NO. 25-840

IN THE

Supreme Court of the United States

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

Petitioners,

v.

BOB FERGUSON, GOVERNOR OF WASHINGTON, ET AL.,

Respondents.

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

AMICI CURIAE BRIEF OF NC VALUES INSTITUTE IN SUPPORT OF PETITIONERS

TAMI FITZGERALD
NC VALUES INSTITUTE
9650 Strickland Rd.
Suite 103-226
Raleigh, NC 27615

DEBORAH J. DEWART
Counsel of Record
111 Magnolia Lane
Hubert, NC 28539
(910) 326-4554
lawyerdeborah@outlook.com

Counsel for Amici Curiae

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae respectfully urges this Court to grant the Petition and reverse the Ninth Circuit ruling.

NC Values Institute, formerly known as the Institute for Faith and Family, is a North Carolina nonprofit corporation that works in various arenas of public policy to protect faith, family, and freedom, including parental rights. See https://ncvi.org.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case implicates a grave threat to the time-honored fundamental parental rights to the care, custody, and control of their children, including the right to make decisions about their medical care. Parental rights are "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Washington has enacted a statutory scheme (the "Statute") even more radically anti-parent than the Washington statute this Court struck down in *Troxel*. The Statute is designed to cause permanent harm to parent-child relationships. Parents risk losing the ability to refuse harmful treatment for their children,

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[1] Counsel of record for all parties received notice at least 10 days prior to the due date of *amicus curiae*'s intention to file this brief. *Amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

losing custody, losing the ability to raise their children according to their faith, and being forced to affirm gender confusion.

Parental rights are not created by statute or even constitutions but are natural, inalienable rights uniformly recognized by courts throughout American history. The sexual transitioning of children, facilitated with secrecy by a growing number of public schools—and now by the State of Washington—assaults these fundamental rights so severely as to essentially obliterate them. The State openly flouts Due Process while it surreptitiously provides dangerous "gender-affirming care" that is virtually guaranteed to cause irreparable harm.

ARGUMENT

I. PARENTS HAVE LEGAL STANDING TO CHALLENGE THE WASHINGTON LAW THAT ANNIHILATES THEIR RIGHTS AND TRANSFERS THEIR ROLE TO THE STATE.

A. Parental rights are inalienable and fundamental.

History reveals "a founding generation that believed parents to have complete authority over their minor children and expected [them] to direct the development of those children." *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 834 (2011) (Thomas, J., dissenting). Justice Scalia, while departing from the *Troxel* majority, vigorously affirmed the "right of parents to direct the upbringing of their children" as "among the unalienable Rights'

with which the Declaration of Independence proclaims all Men . . . are endowed by their Creator." 530 U.S. at 91 (Scalia, J., dissenting) (internal quotation marks omitted).

"[E]xtensive precedent" establishes beyond doubt that "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel*, 530 U.S. at 66. Due process rights to life, liberty, and property encompass "not merely freedom from bodily restraint but also the right . . . to marry, establish a home and bring up children, to worship God . . . ." *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923). These rights to establish a family are "essential." *Ibid*.; *see Troxel*, 530 U.S. at 65. As noted in a child custody dispute, a parent's "right to the care, custody, management and companionship" of his or her children is a "right[] more precious . . . than property rights." *May v. Anderson*, 345 U.S. 528, 533 (1953).

Parental rights are rightly classified as fundamental. "Marriage and procreation are fundamental to the *very existence and survival* of the race." *Skinner v. Oklahoma,* 316 U.S. 535, 541 (1942) (emphasis added). *Skinner* struck down a sterilization requirement, stressing the potentially "far-reaching and devastating effects" of depriving the individual of "a basic liberty." *Ibid*. The language used to recognize fundamental rights easily applies to parental rights—"deeply rooted in this Nation's history and tradition," *Moore v. East Cleveland,* 431 U.S. 494, 503 (1977) (plurality opinion); "so rooted in the traditions and conscience of our people as to be ranked as

fundamental," and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937). *See Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1977) (discussing criteria to recognize fundamental rights beyond those enumerated in the Bill of Rights).

In upholding a child labor law, this Court explained that "the family itself is not beyond regulation in the public interest" but simultaneously reaffirmed the paramount importance of parental rights: "It is cardinal with us that the custody, care and nurture of the child reside *first in the parents*, whose primary function and freedom include preparation for obligations *the state can neither supply nor hinder*." *Prince v. Massachusetts*, 321 U.S. 158, 166, (1944) (emphasis added).

B. Petitioners' allegations sharply differ from two earlier cases where this Court denied Petitions for Certiorari.

This Court recently denied certiorari in two cases concerning secret sex transition policies in public schools. Even assuming, arguendo, that the two cases were decided correctly—a questionable assumption—this case presents materially different facts.

One case arose in the Fourth Circuit: *John & Jane Parents 1 v. Montgomery Cty. Bd. of Educ.*, 78 F.4th 622, 626 (4th Cir. 2023) ("[t]he parents have not alleged that their children have gender support plans, are transgender or are even struggling with issues of gender identity"), *John & Jane Parents 1 v.*

Montgomery Cty. Bd. of Educ., 144 S. Ct. 2560 (2024) (denying certiorari).

The other case came to this Court from the Seventh Circuit: *Parents Protecting Our Child. v. Eau Claire Area Sch. Dist.*, 95 F.4th 501 (7th Cir. 2024) ("Applying *Clapper*'s reasoning here reveals that Parents Protecting's expressions of worry and concern do not suffice to show that any parent has experienced actual injury or faces any imminent harm attributable to the Administrative Guidance or a Gender Support Plan."), *Parents Protecting Our Children v. Eau Claire Area Sch. Dist.*, 145 S. Ct. 14 (2024) (denying certiorari).

Unlike these cases, the Petition presents five families where children have shown signs of gender dysphoria and/or socially transitioned at school. In a case involving two siblings, one child had accused the parents of being "transphobic" and taken the other child, "who underwent a social transition at school," to a "safe place" where that child's "pronouns would be respected." *Int'l Partners for Ethical Care Inc. v. Ferguson*, 146 F.4th 841, 846 (2025). Damage has already occurred and further harm is imminent unless this Court intervenes.

C. Parent-Petitioners satisfy the basic requirements for legal standing.

Petitioners have an unmistakably "personal stake in the outcome of the controversy." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). The Statute jeopardizes their fundamental right to direct the upbringing of their children and make important decisions about

medical care. They could potentially lose custody if their child seeks "gender-affirming care," with no opportunity to be heard or even know the location of the child.

1. **This is one of the rare cases where facial invalidation is appropriate.**

"A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). But here, it is difficult to fathom any conceivable set of circumstances where the Statute could be constitutionally applied. If or when it is applied to a particular child, the rights of that child's parents are instantly violated. The Statute is intentionally designed to exclude parents from their own child's unilateral, life-altering decision to transition to the opposite sex. Parents are kept in the dark until irreparable damage has already occurred.

2. **The parents are not "mere bystanders."**

The Statute deliberately targets parents who do not support their child's sex transitioning. "In these circumstances, the Parents are not merely unharmed bystanders who simply have 'a keen interest in the issue.'" *John & Jane Parents*, 78 F.4th at 641 (Niemeyer, J., dissenting), quoting *Hollingsworth v. Perry*, 570 U.S. 693, 700 (2013). Parents, unlike "mere bystanders," have an obviously personal stake in a controversy involving their own

children. *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 110 (2025). They are the very persons Washington targets and deliberately harms.

3. **Parents delegate *limited* authority to third parties under *limited* circumstances**.

"Simply because the decision of a parent is not agreeable to a child or . . . involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state." *Parham v. J. R.*, 442 U.S. 584, 603 (1979). The Statute defies this principle and usurps the authority of parents who do not affirm their child's sex transition.

Parents delegate authority *in loco parentis* "under circumstances where the children's actual parents cannot protect, guide, and discipline them." *Mahanoy Area Sch. Dist. v. B. L.,* 594 U.S. 180, 192 (2021). But the delegated authority is restricted. Parents do not delegate authority to expand the circumstances and cut them out. In public schools, parents must only be "treated as having relinquished the measure of authority that the schools must be able to exercise in order to carry out their state-mandated educational mission." *Id.* at 198-200 (Alito, J., concurring). They do not delegate authority to make decisions regarding whether their child is a boy or a girl.

4. **Parent-Petitioners are engaged in a constitutionally protected course of conduct.**

As this Court has "recognized on numerous occasions . . . the relationship between parent and child is constitutionally protected." *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978). Accordingly, Petitioners "inten[d] to engage in a course of conduct arguably affected with a constitutional interest" (*Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979))—making important medical decisions for their children and declining to affirm a sex transition.

5. **The harm does not hinge on a "highly attenuated chain of possibilities."**

There is a credible threat the State will enforce the Statute, causing not only a loss of parental rights to make medical decisions for their gender-confused children, *but also irreparable harm to those children.* Petitioners' fear is not "imaginary or wholly speculative." *Babbitt*, 442 U.S. at 302. They have "alleged an actual and well-founded fear that the law will be enforced against them." *Virginia v. American Booksellers Assn. Inc.*, 484 U.S. 383, 393 (1988). That fear does not rest on "harms lying at the end of a highly attenuated chain of possibilities . . . too speculative to support standing." *John & Jane Parents*, 78 F.4th at 629, citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013). As in *Parents Protecting*, the Statute "specifically encourages" officials "to keep parents in the dark" if a child requests gender-affirming treatment. *John & Jane Parents*, 145 S. Ct. at 14 (Alito, J., dissenting from

denial of certiorari). As a result, "the parents' fear that the [State] might make decisions for their children without their knowledge and consent is not 'speculative.'" *Ibid*., citing *Clapper*, 568 U.S. at 410. The parents' well-founded fear is "merely taking the [State] at its word." *Id.* at 145 S. Ct. at 14 (Alito, J., dissenting from denial of certiorari).

6. **Future harm is drastic and irreversible**.

As this Court has explained, "[t]he more drastic the injury that government action makes more likely, the lesser the increment in probability to establish standing." *Massachusetts v. EPA,* 549 U.S. 497, 525 n. 23 (2007) (cleaned up). When judged on such a sliding scale, the potential life-altering harm to children weighs heavily in favor of granting the parents legal standing.

7. **The statutory procedure is intentionally shrouded in secrecy and deceit, hiding the very facts that would establish legal standing.**

Mahmoud v. Taylor, 606 U.S. 522 (2025) emphasized parental rights to be informed and to opt out of curriculum they find objectionable. The State of Washington goes even further by offering to provide "gender-affirming treatment" to runaway children while actively deceiving their parents. Like public school policies that facilitate secret transitioning, the Statute is founded on "nondisclosure, instructing [shelter officials] not to inform parents about their

child's expressions of gender without that [child]'s consent." *Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 342 (1st Cir. 2025). This turns parental rights on its head.

In *Mahmoud*, the school board "stated that it w[ould] not notify parents" when the objectionable books would be used. 606 U.S. at 560. It was "not clear how" parents could obtain that information unless and until they heard about it later from their young child. *Ibid.* As in *Mahmoud*, the statute is intentionally veiled with secrecy that restricts the ability of parents to even *know where their child is*. This is essentially legalized kidnapping.

8. **The statutory procedure lacks Due Process, eviscerates parental rights, and is tantamount to kidnapping**.

Washington's statutory scheme now "provid[es] that the fact of a child's 'seeking or receiving protected health care services'[2] creates an additional instance in which the shelter's obligation to notify the child's parents is voided." *Int'l Partners*, 146 F.4th at 845; Wash. Rev. Code § 13.32A.082(2)(c)(i). This Court's recent *Mahmoud* decision clashes with Washington's anti-parent Statute, which turns parental rights upside down by placing the *child* in control over his/her parents.

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[2] Wash. Rev. Code § 13.32A.082(2)(c)(ii), (2)(d); *id.* at § 74.09.675(3) (defining "gender-affirming treatment"); *id.* at § 74.09.875(4)(c) (defining "reproductive health care services").

There is a shocking lack of Due Process in the State's crushing of parental rights. It is imperative for this Court to ensure that State officials respect the authority of parents to make important decisions for their children. Washington's severe interference with parental rights obliterates those rights without notice or opportunity for a hearing, i.e., basic Due Process. A shocking secrecy pervades the entire process. Washington upends parental rights, flipping the positions of parent and child.

Because parental rights are fundamental, the state must jump a high hurdle to remove a child from the custody of his/her parents or to terminate a parent's rights entirely. Parental rights, like other "liberties of the individual which history has attested as the indispensable conditions of an open as against a closed society . . . come to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." *Stanley v. Illinois,* 405 U.S. 645, 651 (1972), citing *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring). The unwed father in *Stanley* was entitled to a fitness hearing before termination of his parental rights, after the child's mother had died.

Even where parents "have not been model parents," or "blood relationships are strained," or custody has been temporarily lost, fundamental parental rights "do not evaporate." *Santosky v. Kramer,* 455 U.S. 745, 753 (1982). Due Process is required and the state must present "clear and convincing evidence" to "completely and irrevocably" terminate a natural parent's rights. *Id*. at 747-748.

When the state intervenes "to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." *Id.* at 753-754. Choices about raising children "are among associational rights . . . sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996). These rights are ranked as "of basic importance in our society." *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971). In *M.L.B.*, where the mother lacked funds to pay the costs of the record she needed to appeal a decision terminating her parental rights, this Court held that, "Mississippi may not deny M.L.B., because of her poverty, appellate review of the sufficiency of the evidence on which the trial court found her unfit to remain a parent." *M.L.B.*, 519 U.S. at 107. Parental rights were "sufficiently strong to require the state to pay those costs." *Ibid.*

Troxel upheld the right of fit custodial parents to control their children's associations, even with respect to close relatives—let alone the unrelated persons who interact with a child at a public shelter. This Court invalidated a Washington state statute that provided for any person to petition the court for child visitation rights that might serve the child's best interests. In *Troxel*, paternal grandparents had petitioned for the right to visit the children of their deceased son, who had never married the mother. The mother had married and her husband had adopted the children. Based on the Due Process Clause, U.S. Const. amend. XIV, this Court held that the "breathtakingly broad" nonparental visitation statute infringed the mother's parental right to control her

children's associations, even if visiting their grandparents might have benefited the children. *Troxel*, 530 U.S. at 67. The Statute at stake here is even more "breathtakingly broad."

II. PARENTAL RIGHTS FOLLOW THE CHILD EVERYWHERE.

Parental rights extend broadly to public and private life—medical care, education, religion, custody, and associations. Judicial precedent touches them all.

Education is a key area where the scope of parental rights has been extensively litigated. The "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." *Pierce v. Society of Sisters,* 268 U.S. 510, 534-535 (1925). Reasoning that a child is "not the mere creature of the state," this Court explained that "those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id*. at 534-535. *Pierce* upheld the right of parents to place their children in private school rather than "forcing them to accept instruction from public teachers only," a practice designed to "standardize" them. *Id*. at 535.

Parental rights were addressed at length in *Wisconsin v. Yoder*. "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond

debate as an enduring American tradition." 406 U.S. 205, 232 (1972). *Yoder*'s rationale logically extends to the paramount interest of parents in making important decisions about their children's medical care. This is *especially* true where the decision—a transition from one sex to the other—has such obviously radical implications for the child's future.

A. Parental rights follow the child into the doctor's office.

This Court recently upheld a state law enabling the "nonconsenting parent of an injured minor to sue a healthcare provider for violating the [state] law" that prohibited certain medical treatments for minors. *United States v. Skrmetti*, 222 L. Ed. 2d 136, 148 (2025). The law removed certain conditions—"gender dysphoria, gender identity disorder, and gender incongruence—from the range of treatable conditions." *Id.* at 155. *Skrmetti* is a landmark victory, not only for general parental rights to make medical decisions—but specifically as related to the gender identity issues presented in this case.

Wash. Rev. Code § 13.32A.082(2)(d) provides that

> "Protected health care services" means gender-affirming treatment as defined in RCW 74.09.675 and reproductive health care services as defined in RCW 74.09.875.

Accordingly, treatments related to sex transitioning fall within the spectrum of "health care" in the State of Washington. Parents are entitled to exercise their constitutional decision-making rights for their

children—but the State has enacted legislation that severely tramples those rights.

1. Children lack the maturity to make their own medical decisions.

It is difficult to imagine a more critical application of parental rights than basic medical decisions necessary to preserve a child's life and health. In *Skrmetti*, Tennessee concluded that minors lack "maturity to fully understand and appreciate the life-altering consequences" of the prohibited procedures. 222 L. Ed. 2d at 158, citing Tenn. Code Ann. §68-33-101(h). "Mounting evidence" supports the conclusion that children are unable to provide informed consent to "irreversible sex-transition treatments." *Skrmetti*, 222 L. Ed. 2d at 169 (Thomas, J., concurring). A child's "lack of maturity" and "underdeveloped sense of responsibility" can lead to "impetuous and ill-considered actions and decisions." *Ibid.*, citing *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (internal quotation marks omitted). The voices of a "growing number of detransitioners" echo the commonsense conclusion that children are unable to comprehend and consent to sex transition treatments. *Skrmetti*, 222 L. Ed. 2d at 170 (Thomas, J., concurring).

It is imperative that the State of Washington respect parental rights to be informed and consent when a child asks to socially transition or requests "gender-affirming" treatments. These are the first steps on a journey likely to end in deep regret and disaster. "The law's concept of the family rests on the presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment

required for making life's difficult decisions." *Parham,* 442 U.S. at 602. In *Parham*, this Court upheld Georgia's statutory procedure for parents to voluntarily commit a minor to a hospital for mental health treatment, reversing the state court's conclusion that the law was unconstitutional. A child "lacks the maturity, experience, and capacity for judgment" required to make such a difficult decision. *Ibid*. In *Planned Parenthood v. Casey*, this Court upheld laws requiring parental notification or consent prior to a minor's obtaining an abortion, "based on the quite reasonable assumption that minors will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart." 505 U.S. 833, 895 (1992), *overruled on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

Historically, American jurisprudence "reflects Western civilization concepts of the family as a unit with broad parental authority over minor children" and "cases have consistently followed that course." *Ibid*. Medical treatment falls well within the rights and duties of a fit parent. Common law has long recognized that "the only party capable of authorizing medical treatment for a minor in normal circumstances is usually his parent or guardian." *Newmark v. Williams*, 588 A.2d 1108, 1115-1116 (Del. 1990) (child's parents declined chemotherapy); *see* W. Posser & W. Keeton, The Law of Torts § 118 at 114-115 (5th ed. 1984).

2. The State may only override parental authority in cases of imminent danger.

Parental authority is not absolute, but the state may exercise *parens patriae* authority to override a parent's right to consent to healthcare treatment only when the child is "subject to . . . apparent danger or harm." *Mueller v. Auker,* 700 F.3d 1180, 1187 (9th Cir. 2012). The burden is on the State to prove "by clear and convincing evidence that intervening in the parent-child relationship is necessary to ensure the safety or health of the child, or to protect the public at large." *Newmark*, 588 A.2d at 1108. The state may intervene where a child is subject to life threatening conditions. *Id.*, at 1116, citing *In re Application of L. I. Jewish Med. Ctr.*, 147 Misc. 2d 724, 729, 557 N.Y.S.2d 239, 243 (N.Y. Sup. Ct. 1990).[3]

"[T]he tradition of parental authority is not inconsistent with our tradition of individual liberty." *Bellotti v. Baird*, 443 U.S. 622, 638-39 (1979) (plurality). Under normal, non-emergency circumstances, parents have a "liberty interest in family association to be with their children while they are receiving medical attention" and children have "a corresponding right to the love, comfort, and reassurance of their parents. . . ." *Wallis ex rel. Wallis v. Spencer*, 202 F.3d 1126, 1142 (9th Cir. 1999). These

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[3] Courts have ordered medical care (e.g., blood transfusions) over parental objections in cases where the child's life was in danger. *See, e.g., In re McCauley*, 565 N.E.2d 411 (Mass. 1991); *In re Guardianship of L.S. & H.S.*, 87 P.3d 521 (Nev. 2004). But that is far afield from the situation presented here.

associational rights are especially critical in a context where medical decisions are likely to have irreparable, life-altering consequences. The State of Washington is "[p]itting the parents and child as adversaries," an action "at odds with the presumption that parents act in the best interests of their child." *Parham*, 442 U.S. at 610.

The only "imminent danger" presented here arises from the Statute Petitioners challenge.

3. Social transitioning is medical treatment.

Courts consistently recognize social transitioning as a "medically necessary component" of gender dysphoria treatment. *Janiah v. Meeks*, 584 F. Supp. 3d 643, 678 (S.D. Ill. 2022) (prisoner's "housing in a facility matching one's gender identity and access to gender-affirming clothing and other items"); *Edmo v. Corizon, Inc.*, 935 F.3d 757, 770 (9th Cir. 2019) ("[t]reatment options" for gender dysphoria include "changes in gender expression and role," such as "living part time or full time in another gender role, consistent with one's gender identity"); *Lamb v. Norwood*, 899 F.3d 1159, 1161 (10th Cir. 2018) (same). "Treatment" typically includes "a social transition in which the person adopts a new name, pronouns, appearance, and clothing" combined with surgical interventions. *Tirrell v. Edelblut*, 748 F. Supp. 3d 19, 25-26 (D.N.H. Sept. 10, 2024) (girls' sports); *Clark v. Quiros*, 2024 U.S. Dist. LEXIS 132251, *13 (D. Conn. July 26, 2024) (prisoner) (noting "four broad categories" of "gender affirming care" —"mental healthcare, social transition, medical or

somatic treatments, and surgical interventions"); *Pinson v. Hadaway*, 2020 U.S. Dist. LEXIS 170246, *2 (D. Minn. July 13, 2020) ("social transition, hormone therapy, psychotherapy, or surgery"); *Porter v. Allbaugh*, 2019 U.S. Dist. LEXIS 83633, *3 n. 3, citing *Lamb*, 899 F.3d at 111 (in addition to hormones, surgeries, and psychotherapy, current treatments include "social transition . . . dressing and grooming oneself as well as taking on gender roles consistent with one's gender identity").

The State of Washington recklessly endangers the lives and health of young children when they use the Statute to usurp the role of a child's parents by providing "gender-affirming care" without the parent's consent or even knowledge.

B. The Statute lacks roots in historical precedent and clashes with the respect historically shown for parental rights.

In recent years, this Court has increasingly undertaken a historical analysis to examine key constitutional rights. *See, e.g.*, *American Legion v. American Humanist Assn.*, 588 U.S. 19, 60 (2019) (religious display); *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014) (legislative prayer); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022) (Establishment Clause). That is a worthwhile approach here. Parental rights are easily traced back to America's founding generation. But "sex education" in public schools is a troubling "20th-century innovation." *Mahmoud*, 606 U.S. at 582 (Thomas, J., concurring). Public schools have adopted alarming policies to introduce transgender ideology and secretly

"transition" young children from one sex to the other. It is even more radical for a state to enact a broad sweeping statutory process to encourage such transitions by offering "gender-affirming treatments" to runaway children and excluding parents from the decision-making process. There is no historical warrant for such a dramatic departure from the practices of past decades.

III. PARENTAL RIGHTS IMPLICATE SPEECH, RELIGIOUS LIBERTY, AND COERCED IDEOLOGY.

Parental rights are even broader than the religious liberty rights addressed in *Mahmoud*. It unquestionably undermines the rights of parents to "direct the [religious] upbringing of their children" (*Yoder*, 406 U.S. at 233) when schools "[t]each[] young children about sexual and gender identity in ways that contradict parents' religious teachings." *Mahmoud*, 606 U.S. at 590 (Thomas, J., concurring). The storybooks posed "a very real threat of undermining" the religious beliefs the parents were teaching their children. *Id*. at 522, quoting *Yoder*, 406 U.S. at 218. But it undermines parental rights even more when a State enacts laws that encourage runaway children to defy their parents' authority and provide treatments the parents oppose *for any reason*, religious or otherwise. Such a scheme is even more radical than the storybooks in *Mahmoud*. Indeed, "if a State were empowered, as *parens patriae*, to save a child from the supposed ignorance of his religious upbringing . . . [s]uch an arrangement would upend the enduring American tradition of parents occupying the primary role . . . in the upbringing of their

children." *Mahmoud*, 606 U.S. at 585 (Thomas, J., concurring); *Yoder*, 406 U.S. at 222, 232-233 (internal citations and quotation marks omitted).

Transgender ideology is invading American life at an alarming rate. In addition to the Statute's massive intrusion on parental rights, it jeopardizes First Amendment rights to both speech and religion by actively deceiving a child's parents if they do not affirm the *child*'s life-altering decision to transition to the opposite sex. This is a massive interruption of a State's expected truthfulness with its citizens. The State of Washington surreptitiously facilitates a major life decision that is virtually guaranteed to cause irreparable harm. The Statute turns family structure on its head. Instead of children requiring parental permission, the State bows to the will of a child. This law is unconscionable.

A. The Statute compels parents to align their parenting decisions with the State's viewpoint on a highly controversial matter.

The Statute is *viewpoint*-based, demanding compliance with transgender ideology regardless of conscience, moral convictions, or religion. A government edict that commands "involuntary affirmation" demands "even more immediate and urgent grounds than a law demanding silence." *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 585 U.S. 878, 893 (2018), citing *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 633 (1943) (internal quotation marks omitted). The Statute transgresses freedom of thought, long

recognized as the "indispensable condition" of "nearly every other form of freedom." *Palko v. Connecticut*, 302 U.S. at 326-27, *overruled on other grounds by Benton v. Maryland*, 395 U.S. 784 (1969). The freedom of thought that undergirds the First Amendment merits "unqualified attachment." *Schneiderman v. United States*, 320 U.S. 118, 144 (1943).

B. The Statute jeopardizes religious liberty by demanding ideological conformity in defiance of this Court's precedent.

The State's demand for compliance with a particular ideology is blatant viewpoint discrimination.

Convictions about sexuality are intertwined with religion and conscience. Many faith traditions have strong teachings about sexual morality, marriage, and the distinction between male and female. Compelled speech—that a boy is a girl or a girl is a boy—tramples these deeply held convictions. Religious speech is not only "as fully protected . . . as secular private expression," but historically, "government suppression of speech has so commonly been directed *precisely* at religious speech that a free-speech clause without religion would be Hamlet without the prince." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (internal citations omitted).

Mandatory compliance with the State's preferred viewpoint is abhorrent to the First Amendment. This blatant, unlawful viewpoint discrimination does not hinge on the presence of religious objections. *Barnette, Wooley*, and *NIFLA* are "eloquent and powerful

opinions" that stand as "landmarks of liberty and strong shields against an authoritarian government's tyrannical attempts to coerce ideological orthodoxy." Richard F. Duncan, *Defense Against the Dark Arts: Justice Jackson, Justice Kennedy, and the No-Compelled Speech Doctrine*, 32 Regent U. L. Rev. 265, 266 (2019-2020)266; *Barnette*, 319 U.S. 624; *Wooley v. Maynard*, 430 U.S. 705 (1977); *Nat'I Institute of Family & Life Advocates v. Becerra ("NIFLA")*, 585 U.S. 755 (2018).

The "proudest boast" of America's free speech jurisprudence is that we safeguard "the freedom to express 'the thought that we hate.'" *Matal v. Tam*, 582 U.S. 218, 246 (2017) (plurality opinion) (quoting *United States v. Schwimmer*, 279 U.S. 644, 655 (1929) (Holmes, J., dissenting)). Gender identity may be "embraced and advocated by increasing numbers of people," but that is "all the more reason to protect the First Amendment rights of those who wish to voice a different view." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660 (2000). Our law also protects the right to remain silent—to *not* express viewpoints a speaker hates. Compelled expression is even worse than compelled silence because it affirmatively associates the speaker with a viewpoint he does not hold. The Statute so seriously threatens parental rights that some parents will be pressured into feigned agreement with the State's transgender ideology.

Mahmoud recently reaffirmed this Court's aversion to coerced ideological conformity. The challenged Storybooks "present[ed] as a settled matter a hotly contested view of sex and gender that sharply conflict[ed]" with the beliefs of the parent

plaintiffs. *Mahmoud*, 606 U.S. at 553. That viewpoint is not universally accepted. Some may agree, "[b]ut other Americans wish to present a different moral message to their children." *Id*. at 552. In *Mahmoud*, the school's "LGBTQ+-inclusive curriculum and no-opt-out policy pursue[d] the kind of ideological conformity that *Pierce* and *Yoder* prohibit." *Mahmoud*, 606 U.S. at 588 (Thomas, J., concurring).

Here, the situation is even more dire than in public school. Children are encouraged *by the State* to run away from home if they want to receive "gender-affirming" treatments. Parental rights follow the child outside the home or school, "extend[ing] to the choices that parents wish to make for their children" in other contexts. *Mahmoud*, 606 U.S. at 547. One basic choice is the parents' right to direct "the religious upbringing" of their children, as "long recognized" by this Court. *Id*. at 545; *see Espinoza v. Mont. Dept. of Revenue*, 591 U.S. 464, 486 (2020) (quoting *Yoder*, 406 U.S. at 213-214). The no-opt-out policy "undermine[d] parents' religious beliefs" and interfered with their right to "direct the religious upbringing of their children." *Mahmoud,* 606 U.S. at 590 (Thomas, J., concurring), citing *Yoder*, 406 U.S. at 232-233. The surreptitious treatments at stake in this case are even more dangerous to these fundamental parental rights.

IV. PARENTAL RIGHTS DEMAND STRICT SCRUTINY.

This case presents one of the most extreme parental rights violations ever to reach this Court. Undoubtedly the state has "a compelling interest in protecting the physical and psychological well-being of

minors." *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989). But that does not warrant flouting parental rights when a child demands to "transition" to the opposite sex.

Courts must safeguard the rights of parents to make medical decisions for their children. These rights are critical to the health, safety, and life of children across the nation. The Ninth Circuit should have considered the fundamental nature of the rights at stake and subjected the claims to strict scrutiny. This case presents no medical emergency, life threatening or otherwise, that would justify government intervention to override a parent's decision.

Strict scrutiny should be required by the *nature* of parental rights. In *Mahmoud*, this Court found that because "the character of the burden" was the same "as that imposed in *Yoder*," it was unnecessary to ask whether the law was "neutral or generally applicable," as might otherwise be required by *Emp't Div. v. Smith*, 494 U.S. 872 (1990). *Mahmoud*, 606 U.S. at 564. Although *Mahmoud* was specifically concerned with religious rights, the analogy is close enough to apply its rationale. Parental objections to secret transition policies are often founded on religious convictions, morality, conscience, or simply biological reality. This case, like *Yoder*, rests on the bedrock nature of parental rights. But whatever the basis for a parent's objections—religious or otherwise—parental rights must be respected as "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel*, 530 U.S. at 65. No government—federal, state, local, or agency—has any

right to flip the order and demand that parents comply with the will of their *child*.

CONCLUSION

This Court should grant the Petition and reverse the Ninth Circuit ruling.

Respectfully submitted,

Deborah J. Dewart
Counsel of Record
111 Magnolia Lane
Hubert, NC 28539
(910) 326-4554
lawyerdeborah@outlook.com

Tami Fitzgerald
NC Values Institute
9650 Strickland Rd.
Suite 103-226
Raleigh, NC 27615

Counsel for Amici Curiae