No. 24-3661

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INTERNATIONAL PARTNERS FOR ETHICAL CARE, et al.,

Plaintiffs-Appellants,

v.

JAY INSLEE, Governor of the State of Washington,
in his official capacity, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Washington
No. 3:23-cv-05736-DGE-RJB (Hon. Robert J. Bryan)

REPLY BRIEF FOR THE APPELLANTS

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Dismissing the particular and concrete harms Plaintiffs are experiencing and will likely experience due to SHB 1406 and SB 5599 (collectively the "Amendments"), Defendants insist these provisions *merely* allow minors seeking "gender-affirming treatment" to obtain such services on referral from the State should the child run away from home. But Defendants do not dispute that the Amendments facilitate such treatment without parental consent. And, for Plaintiffs, that is a very big deal: The Amendments pose a genuine danger of potentially life-altering treatments to a vulnerable population of children (specifically, Plaintiff Parents' children) by allowing the State to delay notice to parents of their runaway child's whereabouts—and then to use that time to override the Plaintiffs' judgments about how to raise and administer medical care for these children.

Nor do Defendants dispute that, under Washington law, no suggestion, let alone evidence of abuse or neglect, is required for an entire population of parents to be precluded from addressing their child's gender confusion before the State refers them to "gender-affirming" treatment—under laws that forbid the parents from obtaining records of or other information about the resulting therapy. Defendants also do not

dispute that Plaintiffs are the very types of parents the State Legislature targeted—parents who do not wish to have gender-confused children receive life-altering "gender-affirming treatment." Given all that, the Plaintiffs' harms are real, not speculative or hypothetical. And Plaintiffs therefore clearly have Article III standing.

Furthermore, contrary to Defendants' protestations, Plaintiffs' claims are ripe given their current and likely future harms—thus satisfying both constitutional and prudential ripeness requirements. And, contrary to Defendants' suggestion, the merits of Plaintiffs' claims should not be considered at this juncture, and even if they could, Plaintiffs have stated viable constitutional claims.

Accordingly, the district court's dismissal should be reversed and the case remanded for an ultimate decision on the merits.

I. Plaintiffs Have Standing Because of the Current and Likely Future Drastic Injuries Caused by the Challenged Provisions.

To establish standing, a plaintiff must show "an injury in fact" that "likely was caused or will be caused by the defendant" and that "likely would be redressed by the requested judicial relief." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). As Plaintiffs have already

shown, they meet all three requirements. Defendants, however, contest that showing—largely by claiming that Plaintiffs have misunderstood the effects of the relevant statutes. And so, before getting to the specific elements of standing, Plaintiffs will first address Defendants' assertions regarding (1) their interpretation of the Amendments' application and how it affects Plaintiffs' standing, and (2) the hypothetical chain of events Defendants' claim must occur before Plaintiffs can establish standing. In short: Defendants' disagreement with Plaintiffs' interpretation of the statute is not only replete with faulty assumptions but also is a merits question insufficient to defeat standing. It is clear Plaintiffs have standing because they are harmed by the Amendments now and are likely to suffer even greater harm from them in the future.

A. Defendants' argument that the challenged statutory provisions do not function as Plaintiffs assert is both inaccurate and irrelevant to standing.

Many of Defendants' arguments boil down to their insistence that the Amendments "do not do most of the things Plaintiffs say they do." Defs.' Br. 2.[1] But Plaintiffs' opening brief ("Pls.' Br.") explained why,

[1] *Amicus* Legal Counsel for Youth and Children makes the same arguments. *See* Dkt. 30.

under any sound interpretation based on the plain language, the statutes undermine Plaintiffs' constitutional rights. *See* Pls.' Br. 12-18. Defendants do not dispute that the provisions say exactly what Plaintiffs assert they do, but rather argue that the *effects* are different. Defs.' Br. 5-9, 51-56. But, under this Court's decisions, that issue is irrelevant to the question of standing, the only question this Court needs to decide or should decide at this stage.

Indeed, this Court recently reinforced that a defendant cannot defeat standing by claiming a plaintiff misconstrued the law being challenged, as that issue is more appropriate for the merits stage. *Idaho Conservation League v. Bonneville Power Admin.*, 83 F.4th 1182, 1189 (9th Cir. 2023). Further, "[a]lthough a merits question may look similar to the standing question of whether there is an injury in fact traceable to the relevant law …, confusing the two conflates standing with the merits." *Iten v. Los Angeles*, 81 F.4th 979, 985 (9th Cir. 2023) (cleaned up); *see also Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 489 (9th Cir. 2024) (finding that when evaluating standing to challenge a statute, "the relevant question is whether [the plaintiff] plausibly alleged that it

refrained from [taking certain actions] because of" the statute). Here, Defendants do just that.

In their Amended Complaint, Plaintiffs pled sufficient facts to show that the challenged statutes "arguably appl[y]" to their circumstances, which satisfies this aspect of pre-enforcement standing. *See Lopez v. Candaele*, 630 F.3d 775, 790 (9th Cir. 2010); *Wolford v. Lopez*, 116 F.4th 959, 992 (9th Cir. 2024) (finding pre-enforcement standing because "Plaintiffs' interpretation is a reasonable one, so the statute arguably proscribes their conduct" (cleaned up)). These facts are discussed at length in Plaintiffs' opening brief (at 28-37).

Moreover, it is beyond dispute that, under the challenged provisions, licensed shelters are *required* to notify DCYF if a runaway child claims to be seeking "gender-affirming treatment" and that they are *prohibited* from notifying the parents. Wash. Rev. Code §13.32A.082(1)(b), (2)(d).[2] At a minimum, this results in delay and potentially no notice to Plaintiffs of their child's whereabouts before being

[2] While not required, any person, unlicensed shelter or program can, by law, notify DCYF of a runaway child under their care rather than notifying the parents. Wash. Rev. Code §13.32A.082(1)(a). When that occurs, the same delay and medical referral provisions of §13.32A.082(3)(b) would apply.

"offered" family reconciliation services. *Id.* §13.32A.082(3)(b); Pls.' Br. 13-19, 23-24. At the same time, DCYF is *required* to refer the child for behavioral health services to affirm an incongruent gender identity. Wash. Rev. Code §13.32A.082(3)(b); Pls.' Br. 19-23. Such services, moreover, can be provided without parental notice or consent, Wash. Rev. Code §71.34.530, with parents having no right of access to treatment records or details of such "treatment," *id.* §§70.02.240, 70.02.265(1)(a); Pls.' Br. 7-9, 19-20. In any event, Defendants' assertions about the real-world operation of these laws are all questions for a merits determination after the case is remanded for appropriate discovery.

B. Defendants' hypothetical chain of events to establish standing is inconsistent with the law governing Article III standing.

Defendants nevertheless insist that standing can only be established if Plaintiffs can show each step of a complex chain of events:

> Before [Plaintiffs] could plausibly suffer any injury, their child would have to: (1) have a gender identity that is different from their sex assigned at birth; (2) be seeking or receiving gender-affirming care; (3) run away from home; (4) seek refuge with a licensed homeless shelter or organization; (5) decline to share parental information with or receive reconciliation services from DCYF; (6) accept a DCYF referral for behavioral health services; and (7) obtain gender-affirming care … without parental consent based on DCYF's referral[.]

Defs.' Br. 16. By further demanding granular details of each step, Defendants ignore that, "[a]t the pleading stage, *general* factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss [a court] presume[s] that general allegations embrace those specific facts that are necessary to support the claim." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (emphasis added, cleaned up). Under that principle, Plaintiffs' allegations clearly suffice.

1. Out of the gate, Defendants cannot dispute that an IPEC member and four of the Plaintiff parent couples have children who struggle with gender-identity issues or that several have been encouraged to run away (and one did so) over Plaintiffs' decision to not affirm an incongruent gender identity. Pls.' Br. 28-37. Because "seeking or receiving" "gender-affirming treatment" includes mental health counseling, including counseling and social transitioning, *see id.* at 11 n.4, which was provided to several of Plaintiffs' children by the public schools,[3] Plaintiffs fall squarely within the scope of the challenged

[3] Contrary to Defendants' assertion that "there are no allegations that 2D and 3C are seeking gender-affirming care," Defs.' Br. 17, both fall within the reach of the Amendments. 2D's public school socially transitioned her without her parents' knowledge, and she still "identifies herself as

provisions. And their children would, by definition, present with what the State considers "compelling reasons" for a licensed shelter to provide no notice to the parents that their child has run away, but instead to notify DCYF and trigger the other challenged provisions.

2. Nor is there merit to Defendants' contention that, "[b]efore [Plaintiffs] could plausibly suffer any injury, their child would have to … run away from home" and go to a "shelter or host home program that is subject to the requirements of … §13.32A.082(1)(b)." Defs.' Br. 16, 18.[4]

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male" on social media. ER-18. Further, 2D's older sister, 2C, has expressed an intent to take 2D out of their home to an unspecified "safe place" without parental permission, citing 2B's failure to use 2D's preferred pronouns, with both sisters having accused 2A and 2B of transphobia. *Id.* Similarly, Parents 3A and 3B's 14-year-old autistic son, 3C, struggles with gender confusion in part due to pressure from friends. ER-019-020. 3C has also been influenced by his older brother—who has suffered from gender confusion, and who was encouraged by a friend's family to run away and live with them. ER-020.

[4] Contrary to Defendants' insinuation, Plaintiffs need not prove that their children have "run away from home" previously. Defs.' Br. 16. Defendants' argument "misses the point of standing: the relevant inquiry … is not" simply "whether there *has* been a breach" of Plaintiffs' constitutional rights as parents, "but whether [Defendants'] actions have caused reasonable concern of injury to" Plaintiffs. *See Covington v. Jefferson County*, 358 F.3d 626, 639 (9th Cir. 2004) (emphasis added) (cleaned up). And the answer here is "yes." In addition to 5C who has run away in the past, Pls.' Br. 35-37, 2D and 3C are at risk of doing so as set out in note 3. Further, 1C has been pressured by her school to "adopt a gender identify inconsistent with her biological sex." ER-16. This

To the contrary: "One does not have to await the *consummation* of threatened injury before challenging a statute." *Canatella v. California*, 304 F.3d 843, 852 (9th Cir. 2002) (emphasis added; cleaned up). The Amendments increase the *risk* that Plaintiffs' children will run away and thus trigger those provisions, and that is sufficient. *See Isaacson v. Mayes*, 84 F.4th 1089, 1099 (9th Cir. 2023) (finding standing where harm is "sufficiently likely so that [Plaintiffs] need not wait until the harm occurs"). Just as the plaintiffs in *Harris v. Board of Supervisors* did not have to currently be in a hospital to challenge a county's reduction in the number of hospital beds, 366 F.3d 754, 762 (9th Cir. 2004), Plaintiffs' children need not be in a shelter currently; it is enough that Plaintiffs have shown the challenged statutes "have caused reasonable *concern* of injury." *Covington v. Jefferson County*, 358 F.3d 626, 639 (9th Cir. 2004) (emphasis added, cleaned up).

3. Plaintiffs also have standing by virtue of the Amendments' categorical delay in providing notice of their child's whereabouts

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pressure "created tension between 1A and 1B and their child, creating a situation where 1C was at risk of running away over a disagreement of her gender identity." *Id.*

(assuming they get such notice at all) which is necessary to allow the parents to bring them home. Pls.' Br. 13-20; Defs.' Br. 8, 55.

Further, the State's *required* referral of the child for "gender-affirming" behavioral health services without parental notice or consent is sufficient interference with their rights to direct their child's medical care, even if the child ultimately does not "accept a DCYF referral for behavioral health services" or receive "gender-affirming" care. *See* Defs.' Br. 16. This is because, in this Circuit, an "injury in fact to [a parent's] recognized legal interest[]" in the parent's relationship with their child "is enough to grant … standing." *Morrison v. Jones*, 607 F.2d 1269, 1275 (9th Cir. 1979). The challenged provisions do just that.

4. Reinforcing this conclusion is the fact that Plaintiffs' claims include a denial of due process (including procedural due process) as the challenged legislation interferes with their parental rights without providing adequate procedural protections. As in another famous Supreme Court case, "plaintiffs are seeking to enforce a procedural requirement the disregard of which could impair a separate concrete interest of theirs," *Lujan*, 504 U.S. at 572—namely their parental rights, speech rights, and religious free exercise rights, which establishes

standing, regardless of the challenged statutory process's outcome in any given instance. *See Wit v. United Behav. Health*, 79 F.4th 1068, 1083 (9th Cir. 2023); *Iten*, 81 F.4th at 988-89. This lack of process is clear here: There is no requirement in the relevant statutes that there be any suggestion, let alone *evidence* of abuse or neglect, before the State gets involved in delaying or withholding notice to parents, while referring the child for behavioral health care to "affirm" what the law calls "the individual's gender identity," Wash. Rev. Code §74.09.675(3),[5] then setting the conditions of reunification with their children. The realistic prospect of such intrusions into parental prerogatives is more than a sufficient basis to confer standing.

C. Plaintiffs have suffered injury in fact.

As explained in Plaintiffs' opening brief (at 10-13), the Amendments changed State law in a way that denies Plaintiffs timely and proper notification of their child's whereabouts should they run away (which they are at risk to do) and then refers the child for behavioral health services without parental notice or consent. This is causing

[5] The harms of such "treatment" are outlined in Plaintiffs' Brief (at 21-22 & nn.9, 10).

current harms and puts Plaintiffs at serious and likely risk of substantial future harm sufficient to confer standing. Defendants, however, argue that a recent Seventh Circuit decision, *Parents Protecting Our Children, UA v. Eau Claire Area School District*, 657 F.Supp.3d 1161, 1171 (W.D. Wis. 2023), *aff'd*, 95 F.4th 501 (7th Cir. 2024), *cert. denied mem.*, No. 23-1280, 2024 WL 5036271 (U.S. Dec. 9, 2024), requires a different result. *See* Defs.' Br. 29, 30. Yet, in *Parents Protecting*, the plaintiff organization failed even to allege "that any member's child had questioned their gender identity" or that the policy in question *mandated* the parents' exclusion. 95 F.4th at 504. In dissenting from the denial of certiorari, Justice Alito noted that "the parents' fear that the school district might make decisions for their children without their knowledge and consent is not 'speculative.' They are merely taking the school district at its word." 2024 WL 5036271, at *1 (Alito, J., dissenting) (citation omitted). Of course, in this case, Plaintiffs' claim for standing is much stronger, as their children *do* suffer from gender confusion and are at risk of running away, thus subjecting them to the *mandatory* statutory provisions at issue here.

Indeed, as shown below, the challenged statutes exacerbate the risk of Plaintiffs' children running away, and there is a substantial likelihood of at least one of those children doing so and thus triggering the statutes. *See* Pls.' Br. 55-66; *cf. Murthy v. Missouri*, 603 U.S. 43, 69-70 (2024) ("past harms … can serve as evidence of expected future harm ….") . These allegations, unlike mere "generalized grievance[s]" common to all Washingtonians, demonstrate how the challenged statutes "affect [Plaintiffs] in a personal and individual way." *See All. for Hippocratic Med.*, 602 U.S. at 381 (cleaned up). Further, these laws are *already* hampering Plaintiffs' exercise of parental authority and are curtailing their speech. Pls.' Br. 46-52.

1. Plaintiffs are suffering current injuries.

As previously explained, Plaintiffs' Complaint lays out current harms they are experiencing due to the challenged legislation. First, to try to avoid the clear consequences of the challenged provisions, some Plaintiff parents have censored their own speech to their gender-confused children for fear that any disagreement or discipline will result in the child's running away and falling within the scope of the Amendments. *See* Pls.' Br. 46-48. As noted above, the Amendments encourage their

children to do just that. This chilling provides an ample basis for Plaintiffs' standing.

Defendants nonetheless contend that "Plaintiffs cannot fear enforcement because the challenged laws do not obligate or prohibit any conduct on their part." Defs.' Br. 27. But "governmental action may be subject to constitutional challenge even though it has only an indirect effect on the exercise of First Amendment rights." *Laird v. Tatum*, 408 U.S. 1, 12-13 (1972). Further, as this Circuit has held, "the plaintiffs themselves need not be the direct target of government enforcement" to have standing to challenge a statute. *Lopez*, 630 F.3d at 786. Here, Plaintiffs' speech injuries satisfy the injury-in-fact requirement because these parents are curtailing their speech as a natural consequence of trying to avoid the "credible threat" these laws present to their ability to speak freely. *See Ariz. Right to Life Pol. Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003) (cleaned up).

Further, the ongoing injury to Plaintiffs' "fundamental liberty interest … in the care, custody, and management of their child[ren]" is sufficient to establish standing. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). The challenged provisions put the State between parents and

their children experiencing gender incongruence, thereby directly undermining Plaintiffs' parental rights. That kind of harm suffices to establish standing. *See Presbyterian Church (U.S.A.) v. United States*, 870 F.2d 518, 522 (9th Cir. 1989) (finding standing where "the [government's] surveillance has chilled *individual congregants* from attending worship services, and … has in turn interfered with the churches' ability to carry out their ministries").

Additionally, 5C (Plaintiffs 5A and 5B's daughter) is receiving and has received mental health treatment pursuant to Washington Revised Code §71.34.530 related to gender identity, about which 5A and 5B can obtain no information due to the State's statutory scheme. ER-022-023. On this point, Defendants complain that Plaintiffs "challenge the wrong laws if their concerns are about access to health records." Defs.' Br. 28. But Defendants are incorrect: Several interrelated sections of Titles 70, 71, and 13 restrict parents' access to "treatment records" of services provided to a child under §71.34.530. *See* Wash. Rev. Code §§71.24.025(41), 71.34.430, 70.02.240, 70.02.265; 13.50.100(7)(b).[6] And

[6] Plaintiffs are willing to amend their Complaint to include other applicable statutes related to parents' lack of access to their child's

it's well established that "a [plaintiff's] inability to obtain information can satisfy Article III[.]" *Inland Empire Waterkeeper v. Corona Clay Co.*, 17 F.4th 825, 833 (9th Cir. 2021) (cleaned up).

Moreover, the challenged statutes facilitate "affirming" treatment for runaways without parental knowledge—an ongoing injury-in-fact to Plaintiffs' parental rights. Indeed, "[t]he anticipation of future injury may itself inflict present injury." 13A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* §3531.4 (3d ed. 2024). Such allegations are more than sufficient to establish injury in fact for standing purposes at the motion to dismiss stage.

2. Plaintiffs are likely to suffer future injuries.

Additionally, the same IPEC member and four sets of parent Plaintiffs are under a cloud of grave future injuries that satisfy the injury-in-fact requirement. Standing merely requires "at least reasonable probability of *a threat* to a [plaintiff's] concrete interest." *Nuclear Info. & Res. Serv. v. Nuclear Regul. Comm'n*, 457 F.3d 941, 954 (9th Cir. 2006). Thus, "even a small probability of injury is sufficient to

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mental health records, but the district court's dismissal with prejudice prevents such action.

create a case or controversy," provided that "the relief sought would, if granted, reduce the probability." *Massachusetts v. EPA*, 549 U.S. 497, 525 n.23 (2007) (cleaned up).[7]

The threatened injuries here are drastic: interference with Plaintiffs' fundamental rights of supervision and care of their children. The challenged laws incentivize children to run away and, with the State's assistance, obtain "gender-affirming treatment" to which their parents object. *See* Pls.' Br. 44-52. There is a credible threat that at least one of Plaintiffs' children will do so. *See supra* notes 3, 4.

Moreover, the Amendments appreciably increase the odds that Plaintiffs' children will run away to take advantage of the challenged provisions. *See* Pls.' Br. 58-66. As Defendants assert, between 35% and 39% of transgender or nonbinary minors had experienced homelessness or housing instability, s*ee* Defs.' Br. 5-6 (citing Trevor Proj., *Homelessness*

[7] Defendants claim this statement from *Massachusetts* is limited to cases where a state is a plaintiff. Defs.' Br. 22. But the case cited by the Supreme Court for that proposition did *not* involve a State plaintiff. *See Massachusetts,* 549 U.S. at 525 n.23 (citing *Vill. of Elk Grove Vill. v. Evans*, 997 F.2d 328 (7th Cir. 1993)). Also, the *Massachusetts* Court discussed probabilistic-harm standing and the *parens patriae* doctrine in separate sections of its opinion. *Compare id.* at 518-20 *with id.* at 520-26.

and Housing Instability Among LGBTQ Youth (2021)), and a substantial portion of this group experienced these problems due to having run away from home. *See* Trevor Proj. at 4 (noting "16% of LGBTQ youth reported that they had slept away from parents or caregivers because they ran away from home"), available at https://tinyurl.com/5n62bk2t. Accordingly, "[b]ecause … plaintiffs ha[ve] alleged an act" by Defendants "that increased their risk of future harm, they ha[ve] alleged an injury-in-fact sufficient to confer standing." *See Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1143 (9th Cir. 2010) (citation omitted).

Indeed, the Amendments were *designed* to increase the odds that runaway youth with gender-identity issues, such as Plaintiffs' children, would opt to seek shelter at covered facilities, as Defendants and the State Legislature proudly admit. *See* Defs.' Br. 6; Pls.' Br. 20-21, 24-27. Indeed, SB 5599 was "intend[ed] to remove barriers to accessing temporary, licensed shelter accommodations for youth seeking certain protected health care services"—namely, "gender-affirming treatment." ESSB 5599, 68th Leg., Reg. Sess. (Wash. 2023), 2023 Wash. Legis. Serv. ch. 408, §1, available at https://tinyurl.com/3ytye9uk.

Contrary to Defendants' suggestion (at 18), the fact Plaintiffs' children could run away to other locations does not undermine Plaintiffs' standing. *See Ocean Advocs. v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 860 (9th Cir. 2005) (finding that, because the challenged action would contribute to future harm, that was enough for standing even though other factors would also increase the risk of harm). As noted in note 2, *supra*, the statute provides that *any* person or unlicensed agency that houses a gender-confused runaway minor may notify DCYF rather than the parents, and with such notice, the same delay and referral provisions at issue here are triggered. Further, the ubiquity of licensed youth shelters only reinforces Plaintiffs' concern that their children may run away to one of these facilities—as the Legislature intended.[8]

By claiming Plaintiffs' injuries are speculative, the district court and Defendants fail to appreciate that even an "incremental increase in the risk" of harm to a plaintiff's interests "is sufficient for standing purposes[.]" *Covington*, 358 F.3d at 638 n.15 (citation omitted). For

[8] There are at least 14 DCYF-licensed youth shelters in the State with 60.5% of Washingtonians residing in a city or metro area served by at least one licensed youth shelter. *See* Off. Homeless Youth, *Resource Map* (Nov. 5, 2024), https://tinyurl.com/42crvx94 (select Youth Programs ages 12-17).

example, in another case, a group of plaintiffs had standing to "challenge[] a Forest Service decision to select a logging plan that created a slightly greater likelihood of a wildfire," "reduc[ing] potential wildfire fuels by 5.4%, rather than plaintiffs' preferred plan, which reduced the fuels by 14.2%." *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 949 (9th Cir. 2002) (citation omitted). The Amendments, too, increase the risk of Plaintiffs' children running away to trigger the Amendments' provisions, which is sufficient to establish standing.

This case is worlds away from the two appellate cases Defendants cite that found parents lacked standing to challenge gender-identity policies applicable to children. *See* Defs.' Br. 29. In one case, "[t]he parents [did] not allege[] that their children … are transgender or are even struggling with issues of gender identity." *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 626 (4th Cir. 2023), *cert. denied mem.,* 144 S. Ct. 2560 (2024). The other case, *Parents Protecting Our Children,* 95 F.4th 501, is addressed above. Plaintiffs' sworn allegations in this case do not have any of these deficiencies.

D. Plaintiffs have adequately pled both causation and redressability.

Plaintiffs have also adequately pled the second element of standing, that is, "that the [plaintiff's] injury likely was caused or will be caused by the defendant." *All. for Hippocratic Med.*, 602 U.S. at 380. The requirement may be satisfied "even if the defendant is just one of multiple causes of the plaintiff's injury." *WildEarth Guardians v. U.S. Dep't of Agric.*, 795 F.3d 1148, 1157 (9th Cir. 2015). Moreover, Plaintiffs need not "demonstrate that defendants' actions are the 'proximate cause' of plaintiffs' injuries." *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011). As this Circuit has recognized, "[i]n numerous cases, courts have ruled that a possible chain of third-party responses to [official] action was sufficient to confer standing." *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1515 (9th Cir. 1992). Accordingly, a plaintiff may establish standing by "rel[ying] on a causal chain with multiple links." *Mendia v. Garcia*, 768 F.3d 1009, 1013 (9th Cir. 2014).

1. Here, while Plaintiffs are not directly regulated by the challenged statutes, they are affected and indeed targeted by the laws, which interfere with the parent-child relationship. As the Supreme Court has held, "government regulation of a third-party individual or

business may be likely to cause injury in fact to an unregulated plaintiff." *All. for Hippocratic Med.*, 602 U.S. at 384. Defendants respond by contending that Plaintiffs' injuries are "linked to the state laws only by a long and attenuated causal chain involving independent actions by the youth themselves, licensed shelters and host homes, medical providers, and other third parties." Defs.' Br. 29. Yet Defendants' argument fails because none of these actions is in fact "independent" of the legislation at issue here.

For example, the challenged statutes directly regulate licensed shelters, host homes, and medical providers and these "third parties will likely react in predictable ways that in turn will likely injure the plaintiffs." *All. for Hippocratic Med.*, 602 U.S. at 383 (cleaned up). Specifically, a licensed shelter or home is *required* to contact DCYF and refrain from contacting parents.[9] DCYF is then *required* to refer the child for behavioral health services to "affirm" their gender identity. In such a

[9] Defendants claim shelters may still notify parents immediately if they so choose. Defs.' Br. 65 (citing Wash. Rev. Code §13.32A.082(4)). Yet that provision only applies to those unlicensed groups identified in subsection (1)(a) and not licensed shelters under (1)(b) that *must* notify DCYF rather than parents.

case, the provider is then *required* to withhold any information on the mental health treatment of the child from the parents unless the minor child gives consent. Wash. Rev. Code §§71.34.530, 70.02.265(1)(a). Nor are the children acting "independent[ly]" of the challenged statutes, since the statutes encourage and facilitate children's receipt of services against their parents' wishes.

2. Defendants further assert (at 53) that there is no real harm because another statute provides that parents shall, "upon request, be given access to all records and information collected or retained by" DCYF about their child *except* "information … obtained by [DCYF] in connection with the provision of counseling, psychological, psychiatric, or medical services" that the child "has a legal right to receive … without the consent of any person or agency[.]" Wash. Rev. Code §13.50.100(7). Thus, when considered in full, this provision clearly provides that DCYF is *not* required to provide parents access to their child's mental health records, even if DCYF were to obtain them based on the referral offered under §13.32A.082(3)(b)(i).

3. Finally, the "redressability" aspect of Article III standing naturally flows from causation, as the two "are often flip sides of the same

coin." *All. for Hippocratic Med.*, 602 U.S. at 380 (cleaned up). If a defendant caused an injury, a judicial remedy "will typically redress that injury." *Id.* at 381. Moreover, "[r]edressability does not require certainty, but only a substantial likelihood that the injury will be redressed by a favorable judicial decision." *Wash. Env't Council v. Bellon*, 732 F.3d 1131, 1146 (9th Cir. 2013) (citation omitted).

In this case, declaring the Amendments and §71.34.530 unconstitutional would relieve Plaintiffs' current injuries and reduce the threat of future ones arising from these statutes. The redressability prong is thus satisfied.

E. IPEC has organizational standing because of harm suffered by its members.

For the same reasons the parent Plaintiffs have standing, Plaintiff International Partners for Ethical Care, Inc. has associational standing. IPEC's members include approximately two dozen parents in Washington, at least one of which has a minor child who experiences gender confusion, has received counseling for that issue, and is at risk of running away. ER-015; *see* Pls.' Br. 37, 52. This is sufficient for IPEC to have associational standing.

For all these reasons, the district court's order of dismissal with prejudice should be reversed and this matter remanded for further proceedings to determine the merits of Plaintiffs' claims.

II. Plaintiffs' Claims are Ripe.

Defendants further argue that Plaintiffs' claims are unripe. Defs.' Br. 34-36. Because the district court did not reach this issue, this Court should not consider this objection, either: The "standard practice [in this Circuit] is to remand to the district court for a decision in the first instance without requiring any special justification for so doing." *Roth v. Foris Ventures, LLC*, 86 F.4th 832, 838 (9th Cir. 2023) (cleaned up). Indeed, in a recent case this Court held that, where a district court did not rule on the ripeness issue but dismissed on standing grounds, the proper disposition was to "remand to the district court to consider the issue in the first instance." *Seattle Pac. Univ. v. Ferguson*, 104 F.4th 50, 66 (9th Cir. 2024). That should happen here. Nevertheless, should the Court evaluate this issue, Plaintiffs satisfy both components of ripeness doctrine: constitutional and prudential.

1. The constitutional component is easily met: "[T]he ripeness inquiry is synonymous with the injury-in-fact prong of the standing

inquiry." *Id.* at 57 (cleaned up). A plaintiff who "has established a pre-enforcement injury … has established constitutional ripeness." *Id.* at 65 n.4. Because Plaintiffs in this case, for reasons already explained, have shown Article III standing, their claims are constitutionally ripe.

2. Defendants are also wrong in arguing (at 34-46) that Plaintiffs' claims are not "prudentially" ripe.[10] This Circuit considers two factors for prudential ripeness: "the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration." *W. Watersheds Proj. v. Kraayenbrink*, 632 F.3d 472, 486 (9th Cir. 2011). In general, "pre-implementation challenges are ripe where it is inevitable that the law will become effective[]." *Montanans for Cmty. Dev. v. Mangan*, 735 F.App'x 280, 282 (9th Cir. 2018); *see also Fireman's Fund Ins. Co. v. Quackenbush*, 87 F.3d 290, 294 (9th Cir. 1996). There is no question on that point here as the law has *already* become effective.

[10] Indeed, finding Plaintiffs' "claims nonjusticiable on grounds that are 'prudential,' rather than constitutional," would be, as the Supreme Court has suggested, "in some tension with … the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (cleaned up).

Fitness. "A claim is fit for decision if the issues raised are primarily legal, do not require further factual development, and the challenged action is final." *Standard Alaska Prod. Co. v. Schaible*, 874 F.2d 624, 627 (9th Cir. 1989) (citation omitted). Here, Plaintiffs' claims are "primarily legal" as they challenge "[t]he constitutionality of [State] statute[s]," which "is a question of law." *United States v. Frega*, 179 F.3d 793, 802 n.6 (9th Cir. 1999) (citation omitted); *Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1086 n.3 (9th Cir. 2003).

Yet Defendants contend that Plaintiffs' claims are unripe because they depend "on how the laws *might* be applied to their children if their children run away to a licensed shelter" and "seek [and receive] gender-affirming care." Defs.' Br. 35. But there is no reason to wait for Plaintiffs' children to run away and be subjected to the challenged provisions before this case is decided. The law has taken effect, and it is clear how it will apply to Plaintiffs' children should they run away, thus making this case "fit" for consideration. *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1126 (9th Cir. 2009); *Freedom to Travel Campaign v. Newcomb*, 82 F.3d 1431, 1436 (9th Cir. 1996) (where the law "will operate to the plaintiff's disadvantage," the matter is "prudent to resolve.").

Hardship. The other aspect—"[t]he hardship analysis"—"dovetails … with the constitutional consideration of injury." *Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1142 (9th Cir. 2000). Here, Plaintiffs will suffer hardship if consideration of their claims is deferred given the irreparable harms to which they and their children will be subjected under the challenged provisions. Indeed, "delay in decision will create the serious risk that consideration of the validity of those provisions may" be "too late to prevent the [harm] or assure compensation if" the Washington laws at issue "[a]re found unconstitutional." *See Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 145 (1974); *see also Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 81-82 (1978). Thus, both elements of ripeness are amply satisfied here.

III. Defendants' Alternative Arguments On the Merits Also Fail.

Demonstrating their lack of confidence in the district court's standing analysis, Defendants finally insist that "[t]his Court can alternatively affirm dismissal because Plaintiffs' claims fail on the merits." Defs.' Br. 12. But the merits are not properly before the Court

at this stage—and even if they were, Plaintiffs have stated meritorious constitutional claims.

A. The merits cannot be considered at this juncture.

The district court dismissal of Plaintiffs' claims for lack of Article III standing "is a dismissal for lack of subject-matter jurisdiction." *Hoffmann v. Pulido*, 928 F.3d 1147, 1152 (9th Cir. 2019); *Core-Mark Int'l, Inc. v. Mont. Bd. of Livestock*, 701 F.App'x 568, 570 (9th Cir. 2017). Defendants argue this Court can still affirm the dismissal on the merits should Plaintiffs have standing. However, such an alternative disposition would be improper: It is well-settled in this Circuit that when "the district court dismissed the action before reaching the merits, [this Court's] review is confined to the jurisdictional issue." *Elizondo v. Sec'y of U.S. Dep't of Navy*, 267 F.App'x 678, 679 (9th Cir. 2008) (quoting *Vestron, Inc. v. Home Box Off., Inc.*, 839 F.2d 1380, 1381 (9th Cir. 1988)); *see also Saridakis v. United Airlines*, 166 F.3d 1272, 1276 n.4 (9th Cir. 1999). That principle is controlling here.

B. Plaintiffs have stated viable constitutional claims.

Even if this Court nevertheless opted to address the merits, Plaintiffs have stated viable constitutional claims.[11]

1. The challenged provisions violate due process.

First, Plaintiffs stated viable claims for violations of the Due Process Clause, which protects parents' "fundamental liberty interest … in the care, custody, and management of [their] child[ren]," *Santosky*, 455 U.S. at 753, including the right "to make important medical decisions for their children," *Wallis v. Spencer*, 202 F.3d 1126, 1141 (9th Cir. 2000). "[T]he right to familial association" has "both a substantive and a procedural component." *Keates v. Koile*, 883 F.3d 1228, 1236 (9th Cir. 2018). Accordingly, "parents and children [may] not be separated by the state without due process of law except in an emergency." *Wallis*, 202 F.3d at 1136-37 (collecting cases).

Separation without adequate procedures. As addressed above, the challenged statutes deprive Plaintiffs of their substantive "liberty" interest in the care of their children without the procedural safeguards

[11] If the Court decides to reach the merits and has any doubt about the viability of Plaintiffs' claims, Plaintiffs request the opportunity to provide supplemental briefing on them.

required by the Due Process Clause. Under the Amendments, as noted above, the mere fact a child claims to seek "gender-affirming treatment" *requires* the State to delay or withhold notice to the parents of the child's whereabouts while offering the child behavioral health services over which the parents have no say, no right to access the records, and no right even to be involved. Pls.' Br. 12-17.

Defendants admit as much in declaring that "no due process or 'individualized assessment' is necessary" when it comes to a runaway, gender-confused child. Defs.' Br. 65 (quoting ER-70). Yet, "[p]rocedure by presumption … needlessly risks running roughshod over the important interests of both parent and child." *Stanley v. Illinois*, 405 U.S. 645, 656-57 (1972). Where parental rights are implicated, "the Due Process Clause require[s] a more individualized determination." *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 645 (1974); *accord In re William M.*, 473 P.2d 737, 747-48 (Cal. 1970).

The unnecessary and unreasonable delay of any form of notice to the parents of the child's whereabouts is also constitutionally infirm. As another court made clear, "if an [agency of the state] … unnecessarily delays the return of a child" without "evidence of … abuse or neglect, …

the [parent's] procedural due process rights have been infringed." *Nicholson v. Williams*, 203 F.Supp.2d 153, 238 (E.D.N.Y. 2002). The challenged provisions clearly violate this standard.[12] Moreover, "separation of parent from child, even for a short time, represents a serious infringement upon both the parents' and child's rights." *Brokaw v. Mercer County*, 235 F.3d 1000, 1018-19 (7th Cir. 2000) (quoting *J.B. v. Washington County*, 127 F.3d 919, 925 (10th Cir. 1997)); *see also David v. Kaulukukui*, 38 F.4th 792, 804 (9th Cir. 2022).[13]

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[12] Defendants maintain that "[a] parent remains free to pick up their child from a shelter at any time and the youth remains free to return home." Defs.' Br. 56. The statute, however, says nothing about parents retaining the right to pick up their child from the shelter, or anything else about the *timing* of family reunification. *See, e.g.*, Defs.' Br. 8 n.1 for list of reunification services. Further, under an internal DCYF memo, caseworkers are only required to "[m]ake a good faith attempt to notify the parent or guardian that a report was received, *after contacting the youth*," all while making referrals for the youth for "[b]ehavioral," "[r]eproductive" and/or "[g]ender-affirming care." Natalie Green, Asst. Sec'y, Child Welfare Div., State of Wash., Dep't of Child., Youth, & Fams., *3100. Family Reconciliation Services* (July 23, 2024) (emphasis added), https://tinyurl.com/whte8rna. Nothing in the memo ensures prompt notice to the parents or a parent's right to pick up their child. Further, a state agency's internal memo to its employees is not binding interpretation of a challenged statute. *See Ass'n of Wash. Bus. v. Dep't of Revenue*, 120 P.3d 46, 54 (Wash. 2005).

[13] The theoretical possibility that DCYF *might* timely notify parents as to *some* runaway children with sufficient detail to permit the exercise of

It does not matter that the Amendments do not authorize physical removal of children from their parents' households. As another circuit held, "where the government, although not physically taking [a] child away …[,] refus[es] to release him or her," "[a] parent is deprived of [the] constitutionally protected liberty interest … at [the] moment of refusal[.]" *Kia P. v. McIntyre*, 235 F.3d 749, 760 (2d Cir. 2000) (citation omitted). This Circuit reached a similar holding when a mother brought her child to a hospital and social workers "prevent[ed] [the child] from going home with" the mother. *Keates*, 883 F.3d at 1232. This Court held that the mother had adequately stated a claim for violation of her parental rights. *Id.* at 1238.

Moreover, "[t]he weighty parental interest in their child's well-being does not disappear merely because" the child has "left [the] parents' home" without permission. *Polovchak v. Meese*, 774 F.2d 731, 735, 732 (7th Cir. 1985) (citation omitted from first quotation). As one court has persuasively noted, "[c]hildren run away for many reasons, some legitimate and some not legitimate," including "as a means to defy their

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parental rights is no cure as nothing in the statute requires such promptness or detail.

parent." *Mark N. v. Runaway Homeless Youth Shelter*, 733 N.Y.S.2d 566, 568 (Fam. Ct. 2001). Given these valid concerns about parental rights, "properly drawn runaway … youth statutes include a requirement that parents be notified of the child's whereabouts[.]" Gregory A. Loken, *"Thrownaway" Children and Throwaway Parenthood*, 68 Temp. L. Rev. 1715, 1757 n.241 (1995).

And here, the inherent delay in any notice and the lack of statutory requirements regarding notice or a parent's ability to reunite with the child makes the statute unconstitutional on its face. *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1269 (11th Cir. 2011) (finding statutes are "facially" invalid "under the Due Process Clause" if they "lack[] constitutionally adequate procedural protections as [they are] presently written"); *accord Coleman v. Watt*, 40 F.3d 255, 260 (8th Cir. 1994); *Wisconsin v. Constantineau*, 400 U.S. 433, 439 (1971).

Displacement of parents regarding medical treatment. The challenged statutes also violate due-process rights by displacing parental judgment regarding their child's medical treatment. As noted above, the Amendments *mandate* that, once DCYF receives a report from any source regarding a runaway child "seeking" "gender-affirming treatment," the

department *must* "[o]ffer to make referrals on behalf of the minor for appropriate behavioral health services" without notice or consent of the parents. Wash. Rev. Code §§13.32A.082(3)(b)(i), (2)(c)(ii), (2)(d). Given that Section 71.34.530 provides that a minor aged 13 or older may "receive outpatient treatment without the consent of the adolescent's parent," and Sections 70.02.240, 70.02.265 (applying to mental health providers) and 13.50.100(7)(b) (applying to DCYF) *mandate* that records of such "treatment" be withheld from parents absent the child's consent, the challenged referrals severely undermine Plaintiffs' rights to direct the upbringing of their children and oversee their medical care. Thus, the statutory scheme violates the Due Process Clause by interfering with parental judgment in matters of their child's health. *See Mueller v. Auker*, 576 F.3d 979, 995 (9th Cir. 2009).

Defendants retort that, because no "State Defendant actually provides behavioral health services" pursuant to §71.34.530, there is no constitutional violation. Defs.' Br. 44. But Defendants "provide[] such significant encouragement" of that treatment that they may be sued simply for doing so. *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (collecting cases). Further, Defendants enforce the privacy laws in Titles

70 and 71 and make the referrals knowing the runaway minor child can keep that information from his/her parents.

Defendants also miss the point with their protestation that "[y]ouths who are offered [by DCYF] referrals remain free to accept them or not." Defs.' Br. 42. The Amendments *mandate* that DCYF make such a referral. This violates *parents'* constitutional rights, regardless of whether children consent to the treatments. "A parent's due process right to notice and consent is not dependent on the particular procedures … or whether the child demonstrably protests [them]." *Mann v. County of San Diego*, 907 F.3d 1154, 1162 (9th Cir. 2018). "Most children, even in adolescence, simply are not able to make sound judgments concerning … their need for medical care or treatment." *Parham v. J.R.*, 442 U.S. 584, 602-04 (1979); *see also Miller v. HCA, Inc.*, 118 S.W.3d 758, 766 (Tex. 2003); *In re L.H.R.*, 321 S.E.2d 716, 722 (Ga. 1984).

In support of their argument (at 47-49), Defendants point to a case holding that a state-run family planning center did not violate parents' constitutional rights in distributing birth control to minors upon request, because the center "ha[d] imposed no compulsory requirements or prohibitions which affect rights of [parents]." *Doe v. Irwin*, 615 F.2d

1162, 1168 (6th Cir. 1980). In that case, however, parents were *not* "excluded from any decisions or supplanted by … the Center," which "encourage[d] minors to involve their parents in their decisions concerning sexual activity and birth control, and even offer[ed] to help bring the parents into discussions of these subjects." *Id.* at 1168 n.2. By contrast, the challenged statutes here *do* impose on shelters "compulsory requirements" that affect parents' rights and *prohibits* providers from sharing information about the child with the parents, a far cry from "encourag[ing] minors to involve their parents."

Defendants make the same faulty comparison in the other cases they cite. Defs.' Br. 41-43, 45-48 (citing *Anspach v. City of Philadelphia*, 503 F.3d 256, 266, 269 (3d Cir. 2007) (involving "passive failure on the part of a state" to share information with parents); *Curtis v. Sch. Comm. of Falmouth*, 652 N.E.2d 580, 586 (Mass. 1995) (no "compulsory aspect to [condom distribution] program"); *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1206 (9th Cir. 2005), *reaff'd with amendments,* 447 F.3d 1187 (9th Cir. 2006) (per curiam); *Reardon v. Midland Cmty. Sch.*, 814 F.Supp.2d 754, 772 (E.D. Mich. 2011) (both involving parents complaining solely about having their children exposed to ideas or a point of view with which

they disagree)). Rather, this case is more like the many in which government officials' actions, even if not coercive with respect to *children*, nonetheless were unconstitutional because they interfered with *parents'* constitutional rights.[14]

2. The challenged provisions violate Plaintiffs' rights to free exercise of religion.

Plaintiffs also stated viable claims for violations of their free-exercise rights. Although the challenged statutes do not purport to target religion, "the First Amendment bars application of a neutral, generally applicable law to religiously motivated action" that implicates "the Free Exercise Clause in conjunction with other constitutional protections, such as … the right of parents" to raise children. *Emp. Div. v. Smith*, 494 U.S. 872, 881 (1990). In this Circuit, "[i]n such 'hybrid' cases, the law or action must survive strict scrutiny." *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1031 (9th Cir. 2004) (citation omitted).

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[14] *See, e.g., Planned Parenthood of Blue Ridge v. Camblos*, 155 F.3d 352, 384 (4th Cir. 1998) (en banc) ("Our Constitution confers no more fundamental rights than those brought into relief by a statute requiring that the mother and father of a teenager with child be informed of the daughter's decision to terminate her pregnancy by abortion. A mother and father … are *obliged* to know, and they are *entitled* to know, the life-defining decisions their children face."), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

Moreover, "to assert a hybrid-rights claim, a free exercise plaintiff must make out a colorable claim that a companion right has been violated—that is, a fair probability or a likelihood, but not a certitude, of success on the merits." *Miller v. Reed*, 176 F.3d 1202, 1207 (9th Cir. 1999) (cleaned up). And here, as described above, Plaintiffs have stated "colorable" claims of infringements of their "companion right" to raise their children.

3. The challenged provisions violate Plaintiffs' free speech rights.

Plaintiffs have also stated a claim for violations of their First Amendment right to free speech. As explained above, the statutory provisions have caused several Plaintiffs to alter their speech in public as well as in parenting their children. Because "governmental action may be subject to constitutional challenge even though it has only an indirect effect on the exercise of First Amendment rights," *Laird*, 408 U.S. at 12-13, Plaintiffs have more than stated a viable claim. Further, as another circuit held, "a plaintiff who allege[s] … a chill" of First-Amendment rights is "entitled, before his complaint [i]s dismissed, to discovery for the purpose of determining whether the sanction in fact had an inhibiting impact." *Frissell v. Rizzo*, 597 F.2d 840, 846-47 (3d Cir. 1979).

4. The challenged provisions are void for vagueness.

Lastly, Plaintiffs have stated a claim for violation of the Due Process Clause's prohibition on vague legislation. A law may be unconstitutionally vague, and be held invalid in a civil proceeding, "for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement." *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1155 (9th Cir. 2014) (cleaned up); *Fleuti v. Rosenberg*, 302 F.2d 652, 655 (9th Cir. 1962) (principle applies in civil proceeding), *vacated and remanded on other grounds,* 374 U.S. 449 (1963).

The Amendments are unconstitutional for both reasons. First, their lack of standards will encourage arbitrary enforcement. And second, they leave Plaintiffs without any guidance on what they will be required to do to have their children returned to their custody, consistent with their fundamental rights as parents. Indeed, "perhaps the most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights," in which case "a more stringent vagueness test should

apply." *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982).

Defendants attack Plaintiffs' claim by arguing that the challenged laws do not regulate or sanction Plaintiffs' conduct. Defs.' Br. 66. That, however, is not dispositive; the statutes are nonetheless void because they "authorize … arbitrary and discriminatory enforcement," *see Desertrain*, 754 F.3d at 1155 (citation omitted), when it comes to when and what information the State provides parents of runaway children. Defendants also attack the void-for-vagueness claim because nothing in the challenged statutes gives DCYF authority to require parents to do anything to be reunited with their children. Defs.' Br. 67. Yet the Amendments only require DCYF to *offer* reconciliation services, not necessarily reunification, and they establish no criteria for reunification. Without standards, State officials will have only their discretion to determine what is required for reunification. That violates the void-for-vagueness doctrine.

CONCLUSION

Plaintiffs have standing because the challenged statutes expose them to ongoing harm and substantial risk of future harm. The district court's contrary judgment should be reversed.

December 13, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Form 8

1. This brief contains 8,338 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6).

I certify that this brief: complies with the longer length limit permitted by Cir. R. 32-2(b) because it is responding to multiple briefs.

/s/ Gene C. Schaerr
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December 13, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2024, I electronically filed the foregoing brief with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Gene C. Schaerr
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ADDENDUM

INDEX

Washington Revised Code § 13.50.100(7)

Records not relating to commission of juvenile offenses–Maintenance and access–Release of information for child custody hearings–Disclosure of unfounded allegations prohibited

Effective: January 1, 2021

* * *

(7) A juvenile, his or her parents, the juvenile's attorney, and the juvenile's parent's attorney, shall, upon request, be given access to all records and information collected or retained by a juvenile justice or care agency which pertain to the juvenile except:

(a) If it is determined by the agency that release of this information is likely to cause severe psychological or physical harm to the juvenile or his or her parents the agency may withhold the information subject to other order of the court: PROVIDED, That if the court determines that limited release of the information is appropriate, the court may specify terms and conditions for the release of the information; or

(b) If the information or record has been obtained by a juvenile justice or care agency in connection with the provision of counseling, psychological, psychiatric, or medical services to the juvenile, when the services have been sought voluntarily by the juvenile, and the juvenile has a legal right to receive those services without the consent of any person or agency, then the information or record may not be disclosed to the juvenile's parents without the informed consent of the juvenile unless otherwise authorized by law; or

(c) That the department of children, youth, and families or the department of social and health services may delete the name and identifying information regarding persons or organizations who have reported alleged child abuse or neglect.

* * *

Washington Revised Code § 70.02.240

Mental health services--Minors--Permitted disclosures

Effective: June 6, 2024

The fact of admission and all information and records related to mental health services obtained through inpatient or outpatient treatment of a minor under chapter 71.34 RCW must be kept confidential, except as authorized by this section or under RCW 70.02.050, 70.02.210, 70.02.230, 70.02.250, 70.02.260, and 70.02.265. Confidential information under this section may be disclosed only:

(1) In communications between mental health professionals, including Indian health care providers, to meet the requirements of chapter 71.34 RCW, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings, including proceedings within tribal jurisdictions;

(3) To the minor, the minor's parent, including those acting as a parent as defined in RCW 71.34.020 for purposes of family-initiated treatment, and the minor's attorney, subject to RCW 13.50.100;

(4) To the courts, including tribal courts, as necessary to administer chapter 71.34 RCW or equivalent proceedings in tribal courts;

(5) By a care coordinator, including an Indian health care provider, under RCW 71.34.755 or 10.77.175 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 or 10.77 RCW;

(6) By a care coordinator, including an Indian health care provider, under RCW 71.34.755 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 RCW;

(7) To law enforcement officers, including tribal law enforcement officers, or public health officers, including tribal public health officers, as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and

address of the treatment provider, if any, and the last known address must be disclosed upon request;

(8) To law enforcement officers, including tribal law enforcement officers, public health officers, including tribal public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(9) To the secretary of social and health services and the director of the health care authority for assistance in data collection and program evaluation or research so long as the secretary or director, where applicable, adopts rules for the conduct of such evaluation and research. The rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, ..., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/.....";

(10) To appropriate law enforcement agencies, including tribal law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

(11) To appropriate law enforcement agencies, including tribal law enforcement agencies, and to a person, when the identity of the person is

known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence. Nothing in this section shall be interpreted as a waiver of sovereign immunity by a tribe;

(12) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(13) Upon the death of a minor, to the minor's next of kin;

(14) To a facility, including a tribal facility, in which the minor resides or will reside;

(15) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(iii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(iii);

(c) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(d) Tribal law enforcement officers and tribal prosecuting attorneys who enforce tribal laws or tribal court orders similar to RCW 9.41.040(2)(a)(v) may also receive confidential information in accordance with this subsection;

(16) This section may not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the director of the health care authority or the secretary of the department of social and health services, where applicable. The fact of admission and all information obtained pursuant to chapter 71.34 RCW are not admissible as evidence in any legal proceeding outside chapter 71.34 RCW, except guardianship or dependency, without the written consent of the minor or the minor's parent;

(17) For the purpose of a correctional facility participating in the postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555 and 74.09.295;

(18) Pursuant to a lawful order of a court, including a tribal court.

Washington Revised Code § 70.02.265

Adolescent behavioral health services--Disclosure of treatment information and records--Restrictions and requirements--Immunity from liability

Effective: July 28, 2019

(1)(a) When an adolescent voluntarily consents to his or her own mental health treatment under RCW 71.34.500 or 71.34.530, a mental health professional shall not proactively exercise his or her discretion under RCW 70.02.240 to release information or records related to solely mental health services received by the adolescent to a parent of the adolescent, beyond any notification required under RCW 71.34.510, unless the adolescent states a clear desire to do so which is documented by the mental health professional, except in situations concerning an imminent threat to the health and safety of the adolescent or others, or as otherwise may be required by law.

(b) In the event a mental health professional discloses information or releases records, or both, that relate solely to mental health services of an adolescent, to a parent pursuant to RCW 70.02.240(3), the mental health professional must provide notice of this disclosure to the adolescent and the adolescent must have a reasonable opportunity to express any concerns about this disclosure to the mental health professional prior to the disclosure of the information or records related solely to mental health services. The mental health professional shall document any objections to disclosure in the adolescent's medical record if the mental health professional subsequently discloses information or records related solely to mental health services over the objection of the adolescent.

(2) When an adolescent receives a mental health evaluation or treatment at the direction of a parent under RCW 71.34.600 through 71.34.670, the mental health professional is encouraged to exercise his or her discretion under RCW 70.02.240 to proactively release to the parent such information and records related to solely mental health services received by the adolescent, excluding psychotherapy notes, that are necessary to assist the parent in understanding the nature of the

evaluation or treatment and in supporting their child. Such information includes:

(a) Diagnosis;

(b) Treatment plan and progress in treatment;

(c) Recommended medications, including risks, benefits, side effects, typical efficacy, dose, and schedule;

(d) Psychoeducation about the child's mental health;

(e) Referrals to community resources;

(f) Coaching on parenting or behavioral management strategies; and

(g) Crisis prevention planning and safety planning.

(3) If, after receiving a request from a parent for release of mental health treatment information relating to an adolescent, the mental health professional determines that disclosure of information or records related solely to mental health services pursuant to RCW 70.02.240(3) would be detrimental to the adolescent and declines to disclose such information or records, the mental health professional shall document the reasons for the lack of disclosure in the adolescent's medical record.

(4) Information or records about an adolescent's substance use disorder evaluation or treatment may be provided to a parent without the written consent of the adolescent only if permitted by federal law. A mental health professional or chemical dependency professional providing substance use disorder evaluation or treatment to an adolescent may seek the written consent of the adolescent to provide substance use disorder treatment information or records to a parent when the mental health professional or chemical dependency professional determines that both seeking the written consent and sharing the substance use disorder treatment information or records of the adolescent would not be detrimental to the adolescent.

(5) A mental health professional providing inpatient or outpatient mental health evaluation or treatment is not civilly liable for the decision to disclose information or records related to solely mental health services or not disclose such information or records so long as the decision was reached in good faith and without gross negligence.

(6) A chemical dependency professional or mental health professional providing inpatient or outpatient substance use disorder evaluation or treatment is not civilly liable for the decision to disclose information or records related to substance use disorder treatment information with the written consent of the adolescent or to not disclose such information or records to a parent without an adolescent's consent pursuant to this section so long as the decision was reached in good faith and without gross negligence.

(7) For purposes of this section, "adolescent" means a minor thirteen years of age or older.