TransUnion*, the very purpose of requests for such "forward-looking, injunctive relief" is to "prevent the harm from occurring." 141 S. Ct. at 2210. The school district cannot hide from the Plaintiff Parents its violation of their rights and then force them to

complain only after they have been injured, assuming they ever learn of the violations and their injury.

Respectfully submitted,
this 8th day of May, 2023

/s/ Steven W. Fitschen
Steven W. Fitschen
Counsel of Record for Amici Curiae
National Legal Foundation
524 Johnstown Road
Chesapeake, Va. 23322
sfitschen@nationallegalfoundation.org

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitations of F.R.A.P. 32(a)7(B)(i), F.R.A.P. 29(a)(5), and the corresponding local rules. Exclusive of the exempted portions, this brief contains 4,452 words, including footnotes, in 14-point Century Schoolbook font. This total was calculated with the Word Count function of Microsoft Office Word 365.

/s/ Steven W. Fitschen
Steven W. Fitschen
Counsel of Record for *Amici Curiae*
National Legal Foundation
524 Johnstown Road
Chesapeake, Va. 23322
(757) 650-9210
sfitschen@nationallegalfoundation.org

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2023, I served the foregoing Brief *Amici Curiae* of Wisconsin Family Action, *et al.*, on all counsel of record through the CM/ECF system. I certify that all counsel of record in the case are registered CM/ECF users.

/s/ Steven W. Fitschen
Steven W. Fitschen
Counsel of Record for *Amici Curiae*
National Legal Foundation
524 Johnstown Road
Chesapeake, Va. 23322
(757) 650-9210
sfitschen@nationallegalfoundation.org