

**In The
Supreme Court of the United States**

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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.

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

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**BRIEF OF THE ASSOCIATION FOR
GOVERNMENT ACCOUNTABILITY AND
CHILD PROTECTION LEAGUE AS
AMICI CURIAE IN SUPPORT OF PETITIONER**

—◆—
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INTEREST OF *AMICI CURIAE*¹

The organizations submitting this brief share an interest in limiting the power of state government to usurp the constitutional rights of parents and in protecting the autonomy of families from unjust state intervention in the upbringing of children. Both organizations are committed to the belief that fit parents have the right and duty to assist their children with life's difficult decisions, and this right and duty cannot be taken away without due process of law.

The Association for Government Accountability (AGA) is an association of people organized in Minnesota to promote government accountability to its constituents. The AGA uses private and public resources to investigate the conduct of governmental entities or officials—appointed or elected—and seeks reform or justice related to that conduct when it is contrary to the best interests of the people. Whether said conduct is illegal or results in government inefficiency, the AGA has acted and will act to deal with governmental failure.

Child Protection League (CPL) is a Minnesota nonprofit company committed to promoting the welfare of children and protecting them from exploitation, indoctrination, and violence. It is dedicated to

¹ Pursuant to Rule 37.6, counsel for *amici* state that no counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, after timely notification, all parties consented to the filing of this brief.

educating citizens on issues that protect or threaten the safety of children and encourages and equips parents and the public to become active in the legislature, local offices, schools, and school boards. CPL supports the rights of minors on many issues, including the freedom to express their political beliefs, their moral standards, and their faith, while at the same time, supporting parents' constitutional right to protect their minor children's safety by directing their education, healthcare, and activities.

The AGA and CPL submit their brief in support of Anmarie Calgaro's petition for a writ of certiorari. The underlying facts and legal issues are thoroughly described and argued by counsel for Calgaro. However, the AGA and CPL seek to assist this Court concerning the importance of preserving parents' fundamental right to participate in and guide their children's upbringing. If the Court fails to grant the writ of certiorari, it would result in the continuation of a permissive system of non-judicial emancipation in Minnesota that fails to protect parental rights. *Amici* consider that result unjust and in violation of the U.S. Constitution's Fourteenth Amendment Due Process Clause.



SUMMARY OF ARGUMENT

Under the Constitution, fit parents are presumed to make decisions in the best interest of their children. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000). This constitutional presumption strengthens the fabric of

society by allowing fit parents to love and care for their children while using their own judgment in making crucial decisions about how they raise them. These decisions must be made within the family unless the unfitness of a parent necessitates governmental intervention. In this case, a Minnesota county, medical providers, and a school district made emancipation determinations without parental involvement or court order, resulting in the violation of petitioner's parental Due Process Clause rights. Respondents were able to make those emancipation determinations under a Minnesota statutory framework that lacks a specified emancipation procedure designed to protect a fit parent's due process rights.

Amici urge this Court to grant the writ to address a question that has not yet been addressed by this Court: Whether a parent's Due Process Clause protections apply to governmental actors and medical providers that have terminated a parent's control and rights over a minor child without notice and an opportunity to be heard.

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FACTUAL BACKGROUND

This case involves a loving mother, Anmarie Calgaro, and her independent-thinking teenager, E.J.K. Calgaro loves her four children, including E.J.K. Yet, despite Calgaro's unconditional love, E.J.K. sought a letter of emancipation from a local legal service agency.

As a 15-year-old, E.J.K. obtained that letter of emancipation without an investigation or hearing, and without Calgaro's involvement. The letter allowed E.J.K. to make important life decisions, including living arrangements, undergoing life-altering elective medical services, and receiving welfare payments from the county. The letter also allowed respondents to deny Calgaro access to school and medical records. Calgaro no longer had any say in directing E.J.K.'s education, healthcare, and activities. The letter effectively cut off Calgaro from her own child's life.



REASONS FOR GRANTING THE PETITION

This is not a case about minors' freedom to express themselves, or the propriety of minors receiving gender-transition medical treatments. This is a case about whether the government has the constitutional authority to make decisions that completely override a fit parent's decisions regarding her child's upbringing. At bottom, the case is about whether the government has the power to negate a fit mother's right to guide and protect her own minor child, and to do so without Fourteenth Amendment Due Process Clause notice and opportunity to be heard.

I. THIS COURT SHOULD GRANT THE PETITION TO ADDRESS THE CRITICAL CONSTITUTIONAL QUESTION OF WHETHER MINNESOTA'S EXTRAJUDICIAL EMANCIPATION SCHEME VIOLATES DUE PROCESS

In Minnesota, when adjudicating a minor's status, "[e]mancipation is not . . . to be presumed. It must be proved." *Lufkin v. Harvey*, 131 Minn. 238, 240, 154 N.W. 1097, 1098 (1915). In this case, however, governmental and private entities acting outside of a legal proceeding were able to presume the emancipation of a minor in Minnesota without proof. The county, medical providers, and public school district all presumed that E.J.K. could make important life decisions without parental involvement while preventing Calgaro from even accessing information about those decisions. In essence, they presumed the emancipation of a minor without requiring anything beyond a legal service agency's unproven statements of emancipation.

How could this happen given Minnesota's requirement of proof? First, Minnesota lacks a statutory or common law emancipation procedure. In the absence of such a procedure, Calgaro was not provided with notice or an opportunity to be heard before her parental rights were ended. And, once she lost her parental rights, Calgaro had no legal process available to restore them. Minnesota's statutory framework

governing minor welfare payments² and medical services³ allows for non-judicial actions that deprive parents of the right to make decisions concerning these matters. In addition, the school district, unburdened by a specific statute or common law, had a custom and practice of non-judicial emancipation decision making.

Second, acting without statutory or common law limitations, respondents chose to insert themselves into the mother-child relationship and substitute their judgment for Calgaro's. Respondents were able to sever the bonds between mother and child with nothing more than a piece of paper a minor child obtained from a legal service agency. In doing so, they facilitated E.J.K.'s treatment with narcotic medications during illness and cross-sex hormones in an attempt to transition from male to female, his making of unilateral decisions concerning education, and his collection of state welfare payments instead of being provided for by a fit, loving mother.

The complete absence of judicial involvement in the purported emancipation of E.J.K. wholly deprived Calgaro of even the most basic requirements of due process under the United States Constitution. Calgaro received no notice, and had no opportunity to be heard before her fundamental right as a fit parent to direct the upbringing of her minor child was taken away. If the lower courts' rulings are permitted to stand, then parents such as Calgaro will find that the due process

² Minn. Stat. § 256D.05, subd. 1(a)(9).

³ Minn. Stat. § 144.341.

guaranteed to them under the Constitution will be nothing more than a hollow shell.

II. THIS COURT SHOULD GRANT THE PETITION TO CONFIRM ITS LONGSTANDING PRECEDENT THAT THE RESPONSIBILITY FOR EDUCATING AND REARING CHILDREN AS FUTURE CITIZENS LIES FIRST AND FOREMOST WITH PARENTS

This case is important to *amici* and to all parents because they recognize, in keeping with this Court's precedents that the family is the best institution to raise children, especially adolescents in their critical high school years. The truth of this proposition has been established by an abundance of research that demonstrates that parental involvement leads to the improvement of adolescents:

A large body of research supports the importance of family involvement in the middle and high school years, and intervention evaluations increasingly demonstrate that family involvement can be strengthened with positive results for youth and their school success. Such results can be achieved when there is a match among youth's developmental needs, parents' attitudes and practices, and schools' expectations and support of family involvement.⁴

⁴ Kreider, H., Caspe, M., Kennedy, S., & Weiss, H., *Family Involvement in Middle and High School Students' Education* 1 (Cambridge, MA: Harvard Family Research Project, 2007).

Adolescents who have positive relationships with their parents tend to have better academic outcomes, a lower likelihood of problem behaviors, and mental, social, and emotional well-being.⁵ Simply put, individuals and society benefit from positive parent-adolescent relationships and the strong presence of a parent in an adolescent's life.

Youth are especially vulnerable because their brain development has not fully matured to allow for responsible decision making, leaving them to function on an overly emotional and impulsive level. After more than 20 years of using magnetic resonance imaging (MRI) to study the development of the brain from infancy to adulthood, neuroscientists have a clearer picture of how the brain matures. Importantly, scientists have found that the portion of the brain responsible for risk taking, balancing inhibition and excitation, and processing complex emotions does not mature until the mid-20s.⁶ In other words, children's brains are incapable of accurately analyzing sensory inputs, *i.e.*,

⁵ See Moore, K. A., Guzman, L., Hair, E., Lippman, L., & Garrett, S. (2004), *Parent-Teen Relationships and Interactions: Far More Positive Than Not* 3 (Child Trends Research Brief, Publication No. 2004-25, 2004).

⁶ Beckman, M., *Crime, Culpability and the Adolescent Brain*, 305 SCIENCE 596 (July 30, 2004) (citing neuroscientific developments that establish that the portions of the brain responsible for decision making and risk taking are not fully developed until ages 20-25); see also Giedd, J. *et al.*, *Brain Development during Childhood and Adolescence: A Longitudinal MRI Study*, 2 NATURE NEUROSCIENCE, 861-63 (October 1999).

understanding and avoiding risk.⁷ MRI studies reveal that visual and auditory systems are developed early in life, but the cerebral cortex and other parts of the “thinking brain” are continually changing through adolescence and into early adulthood, making children particularly vulnerable to sensory overload and impetuous, unwise decisions.⁸

While a fully developed brain is able to process sensory stimuli and use life experiences to discern whether the sensations are real, imaginary, hazardous, or safe, a still-developing brain is unable to process such stimuli.⁹ For example, children and adolescents are often incapable of identifying predatory people who are using them for their own interests.

It is critical that children and adolescents be guided by parents whose more extensive life experiences and intimate knowledge of the child allow them to better process risks and benefits and make wiser decisions. A parent provides oversight that is rooted in love. The state cannot provide parental love, for which there is no substitute. Minnesota’s flawed emancipation procedures deprive parents and children of these safeguards and violate their fundamental rights.

⁷ Giedd, J., *The Teen Brain: Insights from Neuroimaging*, 42 JOURNAL OF ADOLESCENT HEALTH 335-43 (April 2008); McAnarney, E., *Adolescent Brain Development: Forging New Links?* 42 JOURNAL OF ADOLESCENT HEALTH 321-23 (April 2008).

⁸ McAnarney, E., *supra*, at 321-23.

⁹ Giedd, J., *supra*, at 335-43.

The important role of the parent in the upbringing of children has long been recognized by our courts: “Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course.” *Parham v. J. R.*, 442 U.S. 584, 602 (1979).

III. THIS COURT SHOULD GRANT THE PETITION TO CORRECT MINNESOTA’S EMANCIPATION SCHEME THAT HAS RENDERED CHILDREN MERE CREATURES OF THE STATE CONTRARY TO THIS COURT’S PRECEDENTS

The strong family unit this Court has long confirmed as foundational to the future of our Constitutional Republic is under threat in our country, often by well-intentioned governmental and private entities in power, as demonstrated by the actions of respondents in this case. There is a tendency on the part of such entities to view children as creatures of the state. This view directly conflicts with this Court’s holdings that the parent-child relationship is not subject to the whims of the state. *See Parham*, 442 U.S. at 602 (“our constitutional system long ago rejected any notion that a child is the mere creature of the State”); *see also Prince v. 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.”).

Instead, children are the responsibility of fit parents: “parents generally have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.” *Parham*, 442 U.S. at 602.

Amici are particularly concerned about the treatment of children like E.J.K. as creatures of the state rather than valued family members subject to broad and necessary parental authority. Our nation’s traditions and constitutional framework, now validated by science (*see infra*) respect and promote the fundamental right of fit parents to make decisions for their children under the presumption that those decisions are made in the children’s best interests. Respondents’ use of the legal service agency letter to keep Calgaro out of her child’s life undermines the constitutional presumption that fit parents make decisions in the best interest of their children. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000). Respondents’ actions also run counter to an enduring tradition in Western Civilization, as explained by Chief Justice Burger:

This case involves the fundamental interest of parents, as contrasted with that of the state, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

Wisconsin v. Yoder, 406 U.S. 205, 233 (1972).

IV. THIS COURT SHOULD GRANT THE PETITION TO REMEDY MINNESOTA'S PERMISSIVE SYSTEM OF EMANCIPATION THAT ABROGATES PARENTAL RIGHTS

By providing adolescents with an easy exit from parental authority, Minnesota's permissive system of emancipation runs afoul of the civil rights guaranteed to citizens under the U.S. Constitution, as well as the American tradition of parents nurturing and raising their children. It also abrogates parental rights. When letters of emancipation are being obtained without proof or participation by a parent, along with readily available welfare support, adolescents are being encouraged to leave their families when circumstances do not justify such a drastic life change. It is well known that adolescents often overreact to a world that they perceive as unaccepting of them:

In general, the teenage years are defined by dramatic changes in physical, emotional, and intellectual growth. Actions are often impulsive, directed by intense emotions and a lack of perspective that comes later as thought processes become more abstract and flexible. Adolescents struggle to belong, to find their place in a world that, to them, is often intolerant and repressive.¹⁰

Adolescent impulsiveness can cause teens to turn away from their families, and in extreme cases, engage

¹⁰ Martinez, R., *Understanding Runaway Teens* 85 (JOURNAL OF CHILD AND ADOLESCENT PSYCHIATRIC NURSING, Vol. 19, No. 2, 2006).

in runaway behavior.¹¹ The ease by which adolescents can achieve emancipation in Minnesota is a dangerous abuse and misuse of the system, often by children leaving loving homes but who feel misunderstood and repressed. If counties continue to make welfare payments available, such adolescents will be able to finance their independent lives away from their parents. And, we will be one step closer to turning children into creatures of the state with a corresponding loss of parental care, custody, and control.

But 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*, 530 U.S. at 65. The respondents’ actions, and the statutory framework, customs, and practices under which respondents’ operated, should have respected Calgaro’s fundamental liberty interests. The Fourteenth Amendment includes a substantive component that “provides heightened protection against government interference with certain fundamental rights and liberty interests.” *Troxel*, 530 U.S. at 65 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); also citing *Reno v. Flores*, 507 U.S. 292, 301-02 (1993)). The fundamental right and liberty interest identified in *Troxel*—“the interest of parents in the care, custody, and control of their children” (530 U.S. at 65)—is exactly what respondents took from Calgaro: her interest in the care, custody, and control of E.J.K.

¹¹ *Id.*, at 85.

Respondents violated Calgaro's Due Process Clause rights.¹²



CONCLUSION

Because of the fundamental liberty interests at issue in this case, as well as the real danger that many adolescents in Minnesota will be drawn to easy non-judicial emancipation and away from positive family environments, *amici* support Calgaro's petition for a writ of certiorari. Certiorari is further recommended by the nationwide implication of permitting state interference in the permanency and autonomy of families while encouraging the dependence of minors on welfare and other state programs in lieu of parental support.

¹² Petitioner has set forth in detail respondents' violation of Calgaro's Due Process Clause rights. *See* Pet. Br. at 32-42.

For the foregoing reasons, *amici* respectfully request that this Court grant Anmarie Calgaro's petition for a writ of certiorari.

Dated: August 23, 2019

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