

In the Supreme Court of the United States

**INTERNATIONAL PARTNERS FOR
ETHICAL CARE, INC., *et al.*,**

Petitioners,

v.

**BOB FERGUSON,
GOVERNOR OF WASHINGTON, IN HIS
OFFICIAL CAPACITY, *et al.*,**

Respondents.

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

**Brief *Amici Curiae* of The National Legal
Foundation, Pacific Justice Institute, Center
for Arizona Policy, Hawaii Family Forum,
Illinois Family Institute, Maryland Family
Institute, Wisconsin Family Action, The Family
Foundation, Ethics and Religious Liberty
Commission of the Southern Baptist
Convention, Concerned Women for America,
Protect Our Kids, Family Watch International,
International Conference of Evangelical
Chaplain Endorsers, and Chaplain Alliance for
Religious Liberty
*in Support of the Petitioners***

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Statements of Interests¹

The National Legal Foundation (NLF) is a public interest law firm dedicated to the defense of First Amendment liberties (including the freedoms of speech, assembly, and religion) and parental rights. The NLF and its donors and supporters, in particular those from Washington, are vitally concerned with the outcome of this case because of its effect on religion-based parental rights.

The Pacific Justice Institute (PJI) is a non-profit legal organization established under section 501(c)(3) of the Internal Revenue Code. Since its founding in 1997, PJI has advised and represented in court and administrative proceedings thousands of individuals, businesses, and religious institutions, particularly in the realm of First Amendment rights. As such, PJI has a strong interest in the development of the law in this area. PJI often represents teachers, parents, and their children to vindicate their constitutional rights in the public schools. PJI operates in Washington.

Center for Arizona Policy (CAP) is a nonprofit advocacy group whose mission is to promote and defend the foundational values of life, marriage and family, and religious freedom. CAP is dedicated to strengthening Arizona families through policy and education, and CAP works with elected officials and

¹ No counsel for any party authored this brief in whole or in part. No person or entity other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

members of the community to make Arizona a welcoming state to raise a family.

Hawaii Family Forum (HFF) was established in 1998 to protect, preserve, and strengthen Hawaii's ohana (family). HFF is a non-profit, pro-family research and education organization that provides resources that equip citizens to make their voices heard on critical social policy issues involving the sanctity of human life, the preservation of religious liberties, and the well-being of the ohana as the building block of society.

Illinois Family Institute (IFI) is a non-profit educational and lobbying organization based in Tinley Park, Illinois, that exists to advance life, faith, family, and religious freedom in public policy and culture from a Christian worldview. IFI's core values include upholding parental rights and championing religious freedom and conscience rights for all individuals and organizations.

The **Maryland Family Institute (MFI)** is a Maryland, faith-based, nonprofit organization seeking to promote a society where God is honored, life is cherished, families flourish, and religious freedom thrives. MFI's interest in this case stems from our efforts to support religious freedom and the moral foundation necessary to sustain the family and society.

Wisconsin Family Action (WFA) is a Wisconsin not-for-profit organization dedicated to strengthening, preserving, and promoting marriage, family, life, and religious freedom. WFA has a unique and significant statewide presence with its

educational and advocacy work in public policy and the culture. WFA's interest in this case stems directly from its core issues, in particular its long-sustained efforts to protect and promote the family.

The Family Foundation (TFF) is a Virginia non-partisan, non-profit organization committed to promoting strong family values and defending the sanctity of human life in Virginia through its citizen advocacy and education. TFF serves as the largest pro-family advocacy organization in Virginia. Its interest in this case is derived directly from its concern to preserve religious freedom for all.

The Ethics and Religious Liberty Commission (ERLC) is the moral concerns and public policy entity of the Southern Baptist Convention (SBC), the nation's largest Protestant denomination, with nearly 13 million members in more than 45,000 churches and congregations. The ERLC is charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and ethics. The ERLC affirms that God has established the family as the first and most foundational institution of society and has an interest in ensuring that parents have the freedom to make decisions regarding the upbringing, education, and healthcare of their children.

Concerned Women for America (CWA) is the largest public policy organization for women in the United States, with approximately half a million supporters from all 50 States. Through its grassroots organization, CWA encourages policies that strengthen women and families and advocates for the

traditional virtues that are central to America's cultural health and welfare, including religious and familial liberties. CWA actively promotes legislation, education, and policymaking consistent with its philosophy. Its members are people whose voices are often overlooked—everyday, middle-class American women whose views are not represented by the powerful elite.

Protect Our Kids (POK) is a statewide coalition of California parents, community leaders, attorneys, pastors, teachers and concerned citizens who acknowledge that public schools have a role in educating children on matters of basic biology, anatomy, and human reproduction, but not the promotion of controversial sexual ideas and other ideologies far exceeding the rightful boundaries of the public-school charter. POK exists to inform parents about the scope of these threats, their rights as parents, and to protect children from the harms of public-school indoctrination. POK adheres to Biblical truth, which teaches that God created mankind in His image, male and female, and that parents are the rightful guardians of their minor children's worldview.

Family Watch International (FWI) is a non-profit organization working to solve social problems at the international, national, and local level by stemming and reversing the tide of family disintegration and fragmentation.

The **International Conference of Evangelical Chaplain Endorsers (ICECE)** has as its main function to endorse chaplains to the military and other organizations requiring chaplains that do

not have a denominational structure to do so, avoiding the entanglement with religion that the government would otherwise have if it determined chaplain endorsements. ICECE safeguards religious liberty for all.

Chaplain Alliance for Religious Liberty (“CALL”) is an organization of chaplain endorsers, the faith groups that provide chaplains for the U.S. military and other agencies. CALL speaks for more than 2,600 chaplains serving the Armed Forces from many different denominations. Since 2011, we have led the effort to secure the religious liberties of chaplains and those whom they serve. We enable all chaplains to serve to the broadest extent of their constitutional mission and endorsement, and we nurture and support an environment that cherishes the role of chaplains in American culture. CALL exists to ensure that chaplains can defend and provide for the freedom of religion and conscience that the Constitution guarantees all chaplains and those whom they serve. We join together to pursue a nation where all chaplains, and those whom they serve, freely exercise their God-given and constitutionally protected religious liberties without fear of reprisal.

Summary of the Argument

The fundamental rights of parents to direct the care and education of their minor children is under attack. Public schools and other state agencies believe they know better than many parents when it comes to sexual matters. Pursuant to laws, regulations, and guidelines, they keep secret from the parents that they are facilitating sexual transformations on their minor children—transformations that will

undoubtedly have profound, life-changing effects. Yet, some courts have held that parents have no standing to complain unless they have found out, despite such “Parental Preclusion Policies,”² that the State has already assisted their child to exhibit as transgender.³ The Ninth Circuit in this case joined those courts, ruling that parents may not obtain preemptive relief.

While the plaintiff parents in this case can point to some specific allegations of current, tangible damage that they argue is sufficient to sustain standing, standing for parents should not hinge on whether they have already received some concrete indications that their child is exhibiting as transgender. Standing in Parental Preclusion Policy cases is upheld by the following pillars, which are both individually and collectively sufficient: (a) common sense and practical considerations dictate that parents must be able to complain before tangible harm occurs; (b) Parental Preclusion Policies inflict immediate constitutional injury; (c) parents are the targets of such policies; (d) parents stand in a special relationship to their children that requires their being able to act proactively, both to protect their children

² S. Ernie Walton, *Parental Preclusion Policies: Do Parents Have Standing to Challenge Them Before Enforcement?*, Harv. J. Law & Pub. Policy: Per Curiam (Apr. 16, 2025), journals.law.harvard.edu/jlpp/parental-preclusion-policies-do-parents-have-standing-to-challenge-them-before-enforcement-s-ernie-walton/ (last visited July 25, 2026) (hereinafter, “Walton”).

³ See, e.g., *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.*, 95 F.4th 501 (7th Cir. 2024); *Parents 1 v. Montgomery Cty. Bd. of Educ.*, 78 F.4th 622 (4th Cir. 2023).

and to safeguard their own rights and responsibilities with respect to them; and (e) parents need to be informed of transformative situations like these in order to perform their parental functions to the best of their ability. *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), is the decision on which the Ninth Circuit and other courts have principally relied to deny standing to parents in Parental Preclusion Policy situations, but, when properly construed, *Clapper* supports parental standing as well.

Argument

I. Common Sense Dictates That Standing to Challenge a Policy Designed to Keep Information Secret Cannot Depend on Whether the Secret Got Out

Parental Preclusion Policies like Washington has implemented to keep parents in the dark when the State is facilitating their child’s gender transition are, by definition, secrecy policies.⁴ It violates common sense to say that the only parents who have standing are those who have found out, despite the secrecy policy, that the State is actively facilitating a transition of their child.

“Across contexts, [this Court has] said, courts may make ‘commonsense inferences’ when assessing

⁴ See Eric A. DeGroff & Steven W. Fitschen, *The Not-So-Silent Epidemic of Secret Gender-Affirming Policies in the Nation’s Schools: Parental Rights and the Promise of Pierce v. Soc’y of Sisters*, 100 Notre Dame L. Rev. 1795, 1797-99, 1839-40 (2026) (hereinafter, “DeGroff & Fitschen”).

Article III standing, including inferences about ‘third party behavior.’” *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174, 189-90 (2026) (quoting *Diamond Alt. Energy*, 606 U.S. 100, 116 (2025)). It must be assumed that the State is doing what it says, in this case as required by legislation: that the State is implementing its secrecy policy and that it is implementing it successfully. Yet, in violation of common sense, under the Ninth Circuit’s analysis, parents have standing only when they have been able to pierce the veil of secrecy and can positively affirm that the State is helping their child to transition.

For parents who cannot meet the Ninth Circuit’s hurdle, the proper answer to the question, “Is the State helping your child transition genders now?,” is, “We don’t know because the State’s secrecy policy withholds that information from us.” Indeed, the practical failure of a rule that a parent, to have standing, must know that it is actually happening or very likely to happen is readily apparent. What is sufficient? Knowledge that the child has met with a school counselor to discuss the subject without yet taking any steps? That the child has experimented once with cross-dressing? That the child has run away from home before? Some combination? Something more?

What Professor Richard Re calls “systemic pragmatism” comes fully into play here and asks this question: who else can complain about the policy in a timely way?⁵ Those who are in the know are the

⁵ See Richard Re, *Standing in and After Bost*, SCOTUSblog (Feb. 24, 2026), <https://www.scotusblog.com/2026/02/standing-in-and-after-bost/> (last visited July 24, 2026).

government personnel involved, and if they are bound by a policy of secrecy, who other than the parents themselves can complain about their being kept in the dark? If the process is going to be challenged before tangible harm occurs, then only parents are able to blow the whistle. No parents want to find out, after the fact, that the State has successfully implemented the secrecy policy with their now-transitioned child, especially if irreversible steps have been taken. Common sense dictates that objecting parents be allowed to complain about such a secrecy policy proactively and immediately.

The Fifth Circuit was confronted with a similar situation in a closely analogous case when a father sued to challenge a federal government policy of providing contraceptives to minors without parental notice or consent. In *Deanda v. Becerra*, 96 F.4th 750 (5th Cir. 2024), the court pointed out the irony of the government’s argument that the father had no standing because he did not know whether his daughters had taken advantage of the program: “That is a puzzling argument. A key goal of the Secretary’s policy is to get contraceptives into children’s hands *without their parents knowing*. . . . Parents’ standing to sue should not depend on whether the Secretary has successfully kept them in the dark about their children’s sex lives.” *Id.* at 759 (italics in original). Common sense and systemic pragmatism dictate that the Fifth Circuit is right.

This Court’s handling of a similar case alleging a violation of parental notice and consent rights is instructive. In *Mahmoud v. Taylor*, 606 U.S. 522 (2025), this Court rejected a school district’s argument that a preliminary injunction would be premature

because, due to the school's no-notice policy, the parents did not know when teachers would use in class LGBTQ+-affirming books to which the parents objected on free exercise grounds. As an initial matter, it is telling that standing was not even questioned in the case. And what this Court held with respect to the suitability of injunctive relief is directly analogous to the practicalities involved with standing to challenge secrecy policies:

We do not need to “wait and see” how a particular book is used in a particular classroom on a particular day before evaluating the parents’ First Amendment claims. We need only decide whether—if teachers act according to the clear and undisputed instructions of the Board—a burden on religious exercise will occur.

Besides, it is not clear how the Fourth Circuit expects the parents to obtain specific information about how a particular book was used or is planned for use at a particular time. The Board has stated that it will not notify parents when the books are being read. And it is not realistic to expect parents to rely on after-the-fact reports by their young children to determine whether the parents’ free exercise rights have been burdened. In circumstances like these, where the Board has clearly stated how it intends to proceed, the parents may base their First Amendment claim on the Board’s representations.

Id. at 560.

The State cannot hide behind a wall of secrecy of its own making. If it is going to hide information from parents, then parents have standing to challenge the lawfulness of that policy immediately.

II. Parental Preclusion Policies Inflict Immediate, Intangible Injuries on Parents and the Parent-Child Relationship

Parental Preclusion Policies also do immediate harm. These policies on their face broadcast a message to children loud and clear: “When it comes to gender and sexual matters, you should not trust your parents, especially if they happen to disagree with your current feelings; you should trust government personnel instead.” The harm is only intensified when government officials assure children of their “right” to act independently of their parents’ advice and consent. In essence, the State has taken over the parental role, determining in this area that it will be the one to decide what is in the child’s best interests.

This violates fundamental parental rights that will be discussed further below. The point for present purposes is that violations of constitutional rights, even when non-tangible, inflict immediate harm sufficient to confer standing.

Most recently, in *First Choice Women’s Resource Centers*, this Court reversed a decision of the Third Circuit, analogous to that of the Ninth Circuit in this case, that a pregnancy center lacked standing to object to the constitutionality of a subpoena for its donor records because the center had not yet had to release them. This Court held, “An injury in fact does not arise only when a defendant causes a tangible

harm to a plaintiff, like a physical injury or monetary loss. It can also arise when a defendant burdens a plaintiff's constitutional rights." 608 U.S. at 189. It ruled that the subpoena already chilled the center-donor relationship, which was entitled to constitutional protection, and so the center had standing. Similarly, a Parental Preclusion Policy trenches on parental rights to make important decisions for their minor child in what they perceive to be the child's best interests, and it adversely affects parents' current relationship with their children. Judge Niemeyer in *Parents 1* noted that a Parental Preclusion Policy, by its very existence, has "changed on an ongoing basis" "the dynamics and dialogue between parent and child." 78 F.4th at 641 (Niemeyer, J., dissenting). Similarly, Dean Walton has observed, "Assuming their children are aware of the policy, that awareness alone alters the child's relationship with his or her parents. . . . [H]ow could a child not question his parents' authority when the state is telling him that his parents actually have no authority over something as important as his very identity?" Walton, *supra* note 2.⁶

The Fifth Circuit in *Deanda* also applied this principle to find standing for the father who

⁶ Dean Walton analogizes to free speech cases in which pre-enforcement chilling is sufficient to generate standing. He argues that the Parental Preclusion Policy cases are even more egregious, as "parental preclusion policies purport to transfer constitutionally protected authority from the parent to the government. This should give rise to an injury in fact sufficient to satisfy Article III." Walton, *supra* note 2.

complained that distributing contraceptives to his minor daughters without his knowledge or consent violated his statutory and constitutional rights. After discussing the fundamental nature of parental rights under the Constitution, 96 F.4th at 759, the Fifth Circuit explained that the policy immediately injured the father by depriving him of his notice and consent rights, which alone conferred standing:

[T]he Secretary misunderstands the claimed injury. Deanda asserts injury to his state-secured parental rights to notice and consent To be sure, if one of Deanda's daughters did get contraceptives from a Title X provider without his knowing, that would also injure Deanda. But it would mean Deanda had been injured not once but *twice*—once by the Secretary's nullifying his parental rights and a second time by the Secretary's succeeding in delivering birth control to Deanda's daughter behind his back.

*Id.*⁷

The application here is four-square: Parents are injured immediately by their parental notice and approval rights being eliminated by the State's

⁷ The Fifth Circuit also relied on a State statute providing for parental notice and consent that allowed parents to sue to vindicate those rights. 96 F.4th at 756-57. The federal counterpart here is 42 U.S.C. § 1983. *See also Warth*, 422 U.S. at 501 (citing *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1928), for the proposition that parental rights protected by the Constitution imply a right of action).

Parental Preclusion Policy. They do not have to allege an additional injury to obtain standing.

III. Parents Have Standing to Complain of Parental Preclusion Policies Because They Are Targeted by Such Policies

Contrary to the ruling of those circuit and district courts that have found that parents do not have standing to challenge Parental Preclusion Policies prospectively, this Court has long held that *all* members of a targeted group usually have standing to prevent a challenged policy's potential application. This Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), elucidated as follows:

When the suit is one challenging the legality of government action or inaction, standing depends considerably upon whether the plaintiff is himself an object of the action (or forgone action) at issue. If he is, 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.

Id. at 561-62.

This Court recently reiterated *Lujan's* targeting principle. In *Diamond Alternative Energy*, this Court quoted much of the above language of *Lujan* with the introduction of "Importantly." 606 U.S. at 111. Indeed, it is important, and all the more so in Parental Preclusion Policy cases, because *fundamental* interests protected by the Fourteenth Amendment are at stake, not to mention children's

welfare.⁸ See *Mirabelli v. Bonta*, 607 U.S. 492 (2026); *Troxel v. Granville*, 530 U.S. 57 (2000); *Parham v. J. R.*, 442 U.S. 584 (1979).

This Court also applied the targeting principle in *Mirabelli*. The case presented a certified class of all parents who had objections to a Parental Preclusion Policy promulgated by California. The State argued lack of standing because some parents in the certified class would not have suffered damage because the policy had not been directly applied against them in a tangible way, and the Ninth Circuit put a stay in effect in part on that basis. This Court vacated the stay, finding that *all* objecting parents, as targets of the policy, likely had standing. As this Court explained, the “parents protected by the injunction very likely have standing because they are objects of the challenged exclusion policies.” *Id.* at 498 (citing *Diamond Alt. Energy*, 606 U.S. at 114).

Mirabelli also puts to rest any suggestion that the number of targeted individuals might become too large to support standing for them all. The number of objecting parents in California is undoubtedly very large, but that did not factor into this Court’s rationale in *Mirabelli*. The Fifth Circuit in *Deanda* also properly rejected such an argument. After quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016),⁹ for the “fact that an

⁸ Not just substantive due process rights are violated by Parental Preclusion Policies. States must provide parents procedural due process protections before the State divests them of their rights and responsibilities to care and make decisions for their children. See, e.g., *Stanley v. Ill.*, 405 U.S. 645 (1972).

injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance,” the circuit court remarked, “The Secretary’s policy is to spend millions to get contraceptives to minors without telling their parents. It should not come as a shock that there could be a correspondingly large number of parents who can challenge it in court.” *Id.* at 759-60 (quoting *Spokeo*, 578 U.S. at 339 n.7).

The same reasoning applies in this and other Parental Preclusion Policy cases. The fact that a Parental Preclusion Policy targets all parents does not mean that the only parents who have standing are those few who can prove the policy has been applied against them in a tangible way or that they are more likely than most to experience such additional injury. The fact that the State’s Parental Preclusion Policy targets a large number of parents simply means that a large number of parents have just cause, and standing, to complain.

IV. Parents Have Standing Due to Their Fundamental Relationship with Their Children

Parents also have standing to ward off threats posed by Parental Preclusion Policies due to their fundamental relationship with their minor children. This is a direct application of this Court’s recent decision in *Bost v. Illinois State Board of Elections*, 607 U.S. 71 (2026).

In *Bost*, a congressman challenged the counting

⁹ *Spokeo*, like *Mirabelli*, was a class action suit.

of mail-in ballots received after election day. Because he could not show that the ballots he challenged would have made a difference in his winning or losing a future election, the lower courts held that he lacked standing. This Court reversed. At the outset, it noted that Bost “is a candidate for office. And a candidate has a personal stake in the rules that govern the counting of votes in his election.” *Id.* at 76. Similarly here, parents have a personal stake in the rules that govern how and when they can parent their minor children.

Second, this Court in *Bost* noted, “Candidates are not common competitors in the economic marketplace. They seek to represent the people. And their interest in that prize cannot be severed from their interest in the electoral process—a process ‘of the most fundamental significance under our constitutional structure.’ Win or lose, candidates suffer when the process departs from the law.” *Id.* at 77 (quoting *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)). Similarly here, parents have a vital interest in the childrearing process—a process of the most fundamental significance under our Constitution. Whether or not the State applies its law or policy to their child specifically, parents suffer when the process veers past lawful bounds.

Third, this Court noted in *Bost* that a congressman’s interest is much different than one common to the general public: “Those who spend untold time and resources seeking to claim the right to voice the will of the people have ‘an undeniably different—and more particularized—interest’ in knowing what that will is.” *Id.* at 78 (quoting *Hotze v.*

Hudspeth, 16 F.4th 1121, 1126 (5th Cir. 2021) (Oldham, J., dissenting)). The same obviously can be said of parents: they spend untold time and resources bringing up their children, they know their children best, and they have a more than common interest in knowing what the government is doing with their children. Indeed, the law from time immemorial has recognized that parents are best suited and best disposed to guide their minor children and that the relationship between parent and child is unique and foundational to our society. *See Wash. v. Glucksberg*, 521 U.S. 702, 720 (1997); *Parham*, 442 U.S. at 602-03; *see generally* DeGroff & Fitschen, *supra* note 4.

Finally, this Court in *Bost* disposed of the argument that the congressman should have pleaded a substantial risk of damage in an upcoming election. Assessing that likelihood would require the judiciary to prognosticate in areas outside its ken and postpone such suits until after elections, because challenging the fairness of elections close to or during a campaign is “not just awkward, but politically dangerous.” 607 U.S. at 81-82. The same holds true for the parental-child relationship. Courts are not equipped to evaluate when a particular child might exhibit as transgender or might want to keep such a disposition secret from her parents. And just having a Parental Preclusion Policy in place tells a child that they should be wary of discussing sexual matters with their parents and makes it difficult for parents to know how and when they should confront their children about whether they are keeping secrets from them with the help of government officials.

If a congressman has standing to protect the electoral process because of his special relationship

with it, a parent has standing to protect the familial process because of his special relationship with his child. *Bost* also demonstrates that the Ninth Circuit was egregiously wrong in denying standing to parents targeted by a Parental Preclusion Policy.

V. Parents Have Standing Pursuant to Their Right to Obtain Information Needed to Perform Their Duties

This Court has also repeatedly held that parties have standing to complain of the State denying them information they have a right to receive that affects the performance of their duties. That is exactly what is happening here when the State refuses to inform parents how it is treating their children.

In *FEC v. Akins*, 524 U.S. 11 (1998), this Court held that voters had standing to challenge the FEC's failure to disclose contributions made to an organization and distributions made by that organization to candidates for office. *Id.* at 13-14. It explained that the voters suffered an "injury in fact" because of "their inability to obtain information" that would "help them . . . evaluate candidates for public office." *Id.* at 21; *see also Public Citizen v. DOJ*, 491 U.S. 440 (1989).

Similarly here, the parents assert that they are injured by the State withholding information from them, information to which they are legally entitled and which would help them carry out their parental responsibilities. Parents have a right to direct the upbringing of their children, including medical decisions. *See Parham*, 442 U.S. at 602-03; *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925). They have

standing to complain that the State is withholding information from them that is central to those responsibilities.

VI. The Harms to Parents Are Not Too Attenuated to Deny Them Standing

The Ninth Circuit below paid lip service to the decisions of this Court that plaintiffs may establish standing when injury is only threatened. *See Int’l Partners for Ethical Care Inc. v. Ferguson*, 146 F.4th 841, 847-48 (9th Cir. 2025). In reality, it essentially adopted a rule that denies standing any time a hypothetical chain of events is involved to show impending injury. The Ninth Circuit in this case, like the Seventh Circuit in *Eau Claire* and the Fourth Circuit in *Parents 1*, thought that this Court’s ruling in *Clapper* controlled. *See id.* at 848-49; *Eau Claire*, 95 F.4th at 848-49; *Parents 1*, 78 F.4th at 630-31. These circuit courts have strayed well off the proper path. *Clapper* did not usher in a sea change with a new, highly restrictive standing standard allowing courts to avoid the merits when they desire to do so. *Clapper* overturned no precedent. It remains the rule that it is just as much the judicial duty to decide the merits when proper parties and a live controversy are before the court as it is to avoid making decisions on cases not properly presented to it. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014) (“a federal court’s obligation to hear and decide cases within its jurisdiction is virtually unflagging”) (internal quotations omitted) (quoting *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-126 (2014) (quoting *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013))).

This Court confers standing when there is a credible threat of future enforcement so long as the threat is not “imaginary or wholly speculative,” *Babbitt v. Farm Workers Nat’l Union*, 442 U.S. 289, 302 (1979), “chimerical,” *Steffel v. Thompson*, 415 U.S. 452, 459 (1974), “wholly conjectural,” *Golden v. Zwickler*, 394 U.S. 103, 109 (1969), or relying on “a highly attenuated chain of possibilities.” *Clapper*, 568 U.S. at 410. It has further explained that the most obvious way to demonstrate a credible threat of enforcement in the future is an enforcement action in the past. *See Driehaus*, 573 U.S. at 164; *O’Shea v. Littleton*, 414 U.S. 488, 496 (1974)). And the threat of government use of a challenged statute or policy is especially credible when defendants have not “disavowed enforcement.” *Driehaus*, 573 U.S. at 165-66 (“administrative action, like arrest or prosecution, may give rise to harm sufficient to justify pre-enforcement review”).

While a chain of assumed events sometimes becomes too attenuated, like in *Clapper*, *all* forward-looking, injunctive cases, by definition, involve some chain of possibilities ending in the challenged provision “may be” applied against the plaintiff. For example, in *Babbitt* this Court found standing by assuming that the plaintiff would (a) engage in publicity and (b) inadvertently state an untruth (c) that would be apprehended as such by state authorities (d) who would bring charges (even though they had never done so before). 442 U.S. at 301-02. This Court found the plaintiffs in that situation were “not without some reason” to fear application of the challenged statute, such that the positions of the parties [we]re sufficiently adverse . . . to present a case

or controversy. . . .” *Id.* at 302. All forward-looking cases involve assumptions of certain events that may not occur. “The difference between an abstract question and a ‘case or controversy’ is one of degree.” *Id.* at 297-98; *see also Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941).

The relevant considerations all dictate that parents here have standing to challenge active Parental Preclusion Policies before they are directly applied against them. The State is currently applying its policy in many cases, and it is staunchly defending its desire to continue to do so as more minors express a desire to transition gender. Moreover, recent surveys show that the incidence of minors claiming gender fluidity has markedly increased over the last decade.¹⁰

Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007), provides a correct analogue to this situation. In *Parents Involved*, this Court found sufficiently imminent harm when an unconstitutional school policy might have been applied in the future. This Court noted that the parents all “have children in the district’s elementary, middle, and high schools” that are subject to the policy and, therefore, “*may be* ‘denied admission to the high schools of their choice when they apply for those schools in the future’” by

¹⁰ See Judy L. Herman & Andrew R. Flores, *How Many Adults and Youth Identify as Transgender in the United States?* (Aug. 2025), <https://williamsinstitute.publications/trans-adults-united-states/> (last visited July 27, 2026).

virtue of the challenged policy. *Id.* at 718 (emphasis added). It explained that the fact that “[some] children of group members will not be denied admission to a school based on their race . . . does not eliminate the injury claimed.” *Id.* at 718-19. Indeed, parents complaining of Parental Preclusion Policies are in a unique position and have an even stronger case: if they cannot preemptively challenge these secrecy policies, then they and their children will be *required* to suffer tangible harm before they are able to contest it.¹¹

Clapper is not in conflict with *Parents Involved* and does not require a different result here. In *Clapper*, the plaintiffs challenged FISA, but they were not foreign nationals, who were the ones targeted by the statute. By contrast, Parental Preclusion Policies *expressly target* parents of minor children. Moreover, *Clapper* also involved a highly attenuated chain of assumptions for potential injury. The plaintiffs there had to assume that, among the untold number of

¹¹ The panel majority in *Parents 1*, over Judge Niemeyer’s dissent, suggested that *Parents Involved*’s forward-looking application should be restricted to equal protection cases. 78 F.4th at 633-35; *id.* at 642-43 (Niemeyer, J., dissenting). But this Court from early on has applied its rulings in forward-looking situations to *all* constitutional interests. In *Driehaus*, this Court related, “Building on *Steffel*, we explained that a plaintiff could bring a preenforcement suit when he ‘has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.’” 573 U.S. at 160 (quoting *Babbitt* 442 U.S. at 298 (collecting cases)). In *Driehaus*, the constitutional interest involved was free speech; in *Babbitt*, it was free association.

possibilities, the government would target foreigners with whom they communicated; it would use FISA rather than another authority to do so; the FISA judges would issue a warrant; the government would succeed in intercepting the communications of the plaintiffs' foreign contacts; and they would be party to the particular conversations intercepted. 568 U.S. at 410-14. This essentially made the case one to vindicate the "public interest in proper administration of the laws," *see Lujan*, 504 U.S. at 577, which this Court has been especially reluctant to allow "in the fields of intelligence gathering and foreign affairs." *Clapper*, 568 U.S. at 409.

Parental Preclusion Policy cases could hardly be less alike. They deal with prototypical parental and local issue, such as education and truancy. Government personnel involved in these services see children often, and they need no warrant to speak with them. Nothing stops them from freely discussing sexual identity issues. Indeed, easy access and communication is the rule, not the exception. And far from being an accumulation of mere guesswork, as in *Clapper*, here the challenged "course of action is within the plain text of a policy," establishing that "a 'credible threat' of enforcement exists." *Parents Defending Educ. v. Linn Mar Cmty. Sch. Dist.*, 83 F.4th 658, 667 (8th Cir. 2023); *accord Armstrong v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001). These factual distinctions show that *Clapper*, properly interpreted, argues in favor, not against, standing for parents challenging Parental Preclusion Policies.

This Court has emphasized that a court must "evaluate both the fitness of the issues for judicial decision and the hardship to the parties of

withholding court consideration.” *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967). Parents certainly satisfy both prongs of that test: the Parental Preclusion Policy is in place, the State is staunchly defending it, and the parents will suffer real-world consequences if the Policy is applied to them without their knowledge.

The Eighth and Fifth Circuits have resolved similar cases properly. In *Religious Sisters of Mercy v. Bacerra*, 55 F.4th 583 (8th Cir. 2022), and *Franciscan Alliance, Inc. v. Bacerra*, 47 F.4th 368 (5th Cir. 2022), DOJ argued that doctors didn’t have standing to seek injunctive relief concerning recently issued federal regulations because the agency had not yet decided whether the regulations would apply to doctors who, due to their religious beliefs, refused to provide certain services to transgender youth. Both circuit courts held that, by virtue of DOJ saying the issue was up in the air, it conceded a credible threat of enforcement sufficient to give standing. *Religious Sisters*, 55 F.4th at 602-06; *Franciscan Alliance*, 47 F.4th at 376. That the agency had enforced the regulation against similarly situated doctors also showed the harm was sufficiently imminent. *Religious Sisters*, 55 F.4th at 606. Here, the State doesn’t hesitate to say that it will enforce the Parental Preclusion Policy against the parents if the situation, in the State’s view, so dictates, as it has in other cases. That provides sufficient immediacy to provide standing under this Court’s precedents. *See Babbitt*, 422 U.S. at 459 (relying on enforcement of challenged ordinances in another instance to establish standing for injunctive and declaratory relief).

This Court has summarized, “Basically, the

question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Md. Cas. Co.*, 312 U.S. at 273; *see also Babbitt*, 442 U.S. at 297-98. The risk to parents is certainly sufficiently imminent and substantial when the State does not deny that it has implemented and will continue to implement its policy of transitioning minors without parental knowledge or consent. The importance of the issues involved for the parents, and their minor children, could not be greater.

Conclusion

Would that this case were an isolated aberration. It is not. Parents across the country, in untold instances, are being deprived of the opportunity to protect their rights and their children by Parental Preclusion Policies that hide from them what government personnel are telling and doing with their children. The fact that these policies all revolve around sexuality does not excuse such policies; rather, it makes the situation worse. Sexual matters are at the core of the parent-child relationship. They are the epitome of decisions concerning which children lack the maturity to make wise decisions without the guiding hand of their parents. *See Parham*, 442 U.S. at 602-03.

The Ninth Circuit in finding that the parents lacked standing because they are not yet aware of tangible harm being done to their child violates multiple principles, as well as common sense. The harm the Ninth Circuit’s and similar decisions have

caused is significant and pervasive. This Court should reverse.

Respectfully submitted,
this 15th day of September 2026,

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