

No. 26-369

IN THE
Supreme Court of the United States

JOHN TORSTEN LOOP,

Petitioner,

v.

WASHINGTON, ET AL.,

Respondents.

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

**BRIEF OF NC VALUES INSTITUTE AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Amicus curiae respectfully urges this Court to grant the Petition and reverse the Ninth Circuit ruling.

NC Values Institute, formerly known as the Institute for Faith and Family, is a North Carolina nonprofit corporation that works in various arenas of public policy to protect faith, family, and freedom, including parental rights. See <https://ncvi.org>.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In America today, any reasonably educated person would understand the nation's robust commitment to parental rights. These rights are not only fundamental but *individual*. Each parent must be considered in situations where the parents are split, as they are here. And each individual parent is entitled to the full panoply of applicable procedural due process rights before the state may lawfully terminate his or her parental rights. Here, the state has delegated critical decision-making authority to a private decision maker, jeopardizing the safeguards required for such fundamental rights. This is constitutionally unacceptable, particularly in an

¹ Counsel of record for all parties received notice at least 10 days prior to the due date of *amicus curiae*'s intention to file this brief. *Amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

environment where parental rights are increasingly threatened in so many varied contexts.

ARGUMENT

I. THIS COURT HAS UNEQUIVOCALLY ESTABLISHED THAT PARENTAL RIGHTS ARE INALIENABLE AND FUNDAMENTAL.

This case presents a grave threat to time-honored fundamental parental rights to the care, custody, and control of their children. Parental rights are not created by statutes or constitutions but are natural, inalienable rights uniformly recognized by courts throughout American history. Even in dissenting from the analysis of the other justices in *Troxel*, Justice Scalia vigorously affirmed that the “right of parents to direct the upbringing of their children is among the unalienable Rights with which the Declaration of Independence proclaims all Men . . . are endowed by their Creator.” *Troxel*, 530 U.S. 57, 91 (2000) (Scalia, J., dissenting) (internal quotation marks omitted). Parental rights are “perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Id.* at 65.

There is abundant precedent on point showing indisputably that “the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Troxel*, 530 U.S. at 66. Due process rights to life, liberty, and property encompass “not merely freedom from bodily restraint but also the right of the individual to . . .

marry, establish a home and bring up children, to worship God” *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). These rights to establish a family are “essential.” *Ibid.*; see *Troxel*, 530 U.S. at 65.

In upholding a child labor law, this Court explained that “the family itself is not beyond regulation in the public interest” but simultaneously reaffirmed the paramount importance of parental rights: “It is cardinal with us that the custody, care and nurture of the child reside *first in the parents*, whose primary function and freedom include preparation for obligations *the state can neither supply nor hinder.*” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (emphasis added).

History reveals “a founding generation that believed parents to have complete authority over their minor children and expected [them] to direct the development of those children.” *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 834 (2011) (Thomas, J., dissenting). “[E]xtensive precedent” establishes beyond doubt that the Due Process Clause protects fundamental parental rights “to make decisions concerning the care, custody, and control of their children.” *Troxel*, 530 U.S. at 66. “[P]arents—not the State—have primary authority” for these decisions. *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026), citing *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925); *Meyer*, 262 U.S. at 399-400. “The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Pierce*, 268 U.S. at

535. Parents hold a preeminent “guiding role” in making “important decisions” for their children. *H.L. v. Matheson*, 450 U.S. 398, 410 (1981). These precedents encompass a wide variety of circumstances, including, e.g., “the right *not to be shut out* of participation in decisions regarding their children’s mental health.” *Mirabelli*, 607 U.S. at 497, citing *Parham v. J. R.*, 442 U.S. 584, 602 (1979) (emphasis added). Loop has unquestionably been “shut out of participation” in all sorts of critical decisions about his child’s life.

A. Parental rights fit comfortably within judicial definitions of “fundamental” rights.

“Marriage and procreation are fundamental to the *very existence and survival* of the race.” *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (emphasis added). *Skinner* struck down a sterilization requirement, stressing the potentially “far-reaching and devastating effects” of depriving the individual of “a basic liberty.” *Ibid.* The often repeated language used to recognize fundamental rights easily applies to the parental rights at stake in this case—“deeply rooted in this Nation’s history and tradition,” *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977) (plurality opinion); “so rooted in the traditions and conscience of our people as to be ranked as fundamental,” and “implicit in the concept of ordered liberty,” such that “neither liberty nor justice would exist if they were sacrificed,” *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937). *See Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1977) (discussing the criteria to

recognize fundamental rights beyond those enumerated in the Bill of Rights); *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 240 (2022) (rooted in this Nation's "history and tradition"); *Dep't of State v. Munoz*, 602 U.S. 899, 909-910 (2024) (same). "Relevant here, the doctrine of substantive due process has long embraced a parent's right to raise [his or] her child" *Mirabelli*, 607 U.S. at 499 (Barrett, J., concurring).

B. Each individual parent retains these fundamental rights, regardless of custody or other separation.

Each individual's due process rights to life, liberty, and property encompass "not merely freedom from bodily restraint but also the right . . . to marry, establish a home and bring up children, to worship God" *Meyer*, 262 U.S. at 399. These rights to establish a family are "essential." *Ibid.*; see *Troxel*, 530 U.S. at 65. As this Court noted in a child custody dispute, a parent's "right to the care, custody, management and companionship" of his or her children is a "right[] more precious . . . than property rights" and even more important than financial support from a former spouse. *May v. Anderson*, 345 U.S. 528, 533 (1953). In *May*, a state "where [the] mother [wa]s neither domiciled, resident nor present" could not lawfully issue an ex parte decree (as requested by the father residing in another state) that would "cut off her immediate right to the care, custody, management and companionship of her minor children." *Ibid.*

Because parental rights are fundamental, the state must jump a high hurdle to remove a child from parental custody or—as in this case—to terminate a parent’s rights entirely. Parental rights, like other “liberties of the individual which history has attested as the indispensable conditions of an open as against a closed society . . . come to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.” *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (quoting *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring)). The unwed father in *Stanley* was entitled to a fitness hearing before termination of his parental rights, after the child’s mother had died. “The rights to conceive and to raise one’s children have been deemed ‘essential.’” *Stanley*, 405 U.S. at 651, citing *Meyer*, 262 U.S. 15 399.

Even where parents “have not been model parents,” or “blood relationships are strained,” or they have “temporarily lost custody to the State,” fundamental parental rights “do not evaporate.” *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). Due Process is required and the state must present “clear and convincing evidence” to “completely and irrevocably” terminate a natural parent’s rights. *Id.* at 747-748. When the state intervenes “to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” *Id.* at 753-754. Choices about raising children “are among associational rights . . . sheltered by the Fourteenth Amendment against the State’s unwarranted usurpation, disregard, or disrespect.” *M.L.B. v. S.L.J.*,

519 U.S. 102, 116 (1996). These rights are ranked as “of basic importance in our society.” *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971). In *M.L.B.*, where the mother lacked funds to pay the costs for the record she needed to appeal a decision terminating her parental rights, this Court held that, “Mississippi may not deny *M.L.B.*, because of her poverty, appellate review of the sufficiency of the evidence on which the trial court found her unfit to remain a parent.” *M.L.B.*, 519 U.S. at 107. Parental rights were “sufficiently strong to require the state to pay those costs.” *Ibid.*

II. PARENTAL RIGHTS ARE INCREASINGLY THREATENED IN MANY CONTEXTS.

Challenges to parental rights are legion. These rights, critical to maintaining a free society, are increasingly disregarded by lower courts and government entities.

Secret sex transitioning policies. The sex transitioning of children, facilitated with secrecy by a growing number of public officials—and sometimes through the efforts of medical doctors aligned with *one* of a child’s *two* parents—assaults these fundamental rights so severely as to essentially obliterate them. Medical professionals sometimes openly flout Due Process while surreptitiously providing dangerous “gender-affirming care” that is virtually guaranteed to cause irreparable harm. *See, e.g., Hudacko v. Regents of the University of California, et al.*, Docket No. 26-180 (Petition for Certiorari pending).

These secret sex transition policies have flooded the country with legal challenges. Examples abound—sadly. Parents in Maryland sued their local Board of Education over the schools’ secret social transitioning of children to the opposite sex and deliberately withholding that information from parents. The School Board had adopted “Gender Identity” guidelines specifically providing that parents were *not to be informed* when a child identified as transgender, and furthermore, that school personnel had to take affirmative steps to hide that information from parents by reverting to given names (and correct pronouns) when communicating with them. Amazingly, the Fourth Circuit held that the parents did not allege sufficient injuries to establish legal standing. *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622 (4th Cir. 2023), *cert. denied* WL 2262333 (May 20, 2024). Yet the legal challenges continue to mount.

Athletics. On January 13, 2026, this Court heard oral arguments in *two* consolidated cases related to the exclusion of “transgender women”—biological *men*—from *women’s* sports team. *Little v. Hecox*, Docket No. 24-38, 104 F.4th 1061 (9th Cir. 2023); *West Virginia v. B.P.J.*, Docket No. 24-43, 98 F.4th 542 (4th Cir. 2024). In its opinion on June 30, 2026, the Court affirmed that under Title IX, “schools may maintain women’s and girls’ sports teams for biological females.” *B.P.J. v. West Virginia*, 225 L. Ed. 1040, 1047 (2026).

But challenges continue, including threats to parental rights. In a case still pending, a young female wrestler was sexually assaulted after being

forced to compete against a biological male opponent. Her mother filed suit for violation of parental rights, because she had no notice of the circumstances and therefore no opportunity to make decisions that could have protected her daughter. The district court and Ninth Circuit denied requests for an emergency injunction. *Brown v. Wash. Interscholastic Activities Ass’n*, 2026 U.S. App. LEXIS 29559 (9th Cir. 2026). An “Emergency Application for an Injunction Pending Appeal” has been filed with this Court, Docket No. 26A458.

Medical care. It is difficult to imagine a more critical application of parental rights than basic medical decisions necessary to preserve a child’s life and health. In *United States v. Skrmetti*, Tennessee had concluded that minors lack “maturity to fully understand and appreciate the life-altering consequences” of the prohibited procedures. 605 U.S. 495, 541 (2025). This Court upheld the Tennessee law at issue, which enables the “*nonconsenting parent* of an injured minor to sue a healthcare provider for violating the [state] law” that prohibited certain medical treatments for minors. *Skrmetti*, 605 U.S. at 507 (emphasis added). The law’s express protection for the rights of a “*nonconsenting parent*” highlights the importance of preserving each *individual* parent’s rights. A child’s “lack of maturity” and “underdeveloped sense of responsibility” can lead to “impetuous and ill-considered actions and decisions.” *Id.* at 547 citing *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (internal quotation marks omitted).

Skrmetti is a landmark victory for parental rights. It is imperative that courts respect the rights of *each one of a child's parents* to be informed and consent to a child's medical treatment. In *Planned Parenthood v. Casey*, this Court upheld laws requiring parental notification or consent prior to a minor's obtaining an abortion, "based on the quite reasonable assumption that minors will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart." 505 U.S. 833, 895 (1992), *overruled on other grounds by Dobbs*, 597 U.S. 215.

The parental right to make medical decisions is hardly a novel concept. Historically, American jurisprudence "reflects Western civilization concepts of the family as a unit with broad parental authority over minor children" and "cases have consistently followed that course." *Parham*, 442 U.S. at 602. In *Parham*, this Court upheld Georgia's statutory procedure for parents to voluntarily commit a minor to a hospital for mental health treatment, reversing the state court's conclusion that the law was unconstitutional. Common law has long recognized that "the only party capable of authorizing medical treatment for a minor in normal circumstances is usually his parent or guardian." *Newmark v. Williams*, 588 A.2d 1108, 1115-1116 (Del. 1990) (child's parents declined chemotherapy).

In the normal, non-emergency context of a child receiving medical treatment, parents have a "liberty interest in family association to be with their children while they are receiving medical attention" and

children have “a corresponding right to the love, comfort, and reassurance of their parents. . . .” *Wallis ex rel. Wallis v. Spencer*, 202 F.3d 1126, 1142 (9th Cir. 1999). The associational rights of *both* parents *and* children are especially critical in a context where medical decisions may have irreparable, life-altering consequences. As in *Parham* and other cases, the results in this case tend to place Petitioner and his child in the position of “adversaries,” an action “at odds with the presumption that parents act in the best interests of their child.” *Parham*, 442 U.S. at 610.

III. PARENTAL RIGHTS ARE TOO IMPORTANT TO DELEGATE DECISION-MAKING RESPONSIBILITY TO A PRIVATE ARBITRATOR.

Parental rights extend broadly to public and private life—medical care, education, religion, custody, and associations. Judicial precedent touches them all. Parental rights follow the child. Courts must safeguard the rights of parents to make decisions for their children. These rights and decisions are critical to the health, safety, and life of children across the nation.

This Court addressed parental rights at length in *Wisconsin v. Yoder*. “The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” 406 U.S. 205, 232 (1972). This Court recently

reaffirmed *Yoder*, holding that the government may not condition the availability of public education on a parent's willingness to waive his/her First Amendment rights to religious exercise. *Mahmoud v. Taylor*, 606 U.S. 522, 561 (2025). The *Yoder-Mahmoud* rationale logically extends to Petitioner's paramount interest in a fair judicial process prior to the termination of his parental rights.

Children lack the "maturity, experience, and capacity for judgment" required in "making life's difficult decisions." *Parham*, 442 U.S. at 602. The law presumes that "parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." *Ibid*. "Simply because the decision of a parent is not agreeable to a child or . . . involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state" (*id.* at 603)—or to a private decision maker who is even further removed from the child's life.

Serious challenges to parental rights continue to explode in courts around the country, including these pending cases:

Wailes v. Jefferson County Public School District (10th Cir., No. 25-1341, argued May 12, 2026) (challenge to school policy allowing students to be roomed with students of the opposite sex, on overnight trips, *without parental notice or consent*);

Vitsaxaki v. Skaneateles School District (2d Cir., No. 25-952, argued December 2, 2025) (gender

transition of Vitsaxaki's daughter *without parental notice or consent*);

Averkief v. Washington Interscholastic Activities Association, et al. (W.D. Wash., No. 3:26-cv-05616), on appeal (parents denied notice and opt-out from LGBTQ content and requirements, contrary to *Mahmoud*).

Although these pending cases present facts and circumstances that differ from those of Petitioner Loop, the abundance of parental rights violations demonstrates the urgency for this Court to grant review.

CONCLUSION

This Court should grant the petition and reverse the Ninth Circuit ruling.

Respectfully submitted,

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