No. 23-450

IN THE
Supreme Court of the United States

M.C. AND J.C.,
Petitioners,
v.

INDIANA DEPARTMENT OF CHILD SERVICES,
Respondent.

On Petition for Writ of Certiorari to the Indiana Court of Appeals

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Indiana law permits the Indiana Department of Child Services to provide services to a child where a court finds that a child is "substantially endanger[ing] the child's own health" and "needs care, treatment, or rehabilitation" that "the child is not receiving" and "is unlikely to be provided or accepted without the coercive intervention of the Court." Ind. Code § 31-34-1-6. In this case, an Indiana trial court authorized the Department to take custody of a child with anorexia. Pet. App. 13a–14a. No party disputed that the child "was endangering Child's health," and "needed care . . . that Child was not receiving and would not receive without . . . intervention." Pet. App. 17. Although the child's eating disorder had a nexus with conflict with the parents over the child's gender identity, the court stressed that conflict was "not a reason to remove a child from a home." Pet. App. 81a. Rather, removal was necessary for the child's severe anorexia to "get resolved." *Id.* The trial court also ordered family therapy and unsupervised visitation, allowing discussion of the child's "transgender identity" during therapy but not "during visitation." Pet. App. 27a. That restriction would be lifted once the parents and child learned conflict management. Pet. App. 30a.

The court of appeals upheld the order placing the child with the Department under strict scrutiny. It accepted the trial court's factual determinations "as true," explaining that the parents "had no objection" to the trial court's findings that the child needed services under Indiana Code § 31-34-

1-6 to address an eating disorder or that the eating disorder was "fueled in part by Child's self-isolation from the Parents and that behavior was likely to reoccur if Child was placed back in the home with the Parents." Pet. App. 17a; *see* Pet. App. 20a–22a. The court also upheld the temporary speech restriction under strict scrutiny. According to the court of appeals, the restriction "directly target[ed] the State's compelling interest in addressing Child's eating disorder and psychological health" while allowing discussion of the child's gender identity "in therapy." Pet. App. 30a.

Shortly after the ruling on appeal, the child turned 18 years old, and the trial court terminated state custody. The questions presented are:

1. Whether this juvenile case is moot now that the child is an adult.

2. Whether the custody order violates substantive due process where the parents "had no objection" to factual findings that the order was "necessary" to safeguard the child's health.

3. Whether the temporary speech restriction satisfies strict scrutiny.

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STATEMENT OF THE CASE

This case arises out of a court order permitting the Indiana Department of Child Services (DCS) to remove A.C., a then-16-year-old child with severe anorexia, from home to address the eating disorder. That order does not rest on any moral judgment about the parents' views or decisions but on medical necessity.

I. Statutory Background

The Indiana General Assembly has established a system for protecting children whose health or well-being are in danger—known under Indiana law as "child[ren] in need of services" (CHINS). Ind. Code § 31-34-1 *et seq*. This system provides multiple procedural and substantive safeguards.

Before seeking to provide services to a child, the Indiana Department of Child Services (DCS) must seek judicial permission to file a petition alleging that a "child is a child in need of services." Ind. Code § 31-34-9-1(a). DCS may open a proceeding only if a state trial court conducts a "preliminary inquiry" and "finds probable cause to believe that the child is a child in need of services." § 31-34-9-2. And if DCS seeks to temporarily take a child from a parent's or guardian's custody, the court must find that "detention is necessary to protect the child" and hold a detention hearing within 48 hours to determine whether the child should remain in DCS's custody. §§ 31-34-5-1, -3.

If DCS receives judicial authorization to file a petition alleging that a child is in need of services, the court must hold an initial hearing on the petition within 10 days. Ind. Code § 31-34-10-2. Part of the hearing's purpose is to determine whether the petition's factual basis is disputed. If it is, an evidentiary

hearing is required to determine whether the child is a "child in need of services." § 31-34-11-1. After any evidentiary hearing, the court may make a finding that the child is a child in need of services. § 31-34-11-2. The court then must hold at least one more hearing, known as the dispositional hearing, to fashion judicial relief consistent with "the best interest of the child." §§ 31-34-19-1, -6.

Indiana law specifies a limited number of grounds on which a court can find that a child is a "child in need of services." Three are relevant here. A finding that a child is need of services under Indiana Code § 31-34-1-1 (CHINS-1) requires a finding that a parent's "inability, refusal, or neglect" is seriously impairing or injuring a child's health. § 31-34-1-1. Similarly, a finding that a child is a child in need of services under Indiana Code § 31-34-1-2 (CHINS-2) requires a finding that a parent's "act or omission" has injured the child. § 31-34-1-2. By contrast, a finding that a child is a child in need of services under Indiana Code § 31-34-1-6 (CHINS-6) focuses not on the parents but the child. That section's requirements are satisfied if a child "substantially endangers the child's own health or the health of another individual" and is not receiving needed care, treatment, or rehabilitation that is "unlikely to be provided or accepted without the coercive intervention of the Court." *Id.* "[N]o wrongdoing on the part of either parent" is required. *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010).

The purpose of Indiana Code § 31-34-1-6 (CHINS-6) (and similar provisions) is "to protect children" and others around them, "not punish parents." *N.E.*, 919 N.E.2d at 106. That provision can be used to provide

services to children in a variety of situations in which even well-intentioned parents find themselves unable to prevent serious harm. For example, DCS has used the statute to provide services to a child who suffered hallucinations, took "an entire bottle of pills," "threaten[ed] to take weapons to school, threaten[ed] to kill a teacher or children in their sleep" and threatened "to kill [her] Mother and brother" because the parents could not "protect the Child, themselves and others." *Matter of A.T.*, 219 N.E.3d 90, 97 (Ind. Ct. App. 2023). Nearly every State has a statute similar to Indiana Code § 31-34-1-6 (CHINS-6), authorizing state intervention where children "are jeopardizing their own welfare or that of others." *Mills Pub. Schs. v. M.P.*, 89 N.E.3d 1170, 1180 & n.14 (Mass. 2018) (collecting statutes).

II. Proceedings Below

This case began in May 2021 after DCS received two reports that petitioners M.C. and J.C. were suspected of abusing or neglecting their child, A.C. One report alleged that Mother was using "rude and demeaning language" toward A.C. "regarding Child's transgender identity." Pet. App. 4a. The second report, just ten days later, alleged that parents were "verbally and emotionally abusing Child because they do not accept Child's transgender identity," and that "the abuse was getting worse." Pet. App. 4a, 166a, 168a. At the time of the reports, the child was sixteen years old. Pet. App. 4a; *see* Pet. App. 137a. A DCS family case manager investigated the reports, meeting with the parents, A.C., and A.C.'s siblings, and

speaking with an employee of A.C.'s school. Pet. App. 167a–68a.

A. Trial court proceedings

1. DCS initiated a proceeding based on its investigation, alleging that A.C. was a child in need of services under Indiana Code § 31-34-1-1 (CHINS-1) and § 31-34-1-2 (CHINS-2) due to neglect and the parents' actions seriously endangering A.C.'s health. Pet. App. 5a, Pet. App. 165a. According to the DCS petition, both M.C. and A.C. "stated that Child had been suffering from an eating disorder for the past year but had yet to be evaluated by a medical professional"; the parents had withdrawn A.C. from school and DCS "was unaware of the family's intent to enroll Child in a new school"; and the parents had "discontinued" any therapy for A.C.'s mental-health issues. Pet. App. 5a. The petition also alleged that A.C. did not feel "mentally and/or emotionally safe in the home," and that M.C. used abusive language towards A.C., saying that "[A.C.'s preferred name] is the bitch that killed my son." *Id.* In the petition's assessment, A.C. was "more likely to have thoughts of self-harm and suicide" at home "due to mental and emotional abuse." *Id.*

The trial court held a combined initial and detention hearing at which both sides were represented by counsel to determine whether there was probable cause to find that the child was in need of services and, if so, whether the child should be detained. Pet. App. 96a–97a. The court heard testimony from the family case manager. Pet. App. 103a–111a. She explained that the parents recognized that the child had an eating disorder but had not sought treatment for it, the child had thoughts of self-harm because the

child's gender identity was "not being accepted," and the parents had removed the child from school. *Id.* The court also heard testimony from A.C.'s father, who explained that he and his wife had deeply held religious beliefs on gender and had previously sought therapeutic treatment for A.C. Pet. App. 120a, Pet. App. 122a; *see* Pet. App. 113a–124a. The parents also conceded that A.C. had other medical problems, observing that A.C. gained only one pound from ages fourteen to fifteen, and lost four pounds between fifteen and sixteen. Pet. App. 114a.

After hearing the testimony and reviewing the petition, the trial court issued an initial order in which it preliminarily concluded there was probable cause to believe that A.C. was a child in need of services. Pet. App. 109a. The court stated that it would hear additional evidence on that point at a dispositional hearing. *Id.* The court also ordered A.C. removed from the parents' custody "pending the fact finding or pending another hearing." Pet. App. 130a; *see* Pet. App. 51a–52a, 128a–129a. The court, however, did not require that A.C. be placed in a home that either affirmed or rejected A.C.'s declared gender. *See* Pet. App. 50a–52a, 128a–132a. The court also ordered unsupervised visitation between the parents and A.C. "so long as certain topics" (a category left undefined at the time) "are not addressed." Pet. App. 6a, 52a. The court further ordered A.C. to continue eating disorder treatment and ordered a psychological evaluation. Pet. App. 52a.

2. In October 2021, DCS amended its petition to allege that A.C. was substantially endangering A.C.'s own health, rendering A.C. a child in need of services

under Indiana Code § 31-34-1-6 (CHINS-6). Pet. App. 134a, 138a. DCS explained that A.C.'s eating disorder was worsening: A.C. had lost a significant amount of weight and was throwing away or hiding food. Pet. App. 141a–143a. A.C. was significantly underweight, weighing only 100 pounds. Pet. App. 142a. Doctors treating A.C. had concerns that A.C.'s eating disorder could cause brain damage and harm A.C.'s bones. *Id.* Despite these realities, A.C. was in denial that A.C. had an eating disorder, had lost weight, or needed treatment. *Id.* Even as A.C. was scheduled to begin a partial hospitalization program to treat anorexia, A.C. did not believe any treatment was needed. *Id.* DCS expressed concern that the eating disorder was fueled in part by A.C.'s continued disagreement with A.C.'s parents and would worsen if A.C. were placed back in the parents' home. Pet. App. 142a.

The trial court held another hearing to address the amended petition. At the hearing, the parties agreed that the allegations under Indiana Code § 31-34-1-1 (CHINS-1) and § 31-34-1-2 (CHINS-2) would be dismissed and that the underlying factual allegations would be unsubstantiated. Pet. App. 87a–88a, 90a. The parties agreed that DCS would proceed under Indiana Code § 31-34-1-6 (CHINS-6), which permits state intervention where a child is "substantially endanger[ing] the child's own health" and "needs care, treatment, or rehabilitation" that "the child is not receiving" and "is unlikely to be provided or accepted without the coercive intervention of the Court." Ind. Code § 31-34-1-6, *see* Pet. App. 86a–87.

In evaluating the allegation that court intervention was required under Indiana Code § 31-34-1-6, the

trial court heard testimony from A.C. The child testified and admitted to having an eating disorder and refusing treatment. Pet. App. 86a–89a. When asked whether the parents had "any opposition" to the factual basis for the amended petition and A.C.'s allegations, the parents' counsel said no. Pet. App. 89a. The court found that the statutory requirements were met, and ordered the continued placement of the child outside of the parents' home. Pet. App. 86a–87a. As the court explained, A.C.'s anorexia had "jeopardize[d] [A.C.'s] health," it was "fueled in part by the child's self isolation from the child's parents," and it was "likely to reoccur . . . if the child is placed back in the home of the parents." *Id.* The parents did not object to the trial court's factual findings or to A.C.'s placement outside of their home. Pet. App. 89a.

3. In December 2021, the trial court held a final dispositional hearing. Pet. App. 53a. After allowing additional testimony, the court issued the final dispositional order challenged here. Pet. App. 40a. The court ordered that DCS maintain custody of A.C. Pet. App. 46a. It explained that its "ultimate goal is for family reunification," but that permitting DCS to take custody was necessary for A.C.'s "medical issues" to "get resolved." Pet. App. 81a.

The court emphasized that it was not removing A.C. from the parents' home due to a disagreement or "a child having a certain lifestyle that the parent[s] don't agree with." Pet. App. 81a. "There ha[ve] always been issues" when "children do things that the parents don't agree with," the court explained, and those disagreements are "not a reason to remove a child

from a home." *Id.*; *see also* Pet. App. 68a (DCS explaining that it had not made any decisions in the case based on the parents' religious beliefs). The court ordered A.C. to participate in eating disorder treatment and individual therapy and ordered the parents and A.C. to continue family therapy. Pet. App. 42a–46a.

The court also left its order in place limiting the family from discussing transgenderism during visitations. Pet. App. 79a–80a. It agreed that it was "perfectly alright to have" discussions about A.C.'s and the parents' beliefs about gender identity. Pet. App. 80a. In fact, "at some point they have to have that conversation." *Id.* The court emphasized that these conversations should occur within the "family therapy that is being ordered" because of the connection between these conversations and A.C.'s anorexia. *Id.*

B. Appellate proceedings

1. On January 6, 2022, M.C. and J.C. appealed the trial court's two orders—the combined initial and detention order and the dispositional order—to the Indiana Court of Appeals. Pet. App. 3a–4a. The Indiana Court of Appeals concluded that any challenges to the initial orders were moot. Pet. App. 3a–4a. The trial court had dismissed the allegations based on Indiana Code § 31-34-1-1 (CHINS-1) and § 31-34-1-2 (CHINS-2), so "no relief is available to the Parents due to any alleged error in the court's probable cause determination on Child's detention." Pet. App. 8a–9a. A.C.'s placement outside the home was based on the final dispositional order instead. Pet. App. 9a.

The court of appeals upheld the final dispositional order. Pet. App. 4a. The court explained that the trial court's finding that A.C. met the requirements for

state intervention under Indiana Code § 31-34-1-6 (CHINS-6) was not "clearly erroneous." Pet. App. 10a–11a. Critically, the "Parents did not object . . . to the factual basis" for the trial court's order and "d[id] not argue on appeal that the Child is not a CHINS-6." Pet. App. 12a. It was undisputed that A.C. needed DCS services to "treat anorexia and individual and family therapy to ensure Child's emotional, mental, and psychological safety and well-being." *Id.* The parents, moreover, "had no objection" to the trial court's factual finding that the "Child had an eating disorder fueled in part by the Child's self-isolation from the Parents and that behavior was likely to reoccur if Child was placed back in the home with the Parents." Pet. App. 17a. As the court of appeals explained, that uncontested finding—as well as other evidence, including statements from A.C. on "'numerous occasions' that Child does not feel 'safe' with the Parents"—supported A.C.'s placement outside the parents' home until the medical issue was resolved. Pet. App. 17a–19a.

In upholding the dispositional order, the court of appeals rejected the argument that A.C. had been removed from the parents' custody because of their views about A.C.'s gender identity. Pet. App. 13a. As the court observed, the trial court had "specifically stated" that disagreement about transgender identity is "*not* a reason to remove a child from the home." Pet. App. 14a; *see* Pet. App. 13a, 18a n.4. Rather, the trial court removed A.C. from the parents' home because this was an "extreme case" in which a disagreement caused A.C. to "develop[] an eating disorder and self-isolat[e], which seriously endanger[ed] Child's physical, emotional, and mental well being." Pet. App. 14a.

Its focus was on A.C.'s "medical and psychological health needs." *Id.* In ordering A.C.'s removal from home and attendance at family therapy, the trial court's "ultimate goal" was to "reunit[e] the Parents and Child" by "providing the family with the structure and support they need to enable them to learn to deal constructively with their disagreement." *Id.*

The court of appeals rejected the argument that the final dispositional order violated the parents' Fourteenth Amendment right to the care, custody, and control of their child. Pet. App. 20a–21a. Observing that "'the courts of this state have long and consistently held that the right to raise one's children is essential, basic, [and] more precious than property rights,'" the court of appeals emphasized that this right is limited only "'by the State's compelling interest in protecting the welfare of children.'" *Id.* Here, the court explained, the "unchallenged" finding that A.C. required DCS services under Indiana Code § 31-34-1-6 (CHINS-6) established that the dispositional order was "necessary" to further the State's "compelling interest in protecting Child's welfare." Pet. App. 21a. The court again rejected arguments that A.C. had been removed because of the parents' beliefs about gender, observing that A.C. had been removed because A.C. was "substantially endangering" A.C.'s own health and "needs care, treatment, and rehabilitation that Child is not receiving." Pet. App. 21a–22a.

The court concluded that the dispositional order did not violate the parents' free-exercise rights either. Pet. App. 22a–27a. The dispositional order did not force the parents to choose between their beliefs about gender and having custody of their child. Pet. App.

24a. Rather, "the Dispositional Order was based on Child's medical and psychological needs and not on the Parents' disagreement with Child's transgender identity." Pet. App. 24a. So "the Dispositional Order does not impose a substantial burden on the Parents' free exercise of religion." Pet. App. 25a. Regardless, the court concluded that the dispositional order survived strict scrutiny. As the court explained, "the State has a compelling interest in protecting Child's physical and mental health." Pet. App. 26a. And A.C.'s "health was substantially endangered and that the care, treatment, and rehabilitation would likely not occur without the court intervention." *Id.* The order was "narrowly tailored to serve the State's compelling interest" as well. Pet. App. 27a. Uncontested evidence supported the trial court's finding that "maintaining Child's placement outside the home is essential to focus on treating Child's eating disorder and providing therapy," and parents were still allowed "unsupervised visitation with Child." *Id.*

Finally, the court of appeals rejected the parents' argument that restricting discussion of A.C.'s "transgender identity" during *unsupervised* visitations violated the First Amendment. Pet. App. 27a, 30a. Applying strict scrutiny, it concluded that allowing discussions of the child's gender identity during family therapy but not unsupervised visitations was "narrowly tailored to address the State's compelling interest" "in protecting Child's physical and psychological health." Pet. App. 30a. As the appellate court observed, "[t]he trial court recognized that Child's eating disorder and self-isolation were connected to the discord at home regarding Child's transgender identity" and so "the limitation of the discussion of this

topic" during unsupervised visitations "directly targets the State's compelling interest in addressing Child's eating disorder and psychological health." *Id.* The court of appeals, moreover, observed that the order was narrowly tailored. Pet. App. 30. It permitted A.C.'s transgender identity "to be discussed in therapy, which permits the family to work on conflict management so that they will eventually be able to safely talk about it outside family therapy." *Id.*

2. The parents sought rehearing, which the court of appeals denied on December 12, 2022. Pet. App. 32a–33a. By that time, A.C. had already turned 18 years old, and the underlying proceeding had been dismissed. *See* Pet. App. 32a; Pet. App. 86a; Resp. Add-1.[1] The parents then sought review by the Indiana Supreme Court. The Indiana Supreme Court declined to review the case. Pet. App. 1a–2a.

REASONS TO DENY THE PETITION

No one disputes that the parental and speech rights secured by the Fourteenth and First Amendments are important. But the state courts here did not order a child removed from the parents' home because of the parents' religious beliefs, their refusal to affirm their child's preferred gender identity, or a disagreement with the parents as to what upbringing would be best. The state courts were clear that a disagreement over how to raise a child "is *not* a reason to remove a child from the home." Pet. App. 14a, 81a.

Rather, petitioners' child was removed because the child had a severe eating disorder that petitioners had not been able to effectively address for two years, that

[1] A redacted version of the order is attached as an addendum.

jeopardized the child's brain and bone health, that was "fueled in part" by behavior "likely to reoccur" at home, and that would not be addressed "without coercive court intervention." Pet. App. 17a; *see* Pet. App. 114a, 142a. Under these "extreme" circumstances, the state courts held that A.C.'s removal and a temporary speech restriction on a topic fueling the eating disorder was "necessary" to achieve a "compelling interest" in preserving physical health. Pet. App. 14a, 21a, 30a.

That fact-bound application of strict scrutiny does not warrant review. Indeed, there is no relief that this Court could give now that A.C. is an adult and the challenged state-court orders no longer apply.

I. This Case Is Moot

The Court should deny the petition because this case is moot, and no relief can be given that would remedy petitioners' alleged injuries.

Article III of the Constitution limits federal courts to deciding "Cases and "Controversies." U.S. Const. art. III. To invoke this Court's jurisdiction, a party must identify a "'personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'" *California v. Texas*, 141 S. Ct. 2104, 2113 (2021). Article III's requirements persist through "'all stages of review,'" *Already, LLC v. Nike, Inc.*, 568 U.S. 84, 91 (2013). So "[n]o matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit,'" this Court cannot decide a question "'no longer embedded in any actual controversy about the [parties'] particular legal rights.'" *Id.*

In this case, petitioners M.C. and J.C. seek an advisory opinion no longer connected to any continuing

controversy about the parties' legal rights. Petitioners are challenging a state-court dispositional order placing their then-minor child in DCS custody and placing a condition on unsupervised visitation with their then-minor child. *See* Pet. 2; Pet. App. 3a–4a, 9a. But the parents' child is now a legal adult. *See e.g.*, Ind. Code § 31-9-2-7(c); *id.* § 1-1-4-5. DCS cannot provide A.C. services under Indiana Code § 31-34-1-6 (providing it applies only "before the child becomes eighteen (18) years of age"). And the trial court has terminated DCS's custody over A.C. and closed the case. Resp. Add-1. This case is now moot. *See Lehman v. Lycoming Cnty. Child.'s Servs. Agency*, 458 U.S. 502, 504 n.3 (1982).

A.C.'s parents may "dispute the lawfulness" of the trial court's orders. *Already*, 568 U.S. at 91. But resolution of that dispute would not affect "'particular legal rights.'" *Id.*; *see Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992). This case does not involve any damages claim. The only relief that this Court could give would be a judgment vacating the state-court orders. But that order no longer has any continuing force, and vacating that order "would not remedy the alleged injury." *Haaland v. Brackeen*, 599 U.S. 255, 292 (2023); *see California*, 141 S. Ct. at 2115–16. Vacatur would not return A.C. to the parents' custody or allow the parents to speak on certain matters to A.C. Pet. App. 40a–47a. Now that A.C. is an adult, A.C. is free to choose whether to spend as much (or as little) time with M.C. and J.C. as A.C. wishes, and M.C. and J.C. are free to speak with A.C. about whatever subjects they desire.

Below, petitioners argued that this case could have "legal implications" for their relationship with their other children. Reply in Support of Mot. to Transfer at *6, *M.C. v. Ind. Dep't of Child Servs.*, No. 22A-JC-00049 (Feb. 23, 2023). That is incorrect. Indiana law permits evidence of a prior "act or omission" regarding a child for the limited purpose of establishing intent or that a parent "is responsible for the child's current injury or condition." Ind. Code § 31-34-12-5; *see In re M.S.*, 140 N.E.3d 279, 285 n.4 (Ind. 2020) (relying on prior finding of parental neglect); *In re S.D.*, 2 N.E.3d 1283, 1290 (Ind. 2014) (same). But all allegations that the parents had neglected or harmed their child under Indiana Code § 31-34-1-1 (CHINS-1) and § 31-34-1-2 (CHINS-2) were dismissed and retracted. Pet. App. 87a–88a, 90a. The trial court's finding that A.C. needed services under Indiana Code § 31-34-1-6 (CHINS-6) does not require or imply a finding of parental "wrongdoing." *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010).

State evidentiary rules and dismissal of allegations aside, the dispositional order might impact petitioners' other children only in the event of a future court proceeding involving those children. But whether the parents would ever face allegations of neglect or abuse in the future is speculative—indeed, petitioners stress that they are "fit parents." Pet. 14, 27. Petitioners' abstract concern for their other children is "too speculative" and generalized to support federal jurisdiction. *Clapper v. Amnesty Int'l*, 568 U.S. 398, 401 (2013); *see Lujan*, 504 U.S. at 573–75. This Court should deny the petition, and follow its "regular prac-

tice" of "leav[ing] the judgment of the state court undisturbed." *ASARCO v. Kadish*, 490 U.S. 605, 621 n.1 (1989).

II. The Indiana Court of Appeals's Fact-Bound Holdings Do Not Conflict with a Decision from This Court or Any Other Court

The case does not warrant review regardless. Petitioners do not identify a colorable conflict, but challenge the application of general principles to this case. And much of their challenge is predicated on disagreements with the trial court's factual finding—which petitioners "did not object to" below, Pet. App. 12a—that the dispositional order was necessary to address A.C.'s eating disorder. *See, e.g.*, Pet. 21 (arguing that the state courts did not "properly account[] for . . . the fact that A.C.'s mental health significantly deteriorated in the state's custody"). These alleged, case-specific errors do not warrant review. *See* Sup. Ct. R. 10.

A. The petition does not identify a conflict concerning the application of this Court's parental-rights decisions

The petition argues that, in upholding the order granting DCS temporary custody, the Indiana Court of Appeals "contradicted" decisions establishing a "presumption that fit parents act in the best interest of their child." Pet. 25–26. But the presumption that fit parents act in the best interest of their child is simply that—a "presumption." *Troxel v. Granville*, 530 U.S. 57, 67 (2000) (plurality op.); *see Parham v. J.R.*, 442 U.S. 584, 604 (1979). It does not confer an "absolute" right on parents to do whatever they wish to children. *Doe v. Heck*, 327 F.3d 492, 520 (7th Cir. 2003). Rather, as petitioners' own authorities attest,

courts give parents the respect they deserve where they apply strict scrutiny. *Id.* at 519; *see, e.g.*, *Troxel*, 530 U.S. at 80 (Thomas, J., concurring); *Stanley v. Illinois*, 405 U.S. 645, 652 (1971); *Matter of Guardianship of L.Y.*, 968 N.W.2d 882, 898 (Iowa 2022) (citing *Santi v. Santi*, 633 N.W.2d 312, 320 (Iowa 2001)); *In re C.J.C.*, 603 S.W.3d 804, 814 n.49 (Tex. 2020); *Ex Parte E.R.G.*, 73 So.3d 634, 645 (Ala. 2011).[2]

Take this Court's decision in *Troxel*. In that case, the Court considered a visitation order entered under a statute that permitted "'[a]ny person'" to obtain visitation rights whenever "'visitation may serve the best interest of the child.'" 530 U.S. at 60 (plurality op.). The order there rested "solely on the judge's determination" as to what was "the child's best interest." *Id.* at 67 (plurality op.). In vacating the order, a majority explained that the "problem" was "not that [a state court had] intervened," but that the state court "gave no special weight at all" to the parent's views. 530 U.S. at 69 (plurality op.); *see id.* at 72–73; *id.* at 78–79 (Souter, J., concurring) (similar). No Justice took the position that States are absolutely forbidden from acting to protect children absent a "finding of [parental] unfitness." Pet. 31; *see* 530 U.S. at 73 (plurality

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[2] Petitioners' other cases applied a lower level of scrutiny or were decided on other grounds. *See In re A.A.*, 951 N.W.2d 144, 169 (Neb. 2020) (requiring state to prove by "preponderance of the evidence" exceptional circumstances limiting biological father's rights); *Matter of Guardianship of W.L.*, 467 S.W.3d 129, 137 (Ark. 2015) (interpreting statute terminating grandparent's guardianship once biological father revoked consent); *Tourison v. Pepper*, 51 A.3d 470, 473–74 (Del. 2012) (requiring presumption in favor of biological parents when terminating guardianship absent clear and convincing evidence of harm to child).

op.) (declining to announce a "*per se*" rule). Even the Justice who took the hardest line wrote that strict scrutiny would be a sufficient safeguard. *See* 530 U.S. at 80 (Thomas, J., concurring).

This case is not *Troxel*. Under the Indiana statutes relevant here, state courts must find that a child "substantially endangers the child's own health," "needs care, treatment, or rehabilitation" that "the child is not receiving," and that the needed services are "unlikely to be provided or accepted without the [court's] intervention." Ind. Code § 31-34-1-6 (emphasis added). It is not enough that a judge thinks he could make a better decision than the child's parents. And in selecting a remedy, Indiana courts must ensure that the remedy imposes "the least restraint" on both the child "and the child's parent." § 31-34-19-6; *see* § 31-34-5-3 (explaining requirements for detention). Courts cannot do whatever they wish. Indiana law thus requires that any intervention be both necessary to protect a child's health and minimally invasive. Strict scrutiny's requirements are built into the law.

The appellate court's approach here ensured the requirements of strict scrutiny were met twice over. First, the court determined that the custody order met Indiana's statutory requirements. Pet. App. 10a–20a. As the appellate court observed, A.C. admitted to meeting the statutory requirements for court intervention, and "the Parents had no objection to the Child's . . . admission or the factual basis for it." Pet. App. 17a. Other evidence supported the admission too. Testimony from A.C.'s own parents established that A.C. had gained only one pound from ages four-

teen to fifteen, and lost four pounds between ages fifteen and sixteen—all while in the parents' care. Pet. App. 114a. And at the time of the trial-court proceedings, a then-sixteen-year-old A.C. "weighed [only] 100 pounds," refused to admit to an eating disorder, and was at risk of brain and bone damage. Pet. App. 142a.

Second, the appellate court applied an equally demanding standard to petitioners' Fourteenth Amendment claim. It presumed that a "parent has a fundamental right to raise his or her child without undue influence by the state"—a right that is "'essential, basic, [and] more precious than property rights.'" Pet. App. 20a. And it upheld the custody order only after determining that it was "necessary"—not merely desirable—for advancing a "compelling interest" in "protecting [A.C.'s] welfare." Pet. App. 21a; *cf. In re D.J.*, 68 N.E.3d 574, 580 (Ind. 2017) (state intervention is reserved for "parents [who] lack the *ability* to provide for their children, not merely where they encounter *difficulty* in meeting a child's needs" (cleaned up)). The court went beyond *Troxel*'s requirements.

No other decision petitioners cite requires more. *Parham*, a procedural due process case, upheld a state law that allowed parents to voluntarily commit mentally ill children subject to state review. 442 U.S. at 620. It recognized the "presumption that the parents act in the best interests of their child." *Id.* at 604. Again, however, the Court did not treat that presumption as giving parents "absolute and unreviewable discretion." *Id.* Nor did *Quilloin v. Walcott*, 434 U.S. 246 (1978), hold that parents have absolute decisionmaking authority over children absent a finding of unfitness. In fact, it rejected the argument that an

unwed father could veto his child's adoption. *Id.* at 255. And *Stanley* rejected an automatic statutory presumption *against* unwed fathers, 405 U.S. at 649. Applying a state law that allowed the State to take custody of children "only after a hearing and proof of neglect," *id.* at 658, it simply required the same protection for married and unmarried fathers. *Id.* None of petitioners' cases require courts to do more than apply heightened scrutiny, as a majority did in *Troxel*.

Petitioners question whether the dispositional order was in fact "necessary" to prevent substantial deterioration of A.C.'s health. Pet. 26–31. But the state courts' case-specific, fact-bound determinations about what was "necessary" do not warrant review, Sup. Ct. R. 10, especially the "great deference" due "state-court factual findings," *Hernandez v. New York*, 500 U.S. 352, 364, 366 (1991) (plurality op.). And critically, A.C.'s parents raised "no objection" in the trial court to findings that the "Child was endangering Child's health," the Child "needed care," and "would likely not receive [care] without the court's coercive intervention." Pet. App. 17a. Indeed, "[i]t bears repeating" that the parents did "no[t] object[]" to findings that A.C.'s "eating disorder" was "fueled in part by Child's self-isolation from the Parents" and "was likely to reoccur if Child was placed back in the[ir] home." *Id.*

Petitioners argue they eventually "objected to the continued removal of A.C. from their home." Pet. 30 (citing Pet. App. 78a). That misses the point: Whatever petitioners' stance on the custody ruling, they concededly "did not object" to the factual findings underlying that ruling. Pet. 4; *see* Pet. 13, 29; Pet. App. 12a, 17a. So in evaluating the ruling, the appellate

court was entitled under state law to take the underlying findings "as true." Pet. App. 17a. Nor can petitioners excuse their failure to contest the findings by saying the trial court "should have" been clearer about the consequences of failing to object or "amended" its orders. Pet. 29–30. Petitioners cite no decision holding that parental rights requires States to suspend ordinary procedural rules. And to the extent that this case turns on enforcement of state procedural rules, this case does not raise a federal question sufficient to support jurisdiction. *See Fox Film Corp. v. Muller*, 296 U.S. 207, 209–10 (1935).

Petitioners, moreover, overlook stark physical evidence that supported the findings below. At the time of the trial-court proceedings, A.C. "weighed 100 pounds," refused to admit to an eating disorder, and was at risk of brain and bone damage. Pet. App. 142a. Nor can these problems be attributed to A.C.'s removal from the parents' home. *Contra* Pet. 21. As J.C. testified below, while A.C. was in the parents' care, A.C. gained only one pound from ages fourteen to fifteen, and lost four pounds between fifteen and sixteen. Pet. App. 114a. That testimony establishes that the eating disorder predated DCS's involvement and that the parents had been unable to address it. The evidence and trial court's findings—coupled with a clear-error standard of review—supports the trial court's determination that the dispositional order was "necessary" to protect A.C.'s health. Pet. App. 21a.

Petitioners seek to change the subject. They fault DCS for allegedly initiating an investigation due to their failure to "us[e] a cross-gender name" for A.C.

and for allegedly failing to "fully inform" them of various matters. Pet. 30. But petitioners do not explain how that affects the basis for the challenged dispositional order. As the trial court and court of appeals stressed, that order "was based on Child's medical and psychological needs and not on the Parents' disagreement with Child's transgender identity." Pet. App. 24a; *see* Pet. App. 12a–15a. Petitioners also observe that neglect allegations against them were dismissed. Pet. 27, 29. But there is no logical incompatibility between that voluntary dismissal and the finding that A.C. would not receive needed medical support absent court intervention. *See* Pet. App. 14a–15a.

At bottom, the petition asks this Court to engage in ordinary error correction—not resolve any question of national importance. No court held that a State may "remove any child that claims that their mental health is negatively affected by their parents' rules or religious beliefs." Pet. 28. To the contrary, the courts specifically—and repeatedly—emphasized that "disagreement between parents and a child" over religious, moral, or other issues, "is *not* a reason to remove a child from the home." Pet. App. 14a; *see* Pet. App. 13a, 18a n.4, 25a. And the courts emphasized that family reunification was the goal once A.C. stabilized medically. Pet. App. 18a n.4, 25a, 81a. The appellate court upheld the order as a "necessary" medical intervention based on factual findings to which petitioners raised "no objection." Pet. App. 17a, 21a. That narrow ruling does not conflict with any other decisions.

B. The petition does not identify a conflict arising from the application of this Court's decisions on speech rights

The conflict the petition alleges between this Court's First Amendment decisions and the decision below is illusory as well. In fact, the appellate court agreed with much of what petitioners argue here. It agreed that the trial court's order requiring the parents "to refrain from discussing Child's transgender identity during visitation" (but not therapy) constituted a "prior restraint." Pet. App. 27a, 30a; *see* Pet. 17–19. And the appellate court agreed that the restraint was subject to strict scrutiny. Pet. App. 28a; *see* Pet. 17–19. The appellate court parted ways with the parents only over the application of strict scrutiny to the facts of this case. It simply determined the restraint—which was limited and temporary—was necessary to prevent grave physical harm to A.C.

1. The petition makes the fact-bound nature of the dispute clear. It concedes that the appellate court treated the restriction as "a prior restraint subject to strict scrutiny." Pet. 18. The petition further concedes that "states have a compelling interest" in restricting parents' speech in front of their children where needed to "safeguard[] children's psychological well-being." *Id.*; *see Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944). What the petition disputes is the lower court's ruling that limiting discussion of the child's transgender identity during unsupervised visitation "directly targets" a "discord" that fueled the "Child's eating disorder." Pet. App. 30a. According to petitioners, "A.C.'s behaviors and beliefs—not Parents' speech—was the source of danger or harm to A.C."

Pet. 20; *see* Pet. 20–23. But a factual dispute over whether a state trial court correctly interpreted conflicting evidence does not warrant certiorari.

Petitioners, moreover, are wrong to suggest (at 21–22) that the underlying factual findings are clearly erroneous. The trial court heard evidence that A.C. felt "suicidal," "isolate[ed]" and engaged in "self-harm[]" in the parents' home. Pet. App. 61a. It also heard testimony that there was a "correlation between the stress and anxiety this child is feeling that is feeding into this anorexia," and that maintaining state custody of A.C. was "essential" for A.C.'s safety. *Id.* And critically, the parents did not object to the finding that "child has an eating disorder that jeopardizes [A.C.'s] health," which "is fueled in part by the child's self-isolation from the child's parents." Pet. App. 17a, 87a. Whether corroborated by "medical testimony" or not, Pet. 21, this testimony—and the parents' failure to object—rendered it "plausible" that the speech restriction was necessary to protect A.C. *Anderson v. City of Bessemer*, 470 U.S. 564, 573 (1985).

The petition also argues that the trial court failed to consider how A.C.'s mental health "significantly deteriorated in the state's custody, not the parents." Pet. App. 21–22. But petitioners again overlook that argument is foreclosed by their failure to challenge a factual finding that A.C.'s health would have deteriorated more severely "if Child was placed back in the home." Pet. App. 17a; *see* pp. 6–8, *supra*. And regardless petitioners misapprehend why the state courts considered the parent-child conflict. In evaluating the speech restriction, the state courts relied on the con-

nection between the discord and eating disorder to explain why the situation would be worse without any restriction during visitation. Pet. App. 30a, 81a. They were not examining custody. Whether or not another court "would have decided the case differently," that does not make the trial court's decision "clearly erroneous." *Anderson*, 470 U.S. at 573.

Given the trial court's findings, there is no inconsistency between the decision below and cases like *Shak v. Shak*, 144 N.E.3d 274 (Mass. 2020). In *Shak*, the court explained that a threatened harm must be "grave," and "all but certain" to occur. *Id.* at 278. That was the case here: A.C.'s eating disorder—causing A.C. to be "significantly underweight" at "approximately 100 pounds"—was certainly an actual and grave harm. Pet. App. 142a. A.C., moreover, admitted—and the parents did not object—that A.C.'s eating disorder was "fueled partly because of the child's self-isolation from the child's parents" and discord at home. Pet. App. 48a; *see* Pet. App. 13a–14a, 30a. So, the "nexus" between that discussion and A.C.'s self-harm, Pet. App. 81a, made it "all but certain" additional physical harm would occur, *Shak*, 144 N.E.3d at 278.

The petition is thus incorrect that the decision below blesses "restraining any speech between parent and child, even without a showing of harm." Pet. 19. Rather, the appellate court upheld a time-limited restriction precisely because A.C. "has an eating disorder that jeopardizes Child's health," and the speech restriction "address[ed] Child's eating disorder and psychological health." Pet. App. 30a. As a more recent

Indiana Court of Appeals decision observes, the decision in this case rests upon the trial court's "undisputed" finding that "conversations" would "harm[] the child" physically. *Easterday v. Everhart*, 201 N.E.3d 264, 271 (Ind. Ct. App. 2023). Petitioners' disagreement with the state courts' application of the law to unchallenged factual findings does not warrant review.[3]

2. Nor does the parties' fact-bound dispute over whether the restriction was narrowly tailored warrant review. As the appellate court explained, A.C.'s "eating disorder and self-isolation were connected to the discord at home regarding Child's transgender identity." Pet. App. 30a. The restriction thus had to "target[]" that discord. *Id.* Yet the court did not cut off discussion of A.C.'s gender identity entirely. It barred discussion only during *unsupervised* visitations while encouraging discussion during court-ordered family "therapy," which would "permit the family to work on conflict management" so that they could discuss the topic "outside family therapy." *Id.* And the trial court stated that it would lift the speech restriction as soon as it "hear[d] evidence that . . . it is time for that conversation." Pet. App. 80a.

Petitioners contend that the "trial court could have employed any number of less restrictive means." Pet. 23. Below, however, petitioners did not identify any less restrictive order that would advance a conceded

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[3] The court of appeals's comment about the speech at issue being "private speech," Pet. App. 28a–29a, reflects that the character of speech can affect the level of scrutiny applied in some contexts. Here, the public-private distinction is immaterial because the court still applied strict scrutiny. Pet. App. 29a–30a.

compelling interest in protecting A.C.'s health from further deterioration. The appellate court was not required to "'refute every conceivable option in order to satisfy the least restrictive means prong.'" *United States v. Wilgus*, 638 F.3d 1274, 1289 (10th Cir. 2011) (collecting cases). To show that a restriction is narrowly tailored, the government need only "support its choice of regulation" and refute "the alternative schemes offered by the challenger." *Id.*; *see Blattert v. State*, 190 N.E.3d 417, 423–24 (Ind. Ct. App. 2022). So the appellate court was not required to boil the ocean after the parents suggested no other options.

Regardless, it is far from clear that petitioners' newly proposed alternative—a limit only on "disparaging" comments about gender identity, Pet. 23—would prevent A.C.'s anorexia from worsening. The trial court found there was a "nexus" between A.C. and the parents' "discord about lifestyle and the medical issues." Pet. App. 81a; *see* Pet. App. 14a, 30a. It did not attribute A.C.'s anorexia to particular comments. Hence, it is not clear on a cold record that prohibiting "disparaging" comments would solve the issue, especially given the potential for differing views as to what constitutes a "disparaging" remark. The trial court accounted for these difficulties by ordering family therapy in which a therapist could help everyone "work on conflict resolution." Pet. App. 30a.

Barring discussion of an "entire topic" during unsupervised visitation is not viewpoint discrimination. *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 71 (2022); *contra* Pet. 23. Petitioners cite DCS testimony, but point to no court order permitting or prohibiting any viewpoint. Petitioners, moreover,

did not argue viewpoint discrimination below, and state courts did not pass on the issue. This Court should not address the issue on "first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

C. The petition fails to develop any free-exercise claim—much less show a conflict

Petitioners mention the Free Exercise Clause in passing, Pet. 24, but do not put forth a free-exercise claim warranting review. The petition overlooks that the dispositional order did "not" make reunification "contingent on the Parents violating their religious beliefs and affirming Child's transgender identity." Pet. App. 25a. The petition does not explain how any incidental burdens on religion betray an intentional targeting of religion. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). And the petition ignores the lower court's explanation of why the dispositional order survives strict scrutiny. Pet. App. 25a–26a. The petition only addresses the speech restriction in any detail, Pet. 24, which does not merit review for the reasons above, *see* pp. 23–28, *supra*.

III. This Case Does Not Warrant Review

All other considerations counsel against granting certiorari here. This case does not involve any state law or "domestic policy" regarding parental or First Amendment rights. Pet. 31. Indiana—DCS included—takes those rights seriously. *See, e.g.*, Indiana Attorney General Rokita, *Parents' Bill of Rights* (4th ed. Aug. 2023), https://www.in.gov/attorneygeneral/files/Parents-Bill-of-Rights.pdf. The "courts of this state have long and consistently held that the right to raise one's children is essential, basic, [and] more precious than property rights." *E.P. v. Marion*

Cnty. Off. of Fam. & Child., 653 N.E.2d 1026, 1031 (Ind. Ct. App. 1995). And the courts take speech seriously too, even in the juvenile-custody context. *See, e.g.*, *Easterday*, 201 N.E.3d at 269–71. That is precisely why the appellate court in this case applied strict scrutiny to the constitutional claims.

The only questions presented concern fact-bound issues regarding the application of general principles to a single—now moot—case. And there is no prospect that the narrow factual issues here will reoccur. The decision below disclaims that courts may remove children due to disagreements over upbringing, conflict over gender identity, or parents' religious convictions. Pet. App. 14a, 18a n.18, 25a. Instead, the decision rests on petitioners' failure to contest factual findings establishing the challenged orders were "necessary" to protect their child. Pet. App. 17a, 21a; *see Easterday*, 201 N.E.3d at 271 (explaining the speech restriction rested on an "undisputed" finding "that the conversations . . . harmed the child"). Whatever else, that failure—which the petition repeatedly asks this Court to overlook—makes this case an exceptionally poor vehicle for deciding any federal issue.

Petitioners posit that a "strong restatement of principles" informing parental rights is still needed. Pet. 35. But they do not cite any other cases like this one. And if recently enacted laws in California and Washington give rise to parental-rights challenges, Pet. 34, this Court can address the challenges then in a live case with an actual impact on parties' legal rights. Attempting to shoehorn questions about the relationship between parents and the State into a moot, fact-driven dispute, beset by uncontested state-

court factual findings subject to clear-error review, would risk producing a narrow, muddled statement. The Court can and should wait for a better opportunity to provide any guidance that may be needed.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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JANUARY 2024

Addendum

TABLE OF CONTENTS

STATE OF INDIANA	)	IN THE MADISON
	)	CIRCUIT COURT 2
	) SS:	
COUNTY OF MADISON	)	CAUSE NUMBER:
	)	48C02-2105-JC-000143

IN RE THE MATTER OF

[redacted]

A Child in Need of Services

Order on Wardship Termination

The Indiana Department of Child Services, local office in Madison County, (hereinafter, "DCS"), by its counsel, having filed its Request for Wardship Termination and the Court having considered same and now being duly advised in the premises, hereby GRANTS the Request and ORDERS wardship terminated for the child, [redacted].

1. Notwithstanding the fact that the court ordered permanency was not attained due to the child reaching the age of majority and no longer wishing to participate in reunification services.

2. The Court notes that none of the parties object to case closure.

3. Jurisdiction in this matter is hereby terminated without prejudice and this cause of action is ordered closed. Any hearings currently scheduled in this matter are hereby vacated.

So ordered this date.

12/13/2022

The Honorable Stephen Koester
Judge, Madison Circuit Court 2

Distribution:
[redacted]