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 *AMICUS CURIAE* SUTHERLAND INSTITUTE IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS*[1]

Amicus Sutherland Institute is a Utah nonprofit, nonpartisan public policy organization with a mission to promote the constitutional values of faith, family and freedom. Sutherland promotes the constitutional right to the free exercise of religion and works to explain the individual and societal benefits of the involvement of people of faith and religious organizations in our communities.

This case provides this Court an opportunity to resolve a pressing concern—the practice of some government entities working to exclude parents from notice of, and ability to influence, their minor children's decisions about life-altering decisions related to gender and sexuality.

SUMMARY OF THE ARGUMENT

The Washington statutory scheme challenged in this case is inconsistent with the constitutional recognition of parents' responsibility to direct the upbringing of their children. It interferes with the parent-child relationship of children who are particularly vulnerable and in need of parental direction. It deprives some parents of the custody of

[1] Pursuant to Supreme Court Rule 37.2, counsel for amicus notified all known parties of intention to file a brief of amicus curiae in this case. In accordance with Supreme Court Rule 37, this brief was not authored by counsel for any party in this action. No party or person not related to amicus made any kind of monetary contribution to the preparation or submission of this brief. All funding for this brief came from the amicus.

their children and undermines the ability of those parents to fulfill their responsibility to protect their children's health. It specifically extinguishes a prerequisite for parental responsibility, notice of critical information about their child. It does all of this without any finding of parental unfitness, but merely because the parents differ from the State's preferred position on matters of gender and sexuality.

Washington's law also directly and immediately interferes with parents' free exercise of their religious duty to direct their children's upbringing. Parents who desire to influence their children's decisions about "gender affirming treatment" in Washington must now do so knowing that the State will facilitate such treatment without notifying or involving those parents. The law imposes great pressure on parents to avoid expressing their concerns and religious convictions about gender transition procedures to their children, since if the children are upset by such counsel and are willing to leave home, the State will facilitate those treatments and enforce separation from the parents. This law thus targets religious beliefs about gender for disfavored treatment.

ARGUMENT

I. The Washington law at issue in this case interferes with parents' responsibility to make decisions concerning child-rearing.

This Court has repeatedly recognized, in a variety of contexts, that parents have a "fundamental constitutional right to make decisions concerning the

rearing of" their children. *Troxel v. Granville*, 530 U.S. 57, 70, (2000) (plurality opinion).[2] As the dissent below notes: "Centuries of American and English tradition recognize that fit parents hold a near-absolute right to make decisions about the care and upbringing of their children, free from state interference." Petition for Cert., App. 41a (VanDyke, J. dissenting). The Washington law challenged in this case usurps parents' responsibilities.

This Court's decisions on the constitutional rights of parental decision-making have stressed that those rights cannot be disconnected from, but rather flow from, parents' weighty responsibility to act in their children's best interest. *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) ("those who nurture [a child] and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations"); Petition for Cert., App. 41a (VanDyke, J. dissenting). The longstanding assumption that parents will usually do so is justified by long experience and cannot be lightly set aside. Although the phrase "parental rights" is sometimes used in discussing these cases, it is potentially misleading since what is being described is not really analogous

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[2] *See*, *e.g.*, *Meyer v. Nebraska*, 262 U. S. 390, 400 (1923); *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968); *Wisconsin v. Yoder*, 406 U. S. 205, 213 (1972); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *Parham v. J. R.*, 442 U.S. 584, 602 (1979); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996); *Espinoza v. Montana Dept. of Revenue*, 591 U. S. 464, 486 (2020); *Mahmoud v. Taylor*, 606 U.S. 522, 546 (2025).

to property rights, with the implications of control that concept carries, but is more like a protective jurisdictional limitation on the state's authority.

Many of the decisions implicating this concept arise in the education context, but it is also implicated in decisions about custody (*Troxel v. Granville*, 530 U.S. 57 (2000)), and medical care (*Parham v. J.R.*, 442 US 584 (1979)). Both types of decision are implicated here.

As described in the Petition, Washington law denies parents whose minor children are "seeking or receiving protected health care services" the custody of their children. Petition for Cert. at 4-5 (quoting Wash. Rev. Code §13.32A.082(2)(c)(ii) (2023)). In other situations, absent evidence of abuse or neglect, the parents of minor children who have run away from home are given "prompt, specific notice and are free to pick up their child and take him or her home." Petition for Cert. at 4. The law even provides a right of action for parents who do not receive the required notice. Wash. Rev. Code §13.32A.085 (2023). That, however, is denied to parents whose children are seeking "gender-affirming treatment" or "reproductive health care services" and are thus not entitled to notice.

Washington law also denies parents the ability to influence the medical care of their children. This Court has explained that parents' "high duty" toward their children includes the opportunity "to recognize symptoms of illness and to seek and follow medical advice. The 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." *Parham v. J.R.*, 442 U.S. 584, 602 (1979). Thus, the Court noted that constitutional protection extends to "parents' authority to decide what is best for the child" in the medical context *Id*. at 604.

> Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state. . . . The same characterizations can be made for a tonsillectomy, appendectomy, or other medical procedure. 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. *Id*. at 603.

It is thus not surprising, then, as Judge VanDyke's opinion below points out, the Ninth Circuit has held that even a medical examination conducted without the parents' knowledge or consent violates the parents' constitutional rights. *Mann v. County of San Diego*, 907 F. 3d 1154 (9th Cir. 2018).

This stands in stark contrast to Washington's approach, which is to deny parents knowledge of and ability to consent to a range of medical procedures,

including "pharmaceutical and preventive care service or treatments, directly involved in the reproductive system and its processes, functions, and organs involved in reproduction." Wash. Rev. Code §74.09.875(4)(c) (2023). Add to these, "[f]acial feminization surgeries and facial gender-affirming treatment, such as tracheal shaves, hair electrolysis, and other care such as mastectomies, breast reductions, breast implants." Wash. Rev. Code §74.09.675(2)(b) (2023). Parents' exclusion from knowledge of and participation in a minor child's decisions about these dramatic and life-altering procedures underscores the radicalism of the State's incursion on parental responsibility.

All of this Court's decisions in which parental responsibility is implicated include a critical presupposition—that parents will have some knowledge of their children's lives. It would be manifestly unjust for the law to assume that parents owe their children a duty to provide for their well-being while simultaneously preventing the discharge of that obligation by denying parents critical information about their child. Here, Washington denies that knowledge to parents whose children run away from home and seek "gender affirming treatment." As three justices have noted, a state policy to "purposefully interfere with parents' access to critical information about their children's gender-identity choices" is an issue of "great and growing national importance." *Lee v. Poudre Sch. Dist. R-1*, 2025 WL 2906469, at *1 (Alito, J., concurring in the denial of certiorari); *Parents Protecting Our Child.,*

UA v. Eau Claire Area Sch. Dist., Wisconsin, 145 S. Ct. 14 (2024) (Alito, J., dissenting in the denial of certiorari). In *Mahmoud v. Taylor*, 606 U.S. 522 (2025), this Court pointed to a failure to provide notice of some curricular materials used in schools as an element of the denial of parents' free exercise. Id. at 550. It was also a factor in determining that the parents had standing to challenge the school district policy that the Board of Education had "stated that it will not notify parents." *Id.* at 561. That is exactly what the Washington law at issue in this case has done—told parents that if their children run away and seek certain medical treatments, those parents will not be told. That illustrates that the parents in this case clearly have standing and underscores the harm to parental involvement that Washington's policy causes.

Of course, this Court has recognized that the state has a legitimate role in protecting children, including from parents where necessary. Thus, there are circumstances in which a parent may be denied custody, the ability to influence medical decisions, or even the right to be aware of important information about the child. This, however, has not been understood to grant the state the power to withdraw otherwise appropriate parental choices, because the state has a different concept of what is best for a child. As a plurality of this Court put it, the Constitution "does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a 'better' decision could be made." *Troxel v. Granville*,

530 U.S. 57, 72–73 (2000) (plurality). In an earlier decision, this Court noted the constitutional problems that would occur were a government "to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest." *Quilloin v. Walcott*, 434 US 246, 255 (1978) (quoting *Smith v. Organization of Foster Families*, 431 U. S. 816, 862-863 (1977) (Stewart, J., concurring)). The *Parham* decision noted above recognized that parents would "retain a substantial, if not the dominant, role" in decisions affecting a child's medical care "absent a finding of neglect or abuse" *Parham*, 442 U.S. at 604.

Here is yet another stark contrast with Washington's law, which "treats the parents of children suffering from gender dysphoria as per se neglectful or abusive." Petition for Cert., App. 38a (VanDyke, J. dissenting). This despite no requirement of a specific finding to that effect, and of course, without the ability of parents to offer evidence to the contrary.

The denials of such basic opportunities for parental influence and guidance make clear the radicalism of Washington's statutory scheme. It works a broad and deep deprivation of parental responsibility and of parents' relationship with their children.

II. The law also, directly and immediately, extinguishes the rights of some parents to exercise their religious duty to direct the religious upbringing of their children.

The recognition of parental responsibility as a constraint on government interference has been particularly salient in the context of "the rights of parents to direct 'the religious upbringing' of their children." *Espinoza v. Montana Dept. of Revenue*, 591 U. S. 464, 486 (2020) (quoting *Wisconsin v. Yoder*, 406 U. S. 205, 213-214 (1972)). The Washington law here also interferes with parents' ability to direct the upbringing of their children in sensitive matters, thus prohibiting the parents' exercise of religion.

The interference with parents' free exercise is direct and immediate. As Judge VanDyke explains: "Parents cannot be free—and as alleged by plaintiffs, are not free—to inculcate their children with traditional views of gender so long as Washington creates a system facilitating the transition of those children without their parents' involvement and against their parents' wishes." Petition for Cert., App. 39a (VanDyke, J. dissenting).

Obviously, parents are in an entirely different position vis-à-vis their children when the state has announced it will take the child's side in a disagreement about pursuing gender transition procedures to the extent of not only facilitating such procedures but ensuring that they are done without parental knowledge or involvement. Parents in such a situation must not only worry about straining their

relationship with a child by asserting their beliefs about these sensitive issues, but can realistically worry that the state will actively exclude them from any influence in the child's life if they do not support a child's preference, even though doing so would be fundamentally at odds with their religious commitments.

By incentivizing running away from home to gain access to "gender affirming treatment," Washington makes parents' constitutionally protected right "'to direct the religious upbringing of their' children" an "empty promise." *Mahmoud v. Taylor*, 606 U. S. 522, 547 (2025) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 213-214 (1972)).

Washington's law is a stark illustration of targeting religious belief and practice for disfavored treatment. It deprives only one category of parents, those with religious or other concerns about gender transition, from the notice and reunification offered to others whose children run away from home. It would be like Wisconsin, in response to the Yoder decision, enacting a statute that promised Amish children who left home that they would be provided housing and schooling at odds with their religious upbringing, and their parents would not be told where they were indefinitely.

CONCLUSION

Amicus respectfully urges this Court to grant the petition.

Respectfully submitted,

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