

No. 25-840

IN THE
Supreme Court of the United States

INTERNATIONAL PARTNERS FOR ETHICAL CARE,
INC., *ET AL.*,

PETITIONERS,

V.

ROBERT FERGUSON, GOVERNOR OF WASHINGTON,
ET AL.,

RESPONDENTS.

*On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit*

**BRIEF OF *AMICI CURIAE*
PARENTS INITIATIVE AND DEFENSE OF
FREEDOM INSTITUTE IN
SUPPORT OF PETITIONERS**

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Question Presented

Whether parents have standing to challenge a law or policy that deliberately displaces their decision-making role as to gender transitions of their children, and in so doing creates present and likely future impediments to their ability to parent their children as they deem best for them.

Specifically: Have some or all Petitioner Parents sufficiently alleged injury in fact (and traceability and redressability) because:

- a. they are members of the class of parents who are objects of the laws at issue and adequately allege a violation of their federal constitutional rights as a result;
- b. they are currently suffering additional concrete, actual injuries from those laws in the form of, for example, government-created incentives for their children to run away, which in turn have interfered with the parent-child relationship and forced them to change their parenting strategies; and/or
- c. because of those laws, they face an increased risk of future injuries, for example, to their children's health and to the parent-child relationship?

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Interests of Amici Curiae¹

The PARENTS Initiative is a project of the Liberty Justice Center (LJC), a nonprofit, nonpartisan public-interest litigation firm that defends and advances individual liberties and limited, accountable government. This work includes pursuing strategic, precedent-setting litigation aimed at protecting parental rights. LJC has a specific interest in the determination of the merits issues before the Court in this case.

The Defense of Freedom Institute for Policy Studies (DFI) is a nonprofit, nonpartisan 501(c)(3) organization dedicated to defending and advancing educational freedom and opportunity for every American family, student, teacher, entrepreneur, and worker, protecting the civil and constitutional rights of Americans at school. As part of its mission, DFI focuses on protecting parental rights like those threatened in this case.

Summary of the Argument

Since long before this Nation's founding, common law recognized as axiomatic a timeless truth: parents possess the fundamental right to make decisions regarding their minor children. The inalienability of that right has been affirmed by this Court for more than a century. Today, Washington State is usurping that right by harboring runaway minor children and facilitating life-altering medical interventions without their parents' consent, or even knowledge, based on the minor's supposed gender dysphoria. And to make matters

¹ Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than amici curiae, their members, or their counsel funded its preparation or submission.

worse, courts have denied complaining parents the opportunity to legally challenge the invasion.

Parent-Petitioners have children struggling with gender confusion—most of whom were secretly “transitioned” at their public schools. One of the gender-confused children has previously run away. Older siblings have threatened to take two of the children from the parents’ home to be “affirmed.” Under Wash. Rev. Code § 13.32A.082 as amended,² all of the parents assert that the State is infringing upon their constitutional rights through interference in parental prerogatives, both presently and due to the risk of future harm.

But the Ninth Circuit claimed its hands were tied by Article III and “standing” doctrine—holding that the parents’ alleged injury was insufficient and speculative. This holding fails the original meaning of Article III, parental rights, and judicial administrability.

Rather than asking whether the Parent-Petitioners assert the concrete invasion of an individual private right recognized at common law—the originalist standard for a cognizable injury for standing purposes—the court below applied judicially invented obstacles, demanding proof of downstream consequential

² Washington ESSB 5599 and SHB 1406 amended Wash. Rev. Code § 13.32A.082 to, among other provisions, (1) expand the “compelling reasons” to not notify parents when a youth shelter received a runaway child to include “[w]hen a minor is seeking or receiving protected health care services” which includes “gender affirming treatment,” (2) make referrals for such children for “appropriate behavioral health services,” and (3) recognize “a pathway for qualifying minors to stay in a licensed shelter for up to 90 days without parental permission” with no requirement of an attempt at reunification with any sort of effective deadline.

harm and certainty of future injury. But it is difficult to conceive of a more permanent and present injury than the State asserting the power to facilitate permanent medical treatments for minors without the parents' knowledge or consent.

Finally, by conditioning standing on proof of facts that Wash. Rev. Code § 13.32A.082 is expressly designed to conceal, the Ninth Circuit allows the state to construct an unconstitutional procedural shield to parental involvement. This Court should reject this distortion of Article III, reaffirm that direct state interference with parental authority confers standing, and open the courthouse doors to parents seeking to defend their fundamental rights.

For these and the following reasons, the Court should hold in favor of Parent-Petitioners.

Argument

I. The Founding-era “case or controversy” provision required no separate harm to enforce a private right—the invasion of the right was enough.

Under the Founding-era understanding of “cases” and “controversies,” an infringement of an individual private right itself constituted an actionable legal injury. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). By limiting standing to “cases” and “controversies,” Article III ensures that judicial resolution is not reduced to “abstract intellectual problems resolved in the rarified atmosphere of a debating society.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 423 (2013) (Breyer,

J., dissenting) (cleaned up). At the Founding, this limitation was understood against the backdrop of common law and equitable traditions.

Those traditions generally required a plaintiff to assert a personal, legal interest. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 344 (2016) (Thomas, J., concurring) (“Common-law courts possessed broad power to adjudicate suits involving the alleged violation of private rights, even when plaintiffs alleged only the violation of those rights and nothing more.”). Under this practice, the invasion itself constituted an actionable injury without the need to show separate, consequential physical or financial damage. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 286–90 (2021) (surveying pre- and post-Founding authorities and holding that a completed violation of a personal legal right is redressable through nominal damages without proof of compensable harm); *Webb v. Portland Mfg. Co.*, 29 F. Cas. 506, 508 (C.C.D. Me. 1838) (Story, J.) (“Actual, perceptible damage is not indispensable as the foundation of an action. The law tolerates no farther inquiry than whether there has been the violation of a right.”).

This Court has repeatedly cautioned the lower courts to not make “standing law more complicated than it needs to be.” *Thole v. U.S. Bank N.A.*, 590 U.S. 538, 547 (2020). Thus, this Court has emphasized that an alleged harm satisfies Article III when it bears “a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts.” *TransUnion*, 594 U.S. at 425; *see also Spokeo*, 578 U.S. at 341.

But the Ninth Circuit’s inversion of standing doctrine, under which a litigant must assert something *more* than the invasion of a protected private right, turns the originalist understanding of standing doctrine on its head. The modern standing framework—specifically the requirement of a concrete, particularized “injury in fact” that is “actual or imminent”—largely reflects twentieth-century judicial development rather than the original meaning of Article III. *TransUnion LLC*, 594 U.S. at 450 (Thomas, J., dissenting). As Justice Thomas (joined by Justices Breyer, Sotomayor, and Kagan) observed “it was not until 1970—180 years after the ratification of Article III—that this Court even introduced the ‘injury in fact’ (as opposed to injury in law) concept of standing.” *Id.* (Thomas, J., dissenting) (cleaned up).

As applied by the Ninth Circuit here, the modern framework departs not only from the rule that an injury-in-law is sufficient for standing, but also requires proof of concrete downstream harm and a near undeniable degree of certainty that harm will occur. But “certainty is not, and never has been, the touchstone of standing. The future is inherently uncertain.” *Clapper*, 568 U.S. at 431 (Breyer, J., dissenting). Indeed, this Court has expressly clarified that future injury satisfies Article III when the threat is not only certainly impending but also when there is a “substantial risk” that harm will materialize. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper*, 568 U.S. at 414 n.5).

The Ninth Circuit’s inverted standing rule in this case would have been unrecognizable in 1789. It effectively closes the courthouse doors to citizens with valid legal grievances whose rights have already been invaded. The consequence of this standard is widespread judicial abdication. While “it is important that federal courts heed the limits of their constitutional authority, it is equally important that they carry out their virtually unflagging obligation to exercise the jurisdiction given them” and avoid “succumbing to the temptation to use the doctrine of Article III standing as a way of avoiding some particularly contentious constitutional questions.” *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.*, 145 S. Ct. 14, 14 (2024) (Alito, J., dissenting from denial of certiorari) (cleaned up).

The lower court’s distortion of Article III standing should be rejected in favor of its original, constitutional understanding.

II. Parent-Petitioners’ claim of state interference with long-recognized parental rights is a cognizable injury under Article III.

Before there was government, there were parents. These family units grew into communities, which organically developed their own community rules. As these rules developed, they were codified by formal law and government. Yet amongst all this growth one thing remained constant: the primacy of the parent when it came to decisions affecting minor children.

Examples of this timeless truth abound in the historical record:

The Code of Hammurabi called for a death sentence to any man who kidnapped another man's minor son. *Laws of Hammurabi*, § 14 (Martha T. Roth ed., 2022). Roman law affirmed that a man's children "are in [his] power." Justinian's Institutes 1.9. Sir William Blackstone characterized the relation of parent and child as the "most universal relation in nature," which encompasses the duties of protection, maintenance, and education. 1 William Blackstone, Commentaries *434, *443 (1765). These duties are enforced by "municipal laws," though none more so than the grafting "in the breast of every parent that natural" strong or insuperable "degree of affection, which not even the deformity of person or mind, not even the wickednefs [sic], ingratitude, and rebellion of children, can totally suppress or extinguish." *Id.* at *435.

Crucially for Article III purposes, the relationship between parent and child was universally understood as not merely a social bond, but as a defined, legally enforceable set of private rights and reciprocal duties. See 1 Blackstone, Commentaries *434–41. The American colonies fully embraced this common law inheritance. "Conciliator," a 1788 writer supporting the Federalist argument, confirmed that "the rights of the governed are rights of *reservation*; a parent has full power over his child, save only the child's *reserved* rights," just as "the state . . . has, like a parent, full power over us its children, save only our *reserved* rights." Conciliator, Phila. Indep. Gazetteer, Jan 15. 1788, reprinted in 38 *The Documentary History of the Ratification of the Constitution and the Bill of Rights* 256 (John P. Kaminski et al. eds., 2022) (emphasis in original). Indeed, "Magna Charta, and every bill of rights in the world, stand upon this principle." *Id.*

When these parental rights came under threat in colonial America, the courts protected those “sacred” rights. Daniel E. Witte, *People v. Bennett: Analytic Approaches to Recognizing a Fundamental Parental Right Under the Ninth Amendment*, 1996 BYU L. Rev. 183, 190–91. The right to “bring up children” was “recognized at common law as essential to the orderly pursuit of happiness by free men.” *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

This Court has affirmed this same foundational understanding of parental rights, calling the parental interest “perhaps the oldest of the fundamental liberty interests,” *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Thus, the Due Process Clause of the Fourteenth Amendment counts parental rights amongst the liberties “deeply rooted in the Nation’s history and tradition,” and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). Indeed, few rights satisfy that standard more easily than the right of parents to direct the upbringing and education of their children.

This Court’s recent decisions reinforce the recognized protection of parental rights. Government policies that circumvent or displace parental authority inflict a concrete injury. Specifically, both *Mahmoud v. Taylor*, 606 U.S. 522 (2025) and *Mirabelli v. Bonta*, 607 U.S. 492 (2026) unequivocally support a finding of parental standing in this case. When the state strips parents of notice or the authority to make critical life decisions for their children, the result is an immediate constitutional harm. And here, the question extends far beyond storybooks (as in *Mahmoud*) and even pronouns (as in *Mirabelli*) into the realm of medical

care—an area for which it is entirely untenable to suggest that parents can be sidelined.

Parental authority necessarily includes the responsibility to make consequential decisions concerning a minor child’s health and medical treatment. *Parham v. J.R.*, 442 U.S. 584, 602–04 (1979) (affirming that the law has historically recognized “that natural bonds of affection lead parents to act in the best interests of their children” when deciding their medical needs). A child’s disagreement with a parent does not “automatically transfer the power” to make decisions relating to medical care or treatment “from the parents to some agency or officer of the state.” *Id.* at 603. Yet, Wash. Rev. Code § 13.32A.082 as amended does precisely what *Parham* cautions against: it places Parent-Petitioners in an immediate dilemma with a “substantial risk” that the state will exclude them from critical decisions regarding their children. *Susan B. Anthony List*, 573 U.S. at 158. When a state enacts policies designed to exclude parents from vital aspects of their child’s life—or circumvents parental authority over a child’s mental and physical health that have permanent consequences for the child—it invades an individual private right sufficient for Article III standing.

Parent-Petitioners do not bring a generalized grievance shared by the public at large and are not merely unharmed bystanders with “a keen interest in the issue.” *John and Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 641 (4th Cir. 2023) (Niemeyer, J., dissenting) (quoting *Hollingsworth v. Perry*, 570 U.S. 693, 700 (2013)). Rather, they assert a specific, individualized invasion of their authority over their own minor children. Moreover, parents are the direct objects of the challenged statutory exclusion.

Where a plaintiff himself is an “object of the action,” “there is ordinarily little question that the [government] action or inaction has caused him injury.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992). The parents here—like those in *Mirabelli*—can establish standing by the mere fact that they are “objects of the challenged exclusion policies.” 607 U.S. at 498 (citing *Diamond Alt. Energy LLC v. EPA*, 606 U.S. 100, 114).

Article III does not require Parent-Petitioners to await the completed loss of contact with their child, the completed deprivation of notice, or the completed act of irreversible medical treatment being provided to their child before invoking a federal court’s jurisdiction. When a state scheme is designed to circumvent a parent’s oversight of their children, the parent suffers an immediate injury the moment that barrier is put in place. Though the substance of the current suit would be inconceivable in the 18th century, it would have nonetheless been considered a proper case or controversy to satisfy the threshold standing question established by Article III at the time of the founding.

III. Ruling for Parent-Petitioners will resolve a lower-court impasse insulating school policies from constitutional scrutiny.

In addition to conforming with the original meaning of Article III and recognizing parental rights, clarifying Article III standing in this context is essential to addressing a growing judicially invented procedural barrier affecting public school families throughout the country. School districts nationwide have adopted non-disclosure and secret-transition policies that deliberately conceal minor students’ social transitions from their parents. Yet, federal courts, faced with the im-

portant constitutional question of parents' rights to access to this information, are often hamstrung from reaching the merits of these issues because of that barrier: ruling that parents lack standing unless they can prove their own child is already being secretly transitioned. Courts' inversion of Article III standing requirements has created a procedural firewall, insulating the policies from judicial review.

This barrier is widespread and urgently requires this Court's guidance. In the Ninth Circuit alone, closely related questions concerning parental standing and the State's exclusion of parents from information about their children are being litigated in several pending matters, in addition to this case. *See Mirabelli v. Bonta*, No. 25–8056 (9th Cir.); *Regino v. Blake*, No. 26–475 (9th Cir.); *City of Huntington Beach v. Newsom*, No. 25–3826 (9th Cir.); *Chino Valley Unified Sch. Dist. v. Newsom*, No. 25–3686 (9th Cir.). The First and Seventh Circuits have likewise grappled with this issue and made the same errors as the Ninth Circuit here. *See Foote v. Ludlow Sch. Comm.*, 73 F.4th 46 (1st Cir. 2023); *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.*, 98 F.4th 778 (7th Cir. 2024) (both holding that parents lack standing to challenge non-disclosure and transition policies unless they can prove their own child is being socially transitioned).

These decisions are fundamentally inconsistent with this Court's precedent and the historic understanding of Article III standing. By creating artificial hurdles to standing, courts are granting free rein to state governments to circumvent fundamental parental rights. Reaffirming that parents, by the nature of their constitutionally protected private rights, have standing to sue under Article III would restore the

principle of standing to its proper, historically supported role, thereby opening the courthouse doors to parents in a variety of urgent and important contexts.

Parents are direct objects of exclusionary school policies. When a statute commands the withholding of information from parents, those parents are not incidental third parties. In challenging these schemes, parents seek to vindicate their traditional private rights for which judicial redress has always been available. What exists now is an untenable procedural dilemma in a constitutional question which is “of great and growing national importance.” *Parents Protecting Our Children*, 145 S. Ct. at 14 (2024) (Alito, J., dissenting from denial of certiorari).

A ruling in this case will determine whether parents in the public education context—where school districts across the country have enacted policies that deliberately conceal a minor child’s gender transition—retain access to federal court. By precluding any form of relief in this case on the notion that parents lack standing due to their inability to prove that a *secret* social transition has actually occurred, constitutional adjudication will grind to a halt on an issue affecting millions of families across the country.

Conclusion

No bond is older—or more fundamental—than that between parent and child. This relationship long predates the State, but it does not sit outside constitutional protection. And yet, Washington State has inserted itself between parents and their children and inflicted a direct injury under Article III in its most classical sense. To preserve the ancient and vital authority of parental rights, this Court should find that

when the State withholds critical information from parents and takes liberties with the medical care of their children, parents have standing to sue in federal court.

Respectfully submitted,

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