



(1) provide an adequate explanation as to why the real parties in interest cannot bring the suit themselves, (2) be dedicated to minors' best interests, and (3) have some significant relationship with the minors." *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1989). A proposed next friend has "the burden to clearly establish the propriety of his status." *Id.*

### III. Standing

"In every federal case, the party bringing the suit must establish standing to prosecute the action. In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 11 (2004) (citation omitted), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014). The standing requirement is born partly of " 'an idea, which is more than an intuition but less than a rigorous and explicit theory, about the constitutional and prudential limits to the powers of an unelected, unrepresentative judiciary in our kind of government.' " *Id.* (citations omitted).

Consistent with these principles, our standing jurisprudence contains two strands: Article III standing, which enforces the Constitution's case-or-controversy requirement, . . . ; and prudential standing, which embodies "judicially self-imposed limits on the exercise of federal jurisdiction," . . . . The Article III limitations are familiar: The plaintiff must show that the conduct of which he complains has caused him to suffer an "injury in fact" that a favorable judgment will redress. . . . Although we have not exhaustively defined the prudential dimensions of the standing doctrine, we have explained that prudential standing encompasses "the general prohibition on a litigant's raising another person's legal rights, the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked."

*Id.* The Supreme Court noted that one of the principal areas in which it has customarily declined to intervene is the realm of domestic relations. "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States. *Id.* at 12. In *Elk Grove*, the Supreme Court dismissed a lawsuit filed by the

non-custodial father as next friend of his daughter. Thus, where one lacks the right to act as next friend, the court will dismiss a case for lack of standing. *Id.* at 17-18.

#### IV. Argument

##### 1. The Next Friend lacks standing and the Court cannot by-pass Plaintiff's parents.

Not just anyone may serve as a next friend. *T.W. by & Through Enk v. Brophy*, 954 F. Supp. 1306, 1309 (E.D. Wis. 1996) as modified *T.W. by Enk v. Brophy*, 124 F.3d 893, 895 (7<sup>th</sup> Cir. 1997). A proposed next friend “must allege his capacity to sue as a next friend in the complaint.” *Brophy*, 954 F. Supp. at 1310. In *Brophy*, an advocate brought suit as next friend for foster children who had no general representative. There had been a pending custody dispute in state court involving relatives of the children. The next friend brought suit against various Defendants, including state officials, the appointed Guardian ad Litem, and the custodial aunt and asserted federal equal protection constitutional claims. The District Court dismissed the case with prejudice holding that the child advocate was not a sufficient next friend. The 7<sup>th</sup> Circuit modified the District Court's order by making the dismissal without prejudice and holding that the determination of next friend should be made in a state court.

“Usually a significant relationship between the next friend and the minor will convince the court that the next friend's primary concern is the particular minors and their particular situation.” *Id.* at 1310. “Rule 17(c) distinguishes between a guardian or other ‘duly appointed representative,’ on the one hand--in short, a general representative--and a guardian ad litem or a next friend, on the other hand--a special representative.” *Brophy*, 124 F.3d 893, 895 (7<sup>th</sup> Cir. 1997). The 7<sup>th</sup> Circuit has stated that by-passing a general representative is not appropriate for a federal court.

Unless . . . the court finds the child's general representative to be inadequate, it should not allow the general representative to be bypassed by appointing a special

representative to litigate on behalf of his ward. Rule 17(c) doesn't say this in so many words, but it is implicit in the usual formulations of the court's powers under the rule. (citations omitted) and was made explicit in *Hoffert v. General Motors Corp.*, 656 F.2d 161, 164 (5th Cir.1981). "As a general rule, a federal court cannot appoint a guardian ad litem in an action in which the infant or incompetent already is represented by someone who is considered appropriate under the law of the forum state. 6A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1570, p. 497 (2d ed.1990). It is a sensible general rule because the management of the affairs of infants, like other matters relating to domestic relations, is the primary responsibility of the states rather than of the federal government.

*Id.* at 895-896. Generally, a parent is a proper representative under Fed. R. Civ. P. 17(c). *Id.* at 895-97. Thus, "[u]nless the court finds the child's general representative to be inadequate, it should not allow the general representative to be bypassed." *Id.* at 895. "But the presumption is against [a stranger serving as next friend], and a strong case for an exception must be made--bare allegations in a complaint will not do." *Id.* at 897.

Here, the Complaint admits that "J.A.W. is a minor child . . ." (Compl. ¶ 6). There is no assertion that Plaintiff lacks parents as a general representative. The only allegation pertaining to the proposed next friend is that "Wyatt Squires is an adult resident of Indiana who is a transgender advocate who is a friend and mentor to J.A.W." (Compl. ¶ 6). The Complaint makes no reference to J.A.W.'s parents or other relatives, why they were not included in this suit, or why they should be bypassed in favor of Squires. Any such issue must be addressed in a state court and not in a federal court.

## **2. A professional advocate cannot displace parental representation.**

The Complaint also fails to explain why Squires is dedicated to J.A.W.'s best interests as required by *Whitmore*. While it contains the allegation that Wyatt Squires "is a transgender advocate," such is insufficient to establish that he is a suitable alter ego for J.A.W. "A strong commitment to an issue does not necessarily ensure that [a proposed next friend] will act in the

best interests of the minors.” *Brophy*, 954 F. Supp. at 1310. Being a professional advocate is not a satisfactory basis for being a next friend under FRCP 17(c). *Brophy*, 124 F.3d at 896. “Strong commitment leads to zealotry; zealotry leads to crusades; crusades leave unintended victims.” *Id.* “Although courts may be the modern battleground for social and political crusades, no case can or should become a Children’s Crusade in which minors are unknowing, unwilling, or unwitting casualties to a zealot’s devotion to ideals.” *Id.*

In *T.W.*, the district court found that a self-described children’s advocate who was neither a parent nor relative of the children he proposed to represent even though he had “a strong interest in children’s issues” was incapable of serving as next friend. *Brophy*, 954 F.Supp. at 1310. Similarly, here Squires is a self-described transgender advocate, but is not and does not claim to be a parent or relative of J.A.W. Further, even though he may be an advocate for transgender persons, generally, he makes no claim or showing that he is particularly devoted to advancing the specific interests of J.A.W. or even transgender students. Thus, similar to the advocate in *T.W.*, “his passion for the issue could easily turn into stubbornness, and his version of the ideal could cloud his judgment on what” this particular child actually needs. *Brophy*, 954 F.Supp. at 1310.

Additionally, even if Squires’ claim to capacity to act as next friend is based on a refusal by J.A.W.’s parents to do the same, this argument fails as well. “The Due Process Clause of the Fourteenth Amendment to the United States Constitution protects the fundamental rights of parents in directing the care, custody, and control of their children.” *In re T.H.*, 856 N.E.2d 1247, 1250 (Ind. Ct. App. 2006). The Supreme Court has held that “[w]hen hard questions of domestic relations are sure to affect the outcome, the prudent course is for the federal court to stay its hand

rather than reach out to resolve a weighty question of federal constitutional law.” *Elk Grove Unified School*, 542 U.S. at 17.

In our view, it is improper for the federal courts to entertain a claim by a plaintiff whose standing to sue is founded on family law rights that are in dispute when prosecution of the lawsuit may have an adverse effect on the person who is the source of the plaintiff’s claimed standing.

*Id.* As such, this Court would not be permitted to resolve these weighty questions of constitutional law, where J.A.W.’s parents have not exercised the right to pursue them on behalf of their child.

Squires has failed to demonstrate that he has the right or standing to act as a next friend for J.A.W. Because J.A.W. lacks the capacity to bring a lawsuit in federal court in J.A.W.’s individual capacity and Squires is not a suitable representative who can displace Plaintiff’s parents, this case must be dismissed.

## V. Conclusion

As a result of the foregoing, the Court should dismiss Plaintiff’s Complaint.

Respectfully submitted,

*s/ Patrick A. Shoulders*

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### CERTIFICATE OF SERVICE

I certify that on the 20th day of March, 2018, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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