

No. 25-840

In the Supreme Court of the United States

INTERNATIONAL PARTNERS FOR ETHICAL
CARE INC., ET AL.,

Petitioners,

v.

BOB FERGUSON, GOVERNOR OF WASHINGTON, ET AL.,

Respondents.

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

BRIEF OF ETHICS AND PUBLIC POLICY CENTER
AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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INTEREST OF *AMICUS CURIAE*¹

The Ethics and Public Policy Center (“EPPC”) is a nonprofit research institution applying the Judeo-Christian moral tradition to critical issues of public policy, law, and culture. In pursuit of its mission, EPPC equips Americans to address today’s ethical, political, and cultural questions with firm commitment to human dignity, natural law, and our constitutional freedoms.

EPPC scholars have particular expertise in the conflict that underlies this case. EPPC scholars work to defend the family as the first and most important institution standing between the individual and the state. EPPC Senior Fellow Mary Rice Hasson launched EPPC’s Person and Identity Project² to promote the truth of the human person and equip parents and faith-based institutions to meet the challenges of gender ideology. EPPC has filed amicus briefs in litigation involving gender ideology and defending parental rights in this Court and in the courts of appeals, including in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), *United States v. Skrmetti*, 605 U.S. 495 (2025), and *Chiles v. Salazar*, 146 S. Ct. 1010 (2026).

¹ Rule 37 statement: All counsel of record were timely notified of the intent to file this brief. No counsel for any party authored any part of this brief, and nobody other than amicus and counsel for amicus contributed monetarily to this brief’s preparation or submission.

² <https://personandidentity.com/>.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case asks whether Petitioner Parents have standing to challenge Washington State laws that help children who run away to a shelter obtain “gender-affirming treatment”³ without their parents’ knowledge or consent. The Ninth Circuit panel held that Petitioner Parents did not have standing, reasoning that their alleged harms—hesitation to discipline, silence on the subject of gender, abandonment of a child’s given name—were “self-inflicted,” because Petitioner Parents had not alleged “that their or their children’s behavior has yet brought them within reach of the [laws].” Pet.App.15a–16a. In the panel’s view, a parent has nothing to complain of until the State actually has possession of the child.

That holding was possible only because the panel assumed a particular—and cramped—conception of parental rights. As Judge VanDyke observed, the panel “mistakes parental authority for a mere property interest in the physical possession of a child—a view long rejected by our court and others.” Pet.App.36a (VanDyke, J., dissenting from denial of rehearing en banc). If the parental right merely entailed a right to custody, then perhaps a parent’s “legally protected interest” would be injured only when custody is lost. But this Court has never understood parental rights that way.

³ This brief uses the term “sex-rejecting interventions” to refer to services, products, and procedures that support and affirm an individual’s asserted identity that differs from the individual’s sex.

For more than a century it has described parental rights as “coupled with the high duty, to recognize and prepare [the child] for additional obligations,” *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925)—the rights of *formation*, exercised every day in the words a parent speaks, the discipline a parent imposes, and the truths a parent teaches. Those rights are violated when the State deliberately makes it harder for a fit parent to take those actions, long before the child actually leaves home.

This brief builds on Judge VanDyke’s observation that determining whether a legally protected interest has been invaded necessarily involves a prior inquiry into what that legally protected interest entails. Pet.App.36a. As Judge VanDyke observes, the Ninth Circuit never explicitly addressed this inquiry.

Part I shows that the panel never asked what the parents’ “legally protected interest” protects, and so was in no position to say whether that interest had been “invaded” or violated. Part II answers that question from the common law incorporated by this Court’s cases: parental rights are the correlate of a natural duty to form the child, discharged in the ordinary business of family life, and the presumption that parents are fit may be overcome by the State only by an individualized finding. Part III shows that Washington laws violate both aspects—chilling the exercise of parental duties now and stripping the presumption of fitness from an entire class of parents without any particular finding about any of them.

ARGUMENT

I. The panel erred by failing to consider what parents’ “legally protected interest” entails.

Under *Lujan v. Defenders of Wildlife*, to establish standing a plaintiff must demonstrate an “injury in fact,” which the Court defined as “an invasion of a legally protected interest.” 504 U.S. 555, 560 (1992). The definition has two parts: (i) there must be a legally protected interest and (ii) that interest must be invaded or violated. These two parts are connected—and necessarily so.

“Invasion” is the language of trespass and makes for an apt metaphor here. No court would let a trespass claim proceed without first determining the property line. Standing works the same way—a court cannot say an interest was “invaded” or violated until it has decided the nature and scope of the protected interest.

But the panel below failed to make that determination. Its analysis opens by reciting the *Lujan* standard, Pet.App.13a, but then the panel jumps right to whether Petitioner Parents’ injuries were “actual or imminent” without considering what parental rights entail, Pet.App.14a–15a. The panel makes no claims at all about the scope of parents’ “legally protected interest.” It says only that parents who had “alter[ed] their parenting styles so that [Washington laws] cannot affect them” had no injury because they were not yet “within reach of the [laws].” Pet.App.15a.

Judge VanDyke, dissenting from the denial of rehearing en banc, teases out the panel’s unstated

premise. As he sees it, the panel's holding presumes that parents' "legally protected interest" only extends to "the physical possession of a child." Pet.App.36a. To say the laws trespass on parents' rights only when their child lands in a state-run shelter is, he argues, to claim the Constitution only protects "a mere property interest in the physical possession of a child." Pet.App.36a.

Judge VanDyke is right: the panel skipped a key step in the standing inquiry. While his dissent focuses on what parental rights are not, Part II below draws upon the common law tradition to provide a positive account of parents' rights by considering their duties.

II. At common law, parental rights correlate with parents' broad common law duties—and include a presumption of fitness only an individualized finding can overcome.

This Court's cases draw on the common law to describe parental rights. Two features of those rights, discussed below, are especially relevant to understanding the panel's error. First, parental rights correlate with parents' natural duty to raise their children. To understand parents' rights, one must understand their duty to form their children, the momentous responsibilities entrusted to them. This duty is exercised in the ordinary business of family life or not at all. Second, the law's presumption that parents act for their children's good is more than a mere courtesy or custom; that presumption—which can only be overcome by a strong individualized finding that a parent is not fit—is a part of the right itself.

A. This Court looks to the common law to define constitutional rights; at common law, rights are correlative of duties.

This Court identifies and defines fundamental rights in light of our Nation’s history and traditions. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231 (2022). And the “fundamental right of parents to make decisions concerning the care, custody, and control of their children” is “perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000).

In recognizing parental rights, this Court has looked back not only to our Nation’s history, but also to the common law. The parental rights recognized by this Court in *Meyer v. Nebraska* are the same rights recognized by the common law for centuries. 262 U.S. 390, 399 (1923) (listing parental rights among the “privileges long recognized at common law as essential to the orderly pursuit of happiness by free men”).

The common law did not understand rights as free-standing abstractions. Instead, a legal right identified a legal relationship—and therefore a corresponding duty. For example, Blackstone began his treatment of the rights of persons by distinguishing duties “due *from* every citizen” from rights belonging “*to* him,” while explaining that every social *duty*, being “of a relative nature,” must be due both from one person and to another. Allegiance and protection were therefore “reciprocally, the *rights* as well as *duties* of each other.” 1 William Blackstone, *Commentaries* *119 (George Sharswood ed., 1893) (emphases added). Austin later distilled the same structure into a categorical rule: “every law, really conferring a *right*,

imposes expressly or tacitly a relative *duty*, or a *duty* correlating with the *right*.” John Austin, *Lectures on Jurisprudence* 100–101 (Robert Campbell ed., 5th ed. 1885) (emphases added). And Salmond put the point more strongly still: “*Rights* and *duties* are necessarily correlative. There can be no *right* without a corresponding *duty*, or *duty* without a corresponding *right*.” John W. Salmond, *Jurisprudence* 184 (4th ed. 1913) (emphases added). Thus, in the common law tradition, a right was not an abstract entitlement considered in isolation; it was one side of a legal relationship whose other side was a corresponding duty.

This general principle is especially clear as to parental rights: the common law saw parental *rights* as the flip side of parental *duties*, and those duties came from nature, not from the State. Blackstone taught that parents’ “*power* * * * over their children is derived from * * * their *duty*,” and exists “to enable the parent more effectually to perform his *duty*.” 1 Blackstone *452 (emphases added). These duties were rooted in nature itself: “[t]he *duty* of parents to provide for the maintenance of their children, is a principle of natural law; an obligation * * * laid on them * * * by nature herself.” *Id.* at *447 (emphases added). See *Meyer*, 262 U.S. at 400 (grounding the *right* in “the natural *duty* of the parent,” using a formulation taken nearly verbatim from Blackstone, see 1 Blackstone *450). Locke said likewise: “The *power*, then, that parents have over their children, arises from that *duty* which is incumbent on them, to take care of their offspring, during the imperfect state of childhood.” John Locke, *Second Treatise of Government* § 58 (1689) (emphases added).

The common law reflects a deeper moral tradition, with a settled understanding of what a family is and what parents are for. Aristotle identified the household as the first human community and the seed of the political order. Aristotle, *Politics* bk. I, ch. 2 (H. Rackham trans. 1932). Cicero called the bond between parents and children one of the first bonds of human society and called the household “the foundation of civil government, the nursery, as it were, of the state.” Cicero, *De Officiis* bk. I, § 54 (Walter Miller trans., 1913). On this view the family is a natural institution that precedes and does not depend on the State.

From the ancient world through the English law to the present day, there is widespread agreement that parents’ rights and corresponding duties to their children are broad. Parental rights were never reducible to a mere property interest in the child. Blackstone was explicit that the parent’s power exists for the child’s sake, so a child’s parents must be free to carry out their parental duties. The right describes who has authority to raise the child, and why. And because a parent’s duty to the child includes the duty to form the child, the right is exercised in the ordinary business of family life—in teaching, correcting, deciding, and preparing the child for adult life.

This Court’s parental rights decisions have drawn on the common law tradition. *Pierce v. Society of Sisters* spoke of parents who “have the *right*, coupled with the high *duty*, to recognize and prepare [the child] for additional obligations.” 268 U.S. 510, 535 (1925) (emphases added). *Prince v. Massachusetts* spoke of a parental “function and freedom” that “include preparation for obligations the state can neither

supply nor hinder.” 321 U.S. 158, 166 (1944). And *Parham v. J.R.*, addressing the very kind of decision at issue here, held that “[p]arents can and must make” judgments about their children’s “need for medical care or treatment,” and that a child’s disagreement “does not automatically transfer the power to make that decision from the parents to some agency or officer of the state.” 442 U.S. 584, 603 (1979).

The parental rights the Fourteenth Amendment protects are the common law’s rights: an authority conferred by nature for the performance of a duty the State did not create and cannot assume. That duty is broad and deep; it entails authority over the child’s formation.

**B. Parental rights include a presumption
that parents are fit, rebuttable only by an
individualized finding.**

The same common law tradition confirms another key aspect of parental rights: government may not interfere in the parent-child relationship without overcoming a strong presumption that parents act for their children’s good.

According to Chancellor Kent, the first great American legal commentator, “The wants and weaknesses of children render it necessary that some person maintain them, and the voice of nature has pointed out the parent as the most fit and proper person. The laws and customs of all nations have enforced this plain precept of universal law.” 2 James Kent, *Commentaries on American Law* 159 (New York, O. Halsted 1827). See also Melissa Moschella, *Defending the Fundamental Rights of Parents: A*

Response to Recent Attacks, 37 Notre Dame J.L. Ethics & Pub. Pol’y 397, 409–418 (2023).

This presumption is so strong that the State may step in only when the “natural presumption[] that the children will be properly taken care of” is overcome by proof of “gross ill treatment.” 2 Joseph Story, *Commentaries on Equity Jurisprudence* § 1341 (2d ed. 1839). American courts said the same thing around the time the Fourteenth Amendment was ratified. Parents’ rights under “common law” are such that “the parental authority will not be interfered with, except in case of gross misconduct, or where, from some other cause, the parent wants either the capacity or the means for the proper nurture and training of the child.” *Striplin v. Ware*, 36 Ala. 87, 89–90 (1860). The government could not interfere with paternal rights unless there “are well-founded apprehensions of the father’s acting with extreme harshness or cruelty, or with gross profligacy or immoral conduct, so that the child would be in danger of contamination.” *Cocke v. Hannum*, 39 Miss. 423, 441 (Miss. Err. & App. 1860).

The parent has the right to the care, custody and assistance of his child. The duty to maintain and protect it, is a principle of natural law. * * * Before any abridgment of the right, gross misconduct or almost total unfitness on the part of the parent, should be clearly proved.

People ex rel. O’Connell v. Turner, 55 Ill. 280, 284–285 (1870).

A hundred years later, this Court reiterated the same rule in *Parham*:

The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children.

442 U.S. at 602. As such, the presumption in favor of the parents is difficult to dislodge:

Simply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state. * * * Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments. * * * 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. * * * Neither state officials nor federal courts are equipped to review such parental decisions.

442 U.S. at 603–604 (noting the trial court had not identified “even a single instance of bad faith by any parent of any member of appellees’ class”). See also *Stanley v. Illinois*, 405 U.S. 645, 649 (1972) (father “entitled to a hearing on his fitness as a parent before his children were taken from him”).

Kent’s “voice of nature,” Story’s “natural presumption,” and *Parham*’s “natural bonds of affection” all describe the same thing: the law recognizes that a parent is charged by nature with the child’s care; the law therefore presumes a parent is the person most likely to act for the child’s good. This presumption of fitness is a part of the common law and is a fundamental aspect of parental rights. A State that dispenses with that presumption without a specific, individual finding that proves “gross misconduct or almost total unfitness” does more than merely shift a procedural burden—it invades a legally protected right.

III. Parents have standing because Washington laws invade their legally protected interests.

The historical overview in Part II helps explain why the Washington laws invade parents’ legally protected interests. Measured against that history, Washington laws invade Petitioner Parents’ legally protected interest in at least two independent ways.

A. Washington laws invade parents’ right to carry out their common law duties free from state coercion.

Petitioner Parents have children who have shown signs of gender dysphoria. These parents have identified concrete ways that Washington laws have constricted their ability to form their children by changing the way they have carried out their parental duties toward their children:

- Parent 2A “does not use [her daughter’s] given name in public or use any pronouns when referring to her.” Pet.App.73a, ¶¶26–28.

- Parents 2A and 2B avoid discussing gender issues with or around their daughter. Pet.App.73a, ¶29.
- Parent 1A hesitates to discipline her child for fear it will cause a rift that a youth shelter might cite to justify sex-rejecting interventions. Pet.App.71a, ¶16.

The panel frames these changes as mere alterations of “parenting styles,” as if a parent’s right to form a child were reducible to a superficial “style.” Pet.App.15a. This Court’s cases, and the common law understanding of the nature of parental rights, refute that characterization. See *supra* Part II.A.

Discipline, moral instruction, and the name a mother calls her child are not incidental to parental rights. They are not “voluntary” choices. See Pet.App.15a. They are parental rights in action. The right “to recognize and prepare [the child] for additional obligations,” *Pierce*, 268 U.S. at 535, is exercised in these ways or it is not exercised at all.

The Washington laws thus trespass on parents’ “legally protected interest” long before their child runs away to a shelter. Judge VanDyke put it well: “the real harm to parents from Washington’s legal regime happens long before a child runs away.” Pet.App.44a. Washington has given every minor who, despite parental opposition, seeks sex-rejecting interventions a legally guaranteed alternative pathway. Petitioner Parents have alleged that this open doorway “hinder[s]” the way they are carrying out their “primary function.” *Prince*, 321 U.S. at 166. As Judge VanDyke observed, “So long as Washington

encourages minors to take the plunge into gender transitions without the knowledge (or even over the objection) of fit parents, parents lose their ability to direct the care and upbringing of their children, regardless of whether § 13.32A.082(2)(c)(ii)’s sword of Damocles ever falls on that particular parent.” Pet.App.48a.

The panel below acknowledged that self-censorship can confer standing but held that the rule applies only when the plaintiff’s own speech “arguably falls within the statute’s reach.” Pet.App.16a–17a. *Mahmoud v. Taylor*, 606 U.S. 522 (2025), *says otherwise*. The school board’s policy in *Mahmoud* regulated teachers and curricula, not parents. Yet this Court held that parents were burdened the moment the board’s instruction “pose[d] a very real threat of undermining” what they wished to teach their children, and it refused to make them “wait and see” whether the threat would be carried out. *Id.* at 559–560. The reason is one this Court has stated for half a century: government may not do indirectly what it could not “command directly,” and a law that “penalize[s] and inhibit[s]” the exercise of a constitutional right infringes it. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

Similarly, here, while Washington laws regulate shelters, the threat lands on parents. Indeed, the record shows this includes Petitioner Parents—who have stopped talking to their children about gender, stopped using their daughter’s name, and stopped disciplining their child. Pet.App.16a. That is an injury to parents’ interests under *Mahmoud*. See 606 U.S. at 559–560.

B. Washington laws strip parents of the presumption of fitness without an individualized finding.

The challenged laws also invade parental rights because they overturn, without any individualized finding, the natural presumption that parents act in their children's best interests. This becomes clear by viewing the challenged 2023 amendments in context.

Start with the general rule: when a runaway child appears at a licensed shelter in Washington, the shelter must notify the parents promptly. See Wash. Rev. Code § 13.32A.082(1)(b)(i) (2025); Pet.App.52a (Tung, J., dissenting from denial of rehearing en banc) (same). When passing this law, the Washington legislature found that “parents of runaway youth have an interest in knowing their sons and daughters are safe in a shelter, rather than on the streets,” and that shelters “are a critical pathway to ensuring the youth’s return home.” 2010 Wash. Sess. Laws, ch. 229, § 1. This general requirement honors the parental rights described above. See *supra* Part II.B.

This general rule is subject to a longstanding exception: the shelter must *not* contact the child’s parents when “compelling reasons” exist. Wash. Rev. Code § 13.32A.082(1)(b)(i). Prior to the 2023 amendments, the law enumerated only one “compelling reason[]”: if circumstances indicated that notifying the parents would subject the child to abuse or neglect. Wash. Rev. Code § 13.32A.082(1)(b)(i) and (2)(c)(i) (2025). This “compelling reason” standard conforms, at least in structure, to the common law rule: it turns on circumstances particular to a given child and his or her parent. See *supra* Part II.B.

But when the legislature amended this law in 2023, it created a second “compelling reason” that is not subject to an individualized finding. This addition says a shelter is prohibited from contacting a child’s parents if the runaway minor is “seeking or receiving” “gender-affirming treatment.” Wash. Rev. Code § 13.32A.082(2)(c)(ii) and (2)(d) (2025); Pet.App.52a (Tung, J., dissenting) (same). As the original “abuse or neglect” exception makes clear, this amendment “now treats the parents of children suffering from gender dysphoria as per se neglectful or abusive.” Pet.App.38a (VanDyke, J., dissenting).

The second exception to the parental notice requirement overturns the common law’s strong presumption of parents’ fitness in two key ways.

First, it precludes any individualized finding *relevant to the child’s circumstances*. On its face, the law blocks a shelter from contacting a child’s parents as soon as the child says he or she is seeking sex-rejecting interventions. The law defines “gender-affirming treatment” as services prescribed by a health care provider “to support and affirm the individual’s gender identity.” RCW 74.09.675(3). But Washington’s parental notice ban does not require that the child is receiving “gender-affirming treatment,” as parents are cut out as soon as the child says he or she is “seeking” such treatment. No inquiry is required—and *none would matter*—as to why the child is seeking such treatment or for how long the child has been seeking such treatment.

The law does not even allow a shelter room to make an individualized assessment based on whether the child has even talked to his or her parents about sex-

rejecting interventions. So long as a child tells a shelter that he or she is seeking sex-rejecting interventions—for *whatever reason*, or *even for the first time*—Washington law says shelters must keep parents in the dark as to their missing child’s whereabouts.

Second, the law precludes any individualized findings *relevant to the parents’ circumstances*. A child may reject his or her sex or express a desire for sex-rejecting interventions for reasons that are varied and complex. For some children, the desire for sex-rejecting interventions appears to be a maladaptive response to traumatic or challenging circumstances, including the distress of puberty; difficult peer relationships, bullying, and the influence of social media; and feeling “different” (children with autism or who experience same-sex attraction often report feeling different and are over-represented among children who identify as “transgender”).⁴ Children who identify as “transgender” are highly likely to have preceding or co-occurring mental health issues, such as depression, anxiety, and trauma (including physical, sexual, and emotional abuse), that need separate diagnoses and treatments.⁵

⁴ Marcus Evans, *Freedom to Think: The Need for Thorough Assessment and Treatment of Gender Dysphoric Children*, 45 B. J. Psych. Bull. 285 (2021), <https://doi.org/10.1192/bjb.2020.72>.

⁵ Matti Ruuska et al., *Psychiatric Morbidity Among Adolescents and Young Adults Who Contacted Specialised Gender Identity Services in Finland in 1996–2019: A Register Study*, 115 Acta Paediatrica 1545 (2026), <https://doi.org/10.1111/apa.70533>; Kasia Kozłowska et al., *Australian Children and Adolescents with Gender Dysphoria: Clinical Presentations and Challenges*

All of these circumstances call for careful parental discernment, discussion, and guidance—on a timetable conducive to the child’s development. These decisions are best left to those who know the child best: his or her parents. As Parham recognized, the “natural bonds of affection lead parents to act in the best interests of their children.” 442 U.S. at 602. Parents are presumed to be in the best position to know their child’s medical and social history, and thus, best positioned to make judgments—together with the child’s health care providers—about the best way to respond to and treat a child’s expressed desire for sex-rejecting interventions (subject, of course, to lawful state regulation). The common law affirms that parents are entitled to make these decisions, and are entitled to the strong presumption that they will make these decisions with their child’s best interests at heart. But Washington law denies parents these rights.

Stanley teaches that a categorical presumption of unfitness is itself a constitutional wrong. The State “registers no gain” by presuming a parent unfit, and “procedure by presumption” runs “roughshod over the important interests of both parent and child.” 405 U.S. at 652, 656–657. The injury was the presumption, not only its later consequences. As shown above, the presumption of fitness is part of the parental right itself. Washington law strips that presumption from Petitioner Parents.

* * *

When the State causes fit parents to truncate or restrict the exercise of their parental rights to avoid losing their children, the State has not merely inconvenienced the parents. It has taken part of the parents' authority over the formation of their own children. That injures parents' legally protected interests.

CONCLUSION

The Ninth Circuit should be reversed.

Respectfully submitted.

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