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SUPREME COURT

No. 2020AP1032

In the Supreme Court of Wisconsin

JOHN DOE 1, JANE DOE 1, JANE DOE 3, and JANE DOE 4, PLAINTIFFS-
APPELLANTS-PETITIONERS,

JOHN DOE 5 and JANE DOE 5, PLAINTIFFS-APPELLANTS,

JOHN DOE 6, JANE DOE 6, JOHN DOE 8, and JANE DOE 8, PLAINTIFFS,

v.

MADISON METROPOLITAN SCHOOL DISTRICT, DEFENDANT-RESPONDENT,
GENDER EQUITY ASSOCIATION OF JAMES MADISON MEMORIAL HIGH
SCHOOL, GENDER SEXUALITY ALLIANCE OF MADISON WEST HIGH
SCHOOL, and GENDER SEXUALITY ALLIANCE OF ROBERT M. LA FOLLETTE
HIGH SCHOOL, INTERVENORS-DEFENDANTS-RESPONDENTS.

On Appeal from the Dane County Circuit Court,
The Honorable Judge Frank D. Remington, Presiding,
Case No. 2020-CV-454

**BRIEF OF AMICUS CURIAE PROFESSORS OF PSYCHOLOGY & HUMAN
DEVELOPMENT IN SUPPORT OF DEFENDANT-RESPONDENT &
INTERVENORS-DEFENDANT-RESPONDENT**

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INTEREST OF *AMICI CURIAE*

Dr. Stephanie Budge, Dr. Mollie McQuillan, Dr. Stephen Russell, Dr. Kristina Olson, Dr. Sabra Katz-Wise, Dr. Russell Toomey, Dr. Jenifer McGuire, and Dr. Katherine Kovalanka join as *amici* because of their collective understanding that requiring school personnel automatically to disclose information related to a student's sexual orientation, gender identity, gender exploration, or gender expression to the student's parents or guardians—regardless of a student's individual circumstances or potential vulnerability to harm—would undermine the school's efforts to create a school environment that can best support student development and success. *Amici* have extensive experience studying the effects of home and school environments on the development and wellbeing of young people, including LGBTQ+ young people. Drawing from that research, *amici* urge this Court to deny Plaintiff-Appellees' request for temporary injunctive relief and to remand this case to the trial court for further factual development and consideration.

ARGUMENT

I. Wisconsin law and research-based public policy prohibit automatic disclosure of confidential information to a student's parent in limited circumstances to protect student safety and wellbeing.

Schools are often referred to as a student's home away from home. Like parents, schools are invested in their students. Administrators and school personnel strive to build an environment that is welcoming and inclusive of all students so that students can thrive socially, emotionally, and academically. Because of that common interest, school personnel and parents are natural collaborators. In particular, schools strive to maintain open lines of communication with a student's parents and to encourage open

communication between students and parents. Doing so is important for many reasons, including that it may provide school personnel with an opportunity to share information and resources that will help parents support their child in navigating difficult circumstances. Unsurprisingly, research demonstrates the benefits of such partnerships. *See generally*, Mavis Sanders & Steven Sheldon, *Principals Matter: A Guide to School, Family, and Community Partnerships* (2009); Nat'l Cmte. for Citizens in Educ., *A New Generation of Evidence: The Family is Critical to Student Achievement* (Henderson & Berla, Eds., 1994).

Maintaining open communication with parents is the ideal method for supporting student development and growth; however, as the law in Wisconsin and other states has long recognized, there are limited circumstances where schools must, consistent with their obligations to protect students, respect students' confidentiality when failing to do so may deter them from seeking support or put them at risk of harm.

Importantly, research has documented that for many students, being able to confide confidentially in school personnel is critical to students' willingness to seek adult support. School employees are a likely source for that support because of the convenience of talking with them (*i.e.* no need to get parental permission or assistance to go somewhere else). Laurie S. Zabin & Samuel D. Clark, Jr., *Institutional Factors Affecting Teenagers' Choice and Reasons for Delay in Attending a Family Planning Clinic*, 15 *Fam. Plan. Persp.* 25 (1983). Research repeatedly shows that without confidentiality protections many young

people would rather forgo seeking help than risk their parents finding out.¹ See, e.g., Carol A. Ford et al., *Foregone Health Care Among Adolescents*, 282 JAMA 2227 (1999); Rhonda Williams & Joseph Wehrman, *Collaboration and Confidentiality: Not a Paradox but an Understanding Between Principals and School Counselors*, 94 NAASP Bull. 107, 110 (2010) (“99% of participants identified confidentiality as essential (53%) or important (46%) in their decision to seek help from a school counselor”); Tina Cheng, et al., *Confidentiality in health care: a survey of knowledge, perceptions, and attitudes among high school students*, 269 JAMA 1404 (1993). In those limited circumstances, state law—including in Wisconsin—and research-based best practices prohibit automatic disclosure of sensitive information to a student’s parent or guardian. Guided by the best interests of the students, those policies safeguard the ability of students to obtain support from trusted adults in navigating difficult—if not, crisis—situations.

The most common examples are statutes and policies governing the confidentiality of reports of substance abuse and access to reproductive healthcare, including pregnancy-related services. For more than forty years Wisconsin law has recognized a privileged relationship between students and school personnel “who engage[] in alcohol or drug abuse program activities.” Wisc. Stat. Ann. § 118.126(1). Those communications are confidential regardless of whether the student discloses their own struggle with substance abuse or that of a peer. *Id.* The exceptions to that privilege are very narrow: (1) the student experiencing

¹ Melissa Prober, *Please Don't Tell My Parents: The Validity of School Policies Mandating Parental Notification of a Student's Pregnancy*, 71 Brook. L. Rev. 557, 575 n.108 (2005) (breaching student confidentiality can have a chilling effect, causing students to forgo seeking other health-related services from the school).

the substance abuse issue consents to the disclosure in writing; (2) disclosure is required to prevent “serious and imminent danger to the health, safety or life of any person and [n]o more information than is required to alleviate the serious and imminent danger may be disclosed;” or (3) disclosure is required under applicable statutes for reporting abuse and neglect of minors and reporting of “serious and imminent” threats of violence in or targeted at a school. *Id.* at § 118.126(1)(a)–(c). In contrast, policies that mandate automatic disclosure of sensitive information to parents, such as random drug testing of students, can undermine the school environment by sowing distrust between school personnel and students, and encouraging students to engage in more dangerous behavior to evade detection—for example, by using drugs that are not typically tested for, despite the fact that those drugs have a higher morbidity and mortality rates. *See* Sharon Levy & Miriam Schnizer, *AAP Technical Report: Adolescent Drug Testing Policies in Schools*, 135 *Pediatrics* e1107 (2015). As a result, the American Academy of Pediatrics does not support school-based drug testing programs. *Id.*

Likewise, research-based best practices regarding the confidentiality of a student’s pregnancy strongly support confidentiality and respect for the student’s decision regarding if, and when, to disclose that information to their parent or guardian. Those best practices have been adopted by many major associations of professionals working with young people in the United States. Am. Sch. Counselors Ass’n, *The School Counselor and Confidentiality* (2018), available at, <https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-Confidentiality> (last visited Mar. 9, 2022); Am. Coll. of Obstetricians & Gynecologists,

ACOG Committee Opinion 803: Confidentiality in adolescent care (2020), available at, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2020/04/confidentiality-in-adolescent-health-care> (last visited Mar. 9, 2022); Am. Med. Ass'n, *Opinion 5.055 Confidential care for minors*, 16 AMA J. of Ethics 901 (2014); Am. Acad. Of Pediatrics, *Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents* (Hagan et al., eds., 3d ed. 2008); Carol Ford, et al., *Confidential health care for adolescents: position paper of the Society for Adolescent Medicine*, 35 J. of Adolescent Health 160 (2004).

In practice, this confidentiality is most often time limited; long enough to support the student in coping with the immediate situation while providing the student the tools and support they need to disclose this information to their parent or guardian. This reality is borne out by research. For example, one study found that around ninety percent of students who become pregnant disclose that information to at least one parent. Laurie Zabin et al., *To Whom Do Inner-City Minors Talk About Their Pregnancies? Adolescents' Communications with Parents and Parent Surrogates*, 23 Fam. Plan. Persp. 148, 151 (1992). At the same time, there is no evidence that forcing school personnel to disclose that confidential information is correlated with positive familial communication or outcomes. Am. Acad. of Pediatrics, Comm. on Adolescence, *The Adolescent Right to Confidential Care When Considering Abortion*, 97 Pediatrics 746, 746 (1996). In fact, research strongly indicates the opposite is true; minors whose parents found out about the minor's pregnancy from a third party were two to four times more likely to face adverse consequences. Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24

Fam. Plan. Persp. 196 (1992).

The long-standing public policy of this state and well-established evidence-based best practices demonstrate that, in limited circumstances, there are significant benefits to protecting student confidentiality: namely fostering a supportive school environment that promotes student development and success. In practice, protecting student confidentiality frequently enables students to communicate with their parents, whereas forcing disclosure has the opposite effect, encouraging students to avoid disclosure to any adult and to forego obtaining the adult support and guidance they need. Protecting student confidentiality provides school personnel with the flexibility to work with the student to disclose private information to their parents. It may also help parents make more informed decisions by learning from the expertise and experience of school personnel who have worked with numerous students facing these similar difficult circumstances. Mandating disclosure, however, may put students at risk of serious harms, is more likely to undermine rather than support students' relationship with their parents, and deters many students from seeking any adult support.

II. Requiring school personnel to automatically disclose a student's request to use a different name or pronoun while in school to their parent can undermine the student's safety and wellbeing.

For many of the same reasons schools are required to maintain student confidentiality in the context of pregnancy and substance abuse (which principally are issues some older students may face), schools must also safeguard the confidentiality of students of any age who are exploring their gender identity, some of whom may be

transgender. Transgender young people, in particular, experience high levels of family rejection. Approximately one third of transgender youth are rejected by family after disclosing their transgender status. Sabra Katz-Wise, et al., *LGBT Youth and Family Acceptance*, 63 *Pediatric Clinics of N. Am.* 1011 (2016). The fear of rejection causes another third of transgender young people to keep that information from their families. *Id.*

The negative effects of family rejection are serious and well-documented. In the short-term, family rejection can result in verbal or physical abuse, homelessness, and attempts to change the child's sexual orientation or gender identity. Caitlyn Ryan, et al., *Parent-Initiated Sexual Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment*, 67 *J. of Homosexuality* 159 (2018); Laura E. Durso & Gary J. Gates, *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless* (2012), available at, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-July-2012.pdf> (last visited Mar. 23, 2022). Family rejection also has significant long-term effects. For example, those who experience high levels of family rejection were over eight times more likely to have attempted suicide as compared to twice as likely among families who were moderately rejecting (*i.e.* responded to their child's gender identity with both positive and rejecting behaviors). Caitlyn Ryan, et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 *Pediatrics* 346 (2009). Those who had a highly rejecting family were also six times more likely to experience severe depression. *Id.*

Transgender people experience pervasive discrimination by employers, healthcare providers, and places of public accommodation. In particular, for many transgender young people, even school is not a safe place. Joseph G. Kosciw, et al., *2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* 16 (2021) (finding over forty percent of LGBTQ students did not feel safe at school felt unsafe because of how they expressed their gender); *see also* Michelle M. Johns, et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017*, 68 *MMWR* 67 (2019), available at, <http://dx.doi.org/10.15585/mmwr.mm6803a3> (last visited Mar. 23, 2022); Human Rts. Campaign & Gender Spectrum, *Supporting and Caring for Our Gender Expansive Youth: Lessons from the Human Rights Campaign's Youth Survey* 10 (2014). More than forty percent of students surveyed for the National School Climate Survey reported hearing anti-transgender epithets or remarks by either frequently or often, and more than half reported the same about negative remarks regarding gender expression. Kosciw, *2019 National School Climate Survey* at 22. Transgender students are often the targets of multiple forms of bullying and harassment, such as verbal harassment, relational aggression, and physical assault.

In contrast, research has shown that transgender youth benefit greatly from supportive school environments. For example, transgender students in schools or districts with policies that addressed the specific needs of transgender students, were less likely to hear negative remarks about transgender people, less likely to miss school because they

felt unsafe or uncomfortable, reported experiencing less bullying and harassment. *Id.* at 69-79. At the same time, those students also reported feeling a greater sense of belonging to the school community, which is correlated with improvements in academic motivation and achievement. *Id.* Unsurprisingly, students who reported being taught curriculum that was inclusive of LGBTQ people or that had support from school personnel, also felt safer in school, had higher grades, and higher educational aspirations. *Id.*; *see also* Russell Toomey, et al., *Heteronormativity, school climates, and perceived safety for gender nonconforming peers*, 35 *J. of Adolescence* 187 (2012) (finding schools with LGBTQ-inclusive curriculum and presence of GSA were perceived by students to be safer).

The benefits of a positive and supportive school environment are not just academic. Being bullied and harassed less frequently at school is associated with better self-esteem and lower levels of depression. Kosciw, *2019 National School Climate Survey*, at 52–53. Even something as simple as referring to a transgender student by their chosen name and correct pronouns significantly decreases symptoms of severe depression. Stephen Russell, et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 *J. of Adolescent Health* 503 (2018). Policies that safeguard the confidentiality of a student's transgender identity or gender exploration, like the policy adopted by Madison Metropolitan School District, help preserve the welcoming learning environment in schools throughout the district.

Supportive policies also provide schools an opportunity to facilitate positive communication between students and their parents. This includes being a resource for building family acceptance and support, which is a strong protective factor as a child moves

into adolescence and adulthood. *See, e.g.*, Stephanie Budge, et al., *A grounded theory study of the development of trans youths' awareness of coping with gender identity*, 27 *J. of Child Family Studies* 3048 (2018); Sabra Katz-Wise, et al., *Family functioning and mental health of transgender and gender nonconforming youth in the Trans Teen and Family Narratives project*, 55 *J. of Sex Research* 582 (2018); Alida Bouris & Brandon Hill, *Exploring the mother-adolescent relationship as a promotive resource for sexual and gender minority youth*, 73 *J. of Soc. Issues* 618 (2017); Kristina Olson, et al., *Mental health of transgender children who are supported in their identities*, 137 *Pediatrics* 1 (2016); Lisa Simons, et al., *Parental support and mental health among transgender adolescents*, 53 *J. of Adolescent Health* 791 (2013).

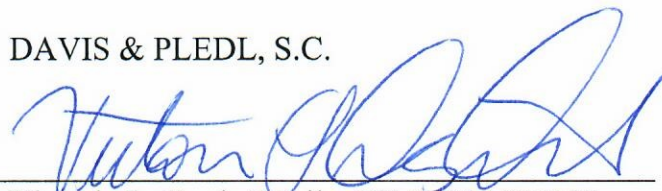
CONCLUSION

Petitioners' requested injunction pending appeal is inconsistent with the safety and wellbeing of transgender young people in Wisconsin and should be denied. *Amici* respectfully urge this Court to remand to allow the parties to develop a full factual record and provide the Circuit Court an opportunity to rule on the merits of Petitioners' legal claims. Thus, the decisions of the Court of Appeals should be affirmed.

Dated: March 25, 2022.

Respectfully submitted,

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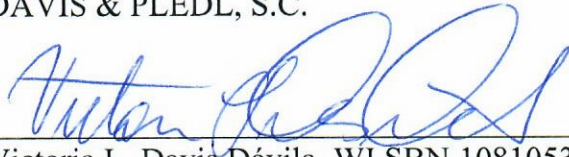
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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief meets the form and length requirements of Rule 809.19(8)(b), (c) for a brief produced with a proportional serif font. The length of this brief is 2,552 words.

Dated: March 25, 2022.

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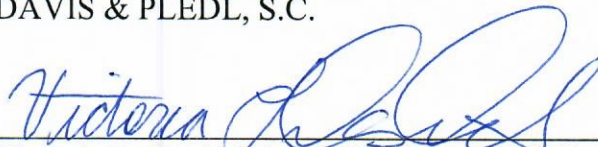
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