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

BRIEF OF ATLANTIC LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICUS CURIAE* [1]

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, nonpartisan, public interest law firm. ALF's mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. *See* atlanticlegal.org.

* * *

ALF long has defended parents' natural and legal right to superintend their children's upbringing and make decisions regarding their children's health, education, and well-being. This fundamental right, however, is under attack by activists who seek to usurp parental control over gender-confused minor

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[1] Petitioners' and Respondents' counsel were provided timely notice of this brief in accordance with Supreme Court Rule 37.2. No counsel for a party authored this brief in whole or part, and no party, counsel for a party, or person other than the *amicus curiae* and its counsel made a monetary contribution intended to fund preparation or submission of this brief.

children. Despite their relatively small number, these activists have gained a disproportionate influence in many state legislatures—including that of the State of Washington. Their well-organized and well-funded effort to unravel our nation's social fabric systematically exploits boys and girls with doubts about who they actually are. A critical part of this exploitation—as the Washington State laws at issue here show—is the removal of parents from having any say, or even prior knowledge, concerning whether gender-confused, runaway or other children will undergo "gender affirming care." This so-called gender transitioning includes surgery that most do not hesitate to call "mutilation." It also includes psychological treatment that in many instances is designed to encourage such children to accept a gender different from that of their biological sex—something that many parents may disagree with in terms of the proper way to raise such children.

The question presented is whether the petitioners have standing to challenge the State of Washington's enactment of laws that completely remove parents from having any decision-making role as to whether their runaway children will undergo gender transitioning. Insofar as gender-confused children run away from parents who object to them receiving 'gender-affirming care,' the state laws at issue not only obstruct the exercise of parental rights, but also aid and abet gender ideologues who seek to destroy the family-based fabric of our society.

The Court should grant the petition for writ of certiorari and reaffirm parental rights over their minor children, including those who may be confused about their gender identity. To underscore the importance of this issue, this amicus brief highlights the deeply-rooted jurisprudential history of parents' right to direct their children's upbringing.

SUMMARY OF ARGUMENT

Since at least 1923, the Supreme Court has recognized parents' critical role in being the primary caretakers of their children and overseeing their upbringing. *See, e.g., Meyer v. Nebraska*, 262 U.S. 390, 401 (1923) (recognizing "the power of parents to control the education of their own."). In so holding, the Court merely recognized something deeply embedded in the English common law—that parents, and not the State, are the primary caregivers of their children. As such, they are vested with the final authority to make decisions regarding their upbringing. This includes decisions about "major surgery for [their] child[ren], even in a state hospital." *Parham v. J.R.*, 442 U.S. 584, 624 (1979) (Stewart, J., concurring in the judgment).

The Washington laws in question here deprive parents of this fundamental right. They cannot be reconciled with either this Court's precedents or the English common law. As a matter of common sense, parents have standing to challenge such laws.

ARGUMENT

The Court Should Grant Review and Hold That Parents Have Standing To Challenge the State of Washington's Gender Transition Laws For Runaway Gender-Confused Children

A. This Court long has recognized parents' right to direct the upbringing of their children

In various contexts, the Court repeatedly has recognized that parents have a fundamental interest and responsibility for the upbringing of their children. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (parents have a fundamental right to control their children's education); *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 511 (2020) (Gorsuch, J., concurring) ("[T]his Court has already recognized that parents' decisions about the education of their children can constitute protected religious activity.") (citing *Yoder*, 406 U.S. at 214-15). While this right originally came about in the context of educating children, the Court has expanded it to other contexts.

1. In *Meyer v. Nebraska*, 262 U.S. at 400, the Court recognized that the Fourteenth Amendment affords parents the right to oversee and control the upbringing and education of their children, explaining that "it is the natural duty of the parent to give his children education suitable to their station in life."

The Court reaffirmed this parental right a short time later, holding that parents have the right "to direct the upbringing and education of children under

their control." *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534-35 (1925). *Pierce* emphasized that "[t]he child is not the mere creature of the state; 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 535.

2. Five decades after *Meyer* and *Pierce*, the Court held that the Fourteenth Amendment creates a presumption that a parent is competent in educating and caring for a child, and that the burden lies on a State to prove otherwise. *See Stanley v. Illinois*, 405 U.S. 645 (1972).

In *Stanley* the Court invalidated an Illinois statute providing that upon the death of a mother, children of unwed fathers automatically became wards of the State. *Id.* at 646-47, 649. The Court held that the state law's presumption that unwed fathers were inherently unfit to raise their children violated basic due process and parental rights. *See id.* at 651 ("The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment.").

3. Several years later, the Court recognized the logical implications of this constitutional presumption of competency when it held that parents can commit their child to a mental facility against his or her will, so long as the child (through a legal representative) is afforded an opportunity to present evidence to rebut the presumption. *See Parham v. J.R.*, 442 U.S. 584 (1979). "Our jurisprudence," the Court wrote,

"historically has reflected Western civilization concepts of the family as a unit *with broad parental authority over minor children*." *Id*. at 602 (emphasis added).

The Court explained that "[t]he law's concept of the family rests on a presumption that *parents possess what a child lacks in maturity, experience and capacity for judgment required for making life's difficult decisions*." *Id*. at 602 (emphasis added). "More important," the Court continued, "historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children." *Id*. (citing 1 William Blackstone, *Commentaries on the Laws of England* *447 (1765); 2 James Kent, *Commentaries on American Law* *190 (1826-1830)). In other words, "[t]he statist notion that governmental power should supersede parental authority . . . is repugnant to American tradition." *Id*. at 603.

Notably, in *Parham* Justice Stewart wrote a concurring opinion that is even more emphatic about parents' rights and responsibilities with regard to their children, even when it comes to difficult decisions about their psychological well being. "For centuries," he wrote, "it has been a canon of the common law that parents speak for their minor children. So deeply embedded in our traditions is this principle of law that the Constitution itself may compel a State to respect it." *Id.* at 621 (Stewart, J., concurring in the judgment). The state law at issue in *Parham* correctly presumed that parents act in their children's best interests, even when parents "make

decisions for their minor children that deprive the children of liberty." *Id.* at 624. "In the case of parents, the presumption[] [is] grounded in a statutory embodiment of long-established principles of the common law." *Id.* at 623.

"Under our law," Justice Stewart continued, "parents constantly make decisions for their minor children that deprive them of liberty, and sometimes even of life itself." *Id.* at 624. Then, in words that have a prophetic tone when read in the context of today's attempt by state governments to enforce transgender ideology upon children, Justice Stewart stated "surely the Fourteenth Amendment is not invoked when an informed parent decided upon major surgery for his child, even in a state hospital." *Id.*

Justice Stewart took it as a matter of common sense that minor children suffered no deprivation of their Fourteenth Amendment constitutional rights when parents made decisions over whether or not to have their children undergo "major surgery." On the contrary, he correctly noted that parents have a constitutional interest in making such decisions for their children. Little could he have anticipated that the day would arrive in which state governments would attempt to deprive parents of having any say whatsoever in whether their children should undergo so-called "gender-affirming care."

4. The Supreme Court most recently addressed parental rights in *Troxel v. Granville*, 530 U.S. 57 (2000). There, the Court invalidated application of a

state statute that allowed, over a parent's objections, nonparental visitation rights with children, provided that a trial court has determined by a preponderance of evidence that the children would benefit from such visitations. *See* 530 U.S. at 67-75.

In *Troxel* the trial court had awarded visitation rights to paternal grandparents (whose son had committed suicide) over the strong objection of the children's natural mother. *Id.* at 60-63. The Supreme Court explained that "[m]ore than 75 years ago, in Meyer . . . we held that the 'liberty' protected by the Due Process Clause includes the right of parents to 'establish a home and bring up children' and 'to control the education of their own.'" *Id.* at 65.

After citing its precedents beginning with *Meyer*, the Court observed in *Troxel* that "[i]n light of this extensive precedent, it cannot be doubted 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." *Id.* at 66. Given this long line of cases, the Court held the statute at issue "unconstitutionally infringes on that fundamental parental right." *Id.* at 67.

Justice Souter's separate opinion in *Troxel* strongly endorsed the importance of parental rights, observing that such rights would be undermined if the trial court's visitation ruling were upheld. *Id.* at 75-79 (Souter, J., concurring in the judgment). Quoting *Meyer*, Justice Souter explained that "[a]s we first

acknowledged in *Meyer*, the right of parents to 'bring up children,' 262 U.S., at 399, and 'to control the education of their own' is protected by the Constitution, *id*., at 401." *Troxel*, 530 U.S. at 77 (emphasis added). He further indicated that "[t]he strength of a parent's interest in controlling a child's associates is as obvious as the influence of personal associations on the development of the child's social and moral character." Id. at 78.

Justice Stevens, in his dissenting opinion in *Troxel*, conceded that his "colleagues [were] of course correct to recognize that the right of a parent to maintain a relationship with his or her child is among the interests included most often in the constellation of liberties protected through the Fourteenth Amendment." *Id.* at 86-87 (Stevens, J., dissenting). There is "no doubt that parents have a *fundamental liberty interest in caring for and guiding their children*, and a corresponding privacy interest . . . in doing so *without undue interference of strangers to them and to their child*." *Id*. at 87 (emphasis added).

B. English and American common law undergird this Court's parental rights jurisprudence.

Both English and American common law long ago recognized the right of parents to raise their children in the manner that they believe to be the most appropriate. This historical background played an important role in development of the Supreme Court's jurisprudence on parental rights.

1. The English common law could not have been clearer that parents have an inviolate right to oversee the upbringing and education of their children. "Indeed, not only did the common law not interfere with the parental right and duty, it enforced the parents' educational wishes against unwilling children." S. Ernie Walton, *The Fundamental Right to Homeschool: A Historical Response to Professor Bartholet*, 25 Tex. Rev. L. & Pol. 377, 403 (2021).

For example, in *Hall v. Hall*, (1749) 26 Eng. Rep. 1213, a child's legal guardian petitioned the Court of Chancery to send the child back to school at Eton after he had refused to return, demanding instead that he be schooled by a private tutor. Concluding that the child's "guardian was the proper judge at what school to place him," the court granted the petition. *Id.*; *see also Tremain's Case*, (1718) 93 Eng. Rep. 452 (granting guardian's petition to compel child to return to school at Cambridge despite child's desire to attend Oxford).

Renowned British jurist William Blackstone was emphatic about the rights that parents possess. He wrote that one of their most important rights and duties is "that of giving [their children] an education suitable to their station in life: a duty pointed out by reason, and of far the greatest importance of any." Blackstone, *supra* at *438. Blackstone's views relied on the work of jurist and political philosopher Samuel Pufendorf. *Id.* While Pufendorf recognized that parents could delegate the responsibility of educating their children to others, he too was adamant that parents retain full responsibility for, and oversight of,

their children's education. *See* Samuel Pufendorf, *The Whole Duty of Man According to the Law of Nature* 274 (Andrew Tooke trans., 4th ed. 1716).

John Locke, one of the most influential political philosophers of the founding generation, was no less firm in maintaining that parents have ultimate authority over their children's upbringing and education. "The well Educating of . . . Children," he wrote, "is so much the Duty and Concern of Parents, and the Welfare and prosperity of the Nation so much depends on it, that I would have every one lay it seriously to heart . . . ." John Locke, *Some Thoughts Concerning Education* lxiii (1693) (Cambridge Univ. Press ed. 1880).

2. This English common-law tradition of recognizing parental rights continued in the United States, even prior to the Supreme Court's opinion in *Meyer*. During the Nineteenth Century and thereafter, state courts were virtually unanimous in holding, for example, that the parents are presumed capable of caring for and educating their children, and that state authorities carry the burden of proving otherwise. This is essentially the same presumption that the Supreme Court subsequently adopted in *Stanley* and *Parham*, *supra*.

In *O'Connell v. Turner*, 55 Ill. 280 (1870), the State of Illinois committed a child to what was tantamount to a precursor of a juvenile detention center. The State did so without any finding that his parents were unable to care for him. *Id.* at 281-82, 284-85. The

father petitioned to have his son returned to his custody. Agreeing with the parent, the Illinois Supreme Court was adamant that "[t]he parent has the right to the care, custody and assistance of his child. The duty to maintain and protect it, is a principle of natural law." *Id.* at 284. The court concluded that the Illinois law that provided for the child's commitment made it far too easy to disrupt the parent-child relationship. *See id.* "Before any abridgment of the right, gross misconduct or almost total unfitness on the part of the parent, should be clearly provided." *Id.* at 284-85. The court thus ordered the child returned to his father. *Id.* at 287-88.

While *Turner* did not directly involve a dispute between a parent and a school, its holding and rationale are nevertheless relevant to the present case because of the burden of proof that it enunciated. *Turner* explicitly rejected the notion that a parent can be presumed to be incompetent or incapable of educating and caring for his or her child. Instead, a presumption of competency must attach to the parents in all disputes between them and a school over a particular policy or teaching matter. *Id.* at 284-85; *accord Mill v. Brown*, 88 P. 609 (Utah 1907).

The Wisconsin Supreme Court applied this presumption in the educational context in *Morrow v. Wood*, 35 Wis. 59 (1874). There, a father enrolled his son in a public school. *Id.* at 60. While generally agreeing with the teacher's proposed curriculum, the father disagreed with the teacher's decision to have his son study geography. *Id.* After the father directed

his son to refuse to study that subject, his teacher inflicted corporal punishment. *Id.* at 62-63. The state supreme court rejected the notion that "upon an irreconcilable difference of views between the parent and teacher as to what studies the child shall pursue, the authority of the teacher is paramount and controlling." *Id.* at 63. It observed that normally, a parent has the "exclusive right to govern and control the conduct of his minor children." *Id.* at 64. The court also emphasized that by electing to send the child to public school, the parent did not relinquish his ability to have a say in what the student was to learn. *Id.* at 65. "The parent is quite as likely to make a wise and judicious selection as the teacher . . . ." *Id.* at 66.

The Nebraska Supreme Court echoed this language in *Sheibley v. School District No. 1*, 48 N.W. 393 (Neb. 1891). There, the court noted that a parent is presumed to be acting in the best interests of the child. *Id.* at 395. "[W]ho is to determine what studies [the student in question] shall pursue in school—a teacher, who has a mere temporary interest in her welfare, or her father, who may reasonably be supposed to be desirous of pursuing such course as will best promote the happiness of the child?" *Id.* It accordingly concluded that a parent's right to determine a child's course of studies prevailed over that of a teacher.

Given this, there can be no question that parents have a fundamental right to decide whether to subject their children to particular medical procedures. This especially applies to medical procedures that some

may call "gender-affirming," but which many other believe to be nothing more than mutilation. The Washington laws in question here take parents entirely out of the equation with regard to such decisions. To hold that parents lack standing to challenge such laws would enable the State to eviscerate their fundamental right to control their children's upbringing without any legal recourse.

C. The Washington State laws violate fundamental parental rights

Judge VanDyke minced no words in his dissenting opinion about the threat that the Washington laws pose to parental authority. "Washington's legal regime governing gender-confused children now empowers its state-run shelters to hide minors from parents and to encourage them to travel farther down the path of gender ideology—all while hiding from fit parents what the state or other actors do in those shelters." Pet.App.35a. Such an "odious framework," he continued, "inverts the age-old, common-sense principle that parents—not the state and certainly not the child—hold primacy over the parent-child relationship." *Id.*

Nor is this deprivation of parental authority academic. The laws in question present four different types of harm: "(1) parents are denied the right to consent to or refuse treatment for their child, including gender transition; (2) notice to parents is now denied or at least significantly delayed; (3) if given notice, parents are not informed about their

child's condition and location; and (4) the child's return is significantly to indefinitely delayed." Pet. at 6.

If a minor runs away, any youth shelter that comes into contact with the minor must, ordinarily, contact the minor's parents within seventy-two hours, preferably within twenty-four hours. Wash. Rev. Code §13.32A.082(1)(b)(i). The new laws in question, however, make a major exception for to this if the minor is "seeking or receiving protected health care services." Wash. Rev. Code §13.32A.082(2)(c)(ii). "Protected health care services," in turn, are defined to "include[] gender-affirming treatment[.]" Wash. Rev. Code §13.32A.082(2)(d). In such a situation, notification is only given to the Department of Children, Youth and Family Services ("DCYF"), which is in turn required to "[o]ffer to make referrals on behalf of the minor for appropriate behavioral health services." Wash. Rev. Code §13.32A.082(3)(b)(i).

Not only are parents side-stepped in deciding whether their children should be subject to such treatment, they are not even provided notice or, if they are, such notice is delayed. Pet. at 11-13. And even if the parents receive notice, they are not told about where their child is or the condition that the child is in. (Pet.14-15). Finally, a significant delay takes place in reunifying the child with the parents. Pet. at 15-16.

Emphasizing the role of parents, Dr. Bob Basu, President of the American Society of Plastic Surgeons, recently stated that "[b]ased on what we see today, we

cannot endorse gender-related surgical intervention in minors and adolescent patients, given the uncertainties that we've discovered. . . . Parents and patients . . . should take time to either accept or decline any treatment. . . . Because the evidence is limited in this area, some interventions are irreversible." Kristine Parks, *We Cannot Endorse: Why the Nation's Plastic Surgeons are Pulling Back on Youth Gender Surgery*, Fox News (Feb. 9, 2026), *available at* tinyurl.com/5n7ajrx2.

But despite this warning, the Washington laws turn the rights of parents to make medical decisions on behalf of their children on its head. It is a far cry from Justice Stewart's observation that the constitutional rights of minors are "not invoked when an informed parent decides upon major surgery [or not] for his child, even in a state hospital." *See Parham*, 442 U.S. at 624 (Stewart, J., concurring in the judgment). The law "now treats the parents of children suffering from gender dysphoria as per se neglectful or abusive and does not require the shelter to contact them." Pet.App.38a (VanDyke, J., dissenting from the denial of rehearing en banc).

CONCLUSION

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

Respectfully submitted,

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