IN THE SUPREME COURT OF WISCONSIN

No. 2023AP002102

IN THE INTEREST OF K.R.C., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

K.R.C.,

Respondent-Appellant-Petitioner.

NON-PARTY BRIEF OF AMICI CURIAE THE AMERICAN CIVIL LIBERTIES UNION AND THE ACLU OF WISCONSIN IN SUPPORT OF RESPONDENT-APPELLANT-PETITIONER K.R.C

Ryan V. Cox
State Bar. No. 1140899
American Civil Liberties Union
of Wisconsin Foundation, Inc.
207 East Buffalo Street, Suite 325
Milwaukee, WI 53202
Tel: (414) 272-4032 x244
Email: rcox@aclu-wi.org.

Bridget Lavender*
American Civil Liberties Union
Foundation, Inc.
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2500
Email: blavender@aclu.org

Matthew R. Segal*
American Civil Liberties Union
Foundation
One Center Plaza, Suite 850
Boston, MA 02108
Tel: (617) 299-6664
Email: msegal@aclu.org

*Pro Hac Vice

Counsel for *Amici Curiae*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Other Authorities

INTEREST OF *AMICI CURIAE*

The American Civil Liberties Union is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to protecting the principles embodied in the state and federal Constitutions and our nation's civil rights laws. The American Civil Liberties Union of Wisconsin is a state affiliate of the national ACLU with nearly 20,000 members in the State of Wisconsin. The ACLU amici have a longstanding interest in defending the rights of students through direct representation, amicus briefs, and advocacy.

INTRODUCTION

This case arises from a closed-door police interrogation of a twelve-year-old boy inside a tiny school office. The court of appeals held that during this police interrogation, and at a later interrogation involving police and an assistant principal, the boy was not in custody, was not entitled to *Miranda* warnings, and voluntarily incriminated himself. That holding is mistaken. As other briefs have shown, admitting the boy's statements into evidence violated the Fifth Amendment to the U.S. Constitution. The ACLU amici write separately because, apart from the Fifth Amendment, this Court should hold that admitting the boy's statements into evidence also violated Article I, Section 8, of the Wisconsin Constitution.

In June 2022, a school official removed twelve-year-old Kevin[1] from class and brought him to a police officer. The officer, wearing a police vest and serving as the school resource officer ("SRO"), ushered Kevin into a small closet-sized office. On the office wall hung an eight by eleven-inch piece of paper with the following text: "You Are in Here Voluntarily Unless Told Otherwise. You are Being Filmed And Can Leave at Any Time!"

Inside the office, the SRO questioned Kevin for approximately ten minutes while a second officer, armed and uniformed, stood between Kevin and the closed door. The questioning ceased only after Kevin made an incriminating statement

[1] A pseudonym.

about an allegation that he had struck another student's groin. Neither officer provided *Miranda* warnings, nor did they offer to call Kevin's parents during this encounter.

Less than an hour later in the student services office, the assistant principal and the school resource officer again questioned Kevin. Once again, the armed and uniformed police officer stood by; no one *Mirandized* Kevin.

Following this encounter, the State filed a juvenile delinquency petition against Kevin. The circuit court denied Kevin's motion to suppress the statements from his interrogations and, after a bench trial, found him guilty. The court of appeals affirmed the denial of Kevin's suppression motion. Despite deeming it a close call, the court concluded that the police were not required to *Mirandize* Kevin and that Kevin's statements had been voluntary.

Whether analyzed under the U.S. or Wisconsin Constitution, the court of appeals' holding is incorrect. When police officers corner and question a twelve-year-old child inside a tiny school office with the door closed and the exit blocked, the child cannot reasonably feel free to leave or to refuse to answer questions. Schoolchildren generally cannot leave their seats, let alone exit a room with an armed police officer blocking the door, without express permission from an adult. In this case, adults orchestrated all of Kevin's physical movements, from the classroom to the interrogation room. No child would have believed that, despite the total control that adults exerted over him, he was free to leave because a piece of paper on the wall said so.

But, for three reasons, the Court should hold that Kevin's rights under the Wisconsin Constitution were violated, regardless of how the Court resolves the federal Constitutional issues. First, resolving this case under the Wisconsin Constitution would advance vital federalism principles concerning the development of state constitutional law. Additionally, the Wisconsin Constitution grants children stronger protections during police interactions than what is afforded by the U.S. Constitution, especially regarding interrogations. Finally,

unlike federal doctrines, which must be sufficiently generic to accommodate variations in police practices across all 50 states, this Court can and should tailor its holding under the Wisconsin Constitution to the specific ways in which Wisconsin students are policed at school.

ARGUMENT

I. Federalism principles support deciding this case under the Wisconsin Constitution.

Resolving this case under the Wisconsin Constitution would advance important federalism principles. For starters, applying the state constitution would "grant the proper respect to" Wisconsin's "own legal foundations and fulfill" this Court's role in elaborating the meaning of the Wisconsin Constitution. *State v. Coe*, 101 Wash. 2d 364, 373–74 (1984). As other judges have noted, to properly develop state constitutional law, it is often a "good idea" to "resolve the state [constitutional] claim first and consider the federal [constitutional] claim only if necessary, only if the court denies relief to the claimant under the state constitution." Jeffrey S. Sutton, 51 Imperfect Solutions 178–79 (Oxford University Press 2018); *see, e.g.*, Clint Bolick, *Principles of State Constitutional Interpretation*, 53 Ariz. St. L.J. 771, 780 (2021) (Justice on the Arizona Supreme Court discussing the importance of "consulting the state constitution first"); Catherine R. Connors & Connor Finch, *Primacy in Theory and Application: Lessons from a Half-Century of New Judicial Federalism*, 75 Maine L. Rev. 1, 9–16 (2023) (Justice on the Maine Supreme Judicial Court making similar arguments).

This Court has agreed. "Since the earliest days of" this state's history, this Court has "embraced [its] role as the principal interpreter[] of" the Wisconsin Constitution and has "repeatedly declared that it is [the Court's] duty to interpret" the state constitution "independently of the United States Constitution." *Matter of*

Adoption of M.M.C., 2024 WI 18, ¶ 51, 411 Wis. 2d 389, 5 N.W. 3d 238 (Dallet, J., concurring) (collecting examples).

Applying the Wisconsin Constitution would also insulate this Court's jurisprudence—and with it, Wisconsin residents—from the impact of federal decisions weakening civil rights, especially the right against self-incrimination. U.S. Supreme Court decisions have caused an "increasing erosion of *Miranda* rights" at the federal level, "especially for the most vulnerable in our population," including "young defendants." *Arriagaguadron v. State*, No. 5-23-535-CR, 2025 WL 1106088, at *5 (Tex. App. Apr. 14, 2025) (Goldstein, J., concurring).[2] While Kevin has demonstrated that current federal case law requires suppression of his statements, that may change in five, ten, or twenty years. However, state constitutional rights are "genuine guarantees against misuse of the state's governmental powers, truly independent of the rising and falling tides of federal case law." *State v. Kennedy*, 295 Or. 260, 271 (1983); *State v. Brown*, 930 N.W.2d 840, 859 (Iowa 2019) (quoting the same). "Real federalism means that state constitutions are not mere shadows cast by their federal counterparts, always subject to change at the hand of a federal court's new interpretation of the federal constitution." *Olevik v. State*, 302 Ga. 228, 234 n.3 (2017).

II. The Wisconsin Constitution broadly protects children interrogated by police.

Applying the Wisconsin Constitution is further warranted in this case because its protections against self-incrimination are not only independent of, but broader than the analogous protections of the Fifth Amendment to the U.S. Constitution. For schoolchildren, the right against self-incrimination stems from

[2] *See, e.g.*, *Salinas v. Texas*, 570 U.S. 178 (2013); *Berghuis v. Thompkins*, 560 U.S. 370 (2010); *United States v. Patane*, 542 U.S. 630 (2004). *Cf. State v. Flack*, 318 Kan. 79, 137–38 (2024), *cert. denied sub nom. Flack v. Kansas*, 145 S. Ct. 1070 (2025) (discussing the erosion of federal *Miranda* rights); Brandon L. Garrett, *Remaining Silent After* Salinas, 80 U. Chi. L. Rev. Dialogue 116 (2013).

Article I, Section 8, and is bolstered by the right to a public education appearing in Article X, Section 3.

With respect to Article I, Section 8, this Court's cases supply ample reason for a broad interpretation. Although the provision's text resembles the Fifth Amendment, that similarity is not dispositive of its meaning. This Court has noted its authority to interpret state constitutional provisions more broadly than their federal counterparts. *See, e.g.*, *State v. Dubose*, 2005 WI 126, ¶ 41, 285 Wis. 2d 143, 699 N.W.2d 582, *abrogated on other grounds by State v. Roberson*, 2019 WI 102, 389 Wis. 2d 190, 935 N.W.2d 813 (quoting William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 500 (1977)); *State v. Knapp*, 2005 WI 127, ¶¶ 60–61, 285 Wis. 2d 86, 700 N.W.2d 899. That includes Article I, Section 8. At the beginning of statehood, this Court declared, "By the policy of the law, no person is compelled to give evidence against himself, or to testify to any matter tending to criminate himself." *Schoeffler v. State*, 3 Wis. 717 [*823], 733 [*841] (1854). Consistent with this principle, this Court adopted an exclusionary rule decades before the U.S. Supreme Court did so in *Mapp v. Ohio*, 367 U.S. 643 (1961), by "fusing" the protections of Article I, Section 8, with the state constitution's search-and-seizure protections. *See Knapp*, 2005 WI 127, ¶ 65. In doing so, the Court sought to ensure that state constitutional rights—including the right against self-incrimination—would "be of substance rather than mere tinsel," even if that meant the guilty would sometimes go free. *Hoyer v. State*, 180 Wis. 407, 415, 193 N.W. 89 (1923).

Similarly, in 1956 this Court recognized that Section 8 is "so sacred" that, especially "where suspicion of guilt is strong," it is "the duty of the courts to liberally construe" the right against self-incrimination. *State v. Kroening*, 274 Wis. 266, 275, 79 N.W.2d 810 (1956). Finally, in 2005 this Court declined to follow *United States v. Patane*, 542 U.S. 630 (2004), which held that federal courts need not suppress derivative evidence discovered as a result a deliberative *Miranda*

warning. *Knapp*, 2005 WI 127. This Court chose, once again, to provide Wisconsinites with broader protections for their sacred rights by mandating suppression of such evidence under Section 8. *Id.*

In school settings, the right against self-incrimination should be construed in light of the Wisconsin Constitution's guarantee of free and public education appearing in Article X, Section 3. The right to education—and to an equal opportunity for education—is "fundamental" and receives the highest level of constitutional protection. *See, e.g.*, *Buse v. Smith*, 74 Wis. 2d 550, 567, 247 N.W.2d 141 (1976); *Vincent v. Voight*, 2000 WI 93, ¶ 3, 236 Wis. 2d 588, 614 N.W.2d 388. This right has no federal analog and reflects the widespread belief among nineteenth-century Wisconsinites that providing free education was an essential function of government. *See* Lloyd P. Jorgenson, The Founding of Public Education in Wisconsin 53–69 (1956); Suzanne M. Steinke, *The Exception to the Rule: Wisconsin's Fundamental Right to Education and Public School Financing*, 1995 Wis. L. Rev. 1387, 1391 (1995). Indeed, the framers of the Wisconsin Constitution deemed public education so important that they gave it an entire article. *See* Wisc. Const. art. X.

The Court of Appeals' holding, which allows students to be routinely taken out of class and placed into interrogation rooms with police officers, where they receive no instruction—including, apparently, about their constitutional rights—undermines the right to a free and public education. Under this system, children can access their education rights only by sacrificing their right against self-incrimination. Yet, as this Court has made clear, it is "simply unacceptable when the State requires a person to sideline one constitutional right before exercising another." *Milewski v. Town of Dover*, 2017 WI 79, ¶ 67, 377 Wis. 2d 38, 899 N.W.2d 303. "If the state may compel the surrender of one constitutional right as a condition of" accessing education, "it may, in like manner, compel a surrender of all." *Id.* (citation omitted).

III. The proliferation of law enforcement in Wisconsin schools warrants strong state constitutional protections for schoolchildren.

Applying the Wisconsin Constitution will also allow this Court to tailor the protection against self-incrimination to the particular way that Wisconsin students are policed. Such tailoring is rare in federal court. U.S. Supreme Court decisions necessarily provide one rule for the entire country, and "[f]ederalism considerations may lead the U.S. Supreme Court to underenforce (or at least not to overenforce) constitutional guarantees." Sutton, *supra*, at 175. But state courts need not "apply a 'federalism discount,'" *id.*, and they can strengthen constitutional rights to match the unique circumstances of their states.[3] As is pertinent here, Wisconsin schoolchildren frequently encounter law enforcement—significantly more than the national averages—and these encounters warrant heightened protections against self-incrimination under the Wisconsin Constitution.

Law enforcement has a sizeable presence in Wisconsin schools. The legislature has mandated that Wisconsin's largest school district—Milwaukee Public Schools—must employ at least twenty-five school resource officers. 2023 WI Act 12, Sect. 45 62.90(8). Numerous other school districts have entered into agreements with law enforcement agencies to station SROs in schools.[4] These

---

[3] *See, e.g.*, *State v. Gunwall*, 106 Wash. 2d 54, 58 (1986) (en banc) (noting that the state supreme court should consider "matters of particular state or local concern" in interpreting state constitution); *Insurance Adjustment Bureau v. Insurance Commissioner*, 518 Pa. 210, 224–25 (1988) (noting that "a regional, versus a national, perspective" might yield different perspectives between the U.S. Supreme Court and state courts); *State v. Hunt*, 91 N.J. 338, 357 (1982) (Pashman, J., concurring) (explaining that the U.S. Supreme Court serves "as final arbiter of at least the minimum scope of constitutional rights for a vastly diverse nation," whereas "the Court's lack of familiarity with local conditions … do[es] not similarly limit state courts"); Hon. Gregory C. Cook, *The Rising Importance of State Courts*, 2023 Harv. J.L. & Pub. Pol'y. Per. Curiam 27, *4 (2023) ("State courts are much better positioned to recognize local conditions and traditions which bear on what those citizens perceive as truly fundamental rights worthy of constitutional protection.").

[4] For example, there are 12 police officers working in the Appleton Area School District and 11 in the Green Bay Area Public School District. *School Resource Officers*, Appleton Area School District, https://www.aasd.k12.wi.us/families/family-resources/school-safety-preparedness/school-resource-officers (last visited June 6, 2025); *School Resource Officers*,

SROs generally have all the powers of other police officers, including the authority to initiate questions, frisks, and even arrests.[5] In theory, SROs handle violations of the law rather than school discipline, but in practice that distinction is unclear; SROs respond to a myriad of disciplinary issues—and when they do, students face harsher punishments.[6]

Although Wisconsin is hardly the only state with SROs, its SRO practices have an especially profound effect on schoolchildren. Wisconsin schools refer students to the police at the fourth-highest rate in the nation.[7] In the 2019–2020 school year, Wisconsin students were referred to the police while in school at 200% of the national rate.[8]

Students with disabilities and students of color are disproportionately affected. In the 2017–2018 school year, Wisconsin students with disabilities were

---

Green Day Police Dep't, https://www.greenbaywi.gov/1206/School-Resource-Officers (last visited June 6, 2025).

[5] *See* Model Memorandum of Understanding for School Resources Officer Program, Wisconsin Department of Public Instruction, https://dpi.wi.gov/sites/default/files/imce/sspw/pdf/sromodelmou.pdf (last visited June 2, 2025).

[6] *See, e.g.*, David Clarey & Cleo Krejci, *City, MPS attempt to ensure school resource officers will not get involved in school discipline*, Milwaukee Journal Sentinel (Mar. 4, 2025), https://www.jsonline.com/story/news/education/2025/03/04/milwaukee-police-will-not-get-involved-in-mps-discipline-agreement-says/81149350007/ (quoting Milwaukee Police Department Chief of Staff saying that there are "gray areas" when differentiating between criminal and non-criminal student behavior); John Rosiak, Final Report of the Program Evaluation of Milwaukee's School Resource Officer Program 7 (2018), https://milwaukeepublic.ic-board.com/attachments/1e24348d-ac17-47da-8641-a08bc1f16fdb.pdf (calling for reforms so that "SROs don't carry out the role of enforcing school discipline rules"); Clare Amari et al., *Wisconsin Schools Called Police on Students at Twice the National Rate – for Native Students, It Was the Highest*, The74 (Jan. 4, 2022), https://www.the74million.org/article/wisconsin-schools-called-police-on-students-at-twice-the-national-rate-for-native-students-it-was-the-highest/; *cf.* Henry Redman, *Kenosha's healing process and school board races shaken up by off-duty cop incident*, Wisconsin Examiner (Mar. 23, 2022), https://wisconsinexaminer.com/2022/03/23/kenoshas-healing-process-and-school-board-races-shaken-up-by-off-duty-cop-incident/ (off-duty cop in school cafeteria responding to a fight "rolls on top of" 12-year-old student "and puts his knee on her neck for 22 seconds while he puts the girl in handcuffs").

[7] Madeline Fox, *Milwaukee Public Schools Disciplines Black Students at Disproportionate Rate, Study Finds*, WPR (Mar. 29, 2022), https://www.wpr.org/education/milwaukee-public-schools-disciplines-black-students-disproportionate-rate-study-finds.

[8] *Id.*

referred to law enforcement at the second-highest rate in the country.[9] That same year, Wisconsin schools referred Native American students to law enforcement at the highest rate in the nation, and they referred Black students to law enforcement at the fifth highest rate.[10] In fact, the federal Office of Civil Rights (OCR) investigated Milwaukee Public Schools in 2014 "after data from the 2011–2012 school year showed Black students represented 84 percent of those receiving in-school suspensions, 82 percent of those receiving out-of-school suspensions and 85 percent of the students expelled," despite only being 56 percent of the school body.[11] OCR's 2018 report detailed over 100 examples of Black students being punished more severely than white students for the same offenses over a two-year period.[12] A 2022 report demonstrates that the disparities have subsequently persisted or worsened.[13]

The increasing presence of law enforcement in Wisconsin schools—and its disproportionate impact on students of color and with disabilities—underscores the need for robust state constitutional protections for students. As Kevin's case demonstrates, SRO questioning of students may take place in a closed office, with one or more uniformed police officers or other authority figures. Because children do not generally have the right to leave class on their own, children who are interrogated in this manner will likely not feel free to leave, or to refuse to answer questions, unless this Court requires the police to tell them exactly what their

---

[9] Amari et al., *supra* note 6; *see also* Susan Ferriss, *Virginia Tops Nation in Sending Students to Cops, Courts: Where Does Your State Rank?*, Center for Public Integrity (Apr. 10, 2015), http://publicintegrity.org/education/virginia-tops-nation-in-sending-students-to-cops-courts-where-does-your-state-rank/ (34.5% of Wisconsin students referred to law enforcement in 2015 had a disability, compared to 14.4% of the student population overall).

[10] Amari et al., *supra* note 6.

[11] Fox, *supra* note 7.

[12] Adele Rapport, U.S. Dep't of Educ., Off. of C.R, Letter to Darienne Driver reporting on OCR Case No. 05-14-5003 (Jan. 31, 2018), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/05145003-a.pdf; *see* Annysa Johnson, *Federal investigation found 100-plus examples of racial disparities in MPS suspensions*, Milwaukee Journal Sentinel (Mar. 29, 2018), https://www.jsonline.com/story/news/education/2018/03/29/federal-probe-found-100-plus-examples-racial-disparities-mps-suspensions/463464002/.

[13] Ctr. for Popular Democracy & Leaders Igniting Transformation, Justice Delayed is Justice Denied (2022), https://populardemocracy.org/sites/default/files/Justice%20Delayed.pdf.

rights are under *Miranda* and its state equivalent. The Wisconsin Constitution's protections against self-incrimination are, of course, vital for all Wisconsinites, but especially for schoolchildren who are compelled by law to attend school and then subjected to police investigations and questioning that is inherently coercive.

CONCLUSION

The ACLU amici respectfully submit that the decision of the court of appeals should be reversed.

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief, as calculated by Microsoft Word, is 2,994 words.

EFILE/SERVICE CERTIFICATION

I certify that in compliance with Wis. Sat. § 801.16(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated: July 9, 2025.

Electronically signed by:
/s/ Ryan V. Cox
Ryan V. Cox
State Bar No. 1140899
AMERICAN CIVIL LIBERTIES UNION OF WISCONSIN FOUNDATION, INC.