

No. 25-840

In the Supreme Court of the United States

INTERNATIONAL PARTNERS FOR ETHICAL CARE, 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**

**AMICUS BRIEF OF THE AMERICAN CENTER
FOR LAW AND JUSTICE
IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICUS¹

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of religious liberty and parental rights. The ACLJ has appeared before this Court in many cases, as counsel for a party, *e.g.*, *Lamb’s Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); or for amicus, *e.g.*, *Mahmoud v. Taylor*, 606 U.S. 522 (2025).

The ACLJ is particularly concerned that the Ninth Circuit’s ruling in this case leaves parents without the ability to remedy grave threats which a government program poses to their children.

SUMMARY OF ARGUMENT

The Ninth Circuit ruled that parents lack standing to challenge the imposition of a serious *threat* of harm to their children because the harm may not ever come to fulfillment. But the constitutional right to care for and protect one’s children includes the right to protect children from government-created *risks* of harm, not just the completed harms themselves. The government creation of a minefield, open to children without parental knowledge or consent, itself constitutes an Article III injury to parental rights, even if the children successfully navigate around or through the field without blowing up.

¹ No counsel for any party authored this brief in whole or in part. No such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity aside from amicus, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

ARGUMENT

The court below held that, when the government *creates a situation that poses grave threats to the wellbeing of children and prevents parental knowledge and consent*, parents nevertheless lack Article III standing because all they can allege is that the danger “may someday” strike their children. Pet. App. 19a. That is nonsense. Parents face *immediate* injury to their right to care for their children when the state opens the doors to disaster, leaves those doors open for children to enter, and keeps parents in the dark.

This Court should reverse.

I. PARENTAL RIGHTS INCLUDE THE PROTECTION OF THEIR CHILDREN FROM HARM, INCLUDING *RISKS OF HARM*.

Parents in Washington face the *ongoing* violation of constitutionally protected parental rights. Petitioners therefore have standing to sue for vindication of those rights.

Standing doctrine asks, *inter alia*, whether plaintiffs allege “an injury in fact,” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). As this Court elaborated,

To establish injury in fact, a plaintiff must show that he or she suffered “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Lujan [v. Defenders of Wildlife]*, 504 U.S. [555,] 560 [(1992)] (internal quotation marks omitted).

Spokeo, 578 U.S. at 339. The Ninth Circuit in the present case held that petitioners failed to show “cognizable” injury. Pet. App. 14a. This conclusion was erroneous. Washington law burdens constitutionally protected parental authority, and does so *now*, not just in some speculative future.

“It is cardinal with us that the custody, care and nurture of the child reside first in the parents,” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). Parental rights must, therefore, at a minimum include the right to *protect their children from harm*, specifically harm engineered by the government. Without a right to *protect* children, parental rights become a meaningless absurdity. *See also Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 684 (1986) (recognizing “the obvious concern on the part of parents . . . to protect children”).

Protecting a child from harm, it should go without saying, includes *preventing* a child from encountering a *future* harm. Susie may not get injured in a car crash just because she rides with an inebriated driver. Johnny may not get addicted just because he goes to an unsupervised party with drug-using friends. But parents wisely forestall possible harms by holding their children back from hazardous situations. Yet if the government were to *create* those hazards, or *disable* parents from keeping their children out of harm’s way, that would be a serious violation of parental rights. *Cf. DeShaney v. Winnebago County Dep’t of Social Servs.*, 489 U.S. 189, 196 (1989) (“purpose” of Due Process Clause “was to protect the people from the State”).

Consider some hypothetical (or maybe not so hypothetical) examples.

Public school staff or a government agency offer to take minors for secret abortions. U.S. DEP’T OF ED.,

U.S. Department of Education Initiates Enforcement Action Against Fairfax County Public Schools for Reportedly Facilitating the Provision of Abortion Services to Students (Sept. 29, 2025).² A government institution leaves manholes improperly covered. Erin Jones, *A Dallas woman fell into a manhole and drowned in the sewer. Her daughter wants answers*, CBS News (Dec. 17, 2024).³ A public school makes poisonous chemicals available to students without supervision. *Cf.* KPTV News Staff & Jordan Gartner, *High school student in critical condition after allegedly drinking a mixture of toxic chemicals*, WKYT (Sept. 8, 2026).⁴

Of course, in any particular situation, the government may or may not have been responsible, as a factual matter, for visiting harms upon the minors in question. *See DeShaney*, 489 U.S. at 197 (no liability for harm from “danger . . . which petitioners concede the State played no part in creating”). But where the government *deliberately constructs* circumstances that pose harms to children, it violates parents’ constitutionally protected authority to care for their children. That is what petitioners allege here. *See, e.g.*, Pet. App. 68a (“this amended statute allows shelters and homes to keep children at locations without their parents’ knowledge and refer those children for health interventions without their parents’ knowledge or approval”).

² <https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-enforcement-action-against-fairfax-county-public-schools-reportedly-facilitating-provision-of-abortion-services>.

³ <https://www.cbsnews.com/texas/news/dallas-woman-seeks-justice-after-mother-dies-in-manhole-accident/>.

⁴ <https://www.wkyt.com/2026/09/08/high-school-student-critical-condition-after-allegedly-drinking-mixture-toxic-chemicals/>.

II. THE IMMEDIATE SUBJECTION OF CHILDREN TO A RISK OF HARM OFFENDS PARENTAL RIGHTS REGARDLESS OF WHEN OR WHETHER THE HARM COMES TO PASS.

The parental right to protect children is violated once government imposes the risk of harm, regardless of whether that harm ever eventuates. The Ninth Circuit therefore erred in holding that a harm does not count for standing purposes, no matter how severe, if that harm only “may someday” come about. Pet. App. 19a. This analysis conflates two distinct injuries to parental rights: first, the *present* subjection of a child and the child’s parents to a hazard; and second, the actual *coming to fruition* of the danger the hazard poses.

The first injury – subjection of children (and their parents) to a hazard – is not a matter of “ifs” and ‘shoulds,” as the court below put it. Pet. App. 21a. It is a *current, active injury*.

Suppose a government-run daycare has an unsecured room open to children, with the floor removed for construction and no barrier preventing a fall into the basement below. The agency has subjected every child permitted to enter that space to a danger. A parent need not wait for a toddler to fall before seeking an order requiring a barrier. The fall would be an *additional* injury, *following* the government’s creation of the dangerous condition.

Or suppose a government agency makes candy laced with marijuana available to children. The State interferes with parental protection when it makes the substance available, even if a particular plaintiff’s child never consumes it. The parent’s objection is not simply that the child might later become ill. It is that

the government has deliberately exposed the child to a danger beyond the parent's immediate control – one the parent has a right and duty to prevent.

The constitutional infringement is thus complete – not just imminent, but immediate – when the government subjects the children and their parents to the risk of harm. And the constitutional violation is only compounded when the government *affirmatively interferes* with parental supervision, as in this case, Pet. App. 7a (“the shelter’s obligation to notify the child’s parents is voided”), by dispensing with parental knowledge and consent. *See DeShaney*, 489 U.S. at 200 (“the State’s affirmative act of restraining the individual’s freedom to act on his own behalf . . . is the ‘deprivation of liberty’ triggering the protections of the Due Process Clause”). A government agency that offers pornography, abortions, or drugs to minors interferes with parental rights regardless of whether children actually take the bait. The constitutional infringement is complete when the government creates the avenue for minors to some harm and prevents parents from exercising the authority that would otherwise stand between the child and the threatened harm.

The problem here is not that the government has neglected to prevent an alleged harm, but rather that the government has intentionally excluded parents from the equation when their minor children pursue the harm in question. Pet. App. 7a. *Compare DeShaney*, 489 U.S. at 201 (contrasting “dangers [for which the government] played no part in their creation, nor did it do anything to render [a child] any more vulnerable to them”). Thus, the present case is more like the child protective agency which offers minors secret abortions, or drugs, or obscene materials, without parental knowledge or consent.

The government injures parental rights by creating that risk of harm, and by expressly obstructing parental knowledge and consent regarding that risk. That government-engineered injury suffices for purposes of Article III standing. To hold otherwise would be to leave parents helpless to challenge threats to the welfare of their children – until it is too late.

CONCLUSION

This Court should reverse the judgment of the Ninth Circuit.

Respectfully submitted,

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