

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.

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

**BRIEF OF LEGAL SCHOLARS AS *AMICI*
CURIAE IN SUPPORT OF PETITIONERS**

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QUESTION PRESENTED

Whether parents have standing to challenge a law or policy that deliberately displaces their decision-making role as to “gender transitions” of their children, and in so doing creates present and likely future impediments to their ability to parent their children as they deem best for them.

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INTEREST OF *AMICI CURIAE*¹

Amici are six law professors who teach and write in the fields of constitutional law, legal history, and related subjects. *See* Appendix A (listing the individual law professors joining this brief). They have a professional interest in the original and historical foundations of the parental-rights doctrine and in ensuring that courts do not narrow that doctrine by treating fit parents as constitutional strangers to decisions about their own children. *Amici* submit this brief to assist the Court in evaluating the Founding-era materials and early American legal tradition recognizing parents' primary authority and duty to care for, educate, direct, and protect their minor children.

This historical evidence bears directly on the question presented because it explains why interference with parental authority has long been understood as a concrete injury. Traditionally, parental authority was understood as an active legal office rather than a remedial interest arising only after removal of a child. The State's creation of procedures that bypass that office therefore injures parents before the State completes the ultimate displacement that Petitioners fear. *Amici's* perspective will aid the Court in parsing the historical evidence.

SUMMARY OF ARGUMENT

This case concerns whether fit parents have Article III standing to challenge a law that treats them as obstacles to bypass when a child seeks certain treatment and shelter away from home. Washington's statutory scheme

¹ Pursuant to Rule 37.6, *Amici* affirm that no counsel for a party authored this brief in whole or in part and no person other than *Amici* or their counsel contributed money intended to fund preparing or submitting this brief.

allows a runaway minor seeking “protected health care services,” including “gender-affirming treatment,” to be routed through shelter and agency processes that may withhold ordinary parental notice, limit parents’ knowledge of the child’s location and condition, and refer the child to behavioral-health services without parental consent. That scheme interferes with “perhaps the oldest of the fundamental liberty interests recognized by this Court”: parental rights. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion). Because Washington’s scheme palpably invades a historically protected and present legal right, Petitioners have standing to challenge it.

I. Anglo-American law traditionally recognized infringement on the parent-child relationship as a real-world, legally cognizable injury. Parental authority was not seen as a narrow possessory interest triggered only after the State physically seized a child. Rather, it was understood as a natural and legal office: parents had both the right and the duty to maintain, educate, govern, and form their children until they could govern themselves. Blackstone described parental obligations of maintenance, protection, and education as duties rooted in nature and Providence. Pufendorf treated parental government as necessary because children lack the judgment to govern themselves. Locke described parental power as temporary but real authority grounded in parents’ duty to direct children until reason matures. Kent and Story carried that tradition into American law, treating parental custody and direction as established, protected legal rights and duties. Related doctrine grounded in that history persists to this day.

II. That history also underpins an important balance in protecting parental rights at the intersection of state

interests. The parental rights this Court has recognized in a series of decisions did not spring from twentieth-century policy preferences. *See Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (right to “bring up children”); *Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925) (right to “direct the upbringing and education of children” and “to recognize and prepare [children] for additional obligations”); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (right to the “custody, care, and nurture of the child”); *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972) (respecting the “fundamental interest of parents . . . to guide the religious future and education of their children”); *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (recognizing “the family as a unit with broad parental authority over minor children”); *Troxel*, 530 U.S. at 65–66 (right to make decisions concerning children’s “care, custody, and control”). Instead, those decisions reflect well-established legal and historical understandings: parental rights are a series of interconnected rights concerning the upbringing of children, and the State may not presume that ordinary parental disagreement with a child’s preferred course of treatment makes the parent unfit or displaceable. Nor may the State create a secret pathway around parental judgment and then deny that parents are injured until that secret process has run its course.

III. Historical *parens patriae* authority confirms the same limiting principle. Chancery intervened to protect children only when ordinary guardianship could not safely do so—such as where a child lacked adequate care or faced serious danger. Chancery’s temperance prevented the sovereign from substituting its judgment for that of fit parents. Ordinary parental disagreement with a child’s preferred course of care did not historically transfer parental authority to the State or its designees

absent an individualized showing. That same tradition secured parents in the right to know a child’s whereabouts and to resume custody. Notice was therefore integral to the parental office.

The decision below conflicts with that tradition. It treats parental rights as if they arise only at the moment of completed state action, while the Founding-era understanding treated parental authority as an ongoing relationship and office that can be impaired by interference, inducement, secrecy, and displacement. Parents whose authority is deliberately circumvented are not bystanders. They are the subjects of the law and suffer present injuries when the State creates incentives and procedures that undercut their ability to direct their children’s care and upbringing. That point also fits comfortably within Justice Thomas’s separate opinion in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021). Whatever the limits of the rule that every private-rights violation supplies Article III injury, the Founding-era materials strongly support that rule where the right infringed is the constitutionally protected parental office itself. *Cf. id.* at 446–49 (Thomas, J., dissenting).

ARGUMENT

I. The Understanding of Parental Rights at the Founding, as in the Modern Day, Flowed from a Deep Common-Law Tradition.

A. The common law imbued parentage with duties, natural rights, and legally protected interests.

1. Parental rights are “perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel*, 530 U.S. at 65. Historically, children were not considered self-governing legal actors in the full sense,

and parents—not the State—bore the responsibility to guide them. That premise appears across natural-law writers, English common-law authorities, and early American treatises. *See* 1 W. Blackstone, *Commentaries* *434 (1765); 2 J. Kent, *Commentaries on American Law* *189 (1826) [hereinafter 2 J. Kent, *Commentaries*]; S. Pufendorf, *The Whole Duty of Man According to the Law of Nature* § 2, at 202 (5th ed. 1735) [hereinafter S. Pufendorf, *Whole Duty*]; 1 J. Burlamaqui, *The Principles of Natural and Political Law* § 7, at 29 (5th ed. 1807) (describing paternal power as a natural trust grounded in the child’s inability to self-govern); *see also* Massachusetts Body of Liberties of 1641, art. 1, *reprinted in* The Colonial Laws of Massachusetts 33 (William Henry Whitmore ed. 1889) (“[N]o man shall be deprived of his wife or children[.]”).

Parental rights were conceived as a fiduciary-like office grounded in duty: because children lack mature judgment, parents must maintain them, protect them, educate them, and prepare them for adult obligations. As Locke put the point, “all parents were, by the law of nature, under an obligation to preserve, nourish, and educate the children they had begotten.” J. Locke, *Second Treatise of Government* § 56, at 241 (6th ed. 1764) [hereinafter J. Locke, *Second Treatise*]; *see also* *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 828–29 (2011) (Thomas, J., dissenting) (explaining Founding generations’ belief in parents’ responsibility to instill “moral prohibitions, behavioral standards, and a capacity for self-government” in children (cleaned up)).

Blackstone described the parent-child relation as centered around parents’ obligations of “maintenance,” “protection,” and “education,” and explained that parental power was “derived from . . . their duty.” 1 W.

Blackstone, *Commentaries* *434, *440. The law respected parents' authority so they could fulfill those obligations. *Id.* at *440. Blackstone likewise described the father as “guardian by nature,” confirming that parental custody and direction were the ordinary legal baseline rather than a discretionary state concession. *Id.* at *449.

Locke gave the same account: parental power arises from the duty to govern children “during the imperfect state of childhood,” J. Locke, *Second Treatise* § 58, at 243, because the child’s want of reason “puts the authority into the parents’ hands” until reason matures, *id.* § 63, at 248. Pufendorf likewise explained that parental authority and maintenance exist because children do not understand “how to govern themselves.” S. Pufendorf, *Whole Duty* § 2, at 202.

Parental authority was temporary in the sense that it was contingent on the child’s maturity, but it was real authority while it lasted. Founding-era sources rooted that authority in parental duty. Locke, for example, wrote that a father holds parental authority “only as he is guardian of his children,” and that such authority “goes along with their nourishment and education, to which it is inseparably annexed.” J. Locke, *Second Treatise* § 65, at 248–49. Because parental authority inheres in parental duty, Locke reasoned that a father who “quits care of” his children “loses his power over them.” *Id.* at 248. Likewise, this Court has explained that the law respects a “dominant” role of parents in deciding their children’s best interests, at least “absent a finding of neglect or abuse.” *Parham*, 442 U.S. at 604.

Early American treatises confirmed the existence of and need for parental authority. Swift, applying the prevailing legal categories of his day rather than opposition to setting a particular age of majority, described persons

under twenty-one as “infants” or “minors” with limited legal capacity. 1 Z. Swift, *A System of the Laws of the State of Connecticut* 213, 215 (1795). Kent explained that guardianship was necessary because of infants’ “inability . . . to take care of themselves.” 2 J. Kent, *Commentaries* *233; see also *id.* at *190 (describing parental duty as a “profession to assist, maintain, and console the child”). Bouvier similarly explained that infants’ full civil and political rights were withheld because they lacked mature “moral faculties,” “strength,” and “intelligence.” 1 J. Bouvier, *Institutes of American Law* 137–38 (Robert E. Peterson ed. 1851). Thus, parents—not the State in the first instance—bore the responsibility to maintain, protect, educate, discipline, and guide children until they could govern themselves.

2. Parents’ duties to their children imbued parentage with natural rights and legally protected interests. Those rights and interests were recognized, rather than created, by positive law. 1 W. Blackstone, *Commentaries* *434–40; see also 2 St. George Tucker, *Blackstone’s Commentaries: With Notes of Reference to the Constitution and Laws of the Federal Government of the United States and of the Commonwealth of Virginia* 446 (1803) (adapting Blackstone’s parent-child framework to early American law). Thus, the common-law world in which the Constitution was adopted assumed that parents rightfully occupied the primary office of directing their children’s growth, formation, and care. See *Troxel*, 530 U.S. at 65 (recognizing parents’ interest “in the care, custody, and control of their children” as “perhaps the oldest of the fundamental liberty interests recognized by this Court”).

If parental authority was a present legal office, then legal interference with that office was itself an injury,

even apart from measurable consequential loss. Justice Story made the point in *Webb v. Portland Manufacturing Co.*: “Actual, perceptible damage is not indispensable as the foundation of an action. The law tolerates no farther inquiry than whether there has been the violation of a right.” 29 F. Cas. 506, 508 (No. 17,322) (C.C.D. Me. 1838) (Story, J.). Justice Story later described the parental analogue in terms especially relevant here: a father could complain when a child was, “by force or fraud, by abduction or seduction, withdrawn from his power or protection,” because the parental relation necessarily involved “deep interest, moral, religious, and social.” *Plummer v. Webb*, 19 F. Cas. 891, 892 (No. 11,233) (C.C.D. Me. 1827) (Story, J.); *see also Stone v. Wall*, 734 So. 2d 1038, 1041–44 (Fla. 1999) (tracing cause of action for intentional interference with the custodial parent-child relationship to English common-law authorities).

Blackstone grouped such injuries with wrongs to domestic relations. The writ *de filio, vel filia, rapto vel abducto* lay for a child “tak[en] away,” while the related ravishment-of-ward action protected the guardian’s custody; but the actionable principle was broader than forcible abduction. 3 W. Blackstone, *Commentaries* *140–41 (1768). Blackstone also described an action against those who “persuade and entice” a family member “to live separate” from the household “without a sufficient cause,” explaining that such injuries attack “the relation itself” by causing its “breach and dissolution.” *Id.* at *139, *142. *Winsmore v. Greenbank* applied the same enticement principle to persuasion without force, holding actionable the procurement of a family member’s continued absence from the household. *See Willes* 577, 583–84, 125 Eng. Rep. 1330, 1333 (C.P. 1745) (holding “every moment that a wife continues absent from her husband

without his consent . . . is a new tort, and every one who persuades her to do so does a new injury”).

Historical remedial tradition likewise treated such invasions as judicially cognizable injuries. Common law recognized that “every injury imports a damage” when a person is “hindred of his right.” *Ashby v. White*, 2 Ld. Raym. 938, 955, 92 Eng. Rep. 126, 137 (K.B. 1703) (Holt, C.J.), *rev’d*, 1 Eng. Rep. 417 (H.L. 1704). Blackstone’s remedial framework made the same point: “In all other cases,” he wrote, “it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy, by suit or action at law, whenever that right is invaded.” 3 W. Blackstone, *Commentaries* *23; *see also id.* at *109 (“[I]t is a settled and invariable principle . . . that every right when withheld must have a remedy, and every injury its proper redress.”). Chief Justice Marshall adopted that Blackstonian premise into American law: a government of laws would “certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

Early Article III usage likewise treated a party’s assertion of legal rights as a “case” or “suit.” *See Weston v. City Council of Charleston*, 27 U.S. 449, 464 (1829) (defining “suit” as proceeding in “which an individual pursues that remedy in a court of justice, which the law affords him”); *Osborn v. Bank of U.S.*, 22 U.S. 738, 819 (1824) (defining “case” as where a party “asserts his rights in the form prescribed by law”); 3 J. Story, *Commentaries on the Constitution of the United States* § 1640, at 507 (1833) (same). That maxim matters here because the parental office described above was not merely moral or aspirational but was rather a vested right that could be vindicated.

This Court has rested on the same understanding that invasion of a legal right is a cognizable injury. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 344 (2016) (Thomas, J., concurring) (explaining that historical courts possessed broad power to adjudicate violations of private rights, and that traditional remedies were not contingent on damages beyond the violation of the private legal right); Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III*, 91 Mich. L. Rev. 163, 170 (1992); Thomas R. Lee, *The Standing of Qui Tam Relators Under the False Claims Act*, 57 U. Chi. L. Rev. 543, 551–53 (1990). As this Court's recent decision in *Uzuegbunam v. Preczewski* correctly explains, the common law, including *Ashby v. White* and *Webb v. Portland Manufacturing Co.*, treated a completed violation of a legal right as a cognizable injury and allowed nominal damages to redress that invasion. 592 U.S. 279, 285–91 (2021). Given this long-standing history and tradition surrounding the concept of legal injury, as explained below in Section III, there is no doubt that the injury to Petitioners' parental prerogatives here would have been considered sufficient basis for federal standing during the Founding era.

B. American parental-rights jurisprudence reflects that longstanding history.

Over the following centuries, American jurisprudence carried forward the Founding-era understanding of parental rights. Kent described the parent as the ordinary and proper custodian of the child, responsible for support and education and entitled to the child's custody, free from unlawful detention. 2 J. Kent, *Commentaries* *189–207; *see also Jones v. Tevis*, 14 Ky. 25, 27 (1823) (describing the parent's right as one “which grows

necessarily out of the reciprocal relation of parent and child”). Story likewise treated parental custody as entrusted to parents on the natural presumption that children will be properly cared for by them. 2 J. Story, *Commentaries on Equity Jurisprudence* § 1341, at 574–75 (1836) [hereinafter 2 J. Story, *Commentaries*]. Parental authority was not merely a remedial right asserted after a child was taken away. It was the ordinary legal arrangement governing the parent-child relationship day by day.

Early American cases made that legal enforceability concrete. New Hampshire decisions, for example, treated enticement and harboring as actionable invasions of parental custody or service. *Campbell v. Cooper* recognized redress for enticing minors away and receiving or harboring them while they owed service. 34 N.H. 49, 68 (1856). *Sargent v. Mathewson* held that a father, absent forfeiture or relinquishment, was entitled to his minor child’s services and custody and could recover against one who deprived him of that right by seducing away or harboring the child. 38 N.H. 54, 57–58 (1859). Texas law reflected the same premise. *Gulf, C. & S.F. Ry. Co. v. Redeker* explained that, where a father sues in tort “for enticing away or harboring his minor child,” the established rule required him to aver and prove the defendant’s knowledge of the child’s minority—not because the parental interest was absent, but because liability turned on knowing interference with that protected relation. 67 Tex. 190, 191 (1886).

The day-by-day parent-child relation described above was not merely philosophical; it was enforceable against third parties who knowingly detained, harbored, enticed, or otherwise withdrew a child from parental custody and protection. Indeed, modern tort doctrine

preserved that same core rule: one who, knowing the parent does not consent, “abducts or otherwise compels or induces a minor child to leave” the parent, or “not to return,” is liable to the parent for interference with custodial rights. Restatement (Second) of Torts § 700 (Am. L. Inst. 1977); *see also* Restatement of Torts § 700 (Am. L. Inst. 1938). Those principles reinforce the point here: if Washington’s scheme presently bypasses the parents’ legally protected office, there is an ongoing invasion of a right historically understood as immediately enforceable.

II. The Original Understanding Encompassed Care, Custody, Education, Moral Formation, and Medical Judgment as a Group of Rights Uniquely Protected from State Intrusion.

Historically, the original understanding tracked parental rights as a series of interconnected rights concerning the upbringing of children. Crucially, those rights stood together, protected against State interference on the grounds of mere disagreement with parental choices.

The Founding-era materials did not divide parental authority into isolated modern categories. “Care,” “custody,” “control,” “education,” and “upbringing” were overlapping aspects of the same relationship. A parent who maintained the child’s body, governed the child’s conduct, trained the child’s conscience, arranged the child’s instruction, and decided how the child should be raised was exercising one integrated office. That is why this Court’s parental-rights cases have repeatedly used broad language: the right to “bring up children,” *Meyer*, 262 U.S. at 399, the right to “direct the upbringing and education of children,” *Pierce*, 268 U.S. at 534, and the

interest in the “care, custody, and control” of children, *Troxel*, 530 U.S. at 65–66, all describe the same historical tradition.

Petitioners’ alleged harms—including, for instance, loss of notice, exclusion from medical decisions, delayed reunification, chilled discipline, and altered speech—should not be treated as disconnected injuries. Pet. 6–16. Rather, they reflect different ways that the State has impaired an integrated parental office. Blackstone’s account of parental duties of maintenance, protection, and education treated those responsibilities as mutually reinforcing aspects of the parent-child relationship. 1 W. Blackstone, *Commentaries* *434–40. Kent likewise described the parent-child relationship as a single domestic relation involving custody, education, support, and governance. 2 J. Kent, *Commentaries* *189–207. American treatise writers used the same frame: Reeve, for instance, treated “parent and child” as one branch of domestic-relations law, and Schouler’s treatise organized the law around “parent and child” as a single relation rather than severable interests in custody, education, discipline, or care. T. Reeve, *The Law of Baron and Femme, of Parent and Child, Guardian and Ward, Master and Servant, and of the Powers of Courts of Chancery* 227 (2d ed. 1846) [hereinafter T. Reeve, *Baron and Femme*]; J. Schouler, *A Treatise on the Law of the Domestic Relations* 303 (2d ed. 1874).

1. The educational dimension is especially important. Founding-era and early American sources understood education to include moral and religious formation, household discipline, preparation for civic and economic life, and guidance in judgment. *See* 1 W. Blackstone, *Commentaries* *438–40; 2 J. Kent, *Commentaries* *195. That history is reflected in this Court’s precedents. *See*,

e.g., *Meyer*, 262 U.S. at 400 (explaining that a parent’s “natural duty” is “to give his children education suitable to their station in life”); *Pierce*, 268 U.S. at 535 (holding that parents “have the right, coupled with the high duty, to recognize and prepare [children] for additional obligations”); *Yoder*, 406 U.S. at 232 (recognizing the “fundamental interest of parents . . . to guide the religious future and education of their children”). Those cases do not rest on a narrow right to select a school building. They recognize that parents have the primary responsibility to prepare children for obligations the State “can neither supply nor hinder.” *Prince*, 321 U.S. at 166. Indeed, this Court has described parental rights as among the “essential . . . basic civil rights of man,” “far more precious . . . than property rights.” *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (cleaned up).

That history bears directly on Petitioners’ allegations that Washington’s scheme has changed how they speak, discipline, and discuss contested moral questions with their children. Moral and religious formation were historically core parental functions, not peripheral incidents of custody. Blackstone treated parental “correction” as part of the parent’s legal authority over children. 1 W. Blackstone, *Commentaries* *441; *see also* T. Reeve, *Baron and Femme* 288 (explaining that, in correcting a child, the parent acts “in a judicial capacity”).

2. Regarding moral formation, Founding-era sources likewise reflect that minor children—lacking full independent legal authority—could not ordinarily set personal conscience against parental governance. *See* J. Locke, *Second Treatise* §§ 57–58, at 241–43 (positing that children cannot understand and direct their own will, and, therefore, “he that understands for [them], must will for [them] too”); S. Pufendorf, *Whole Duty* § 2,

at 202 (ascribing to parents the authority to direct children’s actions because children lack discretion “to govern themselves”). Historians of early American households likewise describe discipline and moral formation as legally protected incidents of parental governance. See Toby L. Ditz, *Ownership and Obligation: Inheritance and Patriarchal Households in Connecticut, 1750–1820*, 47 Wm. & Mary Q. 235, 236–37 (1990) (recognizing Founding-era “authority relations” in which heads of households “have the formal right to make final decisions about internal matters” and to “speak for their dependents in dealings with the larger world”).

This Court’s doctrine tracks that history: *Pierce* protects parents’ authority to “direct the upbringing and education of children,” 268 U.S. at 534; *Prince* recognizes the “private realm of family life which the state cannot enter,” 321 U.S. at 166; and *Yoder* recognizes parental duties to inculcate “moral standards, religious beliefs, and elements of good citizenship” in children, 406 U.S. at 233. If moral formation and discipline were historically central aspects of parental authority, then a state-created incentive structure that chills parents’ correction, counseling, and speech on contested issues burdens the parental right now—not only after the State completes some later custodial or medical intervention.

3. The same historical logic applies to medical and psychological decisions. Although Founding-era medicine differed dramatically from modern medicine, the relevant principle is not technology-specific. Children lack mature judgment; parents ordinarily possess the duty and authority to decide what forms of care will protect the child’s welfare. Children, even adolescents, often cannot make sound judgments about medical care, and parents “can and must” make those judgments. *Parham*,

442 U.S. at 603. Recent scholarship confirms that parents' authority under English tradition and common law was strong and extended to decisions about "what available medical treatments their children would undergo." Nathan J. Wertjes, *Parents and Medical Consent: An Analysis of Parental Rights from the Common Law to the Founding*, 100 Notre Dame L. Rev. 2259, 2274 (2025). Minors had limited contractual capacity for "necessaries," which included "physic" or "medical aid." See 1 W. Blackstone, *Commentaries* *454; 2 J. Kent, *Commentaries* *239. But that did not make a minor maintained by a parent the ordinary medical decisionmaker. Instead, the "necessaries" principle was seen as an exception to the general rule that parents furnish, authorize, and control the child's care. R. H. Tyler, *Commentaries on the Law of Infancy* § 56, at 107 (2d ed. 1882); 2 N. Dane, *A General Abridgment and Digest of American Law* § 4, at 18 (1824); 1 S. Comyn, *A Treatise of the Law Relative to Contracts and Agreements Not Under Seal* 154–61 (1807).

Modern consent doctrine developed on the same premise. Cardozo's root rule was that surgery without consent is assault. *Schloendorff v. Society of N.Y. Hospital*, 211 N.Y. 125, 130 (1914). Extended to minors, "the general rule is that the consent of the parent is necessary for an operation on a child," such that an unauthorized operation is "a technical battery." *Bonner v. Moran*, 126 F.2d 121, 122 (D.C. Cir. 1941). Courts applying that rule held physicians liable for nonemergency treatment of minors without parental consent, while recognizing emergency exceptions. *Moss v. Rishworth*, 222 S.W. 225, 226–27 (Tex. Comm'n App. 1920); *Zoski v. Gaines*, 271 Mich. 1, 9–10 (1935); *Rogers v. Sells*, 178 Okla. 103, 61 P.2d 1018, 1020 (1936).

The rule guarded minors against “the potential overreaching of third parties or the improvidence of their own immature decisionmaking” by leaving such choices “in the hands of” parents. *Am. Acad. of Pediatrics v. Lungren*, 16 Cal. 4th 307, 315 (1997). *Parham* stated the same principle constitutionally: children often cannot make sound medical judgments, so parents “can and must” make those judgments for them. 442 U.S. at 603. Modern mature-minor doctrines and minor-consent statutes are real exceptions, but they are recent statutory departures from the common-law baseline that vested ordinary medical decisionmaking in parents. Those exceptions confirm rather than erase the rule.

For the same reason, Petitioners’ injuries do not depend on waiting until Washington completes a later removal, treatment referral, or custodial displacement. The parental office described in this Section includes notice, custody, moral formation, and medical judgment; when the State impairs those components, it invades the historically protected right. Section III explains why that invasion would have been understood as a concrete legal injury at the Founding.

III. Washington’s Law Inverts the Founding-Era Paradigm by Empowering the State to Displace Fit Parents Without Notice, Consent, or Individualized Process.

A. Displacing fit parents over disagreement flouts the history of parental rights.

The historical tradition lets the State protect children, not displace fit parents over disagreement. This Court’s precedent reflects this tradition, carrying forward into respect for the long-recognized parental right to the return of a child. This context explains the well-

settled *parens patriae* limitations on intrusion in parental rights.

1. This Court’s precedents reflect this protection-versus-substitution distinction. *Stanley* rejected categorical displacement of parents without individualized proof of unfitness. 405 U.S. at 649, 657–58. *Santosky v. Kramer* held that “the State cannot presume that a child and his parents are adversaries,” and “until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.” 455 U.S. 745, 760 (1982). *Troxel* likewise applied a fit-parent presumption and refused to let courts override parental judgment “simply because a state judge believes a ‘better’ decision could be made,” striking down a Washington statute that lacked a threshold showing of harm requirement. 530 U.S. at 73. And *Parham*, *Pierce*, and *Prince* frame state authority as a protective exception, not a power to transfer ordinary parental judgment to “some agency or officer of the state,” because “the child is not the mere creature of the State.” *Parham*, 442 U.S. at 602–03; *Pierce*, 268 U.S. at 535; *Prince*, 321 U.S. at 166–67.

Moreover, precedent assumes that parents may make judgments with which children disagree. See *Pierce*, 268 U.S. at 534 (recognizing parents’ liberty to “direct the upbringing and education of children”); *Parham*, 442 U.S. at 604 (“The fact that a child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parents’ authority to decide what is best for the child.”). If a State may treat disagreement itself as the occasion to hide a child from parents, delay notice, or route the child to services the parents oppose, the parental office becomes contingent on the State’s approval of the parents’

substantive views. That is the opposite of the tradition this Court has recognized. *See Mahmoud v. Taylor*, 606 U.S. 522, 559–60 (2025) (recognizing parents’ “critical right . . . to guide the religious development of their children”).

The State’s attempt to reverse the presumption of parental fitness is itself an injury sufficient to confer federal standing. Petitioners need not wait until the State has completed the displacement of their authority; the challenged scheme presently alters the legal baseline by treating fit parents as presumptively avoidable whenever their judgment conflicts with the child’s preferred course of care.

2. The right to know where a child is and to resume custody is part of that same historical understanding of parent–child relations. Kent explained that a father “may obtain the custody of his children by the writ of habeas corpus, when they are improperly detained from him.” 2 J. Kent, *Commentaries* *194. Blackstone likewise described remedies for a child taken or withheld from lawful custody. 3 W. Blackstone, *Commentaries* *140–41. Concealment or withholding itself impaired parental authority. The right to retrieve and resume custody presupposed the ability to locate the child, making notice instrumental to a centuries-old custody-recovery right rather than a modern procedural gloss.

Early American habeas-custody practice reinforces the same point. To be sure, these cases often arose in inter-parental or private-custodian disputes, not direct challenges to state displacement. But they remain probative because courts did not disturb custody merely because another decisionmaker preferred a different arrangement; they required a concrete, case-specific basis—such as unfitness, danger, misconduct, or

circumstances showing that the child could not safely remain with the parent otherwise entitled to custody. See *United States v. Green*, 26 F. Cas. 30 (No. 15,256) (C.C.D.R.I. 1824) (Story, J.); *Commonwealth v. Addicks*, 2 Serg. & Rawle 174 (Pa. 1815); *Ex parte Barry*, 43 U.S. (2 How.) 65 (1844) (Story, J.).

3. That doctrinal line maps onto the historical one: *parens patriae* has its common-law roots in the royal sovereign's "right or responsibility to take care of persons who are legally unable, on account of mental incapacity . . . to take proper care of themselves." *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 600 (1982) (cleaned up). It was understood as authority to protect those who could not protect themselves—not as a license to replace fit parents with state-preferred decisionmakers.

Some authority, e.g., *Ex parte Crouse*, approved broader *parens patriae* authority over an at-risk child, 4 Whart. 9 (Pa. 1839), but that expansive view was elsewhere repudiated, e.g., *People ex rel. O'Connell v. Turner*, 55 Ill. 280 (1870), rejecting confinement of a child absent crime or adequate legal process. Taken for the limited proposition relevant here, the history supports a specific-showing requirement before parental custody or authority can be displaced—not a categorical rule allowing the State to treat disfavored parental views as constructive unfitness.

The historical protective power of the sovereign confirms the same line. English Chancery's jurisdiction over infants arose from the Crown's *parens patriae* responsibility to provide care where ordinary private guardianship could not safely do so—not from a general power to prefer the State's judgment over that of a fit parent. In *Falkland v. Bertie*, the court's intervention concerned an

infant's wardship and property interests, reflecting Chancery's protective office over those legally unable to act for themselves. 2 Vern. 333, 342, 23 Eng. Rep. 814, 818 (Ch. 1696). And in *Eyre v. Countess of Shaftsbury*, the Chancellor acted where a testamentary guardian sought control over the education and attendants of an infant earl after the surviving household arrangements appeared inadequate, again supplying protective care rather than treating parental authority as categorically defeasible. 2 P. Wms. 103, 118–24, 24 Eng. Rep. 659, 664–66 (Ch. 1722).

These authorities support the limiting principle missing from Washington's scheme. The State may intervene to protect children from unfitness, abandonment, abuse, neglect, or serious danger, but ordinary parental disagreement with a child's preferred course of care did not historically transfer parental authority to the sovereign or its designees.

So too here, Washington's scheme injures Petitioners by making disagreement the operative trigger for curtailing parental prerogatives. A law that treats parental resistance to a child's preferred treatment path as a reason to withhold notice, delay reunification, or route the child through state-approved services does not merely regulate third parties; it burdens the parents' own constitutional office and therefore inflicts a present legal injury.

B. Washington's law lacks the protections historically understood as necessary to intrude in parental authority.

Washington's law departs from the historical baseline in three related ways. First, it changes the ordinary notice rule for runaway minors. Historically and under

the prior statutory arrangement described in the Petition, parents were promptly told where their child was, how the child was doing, and the circumstances that brought the child to a shelter. Wash. Rev. Code § 13.32A.082(1)(b)(i) (2013); Pet. 4. Under the amended scheme, when a runaway minor is seeking or receiving protected health care services—including “gender-affirming treatment”—the shelter may instead notify the Department, and the Department need only make a good-faith attempt to notify parents that a report has been received. Wash. Rev. Code § 13.32A.082(2)(c)(ii), (2)(d), (3)(a)–(b); Pet. App. 186a–187a. As Petitioners describe the statutory operation, ESSB5599 and SHB1406 together require shelter notice to the Department rather than parents and remove the prior prompt-notice baseline. Pet. 11–14.

Second, the law permits the parents’ informational and decision-making role to be displaced at precisely the moment it matters most. The statutory scheme directs the Department to offer referrals on behalf of the minor for behavioral-health services. Wash. Rev. Code § 13.32A.082(3)(b)(i). These services may include gender-affirming treatment and may be provided against the parents’ judgment or before the parents can meaningfully participate. Pet. 6–16; Pet. App. 52a–55a (Tung, J., dissenting); Pet. App. 37a–48a (VanDyke, J., dissenting). By allowing the State to route a child to controversial treatment without parental involvement, the law immediately impairs the parental office; it does not wait to injure parents until after treatment is complete. See *Stanley*, 405 U.S. at 658 (holding that the State cannot presume parental unfitness “when the issue at stake is the dismemberment of [the] family”); *Mahmoud*, 606 U.S. at 559–60 (holding that parents “need not wait” for

damage to occur before filing suit to protect the “critical right . . . to guide the religious development of their children”).

Parental exclusion from the referral decision itself is a present injury because the parental right attaches at the threshold of care, not only at the final procedure. *Parham* is the closest analogue: in a behavioral-health setting, this Court held that parents “retain plenary authority to seek such care for their children,” subject to a physician’s independent examination and medical judgment, and warned that state-sponsored procedures should not “discourage parents from seeking medical aid” for their children. 442 U.S. at 604–05, 620. That framework locates the initial seeking, admission, and evaluation decision in the parent, with a neutral medical factfinder serving as a check—not the child’s veto or the State’s preference.

The same point follows from informed-consent doctrine and the “necessaries” principle discussed above: consent must precede evaluation and treatment, and the parent is the child’s medical procurer from the outset. Washington injures parents when it excludes them from care-related referrals, evaluation, counseling, or treatment pathways before any final procedure occurs. To be sure, the abortion-bypass cases—including *Planned Parenthood v. Danforth*, *Bellotti v. Baird*, and *City of Akron v. Akron Center for Reproductive Health*—reflect abortion-specific departures from the general rule, and modern mature-minor and minor-consent statutes create additional exceptions. But those exceptions confirm the baseline rather than erase it: outside such departures, historical and constitutional doctrine place threshold medical decisionmaking for minors in parents,

subject to emergency, unfitness, and independent medical checks.

Third, Washington’s scheme creates incentives that alter family governance. The challenged law creates a pathway for a child to evade parental judgment by running away to a shelter. Pet. App. 70a–77a, ¶¶11–58; Pet. App. 71a, ¶16; Pet. App. 73a, ¶¶26–30. This incentive structure creates a present injury to the parent-child relationship, not speculative future harm. The Ninth Circuit treated these injuries as self-inflicted. Pet. App. 14a–17a. But where a law predictably burdens the exercise of a constitutional role, the resulting chill is not self-inflicted in any meaningful sense. It is instead the foreseeable and intended consequence of the challenged law. *See Dep’t of Com. v. New York*, 588 U.S. 752, 768 (2019) (permitting standing based on “the predictable effect of Government action on the decisions of third parties”); *Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 393 (1988) (holding that “self-censorship” is “a harm that can be realized even without an actual prosecution”).

Historical analogues also show why a state-sponsored alteration to the parent-child relationship is not a mere legal abstraction. The enticement and harboring doctrines treated separation from parental authority as wrongful even when no one physically seized the child. Blackstone’s formulation covered persuasion or enticement causing a family member to live apart “without a sufficient cause.” 3 W. Blackstone, *Commentaries* *139.

Modern formulations illustrate the same point. For example, the Restatement (Second) of Torts affords a parent relief against one who knowingly “compels or induces” a child to “leave” or “not return to” the parent without the parent’s consent. Restatement (Second) of Torts § 700 (Am. L. Inst. 1977). Likewise, Prosser

described interference with the parent-child relationship as including not only enticement but also “harboring” a child and “inducing or encouraging it to remain away.” See W. Prosser, *Law of Torts* 692–93 (2d ed. 1955); see also *Butterfield v. Ashley*, 60 Mass. (6 Cush.) 249, 250–51 (1850) (recognizing liability for knowingly enticing or harboring a minor, without physical seizure). Those rules matter here because Washington’s scheme predictably changes how parents discipline, speak, and govern by creating a state-backed pathway that encourages or facilitates evasion of parental authority.

C. Petitioners’ case presents concrete injury in the preventive tradition of equity.

Petitioners’ alleged harms (at 8–15, 38–46) comport with the preventive tradition of equity. Story described *quia timet* jurisdiction—literally, “because he fears”—as relief for a party who “seeks the aid of a Court of Equity, because he fears . . . some future probable injury to his rights,” and explained that bills *quia timet* “are in the nature of writs of prevention.” 2 J. Story, *Commentaries* § 826, at 130; see also 1 J. High, *A Treatise on the Law of Injunctions* §§ 1–8, at 2–14 (4th ed. 1905) (noting that the function of preventative equity is to restrain threatened illegal acts that would impair or defeat a private legal right if allowed to occur).

Blackstone likewise stated the general principle that “preventive justice is . . . preferable in all respects to punishing justice.” 4 W. Blackstone, *Commentaries* *248 (1769). Bills *quia timet* belonged to equity’s “ancient jurisdiction,” fixed by the English Chancery principles that informed Article III equity. See *McConihay v. Wright*, 121 U.S. 201, 206 (1887); see also *Gordon v. Washington*, 295 U.S. 30, 36 (1935) (noting the English

common-law origin of this Court’s equity jurisdiction). And Justice Thompson put the equitable point directly in *Cherokee Nation v. Georgia*: equity may “interpose and prevent an injury, before any has actually been suffered.” 30 U.S. 1, 78 (1831) (Thompson, J., dissenting).

That preventive-equity tradition fits this case because the challenged law does not merely threaten a collateral consequence. It presently structures a path around the parental office and impairs the relationship that equity historically protected. Here, Petitioners allege a sufficiently concrete injury because Washington’s law curtails the “deep interest, moral, religious, and social, which the parental relation necessarily involves.” *Plummer*, 19 F. Cas. at 892 (Story, J.). The challenged law empowers the State to induce or facilitate a child’s separation from his or her parents, thereby causing “the breach and dissolution of . . . the relation itself.” 3 W. Blackstone, *Commentaries* *142. Blackstone treated injuries to the relative rights of master, husband, parent, and guardian as actionable because the wrong committed through the subordinate relation produced a legal injury to the superior relation-holder; the action belonged to the master, husband, father, or guardian even though the defendant’s pressure or persuasion often operated on the other member of the household. *Id.* at *142–43. *Plummer* reflects the same structure in the parental context: there, the complained-of wrong was that the child was withdrawn from the father’s “power or protection,” even though the immediate acts operated through the child and the shipmaster who controlled him. 19 F. Cas. at 892 (Story, J.).

That understanding also explains why Petitioners are the objects of the challenged law. The law may regulate shelters and the Department directly, but its object is

the parent-child relationship. Petitioners do not seek judicial supervision of generalized policy choices; they allege that Washington’s scheme unlawfully interferes with their own fundamental liberty interests by disabling notice, consent, custody, and decision-making authority that the historical materials identify as private legal rights. Ultimately, the history and tradition of American constitutional jurisprudence establish that such interference with parental authority is itself a concrete injury.

That conclusion also draws support from Justice Thomas’s separate opinion in *TransUnion*. Justice Thomas explained that, at the Founding, an “injury in law to a private right” was itself injury enough to support suit. *TransUnion*, 594 U.S. at 449 (Thomas, J., dissenting). *Amici* do not ask the Court to adopt that principle across every statutory context. But the principle should apply with special force where, as here, the asserted right is a constitutionally protected right rooted in the common-law tradition. Such recognition would also comport with the *TransUnion* majority’s reasoning, which distinguished harms “traditionally recognized as providing a basis for lawsuits in American courts” and left room for constitutional-rights injuries that historically supported judicial relief. 594 U.S. at 425. Petitioners’ claim of interference with parental notice, custody, consent, and moral and medical judgment falls within that historically grounded category.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted.

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APPENDIX

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APPENDIX

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