No. 25-840

In the Supreme Court of the United States

INTERNATIONAL PARTNERS FOR ETHICAL CARE, INC.; ADVOCATES PROTECTING CHILDREN; PARENTS 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, AND 5B, *Petitioners*,

v.

ROBERT FERGUSON, GOVERNOR OF WASHINGTON, IN HIS OFFICIAL CAPACITY; NICK BROWN, ATTORNEY GENERAL OF WASHINGTON, IN HIS OFFICIAL CAPACITY; AND TANA SENN, SECRETARY OF THE WASHINGTON DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES, IN HER OFFICIAL CAPACITY, *Respondents*.

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

BRIEF FOR LIBERTY COUNSEL AS AMICUS CURIAE SUPPORTING PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

Liberty Counsel is a national civil liberties organization that provides education and legal defense on issues relating to religious liberty, the sanctity of life, and the family. Liberty Counsel is committed to upholding the historical understanding and protection of the rights to free speech and free exercise of religion and ensuring those rights remain an integral part of the country's cultural identity. Liberty Counsel has been substantially involved in advocating for the religious liberty of Americans whose sincerely held religious beliefs compel adherence to Biblical positions on education, sexual orientation, gender, and marriage. Liberty Counsel attorneys have represented clients before this Court, including in a number of cases in which the Free Exercise Clause was a seminal issue, *e.g.*, *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 889 (2020); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289 (2021), and frequently represent clients in free exercise cases in every federal circuit court of appeals and federal district courts. Its attorneys have also spoken and testified before Congress on matters relating to government infringement on First Amendment rights.

Amicus has an interest in ensuring that parents are not deprived of their First Amendment right to direct the religious upbringing of their children by overzealous state legislative majorities

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[1] No counsel for any party authored this brief in whole or in part, and no person other than Amicus or its counsel made a monetary contribution intended to fund this brief's preparation or submission.

that subscribe to radical gender ideology. Parents – not the government – are best positioned to assist their children as they navigate questions of gender identity that many adolescents grapple with, and their right to do so in accordance with the dictates of their faith must be preserved.

SUMMARY OF THE ARGUMENT

Just about a month after this Court unequivocally "reject[ed] this chilling vision of the power of the state to strip away the critical right of parents to guide the religious development of their children" in *Mahmoud v. Taylor*, 606 U.S. 522, 559 (2025), the Ninth Circuit Court of Appeals rejected a challenge to a series of Washington State laws that require state funded agencies providing shelter to runaway youth to hide children from their parents and facilitate medical intervention for gender transition and abortion without parental knowledge or consent, even where parents object to such interventions on the basis of their sincerely held religious beliefs.

Although the lower court rejected the parents' challenge to the statutory scheme on standing grounds, the notion that parents who—consistent with their religious beliefs, are guiding their child away from gender transition and whose child has threatened to or actually run away before—lack standing to seek redress in the courts *before* their child is secreted away by the State and led down an irreversible path to living a life in contravention of the parents' religious beliefs is absurd.

The petitioner parents enjoy a God-given right and mandate, protected by the First Amendment, to

parent their children in accordance with their religious beliefs, and "when a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit." *Id.* at 559-60.

It is clearly alleged in the First Amended Complaint that Parents 3A & 3B and 4A & 4B ("the objecting parents") maintain religious objections to their respective children attempting to change their gender to something other than their biological sex, which was ordained by a perfect God. In spite of this clearly articulated religious basis for these parents' legal challenge to Washinton's usurpation of their parental rights, the Ninth Circuit made no mention of the Free Exercise Clause in its decision dismissing the action. The court below seemingly did not consider these parents' faith-based objections to the challenged statutory scheme and showed no regard for the protections afforded to them by the First Amendment.

A*micus* requests that this Court grant certiorari to make clear that parents have a First Amendment right to direct the religious upbringing of their children, and that this right is infringed when the State takes physical custody of the children of fit parents and ushers them into medical procedures without the knowledge or consent of their parents.

This Court has already recognized that "[m]any Americans…believe that biological sex reflects divine creation, that sex and gender are inseparable, and that children should be encouraged to accept their sex and to live accordingly." *Mahmoud* at 552. Because Washington's statutory scheme "substantially interferes with the religious development of the

parents' children and those policies pose a very real threat of undermining the religious beliefs and practices that the parents wish to instill in their children," the challenged statutes must be subjected to strict scrutiny. *Mahmoud* at 565 (cleaned up). Once that happens, the State laws necessarily fail.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit erred in dismissing the complaint for lack of standing.

The lower court's conclusion that the objecting parents lacked standing to sue was clear error. The argument that these parents did not have standing to challenge Washington's statutory scheme is nothing more than a red herring. "When a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit…Instead, to pursue a pre-enforcement challenge, a plaintiff must show that the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Mahmoud* at 559-60 (internal citations and quotation marks omitted). The objecting parents met this standard. Accordingly, their claims must be allowed to proceed.

The lower court summarized the challenged statutory enactments thusly:

> **ESSB 5599**
>
> Enacted in 2023, ESSB 5599 approved a set of amendments to Wash. Rev. Code § 13.32A.082. 2023 Wash. Legis. Serv., ch. 408, § 2 (West). That law, which was enacted in 1995, sets forth a system of notification requirements that apply when a licensed youth shelter

"shelters a child and knows at the time of providing the shelter that the child is away from a lawfully prescribed residence or home without parental permission." Wash. Rev. Code § 13.32A.082(1)(b)(i).[ ] Upon admitting such a child, the shelter "must contact the youth's parent within 72 hours, but preferably within 24 hours." *Id.*[ ] However, in the presence of "compelling reasons," including any "[c]ircumstances that indicate that notifying the parent or legal guardian will subject the minor to abuse or neglect," the shelter may forego contacting the child's parents and contact the Washington Department of Children, Youth, and Families (DCYF) instead. *Id.* § 13.32A.082(1)(b)(i), (2)(c)(i). Upon contact, DCYF must "make a good faith attempt to notify the parent that a report has been received and offer services to the youth and the family designed to resolve the conflict ... and accomplish a reunification of the family." *Id.* § 13.32A.082(3)(a).

ESSB 5599 adds to this framework by creating a notification pathway that is specific to youth "seeking or receiving protected health care services," including "gender-affirming treatment" and "reproductive health care services." *Id.* § 13.32A.082(2)(c)(ii), (2)(d).[ ] Under the existing framework set forth in Wash. Rev. Code § 13.32A.082, licensed shelters that took in such children were obligated to notify their parents so long as doing so would not "subject the minor to abuse or neglect." *Id.* § 13.32A.082(2)(c)(i). ESSB

5599 modifies this framework by providing that the fact of a child's "seeking or receiving protected health care services" creates an additional instance in which the shelter's obligation to notify the child's parents is voided. *Id.* § 13.32A.082(2)(c)(ii). In these situations, as when the shelter fears potential abuse or neglect by the child's parents, the shelter may again forego contacting the child's parents and contact DCYF instead. *Id.* § 13.32A.082(1)(b)(i), (2)(c)(ii).[2]

As in a case involving potential abuse or neglect, a licensed shelter's report to DCYF will again trigger DCYF's good-faith obligation "to notify the parent that a report has been received and offer services to the youth and the family designed to resolve the conflict ... and accomplish a reunification of the family." *Id.* § 13.32A.082(3)(a). ESSB 5599 further specifies that, if a licensed shelter notifies DCYF that it has taken in a minor seeking or receiving "protected health care services," DCYF must specifically offer two types of services. First, DCYF must "[o]ffer to make referrals on behalf of the minor for appropriate behavioral health services." *Id.* § 13.32A.082(3)(b)(i). Second, DCYF must "[o]ffer services designed to resolve the conflict and accomplish a reunification of the family." *Id.* § 13.32A.082(3)(b)(ii).

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[2] The court's summary softens the blow. The statutory language actually contains mandatory, not optional, language regarding parental notification, to wit: "If there are compelling reasons not to notify the parent, the shelter or organization must instead notify the department." Sec. 2(b)(i).

SHB 1406

Enacted during the same session as ESSB 5599, SHB 1406 implements two additional revisions to the framework set forth in Wash. Rev. Code § 13.32A.082. 2023 Wash. Legis. Serv., ch. 151, § 2 (West). First, it creates additional rules concerning DCYF's good-faith obligation to notify a child's parents and offer services after receiving a report of a runaway child. Wash. Rev. Code § 13.32A.082(3)(a). Specifically, in addition to "notify[ing] the parent that a report has been received," *id.*, DCYF must offer "family reconciliation services," *id.*, which are "services ... designed to assess and stabilize the family with the goal of resolving crisis and building supports, skills, and connection to community networks and resources," *id.* § 13.32A.030(11). DCYF must offer these services "as soon as possible, but no later than three days, excluding weekends and holidays, following the receipt of a report." *Id.* § 13.32A.082(3)(a).

Second, SHB 1406 expressly recognizes a pathway for qualifying minors to stay in a licensed shelter for up to 90 days without parental permission. *See id.* § 13.32A.082(1)(b)(i). This pathway is only available in two situations: (1) if the shelter "is unable to make contact with a parent despite their notification efforts" to the parent or DCYF, *id.* § 13.32A.082(1)(b)(i)(A), or (2) if the shelter "makes contact with a parent, but the parent does not request that the child return

> home," *id.* § 13.32A.082(1)(b)(i)(B).[3] In either scenario, the shelter must re-contact DCYF, which again must offer reconciliation services to the family. *Id.* § 13.32A.082(3).

Intl. Partners for Ethical Care Inc v. Ferguson, 146 F.4th 841, 844-46 (9th Cir. 2025).

To establish standing "[i]n a case arising from an alleged violation of the Establishment Clause, a plaintiff must show, as in other cases, that he is 'directly affected by the laws and practices against which [his] complaints are directed.'" *Trump v. Hawaii*, 585 U.S. 667, 697-98 (2018) (quoting *School Dist. of Abington Township v. Schempp,* 374 U.S. 203, 224, n.9 (1963)). Here, Parents 3A & 3B—whose child is autistic in addition to suffering from gender confusion—allege that they have information that their child recently arranged with a friend to leave the home without their permission and seek refuge at a friend's home with a parent who is supportive of his desired gender transition. Petition, p. 102a, ¶¶ 136-137. Parents "3A and 3B also fear that should [their child] run away to a shelter, they would be forced to accept 'gender affirming treatment' for him or socially affirm him as if he were female, such as using a female name or pronouns, just to be allowed to bring

[3] The new statutory language replaced the term 'consent' (of the parent) with the caveat that 'the parent does not request that the child return home', shifting the burden off of the State to obtain parental consent and onto the parent who may not know they have the right to request the return of their child. A parent ignorant of the law may not make the request, in turn giving the State carte blanche to retain custody of the child and facilitate medical procedures in violation of the parent's constitutional rights.

him home. SB 5599 provides state actors with arbitrary discretion to determine what 3A and 3B would have to do to get their son back." *Id.* at ¶ 41. They also have a concern that due to his autism, he would be easily coaxed by adults into receiving so-called "gender affirming care" without understanding the breadth of the implications, perhaps until it is too late. *Id.* at ¶¶ 39-40. Parents 4A & 4B allege that their "children are part of social activities where they could be especially at risk of pressure to take on an alternate gender identity from their actual sex [and] that their children, if they succumb to that pressure, could run away knowing that 4A and 4B's religious beliefs do not support the idea that a child can change from being a boy to a girl or from being a girl to a boy." *Id.* at ¶¶ 45-46. And the law is clear that the parents need not wait until these direct harms caused by the statute come to fruition to seek redress in the courts. *Mahmoud* at 559-60. To require that, especially under the circumstances presented in this case, would be devastating not only to the objecting parents but to the children who could quite literally have their still developing bodies irreversibly mutilated if these claims are not allowed to proceed until after the anticipated harm actually comes to pass. That cannot be what the law requires.

"The essence of the standing inquiry is whether the parties seeking to invoke the court's jurisdiction have 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.'" *Larson v. Valente*, 456 U.S. 228, 238-39 (1982)

(internal citations omitted). There is nothing a parent has a greater personal stake in than his or her child, and even more so when the parent's religious convictions dictate how he or she is to raise that child.

"The concept of standing is a necessarily flexible one" for this reason. *Schempp*, 374 U.S. at 267 (citing *Baker v. Carr*, 369 U.S. 186 (1962)).

The Ninth Circuit skirted the constitutional issues presented by this case by holding that the objecting parents lack standing to sue. This Court should push through the lower court's pretextual basis to the heart of the matter, and void Washington's statutory scheme as violative of the First Amendment.

II. Washington's statutory scheme violates the parents' right to free exercise of religion by providing their children the means to escape their supervision and access irreversible medical procedures without parental consent and in contravention of their religious convictions.

Washington's statutory scheme substantially interferes with the religious development of runaway youth, thereby impermissibly burdening the parents' religious exercise. In *Mahmoud*, this Court rightly "reject[ed] [the dissent's] chilling vision of the power of the state to strip away the critical right of parents to guide the religious development of their children." *Mahmoud* at 559. If "government burdens the religious exercise of parents when it requires them to submit their children to instruction that poses a very real threat of undermining the religious beliefs and

practices that the parents wish to instill[]" (*Id.* at 534), how much more is the religious exercise of parents burdened when the state absconds with their children and provides the children with religiously proscribed medical procedures? The court should grant certiorari and reverse the judgment of the Ninth Circuit.

A. Washington's statutory scheme impermissibly burdens the parents' right to raise their children in a manner consistent with their religious beliefs.

This Court held in *Mahmoud* that the "[Montgomery County School] Board's introduction of the 'LGBTQ+-inclusive' storybooks—combined with its decision to withhold notice to parents and to forbid opt outs—substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that *Yoder* found unacceptable." *Id.* at 550 (citing *Wisconsin v. Yoder*, 406 U.S. 205 (1972)). Washington's new statutory scheme that not only withholds parental notice of instruction regarding ideologies to which the parents maintain opposing religious views, but actually facilitates children's physical transition, also without offering religious opt outs or exceptions, imposes a far greater burden on this sacred parental right.

The nature of the interference by the State of Washington is more extreme than in both *Yoder* and *Mahmoud*, and the consequences are even more dire. "There is no dispute…that the decision-making capacity of adolescents is developing, but not yet complete…[and] that children's lack of maturity and underdeveloped sense of responsibility often lead to

impetuous and ill-considered actions and decisions." *United States v. Skrmetti*, 605 U.S. 495, 540-41 (2025) (Thomas, J., concurring) (cleaned up). "It is therefore unsurprising that the risks associated with puberty blockers and cross-sex hormones are difficult for adolescents to comprehend and appreciate, as the near certainty of infertility is likely to not be appreciated until the age during which most individuals consider having children." *Id.* (cleaned up). Notwithstanding this, the State of Washington thought it prudent to enact a law allowing children to run away and remain away from home for the purpose of obtaining so-called gender affirming care without the need for parental consent.

Washington's statutory scheme poses "a very real threat of undermining the religious beliefs that the parents wish to instill in their children[,]" (*Mahmoud* at 553-54), which, in turn, "present[s] the same kind of objective danger to the free exercise of religion" that this Court identified in *Mahmoud* and in *Yoder*. Parental "rights are violated by government policies that substantially interfere with the religious development of children and…such interference… carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent." *Id.* at 546 (cleaned up).

B. Strict scrutiny is the appropriate test to assess the constitutionality of the Act.

Because the "the burden imposed" upon the objecting parents by Washington's statutory scheme "is of the same character as that imposed in *Yoder*" (and *Mahmoud*), this Court "need not ask whether the

law at issue is neutral or generally applicable before proceeding to strict scrutiny." *Mahmoud* at 564.

The challenged statutory scheme burdens the objecting parents' right to direct the religious upbringing of their children in that it directs state employees to facilitate medical intervention for children without the involvement of their parents, which interventions can include irreversible procedures and drug therapies that run afoul of the parents' religious beliefs and practices, and potentially irreparably interfere with parents' ability to direct the religious upbringing of their children. Because "the burden imposed is of the same character as that imposed in *Yoder*, [a court] need not ask whether the law at issue is neutral or generally applicable before proceeding to strict scrutiny." *Mahmoud* at 561.

C. Washington's statutory scheme cannot survive strict scrutiny because there is no compelling state interest in hiding children away from their parents while facilitating secret sex change procedures, particularly where such procedures are at odds with the parents' religious beliefs.

"To survive strict scrutiny, a government must demonstrate that its policy 'advances interests of the highest order' and is narrowly tailored to achieve those interests." *Mahmoud* at 565 (quoting *Fulton v. Philadelphia*, 593 U.S. 522, 541 (2021) and *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993)). It is unfathomable that sheltering a runaway child without notifying the parents of the child's whereabouts, then helping the child to get

irreversible sex reassignment surgery or cross sex hormones without parental consent, could be "of the highest order." In fact, this Court has articulated the grave dangers of imposing these medical interventions on children. *See, e.g.*, *Skrmetti* at 532-546 (Thomas, J., concurring).

"The 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." *Pierce v. Socy. of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 535 (1925). It is not for the state to stand in the place of parents and make decisions about children's destiny without regard to the religiously motivated desires of their parents. Nor do children have an absolute right to make decisions apart from their parents. This Court has "recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing." *Bellotti v. Baird*, 443 U.S. 622, 634 (1979). Put differently, this Court has recognized "that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *Id.* at 635. "Consent and involvement by parents in important decisions by minors long have been recognized as protective of their immaturity." *Id.* at 649. The graver the decision faced by the child, the more important parental involvement becomes. *See, e.g., H. L. v. Matheson*, 450 U.S. 398, 412 (1981) ("The

Utah statute is reasonably calculated to protect minors in appellant's class by enhancing the potential for parental consultation concerning a decision that has potentially traumatic and permanent consequences.").

The argument that hiding children's gender confusion and transition from their parents is necessary because parents may not support their children's espoused desire to live as members of a different sex also fails. As this Court made clear in *Parham v. J. R.*, 442 U.S. 584 (1979):

> Simply because the decision of a parent is not agreeable to a child…does not automatically transfer the power to make that decision from the parents to some agency or officer of the state…Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments. The fact that a child may balk…or complain about a parental refusal to provide cosmetic surgery does not diminish the parents' authority to decide what is best for the child.

Id. at 603-04 (citing Goldstein, *Medical Case for the Child at Risk: On State Supervention of Parental Autonomy*, 86 Yale L.J. 645, 664–668 (1977); Bennett, *Allocation of Child Medical Care Decisionmaking Authority: A Suggested Interest Analysis*, 62 Va.L.Rev. 285, 308 (1976)). In other words, it is not the role of government to supplant its judgment for

that of parents. A majority of state legislators in the State of Washington may think—and apparently do think—that a minor's choice of gender identity is in all circumstances right and good and something to be defended, but if a parent holds a different opinion in accordance with the dictates of his or her faith and conscience, it is the prerogative of the parent to deal with the child and the situation in the manner the parent deems appropriate.

The legislature overstepped its bounds in enacting laws that require state agencies to facilitate medical procedures for children without the knowledge and consent of parents, and in secreting the children away from the parents while such procedures are underway. Even if we accept for argument's sake that parental support of a child's gender transition is a desirable societal norm, "it cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means." *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923). Excluding parents from such a serious matter concerning their children is prohibited by a parents' First Amendment right to supervise and direct their children consistent with the dictates of their faith.

At bottom, it would be a departure from precedent to hold that the State has a compelling interest to exclude parents from the decision making process regarding such consequential medical decisions. *See, e.g.*, *Hodgson v. Minnesota*, 497 U.S. 417, 456 (1990) ("We have concluded that the State has a strong and legitimate interest in providing a pregnant minor with the advice and support of a parent during the decisional period.") Just as

"permitting a child to obtain an abortion without the counsel of an adult who has responsibility or concern for the child would constitute an irresponsible abdication of the State's duty to protect the welfare of minors," *Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 72-73 (1976), concealing a child's gender transition and depriving that child's parents from guiding their child through such a physically and emotionally taxing time is equally improper and irresponsible. Most importantly, it is impermissible under the First Amendment.

CONCLUSION

The Court should grant certiorari, review the judgment of the Ninth Circuit Court of Appeals, and reverse it.

Respectfully Submitted,

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