No. ________

In The
Supreme Court of the United States

ANMARIE CALGARO,

Petitioner,

vs.

ST. LOUIS COUNTY, LINNEA MIRSCH, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS INTERIM DIRECTOR OF ST. LOUIS COUNTY PUBLIC HEALTH AND HUMAN SERVICES, FAIRVIEW HEALTH SERVICES, A MINNESOTA NONPROFIT CORPORATION, PARK NICOLLET HEALTH SERVICES, A NONPROFIT CORPORATION, ST. LOUIS COUNTY SCHOOL DISTRICT, MICHAEL JOHNSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS PRINCIPAL OF THE CHERRY SCHOOL, ST. LOUIS COUNTY SCHOOL DISTRICT, AND E.J.K.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

There are no U.S. Supreme Court cases on whether parental Due Process Clause rights apply to local governments and medical providers ending parental control over their minor children. Minnesota relies on its minor children to file common law petitions to emancipate from their parents—which can lead to temporary, partial, conditional, or full emancipation. But, by statutes, custom and practice, Minnesota's counties, school districts, and medical providers end parental control over minors, in varying degrees, upon request by the minor, but without a judicial order of emancipation, without parental waiver, and without parental notice. Neither Minnesota's statutes nor common law authorize parents to file court actions to restore their parental rights.

1. Whether parents' Due Process Clause rights apply to local governments and medical providers ending parental rights, responsibilities or duties over their minor children's welfare, educational, and medical care decisions without a court order of emancipation.

2. Whether the Eighth Circuit erred in affirming dismissal of Calgaro's Due Process Clause claims for damages and equitable relief because, without a court order of emancipation, without parental waiver, and without parental notice: (A) Minnesota Statutes § 256D.05, subd. 1(a)(9), authorizes a county to deem a

QUESTIONS PRESENTED—Continued

minor "emancipated" to receive welfare payments; (B) Minnesota Statutes § 144.341 authorizes medical providers to void parental rights, responsibilities, and duties to a minor child, if it determines the minor is living apart from the parents and is managing personal financial affairs; and (C) a school district in Minnesota has a custom and practice of barring a parent for more than two years from involvement in the child's education after a child is deemed by the school principal, not by a court order, to be emancipated.

LIST OF PARTIES

The petitioner is Anmarie Calgaro who is the mother of E.J.K. and three minor children. The respondents are St. Louis County, Linnea Mirsch, in her official capacity as Director of St. Louis County Public Health and Human Services, Fairview Health Services, Park Nicollet Health Services, St. Louis County School District, and Michael Johnson in his official capacity as Principal of the Cherry School. The petitioner, consistent with the Eighth Circuit decision, no longer makes claims involving Mirsch, individually, Johnson, individually, and E.J.K.

CORPORATE DISCLOSURE STATEMENT

Petitioner Anmarie Calgaro is not a nongovernmental corporation and does not represent a nongovernmental corporation.

STATEMENT OF RELATED CASES

The related cases are:

Calgaro v. St. Louis County, *et al*., No. 16-cv-3919, U.S. District Court for the District of Minnesota. Judgment entered May 23, 2017; and

Calgaro v. St. Louis County, *et al*., No. 17-2279, U.S. Court of Appeals for the Eighth Circuit. Judgment entered March 25, 2019.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Anmarie Calgaro respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 919 F.3d 1054 (March 25, 2019) (App. 1-9). The decision of the district court is unpublished, reported at 2017 WL 2269500 (May 23, 2017) (App. 10-25).

JURISDICTION

The judgment of the court of appeals was entered on March 25, 2019. Upon application in Case No. 18A1353, Justice Gorsuch granted an extension of the deadline for this petition to July 24, 2019. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL CLAUSE AND STATE STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment's Due Process Clause of the U.S. Constitution states:

> nor shall any State deprive any person of life, liberty, or property, without due process of law.

Minnesota Statutes § 256D.05, subdivision 1 governing eligibility for general assistance, authorizes counties to pay general assistance—welfare—to minors if they are not living with a parent, stepparent, or legal custodian if the child is "legally emancipated" by court order or by the county determining the minor is "otherwise considered emancipated under Minnesota law":

> (a) Each assistance unit with income and resources less than the standard of assistance established by the commissioner and with a member who is a resident of the state shall be eligible for and entitled to general assistance if the assistance unit is: . . .
>
> (9) *a child under the age of 18 who is not living with a parent, stepparent, or legal custodian, and only if: the child is legally emancipated. . . . For purposes of this clause, "legally emancipated" means a person under the age of 18 years who:* (i) has been married; (ii) is on active duty in the uniformed services of the United States; *(iii) has been emancipated by a court of competent jurisdiction; or (iv) is otherwise considered emancipated under Minnesota law. . . .*

(Emphasis added). This statute contains no legal requirement for parental waiver nor parental notice prior to the county's determination of the minor being "otherwise considered emancipated under Minnesota law."

Minnesota Statutes § 144.341 authorizes medical providers to deem minors' consent as effective legal consent for elective and non-emergency medical services if the medical provider determines that the minors are living separate and apart from their parents or legal guardian and are managing their personal financial affairs:

> Notwithstanding any other provision of law, any minor who is living separate and apart from parents or legal guardian, whether with or without the consent of a parent or guardian and regardless of the duration of such separate residence, and who is managing personal financial affairs, regardless of the source or extent of the minor's income, may give effective consent to personal medical, dental, mental and other health services, and the consent of no other person is required.

This statute contains no legal requirement for parental waiver nor parental notice prior to the medical providers' determination regarding the minor's "effective consent" to medical services.

STATEMENT OF THE CASE

INTRODUCTION

Anmarie Calgaro is a mother of three children. In federal district court, she asserted separate violations of her parental Due Process Clause rights by a Minnesota county, medical providers, and a school district.

See Troxel v. Granville, 530 U.S. 57, 65 (2000) (parents have Due Process Clause rights). After all, there is a constitutional presumption that "fit parents act in the best interests of their children." *Id.* at 68. Calgaro, as a "fit" parent, objected to her unemancipated child—i.e., not judicially emancipated by court order under Minnesota common law—receiving county general assistance payments, medical providers' gender-transition medical services, and school district's educational services without her knowledge or opportunity to exercise her rights and duties to the child, without parental waiver, and without notice and opportunity to be heard.

Calgaro asserted that Minnesota Statutes § 256D.05, subd. 1(a)(9), authorizing the county's general assistance (welfare) payments to certain minors without parental waiver and without parental notice, violated her Due Process Clause rights as a fit parent. Moreover, the county failed to give her notice or a hearing of its determination that her minor child E.J.K. was emancipated—having done so without a judicial emancipation order.

Furthermore, Minnesota Statutes § 144.341 authorizing medical providers to provide elective, non-emergency medical care to certain minors without parental waiver and without parental notice violated Calgaro's Due Process Clause rights as a fit parent. The statute authorized the medical providers to end Calgaro's rights and duties to her child without a judicial emancipation order.

Similarly, the school district's decision to bar Calgaro's involvement in her child's education for over two years, without a court order of emancipation and without notice, violated Calgaro's Due Process Clause rights as a fit parent.

The lower-court litigation did not go well for petitioner, in part, because this Court has never held that a parent's Due Process Clause rights apply to local governmental entities and medical providers ending a parent's control, rights, and duties over a minor child. Instead, the district court stated that it was "distracted" by the petitioner's use of the word "emancipation"—which also has a common meaning of being set free from restrictions or control.[1] Then, the Eighth Circuit, while claiming the petitioner had "mischaracterized" the "termination" of parental rights involved here (the common meaning of "termination" is the ending of something[2]), dispatched with the petitioner's arguments.

In this way, the Eighth Circuit determined an important question of federal law that has not been, but should be, settled by this Court. According to the Eighth Circuit, parents' Due Process Clause rights do not apply to local governments and medical providers ending parental rights, responsibilities, and duties over minor children. And, since the Eighth Circuit has decided an important constitutional question of

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[1] *Webster's New World Dictionary* 463 (Michael Anges, ed., 4th ed., MacMillan 1997).

[2] *Id.* at 1478.

nationwide importance, which the Court has not answered, one of the Rule 10(c) criteria to grant this petition is met.

PROCEDURAL HISTORY

I. A minor child obtains a letter of emancipation, without any court proceeding, which is used by a county to grant welfare payments, by a school district to deny parental involvement in her child's education, and by medical providers to provide life-changing, gender-transition medical treatments.

A. A "fit" mother loses her parental rights regarding the education, health, and welfare of her child.

What happened? Anmarie Calgaro is E.J.K.'s mother. She also has a state district court order adjudicating that she has "joint legal custody" over E.J.K.[3] But, decisions were made by the Respondents that not only affected her as a fit parent and her parental rights, but eviscerated that court order of "joint legal custody" with no notice, no hearing, no opportunity to be heard, and no parental waiver.

After the Minnesota county, medical providers, and school district undertook their respective non-judicial actions ending Calgaro's parental control over

[3] Anmarie Calgaro Decl. Ex. A, Findings of Fact, Concl. of Law, Or. and Or. for Judg. (Apr. 2008); Dckt. 66.

E.J.K., Calgaro could not turn to a statutory or common law legal process in Minnesota for parents to restore parental rights. Minnesota does not provide such a legal process. Thus, the Respondents' actions ended Calgaro's responsibilities and duties to her child.

In this case, one of Calgaro's minor children E.J.K. obtained a "letter of emancipation" from a legal aid service agency. The "letter" was not a court order. There was no investigation, no hearing, nor adjudication of E.J.K.'s claim to emancipation. Nevertheless, the "letter" was used by the Respondents to deny E.J.K.'s mother access to county records, school records, and medical records, and more disconcerting, opened the door to life-altering elective medical services for gender transformation, including potential surgery, which would change E.J.K.'s gender from male to female.

Nevertheless, Calgaro retained her unconditional love for E.J.K.; however, she found it unconscionable that a county, a school district, and medical providers gave her no notice nor a hearing to allow her as a mother to either assert or restore her parental rights regarding decisions they made for her child without her input.

Likewise, as Calgaro alleged in her complaint and as the arguments provide below, the absence of legal notice and a process to restore her parental rights, even in the post-deprivation context, highlights the imbalance of due process between clashing interests of the government, the fit parent, and also the child.

B. A legal aid clinic provides a minor with a "letter of emancipation" without an investigation of the alleged facts asserted.

E.J.K., at the time of the district court judgment, was 17,[4] and is one of four of Calgaro's children.[5] The three children, other than E.J.K., are still minors in Minnesota—under 18 years of age.[6] Calgaro believes, as a fit parent (there is no contrary evidence), she has a fundamental right to make decisions concerning the care, custody, and control of her children.[7] As such, she has responsibilities and duties to the child. Calgaro has always offered a home to E.J.K.[8] She also communicated with E.J.K. about how E.J.K. would always be welcome in their home and always made efforts to ensure a connection between her and E.J.K. She never willingly or implicitly gave up control nor custody of her child or any of her other children.[9]

Just a week before his 16th birthday, on June 29, 2015, E.J.K. obtained a "to whom it may concern"[10] "letter of emancipation" from the Mid-Minnesota Legal Aid Clinic.[11] The "letter of emancipation" is neither an administrative order nor a court order. The letter does

[4] Plt.'s Compl. ¶23, Dckt. 1.

[5] *Id.* ¶3.

[6] *Id.* ¶¶19, 20.

[7] *Id.* ¶46.

[8] *Id.* ¶50.

[9] *Id.* ¶¶50-52.

[10] *Id.* ¶¶56-57, 66; Ex. A, Dckt. 1.

[11] *Id.* ¶56; Ex. A.

not adjudicate any findings of fact[12] since the letter reflects only E.J.K.'s alleged "facts."[13] The Mid-Minnesota Legal Aid Clinic did not contact Calgaro to investigate, question, confirm, nor affirm the alleged facts asserted by E.J.K.[14] Had the clinic done so, it would have found something different from what the letter asserted regarding Calgaro's relationship as a parent and mother to E.J.K., including a Minnesota court order adjudicating her right to have joint legal custody over E.J.K. "Legal custody" means the right to determine the child's upbringing, including education, health care, welfare, and religious training.[15]

Moreover, the clinic's "letter of emancipation," a letter Calgaro received by chance when filed by E.J.K. in state district court in support of an unsuccessful name change application, is not notarized and does not present a declaratory statement of its truth on pain of perjury.[16] The letter does not state that the person's statements are true, made on personal knowledge nor that the person is competent to make the allegations asserted.[17]

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[12] *Id.* ¶¶60-65.

[13] *Id.* ¶58.

[14] *Id.* ¶59: Calgaro Decl.; Dckt. 66.

[15] Minn. Stat. § 518.003(a).

[16] Plt.'s Compl. Ex. A; Dckt. 1.

[17] *Id.*

II. The "letter of emancipation" is used to deny his mother the right to be involved in the minor's educational decisions and to review school records.

A. The school and school district ended Calgaro's parental rights for more than two years, without supporting statutory law, without a court order of emancipation, without parental waiver, without parental notice, and without a process for Calgaro to assert or restore her parental rights.

Soon after obtaining the letter of emancipation from the Mid-Minnesota Legal Aid Clinic, E.J.K. produced it to a Minnesota high school official located in St. Louis School District.[18] The school, through its principal Michael Johnson and his predecessor (collectively, "Johnson"), acknowledged the letter of emancipation—even though there was no court order of emancipation.[19] Hence, Johnson determined that E.J.K. was emancipated at least for the school district's purposes.[20] At that moment, Johnson effectively ended the parental rights of Calgaro regarding her child's education; yet, Johnson did not provide Calgaro notice of his non-judicial action of emancipation.[21] Meanwhile, Calgaro made repeated attempts to Johnson to get involved in E.J.K.'s education and to obtain access to school

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[18] *Id*. ¶16; Dckt. 1.

[19] *Id.* ¶¶138, 159.

[20] *Id.* ¶¶143, 159, 162.

[21] *Id.* ¶¶159-61.

records. Johnson refused to communicate with Calgaro regarding educational matters affecting E.J.K. for over two years.[22]

As the principal of Cherry School, and due to his position and interaction between parents, their children, and the school and school district, Johnson understood that parents have clearly-established parental rights to the care, custody, and control of their unemancipated minor children.[23] Further, school district policy also allows autonomy to Johnson as a principal in final decision-making consistent with district policy obligating him to act within constitutional limitations as noted below:

> [T]he school board also recognizes the direct responsibility of principals for educational results and effective administration, supervisory, and instructional leadership at the school building level.[24]

Notably, the school district did not identify any statute that recognized a "letter of emancipation" as a *legally binding document* that authorized Johnson, as principal of the high school to refuse a parent an opportunity to participate in the decision-making of an unemancipated minor child or to refuse a parent access to school records.[25] Moreover, E.J.K. did not present Johnson with a court order nor any other judicial

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[22] *Id.* ¶¶76-79; Calgaro Decl.; Dckt. 66.

[23] *Id.* ¶¶156-58.

[24] St. Louis Sch. ISD 2142, Policy 301 § II.D., Kaardal Decl. Ex. 4; Dckt. 67.

[25] Compl. ¶165; Kaardal Decl.; Dckt. 67.

adjudication that E.J.K. was emancipated.[26] Nevertheless, Johnson determined that E.J.K. was "emancipated" and provided no notice of hearing nor opportunity for Calgaro to assert or restore her parental rights even after Johnson's determination of E.J.K.'s emancipation.[27] Finally, the school district has no post-deprivation process in which a parent could seek the restoration of his or her parental rights after the school principal takes the non-judicial action to emancipate a minor child without a court order of emancipation.[28]

B. School district policies are limited by constitutional restrictions, yet support the school principal's action to legally recognize a "letter of emancipation" and deny Calgaro her parental rights.

E.J.K.'s high school and Johnson are under the control and supervision of the St. Louis School District. Johnson is responsible for policies and decisions made at the school which recognizes such policies or decisions cannot violate the Constitution:

> The school district is a public corporation subject to the control of the legislature, *limited only by constitutional restrictions*. . . .[29]

After Johnson's "emancipation" decision in 2016, Calgaro then asked St. Louis County School District

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[26] *Id.* ¶167.

[27] *Id.* ¶¶159-61, 163-64, 166.

[28] *Id.* ¶¶163-64, 166.

[29] St. Louis Sch. ISD 2142, Policy 101 § II.A., Kaardal Decl. Ex. 2 (Emphasis added); Dckt. 67.

officials to participate in E.J.K.'s educational decisions and to have access to E.J.K.'s educational records.[30] Her requests were denied.[31] Calgaro received neither notice nor an opportunity to be heard from the school district regarding Johnson's decision to legally acknowledge the "letter of emancipation" that ended her parental rights.[32] The school district was aware of Calgaro's clearly-established parental rights, but ended them anyway.[33]

Importantly, under the school district's policy governing the privacy of school records, the District recognizes the right of a parent to have access to the child's educational documents:

> "Parent" means a parent of a student and includes a natural parent. . . . The school district may presume the parent has the authority to exercise the rights provided herein, unless it is provided with evidence that there is a state law or court order governing such matters as marriage dissolution, separation or child custody, or a legally binding instrument which provides to the contrary.[34]

Nevertheless, like Johnson, school district officials did not provide Calgaro with a court order nor any other

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[30] Plt.'s Compl. ¶¶134-38; Calgaro Decl.; Dckt. 66.

[31] *Id.* ¶¶135, 137-38.

[32] *Id.* ¶¶138-40, 159-64.

[33] *Id.* ¶¶138, 140-42, 157-59, 161.

[34] St. Louis Sch. ISD 2142, Policy 515 § III.J., Kaardal Decl.; Dckt. 66.

adjudication that declared E.J.K. emancipated.[35] Like Johnson, school district officials legally acknowledged the "letter of emancipation" as if it were a legally binding instrument. Meanwhile, Calgaro made repeated attempts to school district officials to obtain access to school records. In response, the school district refused to communicate with her regarding all educational matters affecting E.J.K.[36]

III. A state district court found the minor child's legal basis to assert emancipation questionable.

A St. Louis County district court order was issued on April 15, 2016 regarding an application by E.J.K.—E.J.K.'s second attempt[37]—for a name change from J.D.K. to E.J.K.[38] The order is illuminating in several respects including the court's doubt of the legality of the "letter of emancipation:"[39]

> A legal issue exists as to whether the juvenile Petitioner herein has a legal basis to assert emancipation. . . .
>
> * * *
>
> On the present record, including . . . *the lack of any Minnesota trial court adjudication*

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[35] Compl. ¶149, 164.

[36] *Id.* ¶76; Calgaro Decl.; Dckt. 67.

[37] Compl. Ex. B, Dckt. 1.

[38] Compl. ¶¶67-68; Ex. B, Dckt. 1.

[39] *See* Compl. Ex. B, Dckt. 1.

> related to emancipation . . . this court cannot consider the Application on the merits as to whether or not it is in the best interests of the Petitioner to achieve the desired relief of a legal change of name.[40]

(Emphasis added). The court denied E.J.K.'s application because E.J.K. had no court order of emancipation.[41]

Meanwhile, as the court order revealed, E.J.K. filed a notarized letter with the court from Minneapolis Gender Services at Park Nicollet dated January 15, 2016, indicating that E.J.K. was being provided medical treatments for gender transition from male to female.[42] At the time of the January 2016 Park Nicollet letter, E.J.K. was 16 and one-half years old. Calgaro had no idea E.J.K. had obtained medical services for gender transition. She had no notice of E.J.K.'s attempt to obtain gender transition medical services nor an opportunity to be heard regarding Park Nicollet's and Fairview Hospital's decisions to accept the "letter of emancipation" that effectively denied her parental rights to the care, custody, and control of E.J.K.

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[40] *Id.* (Emphasis added).

[41] *Id.*

[42] *Id.* ¶¶67-68; Exs. B, C; Dckt. 1.

IV. Healthcare providers grant the minor child with gender-transition medical treatments without a court order of emancipation, without parental waiver, and without a process for Calgaro to assert or restore her parental rights.

The medical providers, Fairview Hospital and Park Nicollet, operating under Minnesota Statutes § 144.341, made a non-judicial determination as to whether parental consent is required for a minor's medical services based on whether a child lives "separate and apart" from his parents and manages the child's "personal financial affairs." The medical providers, in Calgaro's case, took the non-judicial action and determined that Calgaro's consent was not required under § 144.341.

Gender-transition medical treatment is not an emergency procedure, but an elective procedure. Certainly, gender transition is a life-changing event and decision for a minor child.[43] Here, E.J.K. received and continued to receive medical treatment from Park Nicollet Health Services and from the Fairview Range Hospital (Fairview Health Services) for gender transition treatments and other medical services.[44] Specifically, Park Nicollet Health Services provided E.J.K. with medical services which include "permanent

[43] *Id.* ¶¶106-07.

[44] *Id.* ¶¶6-12, 101, 104-05, 116; Ex. C, Dckt. 1.

clinical treatment for gender transition to the new female gender."[45]

Despite these life-changing events and decisions, Park Nicollet and Fairview refused to provide Calgaro access to E.J.K.'s medical records or to other records regarding her minor child's medical treatment.[46] Moreover, for such major and permanent elective procedures, neither of these defendants have any process to provide Calgaro, even in the post-deprivation context, an opportunity to assert or restore her parental rights.

V. The county provides welfare payments to the minor child without a court order of emancipation, without parental waiver, and without a process for Calgaro to assert or restore her parental rights.

St. Louis County, operating under Minnesota Statutes § 256D.05, subd. 1(a)(9),[47] made a non-judicial determination to decide whether parental waiver is required for dealings with the County based on "[a] child under the age of 18 who is not living with a parent . . . if: the child is legally emancipated." The statute provides that "legally emancipated" includes either emancipated by "a court of competent jurisdiction" or "otherwise considered emancipated under Minnesota

[45] *Id.* Ex. C.

[46] *Id.* ¶¶105, 112-14, 118.

[47] Minn. Stat. § 256D.05, subd. 1(a)(10) numbering was amended in the 2017 legislative session to 1(a)(9). No wording in the subdivision was changed.

law." *Id.* Based on Minnesota Statutes § 256D.05, subd. 1(a)(9), the County administratively determined that E.J.K. was "emancipated" to make decisions with the County without Calgaro's consent even though Calgaro is a "fit parent."[48] St. Louis County provided general assistance benefits (welfare payments) to E.J.K. over Calgaro's objection.[49] Under § 256D.05, subd. 1(a)(9), parental waiver and parental notice are not required for general assistance payments for minors. Further, there is no statutory procedure under § 256D.05 for parents to assert or restore their parental rights in this regard.

VI. The district court disregarded Calgaro's complaint allegations regarding "emancipation" as "distracting."

The district court disregarded Calgaro's claim of what occurred as she alleged in her complaint. Instead, the district court asserted through its order to dismiss that the "Defendants' emancipation determinations did not terminate Calgaro's parental rights. Only a court order can do so."[50] The court even found allegations within a 229 paragraph complaint[51] stating that

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[48] Compl. ¶¶122-25.

[49] *Id.* ¶¶122-26, 131.

[50] App. 15.

[51] The complaint (Dckt. 1) is 229 paragraphs long to contain sufficient factual matter to assert a claim for relief as a direct result of *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp v. Twombly*, 550 U.S. 544, 570 (2007).

the "Defendants determined [E.J.K.] emancipated" as "distracting."[52]

The district court denied Calgaro's civil rights claims under 42 U.S.C. § 1983. Moreover, as to the actions of each entity, the court concluded that each entity was well within their authority to end Calgaro's parental control over E.J.K. without a court order of emancipation, without parental waiver, and without parental notice and was, therefore, not subject to § 1983 claims.[53] The district court denied Calgaro's motion for summary judgment and granted St. Louis County's motion for summary judgment.[54]

VII. The Eighth Circuit affirms the district court's decision.

The Eighth Circuit affirmed the district court's decision. App.1-9. First, the Eighth Circuit affirmed the district court's dismissal of the claim against the County asserting that Calgaro failed to identify a "custom" or "policy." Yet, both in district court and in the Eighth Circuit, the Calgaro motion papers identified Minnesota Statutes § 256D.05, subd. 1(a)(9) as the

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[52] App. 14. Under *Black's Law Dictionary* 560 (Bryan A. Garner ed., 8th ed., West 2004), emancipation is defined as "1. The act by which one who was under another's person's power and control is freed. 2. A surrender and renunciation of the correlative rights and duties concerning the care, custody, and earnings of a child. . . ."

[53] *Id.* at 6-12; App. 14-23.

[54] *See*, *e.g.*, Calgaro's Memo. in Opp. to Mot. to Dismiss and for S.J. at 15; Dckt. 65.

county's custom or practice. The statute provides, in relevant part, for general assistance—welfare—to minors if they are not living with a parent, stepparent or legal custodian if the child is "legally emancipated" by court order or is "otherwise considered emancipated under Minnesota law." The statute contains no legal requirement that parental notice occur prior to the county's determination of the minor being "otherwise considered emancipated under Minnesota law." The county makes its emancipation decision under § 256D.05, subd. 1(a)(9) without parental waiver nor parental notice.

In addition, the Eighth Circuit affirmed the district court's dismissal of the claim against the medical providers because petitioner's "claim mischaracterizes what happened":

> Calgaro contends that the providers exercised a "public function" by terminating her parental rights concerning health care decisions, but this claim mischaracterizes what happened. Section 144.341 states that certain minors may give effective consent to medical services, but a provider does not terminate parental rights by recognizing a minor's consent, even if the provider is mistaken. Only a Minnesota court can terminate parental rights. Minn. Stat. § 260C.301.

App.6-7.[55] However, the Eighth Circuit's interpretation of § 144.341 is consistent with petitioner's claim that

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[55] The Petitioner readily acknowledges that "terminate parental rights" has a specific legal meaning under Minnesota

the medical providers voided her parental rights without parental waiver and notice. Minnesota Statutes § 144.341 provides that no parent's "consent" is required if the medical provider determines that the minor is living separate and apart from their parents or legal guardian and managing their personal financial affairs. Importantly, this statute contains no legal requirement for a court order of emancipation, nor for parental waiver, nor for parental notice prior to the medical providers' determination regarding the minor giving "effective consent" to elective, non-emergency medical services—which is the basis for the petitioner's Due Process Clause claim against the medical providers. The medical providers make their decision to void parental rights, to end Calgaro's responsibilities and duties to the child, without parental waiver and without parental notice.

Furthermore, the Eighth Circuit, in affirming the district court's dismissal of the claim against the school district for lack of a *Monell*[56] "custom or practice" based the decision on "Calgaro cites only the single incident at issue here, in which the school district refused to disclose E.J.K.'s educational records or to allow Calgaro to participate in E.J.K.'s educational decisions." App.7. Yet, as the Eighth Circuit acknowledges, Calgaro's claim is "the St. Louis County School District (including Principal Johnson in his official capacity)

Statutes § 260C.301. Nevertheless, the word "terminate" also has a general, non-technical meaning.

[56] *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 694 (1978).

violated her rights by carrying out a 'policy, practice, and custom' of declining to give notice to or to hold a hearing with parents before determining that a minor child is emancipated." Since Calgaro was denied educational involvement in E.J.K.'s school life for over two years as if E.J.K. were emancipated, there are sufficient facts under *Monell* to satisfy the "custom or practice" requirement as to Calgaro.

Finally, the Eighth Circuit held that the petitioner's claims for declaratory and injunctive relief, separate and apart from the petitioner's damage claims, are moot. The Eighth Circuit laid out two arguments for mootness after E.J.K. turned 18: the case does not fit the exception of "capable of repetition, but evades review"; and there is no evidence supporting a reasonable expectation that any of her three minor children will have Calgaro's parental control over them ended by the county, medical providers and school district.

But, Calgaro's Due Process claims fit the "capable of repetition, but evades review" exception. *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (per curiam). The case is capable of repetition because the identified Minnesota statutes, policies and customs void parental rights without parental waiver, without notice, and without a hearing. The claims evade review because parents do not receive notice of the decisions ending parental control over their minor children. And, even if later the parent discovers the decisions of the local governments and medical providers ending parental control, as Calgaro did here, there is only so much time left for the

federal court proceedings to conclude prior to the minor turning 18.

Similarly, Calgaro requested that her equitable claims be litigated in the context of her three minor children. Calgaro asserted her pre-enforcement claims. As this Court has held: "To challenge a statute on a pre-enforcement basis, a plaintiff must 'demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement.'" *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979). The Eighth Circuit, instead, held that Calgaro needed to show a "reasonable expectation" that the local government and medical providers will void her parental rights over her three minor children. But, Calgaro's type of pre-enforcement challenge is about pre-deprivation notice prior to the local governments and medical providers actually voiding Calgaro's parental rights over her three children. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014). Calgaro, as a fit parent, claims direct injury because she reasonably believes she won't receive notice prior to the local governments and medical providers depriving her of her parental rights over any of her three minor children.

Additionally, Calgaro's facial claims do not become moot because E.J.K. turned 18. *See Massachusetts v. Oakes*, 491 U.S. 576, 585-86 (1989). Regardless of the fate of her claims for prospective relief, Calgaro still has her damages claim.

REASONS FOR GRANTING PETITION

The Court should grant the petition under Rule 10(c) of the Rules of the Supreme Court of the United States. Rule 10(c) states in relevant part:

> (c) . . . a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court. . . .

As detailed above, the lower courts' decisions left Calgaro without any parental rights under the Due Process Clause in the context of local governments and medical providers ending parental control. There are no U.S. Supreme Court or federal court cases on point. Calgaro brought damages and equitable claims under 42 U.S.C. § 1983 against the county, medical providers and school district for unconstitutionally ending her parental control. The lower courts' decisions left her empty-handed: no damages and no equitable relief.

Yet, the more severe consequence of the Eighth Circuit's affirmance of the district court's dismissal is that all "fit" parents, such as Calgaro, could have their parental rights ended by counties, medical providers and school districts without court order of emancipation, without parental waiver and without parental notice.

The Eighth Circuit's decision casts into doubt whether the federal courts still have a consistent, nationwide commitment to parental rights under the Due Process Clause as stated not so long ago:

> The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.

Troxel v. Granville, 530 U.S. 57, 65 (2000) (plurality) (citations omitted). Under these circumstances, this petition satisfies the Rule 10(c) criteria that "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court."

I. Calgaro represents a fit parent under *Troxel* who has parental rights protected by the Due Process Clause which were violated in the context of local governments and medical providers ending parental control.

Minnesota relies on its common law for emancipation. The "letter of emancipation" E.J.K. obtained from a legal aid clinic referenced Minnesota common law and, ironically, how a minor could obtain a judicial emancipation order.

A Minnesota Supreme Court case, *Lufin v. Harvey*,[57] states the basis for adjudicating whether a child is emancipated. There, the Minnesota Supreme Court noted that "emancipation is not, however, to be presumed. It must be proved. . . . A minor may be

[57] *Lufin v. Harvey*, 131 Minn. 238, 154 N.W. 1097 (Minn. 1915).

emancipated by an instrument in writing, by verbal agreement, or by implication from the conduct of the parties."[58] "The instrument in writing" does not refer to a legal aid clinic's unproven statements of emancipation, but that of the parent writing to the child. The decision cites to a New Hampshire case that also ruled emancipation as a question of fact: "emancipation is not to be presumed. It is a question of fact."[59]

Notably, there are also *degrees* of emancipation. That is, a child may be partially emancipated depending upon the factual circumstances which under Minnesota common law requires a judicial determination of emancipation. However, Minnesota has no statutory process or procedure that provides an opportunity to receive notice or to be heard before any government entity or medical provider ends the constitutionally-protected parental rights, responsibilities, and duties to the child.

Meanwhile, there was no judicial or administrative determination or other evidence that Calgaro was something other than a fit parent under *Troxel*. No court nor administrative agency has even had proceedings regarding Calgaro's fitness as a parent. No witness has disputed that Calgaro is a fit parent.

Accordingly, it is constitutionally presumed under *Troxel* that when a fit parent like Calgaro acts to protect parental rights to exercise her responsibilities and

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[58] *Id.* at 1098.

[59] *Clay v. Shirley*, 23 A. 521, 522 (N.H. 1874).

duties to the child that she is doing so in the best interests of the child. Under *Troxel*, Calgaro is a fit parent and, therefore, has a constitutional right to pursue decisions on behalf of her children. Any suggestion by the local governments or medical providers otherwise is scandalous.

Calgaro as a fit parent has Due Process Clause rights under the Court's precedents—particularly *Troxel*—which recognize the constitutional "presumption that fit parents act in the best interests of their children." In *Troxel*, the Court summarized that parental rights have for more than seventy-five years been given substantive protection under the Fourteenth Amendment's Due Process Clause. *Troxel*, 530 U.S. at 65. The Seventh Circuit, relying on *Troxel*, stated there is no reason for the state to be involved in the parent-child relationship when there is a fit parent:

> In assessing the reasonableness of the defendants' actions in this case, we begin with the constitutional presumption that "fit parents act in the best interests of their children," *Troxel*, 530 U.S. at 68, 120 S.Ct. 2054, and stress that unless government officials have evidence calling into question the fitness of a parent, there is "no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Id.* at 68-69, 120 S.Ct. 2054.

Doe v. Heck, 327 F.3d 492, 521 (7th Cir. 2003). More recently, in 2013, the Court in *Adoptive Couple v. Baby Girl* re-stated the constitutional "'presumption that fit parents act in the best interests of their children.'" 570 U.S. 637, 686 (2013) (citation omitted).

Specifically, the Court in *Troxel* determined that Washington Statutes § 26.10.160(3) (1994), regarding visitation rights to children, as applied to Granville and her family, violated her Due Process Clause right to make decisions concerning the care, custody, and control of her daughters. *Troxel*, 530 U.S. at 67, 73. First, the Court stated that the Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," including parents' fundamental right to make decisions concerning the care, custody, and control of their children. *Id.* at 65 (citations omitted).

The Supreme Court held that Washington's breathtakingly broad statute regarding court-ordered visitation to children effectively permits a court to disregard and overturn any decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge's determination of the child's best interest. *Id.* at 67. A parent's estimation of the child's best interest was accorded no deference. *Id.* at 69-70.

The Supreme Court also noted that a combination of factors compelled the conclusion that Washington Statutes § 26.10.160(3), as applied in that case, exceeded the bounds of the Due Process Clause. *Troxel* at 67-73.

Notably, the four-justice plurality opinion in *Troxel* is supported by two concurring opinions. Under the *Marks*[60] analysis, the narrowest holding that can be supported by five justices would include Justice Thomas' opinion in *Troxel.* This means that, implicitly, strict scrutiny would be applied regarding parental rights as "fundamental" and, hence, applicable to Due Process Clause analysis. To be sure, the four-judge plurality did not reference "strict scrutiny" which Justice Thomas acknowledged. *Troxel*, 530 U.S. at 80 (Thomas, J., concurring).

Since the Respondents' statutes, customs and practices do not provide a parent with notice and opportunity to be heard prior to ending parental rights (either in the pre-deprivation or post-deprivation context), they are not narrowly tailored to protect any interest of the state. In this case, the Court should apply strict scrutiny because the government's statutes, customs, and policies in Calgaro's case, like *Troxel*'s visitation statute, directly target the parental rights of fit parents.

Calgaro's rights are within the subject area where the constitutional "presumption that fit parents act in

[60] *Marks v. United States*, 430 U.S. 188, 193 (1977).

the best interests of their children" applies *and* the local governments' and medical providers' actions ending parental control directly target the parent-child relationship without providing the parent with notice and an opportunity to be heard.

There could be no better example of governmental policies targeting the rights of fit parents over their unemancipated minor children than the government statutes, customs and practices in this case. Put another way, fit parents' legal problems with the Respondents would not be the same if the government's challenged statutes, customs and policies only applied to minors with court orders of emancipation.

First, Calgaro as a fit parent claims parental rights in her unemancipated child's decision-making with St. Louis County. St. Louis County determined that E.J.K. was "otherwise emancipated" under Minnesota Statutes § 256D.05, subd. 1(a)(9). Minnesota Statutes § 256D.05, subd. 1(a)(9) is directed at unemancipated minor's "emancipation" for the purpose of general assistance payments. St. Louis County's decision under Minnesota Statutes § 256D.05, subd. 1(a)(9) ended Calgaro's constitutionally-protected parental rights as recognized in *Troxel*.

Second, Calgaro as a fit parent claims parental rights in her unemancipated child's decision-making with the medical providers. *See*, *e.g.*, *Parham v. J. R.*, 442 U.S. 584, 602-17 (1979) (generally upholding constitutionality of Georgia statute permitting parents to commit children to mental hospitals). The medical

providers determined that Calgaro's parental waiver was not required under Minnesota Statutes § 144.341. Minnesota Statutes § 144.341 is directed at the unemancipated minor's decision-making without parental participation in the providers' determinations. The medical providers' decisions under Minnesota Statutes § 144.341 directly ended Calgaro's constitutionally-protected parental rights as recognized in *Troxel*.

Finally, Calgaro as a fit parent claims parental rights in her unemancipated child's decision-making with the school district. The public school district, legally acknowledging the "letter of emancipation," determined that Calgaro's parental involvement was not required for E.J.K.'s educational decision-making. *See Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (strikes down an Oregon compulsory education law which, in effect, required attendance of all children between ages eight and sixteen at *public* schools). The school district's custom and practice in legally acknowledging the "letter of emancipation" is directed at the unemancipated minor's "emancipation." The school district's "emancipation" decision, for over two years, ended Calgaro's constitutionally-protected parental rights as recognized in *Troxel*.

II. Calgaro was deprived of her Due Process Clause rights by Respondents ending her parental rights without a court order of emancipation, without parental waiver, and without parental notice.

A. The county deprived Calgaro of her due process rights as a fit parent under Minnesota Statutes when it determined the minor emancipated without parental waiver or court order.

The County operating under Minnesota Statutes § 256D.05, subd. 1(a)(9) in determining whether parental waiver is required based on "[a] child under the age of 18 who is not living with a parent . . . if: the child is legally emancipated" deprived Calgaro of her constitutional rights under the Due Process Clause. The same subdivision provides that "emancipation" can be determined either by court order or by a county. Minnesota Statutes § 256D.05, subd. 1(a)(9) authorizes the County to make emancipation decisions without a court order of emancipation, without parental waiver and without parental notice.

First, the statute allows the government-authorized county to take non-judicial action that the child is emancipated—that is, that parental waiver is not required—for the minor's decisions with the County. Meanwhile, Minnesota law fails to provide a corresponding parental private cause of action against the county to restore parental rights.

For example, Minnesota Statutes Chapter 260C[61] child protection litigation against the county is limited to where the County denies benefits. So, Chapter 260C child protection litigation does not cover when a fit parent objects to the County providing welfare payments to an unemancipated minor.

Second, the statute is not narrowly tailored to meet a compelling state interest; Minnesota Statutes § 256D.05, subd. 1(a)(9) does not match the constitutional presumption that fit parents make decisions in the best interests of the children. Whether the parent is fit or not is completely disregarded in the County's emancipation determination under Minnesota Statutes § 256D.05, subd. 1(a)(9).

Finally, Minnesota Statutes § 256D.05, subd. 1(a)(9) authorizes the County to take non-judicial actions to determine emancipation without parental notice and opportunity to be heard.

In Calgaro's case, the County, without notifying Calgaro, found that the child was "otherwise emancipated without a court order" under Minnesota Statutes § 256D.05, subd. 1(a)(9). The County never considered Calgaro's rights as a fit parent to be involved in her child's decision-making. Consequently, the child received general assistance payments without Calgaro's input and over her objection. Calgaro's objections were never received by the County under Minnesota Statutes § 256D.05, subd. 1(a)(9). Therefore, the County's

[61] Minn. Stat. § 260C.01, et seq. ("Chapter 260C").

actions under Minnesota Statutes § 256D.05, subd. 1(a)(9) deprived Calgaro of her Due Process Clause rights as a fit parent.

B. Medical providers deprived Calgaro of her due process rights as a fit parent when they determined to end parental control of a child's medical care under Minnesota Statutes § 144.341.

Section 144.341 authorizes the medical service providers to take non-judicial action to end parental control for medical care by the minor's representations of "living separate and apart from parents . . . " and "managing personal financial affairs. . . ." As previously noted, Minnesota common law finds the adjudication of emancipation, whether complete, partial, or conditional, as factually intensive requiring judicial review of such determinations.[62] Yet, § 144.341 does not require the medical providers to do the same as the courts.

The medical service provider's decision, under § 144.341, runs directly through the heart of the parent-child relationship as it results in a full deprivation of parental rights regarding *any type of medical procedure, including non-emergency and elective procedures*:

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[62] *Lufin v. Harvey*, 131 Minn. 238, 154 N.W. 1097 (Minn. 1915).

> any minor . . . may give effective consent to personal medical, dental, mental and other health services.

Importantly, the resulting loss to the parent of rights to the care, custody, and welfare of the child is made by the medical service provider without first determining that the parent is unfit to make decisions on behalf of the unemancipated minor.

Again, as previously explained, constitutionally protected parental rights embody the *Troxel* "constitutional presumption" of fit parents acting in the best interests of their children. Until the medical providers under this statute make a determination the parent is "unfit," they cannot constitutionally deprive the parent of any protected constitutional right afforded to a parent *because* the parent is the one and only one in control of the child. Under *Troxel*, being a "parent" means being presumptively "fit" to "act in the best interests of the parent's child." Here, as to a fit parent, the presumption may be rebutted by a court order of emancipation; but, until that court order of emancipation issues, the fully panoply of parental rights remains intact for the fit parent. Further, those parental rights cannot be constitutionally ended without a judicial act.

Further, as the medical providers use § 144.341, they do not recognize either the presumptive constitutional fitness of a parent nor the protectable parental rights embodied within the constitutional presumption of "fitness." Thus, in determining whether parental consent is required based on "any minor who

is living separate and apart from parents or legal guardian . . . and managing personal financial affairs," the medical service providers deprive Calgaro of her Due Process Clause rights as a fit parent.

First, the statute allows the government-authorized medical service provider to determine whether parental consent is required for the minor's decisions with the medical service provider. Meanwhile, Minnesota law fails to provide a corresponding parental private cause of action against the medical service provider to restore parental rights. Quite to the contrary, Minnesota Statutes § 144.345 immunizes medical providers by providing a "good faith" defense for medical providers to rely on the unemancipated minor's representations:

> The consent of a minor who claims to be able to give effective consent for the purpose of receiving medical, dental, mental or other health services but who may not in fact do so, shall be deemed effective without the consent of the minor's parent or legal guardian, if the person rendering the service relied in good faith upon the representations of the minor.

So, for all intents and purposes, parents cannot sue the "good faith" medical providers to restore their parental rights after the medical provider has voided them under § 144.341.

Second, § 144.341 is not narrowly tailored to meet a compelling state interest. Section 144.341 does not match the constitutional presumption that "fit

parents" make decisions in the best interests of the children. Whether the parent is fit or not is completely disregarded in the medical service provider's determination under § 144.341.

Third, § 144.341 authorizes medical providers to take non-judicial actions to determine whether parental consent from a fit parent is required without parental notice and opportunity to be heard.

In Calgaro's case, the medical providers, without notifying Calgaro, found under § 144.341 that parental consent was not required because the child was "living separate and apart from parents or legal guardian . . . and managing personal financial affairs." The medical service provider never considered Calgaro's rights as a fit parent to be involved in her child's decision-making. Consequently, the child received gender-transitioning medical care without Calgaro's input and over Calgaro's objection. Calgaro's objections were never received by the medical providers under § 144.341. Therefore, the medical providers' actions under § 144.341 deprived Calgaro of her Due Process Clause rights as a fit parent.

C. The school district's custom and practice of "emancipation" decision-making deprived Calgaro of her Due Process Clause rights as a fit parent.

The school district's custom and practice of "emancipation" decision-making deprived Calgaro of her Due Process Clause rights as a fit parent. Claims brought against municipalities, inclusive of school districts, under 42 U.S.C. § 1983, must prove that an express or implied policy or custom of the municipality caused the alleged injury.[63] As the Court noted, "[a]n unconstitutional governmental policy can be inferred from a single decision taken by the highest official responsible for setting policy in that area of the government's business."[64] "Once those officials who have the power to make official policy on a particular issue have been identified, it is for the jury to determine whether their 'decisions have caused the deprivation of rights at issue by policies which affirmatively command that it

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[63] *See Monell*, 436 U.S. at 694.

[64] *Pembaur v. Cincinnati*, 475 U.S. 469, 484-85 (1986) (the Supreme Court upheld a finding of municipal liability for the violation of plaintiffs' constitutional rights where deputy sheriffs acted on the express instruction of the county prosecutor. Because the county prosecutor was acting as a final decision-maker at the time, the Court concluded that the county could be held liable under § 1983); *but see Bd. of the County Comm'rs v. Brown*, 520 U.S. 397, 415-16 (1997) ("Bryan County is not liable for Sheriff Moore's isolated decision to hire Burns without adequate screening, because respondent has not demonstrated that his decision reflected a conscious disregard for a high risk that Burns would use excessive force in violation of respondent's federally protected right.").

occur.' "[65] The principal of Cherry School, as the school district's final decision-maker at Cherry School, determined the "emancipation" policy and custom applied to Calgaro's parent-child relationship as subsequently adopted by the school district for over two years.

There is no state statute that defines "emancipation" in the context of education, educational records or educational institutions. Nor have we found any state statute that recognizes a "letter of emancipation" as *legally binding* to be used as a means to deprive a fit parent of their parental rights regarding an unemancipated minor child's education. Further, we have found no state statute that a school district or a school principal can deny a fit parent a right to control the education of his or her unemancipated children. Moreover, we have found no policy of the school district that provides for a fit parent notice and opportunity to be heard after district officials make an emancipation determination without a court order of emancipation.

In this case, the school district does recognize the right of a fit parent to have access to the unemancipated child's educational documents:

> "Parent" means a parent of a student and includes a natural parent. . . . The school district may presume the parent has the authority to exercise the rights provided herein, unless it is provided with evidence that there is a state law or court order governing such

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[65] *Angarita*, 981 F.2d 1537, 1546 (8th Cir 1992) (*quoting Jett v. Dallas Independent School District*, 491 U.S. 701, 737 (1989)).

> matters as marriage dissolution, separation or child custody, or a legally binding instrument which provides to the contrary.[66]

Yet, after the principal of Cherry School and the school district determination of emancipation, they refused for over two years Calgaro's repeated requests to have parental input on E.J.K.'s educational decisions and to access E.J.K.'s records.

Notably, Calgaro cannot make a claim under Minnesota's Uniform Declaratory Judgment Act as the government in the district court suggested. That Act "gives courts within their respective jurisdictions the power to declare rights, status, and other legal relations," but the Act "cannot create a cause of action that does not otherwise exist."[67] "A party seeking a declaratory judgment must have an independent, underlying cause of action based on a common-law or statutory right."[68] But, Minnesota does not provide a private cause of action against the government for the federal constitutional claims asserted here. Further, "there is no private cause of action for violations of the Minnesota Constitution."[69] Accordingly, Calgaro has no state

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[66] St. Louis Sch. ISD 2142, Policy 515 § III.J., Kaardal Decl. Ex. C; Dckt. 66.

[67] *Hoeft v. Hennepin Cnty.*, 754 N.W.2d 717, 722 (Minn. App. 2008) (quotations omitted), *review denied* (Minn. Nov. 18, 2008).

[68] *Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 916 (Minn. App. 2003).

[69] *Eggenberger v. W. Albany Tp.*, 820 F.3d 938, 941 (8th Cir. 2016) (*citing Guite v. Wright*, 976 F.Supp. 866, 871 (D. Minn. 1997), *aff'd on other grounds*, 147 F.3d 747 (8th Cir. 1998)), *cert. denied*, 137 S.Ct. 200 (2016).

cause of action based on the emancipation decisions made by the local governments and medical providers.

Specifically, the school district's "emancipation" custom and practice established by the Cherry School Principal for Calgaro's parent-child relationship violated Calgaro's Due Process Clause rights. First, the school's emancipation policy determination was made without a corresponding parental private cause of action against the school district. Meanwhile, Minnesota law fails to provide a corresponding parental private cause of action against the schools. Chapter 260C child protection litigation is limited to where the County denies benefits; so, Chapter 260C child protection litigation does not cover when a fit parent objects to the school providing services to an unemancipated minor without input from the parent.

In addition, the school's custom and practice is not narrowly tailored to match the constitutional presumption that "fit parents" make decisions in the best interests of the children. Whether the parent is fit or not is completely disregarded in the school district's emancipation custom and practice.

Moreover, the school's emancipation custom and practice authorizes non-judicial actions to determine whether input from a fit parent on educational decisions is required without parental notice and opportunity to be heard.

In Calgaro's case, the school, without notifying Calgaro, found under its "emancipation" custom and practice that parental waiver was not required because

the child was emancipated. The school never considered Calgaro's rights as a fit parent to be involved in her child's decision-making. Consequently, the child received educational services for over two years without Calgaro's input. Calgaro's objections were never received by the school under its "emancipation" custom and practice. The school district provided no procedure for Calgaro to restore her parental rights. Therefore, the school district's actions under its "emancipation" custom and practice deprived Calgaro of her Due Process Clause rights as a fit parent.

CONCLUSION

This petition for a writ of certiorari should be granted.

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Respectfully submitted,

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