APPEAL NO. 22-2927

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PARENTS DEFENDING EDUCATION,

Plaintiff-Appellant,

v.

LINN-MAR COMMUNITY SCHOOL DISTRICT, ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Iowa, Cedar Rapids Division
Honorable C.J. Williams
Case No. 22-CV-CJW-MAR

BRIEF OF PARENTAL RIGHTS IOWA AND THE JUSTICE FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF APPELLANT AND REVERSAL

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TABLE OF CONTENTS

Appellate Case: 22-2927 Page: 2 Date Filed: 11/10/2022 Entry ID: 5217049

TABLE OF AUTHORITIES

Cases

Appellate Case: 22-2927 Page: 4 Date Filed: 11/10/2022 Entry ID: 5217049

Statutes

Other Authorities

IDENTITY AND INTEREST OF AMICUS CURIAE[1]

Parental Rights Iowa is an unincorporated organization that seeks to preserve the liberty of parents to direct the upbringing, education, rearing, care, custody, control, and associations of their children without undue government interference. It was founded in response to the erosion of legal protections for parental rights in the State of Iowa. Even though federal and Iowa courts have repeatedly upheld parents' fundamental rights, parents still encounter obstacles to exercising those rights in schools and other domains.

To protect children, Parental Rights Iowa spearheads efforts to codify federal and state caselaw recognizing parental rights. *E.g.*, Shane Vander Hart, *Parental Rights Bill Advances In the Iowa House*, The Iowa Torch (Mar. 5, 2021), https://bit.ly/3WlhW9V. And it opposes state efforts to violate parental rights. *E.g.*, *Coalition urges Newsom to veto California's 'trans refuge' bill that strips parental rights*, The Iowa Standard (Sept. 19, 2022), https://bit.ly/3UfLR1G. Parental Rights Iowa

[1] No counsel for a party authored this brief in whole or in part, and no person other than amici and their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel were notified of this brief and both Plaintiff-Appellant and Defendants-Appellees consented to its filing.

Appellate Case: 22-2927 Page: 6 Date Filed: 11/10/2022 Entry ID: 5217049

also educates those in government and the public on the important role that parental rights play in protecting children and ensuring that freedom, opportunity, and civil society flourish in the State of Iowa.

The Justice Foundation is a 501(c)(3) charitable foundation that provides free legal representation to protect individual and parental rights across the nation, while enforcing constitutional limits on state authority. It supports the fundamental and natural right of parents to direct the education and upbringing of their own children. The Justice Foundation believes that parental rights are fundamental to the family and society. And it opposes efforts to expand state authority and control over children at the expense of parental rights.

Through direct litigation and amicus submissions, the Justice Foundation seeks to legally establish that parents are the best protectors of children, and that parents have the natural right and duty to provide for their children's care and well-being. The Justice Foundation has substantial experience with public school law. Its President, Allan E. Parker, Jr., was designated by the Texas State Board of Education as one of the official evaluators of Texas' open enrollment charter school program. Mr. Parker is a former professor of

Appellate Case: 22-2927 Page: 7 Date Filed: 11/10/2022 Entry ID: 5217049

education law and represented public school districts in the early years of his practice, before founding the Justice Foundation to represent parents' rights. The Justice Foundation has used his expertise to advocate for parental rights and limiting government entities—like public school districts—to their proper role in many education cases.

Parental Rights Iowa and the Justice Foundation have a strong interest in the outcome of this litigation. The school district's gender-identity policy excludes parents from *any* knowledge or involvement in key decisions regarding their children's care, education, and upbringing. The policy violates parents' fundamental rights that the U.S. Supreme Court has recognized for nearly a century and which *amici* champion every day. *E.g.*, *Meyer v. Nebraska*, 262 U.S. 390, 399–401 (1923) (holding that parents have a fundamental right to "bring up children" and "control the education of their own").

The district court's erroneous ruling makes parental rights effectively impossible to enforce, leaving parents "at the mercy of [school districts'] *noblesse oblige*." *United States v. Stevens*, 559 U.S. 460, 480 (2010). And that thwarts all the work *amici* have done to ensure that the law protects parents' fundamental rights.

Appellate Case: 22-2927 Page: 8 Date Filed: 11/10/2022 Entry ID: 5217049

BACKGROUND

I. The school district's policy

Linn-Mar Community School District adopted a gender-identity policy that assumes public schools are better guardians of children than their own parents. That policy seeks to exclude parents and put government officials in their place. It does not emancipate children but rather holds them captive to the district's views, preventing kids from hearing a different perspective from their parents.[2]

Specifically, the policy provides for the development of a "Gender Support Plan" for "transgender students, gender-expansive students, nonbinary, gender nonconforming students, and students questioning their gender." App. 296; R. Doc. 3-11, at 44. "Any student" may "request" such a plan and decide who attends the meeting with district officials "within 10 school days" to develop it—"including *whether their parent/guardian will participate*." App. 297; R. Doc. 3-11, at 45 (emphasis added).

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[2] Because this brief is concerned with parental rights, *amici* do not address other sections of the gender-identity policy that compel students to use transgender names and pronouns regardless of their beliefs, likely in violation of the Free Speech and Free Exercise Clauses. *See Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021).

Appellate Case: 22-2927 Page: 9 Date Filed: 11/10/2022 Entry ID: 5217049

The district makes it effortless for students to obtain a Gender Support Plan without parents' knowledge, participation, or consent. But even such an easily accessible Plan "is not required for a student" to adopt a transgender or nonbinary identity at school without the knowledge of that child's parents. App. 297; R. Doc. 3-11, at 45. The policy makes clear that if students obtain one, the Plan "will have priority . . . *over their parent/guardian*" at least for "[a]ny student in seventh grade" or up. App. 296; R. Doc. 3-11, at 44 (emphasis added).

The school district hides Gender Support Plans and related measures from parents by placing these Plans in the "student's temporary records, not the student's permanent records." App. 297; R. Doc. 3-11, at 45. The same is true of any "[c]onversations between students and school counselors" or other staff members. *Id.* "All written records related to student meetings concerning their gender identity and/or gender transition with any staff member will be kept in a temporary file that shall be maintained by the school counselor." App. 300; R. Doc. 3-11, at 48. That file is "*only . . . accessible to staff members* that the student has authorized in advance to do so" and is *hidden from parents*. *Id.* (emphasis added).

Appellate Case: 22-2927 Page: 10 Date Filed: 11/10/2022 Entry ID: 5217049

In fact, the gender-identity policy declares that "students[ ] have a right to privacy[,] which includes the right to keep one's transgender status private at school." App. 297; R. Doc. 3-11, at 45. That means "[t]he district shall not disclose information that may reveal a student's transgender status to others[,] *including . . . parents* . . . unless legally required to do so . . . or unless the student" consents. *Id.* (emphasis added). The policy bars "[s]chool staff" from "*contacting [a student's] parent/guardian*" without "check[ing] with the student first." *Id.* (emphasis added). Even worse, staff are required to affirmatively mislead parents by "ask[ing] the student what name and pronouns they would like school officials to use in communications *with their family*." *Id.* (emphasis added).

The policy is designed so that school teachers will invade as many parent-child relationships as possible. "At the beginning of each semester, teachers may ask *all students* how they want to be addressed in class and in *communications with their parent/guardian*." App. 298; R. Doc. 3-11, at 46 (emphasis added). The district will automatically "change a student's name and/or gender marker" upon "a request from a student, *regardless of age*." *Id.* (emphasis added). The only exception is

Appellate Case: 22-2927 Page: 11 Date Filed: 11/10/2022 Entry ID: 5217049

in situations like standardized testing where "the district is required by law to use or to report a student's legal name and/or gender marker." *Id.* For those purposes, "building secretaries will keep a record of the student's legal names . . . in a locked file *for their access only*." *Id.* (emphasis added); *accord* App. 300; R. Doc. 3-11, at 48.

Under the policy, parents' only right is to request that a student receive an "alternative" to sharing restrooms and locker rooms with children of the opposite sex. App. 298; R. Doc. 3-11, at 46. Otherwise, students may use transgender names and pronouns at school; receive transgender-affirming counseling; dress like the opposite sex; take PE classes with the opposite sex; and room overnight with the opposite sex—all without their parents' knowledge, participation, or consent. App. 296–99; R. Doc. 3-11, at 44–47.

Anticipating objections and inquiries from parents, the policy mandates that school staff "*direct parents* . . . to [a] designated spokesperson" who handles "issues related to gender identity." App. 300; R. Doc. 3-11, at 48 (emphasis added). That spokesperson's "top priority" is "*[p]rotecting the privacy* of transgender and gender nonconforming students" from their own parents. *Id.* (emphasis added).

Appellate Case: 22-2927 Page: 12 Date Filed: 11/10/2022 Entry ID: 5217049

In sum, the policy's every detail is designed to ensure that parents lack knowledge about—and the ability to influence—their children's gender-identity issues. Crucially, Iowa law forces children aged six to sixteen to attend school for 180 days minimum each year. Iowa Code §§ 299.1–299.1A (2014); Iowa Admin. Code 281-12.1(7). Public schools are where most children spend a great deal of their waking lives. By excluding parents from crucial aspects of their children's care, education, and upbringing, the district usurps parents' fundamental role. And this power grab has major ramifications for parents' rights and children's welfare, including children's beliefs, practices, and success in life.

II. The parents' lawsuit

Parents Defending Education is a parental-rights organization with members who are parents of school-age children who reside in the Linn-Mar Community School District. It filed suit against the school district in the U.S. District Court for the Northern District of Iowa, alleging that the district's policy violates the First and Fourteenth Amendments to the U.S. Constitution because the policy: (1) violates parent's fundamental rights, (2) compels speech, (3) discriminates based on content and viewpoint, (4) is overbroad, and (5) is void for vagueness.

Appellate Case: 22-2927 Page: 13 Date Filed: 11/10/2022 Entry ID: 5217049

Two parent members' declarations are especially relevant here. Parent A lives within the school district's boundaries and has a child who "is on the autism spectrum and has a sensory processing disability." App. 39–40; R. Doc. 3-2, at 1–2. These conditions make it difficult for Parent A's child to "distinguish[ ] between male characteristics and female characteristics." App. 40; R. Doc. 3-2, at 2. Parent A's child "makes statements that could lead an outside observer to believe that [the] child is confused about their gender identity or expressing a 'gender-fluid' or 'non-binary' identity" when that is not true. *Id.*

The likelihood of misidentification is high for "children on the autism spectrum" who "often fixate on an idea or feeling when they learn of it," including the concept that someone can be "born in the wrong body." App. 40; R. Doc. 3-2, at 2. "[S]everal children on the autism spectrum at Linn-Mar middle schools and Linn-Mar High School have recently asserted transgender or 'non-binary' identities." *Id.* So there is a "substantial risk" that the district will misinterpret statements by Parent A's child "as an assertion of a 'gender fluid,' 'non-binary,' or transgender identity." App. 40–41; R. Doc. 3-2, at 2–3. And, under the district's policy, that misinterpretation will trigger the

Appellate Case: 22-2927 Page: 14 Date Filed: 11/10/2022 Entry ID: 5217049

creation of "a Gender Support Plan or other gender-specific treatment without [Parent A's] knowledge or consent." App. 41; R. Doc. 3-2, at 3.

Because "Linn-Mar officials" refused to assure Parent A that the district "will not assign [the] child a Gender Support Plan or take any other gender identity-related actions without" parental knowledge and "consent," Parent A withdrew the child from "the Linn-Mar middle school [the] child was scheduled to attend." App. 42; R. Doc. 3-2, at 4. Conversely, "[i]f the [p]olicy is rescinded or enjoined," Parent A "will enroll [the] child in middle school at Linn-Mar the following year." *Id.*

Parent B's "daughter is enrolled at Linn-Mar High School and has special needs." App. 44; R. Doc. 3-3, at 1. She is not like "neurotypical children of the same age." App. 46; R. Doc. 3-3, at 3. Parent B's child takes special-needs classes in a room "that also functions as the meeting location for the LGBT student club." App. 45; R. Doc. 3-3, at 2. "The teacher in that classroom is the faculty advisor for the club." *Id.* And the classroom contains "posters with information about various gender identities, gender 'social transitions,' and 'preferred pronouns.'" *Id.*

Appellate Case: 22-2927 Page: 15 Date Filed: 11/10/2022 Entry ID: 5217049

Generally speaking, "[a]dolescent females comprise a disproportionate percentage of school-aged children who assert transgender or 'non-binary' identities." App. 45; R. Doc. 3-3, at 2. And, more specifically, Parent B's "daughter is extremely impressionable and often follows the lead of other students." *Id.* Because her "social development is far below those of neurotypical children of the same age," "it is unlikely that [Parent B's daughter] will be able to understand the scope of [the gender-identity] issue or effectively communicate her true preferences." App. 46; Doc. 3-3, at 3. Parent B is "deeply concerned" that her daughter "will say or do something that will be interpreted as an assertion of a gender identity by Linn-Mar officials who do not know her" as well as Parent B. App. 45; Doc. 3-3, at 2.

Due to the district's policy, Parent B attempted to enroll her daughter "in a neighboring school district," but the request was "denied because the district's special-needs programs were already at capacity." App. 47; Doc. 3-3, at 4. "[P]rivate school is not an option" because of the "specialized instruction" that Parent B's daughter requires. *Id.* So Parent B's daughter continues to attend Linn-Mar High School.

Appellate Case: 22-2927 Page: 16 Date Filed: 11/10/2022 Entry ID: 5217049

Without permission from their special-needs children, the gender-identity policy blocks Parent A and Parent B from learning: (1) whether their children have been "given a Gender Support Plan," (2) whether any "actions have been taken concerning [their children's] gender identity," and (3) whether the district "has any other information" about their children's "'transgender status.'" App. 41, 45; R. Doc. 3-2, at 3; R. Doc. 3-3, at 2. And the policy deprives Parent A and Parent B of the ability to "guide [their children's] upbringing and to help [them] navigate any issues that might arise regarding [their] perception of [their] gender identity." *Id.* In short, the policy "displace[s]" parents, and puts "Linn-Mar administrators" in their place. App. 41, 46; R. Doc. 3-2, at 3; R. Doc. 3-3, at 3.

III. The district court's ruling

Parents Defending Education moved for a preliminary injunction, arguing, among other things, that the gender-identity policy violates parents' fundamental rights. It asked the district court to enjoin the school district from enforcing the policy while the lawsuit continued. But the district court held that the organization lacked standing.

Appellate Case: 22-2927 Page: 17 Date Filed: 11/10/2022 Entry ID: 5217049

Parents Defending Educ. v. Linn-Mar Cmty. Sch. Dist., No. 22-CV-78 CJW-MAR, 2022 WL 4356109, at *9–10 (N.D. Iowa Sept. 20, 2022).

As to Parent A, the district court ruled there was no injury in fact because Parent A's child was "withdrawn . . . from the school district." *Id.* at *10. The court deemed that harm "self-inflicted." *Id.* But even if that injury was "'forced,'" it made no difference in the district court's view because "the [p]olicy itself still has no effect on the child." *Id.*

When it came to Parent B, the district court held that an injury in fact, causation, and redressability were lacking. The court did "not doubt" Parent B's "genuine fears." *Id.* at *9. But "no one has been denied information related to their child's gender identity or Gender Support Plan" and the likelihood of that occurring was too "speculative" to constitute an injury in fact. *Id.*

Causation was also missing, in the district court's estimation, because "there is no injury to cause." *Id.* at *10. And the district court said redressability was absent because even without the policy, Iowa law "expressly prohibits discrimination in Iowa public schools based on gender identity." *Id.*

Appellate Case: 22-2927 Page: 18 Date Filed: 11/10/2022 Entry ID: 5217049

SUMMARY OF ARGUMENT

The district court's standing analysis is wrong. Injury to both Parents A and B is clear. The gender-identity policy forced Parent A to move a middle-school child on the autism spectrum elsewhere. And Parent B, whose special-needs daughter remains at Linn-Mar High School, meets the criteria for a pre-enforcement challenge. Nor is causation an issue. The harm to Parent A's and Parent B's parental rights stems from the policy, nothing else. And, in terms of redressability, a court order enjoining the policy would increase the likelihood that teachers or administrators would respect Parent A's and Parent B's parental rights.

Parents and their children have a "personal bond[ ]" that "cultivat[es] . . . shared ideals and beliefs," "foster[s] diversity," and "act[s] as [a] critical buffer[ ] between the individual and the power of the State." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618–19 (1984). The district's policy severs that bond and violates Parent A's and Parent B's fundamental right to direct the care, education, and upbringing of their children. Parents—not the district—are responsible for guiding their children and helping them make difficult decisions.

Appellate Case: 22-2927 Page: 19 Date Filed: 11/10/2022 Entry ID: 5217049

In parental-rights cases, federal courts must examine whether the government has "exceed[ed] the limitations upon [its] power." *Meyer*, 262 U.S. at 402. The policy does so by (1) ignoring the mandatory presumption that fit parents act in their children's best interests, and (2) denying parents the right even to know about—let alone direct—their children's upbringing and education. By denying a preliminary injunction, the district court reduced these parents' constitutional liberties to theory. *Accord Hawkins v. Barney's Lessee*, 30 U.S. 457, 463 (1831) ("There can be no right without a remedy to secure it.").

Because Parent A's and Parent B's children have neurodevelopmental conditions, the policy is likely to cause their rights—and their children's well-being—superior harm. The record shows that those with autism and related disorders identify as transgender at a higher rate. The policy leaves special-needs children who benefit from more directive parenting at the district's mercy, requiring them to struggle with gender-identity issues (and the district's ideology) alone. Indeed, school officials cannot even accurately determine whether special-needs children *have* gender dysphoria without consulting their parents. So the district's claim that the policy helps transgender children is a ruse.

Appellate Case: 22-2927 Page: 20 Date Filed: 11/10/2022 Entry ID: 5217049

ARGUMENT

I. Because Parents A and B have standing, Parents Defending Education does too.

Parents A and B have standing, and so does Parents Defending Education on their behalf. The injury to Parent A is clear. Because the district's policy abolishes parents' fundamental rights, Parent A was forced to remove an autistic child from a Linn-Mar middle school and place that child elsewhere. If the new school is public, it is further away. And if the new school is private, it is more expensive. Either way, the district's obliteration of parental rights caused Parent A harm, as Parent A wants to reenroll the child in a Linn-Mar middle school. *Mumid v. Abraham Lincoln High Sch.*, 618 F.3d 789, 797 (8th Cir. 2010) (standing for injunctive relief is absent only when no plaintiff is enrolled in the district "and none will ever return").

The district court's description of Parent A's constitutional injury as self-inflicted is pejorative and wrong. First, federal courts do not require parents or students "to continue suffering" an injury "to maintain [their] entitlement to seek relief." *Freedom from Religion Found. Inc. v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 481 (3d Cir. 2016); *accord Bell v. Little Axe Indep. Sch. Dist.*, 766 F.3d 1391,

Appellate Case: 22-2927 Page: 21 Date Filed: 11/10/2022 Entry ID: 5217049

1399 (10th Cir. 1985). Second, "an injury resulting from the application or threatened application of an unlawful enactment [suffices for Article III standing], even if the injury could be described in some sense as willingly incurred." *FEC v. Cruz*, 142 S. Ct. 1638, 1647 (2022).

Parent B's constitutional harm is also real and necessitates a preliminary injunction. "[A] plaintiff need not wait for an actual prosecution or enforcement action before challenging a law's constitutionality." *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 749 (8th Cir. 2019). No doubt exists that Parent B's desire to direct the care, education, and upbringing of Parent B's own child is "affected with a constitutional interest, but proscribed by [the policy] and that there exists a credible threat of" enforcement. *Id.* (quotation omitted).

After all, the school district promulgated a seven-page transgender policy, refused to respond to Parent A's and Parent B's legitimate concerns, and vigorously defended the policy in court. "[T]he existence of the [district's] polic[y], which the [district] plans to maintain as far as a federal court will allow it, suffices to establish that the threat of future enforcement . . . is likely substantial." *Speech First, Inc. v. Fenves*, 979 F.3d 319, 338 (5th Cir. 2020).

Appellate Case: 22-2927 Page: 22 Date Filed: 11/10/2022 Entry ID: 5217049

And because Parent A's and Parent B's children are likely to say something the district would misconstrue as gender-identity confusion, the prospect that the district will apply the policy to the parents' children is substantial as well. Unless the policy is enjoined, harm to Parent A's and Parent's B's parental rights is exceedingly likely, practically a sure thing.

The district court's causation and redressability analysis is also flawed. Harm to Parent A's and Parent B's parental rights flows directly from the policy, nothing else. The court's citation to Iowa law barring gender-identity discrimination in public schools is a red herring. The law bars *schools from discriminating against students* on numerous grounds. But those laws do not authorize—let alone require—*school officials to strip away parents' fundamental right* to direct the upbringing and education of their own children. Nor would such a statute pass constitutional muster. Treating all students the same does not require public schools to sever the parent-child relationship. Laws such as Iowa's are no excuse for public schools to displace parents and radically depart from their proper lane.

Appellate Case: 22-2927 Page: 23 Date Filed: 11/10/2022 Entry ID: 5217049

What's more, the redressability bar is a low one: a court order must simply be capable of making a change in legal status that would effect "a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered." *Utah v. Evans*, 536 U.S. 452, 464 (2002). Neither a guarantee of success nor a total elimination of harm is required. It is enough for standing that enjoining the district's gender-identity policy would, as a practical matter, significantly increase the likelihood that teachers or administrators would respect Parent A's and Parent B's fundamental rights to direct the care, education, and upbringing of their children.

II. Because the policy trammels parents' constitutional rights, courts have a duty to intervene.

A. The district's gender-identity policy terminates parents' chief role in children's upbringing.

"[T]he interest of parents in the care, custody, and control of their children[ ] is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion). Parents' fundamental rights are not limited to "the power of parents to control the education of their own." *Meyer*, 262 U.S. at 401. Parents have "the liberty . . . to direct the upbringing

Appellate Case: 22-2927 Page: 24 Date Filed: 11/10/2022 Entry ID: 5217049

and education of children" in a broader sense. *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534 (1925).

Generally speaking, there is a constitutionally mandated presumption "that parents . . . act in the child's best interests." *Parham v. J.R.*, 442 U.S. 584, 602–03 (1979). Such a presumption makes sense; after all, no one knows a child better than that child's parents, a reality that is particularly stark in the case of Parent A and Parent B and their special-needs children. And that presumption holds regardless of whether voluntary commitment, *id.* at 587–88, grandparent visitation, *Troxell*, 530 U.S. at 68–69, or another important aspect of children's lives is involved. The Supreme Court has summarized the constitutional principle as follows:

> so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children. [*Troxell*, 530 U.S. at 68–69.]

This parental authority is not confined to small or unimportant matters. "The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making *life's difficult decisions*." *Parham*, 442

Appellate Case: 22-2927 Page: 25 Date Filed: 11/10/2022 Entry ID: 5217049

U.S. at 602 (emphasis added). And that presumption does not change simply because the child does not find a parent's decision "agreeable" or "because it involves risks." *Id.* at 603. (Indeed, it is often a parent's *best* choices that a child finds *most* disagreeable.) The Supreme Court has already rejected efforts to "transfer the power to make [important life] decision[s] from the parents to some agency or officer of the state." *Id.* Because public schools are "organs of the State," *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring), that legal principle applies in full force to Linn-Mar.

"Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for [mental health] care or treatment. Parents can and must make those judgments." *Parham*, 442 U.S. at 603. And "[n]either state officials nor federal courts are equipped to review" them. *Id.* at 604. Under our Constitution, it is parents who must "*retain a substantial, if not the dominant, role in the decision*, absent a finding of neglect or abuse, and that the traditional presumption that the parents act in the best interests of their child should apply." *Id.* (emphasis added).

Appellate Case: 22-2927 Page: 26 Date Filed: 11/10/2022 Entry ID: 5217049

There is nothing radical about this conclusion. Parents' "primary role" in children's upbringing "is now established beyond debate as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). The authority of parents "to direct the rearing of their children is basic in the structure of our society." *H.L. v. Matheson*, 450 U.S. 398, 410 (1981) (quotation omitted). "[B]road parental authority over minor children" is therefore constitutionally protected—and for good reason. *Parham,* 442 U.S. at 602; *accord Troxel*, 530 U.S. at 66.

The law recognizes that children, in many instances, "may not foresee the consequences of [their] decision[s]." *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 102 (1976) (Stevens, J., concurring in part and dissenting in part), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). As a result, children "may not make an enforceable bargain," "lawfully work or travel where [they] please[ ]," see "protected adult motion pictures," or "marry without parental consent." *Id.* This is true even if a child disagrees and thinks that watching pornography or entering into an underage marriage are in the child's best interest. And it remains true when a child's teacher agrees with the child and not the parent.

Appellate Case: 22-2927 Page: 27 Date Filed: 11/10/2022 Entry ID: 5217049

Yet the district's gender-identity policy allows children who cannot even see R-rated movies without permission to "socially transition" at school without their parents' knowledge, involvement, or consent. That violates the fundamental principle that the "care and nurture of the child reside first in the parents, whose primary function and freedom . . . the state can neither supply nor hinder." *Troxel*, 530 U.S. at 65–66 (quotation omitted). Public schools cannot replace parents' "'guiding role'" in their children's "upbringing," *H.L.*, 450 U.S. at 410 (quotation omitted), especially as that guidance often depends on religious or philosophical beliefs the government does not share.

It is parents who must "direct the religious upbringing of their children." *Yoder*, 406 U.S. at 233. Children are "not . . . creature[s] of the state" who public schools may "standardize." *Pierce*, 268 U.S. at 535. Parents are children's "nurture[rs]" and those who rightfully "direct [their children's] destiny." *Id.* For instance, public schools may not "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion," including gender identity theory. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). But parents can.

Appellate Case: 22-2927 Page: 28 Date Filed: 11/10/2022 Entry ID: 5217049

Stated differently, only parents may "prepare [children] for additional [spiritual] obligations. *Pierce*, 268 U.S. at 535. No engine of government can take their place. And yet, that is precisely what the district's gender-identity policy seeks to do. Children may use different names and pronouns, wear different clothes, and function as the opposite sex at school—essentially living an alternate life—with school officials' permission and assistance. Whatever plan officials and children agree on takes "priority . . . over [what] their parent/guardian" has to stay, at least for students in the seventh grade or up (*i.e.*, adolescents and teens). App. 296; R. Doc. 3-11, at 44. Parents have *no right* to take part in (or know about) these discussions. App. 298; R. Doc. 3-11, at 46.

Under the policy, the most dedicated parents cannot even *find out* about children's gender-identity issues (real or imagined) because the district hides children's records and prevents parents from accessing them. App. 297, 300; R. Doc. 3-11, at 45, 48. Worse, teachers are required to conspire with students and actively mislead parents at their children's request, App. 297; R. Doc. 3-11, at 45, while the district's gender-identity spokesperson is charged with ensuring that parents never learn the truth. At base, school officials favor gender-identity

Appellate Case: 22-2927 Page: 29 Date Filed: 11/10/2022 Entry ID: 5217049

theory and steer vulnerable children towards controversial ideas and ways of living that contradict their parents' beliefs and guidance. And these officials simultaneously ensure that parents are unable to learn about and effectively counter their actions.

Fundamentally, the policy deprives parents of the ability to guide their children's destiny. That role is now taken by school officials with an ideological agenda that seeks to indoctrinate children with no respect for individual beliefs, circumstances, or needs. Parents are excluded from the process and unable to protect their children from the unforeseen consequences of the district's scheme. It may sound like something from Aldous Huxley's *Brave New World*. But this is not dystopian fiction: it is Linn-Mar parents' reality.

B. The Constitution requires this Court to intervene.

There is no reason to defer to school officials here. When parental rights are affected, the government's "[d]etermination . . . of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts." *Meyer*, 262 U.S. at 400. "The intangible fibers that connect parent and child have infinite variety." *Lehr*

Appellate Case: 22-2927 Page: 30 Date Filed: 11/10/2022 Entry ID: 5217049

v. Robertson, 463 U.S. 248, 256 (1983). And "in appropriate cases," those fibers are "sufficiently vital to merit constitutional protection." *Id.*

This Court recognized that principle in *Whisman v. Rinehart*, 119 F.3d 1303, 1309–10 (8th Cir. 1997). And it should do so again here. Just as in *Whisman*, in this case there is "no indication of any physical neglect of [Parent A's and Parent B's children], no indication of any immediate threat to [the children's] welfare[,] and no indication of any criminal activity by [Parent A, Parent B,] or anyone else. *Id.* at 1310. Because Parent A and Parent B are fit parents, the constitutionally mandated presumption that parents act in their children's best interests applies in full force.

Yet the school's policy is built on the opposite presumption. In the gender-identity context, the policy assumes that public schools must protect children *from their own parents*. And that violates parents' "right to familial relations." *Heartland Acad. Cmty. Church v. Waddle*, 427 F.3d 525, 533 (8th Cir. 2005) (quotation omitted), for the reasons *Troxel* gave. Because the policy "contravene[s]" the fit-parent presumption and rejects parents' "right to make decisions concerning the rearing

Appellate Case: 22-2927 Page: 31 Date Filed: 11/10/2022 Entry ID: 5217049

of [their] own" children, it is unconstitutional and must be enjoined. *Troxel*, 530 U.S. at 69–70.

Following *Troxel*, the Third Circuit recognized that:

> School-sponsored counseling and psychological testing that pry into private family activities can overstep the boundaries of school authority and impermissibly usurp the fundamental rights of parents to bring up their children, as they are guaranteed by the Constitution. . . . Public schools must not forget that "*in loco parentis*" does not mean "displace parents."
>
> It is not educators, but parents who have primary rights in the upbringing of children. School officials have only a secondary responsibility and must respect these rights. [*Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000).]

The district's policy here suffers from the same flaws. It disrupts private family teaching about human sexuality and gender-identity issues, oversteps public schools' authority, and usurps Parent A's and Parent B's primary role in directing their children's upbringing. This Court should follow the Third Circuit's lead and hold that the district's policy violates parents' constitutional rights.

Appellate Case: 22-2927 Page: 32 Date Filed: 11/10/2022 Entry ID: 5217049

III. As individuals with neurodevelopmental conditions are more likely to experience gender confusion, the policy puts Parent A's and Parent B's parental rights—and their children's well-being—at superior risk.

Parents Defending Education presented the district court with evidence showing that individuals who identity as transgender or gender-diverse have, on average, higher rates of autism and other neurodevelopmental issues. Parent A's and Parent B's children fall into these categories. So, as a practical matter, the policy puts their parental rights—and their children's well-being—at superior risk. This Court should reverse the district court and remand with instructions to preliminarily enjoin the policy without delay.

Parent A's child is on the autism spectrum and has a sensory processing disorder. App. 40; R. Doc. 3-2, at 2. Parent B's daughter has special needs and is not like neurotypical children. App. 44, 46; R. Doc. 3-3, at 1, 3. Both children are impressionable, have difficulty understanding biological sex and gender-identity issues, and are unable to communicate their true preference. App. 40–42, 45–46; R. Doc. 3-2, at 2–4; R. Doc. 3-3, at 2–3. Unless this Court intervenes, the policy is likely to subject these special-needs children to harm and prevent their parents from remedying it.

Appellate Case: 22-2927 Page: 33 Date Filed: 11/10/2022 Entry ID: 5217049

Studies show that the rate of gender dysphoria is much higher in children with autism spectrum disorders than in the general population. One study put the percentage as high as 10% among boys and 4% of girls, as opposed to an estimate of 1% in the population at large. App. 215; R. Doc. 3-10, at 143. Researchers have confirmed this "overrepresentation" of gender-dysphoria in children with autism spectrum disorder time and again. App. 400; R. Doc. 3-11, at 148.

The same is true at any age. Using a 641,860-person dataset, Cambridge researchers concluded that those who identify as "transgender and gender-diverse . . . are more likely to be autistic compared to cisgender individuals." App. 276; R. Doc. 3-11, at 24. They are also more likely to have neurodevelopmental conditions. App. 275; R. Doc. 3-11, at 23. Again, this directly concerns Parent A's and Parent B's children.

The record also shows that parental involvement is *even more important* for children who are not neurotypical than it is for other kids. Given their unique experience and needs, children with autism are more likely to "benefit from more directive parenting" than "neurotypical children." App. 389; R. Doc. 3-11, at 137. They often need parents' "support at least into late childhood," as opposed to the "additional

Appellate Case: 22-2927 Page: 34 Date Filed: 11/10/2022 Entry ID: 5217049

autonomy" that "neurotypical children tend to benefit from . . . as they mature." *Id.* Yet the district's policy treats all children the same, regardless of parents' rights or the potential harm to special-needs kids.

Those injuries may be severe, including—as with any child who takes the district's chosen path—"alienation . . . from their . . . crucial social support systems" and "isolation from mainstream, non-trans-gender society, which may curtail educational and vocational potential." App. 440; R. Doc. 3-11, at 188. Parent A's and B's children cannot foresee or appreciate such risks. Yet under the policy, parents are excluded from the conversation and cannot even try to explain them.

Just as important, the school district cannot evaluate children's gender-identity confusion accurately without consulting parents who are "the most knowledgeable informants on matters of their own child's developmental, medical, social, behavioral, and mental health history." App. 440; R. Doc. 3-11, at 188. That is doubly true of children with special needs. Yet instead of encouraging parents' involvement in the process, the policy excludes them. That may serve the district's ideological ends, but it trounces parents' fundamental rights and poses real harm to vulnerable children—like Parent A's and B's kids.

Appellate Case: 22-2927 Page: 35 Date Filed: 11/10/2022 Entry ID: 5217049

Because the school district's policy bars an accurate determination of whether children have gender-identity issues, any claim that it helps transgender kids is a ruse. The policy is designed to put school officials between parents and their children, and such a policy is both unwise and unconstitutional.

CONCLUSION

The district court's ruling is wrong from top to bottom. Parents Defending Education has standing. The school district's gender-identity policy violates parents' constitutional rights. And the record shows that the policy poses serious harm to Parent A and Parent B, as well as their children with special needs.

This Court should hold that the policy likely violates parents' constitutional rights, reverse the district court's preliminary-injunction ruling, and remand with instructions for the district court to enjoin Linn-Mar from enforcing the policy while this case proceeds. In no circumstance should this Court allow the school district to continue excluding parents from their children's most important life decisions while advancing an ideology that sets up kids for a lifetime of physical and psychological harm.

Appellate Case: 22-2927 Page: 36 Date Filed: 11/10/2022 Entry ID: 5217049

Respectfully submitted,

Dated: November 10, 2022

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,131 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as determined by the word counting feature of Microsoft Office 365.

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Dated: November 10, 2022

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Appellate Case: 22-2927 Page: 38 Date Filed: 11/10/2022 Entry ID: 5217049

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2022, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system, which will accomplish service on counsel for all parties through the Court's electronic filing system.

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Appellate Case: 22-2927 Page: 39 Date Filed: 11/10/2022 Entry ID: 5217049