No. 24-745

In the Supreme Court of the United States

MONTANA, ET AL.,
Petitioners,

v.

PLANNED PARENTHOOD OF MONTANA, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Montana Supreme Court

REPLY BRIEF FOR PETITIONERS

TYLER R. GREEN
CODY RAY MILNER
CONSOVOY MCCARTHY PLLC
222 S. Main Street, 5th Floor
Salt Lake City, UT 84101

AUSTIN KNUDSEN
Montana Attorney General
CHRISTIAN B. CORRIGAN
Solicitor General
Counsel of Record
PETER M. TORSTENSEN, JR.
Deputy Solicitor General
MONTANA DEPT. OF JUSTICE
215 N. Sanders Street
Helena, MT 59601
(406) 444-2026
christian.corrigan@mt.gov

Counsel for Petitioners

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REPLY BRIEF

The Montana Supreme Court's decision holds that a minor's state-created privacy interest overrides parents' fundamental federal right to direct their children's medical care. App.38a-39a. To try to ward off review of that decision, Planned Parenthood misdescribes it, suggesting the Montana court did no such thing. But the opinion speaks for itself: Petitioners' "parental rights argument," the court said, "is unpersuasive given the minor's own fundamental right of privacy." App.38a. Compounding the problem, the court then limited the scope of federal parental rights to "a right to parent free from state interference." App.38a. All that contradicts both the history and tradition of parental rights in this Nation and this Court's precedents establishing the scope and protection of those rights as compelling state interests.

The Fourteenth Amendment protects "the interest of parents in the care, custody, and control of their children"—one of the "oldest of the fundamental liberty interests." *Troxel* v. *Granville*, 530 U.S. 57, 65 (2000). This includes parents' "plenary authority" over their children's "medical care," even when a parent's decision is "not agreeable to a child." *Parham* v. *J.R.*, 442 U.S. 584, 603-04 (1979). While states may "adopt in [their] own Constitution[s] individual liberties more expansive than those conferred by the Federal Constitution," state-created liberty interests may not expand so far that they "contravene any other federal constitutional" right or interest. *PruneYard Shopping Ctr.* v. *Robins*, 447 U.S. 74, 81 (1980); *see also Espinoza* v. *Mont. Dep't of Revenue*, 591 U.S. 464, 474, 489

(2020). A state-created privacy interest cannot displace parents' fundamental right to direct their children's medical care, since the latter is protected by the U.S. Constitution. *See Kanuszewski* v. *Mich. Dep't of HHS*, 927 F.3d 396, 418 (6th Cir. 2019); *Mann* v. *Cnty. of San Diego*, 907 F.3d 1154, 1161 (9th Cir. 2018).

Petitioners repeatedly warned that elevating a minor's state-law privacy interest over fundamental parental rights would create a conflict between state law and the Fourteenth Amendment. *Infra* 3-5; App.140a-41a. But the Montana Supreme Court still concluded that in a conflict between fundamental parental rights and a minor's state-created privacy interest, the latter wins. App.37a-39a.

That decision squarely conflicts with a myriad of this Court's precedents. And it's on the wrong side of a deepening circuit split on an issue of self-evident national importance. The Court should grant the petition.

I. Petitioners pressed the question presented below, and the Montana Supreme Court passed on it.

Planned Parenthood rests mainly on the notion that federally protected parental rights were "never addressed below." BIO.14. It claims that all "the parties and state courts assumed that fundamental parental rights exist … and can be a compelling state interest." BIO.14. It claims that Montana now presents its "federal constitutional law" argument for the first time. BIO.3. And it claims that "[t]he Montana

Supreme Court was never asked to consider, and therefore never addressed," the federal issue now raised. BIO.2.

Planned Parenthood errs on each count. And it is wrong about the magnitude of the Montana Supreme Court's error.

A. Consider first Planned Parenthood's claim that Montana previously argued only "state interests" in "family integrity" and never before raised a "question of federal constitutional law." BIO.3, 16. Not so. The State of Montana designed the Consent Act to be coterminous with the scope of parental rights protected by this Court's precedents. And throughout this litigation, Montana warned that displacing those federal parental rights with a state-created privacy interest for minors would conflict with the Fourteenth Amendment.

Laws requiring parental consent before a minor obtains an abortion are not new. A long line of this Court's precedents balanced the federal parental interest in directing a child's medical care with the (then-existent) federal privacy interest of a minor. *See Planned Parenthood of Se. Pa.* v. *Casey*, 505 U.S. 833 (1992); *Hodgson* v. *Minnesota*, 497 U.S. 417 (1990); *Bellotti* v. *Baird*, 443 U.S. 622 (1979); *cf. Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215 (2022). Those cases held that the fundamental parental rights of "custody, care and nurture of the child" are "constitutionally permissible end[s]" that qualify as compelling state interests. *Bellotti*, 443 U.S. at 637-38, 640-41. And while parental rights are not absolute, "a

State may require a minor seeking an abortion to obtain the consent of a parent … provided that there is an adequate judicial bypass procedure." *Casey*, 505 U.S. at 899.

Montana drafted the Consent Act in a way that ensured its law matched the scope of parental rights recognized in this Court's cases. *See Hodgson*, 497 U.S. at 497 (Kennedy, J., concurring in part) (the state "has done nothing other than attempt to fit its legislation into the framework that [this Court] ha[s] supplied in [its] previous cases"). In the Consent Act's purposes section, the legislature wrote that one of the law's purposes was to "further the important and compelling state interests of … protecting the constitutional rights of parents to rear children." App.158a.

Montana invoked those fundamental parental rights while defending the Consent Act. When briefing summary judgment, it argued that the Consent Act served the important purpose of protecting "the parental right to be involved in their minor child's decision making process." App.149a. Montana defined the relevant parental rights as those this Court recognized. App.149a. (citing *Hodgson*). And Montana discussed the fundamental "rights of parents to be involved in their children's abortion decision" and the "constitutional and commonsense proportions" of this fundamental right. App.155a-56a (citing *Bellotti*).

Before the Montana Supreme Court, Montana again invoked "[t]he Fourteenth Amendment['s]" protection of "the interests of parents in the care, custody, and control of their children." App.129a (quoting

Troxel, 530 U.S. 65). Montana warned that the district court impermissibly "disregarded parents' fundamental rights to care for and supervised their children." App.129a. Montana later cautioned that Planned Parenthood's position would "eradicate parents' fundamental liberty interests"—"the same interest[s]" as those protected by "[t]he Fourteenth Amendment." App.139a. Montana also warned that dismissing fundamental "parental rights as a mere 'conflict of interest'" with a minor's state-law privacy interest would place state law "at odds with the Fourteenth Amendment of the United States Constitution." App.140a-41a.

In short, Montana repeatedly raised the issue of federally protected parental rights and did "explicitly ground" its assertion of "parental rights in the U.S. Constitution." *Contra* BIO.17.

B. Planned Parenthood also claims that the federal question now raised—whether fundamental parental rights extend to directing a minor's medical care—"was never addressed below," because "[e]very court simply assumed the existence of" "the right to 'know and participate in decisions' concerning a minor's decision to obtain an abortion." BIO.14, 20. This, too, is false. The Montana Supreme Court specifically rejected the argument that fundamental parental rights extend to participation in medical decisions and refused to deem that fundamental right a "compelling interest."

Even a cursory review of the decision below confirms as much. The Montana Supreme Court did

acknowledge that the Fourteenth Amendment protects a "fundamental right to parent." App.37a (citing *Troxel*). But—contrary to Planned Parenthood's claim—the Montana Supreme Court refused to acknowledge that this parental right extends to parents' "custody, care, and control of their children," or that it can be a compelling interest. Instead, that court watered down the fundamental parental rights this Court has recognized by deeming only the "promotion of healthy families" sufficient to qualify as a compelling state interest. App.37a. By refusing to recognize parental "custody, care, and control" can be a compelling state interest, the Montana Supreme Court undercut the scope of the parental rights that this Court has recognized as protected by the Fourteenth Amendment. *See Troxel*, 530 U.S. at 65; *Bellotti*, 443 U.S. at 637; *Prince* v. *Massachusetts*, 321 U.S. 158, 166 (1944).

Nor did the state court's disregard for this Court's precedent stop there. In its next paragraph, the court concluded that any assertion of parental rights creates a "*fundamental*[] … conflict" with the minor's state-law right to privacy. App.38a. It therefore rejected "[t]he State's parental rights argument" as "unpersuasive given the minor's own fundamental right of privacy." App.38a. And it viewed "any parental right that exists within this framework" as "a right to parent free from state interference, *not* a right to enlist the state's powers to gain greater control over a child." App.38a (emphasis added).

Put differently, when Montana asserted a compelling interest in protecting parents' fundamental rights

to care for their children, the Montana Supreme Court said that parental rights have *no place* in its application of strict scrutiny to the Consent Act. *Contra Bellotti*, 443 U.S. at 640-41. So when federally protected parental rights conflict with a minor's state-created privacy interests, Montana state courts have license to ignore parental rights altogether.

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Planned Parenthood's principal reason for opposing certiorari—its claim that the issue of fundamental parental rights was "never addressed below," BIO.14—cannot be reconciled with what actually happened. Montana carefully crafted its law to match the scope of this Court's parental rights cases. Montana warned against interpreting state law in a way that would undermine this federally protected liberty interest. Yet the Montana Supreme Court still concluded that parents' fundamental federal rights mean nothing when they conflict with a minor's state-created privacy interest. *Contra PruneYard*, 447 U.S. at 81; *Espinoza*, 591 U.S. at 474, 489. That amply preserved the question presented for this Court's review.

II. The lower courts are squarely split over the scope of parents' rights to direct their children's medical care.

The Montana Supreme Court's decision deepens a square split among federal circuit courts and State courts of last resort on whether parents' fundamental rights extend to directing critical medical care for children. Three federal circuits have held that they do.

Deanda v. *Becerra*, 96 F.4th 750, 758, 768 (5th Cir. 2024); *Kanuszewski*, 927 F.3d at 418; *Mann*, 907 F.3d at 1160-61.

In contrast, at least four other courts have held that fundamental parental rights need not even be considered or weighed when it comes to children's medical care. *See Anspach* v. *City of Phila.*, 503 F.3d 256, 261-62 (3d Cir. 2007); *Doe* v. *Irwin*, 615 F.2d 1162, 1169 (6th Cir. 1980); *see also Planned Parenthood of the Great Nw.* v. *State*, 375 P.3d 1122, 1143-45 (Alaska 2016). The Montana Supreme Court's decision now joins the wrong side of this split. App.38a-39a.

Planned Parenthood claims this circuit split is "illusory." BIO.24. It reads the two "sides" of the split to reflect only whether each case involved coercive state action. It also claims that parental rights are too "generalized" to create a clear split, and disputes Montana's contention that many American parents now live under conflicting federal and state laws. Not one of those arguments holds water.

A. Start with Planned Parenthood's claims that the identified circuit split hinges on "whether the state undertook an affirmative act that coercively interfered with the parent-child relationship." BIO.24. This argument fails to explain why federal circuits have reached conflicting conclusions in identical "noncoercive" scenarios.

Take the Third Circuit's decision in *Anspach*, where the state "provid[ed] a minor with emergency

contraceptive pills." BIO.24. Planned Parenthood claims *Anspach* rejected a parent's due-process claim because the state "did not attempt to coercively interfere with the parent-child relationship." BIO.24. But a different federal program distributed contraceptives to minors without parental consent—in ways that Planned Parenthood has described as noncoercive—and the Fifth Circuit held that a parent had standing to challenge it in part because the program "interfere[d] with his parental rights under the Fourteenth Amendment." *Deanda*, 96 F.4th at 758, 760 (citing *Troxel*). That's a square disagreement over the scope of parents' fundamental rights—specifically, whether contraception programs for minors that don't require parental consent infringe those rights. In any event, Planned Parenthood never explains how a governmental program that *actively* interferes with parental involvement over a minor's medical care, *Mann*, 907 F.3d at 1160-61, is functionally different than a governmental program that *passively* interferes with parental involvement in a minor's medical care, *Anspach*, 503 F.3d at 267. In both cases, governmental action resulted in children receiving substantial medical care without parental consultation.

More to the point, Planned Parenthood's suggestion that parental rights block only coercive governmental interference with children is foreclosed by this Court's precedent. Parents' fundamental authority over the custody and care of their children is more than a negative right that prohibits government interference. Parental authority over their children "include[s] preparation for obligations the state can neither supply nor hinder." *Prince*, 321 U.S. at 166.

Nowhere is this point clearer than in *Parham*. That case involved no state interference—coercive or otherwise. Instead, children sued their parents and guardians, claiming that the parents' medical decisions violated the children's liberty interests. *Parham*, 442 at 596-97. This Court held that the "broad parental authority over minor children" extends to making important medical decisions, regardless of whether the decision is "agreeable to [the] child." *Id.* at 602-04. The "traditional presumption that the parents act in the best interests of their child" means that parents "retain plenary authority" over medical decisions for their children. *Id.* at 604; *see also Ginsberg* v. *New York*, 390 U.S. 629, 639 (1968) ("[P]arents … are entitled to the support of laws designed to aid discharge of [their] responsibility."); *Hodgson*, 497 U.S. at 483 (Kennedy, J., concurring in part) (parents have the right "not merely to be notified of their children's actions, but to speak and act on their behalf").

Planned Parenthood's attempts to explain away the circuit split as hinging on coercive state action directly contradict *Parham* and further justify this Court's review.

B. Planned Parenthood next urges this Court to conclude that the "parental right to be involved in a minor child's medical decisions" is too "generalized" to support a split on decisions ranging from contraception to abortion to emergency examinations. BIO.26. That runs headlong into this Court's recent warning against overly granular descriptions, since "*anything* can be described as 'unique' or 'different from' something else." *Kousisis* v. *United States*, No. 23-909, slip

op. at 14 (U.S. 2025). Each case in the deepening split involves the fundamental right of parents to direct their children's medical care and "make critical decisions in an informed, mature manner." *Bellotti*, 443 U.S. at 634. And each case on the wrong side of the split concluded that those parental rights do not apply when a minor's right to privacy is at issue. *See Anspach*, 503 F.3d at 262-64; *Doe*, 615 F.2d at 1168-69.

C. Planned Parenthood lastly claims that there is "no patchwork of conflicting federal and state laws," before pivoting to argue that a "patchwork" of different laws is the "point" of the post-*Dobbs* world. BIO.27-28. It is wrong on both counts.

Abortion providers are now "between a rock and a hard place: if they're sued in federal court, Ninth Circuit caselaw requires parental involvement, but if they're in Montana's state courts, parental involvement is foreclosed." Pet.21. Planned Parenthood claims there is no conflict because the Ninth Circuit's opinions on parental rights do not involve "the context of abortion." BIO.28. But the Ninth Circuit's holding its not context-specific; it held that the Fourteenth Amendment protects "the right of parents to make important medical decisions for their children"—without qualification. *Mann*, 907 F.3d at 1161. Meanwhile, the Montana Supreme Court said that fundamental parental rights do not even qualify as a compelling interest. App.38a-39a. That's directly conflicting legal reasoning about the same federal right.

Planned Parenthood's fallback argument is that the patchwork of state and federal laws is actually "the point, according to *Dobbs*." BIO.28. This, too, misses the mark. The point of *Dobbs* is that states are free to evaluate their own state-created interests differently. *Dobbs*, 597 U.S. at 256. But states are *not* free to treat federal rights—including the parental rights protected by the Fourteenth Amendment—differently. Federal rights cannot have broad application in one state but narrow application in another—or inherently contradictory application within one state, as they do now in Montana. This irreconcilable patchwork of state and federal laws only confirms the need for plenary review.

III. This petition presents an excellent vehicle for this Court's review.

A. The Montana Supreme Court's decision to allow state-created liberty interests to displace federally protected parental rights tears the fabric of federalism. *PruneYard*, 447 U.S. at 81. This Court can correct that erroneous decision while simultaneously clarifying that the affirmative parental right to care for and control their children "includes the right to direct their children's medical care." *Kanuszewski*, 927 F.3d at 419. The question here asks the Court only to affirm that parents have a fundamental right "to know about, and participate in, their children's medical decisions." Pet.26. The state court record on this issue is fully developed and ripe for review now. Pet.28.

B. None of Planned Parenthood's supposed vehicle problems withstand scrutiny. Planned Parenthood

objects primarily that the federal constitutional issue was neither argued in nor decided by the state courts, but those claims cannot be squared with the state court record. *Supra* 2-7. And Planned Parenthood's objections to the deepening circuit split lack merit, since this Court has made clear that parental rights are enforceable even outside the context of coercive state action. *Supra* 7-10; *see also Parham*, 442 U.S. at 602-04.

Planned Parenthood's only other vehicle-related argument is that Montana did not challenge the Montana Supreme Court's separate Equal Protection holding. BIO.22. This, however, is a red herring. In its single strict scrutiny analysis for both the state-law privacy interest and the Equal Protection claim, the Montana Supreme Court refused to recognize protecting federal parental rights as a compelling state interest. App.25a. A ruling by this Court that parental rights qualify as a compelling interest will, by necessity, require reversing the judgment below so the Montana Supreme Court can conduct its Equal Protection strict scrutiny analysis anew.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

June 5, 2025 Respectfully submitted.

AUSTIN KNUDSEN
Montana Attorney General
CHRISTIAN B. CORRIGAN
Solicitor General
Counsel of Record
PETER M. TORSTENSEN, JR.
Deputy Solicitor General
MONTANA DEPT. OF JUSTICE
215 N. Sanders Street
Helena, MT 59601
(406) 444-2026
christian.corrigan@mt.gov

TYLER R. GREEN
CODY RAY MILNER
CONSOVOY MCCARTHY PLLC
222 S. Main Street, 5th Floor
Salt Lake City, UT 84101

Counsel for Petitioners