United States Court of Appeals

for the

Third Circuit

Case No. 24-3278

CHRISTIN HEAPS,

Appellant,

– v. –

DELAWARE VALLEY REGIONAL HIGH SCHOOL BOARD OF EDUCATION; SCOTT MCKINNEY, individually and in his official capacity as

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY IN NO. 3:24-CV-00107 HONORABLE GEORGETTE CASTNER, DISTRICT JUDGE

BRIEF OF *AMICI CURIAE* ADVANCING AMERICAN FREEDOM, INC.; ALASKA FAMILY COUNCIL; AMERICAN ASSOCIATION OF SENIOR CITIZENS; AMERICAN ENCORE; AMERICAN VALUES; AMERICANS FOR FAIR TREATMENT; ASSOCIATION OF MATURE AMERICAN CITIZENS ACTION; SHAWNNA BOLICK, ARIZONA STATE SENATOR, DISTRICT 2; CENTER FOR URBAN RENEWAL AND EDUCATION (CURE); CHRISTIAN MEDICAL & DENTAL ASSOCIATIONS; COALITION FOR JEWISH VALUES; DEFENSE OF FREEDOM INSTITUTE FOR POLICY STUDIES, INC.; EAGLE FORUM; EAGLE FORUM OF GEORGIA; INDEPENDENT WOMEN'S LAW CENTER; INTERNATIONAL CONFERENCE OF EVANGELICAL CHAPLAIN ENDORSERS; JAMES DOBSON FAMILY INSTITUTE; TIM JONES, FORMER SPEAKER, MISSOURI HOUSE, CHAIRMAN, MISSOURI CENTER-RIGHT COALITION; MEN AND WOMEN FOR A REPRESENTATIVE DEMOCRACY IN AMERICA, INC.; MOMS FOR AMERICA; MOMS FOR LIBERTY; NATIONAL APOSTOLIC CHRISTIAN LEADERSHIP CONFERENCE; NATIONAL ASSOCIATION OF PARENTS, INC. DBA PARENTSUSA; NATIONAL CENTER FOR PUBLIC POLICY RESEARCH; NATIONAL RELIGIOUS BROADCASTERS; NEW YORK STATE CONSERVATIVE PARTY; NORTH CAROLINA VALUES COALITION; MELISSA ORTIZ, PRINCIPAL & FOUNDER, CAPABILITY CONSULTING; PROJECT SENTINEL; RICK SANTORUM, FORMER SENATOR 1995-2007; ROBERT SCHWARZWALDER; 60 PLUS ASSOCIATION; STAND FOR GEORGIA VALUES ACTION; STUDENTS FOR LIFE OF AMERICA; TEA PARTY PATRIOTS ACTION, INC.; THE JUSTICE FOUNDATION; TRADITION, FAMILY, PROPERTY, INC.; WOMEN FOR DEMOCRACY IN AMERICA, INC.; AND YOUNG AMERICA'S FOUNDATION IN SUPPORT OF PLAINTIFF-APPELLANT

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Superintendent of Schools; ASHLEY MIRANDA, individually and in her official capacity as school counselor; ANGELICA ALLEN-MCMILLAN, in her official capacity as Acting Commissioner of the New Jersey Department of Education; JOHN ROES 1-10, said names being fictitious, individually and in their official capacities; MATTHEW J. PLATKIN, in his official capacity as Attorney General of the State of New Jersey.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The amici curiae Advancing American Freedom, Inc.; Alaska Family Council; American Association of Senior Citizens; American Encore; American Values; Americans For Fair Treatment; Association of Mature American Citizens Action; Shawnna Bolick, Arizona State Senator, District 2; Center for Urban Renewal and Education (CURE); Christian Medical & Dental Associations; Coalition for Jewish Values; Defense of Freedom Institute for Policy Studies, Inc.; Eagle Forum; Eagle Forum of Georgia; Independent Women's Law Center; International Conference of Evangelical Chaplain Endorsers; James Dobson Family Institute; Tim Jones, Former Speaker, Missouri House, Chairman, Missouri Center-Right Coalition; Men and Women for a Representative Democracy in America, Inc.; Moms for America; Moms for Liberty; National Apostolic Christian Leadership Conference; National Association of Parents, Inc. dba ParentsUSA; National Center for Public Policy Research; National Religious Broadcasters; New York State Conservative Party; North Carolina Values Coalition; Melissa Ortiz, Principal & Founder, Capability Consulting; Project Sentinel; Rick Santorum, Former Senator 1995-2007; Robert Schwarzwalder; 60 Plus Association; Stand for Georgia Values Action; Students for Life of America; Tea Party Patriots Action, Inc.; The Justice Foundation; Tradition, Family, Property, Inc.; Women for Democracy in America, Inc.; and Young America's Foundation are nonprofit corporations. They do not issue

stock and are neither owned by nor are they owners of any other corporate entity, in part or in whole. They have no parent companies, subsidiaries, affiliates, or members that have issued shares or debt securities to the public. The corporations are operated by volunteer boards of directors.

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including parental rights.[1] AAF "will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,"[2] and believes that American prosperity depends on ordered liberty and self-government.[3] AAF is deeply concerned about the nationwide pattern of school officials concealing from parents efforts to encourage social gender "transition" among their children and the message that sends to children that parents' views are lesser if they do not conform to the educational establishment's groupthink.[4] AAF files this brief on behalf of its 9,463 members in the Third Circuit, including 2,215 members in the state of New Jersey.

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

[2]Edwin J. Feulner, Jr., *Conservatives Stalk the House: The Story of the Republican Study Committee*, 212 (Green Hill Publishers, Inc. 1983).

[3] Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at https://advancingamericanfreedom.com/aaff-independence-index/.

[4] "Liberals claim to want to give a hearing to other views, but then are shocked and offended to discover that there are other views." William F. Buckley, Jr., *On the Inculcated and the Inculcators*, National Review (Jan. 11, 1956) https://www.nationalreview.com/1956/01/onthe-inculcated-and-the-inculcators/.

Amici Alaska Family Council; American Association of Senior Citizens; American Encore; American Values; Americans For Fair Treatment; Association of Mature American Citizens Action; Shawnna Bolick, Arizona State Senator, District 2; Center for Urban Renewal and Education (CURE); Christian Medical & Dental Associations; Coalition for Jewish Values; Defense of Freedom Institute for Policy Studies, Inc.; Eagle Forum; Eagle Forum of Georgia; Independent Women's Law Center; International Conference of Evangelical Chaplain Endorsers; James Dobson Family Institute; Tim Jones, Former Speaker, Missouri House, Chairman, Missouri Center-Right Coalition; Men and Women for a Representative Democracy in America, Inc.; Moms for America; Moms for Liberty; National Apostolic Christian Leadership Conference; National Association of Parents, Inc. dba ParentsUSA; National Center for Public Policy Research; National Religious Broadcasters; New York State Conservative Party; North Carolina Values Coalition; Melissa Ortiz, Principal & Founder, Capability Consulting; Project Sentinel; Rick Santorum, Former Senator 1995-2007; Robert Schwarzwalder; 60 Plus Association; Stand for Georgia Values Action; Students for Life of America; Tea Party Patriots Action, Inc.; The Justice Foundation; Tradition, Family, Property, Inc.; Women for Democracy in America, Inc.; and Young America's Foundation believe that the fundamental right of parents to direct the upbringing of their children is essential to liberty and is deeply rooted in American tradition and practice.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

When parents send their children to school, they expect their children to be educated, not to have their authority undermined by willful school employees. Yet, in this case, that is exactly what happened. Plaintiff-appellant Chris Heaps sued the Delaware Valley Regional High School Board of Education, school counselor Ashley Miranda, and the superintendent of the Delaware Valley Regional High School District Scott McKinney (collectively, "the School District") after they facilitated his daughter's use of a new name and incorrect, masculine pronouns. Further, by continuing to refer to his daughter by her real name and correct pronouns when speaking with her parents, the school's officials sought to hide their activity from her parents. *Doe v. Delaware Regional High School Bd. of Ed.*, No. 3:24-cv-00107-GC-JBD, slip op. at 4 (D.N.J. Nov. 27, 2024). These actions of the school violated Mr. Heaps's fundamental, constitutionally recognized right to direct the upbringing of his daughter. This Court should rule for Mr. Heaps and ensure that the rights of parents in the District of New Jersey are secure.

Mr. Heaps's daughter began experiencing anxiety long before reaching high school. Mr. Heaps's daughter "experienced the childhood trauma of the death of her mother and has been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD), high-functioning autism, and anxiety." *Id.* at 2. Her pastoral counselor,

whom she had been seeing for one and a half years before socially transitioning, said that her trauma from the loss of her mother and her high-functioning autism "contributed to Jane's development of gender confusion." *Id*. at 7. As a freshman, Mr. Heaps's daughter participated in "Students Advocating for Equality," or "SAFE," an extracurricular club which exists to "promote open discussion and awareness about modern cultures and topics surrounding intersectionality while aiming to make positive contributions to [the] community and school." *Id*. at 2. In September 2023, Mr. Heaps's daughter expressed to Ashley Miranda, school counselor and the staff advisor of SAFE, that "she identified as a transgender male" and "would like to undergo a social transition from female to male in school." *Id*. at 2.

School officials complied with this request but continued to use her real name and correct pronouns when speaking with her father in a deliberate attempt to conceal her social transition from them. School staff were even instructed to use the daughter's correct name and pronouns over the school announcement system stating concern that her sibling who attended the same school "would learn of her social transition and may cause issues for her at home." *Id*. at 4. Likewise, when Miranda emailed the entire high school staff to inform them of Mr. Heaps's daughter's preferred name and pronouns, Miranda complied with the daughter's request to exclude two teachers from the email "because of their relationship with her family."

Id. at 3. In this case, the School District deliberately obstructed Mr. Heaps's right to direct the upbringing of his child by hiding its actions from him. Mr. Heaps only learned that the School District had been socially transitioning his daughter after overhearing another parent refer to his daughter using a male name. *Id*. at 4.

While the school's campaign of deliberate deception is reprehensible, its efforts were consistent with the district's gender policy, which demonstrates its general agenda. The District's Board Policy 5756, titled "Transgender Students" says:

> The school district shall accept a student's asserted gender identity; parental consent is not required. A student need not meet any threshold diagnosis or treatment requirements to have his or her gender identity recognized and respected by the school district, school, or school staff members. In addition, a legal or court-ordered name change is not required. There is no affirmative duty for any school district staff member to notify a student's parent of the student's gender identity or expression.

Id. at 3. The policy directs school officials to accept a student's asserted gender identity without any input from, or even notice to, the student's parents. Unless parents directly ask whether their child is assuming a new gender identity, they will not be told. And when the School District takes strategies to ensure siblings and parents are left in the dark, parents will not know they should ask.

Despite repeated objections from Mr. Heaps and the child's healthcare providers, including a cease-and desist letter, the school district continued to socially transition Mr. Heaps' daughter. *Id*. at 4. The school district made it impossible for

Mr. Heaps's daughter to receive a public education unless her father yielded his "constitutional and statutory parental rights." *Id*. at 5. After leaving the Delaware Valley school for home instruction, Mr. Heaps's daughter's anxiety decreased and her overall mental health improved. *Id*. at 6. Additionally, since leaving school, the daughter's counselor testified that she believed the daughter no longer wished to socially transition. *Id*. at 7.

Parents have the fundamental right, recognized by the Constitution, to "direct the education and upbringing of" their children. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). That right prohibits schools from substituting their moral judgements about what is best for a child for a parent's, and from concealing important decisions about the child's upbringing from his or her parents.

The school's utter disregard for Mr. Heaps's parental authority is inconsistent with the most fundamental moral norms upon which our society is based, and "substantially interfere[s]," *Mahmoud v. Taylor*, No. 24-297 (June 27, 2025) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)), with Mr. Heaps' right to raise his daughter consistent with his own values. Unless school officials are prepared to make a claim that a child is being abused as defined by law, they have no right to insert themselves between parents and their children. The school's actions in this case directly conflict with one of the most ancient liberties of parents: to direct

the upbringing, education, and care of their children. The Court should rule in favor of Plaintiff-Appellant.

ARGUMENT

I. The Supreme Court has Recognized the Fundamentality of Parental Rights in the Education and Raising of Children.

The United States Supreme Court has consistently recognized that a parent's liberty interest in child rearing and education is fundamental. In a long line of cases, the Supreme Court has enunciated a parental rights doctrine rooted in the First and Fourteenth Amendments of the U.S. Constitution. *See, e.g.*, *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) ("While this court has not attempted to define with exactness the [due process] liberty . . . Without doubt, it denotes . . . the right of the individual to . . . marry, establish a home and bring up children."); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925) (finding that the act challenged in that case, "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."); *Yoder*, 406 U.S. at 214 (citing *Pierce*, 286 U.S. at 535) ("[A] State's interest in education . . . is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protect by the Free Exercise Clause of the First Amendment, and the traditional interests of parents with respect to the religious upbringing of their children."). This Court, too, has recognized the "right to the

preservation of family integrity," which "encompasses the reciprocal rights of both parent and children." *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2nd. Cir. 1977).

The Supreme Court has recently reaffirmed its religious and parental rights jurisprudence in *Mahmoud v. Taylor*, No. 24-297 (June 27, 2025). There, the Court found that religious parents were likely to succeed in their claim that their children's school district had violated parental religious liberty rights when it refused to allow them to opt their children out of instruction from schoolbooks included in the curriculum specifically to push positive messages about alternative sexual and gender lifestyles. The Court found that the parents were entitled to a preliminary injunction because subjecting religious parents' children to such materials would "substantially interfere" with their children's religious development. *Id*. at 17. Further, these rights should not be limited to religious parents alone but rather belong to all parents.

There is no constitutional justification for school officials to conceal from parents some of the most sensitive matters a family may face, except in the most extreme circumstances. For nearly a century, the Supreme Court has repeatedly affirmed the rights and responsibilities inherent in parenthood. *See Pierce*, 268 U.S. at 535 ("The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction . . . The child is not the mere creature of the State; those

who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."); *Meyer*, 262 U.S. at 400 ("It is the natural duty of the parent to give his children education suitable to their station in life."); *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder . . . It is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.") *Yoder,* 406 U.S. at 232 (declaring that parental rights have been "established beyond debate as an enduring American tradition."); *Smith v. Organization of Foster Families,* 431 U.S. 816, 845 (1977) ("The liberty interest in family privacy has its source, and its contours are ordinarily to be sought, not in state law, but in intrinsic human rights, as they have been understood in 'this Nation's history and tradition.'"). This consistent and clear recognition of parental rights demands on the part of public educators a high regard for the will of parents.

II. Evidence Demonstrates that Parental Rights Are Deeply Rooted in Our Nation's History and Tradition

A. *Parental rights in education are a part of the Western tradition.*

Parental authority has always been recognized as the first form of government because[5] it was "the most Sacred and Ancient Kind of Authority."[6] Parental authority was recognized as the basis for all proceeding forms of civil government.[7] This part of Western Tradition runs unbroken all the way back to antiquity, where both Athens[8] and Rome recognized parental authority as the foundation for a free and flourishing state.[9]

Parental rights are, according to Lord Kames, the leading British jurist on the eve of the American Revolution and sympathizer to American concerns, the "corner-

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[5] John Locke, *Two Treatises on Government* 252-53 (Hollis ed., 1764) (1689) ("The subjection of a minor places in the father a temporary government, which terminates with the minority of the child.").

[6] Samuel von Pufendorf, *The Whole Duty of Man According to the Law of Nature* 179-180 (Ian Hunter & David Saunders eds., Liberty Fund 2003) (1673).

[7] Locke, *supra* note 4, at 289-290 ("First then, in the beginning of things, the father's government of the childhood of those sprung from him, having accustomed them to the *rule of one man,* and taught them that where it was exercised with care and skill, with affection and love to those under it, it was sufficient to procure and preserve to men all the political happiness they sought for in society. It was no wonder that they should pitch upon, and naturally run into that form of government, which from their infancy they had been all accustomed to.")

[8] Aristotle, *Politics* 3-4, 16 (Benjamin Jowett ed., 1885) ("[W]hen several families are united, and the association aims at something more than the supply of daily needs, the first society to be formed is the village… the first community, indeed… is the family.").

[9] M. Tullius Cicero, *De Officiis* 54 (Walter Miller ed., 1913) ("For since the reproductive instinct is by Nature's gift the common possession of all living creatures, the first bond of union is that between husband and wife; the next, that between parents and children; then we find one home, with everything in common. And this is the foundation of civil government, the nursery, as it were, of the state.").

stone of society."[10] A natural right of the family's self-government was the right to oversee and direct the moral and intellectual education of the parents' own children. Scottish Enlightenment thinker David Fordyce, whose books were apart of colonial Harvard's curriculum,[11] thought that the "weak and ignorant State of Children, seems plainly to invest their Parents with such Authority and Power as is necessary to their Support, Protection, and Education."[12] The natural law theorist Samuel von Pufendorf, a man whose works were bought for the use of the Continental Congress,[13] observed that "nature has implanted in parents a tender affection for their offspring, so that no one can be willing readily to neglect that office."[14] Lord Kames described the parent-child relationship as "one of the strongest that can exist among individuals."[15]

These writers understood providing an education to be both a chief parental right and duty. Sir William Blackstone wrote, "the last duty of parents toward their

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[10] Henry Kames, *Sketches of the History of Man Considerably enlarged by the last additions and corrections of the author* 80 (James A. Harris ed., Liberty Fund 2007) (1788).
[11] Daniel N. Robinson, *The Scottish Enlightenment and the American Founding* 90 The Monist 170, 174 (2007).
[12] David Fordyce, *The Elements of Moral Philosophy* 8 (Thomas Kennedy ed., Liberty Fund 2003) (1754).
[13] "Report on Books for Congress, [23 January] 1783," *Founders Online,* National Archives, https://founders.archives.gov/documents/Madison/01-06-02-0031.
[14] Samuel von Pufendorf, *Two Books of the Elements of Universal Jurisprudence* 380 (Thomas Behme ed., The Liberty Fund 2009) (1660).
[15] Henry Kames, *Principles of Equity* 15-16 (Michael Lobban ed., The Liberty Fund 2014) (1760).

children is that of giving them an education suitable to their station in life: a duty pointed out by reason, and of far the greatest importance of any."[16] However, education did not just mean teaching mere arithmetic or literacy. At the time of the founding, the end of education was virtue.[17] The chief reason for parental oversight of education was that only parents would have the affection and watchful eye to ensure their child was provided with a virtuous foundation.

Scottish enlightenment thinker Gershom Carmichael, often regarded as one of the Founders of the Scottish Enlightenment that Jefferson was educated in by his Scottish professor William Small, wrote in 1724 that parents "*form the minds and the morals of their children*, so that the life they gave them will not be lost nor turn out to be a burden to others and painful and shaming for themselves."[18] Christian Thomasius, whose books James Madison ordered for the Continental Congress,[19] parental authority entails "leading the child from first infancy to the maturity of body

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[16] William Blackstone, *Commentaries on the Laws of England* 451 (George Sharswood ed., Lippincott Company 1893) (1753).

[17] Benjamin Rush, *Essays, literary, moral & philosophical* 8 (1798) In *Evans Early American Imprint Collection*, https://name.umdl.umich.edu/N25938. 0001.001, University of Michigan Library Digital Collections. Accessed June 17, 2025. ("I beg leave to remark, that the only foundation for a useful education in a republic is to be laid in Religion. Without this there can be no virtue, and without virtue there can be no liberty, and liberty is the object and life of all republican governments.").

[18] Gershom Carmichael, *The Writings of Gershom Carmichael* 134-35 (James Moore ed., Liberty Fund 2002) (1724).

[19] "Report on Books for Congress, [23 January] 1783," *Founders Online,* National Archives, https://founders.archives.gov/documents/Madison/01-06-02-0031.

and mind," a responsibility that "contains two parts, namely, nourishment, which pertains to the infant's body, and learning, which pertains to his mind."[20] Francis Hutcheson, writing in 1747, observed, "[p]arents are most sacredly obliged to provide for their children all the necessaries of life, and even to improve their condition as much as they can; and above all to *form their manners to all virtue by instruction*."[21]

According to the legal theorists of the time, the right of parents to directly oversee the education of their children could be delegated, but it could never be destroyed even by those with whom parents entrusted their children. Gershom Carmichael wrote that it is *"an indissolubly integral part of parental power*."[22] Pufendorf wrote, "though the Education of Children be a Duty laid upon Parents by Nature itself, it hinders not but that, either in Case of Necessity, or for the Benefit of the Children, the Care thereof may by them be intrusted with another; so *still that the Parent reserve to himself the Oversight of the Person deputed*."[23] Even when parents delegate their authority, school districts do not have the authority to expressly reject parental oversight.

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[20] Christian Thomasius, *Institutes of Divine Jurisprudence. With Selections from Foundations of the Law of Nature and Nations* 466-67 (Thomas Ahnert ed., Liberty Fund 2011) (1688).
[21] Francis Hutcheson, *A Short Introduction to Moral Philosophy* 269-70 (Luigi Turco ed., Liberty Fund 2007 (1747) (emphasis added).
[22] Carmichael, *supra* note 17, at 134-35 (emphasis added).
[23] Pufendorf, *supra* note 13, at 183-84 (emphasis added).

B. *Parental rights in education were ubiquitous in the Early Republic*.

Parental rights were also broadly recognized in America's founding era, a period of significant growth in public education which was seen as a bulwark for enlightened liberty and a means for inculcating the civic skills needed for republican self-government. James Wilson was a signer of both the Declaration of Independence and the Constitution and a leader in shepherding the Constitution through the Pennsylvania ratification convention. After ratification, President Washington appointed Wilson to the Supreme Court and Wilson was the first professor of law at the University of Pennsylvania.[24] In his 1791 lectures on law, Wilson contrasted ancient and modern modes of education to illustrate to his students the fundamentals of American parental rights. Spurning the example of the Spartans where "the care and education of children were taken entirely out of the hands of their parents," Wilson commended American law that entrusted "to parental affection the care of education . . . in most instances."[25] As Wilson explained, in America it was foremost "the duty of parents to maintain their children . . . to educate them according to the suggestions of a judicious and zealous regard for their usefulness, their respectability, and their happiness."[26]

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[24] James Wilson in *Biographical Directory of the United States Congress*, https://bioguide.congress.gov/search/bio/W000591.
[25] James Wilson, *Collected Works of James Wilson* 908-910 (Kermit L. Hall & Mark David Hall ed., Liberty Fund 2007) (1791) (Emphasis added).
[26] *Id.* at 1076-77.

Benjamin Rush, a signer of the Declaration of Independence, was one of the foremost advocates for public school. In 1786, Rush published a pamphlet setting out a plan for public schools in which teachers were to inculcate morality, but only in "a strict conformity to… the inclinations of their parents."[27]

Samuel Harrison Smith, a newspaper publisher and friend of Thomas Jefferson, was a rare critic of parental influence in education at the time. Smith wanted to completely remove parental influence from education when children were not actually at home. He wrote a pamphlet for the American Philosophical Society advocating such a system of public education, arguing that "[e]rror is never more dangerous than in the mouth of a parent."[28] The solution, according to Smith, was the complete removal of parental oversight: "education remote from parental influence, the errors of the father cease to be entailed upon the child."[29]

However, Jefferson outright rejected his friend's theory of public schooling. In 1817 Jefferson drew up his plan for public schooling in Virginia. Jefferson kept out

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[27] Benjamin Rush, *A plan for the establishment of public schools and the diffusion of knowledge in Pennsylvania; to which are added thoughts upon the mode of education, proper in a republic: Addressed to the legislature and citizens of the state* 18 (1786) in *Evans Early American Imprint Collection*, https://name.umdl.umich.edu/N15652.0001.001. University of Michigan Library Digital Collections, accessed June 18, 2025.

[28] Samuel Harrison Smith, *Remarks on education: illustrating the close connection between virtue and wisdom. To which is annexed, a system of liberal education* 64 (1797).

[29] *Id.*

of most political controversies during his retirement, but he confessed "the interest I feel in the system of education and wards, has seduced me into the part I have taken as to them, and still attaches me to their success."[30] In the margins of his draft, Jefferson wrestled with parental rights and influence in education.[31] Jefferson concluded that "it is better to tolerate the rare instance of a parent refusing to let his child be educated, than to *shock the common feelings* & ideas by the forcible asportation & education of the infant against the will of the father."[32]

C. *The Antebellum Period and Reconstruction reaffirmed parental rights in education.*

Parental control over the inculcation of virtue in children who attended public schools was reaffirmed throughout the antebellum period, even as changes in American society over questions of race and religion put strains on the tradition. James Kent, first professor of law at Columbia University, from 1826-1830 turned

[30] "Thomas Jefferson to Joseph C. Cabell, 10 September 1817," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-12-02-0011.

[31] "Thomas Jefferson's Bill for Establishing Elementary Schools, [ca. 9 September 1817]," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-12-02-0007. ("A question of some doubt might be raised on the latter part of this section, as to the rights and duties of society towards its members infant and adult. Is it a right or a duty in society to take care of their infant members, in opposition to the will of the parent? How far does this right & duty extend?") (cleaned up).

[32] *Id.*

his series of lectures into the widely popular *Commentaries on American Law*.[33] Kent started with antiquity and remarked that some ancient states had refused to trust education to parents.[34] Such an idea in America was "totally inadmissible."[35] Because nature bound parents to "maintain and educate their children, the law has given them a right to such authority."[36] This was "the true foundation of parental power."[37] Justice Joseph Story agreed. In his *Commentaries on Equity Jurisprudence*, Justice Story quoted the case of *Jenkins v. Peter:* "the presumption ought to be, in the absence of all proof tending to a contrary conclusion, that the advancement of the interest of the child was the object in view."[38] This was the "natural and reasonable presumption in all transactions of this kind is, that a benefit was intended the child, because in the discharge of a moral and parental duty."[39]

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[33] John M. Gould, Preface to James Kent, Commentaries on American Law, at v (Little, Brown & Co. 14th ed. 1896) (explaining that "the masterpiece of Chancellor Kent has now become so interwoven with judicial decisions that these commentaries upon our frame of government and system of laws will doubtless continue to rank as the first of American legal classics so long as the present order shall prevail").
[34] James Kent, *Commentaries on American Law* 233 (Oliver Wendell Holmes ed., Twelfth Edition 1873).
[35] *Id.*
[36] *Id.* at 252.
[37] *Id.*
[38] 1 Joseph Story, *Commentaries on Equity Jurisprudence* 328 (Charles C. Little & James Brown) (4th ed. 1846) (1836) (internal quotation marks omitted).
[39] *Id.*

Anything else would be "a principle at war with all filial as well as parental duty and affection."[40]

The horrors of American slavery became the catalyst for enshrining into the Constitution parental rights to oversee the moral upbringing of one's children. Slave narratives following the Civil War were replete with the tearing apart of children from their parents' oversight.[41] Freed former slaves organized "Colored Conventions" throughout the antebellum period and through the Civil War, where they petitioned for laws and amendments to protect their rights as citizens. One of the petitioned grievances was a lack of state protection for black parental rights. The 1851 Colored Convention of Ohio lamented that black citizens had "no parental or filial rights; but husband and wife, parent and child, may be torn from each other."[42] Other conventions recognized parental rights and education were intertwined, writing they, as former slaves, were "denied the control of their children" who were "debarred an education."[43] Abolitionist and anti-slavery Republicans regularly

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[40] *Id.*

[41] Luray Buckner, *A Right Defined by a Duty: The Original Understanding of Parental Rights*, 37 Notre Dame J.L. Ethics & Pub. Pol'y 493, 501 (2023).

[42] Convention of the Colored Freemen of Ohio (1852 : Cincinnati, OH), 275, *285 Proceedings of the Convention, of the Colored Freemen of Ohio, Held in Cincinnati, January 14, 15, 16, 17 and 19, 1852,* (Colored Conventions Project Digital Records) https://omeka.coloredconventions.org/items/show/250 (last visited June 23, 2025).

[43] Convention of the Colored Men of Ohio (1858 : Cincinnati,

intertwined the denial to educate and oversee one's own children as one of the badges of slavery.[44]

The Congressional debates on the Thirteenth and Fourteenth Amendments make clear that one of the intents of the amendment was to protect the fundamental right of parents to oversee the upbringing of their children. Senator James Harlan said that a consequence of slavery was "the abolition practically of the parental relation, robbing the offspring of the care and attention of his parents."[45] Senator Charles Sumner, perhaps the political leader of the abolitionist movement (who was famously caned nearly to death on the Senate floor after attacking slavery), graphically described "property in man, driven by the lash like beasts, despoiled of all rights, even the right to knowledge and the sacred right of family; so that the relation of husband and wife was impossible and no parent could claim his own child." When speaking in support of the Thirteenth Amendment,[46] Senator Henry Wilson, author of the bills which outlawed slavery in Washington, D.C. and

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OH), 333, *Proceedings of a Convention of the Colored Men of Ohio, Held in the City of Cincinnati, on the 23d, 24th, 25th and 26th days of November, 1858*, (Colored Conventions Project Digital Records) https://omeka.coloredconventions.org/items/show/254 (last visited June 23, 2025).

[44] Joseph K. Griffith II, *Is the Right of Parents to Direct Their Children's Education "Deeply Rooted" in Our "History and Tradition?"* 28 Tex. Rev. L. & Pols. 795. 803-04 (2024).

[45] Cong. Globe, 38th Cong., 1st Sess., 1439 (1864) (Statement of Senator Harlan).

[46] Cong. Globe, 38th Cong., 1st Sess., 1479 (1864) (statement of Senator Sumner).

permitted the enlistment of African Americans into the Army, said, "the sacred rights of human nature, the hallowed family relations of husband and wife, parent and child, will be protected by the guardian spirit of that law which makes sacred alike the proud homes and lowly cabins of freedom."[47]

During the drafting of the Fourteenth Amendment in the 39th Congress, the Joint Committee on Reconstruction inquired into whether certain fundamental rights were being respected in the occupied South. The Joint Committee asked whether Southern whites objected to "the legal establishment of the domestic relations among the blacks, such as the relation of husband and wife, of parent and child, and the securing by law to the negro the rights of those relations?"[48] Likewise, Representative Thomas Dawes Eliot spoke of the need to protect the right of "husband, wife, and parent."[49]

Upholding this tradition, the Courts have repeatedly recognized that "[t]he child is not the mere creature of the state," *Pierce,* 268 U.S. at 535. and parents, not school officials, have the right and responsibility "to direct the education and upbringing" of their children. *Glucksberg,* 521 U.S. at 720. The school's deception in this case demonstrates that it knew it was interfering with that right. Had it

[47] Cong. Globe, 38th Cong., 1st Sess., 1324 (1864) (Statement of Senator Wilson).
[48] Joint Comm. on Reconstruction, Report of the Joint Committee on Reconstruction, H.R. Rep. No. 30, 39th Cong., 1st Sess. (1866) at 171.
[49] Cong. Globe, 39th Cong., 1st Sess. 2773 (1866) (Statement of Representative Eliot).

believed that Mr. Heaps would approve of his daughter being socially "transitioned," it would have had no reason to conceal the fact from him.

The school violated Mr. Heaps's fundamental parental rights when it socially "transitioned" his daughter without his knowledge and affirmative consent. It compounded the violation when it first misled him, and then continued to encourage his daughter's "transition" even after Mr. Heaps became aware and requested the school district desist. This Court should rule for plaintiff-appellant.

III. The Significance of the Disregard of Parental Rights in This Case is Evident When Compared to the Significant Parental Involvement in the Schools' Administration of Medication to Students.

The Delaware Valley Regional High School Board of Education policy on the distribution of medication to students demonstrates that it understands the importance of parental consent for even basic interventions. In the District, the distribution of all medications, whether prescription or over-the-counter, is closely controlled. Parents must authorize the school to give their child medication which must be dropped off at the school by the parent in the original, labeled container.[50] The school personnel may only administer the medication when they have the

[50] *Administration of Medication*, Delaware Valley Regional Board of Education (last visited July 2, 2025) available at https://www.straussesmay.com/seportal/Public/DistrictRegulation.aspx?Regulationid=5330&id=f6c09ab4e35d4f5582368558e635a06a.

parent's authorization in writing.[51] Even the emergency administration of some medications, such as epi-pens, require permission to be renewed yearly.[52]

In contrast to the Delaware Valley Board of Education's meticulous medication policy, the school's gender policy leaves to the student's discretion whether to seek parental input. *Doe*, slip op. at 3. Parents may be kept completely in the dark as school officials coax their children into deep personal confusion. In cases like the one before this Court, students may be allowed to choose new names and demand the use of pronouns of the opposite gender or contrived pronouns wholly unconnected to reality, all while school officials effectively encourage those children to lie to their parents

Unless school administrators are prepared to make the serious claim that a parent is abusing his or her child, they have no business involving themselves in the raising of children without parental consent. Representatives of the state cannot simply claim that they are acting in the best interest of the child and on those grounds insinuate themselves between the parents and their children. *See Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have little doubt that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family, over

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[51] *Id.*

[52] *Administration of Medication*, Delaware Valley Regional Board of Education (last visited July 2, 2025) available at https://www.straussesmay.com/seportal/Public/DistrictPolicy.aspx?policyid=5330&id=f6c09ab4e35d4f5582368558e635a06a.

the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest."). Nor can school officials hide behind the supposed consent of the children in this case. *See Parham v. J.R.*, 442 U.S. 584, 602-603 (1979) ("Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state."). The child in this case was a freshman in high school. She would not be allowed to provide consent for taking medication at school. She cannot legally consent to sexual activity. Contracts with minors may be voidable. She would be tried as a minor in a criminal context. The school's decision to encourage students to socially transition without their parents' knowledge or consent is as reprehensible as it is illegitimate.

In a speech at Hillsdale College, then-Secretary of Education Betsy DeVos said "the family [is a] sovereign sphere . . . A sphere that predates the government altogether. It's been said, after all, that the family is not only an institution; it's also the foundation for all other institutions."[53] The right of parents to raise their children, barring extraordinary circumstances, is just as old as the institution of the family and

[53] Virginia Aabram, *Secretary of Education Betsy DeVos Speaks at Hillsdale*, (Oct. 22, 2022) https://hillsdalecollegian.com/2020/10/secretary-of-education-betsy-devos-speaks-at-hillsdale/.cite.

the Supreme Court has long recognized its protection under the Constitution. By facilitating Mr. Heaps's daughter's social "transition," the school officials in this case trampled over that fundamental right.

The right of parents to direct the upbringing of their children is of great importance and is fundamental to the liberty government exists to protect. This Court should rule in favor of Plaintiff-Appellant to ensure that the Constitution's guarantees of freedom are more than mere "parchment barriers"[54] against government power.

CONCLUSION

For the foregoing reasons, the Court should rule for plaintiff-appellant.

Respectfully submitted,

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[54] The Federalist No. 48 at 256 (James Madison) (George W. Carey and James McClellan, eds., The Liberty Fund 2001).

CERTIFICATION OF ADMISSION TO BAR

I, J. Marc Wheat, certify as follows:

1. I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

2. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: July 7, 2025

/s/ J. Marc Wheat
J. Marc Wheat

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). This brief contains 5,853 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii) of the Federal Rules of Appellate Procedure.

This brief complies with the typeface requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the type style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

This brief complies with the electronic filing requirements of Local Rule 31.1(c) because the text of this electronic brief is identical to the text of the paper copies, and the Vipre Virus Protection, version 3.1 has been run on the file containing the electronic version of this brief and no viruses have been detected.

Dated: July 7, 2025

/s/ J. Marc Wheat
J. Marc Wheat

CERTIFICATE OF SERVICE

I certify that on July 7, 2025, I am causing this Brief to be filed electronically with this Court's CM/ECF system. All participants are registered CM/ECF users and will be served by the Appellate CM/ECF system.

Dated: July 7, 2025

/s/ J. Marc Wheat
J. Marc Wheat