

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 *AMICUS CURIAE*
SUTHERLAND INSTITUTE IN
SUPPORT OF PETITIONERS**

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September 15, 2026

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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.

The Washington policy at issue in this case is an example of a pressing national concern—the practice of government entities excluding parents from notice of, and ability to influence, their minor children’s decisions about life-altering decisions related to gender and sexuality. This practice implicates the constitutional values Sutherland Institute promotes.

SUMMARY OF THE ARGUMENT

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

¹ 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*.

undermines the ability of those parents to fulfill their responsibility to protect their children's health. It specifically extinguishes core prerequisites for parental responsibility: custody of children, notice of critical information about them, and the opportunity to influence their decisions. 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 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. This law thus targets religious beliefs about gender for disfavored treatment.

The effect of Washington's law is direct and immediate. The law imposes great pressure on parents to avoid expressing their concerns about gender identity 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.

Empirical evidence suggests that when the State signaled it would take a "side" in parent-child disagreements about gender identity, parents who were already under pressure to modify their direction due to conflict would be under greater pressure to do

so. These studies indicate that when children know they have a new option, their attitudes and behavior change. Mere knowledge of legal rules changes family dynamics and could even incentivize children to run away or threaten to do so as a bargaining strategy in their disagreement with parents.

Concretely, the Washington law here changed how parents interact with children on this sensitive issue in a way that is detrimental to constitutionally protected parental authority and free exercise.

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

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).

upbringing of their children, free from state interference.” *International Partners for Ethical Care v. Ferguson*, 161 F.4th 604, 608 (2025) (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”). 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 to property rights, with the implications of control that concept carries, but is more like a protective jurisdictional (in the non-technical sense) 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 custody and medical care decisions are implicated here.

As relevant in this case, this Court’s decisions have identified at least three elements of parental

responsibility that must receive constitutional protection: knowledge, custody, and influence. Parents in Washington are deprived of all three by the law challenged here.

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.

A plurality of this Court noted that parents’ liberty interest “in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion). A concurring opinion also invoked parents’ interest in the custody of their children. *Id.* at 77 (Souter, J., concurring). Earlier decisions had repeatedly noted that parents have a right to parents’ interests in the “custody” and “care” of their children. *See Prince v. Massachusetts*, 321 U. S. 158, 166 (1944); *Stanley v. Illinois*, 405 U. S. 645, 651 (1972); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

As described in the Petitioners’ Brief, Washington law denies parents whose minor children are “seeking or receiving protected health care services” the custody of their children. Petitioners’ Brief at 6 (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.

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.” *International Partners for Ethical Care v. Ferguson*, 161 F.4th 604, 606 (2025) (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 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 that bear on faith like sexuality, thus prohibiting the parents' exercise of religion.

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, of the notice and reunification offered to others whose children run away from home. It would be as if Wisconsin, in response to the *Yoder* decision, had enacted 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.

III. Empirical evidence supports the conclusion that the effect of Washington's law on parents' influence and free exercise is direct and immediate.

The interference of Washington's law with parents' rights 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." *International Partners for Ethical Care v. Ferguson*, 161 F.4th 604, 608 (2025) (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.

Empirical research supports this common-sense observation. When a child's outside options are altered, the interactions between parents and the child are changed even before the child decides to act on one of those options. Studies identify some mechanisms for this effect.

First, parents appear to change their attitudes about children's unsafe or unwise choices, decreasing opposition when faced with conflict. For example, a longitudinal study of 494 Swedish youth and their parents examined the parents' reaction when they found out their children were using alcohol against their wishes. The parents typically became less opposed to the children's choices over time, and those who maintained opposition experienced "more worries." Terese Glatz, et al., *A Test of Cognitive Dissonance Theory to Explain Parents' Reactions to Youths' Alcohol Intoxication* 61 *Family Relations* 629 (2012). It is fair to assume that something similar is likely to happen when parents and children disagree

about gender identity.

Second, minors appear to change their attitudes *when they become aware* of independent options, not just when they have the opportunity to invoke the option. Thus, in one study of 562 adolescents in California high schools, participants were randomly assigned to groups who listened to messages from physicians about possible promises of confidentiality for anything disclosed by the youth. The researchers found that “[a]ssurances of confidentiality increased the number of adolescents willing to disclose sensitive information about sexuality, substance use, and mental health” (increase of more than seven percentage points), “to seek future health care” (increase of 14 points), and “to return for a future visit” (increase of 10 points). Carol A. Ford, et al., *Influence of Physician Confidentiality Assurances on Adolescents’ Willingness to Disclose Information and Seek Future Health Care* 278 JAMA 1029 (1997). As another example, a recent study of 5,888 adolescents across the United States examined the effect of state laws allowing minors to consent to treatment for sexually transmitted infections. The researchers found that allowing minors to consent “was positively associated with past year” testing for HIV and STIs. Kimberly M. Nelson, et al., *Presence and Knowledge of Minor Consent Laws and STI Testing in US Adolescents* 157 Pediatrics e2025074357 (2026). In the context of family planning, a study of 1,526 female adolescents attempted to understand the possible impacts of laws mandating parental notification when a minor seeks contraceptives at a clinic. A majority of

the participants reported that they would continue to use the clinic for contraceptive services in the event of mandatory parental notification. However, for those whose parents were not aware of their clinic use, “70% would not come for prescription contraception if parental notification were mandated.” Additionally, the reports indicated “18% would engage in risky sexual behavior, and 5% would forgo STD services.” Rachel K. Jones, et al., *Adolescents’ Reports of Parental Knowledge of Adolescents’ Use of Sexual Health Services and Their Reactions to Mandated Parental Notification for Prescription Contraception* 293 JAMA 340, 347 (2005).

These studies suggest that merely becoming aware of an option can change the attitudes and behavior of minors toward that option.

Third, minors’ decisions about running away from home, the action that triggers the provisions of the law at issue here, are affected by family dynamics, rather than just being a matter of the child deciding to leave or the parents driving the child away. The research here is more limited and tentative, but coincides with common-sense observations about how families function. See Joan S. Tucker, et al., *Running Away From Home: A Longitudinal Study of Adolescent Risk Factors and Young Adult Outcomes* 40 Journal of Youth and Adolescence 507 (2011).

Fourth, minors may see running away as a form of “withholding behavior” that acts as a “conflict-resolution strategy” or “bargaining strategy” to secure desired outcomes. An examination of a Con Chuuk

community in Micronesia describes this dynamic at work. Kristen L. Syme & Edward H. Hagen, *Bargaining and interdependence: Common parent-offspring conflict resolution strategies among Chon Chuuk and their implications for suicidal behavior* 125 *American Anthropologist* 262 (2023). It must be noted that this study is limited because of its qualitative methodology and specific cultural context, but again, it is consistent with longstanding experience of family life.

These findings have clear relevance for Washington law. As the State signals that it will take a “side” in parent-child disagreements about gender identity, parents who are already under pressure to modify their direction due to conflict will be under greater pressure to do so. Children, knowing they have a new option, also change their attitudes and behavior. The mere knowledge of the law changes family dynamics and may incentivize children to run away or threaten to do so as a bargaining strategy in their disagreement with parents.

These social science findings are consistent with a simple reality—that parents and children are in a relationship. What parents do provokes responses from a child and vice versa. Inputs from third parties shape these responses because relationships do not exist in a vacuum. All of this affects family interactions and the incentives each member experiences as they interact. Concretely, the Washington law here changes the options that children have as they interact with parents, and some

parents have had to change how they discuss concerns and give counsel to their children in response to these changes.

The law challenged here thus infringes the rights of parents by its very existence, not only in a future specific instance when it is applied.

CONCLUSION

Amicus respectfully urges this Court to reverse the decision of the Court below.

Respectfully submitted,

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September 15, 2026