

In the Wisconsin Court of Appeals
DISTRICT IV

JOHN DOE 1, JANE DOE 1, JANE DOE 3,
JANE DOE 4, JOHN DOE 5, and JANE DOE 5,
PLAINTIFFS-APPELLANTS,

JOHN DOE 6, JANE DOE 6,
JOHN DOE 8, and JANE DOE 8,
PLAINTIFFS,

v.

MADISON METROPOLITAN SCHOOL DISTRICT,
DEFENDANT-RESPONDENT,

GENDER EQUITY ASSOCIATION OF JAMES MADISON
MEMORIAL HIGH SCHOOL, GENDER SEXUALITY ALLIANCE OF
MADISON WEST HIGH SCHOOL, and GENDER SEXUALITY
ALLIANCE OF ROBERT M. LA FOLLETTE HIGH SCHOOL,
INTERVENORS-DEFENDANTS-RESPONDENTS.

**MOTION FOR AN INJUNCTION PENDING APPEAL
AND/OR TEMPORARY INJUNCTION**

RICK ESENBERG
LUKE N. BERG
ANTHONY F. LOCOCO
Wisconsin Institute for
Law & Liberty
330 E. Kilbourn Ave., Ste. 725
Milwaukee, WI 53202

ROGER G. BROOKS*
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, Arizona 85260

Attorneys for Plaintiffs-Appellants

* Pro hac vice motion granted. R. 31.

PLEASE TAKE NOTICE that pursuant to Wis. Stat. §§ 806.07(2)(a) and 809.12, Plaintiffs-Appellants hereby move for an injunction prohibiting the Madison Metropolitan School District (the “District”) from following certain policies set forth in its recently adopted document entitled “Guidance & Policies to Support Transgender, Non-binary & Gender-Expansive Students.” Specifically, Plaintiffs-Appellants seek an injunction prohibiting the District from: (1) enabling children to socially transition to a different gender identity at school by selecting a new “affirmed name and pronouns,” without parental notice or consent; (2) preventing teachers and other staff from communicating with parents that their child has or wants to change gender identity and/or be referred to by a name and pronouns associated with a gender other than the child’s biological sex and/or may be dealing with gender identity issues, without the child’s consent; and (3) deceiving parents by using different names and pronouns around parents than at school.

PLEASE TAKE FURTHER NOTICE that the Plaintiffs-Appellants also (or in the alternative) hereby move for a temporary injunction pursuant to Wis. Stat. §§ 813.02 and 809.14 seeking the same relief as set forth above.

The grounds for this motion are as follows:

1. Plaintiffs-Appellants can establish a likelihood of success on the merits, the existence of irreparable harm, and an inadequate remedy at law.

2. As required by Wis. Stat. § 809.12, Plaintiffs-Appellants first sought this relief in the Circuit Court. R. 89–90. The Circuit Court partially granted and partially denied Plaintiffs-Appellants’ request. App. 101–103.

3. The partial denial, however, was an erroneous exercise of discretion.

4. Per Wis. Stat. § 809.12, Plaintiffs-Appellants submit, in an appendix attached to this motion, the Circuit’s Court’s Order and the transcript of the hearing on Plaintiffs’ motion in the Circuit Court. For ease of reference, Plaintiffs-Appellants have

also included in the appendix the parties' filings on that motion that are not already in the record in this appeal.

5. Plaintiffs also filed a motion for a temporary injunction, under Wis. Stat. § 813.02, with the Circuit Court in February, 2020, but have yet to be heard by the Circuit Court on that motion. The Circuit Court's failure to hear and decide that motion on a timely basis was error.

6. Plaintiffs' understanding is that there is no meaningful difference between an injunction pursuant to Wis. Stat. § 813.02 and an injunction pursuant to § 806.07, and the standards are same for either. However, to the extent that there is some difference, Plaintiffs-Appellants hereby request an injunction under both.

This motion is supported by the Memorandum In Support of Motion for an Injunction Pending Appeal and/or Temporary Injunction filed herewith.

Dated: October 13, 2020.

Respectfully submitted,

RICK ESENBERG
State Bar #1005622
rick@will-law.org



LUKE N. BERG
State Bar #1095644
luke@will-law.org

ANTHONY F. LOCOCO
State Bar #1101773
alococo@will-law.org

WISCONSIN INSTITUTE FOR
LAW & LIBERTY
330 E. Kilbourn Ave.,
Suite 725
Milwaukee, WI 53202
Phone: (414) 727-7361

ROGER G. BROOKS
rbrooks@ADFlegal.org

Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, Arizona 85260
Phone: (480) 444-0020
Fax: (480) 444-0028

Attorneys for Plaintiffs