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Exhibit A

Nos. 22AP2042, 23AP305, 23AP306

In the Wisconsin Court of Appeals

DISTRICT IV

JANE DOE 4,

PLAINTIFF-APPELLANT,

v.

MADISON METROPOLITAN SCHOOL DISTRICT, DEFENDANT-RESPONDENT,

GENDER EQUITY ASSOCIATION OF JAMES MADISON MEMORIAL HIGH SCHOOL, GENDER SEXUALITY ALLIANCE OFMADISON 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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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) 12

Am. Acad. Of Pediatrics, *Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents* (Hagan et al., eds., 3d ed. 2008) 5

Am. Acad. of Pediatrics, Comm. on Adolescence, *The Adolescent Right to Confidential Care When Considering Abortion*, 97 Pediatrics 746 (1996) 5

Am. Coll. of Obstetricians & Gynecologists, *ACOG Committee Opinion 803: Confidentiality in adolescent care* (2020), https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2020/04/confidentiality-in-adolescent-health-care 5

Am. Med. Ass'n, *Opinion 5.055 Confidential care for minors*, 16 AMA J. of Ethics 901 (2014) 5

Am. Sch. Counselors Ass'n, *The School Counselor and Confidentiality* (2018), https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-Confidentiality 5, 14

Am. Sch. Counselors Ass'n, *The School Counselor and Transgender and Nonbinary Youth* (2022), https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-Transgender-Gender-noncon 14

Amanda M. Pollitt, et al., *Predictors and Mental Health Benefits of Chosen Name Use Among Transgender Youth*, 53 Youth & Society 320 (2019) 11

American Counseling Association, *Promoting LGBTQ students' well-being in schools*, https://ct.counseling.org/2018/10/promoting-lgbtq-students-well-being-in-schools/ ... 14

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). 8

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) 7

Carol A. Ford et al., *Foregone Health Care Among Adolescents*, 282 JAMA 2227 (1999) 3

Carol Ford, et al., *Confidential health care for adolescents: position paper of the Society for Adolescent Medicine*, 35 J. of Adolescent Health 160 (2004) 5

Human Rts. Campaign & Gender Spectrum, *Supporting and Caring for Our Gender Expansive Youth: Lessons from the Human Rights Campaign's Youth Survey* 10 (2014) 9

Jenifer K. McGuire, et al., *School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses*, 39 J. Youth Adolescence 1175 (2010) 10

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* (2021) 9, 10, 11

Katharine B. Parodi, et al., *Associations between school-related factors and mental health among transgender and gender diverse youth*, 90 J. of School Psychol. 135 (2022) 10

Kristie L. Seelman, et al., *School engagement among LGBTQ high school students: The roles of safe adults and gay–straight alliance characteristics*, 57 Children and Youth Services Review 19 (2015) 11

Kristina R. Olson, et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 Pediatrics 1 (2016) 12

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), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-July-2012.pdf 8

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) 3

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 (1992). 5

Lily Durwood, et al., *Mental health and self-worth in socially transitioned transgender youth*, 52 J. of the Am. Acad. of Child & Adolescent Psychiatry 116 (2017)..... 12

Lisa Simons, et al., *Parental support and mental health among transgender adolescents*, 53 J. of Adolescent Health 791 (2013) 12

Mavis Sanders & Steven Sheldon, *Principals Matter: A Guide to School, Family, and Community Partnerships* (2009) 2

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 (2005) 3

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), http://dx.doi.org/10.15585/mmwr.mm6803a3 9

Mollie McQuillan, et al., *Examining School Supports and Barriers to Improving the Health, Safety, and Academic Achievement of MMSD LGBTQ+ Students*, Madison, WI: Madison Education Partnership (2021) 8, 9, 11

Nat'l Cmte. for Citizens in Educ., *A New Generation of Evidence: The Family is Critical to Student Achievement* (Henderson & Berla, Eds., 1994). 2

National Association of School Psychologists, *Position Statement: Safe and Supportive Schools for Transgender and Gender Diverse Students* (2022) 14

National Education Center, *Legal Guidance on Transgender Students' Rights*, https://www.nea.org/sites/default/files/2020-07/2018_Legal%20Guidance_Transgender%20Student%20Rights.pdf 13

Rhonda Williams & Joseph Wehrman, *Collaboration and Confidentiality: Not a Paradox but an Understanding Between Principals and School Counselors*, 94 NAASP Bull. 107 (2010) 3

Russell Toomey, et al., *Heteronormativity, school climates, and perceived safety for gender nonconforming peers*, 35 J. of Adolescence 187 (2012) 10

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) 12

Sabra Katz-Wise, et al., *LGBT Youth and Family Acceptance*, 63 Pediatric Clinics of N. Am. 1011 (2016) 7

Sharon Levy & Miriam Schnizer, *AAP Technical Report: Adolescent Drug Testing Policies in Schools*, 135 Pediatrics e1107 (2015) 4

Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 Fam. Plan. Persp. 196 (1992) 6

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) 12

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) 11

Tiffany Jones, *Evidence Affirming School Supports for Australian Transgender and Gender Diverse Students*, 14 Sexual Health 412 (2017) 10

Tina Cheng, et al., *Confidentiality in health care: a survey of knowledge, perceptions, and attitudes among high school students*, 269 JAMA 1404 (1993) 3

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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 Kuvalanka 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. This research shows that when transgender and nonbinary students are supported at school, including through use of their chosen names and pronouns, they experience significant improvements in academic achievement and a marked decrease in symptoms of depression. Drawing from that research, *amici* urge this Court to affirm the Circuit Court's dismissal of Plaintiff-Appellant's claims and, if bypass is granted, amici urge the Wisconsin Supreme Court to deny Plaintiff-Appellant's request for temporary injunctive relief.

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. 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); *see also* 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 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 Apr. 8, 2023); 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 Apr. 8, 2023); 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 disclose that they are, or may be, transgender to a teacher or other school staff. Forcing teachers or other school staff to immediately disclose a child's confidence in this context can lead to family rejection and potential abuse, victimization at school, and depressive symptoms.

Just as some families may have a difficult time dealing with a young person's pregnancy or substance abuse, which requires sensitivity and caution on the part of school staff to whom students disclose confidential information about these issues, families may have a difficult time dealing with a young person who is or may be transgender. Unfortunately, transgender young people 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 Apr. 8, 2022).

Family rejection also has significant long-term effects. LGBT youth 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.*

A recent study of Madison Metropolitan School District students suggests that transgender and nonbinary students have less parental support than other students. Compared to their peers, transgender and gender-diverse students in the Madison Metropolitan School District were over twice as likely to report having been homeless in the past, and a greater percentage of transgender and gender-diverse students did not live with their parents at the time the survey was conducted in 2019. Mollie McQuillan, et al., *Examining School Supports and Barriers to Improving the Health, Safety, and Academic Achievement of MMSD LGBTQ+ Students*, Madison, WI: Madison Education Partnership

(2021). Transgender and gender-diverse students also reported much higher rates of suicide attempts and depressive symptoms compared to their peers. *Id*.

Transgender young people also face challenges at school, which for many 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); *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 Apr. 8, 2023); Human Rts. Campaign & Gender Spectrum, *Supporting and Caring for Our Gender Expansive Youth: Lessons from the Human Rights Campaign's Youth Survey* 10 (2014); Mollie McQuillan, et al., *Examining School Supports and Barriers to Improving the Health, Safety, and Academic Achievement of MMSD LGBTQ+ Students*, Madison, WI: Madison Education Partnership (2021) (finding that forty percent of transgender and gender-diverse students within the Madison Metropolitan School District indicated that they did not feel safe at school). More than forty percent of students surveyed for the National School Climate Survey reported hearing anti-transgender epithets or remarks either frequently or often, and more than half reported the same about negative remarks regarding gender-nonconformity. 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. Research has

shown that without the support of teaching staff, transgender students were more likely to be the targets of bullying and other discriminatory behavior. Tiffany Jones, *Evidence Affirming School Supports for Australian Transgender and Gender Diverse Students*, 14 Sexual Health 412 (2017).

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, and reported experiencing less bullying and harassment. Kosciw, *2019 National School Climate Survey* at 69-79. 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. See also* Jenifer K. McGuire, et al., *School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses*, 39 J. Youth Adolescence 1175 (2010) (finding trust in school personnel to be an important factor for academic success among transgender students); Katharine B. Parodi, et al., *Associations between school-related factors and mental health among transgender and gender diverse youth*, 90 J. of School Psychol. 135 (2022) (finding that a greater sense of connectiveness to one's school is associated with lower rates of anxiety and depression among transgender students). Unsurprisingly, students who reported being taught curriculum that was inclusive of LGBTQ people or who 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 that schools with LGBTQ-inclusive curriculum and student groups for LGBTQ students and allies were perceived by students to be safer); Kristie L. Seelman, et al., *School engagement among LGBTQ high school students: The roles of safe adults and gay–straight alliance characteristics*, 57 Children and Youth Services Review 19 (2015) (associating the number of "safe adults" in whom transgender students can confide on matters relating to their gender identity, which would include the name and pronouns they want used at school, with greater connectiveness with their school, higher GPA, and a decrease in absences due to fear). In one study out of Madison, Wisconsin, researchers found that schools that had implemented LGBTQ+-inclusivity training for staff experienced significantly fewer disciplinary problems as compared to schools without such training programs. McQuillan, *Examining School Supports and Barriers to Improving the Health, Safety, and Academic Achievement of MMSD LGBTQ+ Students* at 26.

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 is associated with lower symptoms of 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); Amanda M. Pollitt, et al., *Predictors and Mental Health Benefits of*

Chosen Name Use Among Transgender Youth, 53 Youth & Society 320 (2019) (finding that the use of chosen names at school predicted fewer depressive symptoms and greater self-esteem); Kristina R. Olson, et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 Pediatrics 1 (2016) (finding that transgender children who received care and support showed no elevated rate of depression, in contrast to children without such support); *see also* Lily Durwood, et al., *Mental health and self-worth in socially transitioned transgender youth*, 52 J. of the Am. Acad. of Child & Adolescent Psychiatry 116 (2017) (same). 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 R. 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).

III. Major educational professional associations caution against mandatory disclosure of gender identity in schools.

Major educational professional associations support policies like the Madison Metropolitan School District Guidance in order to protect the health and wellbeing of students and families. These associations have emphasized the need for school administrators to support transgender and nonbinary students, to ensure that they have equal educational opportunities, and to avoid policies that single out these students by requiring automatic forced disclosure any time a student shares confidential information about their gender identity with a teacher or other school staff. For example, the National Education Association (NEA), has published guidelines that describe the need for educators and school administrators to support transgender and nonbinary youth. National Education Center, *Legal Guidance on Transgender Students' Rights*, available at: https://www.nea.org/sites/default/files/2020-07/2018_Legal%20Guidance_Transgender%20Student%20Rights.pdf (last visited Apr. 9, 2023). The guidelines also highlight the importance of respecting a student's confidentiality. *Id*. As the guidelines note, school administrators and other personnel should not automatically disclose a student's gender identity to others—including other students, teachers, parents or guardians—unless the student has agreed to such disclosure. *Id*. at 6.

Educational professional organizations have also cautioned that policies

mandating disclosure of such confidential information may violate state or federal privacy protections. For example, the American School Counselor Association has stated: "Each student's unique situation should be addressed on a case-by-case basis, using a student-centered approach that includes ongoing student and parent/guardian engagement (as appropriate) and school personnel with a legitimate educational interest per the Family Education Rights and Privacy Act (FERPA)." Am. Sch. Counselors Ass'n, *The School Counselor and Transgender and Nonbinary Youth* (2022), available at, https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-Transgender-Gender-noncon (last visited Apr. 8, 2023). The guidance makes clear that "school officials should work collaboratively [with students' parent/guardians], directed by students' comfort about what and with whom to share their confidential information." *Id.*; *see also* American Counseling Association, *Promoting LGBTQ students' well-being in schools*, available at: https://ct.counseling.org/2018/10/promoting-lgbtq-students-well-being-in-schools/ (last visited Apr. 9. 2023) (noting that counselors should discuss students' feelings about informing parents of their sexual or gender identity prior to disclosing this sensitive information).

The National Association of School Psychologists (NASP) has similarly cautioned that precipitous disclosure of a student's gender identity could lead to potential harm, despite any beneficent intent, and may be violate privacy laws. National Association of School Psychologists, *Position Statement: Safe and Supportive Schools for Transgender and Gender Diverse Students* (2022). In keeping with best practices, NASP urges school

psychologists to "'respect the right of persons to choose for themselves whether to disclose their private thoughts, feelings, beliefs, and behaviors, particularly related to sharing their sexual orientation or gender identity." *Id*.

CONCLUSION

Plaintiff-Appellant's claims, and the injunctive relief she sought below, are inconsistent with the broad consensus of educators, mental health professionals and child welfare experts regarding the safety and wellbeing of transgender young people in Wisconsin. *Amici* respectfully urge this Court to affirm the Circuit Court's dismissal of this case and, if bypass is granted, urge the Wisconsin Supreme Court to deny Plaintiff-Appellant's request for temporary injunctive relief.

Dated: April 20, 2023.

Respectfully submitted,

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[1] Counsel was admitted *pro hac vice* to this matter by the Supreme Court of Wisconsin on March 30, 2022, and submits this brief pursuant to Wisconsin Supreme Court Rule 10.03(4)(b). *John Doe 1*, et al., v. *Madison Metro. School Dist.*, et al., 20AP1032. *See* SCR 10.03(4)(b) ("An order granting nonresident counsel permission to appear and participate in an action or proceeding shall continue through subsequent appellate or circuit court actions or proceedings in the same matter. . . .").

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 3,647 words.

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