

WILL: Wisconsin Supreme Court to hear parental rights case challenging Madison schools gender identity policy

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WILL sued MMSD over policy that takes important healthcare decisions away from parents

The News: The Wisconsin Supreme Court granted a petition for review in Doe v. MMSD, a Wisconsin Institute for Law & Liberty (WILL) and Alliance Defending Freedom (ADF) lawsuit on behalf of a group of parents challenging a Madison Metropolitan School District's (MMSD) gender identity policy that violates the rights of parents to make important healthcare decisions on their children's behalf. WILL and ADF filed the lawsuit in Dane County Circuit Court in 2020 after MMSD adopted policies that allow children of any age to transition to a different gender identity at school without parental consent and even instructed district employees to deceive parents about the transition.

The Wisconsin Supreme Court will review a September 2020 partial injunction against the policy and to what extent the parents can remain anonymous. Oral arguments are expected to be scheduled at a later date.

The Quotes: WILL Deputy Counsel, Luke Berg, said, "We are pleased the Wisconsin Supreme Court has agreed to hear this important case. The Madison Metropolitan School District cannot make decisions reserved for parents."

ADF counsel Kate Anderson, Director of ADF's Center for Parental Rights, added, "School policies that exclude parents from children's gender identity decisions are harming children across the country. We are hopeful that the Wisconsin Supreme

Court will take the lead in protecting a parent's right to be a parent."

Background: In April 2018, the Madison Metropolitan School District (MMSD) adopted "Guidance and Policies to Support Transgender, Non-binary & Gender-Expansive Students." Importantly, the policy includes the following provisions:

Children of any age can transition to a different gender identity at school, by changing their name and pronouns, without parental notice or consent.

District employees are prohibited from notifying parents, without the child's consent, that their child has or wants to change gender identity at school, or that their child may be dealing with gender dysphoria.

District employees are even instructed to deceive parents by using the child's legal name and pronouns with family, while using the different name and pronouns adopted by the child in the school setting.

WILL and ADF filed a lawsuit in Dane County Circuit Court in February 2020, on behalf of an anonymous group of MMSD parents, that the 2018 MMSD policy violates constitutionally protected parental rights. Parents have the right to make important healthcare decisions on their children's behalf. Transitioning to a different gender identity is a significant psychotherapeutic intervention that requires parental notice or consent. Public school districts, like Madison, do not have the right to make those decisions for parents.

In September 2020, Dane County Circuit Court Judge Frank Remington issued a partial injunction that prevents MMSD from "applying or enforcing any policy, guideline, or practice" that "allows or requires District staff to conceal information or to answer untruthfully in response to any question that parents ask about their child at school, including information about the name and pronouns being used to address their child at school." But the injunction does not go far enough. It still allows minor students to transition at school without parental notice or consent, and for the District to hide this from parents until they specifically ask about it. Judge Remington also partially denied the parents request to remain anonymous.

The Wisconsin Supreme Court granted the case and will determine whether WILL's clients can proceed anonymously and whether Judge Remington's injunction goes far enough, in light of the potential for significant harm from a secret "affirmed" transition at school.

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Wisconsin Supreme Court Order, January 13, 2022
Dane County Circuit Court Injunction, September 28, 2020
WILL Complaint, February 18, 2020