

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 WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

**BRIEF OF AMERICA FIRST LEGAL FOUNDATION
AS AMICUS CURIAE IN SUPPORT OF PETITIONERS**

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QUESTIONS PRESENTED

The law of Washington allows minor children to run away to state-licensed youth shelters to seek or obtain abortions or gender-transitioning treatments. When a runaway minor arrives at a youth shelter for one of those purposes, the shelter is forbidden to notify the child's parents and must instead notify the state's Department of Children, Youth, and Families. *See* Wash. Rev. Code §§ 13.32A.082(1)(b)(i), 13.32A.082(2)(c). The Department must then “offer to make referrals” on the minor's behalf for the desired abortion or gender-transitioning services, without regard to whether the minor's parents approve or consent. *See* Wash. Rev. Code § 13.32A.082(3)(b).

The plaintiffs in this case include five sets of parents who reside in Washington. Four sets of parents have children who are struggling with gender confusion and could run away from home to obtain gender-transitioning services against their parents' wishes. The plaintiffs alleged that the enforcement of these disputed laws are inflicting immediate, present-day injuries, but the lower courts dismissed their alleged injuries as “speculation and conjecture.” Pet. App. 29a. The question presented is:

Did the plaintiffs allege Article III injury or otherwise allege standing to challenge the disputed Washington laws?

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A parent with children suffers injury in fact when a law or policy creates incentives for a child to obtain gender-transitioning treatments against his parent's wishes.¹ The parent need not plead or prove that his child will in fact succumb to the temptations provided by the disputed law or policy. It is enough to allege that the state has created an attractive nuisance that entices children to act in a manner that the parent regards as harmful or

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1. No counsel for a party authored any part of this brief. And no one other than the amicus curiae, its members, or its counsel financed the preparation or submission of this brief.

immoral. This Court recognized as much in *Mirabelli v. Bonta*, 607 U.S. 492 (2026), and it should hold that the disputed Washington laws inflict immediate and present-day injury on parents who wish to protect their children from treatments that can lead to sterilization and permanent sexual dysfunction.

SUMMARY OF ARGUMENT

1. The plaintiffs have alleged immediate, present-day injury in fact in no fewer than five distinct ways:
 - a. Parents 1A and 1B have altered their parenting and discipline of their child (1C) in response to the disputed laws;²
 - b. Parents 2A and 2B are self-censoring their speech out of fear that their minor child (2D) might run away on account of the new laws;³
 - c. All of the parents have lost a legal entitlement that they previously had to receive notice of a runaway child's whereabouts and condition;⁴
 - d. All of the parents (except 4A and 4B) are injured by the incentives that Washington law creates for gender-confused children to

2. Pet. App. 71a.

3. Pet. App. 73a.

4. Pet. App. 71a–72a; Pet. App. 73a; Pet. App. 75a.

run away to a shelter, which operate in a manner akin to an attractive nuisance;⁵

- e. All of the parents (except 4A and 4B) suffer daily fear that their gender-confused child might transition or run away on account of the incentives created by the disputed Washington laws.⁶

There is nothing “speculative” or “conjectural” about any of these harms, and each of them qualifies as “actual or imminent” and “concrete and particularized” under the requirements of *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

a. The Ninth Circuit erred by dismissing Parents 1A and 1B’s changed parenting as a “self-inflicted injury.” Pet. App. 15a. This Court has repudiated the idea that “self-inflicted injuries” fall outside the scope of Article III. *See Federal Election Commission v. Cruz*, 596 U.S. 289, 296–97 (2022) (“[T]he Government asks us to recognize an exception to traceability for injuries that a party purposely incurs. We have never recognized a rule of this kind under Article III.”). The Ninth Circuit did not cite *Cruz*, and it falsely claimed that voluntary actions can never inflict Article III injury unless the plaintiff is challenging a statute that directly regulates the plaintiff’s behavior. Pet. App. 15a–16a. That stance is incompatible with numerous precedents of this Court, including *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), where

5. Pet. App. 71a–72a; Pet. App. 73a.

6. Pet. App. 70a–71a; Pet. App. 73a; Pet. App. 75a; Pet. App. 77a.

the “tester” plaintiffs who posed as renters were not subject to any “requirement” of a challenged law yet nonetheless had standing to sue over an injury that they purposefully and voluntarily incurred. *See id.* at 374.

b. The Ninth Circuit also erred by refusing to confer standing based on Parents 2A and 2B’s self-censorship injuries. Pet. App. 16a–17a. In the Ninth Circuit’s view, self-censorship can inflict Article III injury only when a challenged law directly regulates the plaintiff’s speech. *See id.* at 17a (“Plaintiffs cannot ‘reasonably fear[] prosecution under [the Statutes] for engaging in protected speech’ because the Statutes do not regulate or prosecute speech.”). But injury in fact can still arise when a person changes their speech or behavior in response to a law that regulates the conduct of others, *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963) (book publishers who self-censored in response to Rhode Island law had standing even though the law targeted only book distributors and not publishers with penalties); *Book People, Inc. v. Wong*, 91 F.4th 318 (5th Cir. 2024) (bookstores had standing to challenge Texas law requiring school-book vendors to issue sexual-content ratings for all library materials, even though the law is enforced only against vendors and not bookstores). The Ninth Circuit therefore erred in holding that self-censorship confers standing only when the plaintiff is threatened with prosecution or enforcement action over his speech-related activities.

c. The Ninth Circuit should have found additional Article III injury from the plaintiffs’ loss of their pre-existing legal entitlement to notice of a runaway child’s

whereabouts and condition. Before the enactment of ESSB 5599, the plaintiffs had a legal right to receive notice if their child ran away to a youth shelter unless there were “compelling reasons” not to notify the child’s parent. *See* Wash. Rev. Code § 13.32A.082(1)(b)(i). “Compelling reasons” were previously defined to include “circumstances that indicate that notifying the parent or legal guardian will subject the minor to abuse or neglect as defined in RCW 26.44.020.” Wash. Rev. Code § 13.32A.082(2)(c) (2013). But ESSB 5599 expands the definition of “compelling reasons” to include runaway minors seeking abortions or gender-transitioning services, thereby stripping the plaintiffs (and all parents) of a state-law entitlement to notice that they once enjoyed. The removal of this previously extant state-law right—standing alone—establishes injury in fact for the plaintiffs.

d. The Ninth Circuit should also have found injury in fact from the incentives that ESSB 5599 and SHB 1406 create for the plaintiffs’ children to run away from home. This inflicts injury in fact in the same manner as an attractive nuisance, which entices children to engage in harmful behavior against their parents’ wishes and without their knowledge and consent. A parent does not need to allege or prove in these situations that his child will in fact succumb to the attractive nuisance. *See, e.g., Fairview Township v. Schaefer*, 562 A.2d 989, 990 (Pa. Cmwlth 1989). It is enough to allege that the incentives created by state law are eroding parental authority, even if the child declines the opportunity to run away. Parents have standing to challenge condom-distribution pro-

grams in the public schools based on the mere fact that the school is offering those products to their children; they do not need to allege or prove that their children will acquire (or try to acquire) those offerings. *See Parents United For Better Schools, Inc. v. School District of Philadelphia Board of Education*, 148 F.3d 260 (3d Cir. 1998) (allowing parents to challenge condom-distribution program on the ground that it subverts their authority as parents).

e. Finally, the Ninth Circuit should have conferred injury in fact based on the plaintiffs’ objectively reasonable fears that their children might run away on account of the challenged laws. Fear of criminal prosecution or state enforcement action has long qualified as Article III injury. *See Steffel v. Thompson*, 415 U.S. 452, 459 (1974). But fear is no less an “injury in fact” when it arises from a parent’s concern that a state law will cause their child to run away. To be sure, that fear must be objectively reasonable and not “chimerical” to qualify as injury in fact. *See Poe v. Ullman*, 367 U.S. 497, 508 (1961). But the source of a plaintiff’s fear should not matter for standing purposes. Litigants in private-law disputes have long sued to redress fear inflicted by others; the tort of assault is but one example. *See Tuberville v. Savage*, 1 Mod. Rep. 3, 86 E.R. 684 (1669). Fear does not need to arise from penalties or punishments threatened by the government to confer Article III injury.

2. The parent plaintiffs are indistinguishable from the plaintiffs in *Mirabelli v. Bonta*, 607 U.S. 492 (2026), who sued to enjoin a state policy that prohibited schools from telling parents about their child’s gender non-

conforming behavior. The district court in *Mirabelli* certified a class of all parents in California who object to the challenged policy and enjoined the defendants from applying the policy to the children of any class member. *See id.* at 494–95. After the Ninth Circuit stayed the class-wide injunction, this Court vacated the Ninth Circuit’s stay and held that the class members “very likely have standing” because “they are objects of the challenged exclusion policies.” *Id.* at 498 (citing *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 114 (2025)).

The parent plaintiffs in this case have an even stronger case for standing because many of the absent class members in *Mirabelli* had no gender dysphoric children and no reason to fear or suspect that their children might engage in gender transitioning conduct. Yet this Court still conferred standing on the entire class and rejected the Ninth Circuit’s claim that the classwide injunction “grant[ed] relief to uninjured class members who lacked Article III standing.” *Id.* at 495; *see also id.* at 498 (holding that *all* of “the parents protected by the injunction very likely have standing”). If the absent class members in *Mirabelli* have (or “very likely have”) Article III standing, then it follows *a fortiori* that the parent plaintiffs in this case have standing as well.

3. The Court should overrule the injury-in-fact requirement, which has no textual grounding in the Constitution and cannot remotely be derived from the original understanding of Article III. The idea of injury in fact as a constitutional requirement for standing was invented by this Court in *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 158 (1970),

and for the first 180 years of Article III this Court never claimed (or purported to claim) that plaintiffs in federal court must prove “injury in fact” as a jurisdictional prerequisite to suit. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 450 (2021) (Thomas, J., dissenting). The early Congresses enacted statutes that conferred standing on qui tam relators, who had no conceivable “injury in fact” and sued only as private attorneys general litigating “generalized grievances.” And no one batted an eye at this practice or called its constitutionality into question. The Court cannot seriously claim in light of this history that Article III, as originally understood, required litigants to plead and prove “injury in fact” to establish standing. Nor is there anything in the text of Article III that says or suggests that a plaintiff’s asserted injury must be “actual,” “imminent,” “concrete,” or “particularized.” This is court-invented doctrinal jargon that has nothing to do with Article III’s text or original meaning.

The Court does not need to overrule the injury-in-fact requirement to resolve this case, as the plaintiffs have comfortably established Article III injury within the confines of existing case law. But members of this Court who are dissatisfied with the injury-in-fact doctrine should not hesitate to write separately and call for a wholesale reconsideration of the Court’s standing jurisprudence. Standing should turn simply (and entirely) on whether the plaintiff has a cause of action that authorizes him to sue—and nothing more. *See* Cass R. Sunstein, *What’s Standing After Lujan? Of Citizen Suits, “Injuries,” and Article III*, 91 Mich. L. Rev. 163, 171 (1992); David P. Currie, *Misunderstanding Standing*,

1981 Sup. Ct. Rev. 41, 42 (“No one can sue, I should have thought, unless authorized by law to do so”). The plaintiffs have standing because they have alleged that state officials are violating their constitutional rights, and 42 U.S.C. § 1983 confers a cause of action on anyone who alleges that another person is violating their federally protected rights under color of state law. Nothing more is needed to resolve this case.

ARGUMENT

I. THE PLAINTIFFS HAVE ALLEGED AN IMMEDIATE, PRESENT-DAY INJURY IN FACT IN FIVE SEPARATE AND INDEPENDENT WAYS

The district court dismissed the plaintiffs’ Article III injuries as “speculation and conjecture,” Pet. App. 29a, and the Ninth Circuit affirmed on similar grounds. *See id.* at 14a–25. That was error. The enforcement of the challenged laws is inflicting no fewer than five immediate, present-day injuries on at least one of the individual plaintiffs.⁷

A. Parents 1A And 1B Have Alleged Article III Injury By Altering Their Parenting In Response To The Disputed Laws

Parents 1A and 1B alleged that the defendants’ enforcement of ESSB 5599 and SHB 1406 has caused them to alter their parenting and back off from disciplining 1C out of fear that these recently enacted laws might

7. Only one plaintiff needs to allege standing. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 674 n.6 (2020).

prompt her to run away to a youth shelter. Pet. App. 71a. This allegation must be accepted as true at this stage of the litigation. See *Christopher v. Harbury*, 536 U.S. 403, 406 (2002) (“[O]n [a] motion to dismiss, we accept [the plaintiff’s] factual allegations and take them in the light most favorable to her.”). And this alleged injury cannot be blown off as “speculation” or “conjecture”;⁸ it is already happening.

Yet the Ninth Circuit held this present-day injury cannot confer standing because it is a “self-inflicted”⁹ harm—and (according to the Ninth Circuit) a “self-inflicted” injury can never qualify as Article III injury in fact. Pet. App. 15a (“Such injuries are self-inflicted”); *id.* (“[N]o [plaintiff] can be heard to complain about damage inflicted by its own hand.” (quoting *Pennsylvania v. New Jersey*, 426 U.S. 660, 664 (1976) (per curiam))); *id.* (“[S]elf-inflicted harm doesn’t satisfy the basic requirements for standing. Such harm does not amount to an ‘injury’ cognizable under Article III.” (quoting *Nat’l Family Planning & Reproductive Health Ass’n v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006))).

The problem for the Ninth Circuit is that this Court disavowed its take on the self-inflicted injury doctrine in *Federal Election Commission v. Cruz*, 596 U.S. 289 (2022):

[T]he Government asks us to recognize an exception to traceability for injuries that a party

8. Pet. App. 29a.

9. Pet. App. 15a.

purposely incurs. We have never recognized a rule of this kind under Article III. To the contrary, we have made clear that an injury resulting from the application or threatened application of an unlawful enactment remains fairly traceable to such application, even if the injury could be described in some sense as willingly incurred.

Id. at 296–97. That is precisely the situation that Parents 1A and 1B have alleged. They have altered their parenting of 1C as a result of “the application or threatened application” of ESSB 5599 and SHB 1406. *Id.* at 297. That they have “willingly incurred” this injury in response to the disputed laws does nothing to disqualify them from challenging the constitutionality of those statutes in federal court.

Cruz also limits the reach of *Clapper v. Amnesty Int’l USA*, 568 U.S. 398 (2013), which the Ninth Circuit invoked to support its claim that “self-inflicted” injuries can never confer Article III standing. Pet. App. 15. *Cruz* makes clear that *Clapper* does not establish that voluntarily incurred harm can never qualify as injury in fact, as the Ninth Circuit held. The problem in *Clapper* was that the plaintiffs had incurred these injuries in response to a policy that they “could not show that they had been or were likely to be subjected to.” *Cruz*, 596 U.S. at 297. In this case, by contrast, each of the plaintiffs (and every parent in Washington) is being subjected to the provisions of ESSB 5599 and SHB 1406, which govern how youth shelters must treat any absconding child.

There is language in *Cruz* that could be read to suggest that self-inflicted injuries confer standing only when the plaintiff is directly threatened with enforcement action. See *Cruz*, 596 U.S. at 297. The opinion distinguishes *Pennsylvania v. New Jersey*, 426 U.S. 660 (1976) (per curiam), on the ground that the plaintiffs’ self-inflicted injuries in that case were “due to their own independent response to taxes levied on others,” while noting that the Cruz campaign’s injury was “directly inflicted by the FEC’s threatened enforcement of the [challenged] provisions” against it, even though the campaign had voluntarily incurred this injury by choosing to subject itself to those challenged laws. *Cruz*, 596 U.S. at 297. The Ninth Circuit’s opinion gestures toward this approach, as it appears to concede that plaintiffs who “voluntarily” change their behavior in response to a law that directly regulates their conduct will have standing to challenge that law despite the self-inflicted injury doctrine. Pet. App. 15a–16a (“Critically, Plaintiffs do not allege that their or their children’s behavior has yet brought them within reach of the Statutes.... Such injuries are self-inflicted because they are the result of ‘voluntary’ actions that Plaintiffs have taken ‘in response to’ the Statutes—not because of any actual requirement that the Statutes impose.”).

But a plaintiff need not be facing a threatened enforcement action to sue over a self-inflicted injury. The testers in *Havens Realty* were not threatened with enforcement action and were not regulated by any of the civil-rights statutes invoked in that case. Yet the Court conferred standing, even though the testers’ injuries

were voluntarily incurred. *See Havens Realty*, 455 U.S. at 374. And pregnant women have standing to challenge the constitutionality of abortion bans even though their injuries are often self-inflicted,¹⁰ and even though abortion prohibitions regulate and punish abortion providers rather than women seeking abortions. *See Roe v. Wade*, 410 U.S. 113, 124–25 (1973), overruled on other grounds in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022). It is untenable to hold that self-inflicted injury confers standing only when the plaintiff’s conduct is directly regulated by a challenged law.

B. Parents 2A And 2B Have Alleged Article III Injury By Self-Censoring In Response To The Disputed Laws

Parents 2A and 2B allege that they “avoid talking about gender at all with 2D” and no longer “use 2D’s given name in public or use any pronouns when referring to her.” Pet. App. 73. They also allege that they undertook this self-censorship in response to ESSB 5599. This inflicts immediate, present-day injury, and there is nothing “speculative” or “conjectural” about this harm. But the Ninth Circuit held that self-censorship inflicts Article III injury only when the challenged law directly regulates the plaintiff’s speech. *See id.* at 16a (“Self-censorship may give rise to standing when it is based on ‘an actual and well-founded fear that the law will be enforced against [the plaintiff].’” (quoting *Virginia v. American Booksellers Ass’n, Inc.*, 484 U.S. 383, 393

10. The vast majority of unwanted pregnancies result from consensual and voluntarily sexual intercourse.

(1988)). The Ninth Circuit is wrong; self-censorship can inflict Article III injury even when the litigant who self-censors cannot be prosecuted or punished under the challenged statute.

This Court previously held as much in *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963), which conferred standing on book publishers who self-censored in response to a Rhode Island statute that punished distributors (but not publishers) of indecent materials. *See id.* at 63 (describing the publishers’ self-censorship); *id.* at 64 n.6 (holding that the publishers “have in fact suffered a palpable injury” even though “[t]he Commission purports only to regulate distribution; it has made no claim to having jurisdiction of out-of-state publishers.”). The Ninth Circuit’s stance is also incompatible with lower-court decisions that rely on *Bantam Books* to confer standing on book sellers that self-censor in response to laws that impose no legal requirements or obligations on them. *See Book People, Inc. v. Wong*, 91 F.4th 318, 330 (5th Cir. 2024) (conferring Article III standing on book sellers that self-censored in response to a Texas law requiring school-book vendors to issue sexual-content ratings for library materials, even though “the State cannot enforce the library-collection standards against Plaintiffs.”); *id.* at 329 n.49 (citing *Bantam Books*).

More importantly, a plaintiff who self-censors is alleging a form of “self-inflicted” injury—and litigants who allege self-inflicted injury need not plead or prove that they are being threatened with enforcement action. *See* p. 11–13, *supra*. The test is injury in fact, and an injury is no less an “injury” when it comes from a litigant’s volun-

tary response to an allegedly unconstitutional statute. The fear that arises from a threatened enforcement action may qualify as an *additional* Article III injury,¹¹ but it is not a necessary condition of establishing injury in fact for litigants who assert a self-inflicted harm.

C. Each Of The Parent Plaintiffs Alleged Article III Injury From The Loss Of Their Pre-Existing Legal Entitlement To Notice

The parent plaintiffs have alleged additional injury in fact because ESSB 5599 diminished the legal right they once had to notice of a runaway child’s whereabouts and condition. Before ESSB 5599, state law gave every parent the right to receive notice when their child ran away to a youth shelter. The only exception to the previous notice requirement arose when “compelling reasons”¹² supported withholding notification, which the previous statute defined to include “circumstances that indicate that notifying the parent ... will subject the minor to abuse or neglect.” Wash. Rev. Code § 13.32A.082(2)(c) (2013).

ESSB 5599 amends this regime to withhold notice when a runaway minor is seeking abortions or gender-transitioning services. *See* Wash. Rev. Code § 13.32A.082(2)(c); Wash. Rev. Code § 13.32A.082(2)(d). So parents who once had a state-law right to receive notice in these situations no longer enjoy this entitlement that they once had. The loss of this previous state-law

11. *See Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (conferring standing based on “threats of prosecution that cannot be characterized as ‘imaginary or speculative’” (citation omitted)).

12. Wash. Rev. Code § 13.32A.082(1)(b)(i).

right on account of ESSB 5599 inflicts injury in fact on each of the parent plaintiffs, regardless of whether they can allege or prove that their children will actually abscond on account of these newly enacted laws.

Imagine a state law that disenfranchises convicted felons. A felon who is stripped of his voting rights under this law can sue immediately; he need not wait until he is turned away at the polls to show “injury in fact.” See *Williams v. Taylor*, 677 F.2d 510 (5th Cir. 1982); *Shepherd v. Trevino*, 575 F.2d 1110 (5th Cir. 1978); *Farrakhan v. Washington*, 338 F.3d 1009, 1016 (9th Cir. 2003), *overruled in part by Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010).

Or consider a state law that strips wedding vendors of their right to decide whether they will participate in homosexual marriage ceremonies. A wedding vendor who has lost that prerogative may sue to recover that right, and does not need to wait for the state (or a customer) to *violate* that right by forcing the vendor to participate in a same-sex wedding. See *Telescope Media Group v. Lucero*, 936 F.3d 740, 749–50 (8th Cir. 2019) (allowing videographer to challenge anti-discrimination statute that prohibited wedding vendors from withholding services for same-sex weddings—even though the plaintiff had not yet entered the wedding-video business and was not facing any enforcement action); *303 Creative LLC v. Elenis*, 6 F.4th 1160, 1070–76 (10th Cir. 2021) (allowing website designer to challenge anti-discrimination statute that prohibited it from denying services to those seeking to celebrate or promote same-sex weddings, even though the designer was not yet offering wedding-

related services and had not been threatened or compelled to create an objectionable website), *aff'd 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023).

Or imagine if Washington had terminated parents' pre-existing state-law right to consent to their children's medical treatments and transferred that prerogative to the state.¹³ The loss of that state-law right would inflict immediate Article III injury, and the parent plaintiffs would have standing to sue without waiting for an actual medical situation to arise. The *loss* of the previous state-law right to receive notice confers standing, and the plaintiffs need not wait for a *violation* of their rights to occur before seeking judicial relief.

**D. Each Of The Parent Plaintiffs (Except 4A And 4B)
Alleged Article III Injury From The Incentives That
Washington Law Creates For Gender-Confused
Children To Run Away To A Shelter, Which
Undermine Parental Authority And Operate As An
Attractive Nuisance**

The parent plaintiffs alleged yet another immediate, present-day injury from the incentives that ESSB 5599 and SHB 1406 create for the plaintiffs' children to run away from home. The mere fact that Washington allows minors to obtain gender-transitioning treatments by running away to youth shelters undermines the authority of parents who want to protect their children from

13. ESSB 5599 does this in part by authorizing the state to "make referrals on behalf of the minor" when a runaway minor is seeking an abortion or gender-transitioning services. *See* Wash. Rev. Code § 13.32A.082(3)(b)

procedures that can result in sterilization or sexual dysfunction. It also operates as an attractive nuisance by inviting children to engage in harmful behaviors without their parents' knowledge or consent. This erosion of parental authority and control inflicts present-day injury in fact—regardless of whether the plaintiffs' children will actually run away in response to the disputed laws.

The Ninth Circuit tried to avoid this conclusion by characterizing the alleged harm as a speculative and conjectural injury that depends on future decisions of third parties such as the plaintiffs' children and the youth shelters. Pet. App. 19a–22a. But that mischaracterizes the injury that the parent plaintiffs are asserting. The parent plaintiffs are not claiming injury by alleging that their children *will* run away on account of the disputed laws. They are instead claiming injury from the subversion of parental authority and the temptations that the challenged laws are offering to their children. These are immediate and present-day injuries rather than contingent or hypothetical future harms. And these injuries do not depend on whether one's children will actually run away from home on account of the statutes.

The injuries that the parents are asserting are no different from the injuries that result when a school distributes condoms without parental notification or consent. A parent whose children attend that school has standing from the mere fact that condoms have been made available; he need not allege or show that his children would actually obtain (or try to obtain) the prophylactics. See *Parents United For Better Schools, Inc. v. School District of Philadelphia Board of Education*, 148

F.3d 260 (3d Cir. 1998) (allowing parents to challenge a condom-distribution program on the ground that it subverts their authority as parents, while rejecting the parents’ challenge to the program on the merits); *Parents United For Better Schools, Inc. v. School District of Philadelphia Board of Education*, 646 A.2d 689, 691 (Pa. Cmwlth. 1994) (conferring standing on parents to challenge condom-distribution program because parents suffer injury from the loss of their prerogative to “consent ... before medical treatment [is] provided”). The injury to parental authority in these cases does not depend on whether one’s children actually seek or obtain the disputed services. The mere fact that Washington law allows children to obtain abortions or gender-transitioning treatments by running away to youth shelters subverts the plaintiffs’ authority as parents and inflicts Article III injury.

**E. Each Of The Parent Plaintiffs (Except 4A And 4B)
Alleged Article III Injury Based On Their Objectively
Reasonable Fears That Their Children Might Run
Away On Account Of The Challenged Laws**

Each of the parent plaintiffs (except 4A and 4B) alleged they live in daily fear that their gender-confused children might run away on account of the incentives created by ESSB 5599 and SHB 1406.¹⁴ These fears are objectively reasonable given that their children are experiencing gender dysphoria and the plaintiffs want to encourage their children to live in accordance with their

14. Pet. App. 70a–71a (1A and 1B); Pet. App. 73a (2A and 2B); Pet. App. 75a (3A and 3B); Pet. App. 77a (5A and 5B).

biological sex. These objectively reasonable fears qualify as injury in fact.

It has long been established that fear qualifies as Article III injury, as fear of criminal prosecution confers standing to seek pre-enforcement declaratory or injunctive relief. *See Virginia v. American Booksellers Ass’n, Inc.*, 484 U.S. 383, 393 (1988) (conferring standing when “plaintiffs have alleged an actual and well-founded fear that the law will be enforced against them.”); *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (conferring standing when the plaintiff “alleged threats of prosecution that cannot be characterized as ‘imaginary or speculative’” (citation omitted)). Of course, the mere assertion of fear will not suffice to confer standing, as an alleged fear must be objectively reasonable and not “chimerical.” *See id.* (“The prosecution of petitioner’s handbilling companion is ample demonstration that petitioner’s concern with arrest has not been ‘chimerical’ (quoting *Poe*, 367 U.S. at 508)). But there is nothing “chimerical” about the plaintiffs’ fears that their gender-confused children might seek refuge in a youth shelter, especially when 5C previously ran away from home, has exhibited suicidal tendencies, and refuses to discuss her previous hospitalizations with her father and step-mother (5A and 5B). Pet. App. 77a.

The Ninth Circuit acknowledged the plaintiffs’ fear but never discussed or considered whether these fears could qualify as injury in fact. *Compare* Pet. App. 10a–11a (describing the plaintiffs’ allegations of “fear”); *with id.* at 14a–25a (no analysis of whether the plaintiffs’ fear qualifies as Article III injury). Perhaps the Ninth Circuit

believed or assumed that fear inflicts Article III injury only when a plaintiff sues to enjoin a criminal prosecution or enforcement action, given that this Court’s cases recognizing fear as injury have mostly arisen in that context. *See, e.g., American Booksellers Ass’n*, 484 U.S. at 393; *Steffel*, 415 U.S. at 459. But that is not the law. Fear qualifies as Article III injury if a plaintiff sues for assault under the diversity jurisdiction, or sues to enjoin a nuisance that frightens the defendant’s neighbors. And fear is no less an “injury in fact” when it arises from a parent’s non-chimerical concerns that a state law might induce their gender-confused child to abscond to a state-licensed youth center.

* * *

The plaintiffs have alleged Article III injury in five separate ways. Each of these alleged injuries is “actual or imminent” because at least one plaintiff is already experiencing these harms. And each of these alleged injuries is “concrete” and “particularized.” They are particularized because each injury “‘affect[s] the plaintiff[s] in a personal and individual way.’” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan*, 504 U.S. at 560 n.1). And the injuries are “concrete” because they “actually exist”¹⁵ and bear “a ‘close relationship’ to a harm traditionally recognized as providing a basis for a lawsuit in American courts.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 417 (2021) (citation omitted). Fear has long provided a basis for suit in American and English courts; the common-law tort of assault is a prime example. *See*

15. *Spokeo*, 578 U.S. at 340.

Tuberville v. Savage, 1 Mod. Rep. 3, 86 E.R. 684 (1669) (allowing a plaintiff to sue a defendant for assault after he placed his hand on his sword and uttered, “If it were not assize-time, I would not take such language,” while rejecting the plaintiff’s claim on the merits). And injuries inflicted by the incentives that Washington law provides for children to run away and seek gender-transitioning services bear a “close relationship” to attractive nuisance, which has long existed as a common-law tort. *See Sioux City & Pacific Railroad Co. v. Stout*, 84 U.S. 657 (1873).

The state must refute all five theories of injury if it wants this Court to affirm, and it cannot refute any of them.

II. THE PARENT PLAINTIFFS HAVE A STRONGER CASE FOR ARTICLE III INJURY THAN THE ABSENT CLASS MEMBERS IN MIRABELLI

The Court most recently weighed in on parental standing in *Mirabelli v. Bonta*, 607 U.S. 492 (2026) (per curiam). *Mirabelli* was an emergency-docket ruling, and provides only a tentative assessment of whether the parent plaintiffs in that case were “likely” to establish standing. *See id.* at 498. But *Mirabelli* is nonetheless instructive, as it conferred Article III standing on parent plaintiffs who challenged a policy similar to the disputed Washington laws.

The plaintiffs in *Mirabelli* sued to enjoin enforcement of a state policy that banned schools from notifying parents about their child’s gender-transitioning behavior at school unless the child consented to the disclosure. The lead plaintiffs had gender-dysphoric children in Cal-

ifornia’s schools and had been kept in the dark by school officials about their child’s gender-nonconforming behavior. *See id.* at 493–94. But they sought to represent a class of all parents in California who objected to the no-notice policy, including parents who have no reason to believe or suspect that their child might be engaging in gender-nonconforming behavior. The district court certified a class to that effect and enjoined the defendant schools from “misleading” class members about their children’s gender-transitioning behavior. *See id.* at 495. It also required schools to follow the parent class members’ instructions regarding their children’s names and pronouns. *See id.*

The Ninth Circuit stayed the injunction pending appeal. *See id.* at 495–96. The Ninth Circuit also declared the classwide injunction overbroad because it “‘covers every parent of California’s millions of public school students,’” and thereby “grant[ed] relief to uninjured class members who lacked Article III standing.” *Id.* at 495. But this Court vacated the stay and reinstated the classwide injunction. *See id.* at 496–98. And it held that *every* objecting parent in California was “very likely” to have standing to challenge the disputed policy:

[T]he parents protected by the injunction very likely have standing because they are objects of the challenged exclusion policies. *See Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 114 (2025). Contrary to the Ninth Circuit’s suggestion, the injunction does not provide relief for all the parents of California public school students, but only for those par-

ents who object to the challenged policies or seek religious exemptions.

Id. at 498.

Mirabelli does not explain what it means to be an “object[] of the challenged exclusion policies,” and it is not apparent what the Court meant by this phrase. The opinion cites *Diamond Alternative Energy LLC v. Environmental Protection Agency*, 606 U.S. 100 (2025), which in turn cites the following passage from *Lujan*:

When a plaintiff is the “object” of a government regulation, there should “ordinarily” be “little question” that the regulation causes injury to the plaintiff and that invalidating the regulation would redress the plaintiff’s injuries.

Id. at 114 (citing *Lujan*, 504 U.S. at 561). But *Lujan* defines the “object” of a governmental regulation as a person who is directly regulated by the challenged law or policy, as opposed to a litigant who is challenging the government’s regulation “of someone else.” *Lujan*, 504 U.S. at 562 (emphasis removed).¹⁶ The parent plaintiffs in *Mirabelli* were not “objects” of the challenged policy

16. See Cass R. Sunstein, *What’s Standing After Lujan? Of Citizen Suits, “Injuries,” and Article III*, 91 Mich. L. Rev. 163, 195 (1992) (describing *Lujan* as a response to a “trend in administrative law” that “assault[s] ... the distinction between regulated objects and regulatory beneficiaries” and noting that “Professor Antonin Scalia of the University of Chicago Law School made his enthusiasm for the object-beneficiary distinction clear in an influential 1978 article on the *Vermont Yankee* case.”).

as *Lujan* defines that term, because the challenged policy governed only the behavior of school officials and imposed no requirements or legal obligations on parents of schoolchildren. So *Mirabelli* represents a departure from *Lujan*'s understanding of the term "object." Yet the Court's opinion does not explain when an unregulated party (such as the parent plaintiffs in *Mirabelli*) becomes an "object" of a policy that does not govern his behavior.

More importantly, an "object" of a challenged policy (whatever that means) is not excused from his obligation to plead and prove the components of Article III standing—injury in fact, traceability, and redressability. *Lujan* recognizes that it is *easier* for a directly regulated party to establish these elements of standing. *See Lujan*, 504 U.S. at 561–62 ("Whe[n] the plaintiff is himself an object of the action (or forgone action) at issue ... , there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it."). But *Lujan* does not *exempt* "objects" of a challenged policy from the Article III standing test that applies to every litigant in federal court. *Mirabelli* appears to be saying that an "object" of a challenged policy automatically has Article III standing. *See Mirabelli*, 607 U.S. at 498 ("[T]he parents protected by the injunction very likely have standing *because* they are objects of the challenged exclusion policies." (emphasis added)). That is a non sequitur.¹⁷

17. It is also false. The abortion providers who challenged the constitutionality the Texas Heartbeat Act were indisputably "ob-
(continued...)

Mirabelli is nonetheless helpful to the plaintiffs because it conferred standing on absent class members who had *no* gender-dysphoric children and *no* reason to believe or suspect that school officials were concealing information about their child’s gender non-conforming behavior. The mere fact that the parents had children in California’s schools and objected to the no-notice policy was all that was needed for this Court to declare them “very likely” to have standing. *Id.* at 498; *see also id.* (“[T]he injunction does not provide relief for all the parents of California public school students, but only for those parents who object to the challenged policies or seek religious exemptions.”). The parent plaintiffs in this case stand on stronger ground because their children are already struggling with gender confusion, and *Mirabelli* conferred classwide standing without requiring the plaintiffs to allege or prove that school officials would in fact withhold notice about a child’s behavior from any of the absent class members. *Mirabelli* establishes that parents have standing to challenge policies that deprive them of their right to notice of their children’s whereabouts or activities—and the mere deprivation of this entitlement inflicts injury in fact regardless of whether the parent has a gender-dysphoric child.

jects” of that law, which directly regulated their behavior. *See Whole Woman’s Health v. Jackson*, 595 U.S. 30 (2021). Yet they lacked Article III standing because none of their injuries were traceable to the named defendants. *See Whole Woman’s Health v. Jackson*, 642 S.W.3d 569, 577 (Tex. 2022) (holding that state licensing officials were powerless to enforce the Texas Heartbeat Act).

III. THE COURT SHOULD OVERRULE THE INJURY-IN-FACT REQUIREMENT AND CONFER STANDING ON ANY PLAINTIFF WHO HAS A CAUSE OF ACTION

The injury-in-fact test should be torn out root and branch. It has no basis in the text or original understanding of Article III and rests entirely on court-invented doctrines of recent vintage. It has become non-falsifiable and incapable of consistent and principled application. And the Court's recent standing cases have aggravated these problems by concocting new categories and doctrinal rules that are nonsensical and borderline lawless. *See* Cass R. Sunstein, *Injury In Fact, Transformed*, 2021 Sup. Ct. Rev. 349 (blasting *TransUnion* as "lawless"). The Court has not hesitated to overrule longstanding precedents and doctrines when they depart from its understanding of enacted texts or the original meaning of those texts. *See Trump v. Slaughter*, 146 S. Ct. 2283 (2026) (overruling *Humphrey's Executor v. United States*, 295 U.S. 602 (1935)); *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (overruling *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)); *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023) (overruling *Grutter v. Bollinger*, 539 U.S. 306 (2003)); *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022) (overruling *Roe v. Wade*, 410 U.S. 113 (1973)). The injury-in-fact test should be next on the chopping block.

A. The Court-Created Injury-In-Fact Test Has No Grounding In Constitutional Text Or Original Meaning

There is nothing in the text of Article III that requires litigants to allege or prove an “actual or imminent” injury that is “concrete and particularized.” And no such requirement can be derived from originalist sources or early congressional practice. On the contrary, historical evidence decisively refutes the notion of “injury in fact” as a constitutional requirement, as *qui tam* and informers’ actions were ubiquitous in the early days of the nation, and the early Congresses enacted statutes conferring standing on *qui tam* relators who suffered no conceivable “injury” on account of the conduct that they sued to redress.¹⁸ Not only were these *qui tam* relators uninjured, they were also litigating what this Court describes as “generalized grievances” that private litigants are (supposedly) forbidden to assert. *See Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 127 n.3 (2014) (insisting that the “generalized grievance” doctrine is a constitutional limitation on standing).

Injury in fact did not become a “constitutional”¹⁹ requirement for standing until *Association of Data Pro-*

18. *See, e.g.*, The First Census Act (1790), Act of Mar. 1, 1790, ch. 2, § 6, 1 Stat. 101, 103; The First Copyright Act (1790), Act of May 31, 1790, ch. 15, § 2, 1 Stat. 124, 124–25; The Indian Commerce Act (1790), Act of July 22, 1790, ch. 33, § 3, 1 Stat. 137, 137–138.

19. We use scare quotes around “constitutional” because *Data Processing* did not make clear whether the injury-in-fact test was indeed a requirement of Article III, although later opinions of this Court have endorsed that misguided view. *See* Cass R. Sun- (continued...)

cessing Service Organizations, Inc. v. Camp, 397 U.S. 150, 158 (1970), a “remarkably sloppy opinion”²⁰ that has been roundly and deservedly excoriated by commentators. See Cass R. Sunstein, *What’s Standing After Lujan? Of Citizen Suits, “Injuries,” and Article III*, 91 Mich. L. Rev. 163, 185 (1992) (“One might well ask: What was the source of the injury-in-fact test? Did the Supreme Court just make it up? The answer is basically yes.”); William A. Fletcher, *The Structure of Standing*, 98 Yale L.J. 221, 229 (1988) (“More damage to the intellectual structure of the law of standing can be traced to *Data Processing* than to any other single decision.”); Richard Stewart, *Standing for Solidarity*, 88 Yale L.J. 1559, 1569 (1979) (describing *Data Processing* as an “unredeemed disaster”). The Court has since built on the idea of “injury in fact” to require litigants to demonstrate injuries that are “actual or imminent” and “concrete and particularized”—even though these requirements are nowhere to be found in the text of Article III and cannot be squared with the early congressional endorsement of qui tam litigation. It would not be an exaggeration to say that these injury-in-fact doctrines are as much a judicial concoction as the substantive-due-pro-

stein, *What’s Standing After Lujan? Of Citizen Suits, “Injuries,” and Article III*, 91 Mich. L. Rev. 163, 186 (1992) (“*Data Processing* ... was opaque on the connection between injury in fact and Article III. The test seemed to stem from the APA, but the opinion can be read to suggest that Article III is also highly relevant.”).

20. Sunstein, *What’s Standing After Lujan?*, 91 Mich. L. Rev. at 185.

cess doctrines that produced *Lochner v. New York*, 198 U.S. 45 (1905), and *Roe v. Wade*, 410 U.S. 113 (1973).

These are no means original observations. Justice Thomas’s *TransUnion* dissent calls out *Data Processing* and subsequent cases for incorporating the Administrative Procedure Act’s test for statutory standing into Article III’s constitutional requirements, echoing criticisms that commentators have been making for decades. *See TransUnion*, 594 U.S. at 450 (Thomas, J., dissenting); *see also* p. 29, *supra*. And the Court has never seriously engaged any of these criticisms of its injury-in-fact test. It simply incants statements from its precedents rather than address the absence of textual and historical support for the injury-in-fact doctrine,²¹ a posture similar to the pro-abortion members of this Court who ignored the many scholarly critiques of *Roe v. Wade*, 410 U.S. 113 (1973),²² and acted as though they could speak a constitutional right to abortion into existence by repeating it many times over.

B. The Court’s Injury-In-Fact Doctrines Have Become Incapable Of Consistent And Principled Application

The Court should also overrule the injury-in-fact requirement because it has become incapable of consistent and principled application. *See Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 280–81 (2022)

21. *TransUnion*, 594 U.S. at 422–24.

22. John Hart Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 Yale L.J. 920 (1973); Richard A. Epstein, *Substantive Due Process By Any Other Name: The Abortion Cases*, 1973 Sup. Ct. Rev. 159.

(“[A]nother important consideration in deciding whether a precedent should be overruled is whether the rule it imposes is workable—that is, whether it can be understood and applied in a consistent and predictable manner.”). As this case demonstrates, the outcome in Article III standing cases too often depends on how courts choose to characterize the asserted injury. This Court easily could have found standing in *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), *Lujan*, and *Clapper* by deploying the same tactic that it used in cases such as *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 155 (2010), and *Massachusetts v. EPA*, 549 U.S. 497, 525 n.23 (2007). All the Court had to do was describe the relevant “injury” as an increased risk of a future harm—the increased risk of a chokehold, the diminished likelihood of witnessing an endangered species, or the increased likelihood of being subjected to surveillance—and then hold that the plaintiff was suffering an immediate, present-day harm on account of that increased risk. The Court chose not to do that in any of those cases, insisting that those plaintiffs plead and prove that the feared future harm was “actual or imminent,” without allowing them to use the increased risk of that harm as a basis for Article III standing. But the Court’s injury-in-fact cases give the judiciary near-total discretion on how it chooses to characterize an allegation of future harm—and the judiciary’s chosen characterization will often determine whether the case is allowed to proceed. *See* Sunstein, *What’s Standing After Lujan?*, 91 Mich. L. Rev. at 203–05.

Public confidence in the judiciary requires court decisions to be grounded in law. Malleable and indeterminate doctrines fuel the criticisms of legal realists and attitudinalist political scientists who try to paint the Court as a political institution whose members are doing whatever they want. The Court’s injury-in-fact requirements may not be as loose and subjective as the erstwhile “undue burden” test that was once used to govern abortion regulations,²³ but it gives judges and courts far too much latitude and discretion in deciding whether to lock a litigant out of court.

* * *

A plaintiff has “standing” whenever he has a cause of action, *i.e.*, whenever the law authorizes the plaintiff to sue to vindicate his alleged violations of the law. If the Court is not yet ready to jettison the injury-in-fact test, then the members of this Court who disapprove the doctrine should write separately and lay the groundwork for its eventual overruling. The plaintiffs have comfortably alleged injury in fact consistent with the existing doctrines, but that is no reason for this Court to perpetuate an injury-in-fact requirement that has no grounding in the Constitution and seems to grow more incoherent and indeterminate by the term.

23. See *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 874 (1992) (plurality opinion), overruled in *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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