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)

BRIEF FOR THE APPELLANTS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Plaintiff-Appellant International Partners for Ethical Care, Inc., is a corporation formed and in good standing in the State of Illinois under Section 501(c)(4) of the Internal Revenue Code.

International Partners For Ethical Care, Inc. is not publicly traded and has no parent corporation. There is no publicly held corporation that owns ten percent or more of its stock.

Plaintiff-Appellant Advocates Protecting Children is a non-stock corporation formed and in good standing in the State of Virginia under Section 501(c)(3) of the Internal Revenue Code.

Advocates Protecting Children is not publicly traded and has no parent corporation. There is no publicly held corporation that owns ten percent or more of its stock.

Plaintiffs-Appellants Parents 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A and 5B are individuals, and thus, no corporate disclosure is required.

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INTRODUCTION

This case challenges Washington's efforts to displace parents when a gender-confused child runs away from home. It is *not* a case of random citizens who merely have policy or ideological disagreements with state laws. Rather, it is a case brought by the very types of parents the laws at issue were enacted to undermine: parents who do not believe it is healthy to "affirm" their child's gender confusion. As a result of the legal provisions at issue, these parent Plaintiffs are suffering current injuries and remain under threat of drastic future injuries—either of which is sufficient to confer standing. Yet, under the district court's holding, parents will be unable to bring suit until their child has *already* run away from home, has been referred to "gender affirming" behavioral health services without parental consent, and both their child and their relationship with that child have suffered permanent harm as a result. Article III does not impose such a high burden on parents before courts can adjudicate claims seeking to prevent the state from placing itself between them and their troubled children.

Seeking to maintain their constitutional rights to raise their children without undue state interference, especially concerning their

child's medical and mental health care, parent Plaintiffs and organizational Plaintiffs challenge three laws. One allows minors 13 and up to consent to their own mental health treatment and to keep any details of that treatment secret from their parents. The other two laws (SB 5599 and SHB 1406) build on this first law and trigger a series of state actions when a runaway child shows up at a shelter or home seeking or receiving "gender-affirming" treatment. In such a case, the challenged statutes allow the state to (1) refer the child for "behavioral health treatment" without parental notification or permission, (2) delay reunification between the child and the parent, and (3) even keep parents in the dark about where and how their child is doing. In short, these two new laws simply *presume* a parent has engaged in neglect or abuse when a child arrives at a shelter seeking "gender-affirming" treatment—while requiring no evidence of actual neglect or abuse.

In the district court, the Defendants (including the Governor, Attorney General, and Secretary of the Washington Department of Children, Youth, and Families) opposed this lawsuit on a false premise—namely, that Plaintiffs are seeking to restrict the ability of gender-confused youth to access healthcare. The reality is that the provisions

challenged here allow Defendants to displace the parent Plaintiffs and all Washington parents as those primarily responsible to ensure proper care for a gender-confused runaway child. Based on the plain language of the statutes in question and confirmed by the legislative sponsors and echoed by Defendants below, it is clear the challenged provisions are *designed* to direct a gender-confused child to "gender-affirming treatment" without notice to and over parents' objections. Accordingly, the challenged statutes empower Defendants to take extraordinary steps, without parental notice or consent, to "transition" children from their biological sex.

The targeted minors, moreover, are vulnerable children who typically run away, not because of abuse or neglect in the traditional sense, but because, as Defendants suggest, their parents have decided to affirm (at least for now) their biological sex and not their gender confusion. Rather than respect the rights of parents to make such medical and mental health decisions for their children, as Plaintiffs believe the Constitution demands, Defendants have created a way for children to bypass their parents, further cementing this confusion and putting children on a path far more likely to lead to invasive treatments,

bodily mutilation, and sterility—life-altering treatments unsupported by medical science and often later regretted.

Additionally, the parent-child relationship will be severely damaged, perhaps irreparably, by the state's keeping these vulnerable children separated from their parents for longer periods than the law previously allowed, and by providing access to treatments their parents believe are harmful to their children. By improperly usurping the role of Plaintiffs as parents, and delaying the return of their children, the challenged provisions not only violate the federal Constitution, they also impose real harm and potentially drastic future harm on both children and parents, including the parent Plaintiffs.

Yet, despite the concrete risks to the Plaintiffs and their children—indeed, four sets of parent Plaintiffs have children *currently* struggling with gender confusion, one of whom has previously run away—the district court found that any injuries were "speculative" and based on "conjecture." ER-005. And the court did so without a single word about the specific allegations in the First Amended Complaint or either of the two accepted avenues for standing that the law recognizes and that Plaintiffs squarely raised.

That holding is in error. Plaintiffs have standing for their current First and Fourteenth Amendment injuries resulting from the challenged laws. And, under settled Supreme Court and Ninth Circuit standing doctrine, they also have standing arising from the real threat of future harm. This Court should reverse the district court's ruling so this litigation can proceed to the merits.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331 because Plaintiffs' claims raised federal questions. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291 because Plaintiffs appeal a final decision of the district court. *See* ER-004-007; *Nevada v. Burford*, 918 F.2d 854, 855 (9th Cir. 1990). The district court entered judgment on May 15, 2024. ER-003. Appellants timely filed a notice of appeal on June 8, 2024. *See* ER-090; Fed. R. App. P. 4(a)(1)(A).

ISSUE PRESENTED

Whether the district court erred in granting Defendants' motion to dismiss for lack of standing, notwithstanding (and without even discussing) Plaintiffs' extensive allegations of both current and future catastrophic harm.

PERTINENT CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, REGULATIONS OR RULES

All relevant constitutional, statutory, and regulatory authorities are set out in the Addendum filed with this brief.

STATEMENT OF THE CASE

Plaintiffs challenge two new laws and one older one that together create the constitutional violations at issue. These new laws have never been interpreted by a court, so an analysis of the authority they give the State, which the district court did not do, will demonstrate why Plaintiffs have standing now and do not need to wait for their children to run away. Accordingly, Plaintiffs start with a discussion of what the challenged laws do and the pleaded facts surrounding these Plaintiffs and their children before addressing the errors in the district court's ruling.

A. Legal Background

The challenged laws are best understood in the context of Washington's overall statutory scheme limiting when the state may interfere in the parent/child relationship. The challenged laws significantly diminish otherwise strong protections for parental rights in directing the upbringing of their children. And it is specifically when a child is experiencing gender confusion that the state now seeks to

separate the child from the parent when the parent declines to offer what the State calls "gender affirming care."

1. Pre-existing Washington Law

Under pre-existing Washington law, absent limited, extraordinary circumstances, the state must obtain a court order before an appropriate official may take a child into custody. *See* Wash. Rev. Code § 13.34.050 (2023). To obtain such an order, the state must file an "affidavit or declaration demonstrating a risk of imminent harm" to the child, while the parents must be provided notice and an opportunity to be heard before the court can order the removal of the child. *Id.* § 13.34.050(2). Even then, removal of the child is permitted only if there are "reasonable grounds to believe that removal is necessary to prevent imminent physical harm to the child due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect." *Id.* § 13.34.050(1)(b). And the child can only be held for 72 hours, not counting weekends and holidays, without a court order. Wash. Rev. Code §§ 26.44.050(2), 13.34.060(1).

Even with these strict limits and protections for parental rights, Washington has emancipated minors at the age of 13 when it comes to

mental health counseling, whether as an outpatient or even through inpatient treatment[1], and has extended this *de facto* separation of children from their parents when the child runs away seeking "gender-affirming treatment." Under section 71.34.530 (2019) of the Washington Revised Code, which Plaintiffs have challenged as violating constitutional parental rights,[2] any minor aged 13 and older "may request and receive outpatient treatment without the consent of the

[1] Under Washington law, usual parental notice of inpatient care must be provided within 24 hours, using a method "most likely to reach the parent[.]" Wash. Rev. Code § 71.34.510(4). That is very different from the "good faith attempt" at notification under the challenged provisions. Yet, even with these parental protections, the mental health professional is permitted to withhold all notice to parents of inpatient treatment if "the professional person has a compelling reason to believe that such disclosure would be detrimental to the adolescent or contact cannot be made[.]" *Id.* § 71.34.510(1). Such a vague criterion essentially leaves it up to a mental health professional to decide if a parent even gets notice of his/her child receiving inpatient treatment. In such a case, the statute only requires notice to Department of Children, Youth and Families but only in the event the child is publicly listed as missing. *Id.* § 71.34.510(3). Yet, under the challenged statutes, even a "compelling reason to believe that such disclosure would be detrimental to the adolescent" is not required before the state refers a child to "gender affirming" behavioral health services without parental notification because a minor child seeking such services is all that is required. Wash. Rev. Code § 13.32A.082(3) (2023).

[2] Plaintiffs have challenged the constitutionality of § 71.34.530 in two counts: Count V (Fourteenth Amendment procedural due process) and Count VII (Fourteenth Amendment substantive due process). ER-067-071, 072-075 (FAC ¶¶215-28, 237-49).

adolescent's parent." When the child seeks such treatment, the state then restricts the parents' rights to access the child's mental health "treatment records." Wash. Rev. Code §§ 71.24.025(41); 71.34.430 (setting limits on disclosure of records to parents); 70.02.240 (limiting access to a minor's records, including to parents except under prescribed circumstances); 70.02.265 (allowing therapist to deny parents access to their child's mental health treatment information).

2. The Two New Statutes and Their Effects.

It is against this backdrop, and Defendants' desire for children to receive "gender-affirming treatment" over their parents' objection, that the challenged amendments to Washington Revised Code § 13.32A.082 (2013) should be evaluated. A year ago, the Washington Legislature enacted two statutes that amended § 13.32A.082, the Family Reconciliation Act ("FRA"). These are known as SHB 1406, 68th Leg., Reg. Sess. § 2 (Wash. 2023), and SB 5599, 68th Leg., Reg. Sess. (Wash. 2023). Both acts went into effect on July 23, 2023. These two bills ("the FRA amendments") modified the procedures of Washington law related to runaway children and seriously undermined the rights of parents in the upbringing and custody of their children.

To understand why, it is first necessary to understand Washington's baseline rule governing parental rights when children go to a youth shelter. The baseline rule is that when a shelter "knows at the time of providing the shelter that the child is away from a lawfully prescribed residence or home without parental permission, it must contact the youth's parent within 72 hours, but preferably within 24 hours, following the time that the youth is admitted to the shelter or other licensed organization's program." Wash. Rev. Code § 13.32A.082(1)(b)(i) (2013).[3] Further, that "notification must include the whereabouts of the youth, a description of the youth's physical and emotional condition, and the circumstances surrounding the youth's contact with the shelter or organization." *Id.* Thus, under this baseline rule, no later than 72 hours after a minor shows up at a shelter, parents must be told exactly where the child is, how the child is doing, and how the child ended up at the shelter. And the parents are free to pick up their child and take him or her home.

[3] Under Washington Revised Code § 13.32A.082(1)(a), notification requirements also apply to "any person, unlicensed youth shelter, or runaway and homeless youth program" that houses a runaway child. *Id.* § 13.32A.082(3) (2023).

The only exception to this statutorily imposed duty on shelters is that, "[i]f there are compelling reasons *not* to notify the parent, the shelter or organization must instead notify the department"—that is, the state Department of Children, Youth and Families ("DCYF" or Department). *Id.* (emphasis added). Additionally, "compelling reasons" were previously limited to "[c]ircumstances that indicate that notifying the parent or legal guardian will subject the minor to abuse or neglect as defined in [another code section]." *Id.* § 13.32A.082(2)(c) (2013).

But SB 5599 expanded the definition of "compelling reasons" to now also include "[w]hen a minor is seeking or receiving protected health care services." Wash. Rev. Code § 13.32A.082(2)(c)(ii) (2023). And "'protected health care services' means 'gender-affirming treatment[.]'" *Id.* § 13.32A.082(2)(d).[4] As a result of this change, "compelling reasons" are

[4] "[G]ender-affirming treatment" is defined as "a service or product that a health care provider . . . prescribes to an individual to support and affirm the individual's gender identity." Wash. Rev. Code § 74.09.675(3). This would include physical or mental health services, *id.* § 70.02.010(15), including "[f]acial feminization surgeries and facial gender-affirming treatment, such as tracheal shaves, hair electrolysis, and other care such as mastectomies, breast reductions, breast implants, or any combination of gender-affirming procedures, including revisions to prior treatment, when prescribed as gender-affirming treatment," *id.* § 74.09.675(2)(b).

automatically present whenever a minor shows up at a shelter seeking "gender-affirming treatment."[5] So, while previously a shelter would notify the parents directly within 72 hours of the child's arrival, under the FRA amendments notice now only goes to DCYF.

With these new modifications, the notice requirements and the state's new authority to displace the parents in such circumstances are now contained in a provision known as "Paragraph 3," as follows (with the SB 5599 amended provisions bolded and the SHB 1406 amended provisions italicized):

> (3) **(a)** When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services *to the youth and the family* designed to resolve the conflict**,** *including offering family reconciliation services***,** and accomplish a reunification of the family. *The department shall offer services under this subsection as soon as possible, but no later than three days, excluding weekends and holidays, following the receipt of a report under subsection (1) of this section.*

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[5] Children, of course, run away for a host of reasons unrelated to abuse or neglect, such as: "birth of a new baby in the family;" "family financial worries;" "problems at school;" "peer pressure;" "failing or dropping out of school;" "death in the family;" "parents separating or divorcing or the arrival of a new stepparent;" and "kids . . . drinking alcohol or taking drugs." *Running Away*, Nemours KidsHealth (June 2018), https://tinyurl.com/5n6vjpev (medically reviewed by Steven Dowshen, MD).

> **(b) When the department receives a report under subsection (1) of this section for a minor who is seeking or receiving protected health care services, it shall:**
>
> **(i) Offer to make referrals on behalf of the minor for appropriate behavioral health services; and**
>
> **(ii) Offer services designed to resolve the conflict and accomplish a reunification of the family.**

Wash. Rev. Code § 13.32A.082(3).

As explained below, as now incorporated into Paragraph 3, the FRA amendments harm Plaintiffs in at least four ways: (1) notice to parents is now not required, or is at least significantly delayed; (2) if given notice, parents are kept in the dark about their child's condition and location; (3) parents are denied the right to consent or deny treatment for their child; and (4) the timing of the child's return is significantly to indefinitely delayed.

a. *Notice to parents now not required or at least delayed*

As amended, the statute's plain language exempts from the prompt parental-notice requirement those cases in which minors are seeking or receiving "protected health care" services and provides no period for notifying parents or obtaining their consent before referring the minor for "behavioral health services."

Paragraph 3 covers "compelling reasons," with Paragraph 3(a) being general but Paragraph 3(b) being specific to minors seeking "gender-affirming treatment." While both require plans for reunification, Paragraph 3(b) provides no timeline for the provision of the services set forth in the Paragraph.[6] *Compare* Wash. Rev. Code § 13.32A.082(3)(a) (2023) *with* (3)(b).

If there were any doubt as to Paragraph 3(b)'s controlling the notice requirements, or lack thereof, to Plaintiff parents, a review of the legislative history—which under Washington law is highly relevant to

[6] Interpreting Paragraph 3(a) and 3(b) as overlapping would violate "the rule against surplusage, which requires [a] court to avoid interpretations of a statute that would render superfluous a[ny] provision" thereof. *Veit, ex rel. Nelson v. Burlington N. Santa Fe Corp.*, 249 P.3d 607, 620 (Wash. 2011). *See also Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) (stating that "[i]n construing a statute we are obliged to give effect, if possible, to every word [the legislature] used" (citation omitted)).

And under the rule of statutory construction that "a specific provision controls over one that is general in nature," *Miller v. Sybouts*, 645 P.2d 1082, 1084 (Wash. 1982), the redundancies and potential conflicts are ironed out by applying Paragraph 3(b) to minors seeking "gender-affirming treatment" and Paragraph 3(a) to all other minors who trigger "compelling reasons." These interpretive principles are controlling, because when construing a state statute, federal courts "follow that state's rules of statutory interpretation." *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 930 (9th Cir. 2004); *accord State Chartered Banks in Wash. v. Peoples Nat'l Bank of Wash.*, 291 F. Supp. 180, 196 (W.D. Wash. 1966) ("[This court] must . . . apply the general rules of statutory interpretation that the courts of Washington use.").

the interpretation of state statutes[7]—confirms Plaintiffs' interpretation. That history strongly indicates that the Washington Legislature *intended* to deprive parents of their rights when their child shows up at a shelter receiving or seeking "gender-affirming treatment." As legal counsel for the Committee explained, "Under this bill, they [*i.e.*, personnel at a shelter or from the Department] do not need to contact the parent if a compelling reason exists—which includes but is not limited to notifying the parent will subject the minor to child abuse and neglect *or the minor is seeking protected health care services*." *Hearing on SB 5599 Before the S. Hum. Servs. Comm.*, 68th Leg., Reg. Sess. (Wash. 2023) (statement of Alison Mendiola, Coordinator & Counsel for the Comm., at 28:44–29:03 (Feb. 6, 2023)) (emphasis added), available at https://tinyurl.com/3kr8h7ju (click "view video"). Remarkably, under the text and legislative history of SB 5599, it appears the Department is not

[7] When statutory language is unclear, conflicting, or silent, Washington state courts often resort to legislative history. *See Gorre v. City of Tacoma*, 357 P.3d 625, 631 (Wash. 2015) ("We must therefore resort to other aids of statutory interpretation to resolve th[e] [statutory] ambiguity. And one of those aids—legislative history—ends our analysis." (citation omitted)); *see also In re Marriage of Kovacs,* 854 P.2d 629, 634 (Wash. 1993) ("[I]n determining the legislative purpose and intent the court may look beyond the language of the Act to legislative history.").

required to give parents of children who seek or receive protected health services any notification on the location or welfare of their child.

Department policy further confirms this reading of the statute. On July 21, 2023, Natalie Green, then-Assistant Secretary of Child Welfare Field Operations at the Department, and Steven Grilli, then-Assistant Secretary of Partnership, Prevention, and Client Services at the Department, issued a Policy Memo, *see Our Leadership*, Wash. State Dep't of Children, Youth & Families, [https://tinyurl.com/bdnm669u (Aug. 2, 2023)]. That Memo asserts that, in implementing SB 5599 regarding a homeless youth seeking "gender-affirming treatment," a caseworker must "[m]ake a good faith attempt to contact the youth's parent or legal guardian to offer FRS [*i.e.*, family reconciliation services] to resolve the conflict and accomplish a reunification of the family." Policy Memo from Natalie Green, Asst. Sec'y, and Steve Grilli, Asst. Sec'y of Partnership, Prevention & Servs., State of Wash., Dep't of Child., Youth, & Fams., *Changes to 3100, Family Reconciliation Services Policy* 2 (July 21, 2023), https://tinyurl.com/y42r6v63. The Memo goes on to specify that, "[w]hen making a good faith attempt, caseworkers must at minimum do the following: Ask the youth or shelter to provide contact

information for the youth's parents or legal guardians, if known," and, "[c]ontact the parents or legal guardians as outlined in the current FRS policy, *if* contact information is provided." *Id.* (emphasis added). The only other efforts to contact parents is if there was a prior child welfare report with parental information, otherwise the Memo indicates that no notification will be provided to the parents. No independent efforts to identify and notify the parents need be made, nor is any timeline for making contact provided. There is simply no guarantee on when or if a parent will learn the fate of their child who runs away and claims to be receiving or seeking "gender affirming care."[8]

Thus, the effect of SB 5599 and SHB 1406 is to change the notification time from 72 hours to as many as ten days—an eternity for parents whose child has run away. This is illustrated by the following

[8] Even if one reads the statute such that Subsection 3(a) also applies to everyone under Subsection 3(b), the FRA amendments still delay notice to parents to substantially impair their parental rights. Before the amendments, a parent of a child receiving "gender-affirming treatment" who showed up at a shelter would receive notification within 72 hours. *See* Wash. Rev. Code § 13.32A.082(1)(b)(i) (2013). But now, under the revised Subsection 3(a), the Department does not have to provide parental notification until three business days after they receive a report from the shelter, which extends the original 72 hour limit by three business days (if there is even any time requirement at all). *Id.* § 13.32A.082(1)(b)(i) (2023).

scenario: Suppose a child shows up at a shelter, triggering Paragraph 3, on the Monday morning before Thanksgiving. This starts the 72-hour clock for the shelter to inform the Department. But the expiration of those 72 hours falls on Thanksgiving Day. The next day is also a holiday in Washington—Native American Heritage Day, *see State Holiday Schedule,* Wash. State Dep't of Revenue, https://dor.wa.gov/contact/state-holiday-schedule (last visited Aug. 21, 2024). The two days after that are a Saturday and Sunday. So, the start of the three business days within which the Department is to notify parents is not until the following Monday morning, meaning that only by Thursday morning—10 days after the child showed up at the shelter—the Department would need to give notice to the parents.

Hence, the FRA amendments add three to seven calendar days to the notice period—stretching it from 72 hours to as much as 240 hours. It would thus not be correct to read the amended FRA as only changing who reports to parents and nothing else. At very least, the timing allowed for parental notification has now been doubled or even tripled. And at worst, no notification is required.

b. *If notice is given, parents are kept in the dark about their child's condition and location.*

Next, even if Subsection 3(a) applies to parents with minors seeking or receiving protected health services, the statutory changes also alter the level of detail that must be provided to parents. Previously, in the absence of abuse or neglect, the shelter would provide the child's location, condition, and circumstances for arriving at the shelter. *See* Wash. Rev. Code § 13.32A.082(1)(b)(i) (2013).

The FRA amendments removed that requirement for a minor seeking "protected health care service." All the Department must provide now is a notice that it received a report from a shelter. *Id.* § 13.32A.082(3)(a) (2023). Thus, parents will not know where their child is or how he or she is doing, and without the former, they cannot go and get the child. This change in the law deprives certain parents—for whom there is no suspicion of actual neglect or abuse—of crucial knowledge about their child and the ability to promptly reunite with their child.

c. *Parents are bypassed in the treatment of their child.*

The changes by the FRA amendments also remove from parental control choices about treatment for a child under Paragraph 3(b)(i). This provision now enables the Department to "[o]ffer to make referrals on

behalf of the minor for appropriate behavioral health services." Wash. Rev. Code § 13.32A.082(3)(b)(i) (2023). Nowhere is "appropriate behavioral health services" defined in the statute or elsewhere in Washington law. But in context it can only mean services to affirm a gender different from the child's biological sex.

This is confirmed by the legislative history. *See In re Marriage of Kovacs*, 854 P.2d 629, 634, 636 (Wash. 1993) ("[I]n determining the legislative purpose and intent. . . . the remarks of . . . sponsor[s] and drafter[s] of . . . bill[s], are appropriately considered to determine th[at] purpose . . . ."). That history indicates that the legislation was intended to empower the state or its agents to displace a child's parents and authorize "gender-affirming treatment" for minors who show up at a shelter seeking "protected health services." For example, Washington Senator Marko Liis, a sponsor of SB 5599, explained during a legislative hearing on his bill:

> What this bill speaks to is when a young person is seeking certain essential health care services, … to make critical decisions about their future or seeking *gender-affirming care* in the face of opposition and hostility from their family. In those cases where *that reunification process would separate that vulnerable young person from the health care that they're entitled to*… When a family is standing between their young person and essential health care services … we need to focus

> on the essential needs of a young person—insure *they're getting the care they deserve*….

Senate Floor Debate on SB 5599 (Mar. 1, 2023) (statement of Sen. Marko Liias, Sponsor, at 1:24:48–1:26:00 (emphasis added)), available at https://tinyurl.com/75jaep4t (click "start video") ("SB 5599 Senate Floor Debate").

And Governor Inslee, whose signature made the FRA amendments law, confirmed that the amendments "support these youth as they *access* gender-affirming treatment[.]" Associated Press, *Trans Minors Protected from Parents under Washington Law*, KNKX Pub. Radio (May 9, 2023), https://tinyurl.com/ynyfm7s6 (emphasis added). There can thus be no doubt that the statutory phrase "appropriate behavioral health services" encompasses "gender-affirming treatment."

In sum, the amended FRA now allows the state, over parents' objections or without their knowledge, to provide medical care to a child. This care can send a minor down a road of "gender-affirming treatment" that could cause permanent and irreversible sterilization and sexual dysfunction, as well as other devastating physical and psychological consequences to the child and serious harm to the parent-child relationship. This is because "gender affirming" behavioral health

services are more likely to lead a child to greater interventions, such as medical and surgical treatments.[9]

Indeed, the only reason to add a minor "seeking or receiving gender-affirming treatment" to the definition of "compelling reasons" was to take children whose parents would not consent to "gender-affirming treatment" and refer those children to "affirming" behavioral health services. Thus, the delay in parental notice provides additional time for the State to provide this treatment to the child without parental consent. And, even if "behavioral health services" is narrowly interpreted to only mean mental therapy, the damage can be long-lasting or permanent. Indeed, by referring minor children to counseling that affirms they are something other than their biological sex, the Department is likely cementing—perhaps for a lifetime—a confusion that the overwhelming majority of children would otherwise mature out of.[10]

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[9] *See generally*, Declaration, Doctors Protecting Children (June 6, 2024), https://doctorsprotectingchildren. org/#_edn1.

[10] Over 80% of gender-confused children overcome that confusion and identify with their biological sex after puberty *if* that gender confusion is not affirmed. Kenneth J. Zucker, *The myth of persistence: response to "A critical commentary on follow-up studies and 'desistance' theories about transgender and gender nonconforming children" by Temple Newhook et al. (2018)*, 19 Int'l J. Transgenderism 231, 232, 237 (2018); Riittakerttu Kaltiala-Heino et al., *Gender Dysphoria in Adolescence: Current*

Further, the amended FRA now interjects the state between parents and children when it would otherwise have no authority to be involved. Absent a finding of abuse or neglect, the Department cannot reach out to a child and refer them for "behavioral health services." In fact, the Department cannot do that with runaways in a shelter, unless "compelling reasons" are triggered, which only now exist here because of the FRA amendments. So, the amended FRA has changed the status quo in a way that violates parental rights (and is harmful to children).

d. *The timing of a child's return is significantly to indefinitely delayed.*

Finally, the FRA amendments significantly delay the return of a child back to his or her parents. Parents of a runaway child will not know

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Perspectives, 9 Adolesc. Health Med. Therapeutics 31, 33 (2018) (approximately 4 of every 5 minor children with gender dysphoria see it resolve, ultimately accepting their biological sex, *if not affirmed as the opposite sex*), https://tinyurl.com/ppyhuemr; *see also* ER-035 (FAC ¶108). Thus, referring gender-confused children to "gender-affirming treatment" puts them on the path to life-altering medical interventions, interventions Plaintiff parents oppose for their children. Declaration ¶ 5, Doctors Protecting Children (June 6, 2024), https://doctorsprotectingchildren. org/#_edn1.

Even more harmful, a child who "voluntarily" receives the offered behavioral health services may keep his or her parents from learning anything about what takes place during those behavioral health services under § 71.34.530, further infringing Plaintiffs' constitutional rights.

the child's location, and nothing in these statutory changes requires the Department to return the child on any specific timeline. All that Paragraph 3(b)(ii) requires is for the Department to "[o]ffer services designed to resolve the conflict and accomplish a reunification of the family." Wash. Rev. Code § 13.32A.082(3)(b)(ii) (2023). But, until that conflict is resolved—to whose satisfaction the statute does not say, but likely the Department's—reunification will not be required, meaning the Department will be under no mandate to return the child. In short, the Department is no longer required to accomplish reunification within three days, but instead need only offer services for reunification on no specific timetable. *Id.*

Here again, the legislative history supports this reading of the statutory text. Sponsor Sen. Liias said the law is for "those cases where that reunification process would separate that vulnerable young person from the health care that they're entitled to . . . . When a family is standing between their young person and essential health care services … we need to focus on the essential needs of a young person—insure they're getting the care they deserve. And *then* focus on the important reunification process…." SB 5599 Senate Floor Debate (statement of Sen.

Liias, at 1:24:48–1:26:00 (emphasis added)). In other words, when the Department can provide the services it thinks the child needs without parental consent, it need not attempt reunification until *after* those services have been offered to the child.[11]

Additionally, the legislative history indicates that is exactly what the proponents of the FRA amendments intended. During the legislative debates, proponents of the bill frequently framed "non-affirming" parents as the problem SB 5599 was designed to solve. On the Senate floor, for example, Sponsor Sen. Marko Liias referred to the "opposition and hostility from their family" that children seeking these services would face and how "a family is standing between their young person and essential health care services." SB 5599 Senate Floor Debate (statement of Sen. Liias, at 1:24:48–1:26:00); *see also* Taija Perry Cook & Joseph O'Sullivan, *WA Transgender Youth Bill Targeted in National Culture War*, Cascade PBS (May 1, 2023), https://tinyurl.com/mva94s (quoting Washington State Sen. Liias as stating that "family members are actively

[11] But the statute is also silent about what triggers reunification and when that would occur or what conditions might be placed on such reunification. And that silence creates a serious additional risk that parents' constitutional rights will be impaired.

contributing to the unsafe circumstances that led them to [the shelter]"). Never mind that many of these services have potentially life-altering, negative consequences for the child—including sterilization.

Similarly, on the floor of the Washington House, Representative Jamila Taylor described the purpose of the bill as "saving" kids from their parents:

> I just want to remind you, Mr. Speaker, that we're talking about children who are not in this room hearing really encouraging language from their parents. It's the combination, the tone, the tenor, the threats, the isolation, the words that are constantly told—"you cannot be uniquely you. You cannot be something other than what I desire for you to be. And if you do not follow my rules … I'm not even gonna give you the safety, the comfort that you so desire when you want to be uniquely you." … Their parent need another way to speak to this child, to get them through the toughest parts of their life. We must step in. We must provide a place for this child.

Washington State House Floor Debate on SB 5599 (Apr. 12, 2023) (statement of Rep. Jamila Taylor, at 1:42:32–1:45:03), available at https://tinyurl.com/4wdbhape (click "start video").

Senator Yasmin Trudeau, another supporter of the bill, similarly declared:

> [W]e know the statistics when it comes to suicide, when it comes to, you know, homelessness, when it comes to other issues that disproportionately impact trans youth. It is a

> result of rejection by their family, by the lack of love and support that's shown. And so I think that we all have, we would love to know that every family is a family that supports their children. But Mr. President, that just isn't the case . . . . So I just say, yes, for those of us that, that have the means and the resources and the ability to love: wonderful. Many families don't. And for the kids that come from those families, they deserve the support and love as well. ….

SB 5599 Senate Floor Debate (statement of Sen. Yasmin Trudeau, at 1:55:08–1:56:46).

Of course, nothing in the statute requires any finding that the parents kicked the child out of the home or in any other way neglected or abused their child to trigger the various constitutional infringements to parents that the FRA amendments authorize. Yet the state has decided that, if a gender confused child runs away, the parents are to be displaced because, according to Sen. Trudeau, the parents cannot love and support the child the way the state says they should.

* * *

Defendants claimed below that all the State is doing is giving the Department "an opportunity to offer services to transgender youth," services, as noted here, that are both contrary to parental wishes and the best interests of the very vulnerable youth Defendants claim to protect. *See* Defs.' Mot. to Dismiss at 1 (ER-009). Yet, through the FRA

amendments and § 71.34.530, Defendants have taken great steps to eliminate or block parental involvement in the upbringing of their children—utilizing a veritable toolbox of state laws to exploit runaway children who profess to seek "gender-affirming treatment." To be sure, those supporting the FRA amendments believe all parents should "affirm" a child's gender confusion, but that is not the state's call. ER-034-035, 038-039 (FAC ¶¶105-06, 114-16). Plaintiffs are well within their rights to raise their children consistent with their children's biological sex.

B. Factual Background

As outlined above, and as Plaintiffs demonstrated in detail below, they are facing substantial injury from the challenged statutes—both currently and in the foreseeable future.

1. The Parent Plaintiffs.

Four of the parent Plaintiffs have children who struggle with gender confusion, with one of those having a child who has run away previously. These are not concerned citizens with mere ideological or policy concerns with the FRA amendments. These are parents whose lives and families are *currently* harmed, as well as deeply threatened, by the challenged statutes.

a. *Parents 1A & 1B*

Parents 1A (mother) and 1B (father) have a 14-year-old[12] daughter (biological girl), 1C, who struggles with gender confusion. First Am. Compl. ("FAC") ¶¶11-12 (ER-016). Unbeknownst to her parents, 1C first began expressing signs of gender dysphoria at school. ER-016 (FAC ¶13). Then, without notice to her parents, 1C's school encouraged her to socially "transition" to being recognized as a boy, including meetings with a school counselor for two and a half months. *Id.* Upon learning of 1C's struggles, 1A and 1B sought proper treatment for 1C and removed her from public school. Thereafter, her gender confusion eased somewhat. *Id.*

Given 1C's vulnerability, 1A and 1B are concerned that she will again be pressured at school to adopt a gender identity inconsistent with her biological sex and that the information will again be kept from them. ER-016-017 (FAC ¶14). Previously, the school's intervention created tension between 1A and 1B and their daughter, creating a situation

[12] The ages of the children of Plaintiffs 1A, 1B, 2A, 2B, 3A and 3B are as of the time of filing of the original Complaint on August 16, 2023 (Dkt. 1); the age of Plaintiffs 5A and 5B's child is as of the time of filing of the First Amended Complaint on November 6, 2023 (Dkt. 34).

where 1C was at risk of running away over a disagreement regarding her gender confusion. *Id.* Should that occur again, 1C would be subject to the provisions of the FRA amendments, and 1A and 1B would thus be denied information on 1C's whereabouts and her condition. Moreover, 1A and 1B would be left without input before the Department referred 1C for behavioral health services that promote a gender identity inconsistent with their daughter's sex—contrary to 1A and 1B's beliefs and desires for their daughter. *Id.* For these reasons, the FRA amendments cause 1B daily fear. ER-017 (FAC ¶15).

Their fear is not imaginary but so real that, since passage of the FRA amendments, 1A has been hesitant to discipline 1C for fear it will cause a rift that others might take advantage of. ER-017 (FAC ¶16). The FRA amendments thus make it very difficult to parent, leaving 1A uncomfortable every time she has a disagreement with 1C. *Id.*

Since the FRA amendments, moreover, 1A and 1B fear that 1C could seek to "transition" again and be incentivized to run away given the law's now providing her an option to go around her parents. ER-017 (FAC ¶18). They also fear that 1C's being referred for "behavioral health services" while at a shelter would make it much harder for them to parent

her and would interfere with the relationship they have built since removing her from her old school. *Id.* It would also make it far more difficult to get their minor daughter the care she needs for any underlying mental health concerns that manifest as gender confusion.

Parents 1A and 1B also fear that, if the Department were to get custody of 1C should she run away, the Department would delay or even prohibit them from getting their daughter back if they did not support or affirm a transgender ideology or some form of "gender-affirming treatment," or use the pronouns or name the Department required. ER-018 (FAC ¶20).

b. *Parents 2A & 2B*

Parents 2A (mother) and 2B (father) have two children who struggle with gender confusion: 2C, a daughter (biological girl) suffering gender confusion who recently turned age 18, and 2D, another daughter (biological girl) suffering gender confusion, who is age 13. ER-018 (FAC ¶¶21-22).

2D's public school socially transitioned[13] her without her parents' knowledge. ER-018 (FAC ¶23). The older sister, 2C, threatened to take 2D to a "safe place" because 2B would not use 2D's preferred pronouns. ER-018 (FAC ¶24). Both 2C and 2D have accused 2A and 2B of being "transphobic." *Id.* 2D still has her chosen name up in her room and "identifies herself as male" on a popular tech platform profile. ER-018 (FAC ¶25).

Parents 2A and 2B live in fear that 2D will see SB 5599 as providing a way for her to get what she wants without parental consent and run away to get the "treatment" she desires. ER-018 (FAC ¶26). Parents 2A and 2B also fear that, should their minor daughter run away to a shelter, they would be hampered from reuniting with her unless they support or affirm the State's preferred gender ideology, including calling their daughter by a chosen, nonbirth name and using opposite-sex or non-biologically aligned pronouns. ER-019 (FAC ¶27).

Because of the FRA amendments, moreover, Parent 2A is currently afraid to use 2D's given name and pronouns that match her biology in

[13] Social transitioning is the use of a name and pronouns associated with the opposite sex or the new "identity" being adopted as well as possible use of opposite sex restrooms, locker rooms, and dress.

most public places. ER-019 (FAC ¶28). So 2A just does not use 2D's given name in public or use any pronouns when referring to her, with the exception of her current (new) school community or extended family. *Id.*

Also because of the FRA amendments, Parents 2A and 2B avoid talking about gender at all with 2D or even near her. ER-019 (FAC ¶29). And every time 2D leaves the house with 2C, especially if it is not planned well in advance, 2A and 2B fear she may not return because of the FRA amendments. ER-019 (FAC ¶30).

c. *Parents 3A & 3B*

Similarly, Parents 3A (mother) and 3B (father) have a 14-year-old autistic son (biological boy), 3C, who struggles with gender confusion. As Roman Catholics, Parents 3A and 3B believe in the teachings of the Roman Catholic Church on gender. ER-019 (FAC ¶33). Based on those teachings, they reject the state's gender ideology. And their religious beliefs inform their conviction that a boy is a male child with any personality, regardless of whether that personality conforms to stereotypes of masculinity. *Id.*

By contrast, 3C is in a sometimes-fragile state as a young autistic adolescent and is frequently ambivalent about his gender. ER-019-020

(FAC ¶¶31-32, 34). For example, recently he indicated he was going to stop "identifying as a girl," but then shortly thereafter reversed himself after hanging out with his friends. *Id*. In short, his autism makes him vulnerable to the suggestions of friends and those in authority such as school staff or a state-provided behavioral health specialist. ER-020 (FAC ¶¶36-37)

His gender issues, moreover, are tied up in a very negative idea of men and maleness: He was bullied by boys at school, and he does not want to be like the boys who bullied him. ER-020 (FAC ¶35). His therapist also believes that 3C is simply fearful of growing up. *Id*.

3C was also influenced by the experience of his older brother. A friend's family encouraged 3C's older brother, who was suffering from gender confusion, to run away and live with them since 3A and 3B did not believe rejecting his natural body and gender was authentic and healthy for him. As a result, 3A and 3B reasonably fear 3C might also run away.[14] ER-020 (FAC ¶38). But because of 3C's autism and his being

[14] Even running away to a friend's house triggers the harms of the statute since those individuals could simply notify the Department of the child's running away to their home, triggering the Department's delayed notification and referral of 3A and 3B's son to "behavioral health services"

a minor, should he run away, he would be incapable of giving consent for "appropriate behavioral health services," especially those that would "affirm" his gender confusion. ER-020 (FAC ¶39). If 3C were to run away and receive counseling to reject his natural body and biological sex or receive medical "treatment" to make him look more like a biological girl, it would only make it more difficult for 3A and 3B to keep or rebuild his trust. ER-021 (FAC ¶40).

3A and 3B also fear that, should 3C run away to a shelter, they would be forced to accept "gender-affirming treatment" for him or socially affirm him as if he were female, such as using a female name or pronouns, just to be allowed to bring him home. ER-021 (FAC ¶41). As noted above, the FRA amendments provide Defendants with arbitrary discretion to determine what 3A and 3B would have to do to get their son back. *Id.*

d. *Parents 5A & 5B*

Parents 5A and 5B are in an analogous situation. Parent 5A is the father of a 15-year-old daughter, 5C, and 5A has primary legal and physical custody of 5C. ER-022 (FAC ¶48). Parent 5B is the stepmother

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without 3A and 3B's consent under Washington Revised Code § 13.32A.082(3)(b) (2023).

of 5C and is married to 5A. ER-022 (FAC ¶49). 5C primarily resides in the home of 5A and 5B. *Id.*

5C began suffering from rapid onset gender dysphoria when she was 12. ER-022 (FAC ¶50). 5A and 5B do not affirm 5C's claim to be a boy. *Id.* At the age of 12, 5C was hospitalized for suicidality. ER-022 (FAC ¶51). The hospital asked permission to put her on puberty blockers, but 5A and 5B declined. *Id.*

5C's public school district transitioned her behind her parents' back, starting in the 8th grade, by using a male name and pronouns and effectively treating her as if she were a boy. ER-022 (FAC ¶52). When 5C was 13, she got upset when 5B called her by her birth name. ER-022 (FAC ¶53). Later, also at age 13, 5C ran away from home. ER-022 (FAC ¶54). Since then, 5C has had subsequent hospitalizations, but has refused to talk to 5A and 5B about the details. ER-022 (FAC ¶55).

5C is now in 10th grade and continues to present as a boy at school. ER-023 (FAC ¶56). 5C currently sees a school counselor who challenged 5A for not supporting 5C in "transitioning" and became upset at 5A for not calling 5C by her preferred pronouns. ER-023 (FAC ¶57). In the past, 5C saw therapists for a couple of years, and she has had conversations

with numerous therapists and behavioral health specialists about gender confusion and so-called "transitioning." *Id.*

5A and 5B fear that if, 5C runs away again, she will rely on the FRA amendments to seek "gender-affirming treatment" of some sort and receive "gender affirming" behavioral health services without 5A's consent, permanently harming his daughter. ER-023 (FAC ¶58).

2. The Organizational Plaintiffs

Plaintiff International Partners for Ethical Care, Inc., is a nonprofit organization incorporated in Illinois and recognized as a charitable or educational public benefit organization under Section 501(c)(3) of the Internal Revenue Code. ER-015 (FAC ¶9). The organization's "mission is to stop … the unethical treatment of children by schools, hospitals, and mental and medical healthcare providers under the duplicitous banner of gender identity affirmation." *Home,* Partners for Ethical Care, https://tinyurl.com/4nrp5vn9 (last visited Aug. 20, 2024). Members of this organization include approximately two dozen parents in Washington, at least one of which has a minor child who experiences gender confusion, has received counseling for such confusion, and is at risk of running away. ER-015 (FAC ¶9).

Plaintiff Advocates Protecting Children is a nonprofit 501(c)(3) organization. ER-015 (FAC ¶10). It is "dedicated to fighting the gender industry, and especially its predation on children in the form of unethical social and medical transition for the sake of political and financial profit." *About Us*, Advocates Protecting Children, https://tinyurl.com/3kun8vf2 (last visited Aug. 20, 2024).

C. Procedural History.

Plaintiffs filed their first amended complaint on November 6, 2023. ER-012–089. That complaint contained seven counts raising federal constitutional challenges under the First and Fourteenth Amendments, to the FRA amendments, and to Washington Revised Code § 71.34.530. ER-051-075 (FAC ¶¶156-249). Approximately six months later, the case was reassigned to a different judge. One day later, the new district court granted Defendants' motion to dismiss with prejudice because the court held the Plaintiffs lacked standing. Order at 1 (ER-004).

In its order, the court determined that the alleged injuries were too "speculative." *Id.* at 2–3 (ER-005-006). Specifically, and without any further analysis, the court summarily concluded: "The Plaintiff parents fail to allege that the challenged laws actually injured them or will

imminently injure them in a concrete and particularized manner. Their allegations rest on speculation and conjecture." *Id.* at 2 (ER-005). Regarding the organizational plaintiffs, the district court summarily found that "Plaintiffs IPEC and APC have not pled facts to justify a finding of associational or organizational standing." *Id.* at 3 (ER-006). That is the sum total of the district court's analysis—which ignored the extensive allegations, arguments and evidence surrounding both current and likely drastic future harms that binding federal law consistently finds sufficient to confer standing.

SUMMARY OF ARGUMENT

As noted, this case is about real Washington parents facing the difficulty of raising a gender-confused child, who now must contend with the state's telling their kids to run away to be "affirmed." These challenged laws detrimentally affect these parents now, and substantially risk irreparable harm to them in the near future.

Specifically, as explained in their First Amended Complaint, Plaintiffs have standing for the three injuries they *currently* suffer. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381, 387 (2024). First, some Plaintiffs have curtailed their own speech in an effort

to avoid a scenario where the new laws are triggered. Second, some Plaintiffs have otherwise altered their parenting, hoping to avoid a scenario where the new laws are triggered. And third, some Plaintiffs are or were kept in the dark and left without a say in their children's ongoing or past mental health treatment because of § 71.34.530. These are all injuries sufficient to confer standing.

Plaintiffs also have standing due to the risk of future injuries. *Massachusetts v. E.P.A.*, 549 U.S. 497, 526 (2007). Under Supreme Court and Ninth Circuit precedent, the greater the potential future harm, the lower the probability of harm required to create standing. *Covington v. Jefferson County,* 358 F.3d 626, 638 n.15 (9th Cir. 2004) (citing *Mountain States Legal Found. v. Glickman*, 92 F.3d 1228, 1234 (D.C. Cir. 1996) ("The more drastic the injury that government action makes more likely, the lesser the increment in probability necessary to establish standing.")). Further, in pre-enforcement cases, waiting until one "is subject … [to an] enforcement action is not a prerequisite to challenging the law." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014).

Here, the potential future harm is grave—irreparably damaged parent-child relationships, cemented gender confusion, often leading to

permanent physical deformity and mental health issues, extended separation of the child from parents, being left out of treatment decisions for one's child, and the anguish of not knowing where or how one's child is doing while the state displaces the parents in determining what is "best" for their child. Those severe potential harms are more than sufficient to confer standing, even if one believes (as the district court obviously did) that the likelihood of these harms is relatively low. Moreover, given that four of the parent Plaintiffs have children who *actually* struggle with gender confusion, with one of those children having run away previously, the sliding scale standard for grave future injuries is easily met here.

STANDARDS OF REVIEW

Although a plaintiff "has the burden to establish that it has standing," this Court "review[s] a motion to dismiss for lack of standing de novo, construing the factual allegations in the complaint in favor of the plaintiffs." *WildEarth Guardians v. U.S. Dep't of Agric.*, 795 F.3d 1148, 1154 (9th Cir. 2015) (citations omitted). At the pleading stage, moreover, "general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume

that general allegations embrace those specific facts that are necessary to support the claim." *Cal. Rest. Ass'n v. City of Berkeley*, 65 F.4th 1045, 1049 (9th Cir. 2023) (citation omitted), *amended and superseded on denial of reh'g en banc,* 89 F.4th 1094, 1100 (9th Cir. 2024). *Accord Alliant Energy Corp. v. Bie*, 277 F.3d 916, 920 (7th Cir. 2002) ("[S]upplying details is not the function of a complaint. It is easy to imagine facts *consistent with* this complaint and affidavits that will show plaintiffs' standing, and no more is required." (citing *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984))). Finally, only one plaintiff need have standing for the case to proceed as to all plaintiffs. *See Leonard v. Clark*, 12 F.3d 885, 888 (9th Cir. 1993), *as amended* (Mar. 8, 1994) (citing *Carey v. Population Servs. Int'l,* 431 U.S. 678, 682 (1977)).

ARGUMENT

To establish Article III standing, a plaintiff must show "(i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). This tripartite test ensures that a "plaintiff . . . [is not] a mere bystander, but

instead . . . ha[s] a personal stake in the dispute." *Id.* at 379 (internal quotation marks and citation omitted). Plaintiffs here could not have a more personal stake in this dispute under the current circumstances. Further, they have sufficiently alleged current and likely injuries due to the challenged provisions.

Moreover, "[t]o establish organizational standing," a plaintiff organization "need[s] to show that the challenged conduct frustrate[s] [its] organizational mission[]" and that it would "divert[] resources to combat that conduct." *Friends of the Earth v. Sanderson Farms, Inc.*, 992 F.3d 939, 942 (9th Cir. 2021) (citation omitted). In addition, "[a]n organization has standing to sue on behalf of its members where: '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purposes; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Am. Diabetes Ass'n v. U.S. Dep't of the Army*, 938 F.3d 1147, 1155 (9th Cir. 2019) (quoting *Ecological Rts. Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1147 (9th Cir. 2000)). Plaintiff IPEC has a member with a gender confused child

suffering the same current and likely future injuries of the Plaintiff parents. ER-015 (FAC ¶9).

Here, the district court did not deny that Plaintiffs had established causation and redressability but focused solely on the actual injury requirement. And, as shown in detail below, the district court erred in dismissing Plaintiffs' case for two independent reasons. First, the court completely ignored the parent Plaintiffs' *current* Free Speech and parental rights injuries, focusing instead only on the future injuries Plaintiffs plead. And those Plaintiffs (and hence the organizational Plaintiffs) easily satisfy standing requirements for the injuries they are currently experiencing: They are suffering constitutional harms now because of the laws Defendants are tasked with enforcing. Second, by ignoring binding doctrine on drastic future injuries, the district court erred in finding a lack of standing for Plaintiffs' future injuries.

I. Plaintiffs Possess Standing to Challenge Their Current Free Speech And Parental Rights Injuries.

Among other claims, Plaintiffs plead *current* free speech and parental-rights injuries that the district court should have accepted as true, especially construing the complaint in Plaintiffs' favor. Under those allegations, at least some parent Plaintiffs are suffering a current,

concrete injury, caused by Defendants, which can be remedied by a court ruling in their favor.

A. The Individual Parent Plaintiffs' Allegations Meet the Legal Standard for Current Deprivations of Constitutional Rights.

To satisfy the first prong of the standing inquiry, an injury in fact "must be particularized," meaning it "must affect the plaintiff in a personal and individual way" rather than being "a generalized grievance." *All. for Hippocratic Med.*, 602 U.S. at 381 (cleaned up).[15]

[15] While the standard applied in *Alliance for Hippocratic Medicine* is applicable, the underlying facts and outcome of that case are fundamentally different, thus compelling a different outcome here. There, doctors brought a challenge to federal regulations of a drug. *See* 602 U.S. at 385. Those regulations applied to doctors prescribing and to patients taking the drug. *Id.* But the doctor plaintiffs did not "prescribe, manufacture, sell, or advertise [the regulated drug] or sponsor a competing drug[.]" *Id.* Nor did the doctors take the drug themselves. *Id.* at 386. Accordingly, the Court found a lack of causation as the doctors suffered no injury from the regulation of a drug they had nothing to do with. *Id.*

For the outcome to be the same here, Plaintiffs would have to have no children (since the harms result from how the state treats children). But all Plaintiff parents have children, and four of the couples have children who have or are struggling with gender confusion, with one child having run away. These Plaintiffs, then, would be like doctors in *Alliance for Hippocratic Medicine* who prescribed the drug and had patients that took the drug (i.e., impacted by the challenged regulations), which the Court implied would satisfy standing.

Recognizable injuries include "an injury to one's constitutional rights[.]" *Id.* Likewise, Plaintiffs "would have standing to challenge a government action [or law] that likely would cause [Plaintiffs] to [act] . . . against their consciences" because "a conscience injury" can "constitute[] a concrete injury in fact for purposes of Article III." *Id.* at 387.

Each of the Plaintiff parents discussed above satisfies that standard here, pleading current injuries because of the challenged provisions. They have at least pleaded "general factual allegations of injury" which the district court was required to presume "embrace[d] those specific facts that are necessary to support the claim." *Cal. Rest. Ass'n*, 65 F.4th at 1049 (citation omitted).

1. Plaintiffs currently censor their own speech because of the challenged provisions.

One example of current injury is that some Plaintiff parents have censored their own speech to their gender-confused children because of the FRA amendments. Specifically, Parent 2A, because of the challenged statutes, is afraid to use in most public places 2D's given name and pronouns that match her (2D's) biology. *See* ER-019 (FAC ¶28). Instead, 2A just does not use 2D's given name in public or use any pronouns when referring to her, the only exceptions being 2D's new school community or

in the presence of extended family. *Id.* Thus, Parent 2A must suppress her own speech in an effort to avoid the consequences of the challenged provisions—not using the very name she selected for her daughter. Furthermore, Parents 2A and 2B avoid talking about gender at all with or near 2D because of the challenged statutes. ER-019 (FAC ¶29). Hence, an important topic that any loving parent should discuss with their child, especially those with the struggles their daughter is experiencing, is now too dangerous to discuss in the wake of the challenged provisions.

The chilling of Plaintiffs' speech provides an ample basis for Plaintiffs' standing. As this Circuit has recognized for over two decades, "[c]onstitutional challenges based on the First Amendment present unique standing considerations." *Ariz. Right to Life Pol. Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003). That is because, "[i]n an effort to avoid the chilling effect of sweeping restrictions, the Supreme Court has endorsed what might be called a 'hold your tongue and challenge now' approach rather than requiring litigants to speak first and take their chances with the consequences." *Id.* Applying those considerations, the free speech constitutional injuries that Parents 2A

and 2B are currently suffering satisfy the injury-in-fact requirement because here, the consequences—under a statutory regime that incentivizes children to run away to get from the state what they cannot from their parents—are enormous. That regime effectively forces parents of children who struggle with gender confusion or dysphoria to "walk on eggshells" around their children. Not surprisingly, and very rationally, at least some of these parents are curtailing their speech as a natural consequence of trying to avoid the "credible threat" these laws present. *Id*. (citation omitted)

2. Plaintiffs currently curtail their parenting because of the challenged provisions.

In addition to curtailing their speech, some Plaintiff parents have altered the parenting of their children because of the FRA amendments. For instance, the passage of the challenged statutes has caused Parent 1A to pull back from disciplining 1C for fear it will cause a rift that others might take advantage of to encourage 1C to run away. *See* ER-016-017 (FAC ¶¶16, 18). 1A is in fear that 1C could find other adults or a family of a friend, for instance, who might support her disagreement with 1A, disagree with 1A's beliefs about gender, and encourage 1C to "transition" simply because 1C was disciplined for any reason. ER-017 (FAC ¶17).

The challenged statutes thus function to undermine 1A's authority as a parent, making it very easy for others to create a wedge between her and her child, a wedge that is very real should 1C run away for any reason. ER-017 (FAC ¶¶17-18). By putting all the cards in the hands of a child who is not qualified to make any number of important decisions, these laws make it hard for 1A to parent and protect 1C, who is most vulnerable to the effects of "affirming" state action.

As a result, this creates an injury to the parent-child relationship, a relationship that is constitutionally protected. *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."). The care, custody, and nurture of a child "reside[s] first in the parents" because their "primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (citation omitted). As the Supreme Court has held, it is by now "firmly established that 'freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.'" *Quilloin*, 434 U.S. at 255 (citation omitted). The State's usurpation of the parent's

ability to parent their child is a current injury that each Plaintiff parent suffers, an injury sufficient to satisfy the standing requirement.

3. Plaintiffs are currently being denied information related to their minor child's mental health treatment.

Additionally, specific to § 71.34.530, the daughter (5C) of parent Plaintiffs 5A & 5B's, is receiving and has received mental health treatment related to gender confusion, about which 5A and 5B knew nothing, and which because of § 71.34.530 Plaintiffs are powerless to resist. Being kept in the dark on so important a topic makes it more difficult for 5A and 5B to parent their child and creates separation between them and her. ER-022-023 (FAC ¶¶52-57).

Likewise, a school counselor worked to "socially transition" the daughter of parent Plaintiffs 1A and 1B without their knowledge, *see* ER-016 (FAC ¶13), and the challenged laws create a significant present risk that counselors will attempt to do so again. It is precisely that kind of "affirming" behavioral health care that the challenged statutes facilitate for runaway kids without parental knowledge, and which undermines these Plaintiff parents' ability to raise their children—thereby imposing

current, concrete harm on them. *See* ER-016-018, 022-023 (FAC ¶¶14-20, 55, 57-58).

These are present or past injuries, not merely future ones. Accepting those allegations, as the Court must, *see Cal. Rest. Ass'n*, 65 F.4th at 1049, Plaintiffs are presently injured and have standing. Nor does it matter that Plaintiffs experience some of these injuries as a result of trying to avoid even greater injuries in the future. As the Seventh Circuit, relying on Supreme Court precedent, has held: "[T]he present impact of a future though uncertain harm may establish injury in fact for standing purposes." *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 498 (7th Cir. 2005) (citing *Clinton v. City of New York*, 524 U.S. 417 (1998)). That is the case for these parents.

This is thus not a situation where citizens have a generalized grievance, indistinguishable from others, based on "a strong moral, ideological, or policy objection to a government action." *All. for Hippocratic Med.*, 602 U.S. at 381 (citation omitted). This suit might be of that flavor if these Plaintiffs did not have children who have or are struggling with gender confusion or did not have any children at all. But these Plaintiff parents are no "mere bystander[s]"—they have a "personal

stake" in this litigation, as their daily life as parents is harmed by these statutes. *Id.* at 379. This satisfies the injury-in-fact requirement. The district court erred by ignoring these current injuries and should be reversed for doing so.

B. Organizational Plaintiffs Likewise Meet the Legal Standard for Standing.

Just as the Plaintiff parents have standing, IPEC has organizational standing. As noted above, IPEC has at least one member who is a Washington State parent with a child suffering gender confusion who is at risk of running away. Protecting that member's interest, who would have a basis to sue in his/her own right, serves IPEC's interests and purposes and, because this is a facial challenge to the statute, the individual parent is not necessary for resolving the issues raised in this suit. Thus, IPEC has organizational standing. *Am. Diabetes Ass'n*, 938 F.3d at 1155. Relief in favor of IPEC would necessarily benefit all its Washington State members who are parents of minor children, thus providing relief to those directly affected by Defendants' unconstitutional statutes.

C. Plaintiffs Also Satisfy the Causation and Redressability Elements for Standing.

Even though the district court did not address the final two elements of the standing analysis, Plaintiffs also satisfy the requirements of causation and redressability.

The second element of standing requires a plaintiff to establish "that the injury likely was caused or will be caused by the defendant." *All. for Hippocratic Med.*, 602 U.S. at 380. Here, Plaintiffs clearly alleged facts that show they have altered their speech and parenting (including in ways that violate their religious beliefs) because of the real probability of their child's falling within reach of the challenged provisions. *See* ER-016-019, 021-023 (FAC ¶¶14-20, 26-29, 40-41, 54-58). Each set of parents has loved and taken great steps to help their children who suffer from gender confusion. Prior to the challenged laws, they knew that if their child ran away, they would get their child back and the state could not impose "gender affirming care" on them. Yet now that all of that has changed, this reasonable fear has caused a change in behavior, including curtailing speech and parenting methods in ways that harm their relationships with their child and violates their parental rights. *See Bayless*, 320 F.3d at 1006 (finding standing when plaintiffs altered their

speech to avoid consequences of the challenged statute). Thus, Plaintiffs' injuries are caused by the challenged statutes.

Further, the harm to Plaintiffs from § 71.34.530 is obvious. By denying Plaintiffs access to their minor child's mental health records, the state is actively interfering with their parental rights. This current violation becomes even more serious given the FRA amendments, under which the state will refer a runaway child for "gender affirming" behavioral health service and the parents will neither consent nor have any right to discover exactly what kind of "treatment" or "services" are being provided. Causation is clearly met here.

The same is true for redressability, which naturally flows from causation as "[t]he second and third standing requirements—causation and redressability—are often flip sides of the same coin." *All. for Hippocratic Med.*, 602 U.S. at 380 (citation and internal quotation marks omitted). Thus, if Defendants caused the injury, a court-provided remedy "will typically redress that injury." *Id.* at 381.

Such is the case here. Should a court declare the FRA amendments and § 71.34.530 unconstitutional, these laws will no longer be followed, relieving current injuries to Plaintiffs and removing the threat of future

ones. Declaring the FRA amendment and § 71.34.530 unconstitutional would return to Plaintiffs and all Washington parents the rights guaranteed to them under the Constitution to make critical decisions on how to raise their children. The redressability prong of standing is thus obviously satisfied.

II. Plaintiffs Possess Standing Because Of Likely Future Drastic Injuries.

Besides their current injuries, parent Plaintiffs and IPEC members[16] are also under the cloud of grave future injuries that independently satisfy the injury-in-fact requirement. That's because standing also extends to probabilistic events where "[t]he risk of catastrophic harm, though remote, is nevertheless real" and "[t]hat risk would be reduced to some extent if [plaintiffs] received the relief they seek." *Massachusetts*, 549 U.S. at 526. Such is clearly the case here.

[16] As explained in Section I.C. above, IPEC has standing because at least one of its members is affected, its interests and objectives are served in pursuing these claims on behalf of its members, and the relief sought does not required the individual members to be parties to this case. Accordingly, IPEC has standing on the same basis as the Plaintiff parents.

A. The Probabilistic Harm Doctrine Applies Here.

The Supreme Court has recognized that probabilistic harm can satisfy the injury-in-fact requirement for standing, with the likelihood of the injury being evaluated on a sliding scale based on the seriousness of the potential injury. Thus, "[t]he more drastic the injury that government action makes more likely, the lesser the increment in probability to establish standing." *Massachusetts,* 549 U.S. at 525 n.23 (internal quotation marks and citation omitted).[17] Hence, "[e]ven a small

[17] As they did in the district court, Defendants may try to argue that *Massachusetts v. EPA* is no longer good law and that the Ninth Circuit should decline to follow it. But such an argument would be erroneous for at least two reasons.

First, because the Supreme Court recognized the sliding-scale probabilistic injury standing doctrine, that Court alone gets to determine whether the hybrid-rights doctrine is still viable. *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) ("If a precedent of this Court has direct application in a case, … a lower court should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." (cleaned up)). The Supreme Court has never expressly overruled *Massachusetts v. EPA*'s sliding-scale probabilistic injury standing doctrine, so all lower federal courts are still bound by it. *See* 549 U.S. at 526.

Second, Defendants' argument is foreclosed by the law-of-the-circuit doctrine. Various panels of this Circuit have recognized the sliding-scale probabilistic harm standing doctrine. *See, e.g., Covington v. Jefferson County,* 358 F.3d 626, 638 n.15 (9th Cir. 2004); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1015 (9th Cir. 2013). And "one panel may not overrule another; the power to overrule is confided to the en banc court,

probability of injury is sufficient to create a case or controversy—to take a suit out of the category of the hypothetical—provided of course that the relief sought would, if granted, reduce the probability." *Id.* (internal quotation marks and citation omitted); *see also Baur v. Veneman*, 352 F.3d 625, 637 (2d Cir. 2003) ("Because the evaluation of risk is qualitative, the probability of harm which a plaintiff must demonstrate in order to allege a cognizable injury-in-fact logically varies with the severity of the probable harm.").

So, for example, in *Massachusetts v. EPA*, the alleged future injury was that "a significant fraction of coastal property will be either permanently lost through inundation or temporarily lost through periodic storm surge and flooding events." 549 U.S. at 523 (internal quotation marks and citation omitted). Note that the future injury did not have to be permanent—the few hours or days of a storm surge would suffice. As to what "a significant fraction" means, the Court did not clarify, but it did observe that "global sea levels rose somewhere between 10 and 20 centimeters over the 20th century as a result of global

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and the en banc court alone." *In re Watts*, 298 F.3d 1077, 1084 (9th Cir. 2002) (O'Scannlain, J., concurring in the judgment).

warming." *Id.* at 522. In other words, a permanent loss of 3.9–7.9 inches, or a temporary loss of a few feet of coastline are "significant harms." *Id.* at 521–22. And applying this sliding scale, the imminence of these alleged future harms only had to "increase over the course of the next century." *Id.* at 522–23.

Under this standard, Plaintiffs need only show that Defendants' "actions have caused 'reasonable concern' of injury." *Covington*, 358 F.3d at 639. And "the injury-in-fact requirement can be satisfied by a threat of future harm or by an act which harms the plaintiff only by increasing the risk of future harm that the plaintiff would have otherwise faced, absent the defendant's actions." *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1143 (9th Cir. 2010) (citation omitted). As we next show, Plaintiffs easily clear that standing hurdle.

B. Under That Doctrine, Plaintiffs Are Sufficiently Likely to Suffer Harm Due to the Challenged Provisions to have Standing.

Here, there is a credible likelihood that at least one of the parent Plaintiffs' children will run away to a shelter and thus trigger the amended FRA. After all, four of the families have minor children who currently struggle or recently struggled with gender dysphoria, and all of

those have children who were "socially transitioned" by the state (through the public schools) behind the parents' backs. *See* ER-016, 018, 020, 022 (FAC ¶¶13, 21, 23, 36-37, 50, 52). Furthermore, one of those children had previously run away. *See* ER-022 (FAC ¶54).

Under the facts pleaded here, moreover, the threatened injuries are "drastic"—the loss of the custody and control of one's child, the potential irreversible harm to that child, and the infringement of First and Fourteenth Amendment rights. Thus, only a "lesser . . . increment in probability [is needed] to establish standing"—just "a small probability of injury" will do. *Massachusetts,* 549 U.S. at 525 n.23 (quotation marks and citations omitted). There is also a "credible threat" that these harms will arise because of the challenged provisions, which is sufficient in this Circuit to establish an injury necessary for standing. *Nat. Res. Def. Council v. U.S. E.P.A.*, 735 F.3d 873, 878–79 (9th Cir. 2013) (*"NRDC"*) ("an injury is 'actual or imminent' where there is a 'credible threat' that a probabilistic harm will materialize.").

In *NRDC*, this Court held that an organization did not have to show that its members' children would necessarily be exposed to a pesticide to

have standing to challenge the conditional registration of that pesticide. *See id.* Rather, the court determined that, without the conditional registration, "there is roughly no chance that the children . . . will be exposed," but the "[c]onditional registration of the product increases the odds of exposure." *Id.* at 878. And it mattered to the court in finding a credible threat that potentially extensive applications of the pesticide meant the parents could not fully control their children's exposure to the pesticide. *See id.*; *see also Raich v. Gonzales*, 500 F.3d 850, 857 (9th Cir. 2007) (recognizing the anticipation of future actual injury and current fear in finding standing).

The same is true here. In the district court, Defendants argued that, before passage of the FRA amendments, up to 40% of gender-dysphoric minors were homeless, with some portion of that group having run away. Defs.' Mot. to Dismiss at 3 n.2 (ER-010). Even those odds are worse than Russian roulette. But now, the odds of significant harm have *increased* because these new laws incentivize children to run away and, when they do, the state will now displace the child's parents and facilitate the "gender-affirming treatment" the Plaintiff parents believe will cause their children harm. *See* ER-017-021, 023 (FAC ¶¶17-20, 26-27, 38-

41, 57-58). Indeed, when public schools attempted to "transition" several of these children behind their parents' backs, it substantially damaged the parent/child relationship and made it harder for the parents to care for their children. *See* ER-016, 018, 020-023 (FAC ¶¶13-14, 23-25, 37, 40, 52-57).

Given that there are at least four gender-dysphoric minors represented by the parent Plaintiffs in this suit, one may infer that at least one child is likely to run away in the future, given the high incidence of such vulnerable children running away in the first place. *See Nat. Res. Def. Council v. Env't Prot. Agency*, 464 F.3d 1, 7 (D.C. Cir. 2006) (holding that the lifetime risk that about 1 in 200,000 will develop nonfatal skin cancer as a result of a federal rule was a sufficient injury in fact for standing because "[o]ne may infer from the statistical analysis that two to four of [plaintiffs'] nearly half a million members will develop cancer as a result of the rule"). In short, it is very likely that at least one of the parent Plaintiff's children will be subject to the provisions of the challenged provisions—a probability that increased merely by the passage of those provisions.

With even a small change in the probability of severe harm, moreover, Plaintiffs have standing to bring their claims. *See Glickman*, 92 F.3d at 1234 (finding that the difference between a 5.4% and a 14.2% reduction in acres containing high-risk fuels under alternative government actions regarding fire risk was sufficient for standing). And Plaintiffs' allegations are sufficient to establish at least a small change in that probability as to them and their children.

C. Plaintiffs Do Not Have to Wait for Their Children to Run Away to Have Standing.

Nor does it matter that none of the Plaintiff parents' gender-confused children is currently in a covered youth shelter. The mere "risk of future injury" can satisfy standing, and "[t]he anticipation of future injury may itself inflict present injury." *See* 13A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3531.4 (June 2024 Update). Thus, for example, the plaintiffs in *Harris v. Board of Supervisors*, 366 F.3d 754, 760–64 (9th Cir. 2004), did not have to *currently* be in a hospital to challenge a government body's vote to reduce hospital beds in one hospital and close another. After all, "[o]ne need not wait for the conflagration before concluding that a real and present threat exists." *Dimarzo v. Cahill*, 575 F.2d 15, 18 (1st Cir. 1978). *See*

also Krottner, 628 F.3d at 1143 ("Because the plaintiffs had alleged an act that increased their risk of future harm, they had alleged an injury-in-fact sufficient to confer standing." (citation omitted)).

Under the challenged provisions, Plaintiff parents have children who are exactly the kids targeted by the FRA amendments. Just as it is not necessary for a child to be exposed to a pesticide before the parents have standing, so too here. *NRDC*, 735 F.3d at 878–79. Also, similar to the pesticide case, the FRA amendments have increased the odds of parents suffering constitutional harms, which odds were effectively zero before its passage. Furthermore, parents cannot fully control whether their children run away to a shelter. And, as noted above, there is real fear on the part of at least some of these parent Plaintiffs that their children will do just that to take advantage of the FRA amendments. *See* ER-016-021, 023 (FAC ¶¶14, 17-18, 26, 28, 38-41, 58). This is sufficient injury to establish standing.

Additionally, children often hide their gender dysphoria and "social transitioning" from their parents, as some of the children of the Plaintiff parents did with encouragement from their public-school staff. *See* ER-016, 018, 020, 022 (FAC ¶¶13, 23, 37, 52). And parents often do not have

a clue beforehand that a child will run away. Thus, any parent of minor children in the state could potentially wake up tomorrow to find that the challenged statutes have been triggered and the parents' constitutional rights are being violated by Defendants.

Nor is there any question that, even without a runaway child, the challenged provisions create a constitutional harm. A plaintiff who "is asserting [his or] her interest as the [parent] of [a] child" may "unquestionably" challenge official actions that cause "injury … with respect to [the parent's] relationships with [the child]" and a parent's "injury in fact to [this] recognized legal interest[] is enough to grant … standing." *Morrison v. Jones*, 607 F.2d 1269, 1275 (9th Cir. 1979); *see also Smith v. Org. of Foster Fams. for Equal. & Reform*, 431 U.S. 816, 842 & n.45 (1977). And, since "the importance of the familial relationship … stems from the emotional attachments that derive from the intimacy of *daily* association," *Smith,* 431 U.S. at 844 (emphasis added), the "separation of parent from child, even for a short time [as the challenged provisions unquestionably do here], represents a serious infringement upon both the parents' and child's rights," *Brokaw v. Mercer County*, 235 F.3d 1000, 1019 (7th Cir. 2000) (quoting *J.B. v. Washington County*, 127

F.3d 919, 925 (10th Cir. 1997)). The courts of appeals thus agree that "when a state actor takes a child into temporary custody, … a case worker must have no less than a reasonable suspicion of child abuse (or imminent danger of abuse) before taking a child into custody prior to a hearing." *Hatch v. Dep't for Child., Youth & Their Fams.*, 274 F.3d 12, 23 (1st Cir. 2001); *see David v. Kaulukukui*, 38 F.4th 792, 804 (9th Cir. 2022) (allegation of 21-day separation of parents and child stated claim under Due Process Clause); *Keates v. Koile*, 883 F.3d 1228, 1238 (9th Cir. 2018) (same for two- to three-day separation). Yet the provisions challenged here require no such finding.

Finally, the situation here is analogous to a pre-enforcement challenge. *See All. for Hippocratic Med.*, 602 U.S. at 384–85 (collecting cases). In pre-enforcement cases, waiting until one "is subject … [to an] enforcement action is not a prerequisite to challenging the law." *Susan B. Anthony List*, 573 U.S. at 158. And, "where threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat—for example, the constitutionality of a law threatened to be enforced." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007). Under

this reasoning, the odds of one of these Plaintiffs' children running away and triggering the law are sufficiently substantial to confer standing. Defendants intend to enforce these laws, which itself creates a substantial likelihood of harming Plaintiffs. Thus, Plaintiffs have standing to challenge the laws now.

CONCLUSION

The Plaintiff parents in this suit are the very people targeted by the challenged laws—the so-called "problem" Washington legislators were aiming to solve. And the organizational Plaintiffs represent other parents subject to the same harms. Those parents are *currently* suffering concrete harms that give them standing to challenge those laws. And they face a substantial risk of future severe harm that independently provides them with standing. The district court thus erred in dismissing the case for lack of standing. This Court should reverse that decision and remand this case for further proceedings.

August 21, 2024

Respectfully submitted,

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STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, counsel for Plaintiffs-Appellants is unaware of any related cases pending in this Court.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Circuit Rule 32-1 because:

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August 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.

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ADDENDUM

INDEX

U.S. Constitution Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution Amendment XIV [excerpted]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

Washington Revised Code § 13.32A.082 (2013)

13.32A.082. Providing shelter to minor--Requirement to notify parent, law enforcement, or department
Effective: July 28, 2013 to July 22, 2023

(1)(a) Except as provided in (b) of this subsection, any person, unlicensed youth shelter, or runaway and homeless youth program that, without legal authorization, provides shelter to a minor and that knows at the time of providing the shelter that the minor is away from a lawfully prescribed residence or home without parental permission, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department.

(b)(i) If a licensed overnight youth shelter, or another licensed organization with a stated mission to provide services to homeless or runaway youth and their families, shelters a child and knows at the time of providing the shelter that the child is away from a lawfully prescribed residence or home without parental permission, it must contact the youth's parent within seventy-two hours, but preferably within twenty-four hours, following the time that the youth is admitted to the shelter or other licensed organization's program. The notification must include the whereabouts of the youth, a description of the youth's physical and emotional condition, and the circumstances surrounding the youth's contact with the shelter or organization. If there are compelling reasons not to notify the parent, the shelter or organization must instead notify the department.

(ii) At least once every eight hours after learning that a youth receiving services or shelter under this section is away from home without permission, the shelter or organization staff must consult the information that the Washington state patrol makes publicly available under RCW 43.43.510(2). If the youth is publicly listed as missing, the shelter or organization must immediately notify the department of its contact with the youth listed as missing. The notification must include a description of the minor's physical and emotional condition and the

circumstances surrounding the youth's contact with the shelter or organization.

(c) Reports required under this section may be made by telephone or any other reasonable means.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from a lawfully prescribed residence or home without parental permission.

(c) "Compelling reasons" include, but are not limited to, circumstances that indicate that notifying the parent or legal guardian will subject the minor to abuse or neglect as defined in RCW 26.44.020.

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family.

(4) Nothing in this section prohibits any person, unlicensed youth shelter, or runaway and homeless youth program from immediately reporting the identity and location of any minor who is away from a lawfully prescribed residence or home without parental permission more promptly than required under this section.

Washington Revised Code § 13.32A.082 (2023)

13.32A.082. Providing shelter to minor--Requirement to notify parent, law enforcement, or department
Effective: July 23, 2023

(1)(a) Except as provided in (b) of this subsection, any person, unlicensed youth shelter, or runaway and homeless youth program that, without legal authorization, provides shelter to a minor and that knows at the time of providing the shelter that the minor is away from a lawfully prescribed residence or home without parental permission, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department.

(b)(i) If a licensed overnight youth shelter, or another licensed organization with a stated mission to provide services to homeless or runaway youth and their families, shelters a child and knows at the time of providing the shelter that the child is away from a lawfully prescribed residence or home without parental permission, it must contact the youth's parent within 72 hours, but preferably within 24 hours, following the time that the youth is admitted to the shelter or other licensed organization's program. The notification must include the whereabouts of the youth, a description of the youth's physical and emotional condition, and the circumstances surrounding the youth's contact with the shelter or organization. If there are compelling reasons not to notify the parent, the shelter or organization must instead notify the department. When a minor remains in a licensed overnight youth shelter or with another licensed organization with a stated mission to provide services to homeless or runaway youth and their families under subsection (1)(b)(i)(A) and (B) of this section [(b)(i)(A) and (B) of this subsection], the shelter or organization must also notify the department. A minor may provide authorization to remain in a licensed overnight youth shelter or with another licensed organization with a stated mission to provide services to homeless or runaway youth and their families, subject to any limits established by those licensed shelters or organizations, for up to 90 days if:

(A) The licensed overnight youth shelter or other licensed organization with a stated mission to provide services to homeless or runaway youth and their families is unable to make contact with a parent despite their notification efforts required under this section; or

(B) The licensed overnight youth shelter or other licensed organization with a stated mission to provide services to homeless or runaway youth and their families makes contact with a parent, but the parent does not request that the child return home even if the parent does not provide consent for the minor remaining in the licensed overnight youth shelter or other licensed organization with a stated mission to provide services to homeless or runaway youth.

(ii) At least once every eight hours after learning that a youth receiving services or shelter under this section is away from home without permission, the shelter or organization staff must consult the information that the Washington state patrol makes publicly available under RCW 43.43.510(2). If the youth is publicly listed as missing, the shelter or organization must immediately notify the department of its contact with the youth listed as missing. The notification must include a description of the minor's physical and emotional condition and the circumstances surrounding the youth's contact with the shelter or organization.

(c) Reports required under this section may be made by telephone or any other reasonable means.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from a lawfully prescribed residence or home without parental permission.

(c) "Compelling reasons" include, but are not limited to:

(i) Circumstances that indicate that notifying the parent or legal guardian will subject the minor to abuse or neglect as defined in RCW 26.44.020; or

(ii) When a minor is seeking or receiving protected health care services.

(d) "Protected health care services" means gender-affirming treatment as defined in RCW 74.09.675 and reproductive health care services as defined in RCW 74.09.875.

(3)(a) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services to the youth and the family designed to resolve the conflict, including offering family reconciliation services, and accomplish a reunification of the family. The department shall offer services under this subsection as soon as possible, but no later than three days, excluding weekends and holidays, following the receipt of a report under subsection (1) of this section.

(b) When the department receives a report under subsection (1) of this section for a minor who is seeking or receiving protected health care services, it shall:

(i) Offer to make referrals on behalf of the minor for appropriate behavioral health services; and

(ii) Offer services designed to resolve the conflict and accomplish a reunification of the family.

(4) Nothing in this section prohibits any person, unlicensed youth shelter, or runaway and homeless youth program from immediately reporting the identity and location of any minor who is away from a lawfully prescribed residence or home without parental permission more promptly than required under this section.

(5) Nothing in this section limits a person's duty to report child abuse or neglect as required by RCW 26.44.030 or removes the requirement that the law enforcement agency of the jurisdiction in which the person lives be notified.

Washington Revised Code § 71.34.530

71.34.530. Outpatient treatment of adolescent
Effective: July 28, 2019

Any adolescent may request and receive outpatient treatment without the consent of the adolescent's parent. Parental authorization, or authorization from a person who may consent on behalf of the minor pursuant to RCW 7.70.065, is required for outpatient treatment of a minor under the age of thirteen.