No. _____

In the Supreme Court of the United States

INTERNATIONAL PARTNERS FOR ETHICAL CARE, INC.; ADVOCATES PROTECTING CHILDREN; PARENTS 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, AND 5B, *Petitioners,*

v.

ROBERT FERGUSON, GOVERNOR OF WASHINGTON, IN HIS OFFICIAL CAPACITY; NICK BROWN, ATTORNEY GENERAL OF WASHINGTON, IN HIS OFFICIAL CAPACITY; AND TANA SENN, SECRETARY OF THE WASHINGTON DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES, IN HER OFFICIAL CAPACITY

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The "interest of parents in the care, custody, and control of their children[] is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel* v. *Granville*, 530 U.S. 57, 65 (2000). But that right is mere rhetoric if federal judges bar parents from court via a miserly interpretation of standing doctrine—a question, as three Justices recently recognized, that is of "great and growing national importance." *Lee* v. *Poudre Sch. Dist. R-1*, 607 U.S. --, 2025 WL 2906469, *1 (2025) (Alito, J., statement) (citation omitted).

It is certainly important to Petitioners, who are parents of gender-confused children (including one child who previously ran away) and who do not wish to affirm that confusion. They challenged Washington laws designed to give runaway minors "gender-affirming treatment" without parental notice or consent. But despite their being the challenged laws' target, and despite their alleging specific current harms and a substantial risk of specific future harms to their ability to parent, the Ninth Circuit held that Petitioners lacked Article III standing.

The question presented is:

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

PARTIES

The case caption contains the names of all parties to the proceeding. The district court allowed the Parent Plaintiffs to proceed under pseudonyms. The names of the Respondents were substituted according to Federal Rule of Appellate Procedure 43.

Petitioners International Partners for Ethical Care, Inc., Advocates Protecting Children, and Parents 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A and 5B were the Appellants in the Ninth Circuit and the Plaintiffs in the district court.

Respondents Robert Ferguson, Governor of Washington; Nick Brown, Attorney General of Washington; and Tana Senn, Secretary of the Washington Department of Children, Youth, and Families were Appellees in the Ninth Circuit, having been substituted for Jay Inslee, Governor of Washington; Robert Ferguson, Attorney General of Washington; and Ross Hunter, Secretary of the Washington Department of Children, Youth, and Families, Defendants in the district court.

CORPORATE DISCLOSURE STATEMENT

Petitioner International Partners for Ethical Care, Inc. (IPEC) is a corporation formed and in good standing in the State of Illinois under Section 501(c)(4) of the Internal Revenue Code. IPEC is not publicly traded, has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

Petitioner 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, has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

Petitioners Parents 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A and 5B are individual persons, and no corporate disclosure is required.

RELATED PROCEEDINGS

The following proceedings are related to this case:

- *International Partners for Ethical Care Inc.* v. *Robert Ferguson, Governor,* No. 24-3661 (9th Cir.) (opinion affirming dismissal entered July 25, 2025 (App.A); petition for rehearing or rehearing *en banc* denied December 5, 2025 (App.C)); and
- *International Partners for Ethical Care, Inc.* v. *Jay Inslee, Governor of Washington, in his official capacity,* No. 3:23-cv-05736-DGE (W.D. Wash.) (order dismissing claims entered May 15, 2024 (App.B)).

TABLE OF CONTENTS

APPENDICES

TABLE OF AUTHORITIES

Cases **Page(s)**

Constitutional Provisions

Statutes

Rules

Other Authorities

INTRODUCTION

Viewing parents as the problem, Washington passed laws that deliberately target certain parents by supplanting them with the state in the context of gender-confused runaway minors: Whenever a child runs away, so long as he or she asks for "gender-affirming treatment," a cascade of events is triggered. First, the child is referred for "gender-affirming treatment" without parental notice or consent. Second, parents can be kept in the dark as to the child's location and condition. And third, reunification can be significantly delayed, with conditions for that reunification uncertain and entirely up to the state.

In addition to children's rights organizations, Petitioners are parents of gender-confused children, including one child who has run away before. These parents do not affirm their children's confusion but seek to raise them according to their biological sex—making Petitioners the very objects of the challenged laws. Because of Washington's laws and regulations, Petitioners alleged *current* chilling of their parenting to avoid having their children take advantage of the incentive Washington law now provides for the child to run away and get the "treatment" the parents oppose. Petitioners also alleged a substantial risk of *future* harm to their parental, free speech, procedural, and religious free exercise rights given their children's condition, their past behavior, and the perverse incentives created by Washington's laws for gender-confused children to run away.

But the Ninth Circuit found Petitioners lacked standing to challenge the laws because the current

injuries were (in the court's view) self-inflicted and the future harms were not sufficiently immediate or certain.

In so holding, the panel conflicted with multiple precedents of this Court and other circuits. And the panel held that Petitioners lacked standing despite Judge VanDyke's observation in his dissent from denial of rehearing *en banc* that "Washington's legal regime does not merely invade plaintiffs' parental rights ***, it will obliterate them." App.47a (cleaned up). Judge Tung also dissented from denial of rehearing, noting that "[t]he requirements of standing are strict, but they are not cruel." App.55a.

Sadly, this case is not an outlier. As Justices of this Court have observed, lower federal courts often misread standing doctrine to avoid ruling on contentious constitutional issues. These Justices have likewise observed that parental standing to challenge gender-transition policies presents "a question of great and growing national importance." *Parents Protecting Our Child., UA* v. *Eau Claire Area Sch. Dist.,* 145 S.Ct. 14, 14 (2024) (Alito, J., dissenting from denial of certiorari). And this is a clean vehicle with which to decide that issue because, among other things, the case was dismissed on the pleadings and involves a challenge to state laws that target the very parents who sued.

For those and other reasons explained below, the petition should be granted.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is published at 146 F.4th 841 and reproduced in Appendix A, App.1a-27a.

The district court's order granting the motion to dismiss is not reported but is available at 2024 WL 2214707 and reproduced in Appendix B, App.28a-31a.

The Ninth Circuit's order denying Plaintiffs' petition for rehearing or rehearing *en banc* is published at 161 F.4th 604 and reproduced in Appendix C, App.32a-65a.

JURISDICTION

The Ninth Circuit's opinion issued on July 25, 2025. App.1a. Plaintiffs' petition for rehearing and rehearing *en banc* was denied on December 5, 2025, App.32a, making this petition due March 5, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article III, section 2 of the United States Constitution is reproduced in Appendix E, App.149a. Engrossed Substitute Senate Bill 5599, 68th Leg., Reg. Sess. (Wash. 2023), enacted as 2023 Wash. Sess. Laws, ch. 408 (effective July 23, 2023), is reproduced in Appendix F, App.151a. Substitute House Bill 1406, 68th Leg., Reg. Sess. (Wash. 2023), enacted as 2023 Wash. Sess. Laws, ch. 151 (effective July 23, 2023), is reproduced in Appendix G, App.167a. Washington Revised Code §13.32A.082 (2023) is reproduced in Appendix H, App.184a. Washington Revised Code

§71.34.530 (2019), is reproduced in Appendix M, App.201a. Relevant portions of Washington Revised Code §74.09.675 (2021) are reproduced in Appendix N, App.202a.

STATEMENT

A. Operation of Washington's Laws

For decades in Washington, whenever a youth shelter received a runaway child, state law required the shelter to contact the parents within seventy-two hours, preferably within twenty-four hours. Wash.Rev.Code §13.32A.082(1)(b)(i) (2013). 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." *Ibid.* Thus, under this baseline rule, parents receive prompt, specific notice and are free to pick up their child and take him or her home.[1]

There was one exception—"[i]f there [were] compelling reasons not to notify the parent," *ibid.*—that is, circumstances where "notifying the parent or legal guardian [would] subject the minor to abuse or neglect," *id.* §13.32A.082(2)(c).

In 2023, however, the Washington Legislature enacted two statutes that substantially amended §13.32A.082, called the Family Reconciliation Act (FRA): SHB1406, 68th Leg., Reg. Sess. §2 (Wash.

[1] 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).

2023), and SB5599, 68th Leg., Reg. Sess. (Wash. 2023). SB5599 expanded the definition of "compelling reasons" to delay (or deny) parental notice to 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 it expanded the definition of "protected health care services" to "include[] gender-affirming treatment[.]" *Id.* §13.32A.082(2)(d).[2] With these new modifications, the notice requirements and the state's new authority to displace parents in such circumstances are now contained in a provision known as "Paragraph 3." Wash.Rev.Code §13.32A.082(3); App.155a;App.172a.

Thus, after this amendment, "compelling reasons" not to notify parents are present whenever a minor runs away to a shelter seeking "gender-affirming treatment."[3] While previously a shelter would notify the parents directly, under the FRA amendments, notice now only goes to the Department of Children, Youth and Family Services ("DCYF"). Thus, "[t]hat amendment now treats the parents of children

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[2] "[G]ender-affirming treatment" is "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 includes physical or mental health services, *id*. §70.02.010(15), including "[f]acial feminization surgeries"; "facial gender-affirming treatment"; "tracheal shaves, hair electrolysis," "mastectomies, breast reductions, breast implants, or any combination of gender-affirming procedures," *id*. §74.09.675(2)(b).

[3] Children run away for a host of reasons unrelated to abuse or neglect. *Running Away*, Nemours KidsHealth (June 2018), https://tinyurl.com/5n6vjpev (medically reviewed by Steven Dowshen, MD).

suffering from gender dysphoria as per se neglectful or abusive and does not require the shelter to contact them." App.38a (VanDyke, J., dissenting).

As explained below, the FRA amendments harm Petitioners in at least four distinct ways: (1) parents are denied the right to consent to or refuse treatment for their child, including gender transition; (2) notice to parents is now denied or at least significantly delayed; (3) if given notice, parents are not informed about their child's condition and location; and (4) the child's return is significantly to indefinitely delayed.

1. Parents are bypassed in their child's treatment.

The FRA amendments remove from parental control important choices about a child's treatment. Those amendments now require DCYF itself 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), "which can include 'gender-affirming' treatment," App.53a (Tung, J., dissenting).[4]

Legislative history—which under Washington law is highly relevant to the interpretation of state

[4] When the child receives such treatment, the state then restricts the parents' rights to access the child's mental health "treatment records." Wash.Rev.Code §71.24.025(42) (App.K); §71.34.430 (App.L) (limiting disclosure to parents); §70.02.240 (App.I) (limiting parent's access to a minor's records, except under prescribed circumstances); §70.02.265 (App.J) (allowing therapist to deny parents access).

statutes[5]—confirms that the legislature *intended* to displace a child's parents and authorize "gender-affirming treatment" for runaway minors seeking "protected health services." As Judge Tung put it, "[i]n the legislature's view, a child suffering from gender dysphoria must be 'protected' from parents who do not seek 'gender-affirming treatment' for their child and do not 'affirm' the child's gender identity." App.52a.

Judge Tung's observation is validated by the legislative debates, where proponents of the amendments frequently framed "non-affirming" parents, like Petitioners, as the problem SB5599 was designed to solve. For example, Washington Senator Liias, an SB5599 sponsor, explained during his bill's legislative hearing:

> What this bill speaks to is when a young person is [among other things] 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 ***[,] [w]hen *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 ***.

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[5] *In re Marriage of Kovacs*, 854 P.2d 629, 634, 636 (Wash. 1993) ("[I]n determining the legislative purpose and intent the court may look beyond the language of the Act to legislative history [and] the remarks of *** sponsor[s] and drafter[s] of *** bill[s], are appropriately considered to determine th[at] purpose[.]").

Senate Floor Debate on SB5599 (Mar. 1, 2023) (statement of Sen. Liias, Sponsor, at 1:24:48-1:26:00 (emphasis added)), https://tinyurl.com/75jaep4t (click "start video") ("Liias Statement").

Similarly, on the House floor, Representative Taylor described the bill's purpose 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 *** 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." *** [So w]e must step in. We must provide a place for this child.

House Floor Debate on SB5599 (Apr. 12, 2023) (statement of Rep. Taylor, at 1:42:32-1:45:03), https://tinyurl.com/4wdbhape (click "start video") ("Taylor Statement").

Senator 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. *** Many families don't. And for the kids that come from those families, they deserve the support and love as well[.]

SB5599 Senate Floor Debate (statement of Sen. Trudeau, at 1:55:08-1:56:46) ("Trudeau Statement").

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. Never mind that many of these services have potentially life-altering, harmful consequences—including sterilization.

Of course, nothing in the statute requires any finding that parents kicked a child out of the home or committed any other neglect or abuse to trigger the various infringements on parental prerogatives 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 Senator Trudeau, the parents cannot love and support the child the way the state says they should.

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. Previously, absent a

finding of abuse or neglect, DCYF could not reach out and refer a child for any "behavioral health services"—including "gender-affirming treatment." Thus, the new law provided the state with authority—and additional time—to provide this treatment to the child in the face of parental opposition.

In sum, the amended FRA now allows the state, over parents' objections or without their knowledge, to provide "gender-affirming" medical care to a child. This care can send a minor down a road of "gender-affirming treatment" that could cause 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. That's because "gender affirming" behavioral health services are more likely to lead a child to additional interventions—including medical and surgical treatments.[6] So the amended FRA has

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[6] See generally Declaration, Doctors Protecting Children (June 6, 2024), https://tinyurl.com/ycy8xzet. Moreover, even if "behavioral health services" were interpreted to mean only mental therapy, the damage can be long-lasting or permanent. By referring minor children to counseling that affirms they are something other than their biological sex, DCYF is likely cementing—perhaps for a lifetime—a confusion that most children would otherwise mature out of, all without parental knowledge or consent. Indeed, the evidence shows that 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 Perspectives*, 9 Adolesc. Health Med.

changed the status quo in a way that curtails parental prerogatives—and harms children.

2. Notice to parents is denied or delayed.

To make matters worse, the statute's plain language also 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 such services.

Paragraph 3 determines DCYF's actions now that licensed shelters are forbidden from notifying parents of a runaway gender-confused minor under the new definition of "compelling reasons."[7] While Paragraph 3(a) is general to any notice given to DCYF regardless of "compelling reasons," Paragraph 3(b) is specific to minors seeking "gender-affirming treatment." While both require plans for reunification, Paragraph 3(b)

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; App.91a,¶108. Thus, referring gender-confused children to "gender-affirming treatment" puts them on the path to life-altering medical interventions, Declaration ¶5, interventions Parent Petitioners oppose for their children..

[7] The panel mistakenly read "compelling reasons" to mean "the shelter *may* forego contacting the child's parents and contact [DCYF] instead." App7a. (emphasis added). But the statute clearly states that if "compelling reasons" exist, the shelter "*must instead* notify [DCYF]." App.184a-185a (emphasis added). Still, merely lodging that decision in the shelter rather than the child's parents would itself threaten parents' ability to raise their children as they see fit.

provides no timeline for the provision of the reconciliation and reunification services listed therein.[8] 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 Petitioner Parents, a review of the legislative history confirms Petitioners' interpretation. That history confirms that the Washington Legislature *intended* to deprive parents of their parental rights when their child runs away to receive "gender-affirming treatment."

As legal counsel for the Committee that produced the legislation explained, "Under this bill, they [*i.e.*, shelter or DCYF personnel] 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 SB5599 Before S. Hum. Servs. Comm.*, 68th Leg., Reg. Sess. (Wash. 2023) (emphasis added) (statement of Alison Mendiola, Coordinator & Counsel for Comm., at 28:44-29:03 (Feb. 6, 2023)), https://tinyurl.com/3kr8h7ju (click "view video"). Remarkably, then,

[8] Interpreting Paragraphs 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). And since "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 disappear by applying Paragraph 3(b) to all minors seeking "gender-affirming treatment" and Paragraph 3(a) to all other minors who trigger "compelling reasons."

under the text and legislative history of SB5599, DCYF is not required to notify parents of children seeking or receiving protected health services of their child's location or welfare.

DCYF policy further confirms this reading. A Policy Memo issued two days before the FRA Amendments went into effect asserts that, in implementing SB5599 regarding a homeless youth seeking "gender-affirming treatment," a caseworker must "[m]ake a good faith attempt to contact the youth's parent[.]" Policy Memo from Natalie Green, Asst. Sec'y, and Steve Grilli, Asst. Sec'y of Partnership, Prevention & Servs., Wash. Dep't of Child., Youth & Fams., *Changes to 3100, Family Reconciliation Services Policy* 2 (July 21, 2023), https://tinyurl.com/y42r6v63. The Memo then specifies that for "a good faith attempt, caseworkers must at minimum *** *[a]sk* the youth or shelter to provide contact information for the youth's parents ***, if known," and, "[c]ontact the parents *** *if* contact information is provided." *Id.* (emphasis added). The only other effort to contact parents is if there was a prior child welfare report with parental information; otherwise, no notification will be provided parents. The law requires no independent efforts to identify and notify parents. Furthermore, if initial contact is unsuccessful—say, because the child refuses to provide contact information or a correct name—the minor may stay in the shelter for as many as 90 days. App.185a. There is no guarantee when or if a parent will learn the fate of their runaway child who claims

to be receiving or seeking "gender affirming treatment."[9]

3. Even if provided notice, parents are not told about their child's condition or location.

Even if Subsection 3(a) is read to apply to parents of runaway minors seeking or receiving protected health services, the statutory changes also reduce the detail provided to parents. Previously, absent abuse or neglect, the shelter would provide the child's location, condition, and circumstances upon arrival at the shelter. Wash.Rev.Code §13.32A.082(1)(b)(i) (2013). But the FRA amendments removed that requirement for a minor seeking "protected health care service." All DCYF must provide now is notice that it received a report from a shelter. *Id.* §13.32A.082(3)(a) (2023). Thus, parents will not know their child's location or condition.

This amendment thus targets and deprives certain parents—for whom there is no suspicion of neglect or abuse—including Petitioners here, of crucial knowledge about their child and the ability to promptly reunite with their child.

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[9] Even if Subsection 3(a) were read to apply to everyone covered under Subsection 3(b), the FRA amendments still significantly delay parental notice. At minimum, the FRA Amendments change the notification time from seventy-two hours to as many as ten days, depending on the timing of weekends and holidays, by adding three business days—an eternity for parents of a runaway child. Wash.Rev.Code §13.32A.082(1)(b)(i) (2023).

At best, then, the timing of parental notification is doubled or tripled. And at worst, no notification is required.

4. A child's return is significantly delayed.

Finally, the FRA amendments significantly delay the parent-child reunification—thereby entrenching any "gender-affirming" care the child might receive. Parents of a runaway child will not know the child's location, and these statutory changes do not require DCYF to return the child on any specific timeline. All Subsection 3(b)(ii) requires is for DCYF—at some unspecified time—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).[10] But until that "conflict" is resolved—to DCYF's satisfaction—reunification is not required, meaning the Department has no mandate to return the child. In short, the law no longer requires DCYF to accomplish reunification within three days but need only offer reunification services whenever it wishes. *Ibid.*[11]

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[10] The state argued below that 3(b) applies to runaway children, and thus reunification services must be offered within three days, excluding weekends and holidays. Answer.Br. 9. Yet even if that strained reading were correct, but see *supra* n.8 and related legislative history, the "good faith" limitation means many parents will never be contacted. And even if they are, the statute provides no timeline for actual reunification, nor the conditions for reunification, which are left to DCYF.

[11] The state argued below that "DCYF policy also directs that its caseworkers must contact the family within twenty-four hours of being assigned the case, excluding weekends and holidays, to schedule an interview and assessment." Answer.Br. 7. But the state did not and does not say how quickly a case must be "assigned," nor does scheduling an interview and assessment mean reunification.

Here again, the legislative history supports this reading. As explained above, Senator Liias, a co-sponsor, essentially said the law is for providing minors care and then worrying about reunification later. Liias Statement, *supra*. In other words, DCYF can provide the services it thinks the child needs without parental consent, and it need not attempt reunification until *after* it has offered and provided those services to the child.

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As Judge Tung put it, Washington "law thus places *** parents[] who wish to raise their child in accordance with the child's biological sex[] in the same category as parents who are abusive or neglectful. Both categories of parents lose any entitlement to be notified of their runaway child's location." App.52a. And "Washington's regulatory regime *** now systematically facilitates the covert transitioning of children without parental knowledge or consent." App.37a (VanDyke, J., dissenting). Indeed, "the law appears *designed* to *** prevent parents from reuniting with their child (unless they 'affirm' the child's gender identification) and to clear the path of obstacles for the child to receive 'gender-affirming' treatment." App.53a (Tung, J., dissenting) (emphasis added).

B. Factual Background

As outlined above, and as Petitioners pleaded in detail in their amended complaint (App.D), they are facing substantial injury from the challenged statutes—both currently and in the near future. Petitioner Parents are not just 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 as they care for and raise children dealing with gender confusion.

For example, four of the Petitioner Parent couples have children who struggle with gender confusion (with most of those children being secretly transitioned at their public schools). App.70a,72a,73a,76a-77a. None of the Petitioner Parents are willing to affirm that gender confusion. App.72a,73a,75a,77a. Furthermore, one of those couples has a gender-confused child who previously ran away. App.77a. And there have been threats by others to take two of these couples' gender-confused children to another place to be "affirmed." App.72a,74a-75a,¶¶24,38. These parents thus alleged that the Washington laws at issue create a substantial *future* risk that the state (in response to a child's running away from home) will facilitate a gender transition contrary to the parents' wishes. App.70a-73a,75a,77a. And that is an enormous intrusion into parental prerogatives.

Additionally, because of daily fear that their child will run away to get the "gender-affirming care" the parents reject, App.71a, some of the parents have felt compelled to alter their *current* parenting. For instance, Parent 1A has hesitated to discipline her child for fear it will cause a rift that others (including homeless shelters) might take advantage of to facilitate a gender transition—thus making it difficult to parent. App.71a,¶16. And "[b]ecause of the FRA amendments, Parent 2A *** does not use [her

daughter'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." App.73a,¶¶26-28. Likewise, to minimize the risk that their gender-confused minor daughter will run away to a shelter, Parents 2A and 2B avoid any discussion of gender with or even near her. App.73a.[12]

C. Procedural History

Petitioners sued about three weeks after the laws went into effect and filed their first amended complaint on November 6, 2023. App.66a. Approximately six months later, the case was reassigned to a different judge. One day later, with no oral argument, the new judge granted Defendants' motion to dismiss with prejudice, holding that Petitioners lacked Article III standing. App.28a-31a. The district court's standing analysis totaled ten, mostly conclusory, sentences. App.30a-31a.

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[12] Petitioner International Partners for Ethical Care, Inc. also has standing. Its 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 Jan. 7, 2026). The organization's members include approximately two dozen parents in Washington, at least one of which has a minor child who experiences gender confusion, has received counseling for such confusion, and is at risk of running away. App.69a,¶9. Petitioner Advocates Protecting Children 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 Jan. 7, 2026).

The Ninth Circuit affirmed. App.4a-5a. The panel held that Petitioners lack standing because (1) any current altering of parenting in response to the Washington laws is a "self-inflicted injury," (2) the laws does not *directly* regulate the parents' speech, and (3) standing based on probabilistic harm requires *immediate* injury even when the feared injury is drastic. App.14a-25a. Moreover, Petitioners urged in their opening brief (p. 66) and during oral argument (and in their complaint, App.94a) that the challenged laws target the Petitioners. And they raised *Diamond Alternative Energy, LLC* v. *EPA*, 606 U.S. 100, 111 (2025), in a Rule 28(j) letter well before the panel's decision came out. But the panel ignored *Diamond* and Petitioners' showing that they have Article III standing as objects of the law.

Petitioners unsuccessfully petitioned for rehearing and rehearing *en banc*. App.32a-34a. But in dissent from denial, Judge VanDyke, joined by Judge Bumatay, showed that the panel conflicted with the Fifth Circuit and with this Court in refusing to find standing based on the current injury to the parental right to bring up a child, and because the parents were the objects of the challenged statutes. App.34a-51a. And Judge Tung, joined by Judges Bumatay and VanDyke, also showed that Petitioners had alleged a sufficient risk of future injury for standing, and that the panel's decision conflicted with this Court and with other circuits. App.51a-65a.

REASONS FOR GRANTING THE PETITION

In holding that Petitioners lacked standing, the Ninth Circuit conflicted with multiple precedents of this Court and with multiple circuits, on what members of this Court have called "a question of great and growing national importance." *Parents Protecting,* 145 S.Ct. at 14 (Alito, J., dissenting). As these Justices observed, standing doctrine is becoming an excuse for some federal courts to avoid what they perceive as contentious constitutional questions. *Ibid.* And this petition presents a clean and simple vehicle for deciding the issue of parental standing to challenge governmental actions designed to facilitate children's gender transitions.

I. As Multiple Justices Have Recognized, the Question Presented Is "of Great and Growing National Importance."

At least three Justices agree that the issue presented in this petition is a "question of great and growing national importance." *Parents Protecting,* 145 S.Ct. at 14 (Alito, J., dissenting). In his dissent in *Parents Protecting*, Justice Alito, joined by Justice Thomas, declared that "when, without parental knowledge or consent, [the government] encourages a [minor] to transition to a new gender or assists in that process," the issue of parental standing "presents a question of great and growing national importance." *Ibid*. That is exactly the situation here.

In that case, moreover, Justices Alito and Thomas noted the lower court's "questionable understanding of *Clapper* [v. *Amnesty International USA,* 568 U.S. 398 (2013),] and related standing decisions"—where the

lower court held that parents lacked standing to challenge a government policy facilitating transitioning without parental knowledge or consent. *Parents Protecting,* 145 S.Ct. at 14. These Justices expressed concern "that some federal courts are succumbing to the temptation to use the doctrine of Article III standing as a way of avoiding some particularly contentious constitutional questions." *Id.* at 14-15. And as important as it is to "heed the limits of [courts'] constitutional authority," it is "equally important" that courts "carry out their 'virtually unflagging obligation *** to exercise the jurisdiction given them.'" *Id.* at 15 (quoting *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976)).

Justice Alito, joined by Justice Thomas and Justice Gorsuch, reiterated these concerns in *Lee* v. *Poudre School District R-1*, 607 U.S.--, 2025 WL 2906469 (2025) (statement respecting denial of certiorari). There these Justices emphasized their "concern[] that some federal courts are 'tempted' to avoid confronting a 'particularly contentious constitutional question': whether [the government] violates parents' fundamental rights 'when, without parental knowledge or consent, it encourages a student to transition to a new gender or assists in that process.'" *Id.* at *1 (cleaned up) (quoting *Parents Protecting*, 145 S.Ct. at 14 (Alito, J., dissenting)).

These Justices also noted that government entities with "policies *** that purposefully interfere with parents' access to critical information about their children's gender-identity choices and [government] personnel's involvement in and influence on those

choices" are both "troubling *** and tragic." *Ibid*. And they viewed the question presented by petitioners—"[w]hether [the government] may discard the presumption that fit parents act in the best interests of their children and arrogate to itself the right to direct the care, custody, and control of their children," Pet. at i, *Lee* v. *Poudre Sch. Dist. R-1,* No. 25-89 (U.S. July 21, 2025)—as a question of "great and growing national importance." *Lee*, 2025 WL 2906469, *1 (quoting *Parents Protecting,* 145 S.Ct. at 14 (Alito, J., dissenting)).

That same concern—misreading the Court's "standing decisions" to "avoid[] [the] particularly contentious constitutional questions" of whether the state can encourage or assist the gender transitioning of minors "without parental knowledge or consent"—is the fundamental problem here. *Parents Protecting,* 145 S.Ct. at 14-15 (Alito, J., dissenting); see also *Lee*, 2025 WL 2906469, *1 (Alito, J., statement). And that concern is especially salient here given that the lower courts held that the very parents targeted, harmed, and placed in jeopardy for future harm by the challenged laws lack standing to sue.

Additionally, resolving the standing issue here will provide guidance to dozens of suits around the country in the closely related context of school policies designed to secretly transition children. More than 1,200 districts, covering 21,000 schools and twelve million children, maintain those policies.[13]

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[13] *List of School District Transgender Gender Nonconforming Student Policies*, Parents Defending Educ., https://bit.ly/4aiLjPW (updated Apr. 21, 2025).

As Justice Alito has observed elsewhere, "Article III standing is an important component of our Constitution's structural design," and "[t]hat doctrine is cheapened when the rules are not evenhandedly applied." *Murthy* v. *Missouri*, 603 U.S. 43, 98 (2024) (Alito, J., dissenting). This Court's review is necessary to avoid this "troubling *** and tragic" national trend. *Lee*, 2025 WL 2906469, *1 (Alito, J., statement).

II. In Denying Standing to Parent Plaintiffs, the Ninth Circuit Deviated from This Court's and Other Circuits' Standing Precedent.

The Ninth Circuit's decision has also created numerous conflicts with this Court and other circuits' standing precedent, both regarding current and future injuries, as well as regarding scenarios where plaintiffs are the statute's object. Any of these necessitate granting the petition, but taken together, they overwhelmingly call for this Court's review.

A. The Ninth Circuit's decision conflicts with this Court's precedent on standing when the plaintiff is the object of the statute in question.

The decision below conflicts first with decisions of this Court on standing requirements when plaintiffs are effectively the object of the challenged law.

1. In *Diamond Alternative Energy*, this Court held that fuel producers, as non-regulated third parties, had standing to challenge the EPA's approval of California regulations requiring automakers in the future to manufacture more electric and fewer gasoline-powered vehicles. 606 U.S. at 104-105. In so

holding, *Diamond* observed that "[t]he fuel producers here might be considered an object of the California regulations," by analogizing to *Pierce* v. *Society of the Sisters*, 268 U.S. 510 (1925), where "a State prohibited parents from sending their children to private schools, [yet, the] affected schools had standing to sue, even though parents were the directly regulated parties." *Diamond*, 606 U.S. at 114-115. That was because, "when a regulation targets the provider of a product or service by limiting another entity's use of that product or service, the targeted provider ordinarily has standing—without the need for much additional analysis." *Id*. at 115.

The parallels here are obvious: Through laws governing shelters and DCYF, Washington impacts parents whose children are directly subject to the laws' effects. App.83a-97a,¶¶84-119. Thus, even though these laws do not regulate parents directly, parents of gender-confused children clearly (at a minimum) "might be considered an object of the [Washington] regulations." *Diamond*, 606 U.S. at 114. See also App.57a (Tung, J., dissenting) ("[A]s the objects of the challenged Washington law, the parents have standing to sue.").

2. As detailed above, the legislative history bears that out. During legislative debates, the laws' proponents frequently framed non-"affirming" parents as the problem the laws were designed to solve, thus giving the parents standing. On the Senate floor, for example, Sponsor Senator 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." Liias Statement, *supra*. Representative Taylor likewise described the bill's purpose as ensuring that the state "must step in" because some children do not get what they need from their parents. Taylor Statement *supra*. Senator Trudeau similarly declared that the bill was for "trans youth" who are "reject[ed] by their family." Trudeau Statement, *supra*. These statements make clear that, as in *Diamond*, parents are the "problem" the laws here target. App.57a (Tung, J., dissenting) (noting that here the challenged law's "object is to 'protect' runaway children with gender dysphoria *from their parents* who might hinder their desired treatment. Those parents are the clear 'targets' of the law"); *Diamond,* 606 U.S. at 116 (observing that "the government might seek to indirectly target a product or service 'through a conduit' in addition to regulating it directly").

And *Diamond* acknowledged as "not without force" the point that "when a regulation targets the provider of a product or service by limiting another entity's use of that product or service, the targeted provider ordinarily has standing—without the need for much additional analysis." *Id*. at 115-116. So too here: Washington's regulations target "non-affirming" parenting (with parenting being a service parents provide to children and the State) by limiting the use of that service by parents. Thus, as the "targeted provider," Petitioners have standing just as the fuel producers did in *Diamond*. See also App.58a (Tung, J., dissenting) ("The panel contravenes Supreme Court *** precedent by failing to properly analyze *** whether the parents are the objects of the

challenged law that would give rise to standing ***. See *** *Diamond Alt. Energy*, 606 U.S. at 114 ("'object' of a government regulation"); *Lujan* [v. *Defenders of Wildlife*], 504 U.S. [555,] 561-62 [(1992)] ("object of the action").").

3. Additionally, the *Diamond* Court determined that, even if a third party isn't itself regulated, "government regulation of a [different party] may be likely to cause injuries to other linked [parties]." 606 U.S. at 116 (cleaned up). Thus, the Court concluded that regulating automobile manufacturers by requiring them to produce fewer gasoline-powered vehicles "may be likely" to injure fuel producers as fewer vehicles need the producers' product. *Id*. at 115-117.

Likewise, here: By requiring shelters and DCYF to bypass parents as to Petitioners' children, the Washington laws injure Petitioners sufficiently to create Article III standing. If anything, the injury here is more direct than in *Diamond* since parents are not downstream from shelters but are in a sense direct "competitors" in providing care for their children.

4. Nor did it matter in *Diamond* that the fuel producers' injuries would not materialize for years and required a series of steps by several parties to produce the injury. It was enough that "[i]nvalidating the regulations likely *(not certainly, but likely)* would make a difference for fuel producers because automakers would likely manufacture more vehicles that run on gasoline and other liquid fuels." *Id*. at 118 (emphasis added).

Hence, it does not matter here, as the Ninth Circuit thought, that "Plaintiffs do not allege that these [concerning] events have transpired, and *** fail to provide 'concrete' details or 'specification of *when*' they might occur." App.22a (citing *Lujan*, 504 U.S. at 564). Those considerations did not matter in *Diamond* and do not control here.

5. Relatedly, *Diamond* relied on "commonsense economic inferences about the operation of the automobile market" to predict a sufficient likelihood of future harm for standing. 606 U.S. at 120. Here too, common-sense inferences about children's behavior can be drawn to the same effect. Any parent knows that children respond to incentives and will continue to seek what they want unless completely (and usually repeatedly) foreclosed from their desire. This is evident when one parent tells a child "No," so the child runs to the other parent with the same request.

And that is what we have here—the law tells children that, if their parents will not allow "gender-affirming services," the state will provide those "services" if a child just shows up at a shelter and requests them. Commonsense in child behavior thus must play a role in the standing analysis, as this Court made clear in *Diamond*—and the panel ignored. App.56a (Tung, J., dissenting) ("[T]he incentive that Washington law has created for gender-dysphoric children to run away to licensed shelters is also enough to confer standing.").

B. The Ninth Circuit's decision conflicts with this Court's and Fifth Circuit precedent on standing when state law interferes with parents' current ability to make critical decisions for their children.

The panel's decision also conflicts with this Court's precedent and at least with the Fifth Circuit in failing to recognize that "the real harm to parents from Washington's legal regime happens long before a child runs away"—because "intentional interference with the parent-child relationship, be it direct or indirect, creates an injury to the fundamental right to parent." App.44a-45a (VanDyke, J., dissenting) (citing *Troxel*, 530 U.S. at 75). See also *Parham* v. *J. R.*, 442 U.S. 584, 610 (1979) ("Pitting the parents and child as adversaries often will be at odds with the presumption that parents act in the best interests of their child."); *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.").

1. As Judge VanDyke pointed out, the panel "fundamentally misunderstood the nature of parental rights by concluding that the plaintiff parents have only alleged 'self-inflicted injuries' in describing how Washington's legal regime has chilled and interfered with their parenting." App.44a. And he noted the conflict not only with this Court, but with the Fifth Circuit in *Deanda* v. *Becerra*, 96 F.4th 750 (5th Cir. 2024). App.45a-57a.

There, a parent sued over funding for programs that provided contraceptives to minors without parental consent. *Deanda*, 96 F.4th at 754-755. The parent argued that funding the offering of contraceptives to his child without his consent transgressed "his constitutional right to direct his children's upbringing." *Id.* at 755. Because the parent never alleged his child had received any contraceptives from the funded programs, nor that his children were at a heightened risk of such, the government defendant argued that the parent lacked standing because he hadn't suffered an injury. *Id.* at 759.

The Fifth Circuit rejected this standing argument, holding that the plaintiff's "parental right[] to notice and consent" was infringed solely by the fact that the challenged programs existed and bypassed parental consent. *Ibid.* In other words, the programs "nullif[ied] [plaintiff's] parental rights" and thus he had standing "because the Secretary [sought] to preempt his *** right to consent to his children's obtaining contraceptives." *Id.* at 759-760.

As Judge VanDyke observed, "*Deanda*'s reasoning maps neatly onto this case" as "[t]here's no reasonable dispute that Washington's legal regime intentionally allows for and encourages minors to seek and obtain gender transition services over the objections of fit parents." App.47a. Further, "[t]here's also no reasonable dispute that fit parents have a constitutional right to make major health decisions on behalf of their minor children." *Ibid.* Thus, the Ninth and Fifth Circuits are now in conflict.

2. This Court's decision in *Mahmoud* v. *Taylor*, 606 U.S. 522 (2025), also highlights the need for granting the petition. *Mahmoud* refused to require parents to take a "wait and see" approach to the infringement of their constitutional rights. *Id.* at 559-560. Likewise, the parents here should not have to wait for the state to take possession of their child and refer the child for "treatments" the parents oppose before the parents can file suit.

Further, the fact that parents in *Mahmoud* would be kept in the dark mattered to the Court because "it is not clear how the [lower court] expects the parents to obtain specific information about" the future injury when the "Board has stated that it will not notify parents" beforehand. *Id.* at 560. Judge Tung echoed this point below: "The parents should not have to wait until their child has run away to a shelter and received life-altering treatment before they are afforded the opportunity to challenge the law—a law whose very object is to prevent the parents from knowing *** of their child's arrival at the shelter and his or her receipt of 'gender-affirming' treatment." App.55a.

3. While it is not clear when or if any of Petitioners' gender-confused children will run away (again), triggering direct application of the challenged laws, they certainly *incentivize* Petitioners' children to do so. App.56a (Tung, J., dissenting) ("[T]he incentive that Washington law has created for gender-dysphoric children to run away to licensed shelters is also enough to confer standing."). That—and the reality that Petitioners must now hamper their parenting due to that incentive, see App.71a-73a—is sufficient to confer standing.

Petitioners must have standing to challenge these laws *before* irreversible harm befalls their children. App.55a (Tung, J., dissenting) ("By that time, it may be too late to rehabilitate (in the parents' view) the damage done to their child."). After all, children rarely give advance notice of their intent to run away.

In sum, as Judge VanDyke put it, "[s]o long as Washington encourages minors to take the plunge into gender transitions without the knowledge (or even over the objection) of fit parents, parents lose their ability to direct the care and upbringing of their children, regardless of whether [the challenged laws'] sword of Damocles ever falls on that particular parent." App.48a.

C. The Ninth Circuit's decision conflicts with this Court's and other circuits' precedent on Article III standing arising from threat of future injury.

The panel's holding that Petitioners lack standing under probabilistic injury doctrine also conflicts with this Court's decision in *Massachusetts* v. *EPA,* 549 U.S. 497 (2007), and with other circuit courts. This Court recognizes that probabilistic harm can satisfy standing's injury-in-fact requirement on a sliding scale, depending on the likelihood and 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." *Id.* at 525 n.23 (cleaned up). Hence, "[e]ven a small probability of injury is sufficient *** provided of course that the relief sought would *** reduce the probability." *Ibid.* (cleaned up).

And 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." *Id.* at 523 (cleaned up). As to what "a significant fraction" means, the Court observed that "global sea levels rose somewhere between 10 and 20 centimeters over the 20th century as a result of global warming." *Id.* at 522. Hence, a permanent loss of 4-8 inches, or a temporary loss of a few feet of coastline were "significant harms." *Id.* at 521-522. Applying this sliding scale, the imminence of these alleged future harms only had to "increase over the course of the next century." *Id.* at 522-523.

The panel here discounted this binding precedent for two reasons. First, it said the probabilistic harm doctrine "does not replace the foundational rule that a future injury must be imminent in order to satisfy the injury-in-fact requirement." App.23a (citation omitted). Second, the panel distinguished *Massachusetts* v. *EPA*'s discussion of drastic injuries allowing a lesser increment of probability for standing because it occurred in the redressability portion of the Court's analysis. App.22a-23a. Both attempted distinctions conflict with that decision, however, and with other circuits.

1. Regarding imminence, *Massachusetts* v. *EPA* did not deal with an imminent injury normally understood: The alleged harm—"a precipitate rise in sea levels"—was predicted to occur only within 93 years ("by the end of the century"). 549 U.S. at 521; see also *id.* at 522-523 (noting the possibility of increased injury "over the course of the next century"). True, this

Court referred to this as an "imminent" injury, but under that definition of imminence, Petitioners more than meet it.

Also, the panel here missed that, under *Massachusetts* v. *EPA*, when "a litigant is vested with a procedural right," that litigant may "assert that right without meeting all the normal standards for *** immediacy." *Id.* at 517-518 (cleaned up). As Petitioners adequately alleged, App.126a-130a,¶¶215-228, they possess the requisite procedural right under the Fourteenth Amendment's Due Process Clause.

Further, requiring a temporally immediate injury rather than allowing that requirement to be satisfied by a combination of probability and severity effectively nullifies the probabilistic harm doctrine: Immediate harm is, by itself, sufficient to satisfy injury in fact; hence (under the panel's reasoning) probabilistic harm adds nothing to the analysis. Just as courts do not interpret statutory language as superfluous, so too courts should not interpret this Court's standing doctrine to be superfluous, as the Ninth Circuit did here.

2. As to the argument that this Court's sliding-scale analysis occurred in its redressability discussion, the panel again misread *Massachusetts* v. *EPA*, ignored logic, and created a conflict with at least five other circuits. True, at one point in *Massachusetts* v. *EPA*, this Court's discussion of "the enormity of the potential consequences" of the probabilistic injury occurs in its redressability analysis. 549 U.S. at 525 & n.23. But this Court also discussed "[t]he severity" of a potential future injury in its injury-in-fact analysis.

Id. at 522-523. This makes sense logically because redressability (and causation) "are usually flip sides of the same coin" with injury in fact. *Diamond,* 606 U.S. at 111 (cleaned up). Evidence for one can prove the other.

Moreover, this Court's adoption of this sliding-scale doctrine—that the more severe the injury, the lower the probability of injury one must show—has been placed under the injury-in-fact analysis in at least five circuits. *Public Citizen, Inc.* v. *National Highway Traffic Safety Admin.*, 489 F.3d 1279, 1296 (D.C. Cir. 2007); *Pisciotta* v. *Old Nat'l Bancorp*, 499 F.3d 629, 634 & n.4 (7th Cir. 2007); *Kerin* v. *Titeflex Corp.,* 770 F.3d 978, 983 (1st Cir. 2014); *Friends of the Earth, Inc.* v. *Gaston Copper Recycling Corp.*, 204 F.3d 149, 160 (4th Cir. 2000) (*en banc*); *Baur* v. *Veneman*, 352 F.3d 625, 637 (2d Cir. 2003). By limiting this sliding-scale doctrine to redressability alone, the panel created a split with these circuits and this Court.

Contrary to the panel's claim, moreover, Plaintiffs are *not* contending that merely "because Plaintiffs may someday be affected by the Statutes, Plaintiffs should have standing to challenge the Statutes now." App.19a. Besides current harms, Plaintiffs articulated numerous specific reasons that they are at substantial risk of suffering additional and even greater future injuries from the challenged laws. App.70a-77a,¶¶11-58, & App.109a-135a (lose ability to refuse harmful treatment for minor children, lose custody of child, lose ability to raise child consistent with their faith, being forced to affirm gender confusion for the state to return one's child, and permanent harm to the parent-child relationship). And those allegations are

sufficient under *Massachusetts* v. *EPA* and its circuit progeny.

D. The Ninth Circuit's decision reflects a deeper confusion and conflict over the proper standard applicable to a motion to dismiss on standing.

The panel's decision also reflects a deeper confusion among the lower courts over the proper pleading standard for Article III standing: How, if at all, does the *Twombly/Iqbal* plausibility standard apply in assessing standing on a motion to dismiss?

For example, the Second Circuit rejected the *Twombly/Iqbal* standard for assessing standing at the motion-to-dismiss stage. That Circuit did so because "plausibility is not at issue at this point, *** we are considering only Article III standing." *Ross* v. *Bank of Am., N.A. (USA)*, 524 F.3d 217, 225 (2d Cir. 2008). Thus, in that Circuit, the requirement that one "'[c]learly alleg[e]" facts demonstrating standing "is a 'low[er] threshold' than that for 'sustaining a valid cause of action.'" *Harry* v. *Total Gas & Power N. Am., Inc.*, 889 F.3d 104, 110 (2d Cir. 2018) (quoting *Ross*, 524 F.3d at 222). Compare Fed.R.Civ.P. 12(b)(1) (subject-matter jurisdictional defect) with Rule 12(b)(6) (pleading defect).

But several circuits disagree. For example, the Seventh Circuit concluded that "the *Twombly-Iqbal* facial plausibility requirement for pleading a claim is incorporated into the standard for pleading subject matter jurisdiction," such as standing. *Silha* v. *ACT, Inc.*, 807 F.3d 169, 174 (7th Cir. 2015) (citation omitted); see also *Román-Oliveras* v. *Puerto Rico Elec.*

Power Auth., 655 F.3d 43, 45 n.3, 49 (1st Cir. 2011); *In re Schering Plough Corp. Intron/Temodar Consumer Class Action,* 678 F.3d 235, 243-244 (3rd Cir. 2012); *Lane* v. *Halliburton,* 529 F.3d 548, 557 (5th Cir. 2008); *Stalley* v. *Catholic Health Initiatives,* 509 F.3d 517, 521 (8th Cir. 2007).

And recently, the Ninth Circuit likewise required that "the complaint's factual allegations of Article III standing [be] found to be adequate under *Iqbal*" for the case to survive a motion to dismiss. *Jones* v. *L.A. Cent. Plaza LLC*, 74 F.4th 1053, 1058 (9th Cir. 2023); but see *Maya* v. *Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011) ("*Twombly* and *Iqbal* are ill-suited to application in the constitutional standing context because in determining whether plaintiff states a claim under 12(b)(6), the court necessarily assesses the merits of plaintiff's case," which is "distinct" from "the threshold question of whether plaintiff has standing.").

To be sure, Petitioners meet either standard. App.51a (VanDyke, J., dissenting) ("Plaintiffs plausibly alleged that they are chilled in carrying out this constitutionally protected duty[.]). But, as Judge Tung suggested below, the confusion over the proper standard may have caused the panel to improperly "construe[] the parents' allegations in the most *disfavorable* light." App.61a. For, as he put it, "[o]nly by drawing inferences in favor of the State (rather than the plaintiffs) could the panel conclude that standing was lacking." *Ibid.* And that contradicts the motion-to-dismiss standard articulated by this Court, see, *e.g., Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175,

181 (2024), which requires that any inferences be drawn in the plaintiff's favor.

By granting the petition, this Court can provide needed general guidance on the proper standard for assessing standing at the motion-to-dismiss stage.

III. This is a Clean Vehicle for Deciding the Question Presented.

There are no countervailing reasons for this Court to deny review as the petition avoids the fact-intensive scenarios often present when addressing standing in the parental-rights context. And it does so for at least two reasons.

First, this case was dismissed at the pleading stage, before any discovery. Thus, to determine whether Petitioners have standing, the Court need only read the challenged laws and the amended complaint, avoiding wading through an extensive record.

Second, as Judge VanDyke noted, "public education is probably the environment where gender ideology most often runs up against parental rights." App.49a. But "that setting presents unique and fact-specific considerations that have made appellate review challenging to obtain," App.49a, "limit[ing] opportunities to squarely address a government's infringement on parental rights surrounding gender ideology." App.50a.

By contrast, "[t]his case presents no such issues." *Ibid*. Here, Petitioners' standing "does not depend on the factual nuances of how a school implements its own informal guidance documents, which are subject

to change at a moment's notice." *Ibid.* Instead, Petitioners "sue to enjoin the operation of several statewide laws that Washington shelters are now obligated to follow." *Ibid.* This case is therefore an especially clean vehicle with which to resolve the standing question that several Justices have now indicated a desire to address.

CONCLUSION

The Ninth Circuit determined that the very objects or targets of the relevant statutes—parents who do not wish to affirm their children's gender confusion—lack standing to challenge those statutes. And it did so despite Petitioners' alleging current injuries to their ability to parent and the risk of catastrophic future injuries to that ability, and despite the requirement that these allegations must be taken as true at the pleading stage. To paraphrase *Hamlet*, "something is rotten" in standing doctrine when parents who are the object of a "gender-transition" law have to wait for the (likely) irreparable injury of their child's actual transition before they can sue. Only this Court can excise the rot.

The petition should be granted.

Respectfully submitted,

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January 13, 2026

APPENDIX

TABLE OF APPENDICES

Appendix A

Case: 24-3661, 07/25/2025, DktEntry: 54.1

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INTERNATIONAL PARTNERS FOR ETHICAL CARE INC; ADVOCATES PROTECTING CHILDREN; PARENT 1A; PARENT 1B; PARENT 2A; PARENT 2B; PARENT 3A; PARENT 3B; PARENT 4A; PARENT 4B; PARENT 5A; PARENT 5B, *Plaintiffs - Appellants*, v. ROBERT FERGUSON, Governor; NICK BROWN, Attorney General of Washington; TANA SENN, Secretary of the Washington Department of Children, Youth, and Families,* *Defendants - Appellees*.	No. 24-3661 D.C. No. 3:23-cv-05736-DGE OPINION

* Pursuant to Fed. R. App. P. 43(c)(2), Robert Ferguson, Nick Brown, and Tana Senn have been automatically substituted for their predecessors—Jay Inslee, Robert Ferguson, and Ross Hunter, respectively.

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, District Judge, Presiding

Argued and Submitted May 15, 2025
San Francisco, California

Filed July 25, 2025

Before: SIDNEY R. THOMAS, MILAN D. SMITH, JR., and DANIEL A. BRESS, Circuit Judges.

Opinion by Judge Milan D. Smith, Jr.

SUMMARY[**]

Article III Standing

The panel affirmed the district court's dismissal, for lack of Article III standing, of an action challenging three Washington laws regulating the rights and privileges of Washington minors seeking access to mental health care and shelter services, particularly minors who are transgender.

The panel held that plaintiffs, two national organizations and five sets of parents whose children have shown signs of gender dysphoria, had not pled current or future injuries sufficient to confer standing.

First, the panel held that the individual plaintiffs lacked standing based on current injuries because the individual plaintiffs' alleged injuries in constraining their ability to parent, forcing them to censor their speech, and limiting their access to relevant

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[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

information about their children are not cognizable under Article III.

Second, the panel held that the individual plaintiffs lacked standing based on future injuries. The panel rejected the individual plaintiffs' suggestion that, because they have minor children who experience gender dysphoria and socially transitioned at school, "one may infer that at least one child is likely to run away in the future" and therefore come within reach of the challenged laws. The panel held that the individual plaintiffs' amorphous and insufficiently explained concerns about "some day" injuries were not enough to satisfy Article III.

Finally, the panel held that the organizational plaintiffs lacked standing. For the same reasons that the individual plaintiffs lacked standing, the panel rejected plaintiffs' argument that International Partners for Ethical Care, Inc. had associational standing based on the alleged injury suffered by one of its members, a Washington parent of a minor child who has struggled with gender dysphoria. Plaintiffs offered no assertion that the other organizational plaintiff had any type of standing.

Accordingly, the panel affirmed the district court's dismissal of plaintiffs' action for lack of standing.

COUNSEL

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OPINION

M. SMITH, Circuit Judge:

Plaintiffs, two national organizations and five sets of Washington parents, bring constitutional challenges against three Washington laws regulating the rights and privileges of Washington minors, particularly minors who are transgender. The district court dismissed Plaintiffs' claims for lack of standing. Plaintiffs timely appeal, contending that they have standing based on present injuries and future injuries that are certainly impending. We conclude, like the

district court, that Plaintiffs have not pled current or future injuries sufficient to confer Article III standing. Because Plaintiffs lack standing until actual or imminent injuries occur, we affirm the district court's dismissal of their action.

LEGAL BACKGROUND

Plaintiffs challenge the constitutionality of three Washington laws: (1) Wash. Rev. Code § 71.34.530, (2) Engrossed Substitute Senate Bill 5599 (ESSB 5599), and (3) Substitute House Bill 1406 (SHB 1406) (collectively, the Statutes). The effect of these laws is summarized briefly here.

I. Wash. Rev. Code § 71.34.530

Enacted in 1985, Wash. Rev. Code § 71.34.530 was passed as part of a comprehensive law "ensur[ing] that minors in need of mental health care and treatment receive appropriate care and treatment." 1985 Wash. Sess. Laws, ch. 354, § 1. It provides that any minor aged 13 and older "may request and receive outpatient treatment without the consent of the adolescent's parent." Wash. Rev. Code § 71.34.530. Outpatient treatment includes non-residential programs offering, *inter alia*, mental and behavioral health care. *Id.* §§ 71.34.020(46), 71.24.025.

Even if children receive outpatient treatment without parental consent, their parents may still access information about their care. For example, Washington law provides that facilities offering mental health services may release medical information and records about a child to that child's parents. *Id.* §§ 70.02.240(3), 71.34.430. Nevertheless,

"[w]hen an adolescent voluntarily consents to his or her own mental health treatment under . . . [§] 71.34.530, a mental health professional shall not proactively exercise his or her discretion . . . to release information or records related to solely mental health services received by the adolescent to a parent of the adolescent, beyond any notification required under [Washington law], unless the adolescent states a clear desire to do so[.]" *Id.* § 70.02.265(1)(a).

II. ESSB 5599

Enacted in 2023, ESSB 5599 approved a set of amendments to Wash. Rev. Code § 13.32A.082. 2023 Wash. Legis. Serv., ch. 408, § 2 (West). That law, which was enacted in 1995, sets forth a system of notification requirements that apply when a licensed youth shelter "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." Wash. Rev. Code § 13.32A.082(1)(b)(i).[1] Upon admitting such a child, the shelter "must contact the youth's parent within 72 hours, but preferably within 24 hours." *Id.*[2] However, in the presence of "compelling reasons," including any "[c]ircumstances that indicate that notifying the parent or legal guardian will subject the minor to

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[1] Wash. Rev. Code § 13.32A.082 also contains separate provisions that apply to people, unlicensed shelters, and other programs that take in runaway children. *See* Wash. Rev. Code § 13.32A.082(1)(a). Those provisions are not at issue here.

[2] This 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." Wash. Rev. Code § 13.32A.082(1)(b)(i).

abuse or neglect," the shelter may forego contacting the child's parents and contact the Washington Department of Children, Youth, and Families (DCYF) instead. *Id.* § 13.32A.082(1)(b)(i), (2)(c)(i). Upon contact, DCYF must "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 . . . and accomplish a reunification of the family." *Id.* § 13.32A.082(3)(a).

ESSB 5599 adds to this framework by creating a notification pathway that is specific to youth "seeking or receiving protected health care services," including "gender-affirming treatment" and "reproductive health care services." *Id.* § 13.32A.082(2)(c)(ii), (2)(d).[3] Under the existing framework set forth in Wash. Rev. Code § 13.32A.082, licensed shelters that took in such children were obligated to notify their parents so long as doing so would not "subject the minor to abuse or neglect." *Id.* § 13.32A.082(2)(c)(i). ESSB 5599 modifies this framework by providing that the fact of a child's "seeking or receiving protected health care services" creates an additional instance in which the shelter's obligation to notify the child's parents is voided. *Id.* § 13.32A.082(2)(c)(ii). In these situations, as when the shelter fears potential abuse or neglect by the child's

[3] Washington law defines "gender-affirming treatment" 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). It defines "reproductive health care services" as "any medical services or treatments, including pharmaceutical and preventive care service or treatments, directly involved in the reproductive system and its processes, functions, and organs involved in reproduction, in all stages of life." *Id.* § 74.09.875(4)(c).

parents, the shelter may again forego contacting the child's parents and contact DCYF instead. *Id.* § 13.32A.082(1)(b)(i), (2)(c)(ii)

As in a case involving potential abuse or neglect, a licensed shelter's report to DCYF will again trigger DCYF's good-faith obligation "to notify the parent that a report has been received and offer services to the youth and the family designed to resolve the conflict . . . and accomplish a reunification of the family." *Id.* § 13.32A.082(3)(a). ESSB 5599 further specifies that, if a licensed shelter notifies DCYF that it has taken in a minor seeking or receiving "protected health care services," DCYF must specifically offer two types of services. First, DCYF must "[o]ffer to make referrals on behalf of the minor for appropriate behavioral health services." *Id.* § 13.32A.082(3)(b)(i). Second, DCYF must "[o]ffer services designed to resolve the conflict and accomplish a reunification of the family." *Id.* § 13.32A.082(3)(b)(ii).

III. SHB 1406

Enacted during the same session as ESSB 5599, SHB 1406 implements two additional revisions to the framework set forth in Wash. Rev. Code § 13.32A.082. 2023 Wash. Legis. Serv., ch. 151, § 2 (West). First, it creates additional rules concerning DCYF's good-faith obligation to notify a child's parents and offer services after receiving a report of a runaway child. Wash. Rev. Code § 13.32A.082(3)(a). Specifically, in addition to "notify[ing] the parent that a report has been received," *id.*, DCYF must offer "family reconciliation services," *id.*, which are "services . . . designed to assess and stabilize the family with the goal of

resolving crisis and building supports, skills, and connection to community networks and resources," *id.* § 13.32A.030(11). DCYF must offer these services "as soon as possible, but no later than three days, excluding weekends and holidays, following the receipt of a report." *Id.* § 13.32A.082(3)(a).

Second, SHB 1406 expressly recognizes a pathway for qualifying minors to stay in a licensed shelter for up to 90 days without parental permission. *See id.* § 13.32A.082(1)(b)(i). This pathway is only available in two situations: (1) if the shelter "is unable to make contact with a parent despite their notification efforts" to the parent or DCYF, *id.* § 13.32A.082(1)(b)(i)(A), or (2) if the shelter "makes contact with a parent, but the parent does not request that the child return home," *id.* § 13.32A.082(1)(b)(i)(B). In either scenario, the shelter must re-contact DCYF, which again must offer reconciliation services to the family. *Id.* § 13.32A.082(3).

FACTUAL BACKGROUND

Plaintiffs are two organizations and five sets of parents that have challenged the Statutes as unconstitutional. The organizations—International Partners for Ethical Care, Inc. (IPEC) and Advocates Protecting Children (APC) (collectively, the Organizational Plaintiffs)—are national nonprofits that share a commitment to "stop[ping] the unethical treatment of children by schools, hospitals, and mental and medical healthcare providers under the duplicitous banner of gender identity affirmation." The parents—1A and 1B, 2A and 2B, 3A and 3B, 4A

and 4B, and 5A and 5B (collectively, the Individual Plaintiffs[4])—are residents or citizens of Washington whose children have shown signs of gender dysphoria.[5]Their experiences are summarized briefly here.[6]

Parents 1A and 1B have a 14-year-old child, 1C, who has shown signs of gender dysphoria. After 1C underwent a social transition at school, 1A and 1B sought treatment for 1C and removed 1C from school. These actions caused 1C's "gender confusion [to] ease[] some." Yet 1A and 1B remain "concerned" that 1C will again seek to "adopt a gender identi[t]y inconsistent with [1C's] biological sex." They "fear" that 1C may seek to take advantage of the framework set forth in the Statutes and worry that "[i]f 1C were to run away, the [Statutes] would greatly harm [their] ability to care for and raise" 1C. This concern has made 1A "hesitant to discipline 1C for fear it will cause a rift that others might take advantage of."

Parents 2A and 2B have two children—an 18-year-old, 2C, and a 13-year-old, 2D—who have shown signs of gender dysphoria. 2C, who has accused 2A and

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[4] Due to the sensitivity of the Individual Plaintiffs' experiences and claims, the district court granted their motion to proceed using pseudonyms.

[5] 4A and 4B are the only Individual Plaintiffs whose children have not shown signs of gender dysphoria. Presumably for this reason, Plaintiffs do not pursue the claims of 4A and 4B on appeal. We follow Plaintiffs' lead in focusing on the claims of the other Individual Plaintiffs.

[6] This section is based on the allegations in the First Amended Complaint (FAC). Because the procedural posture is that of a motion to dismiss, the allegations in the FAC are accepted as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2008).

2B of being "transphobic," has threatened to take 2D, who underwent a social transition at school, to a "safe place" where 2D's pronouns would be respected. This causes 2A and 2B to become fearful every time 2D leaves their home with 2C. To avoid exacerbating tensions with their children, 2A and 2B have begun to avoid talking about gender around 2C and 2D, and 2A has also ceased using 2D's name or pronouns in public settings. 2A and 2B worry that, "should [2D] run away to a shelter," their parental rights would be limited.

Parents 3A and 3B have a 14-year-old child, 3C, who is autistic and has shown signs of gender dysphoria. 3C has "experiment[ed] with a new name and . . . pronouns with friends and at school," and is "frequently ambivalent about . . . gender." When 3C's older brother experienced similar signs of gender confusion, "a friend's family encouraged [him] to run away and live with them." 3A and 3B fear that 3C may similarly be encouraged to run away and worry that, if 3C does, the Statutes will "force[] [them] to accept 'gender-affirming treatment' for" 3C.

Finally, Parents 5A and 5B have a 15-year-old child, 5C, who has shown signs of gender dysphoria. 5C's symptoms came on "rapid[ly]" at age 12, and 5C later underwent a social transition at school without 5A and 5B's knowledge. 5C continues to identify as "transgender" at school and has "had conversations with numerous therapists and behavioral health specialists about gender identity and 'transitioning.'" Because 5C ran away from home once at age 13, and because 5C has since had "hospitalizations" about which 5A and 5B have limited information, 5A and 5B

worry that 5C will run away again and will rely on the Statutes to seek gender-affirming care.

PROCEDURAL BACKGROUND

Plaintiffs first filed suit in August 2023, challenging ESSB 5599 on a facial basis. Their complaint named as defendants former Washington Governor Jay Inslee, former Washington Attorney General Robert Ferguson, and DCYF Secretary Ross Hunter, all in their official capacities (collectively, the State). The State moved to dismiss for lack of standing, and Plaintiffs responded by amending their complaint as of right pursuant to Fed. R. Civ. P. 15(a)(1)(B). Their First Amended Complaint (FAC) added a new set of parents—Parents 5A and 5B—and new challenges to SHB 1406 and Wash. Rev. Code § 71.34.530. The FAC asserts claims under the Due Process Clause, the Free Exercise Clause, and the Free Speech Clause.

In December 2023, Defendants again moved to dismiss for lack of standing. This time, Plaintiffs did not seek to amend the FAC, and the district court proceeded to evaluate the merits of the motion. It found that Plaintiffs' alleged harms were based on a "speculative chain of possibilities." The district court thus held that the Individual Plaintiffs had not suffered concrete injuries sufficient to confer standing. The district court similarly concluded that the Organizational Plaintiffs had not sufficiently alleged organizational standing. The district court dismissed the action with prejudice for lack of standing and entered final judgment.

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction pursuant to 28 U.S.C. § 1291. *Meland v. Weber*, 2 F.4th 838, 843 (9th Cir. 2021). "We review questions of standing de novo," *Tyler v. Cuomo*, 236 F.3d 1124, 1131 (9th Cir. 2000), construing "all material allegations of fact in the complaint in favor of the plaintiff," *Southcentral Found. v. Alaska Native Tribal Health Consortium*, 983 F.3d 411, 416–17 (9th Cir. 2020).

ANALYSIS

The sole question we must resolve on appeal is whether Plaintiffs have standing to bring their claims. To establish Article III standing, a plaintiff must show that he has suffered or will imminently suffer an injury in fact, i.e., "an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not "conjectural" or "hypothetical."'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). A plaintiff must further demonstrate causation and redressability by showing "that the injury likely was caused or will be caused by the defendant, and . . . that the injury likely would be redressed by the requested judicial relief." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 368, 380 (2024).

The district court dismissed Plaintiffs' claims for lack of standing, specifically concluding that Plaintiffs had not demonstrated a cognizable injury in fact. Plaintiffs contest this conclusion, arguing that they can demonstrate three independent and legally sufficient types of injuries. First, Plaintiffs contend

that some or all of the Individual Plaintiffs are suffering current injuries. Second, Plaintiffs contend that some or all of the Individual Plaintiffs are likely to suffer future injuries that are certainly impending. Finally, Plaintiffs contend that IPEC, one of the Organizational Plaintiffs, has associational standing based on the claims of its member. For the following reasons, we conclude that Plaintiffs are unable to muster standing under any of these theories.

I. The Individual Plaintiffs Lack Standing Based on Current Injuries.

Plaintiffs first contend that some or all of the Individual Plaintiffs have standing based on current injuries. They point to three types of injuries: constraints on their ability to parent, censored speech, and restrictions on access to information about their children. The State responds that these injuries are not cognizable under Article III. Construing the allegations in the FAC in favor of Plaintiffs, *Pennell v. City of San Jose*, 485 U.S. 1, 7 (1988), we agree with the State that Plaintiffs' alleged injuries are not cognizable.

a. Constraints on Parenting

Plaintiffs first argue that the Statutes have injured the Individual Plaintiffs by forcing them to alter their parenting styles. This injury is most pertinent to Parents 1A and 1B. Fearing that their child, 1C, may run away to seek gender-affirming care, 1A and 1B are "hesitant to discipline 1C" because they do not wish to give 1C any reason to leave home. This tension further leaves 1A "uncomfortable every time she has a disagreement with 1C." Plaintiffs argue that

these types of parenting-related difficulties are practical injuries that the Individual Plaintiffs have suffered due to the Statutes.

These injuries are not sufficient to confer standing. As noted, Article III standing requires that a plaintiff present an "actual or imminent" injury that is fairly traceable to the defendant's conduct. *Lujan*, 504 U.S. at 560 (quoting *Whitmore*, 495 U.S. at 155). As a corollary, a plaintiff "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013). Stated another way, "[n]o [plaintiff] can be heard to complain about damage inflicted by its own hand." *Pennsylvania v. New Jersey*, 426 U.S. 660, 664 (1976) (per curiam); *see also Nat'l Family Plan. & Reprod. Health Ass'n v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006) ("We have consistently held that self-inflicted harm doesn't satisfy the basic requirements for standing. Such harm does not amount to an 'injury' cognizable under Article III."); *Iten v. Los Angeles*, 81 F.4th 979, 990 n.1 (9th Cir. 2023).

Damages "inflicted by [their] own hand" are precisely what Plaintiffs offer here. *Pennsylvania*, 426 U.S. at 664. Critically, Plaintiffs do not allege that their or their children's behavior has yet brought them within reach of the Statutes. Instead, they allege only that the looming "threat" imposed by the Statutes has led them to alter their parenting styles so that the Statutes cannot affect them. Such injuries are self-inflicted because they are the result of "voluntary" actions that Plaintiffs have taken "in response to" the

Statutes—not because of any actual requirement that the Statutes impose. *See Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1176 (9th Cir. 2022) (finding that the plaintiff lacked standing because the only injuries it suffered were voluntarily "taken in response to" the challenged action); *see also Maryland v. Louisiana*, 451 U.S. 725, 742 n.18 (1981) (affirming that standing does not arise from an "injury [that] was voluntarily suffered"). As a result, Plaintiffs' alleged injuries do not give rise to standing. *Lujan*, 504 U.S. at 560.

b. Censored Speech

Plaintiffs next argue that the Statutes have injured the Individual Plaintiffs by forcing them to censor their speech. This injury is most pertinent to Parents 2A and 2B. Fearing that their children may run away if angered or confronted about their gender dysphoria, 2A and 2B have stopped talking about gender with or in front of their children. Similarly, 2A no longer uses 2D's given name or pronouns in public settings in order to avoid upsetting 2D. In these ways, 2A and 2B have "suppress[ed] [their] own speech in an effort to avoid the consequences of the challenged provisions."

Self-censorship may give rise to standing when it is based on "an actual and well-founded fear that the law will be enforced against [the plaintiff]." *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988); *see also Clapper*, 568 U.S. at 417–18; *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972). However, "such a fear of prosecution will only inure if the plaintiff's intended speech arguably falls within the statute's reach." *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1095

(9th Cir. 2003); *Ariz. Right to Life Pol. Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003); *Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965).

Plaintiffs cannot make this showing with respect to the Statutes because the Statutes do not regulate speech: They set forth rules and systems pertaining to the rights and privileges of Washington minors, and they have no bearing on whether and to what extent Plaintiffs are permitted to speak about topics, such as gender, with or around their children. This distinction separates Plaintiffs from those individuals that have been permitted to "hold [their] tongue[s] and challenge now." *Ariz. Right to Life*, 320 F.3d at 1006. Whereas those individuals sought to challenge regulations under which they would suffer likely prosecution, Plaintiffs cannot "reasonably fear[] prosecution under [the Statutes] for engaging in protected speech" because the Statutes do not regulate or prosecute speech. *Id. at* 1007. As a result, Plaintiffs lack "an actual and well-founded fear that [the Statutes] will be enforced against [them]," and they have accordingly not "suffered the constitutionally recognized injury of self-censorship." *Cal. Pro-Life Council*, 328 F.3d at 1095 (quoting *Virginia*, 484 U.S. at 393); *see Clapper*, 568 U.S. at 417–18.

c. Limited Access to Information

Plaintiffs finally argue that the Statutes have injured the Individual Plaintiffs by limiting their access to relevant information about their children. Plaintiffs focus on two specific harms that are alleged in the FAC.

The first alleged harm concerns efforts by the schools of Plaintiffs' children to facilitate social transitions or provide gender-related counseling without notice to parents. For example, 1C's school helped 1C to "socially 'transition'" 1C without providing prior notice to 1A and 1B. 5C's school, similarly, did not consult 5A and 5B before providing 5C with a "school counselor" to discuss transitioning. Plaintiffs argue that these schools' refusal to seek consent or provide up-to-date information relating to their children's gender has "undermine[d] [their] ability to raise their children," thereby imposing injury. But as alleged in the FAC, these incidents bear no relation to the Statutes, which do not regulate the conduct of public schools. As a result, these incidents are neither "fairly traceable to [the State's] allegedly unlawful conduct [nor] likely to be redressed by [Plaintiffs'] requested relief"—a declaration that the Statutes are unconstitutional and an injunction preventing their enforcement. *Allen v. Wright*, 468 U.S. 737, 751 (1984). These gaps are fatal to standing. *See id.*

Plaintiffs also point to the fact, as alleged in the FAC, that 5C has had "hospitalizations, but has refused to talk to 5A and 5B about the details." Plaintiffs assert that 5C was permitted to "ke[ep] [5A and 5B] in the dark" due to Wash. Rev. Code § 71.34.530, the law that authorizes minors to receive outpatient mental health treatment without parental approval. But Wash. Rev. Code § 71.34.530 does not regulate parental access to medical records, and other provisions that do, such as Wash. Rev. Code § 70.02.240, are not challenged in the FAC. Further,

the FAC lacks allegations connecting 5A and 5B's alleged injury to this statutory framework. Notably, it does not allege that 5C's hospitalizations were for outpatient mental or behavioral health treatment, that 5A and 5B declined to authorize that treatment, or that 5A and 5B sought information from 5C's medical providers. *See* Wash. Rev. Code § 71.34.530. Without those allegations, the FAC fails to tie 5A and 5C's alleged injury to any of the challenged provisions of Washington law.

II. The Individual Plaintiffs Lack Standing Based on Future Injuries.

Plaintiffs further contend that even if the Individual Plaintiffs have not suffered cognizable current injuries, they still have standing to sue based on their likelihood of being injured in the future. This argument turns on the factual circumstances presented by the Individual Plaintiffs. Plaintiffs suggest that, because they have minor children who experience gender dysphoria and socially transitioned at school, "one may infer that at least one child is likely to run away in the future" and therefore come within reach of the Statutes.

Plaintiffs' argument distills to the suggestion that, because Plaintiffs may someday be affected by the Statutes, Plaintiffs should have standing to challenge the Statutes now. A similar argument was put forward in *Lujan*. There, environmental organizations sought to challenge a regulation that limited the geographic scope of the Endangered Species Act's consultation requirements. *Lujan*, 504 U.S. at 557–58. The organizations conceded that they

were not directly subject to the regulation, but they insisted that it would harm their members through a tenuous casual pathway: Because "the lack of consultation . . . [would] 'increas[e] the rate of extinction of endangered and threatened species,'" members of the organizations who "inten[ded]" to travel the world and appreciate animal diversity would someday be "deprived of the opportunity to observe animals of the endangered species" that the regulation adversely affected. *Id.* at 562–64.

The Supreme Court rejected this attempt to contrive a future injury. It explained that, in the absence of a present injury, plaintiffs may satisfy standing by showing that they face a future injury that is "imminent," or "*certainly* impending." *Id.* at 561, 564 n.2 (quoting *Whitmore*, 495 U.S. at 158). But it found that the "imminence" requirement "ha[d] been stretched beyond the breaking point" in the case of the organizational plaintiffs because they "allege[d] only an injury at some indefinite future time, and the acts necessary to make the injury happen [we]re at least partly within the [organizations'] own control." *Id.* at 564 n.2. The Court noted, for example, that standing would require the organizations to show "not only that listed species were in fact being threatened by funded activities abroad, but also that one or more of [the] members would thereby be 'directly' affected[.]" *Id.* at 563 (quoting *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972)). In the absence of that showing, the Court held that the organizations' "'some day' intentions—without any description of concrete plans, or indeed even any specification of *when* the some day w[ould] be—d[id] not support a finding of the 'actual or

imminent' injury that [Article III] require[s]." *Id.* at 564.

Plaintiffs' situation is analogous. They contend that, "[g]iven that there are at least four gender-dysphoric minors represented by the parent Plaintiffs," "there is a credible likelihood that at least one of the parent Plaintiffs' children will run away to a shelter and thus trigger the [Statutes]." But as the district court found, Plaintiffs' claims rely on an enormity of "ifs" and "shoulds," without any detail or explanation as to when or why these contingencies might occur. For example, 3A and 3B worry that "[i]f 3C were to run away and receive counseling to affirm a 'transgender identity,' or receive medical 'treatment' to . . . look more like" the opposite sex, they would fall within the reach of the Statutes and be adversely impacted. But Plaintiffs present no allegation that 3C is transgender, has sought gender-affirming treatment, or has expressed an interest in running away. In the absence of those details, like the plaintiff organizations in *Lujan*, Plaintiffs' amorphous and insufficiently explained concerns about "some day" injuries are "simply not enough" to satisfy Article III. *See id.*

Plaintiffs' attempt to demonstrate future injury is made more difficult by the complicated and specific pathway that is necessary to trigger the Statutes. In *Lujan*, for example, the Court found that the organizational plaintiffs would come into contact with the challenged regulations if two events occurred: (1) the regulations threatened endangered species, and (2) that threat directly affected organizational members. *Id.* at 563. Here, by contrast, Plaintiffs will

come into contact with the Statutes only if a more convoluted series of events transpires: (1) one of the Individual Plaintiffs' minor children (2) runs away (3) to a licensed shelter (4) while actively seeking or receiving gender-affirming care, resulting in (5) the shelter taking in the child (6) despite knowing that the minor is there without parental permission. *See* Wash. Rev. Code § 13.32A.082(1)(b)(i). Plaintiffs do not allege that these events have transpired, and they fail to provide "concrete" details or "specification of *when*" they might occur. *Lujan*, 504 U.S. at 564.[7] Thus, considered in light of the complex statutory scheme they challenge, Plaintiffs' basic "[a]llegations of *possible* future injury" are especially insufficient. *Clapper*, 568 U.S. at 409 (alteration in original) (quoting *Whitmore*, 495 U.S. at 158).

Plaintiffs attempt to counter this result with three different arguments, but none is persuasive. They first argue that, even if their prospect of future injury remains uncertain, the Statutes have already harmed them by increasing the likelihood that they will suffer some injury in the future. Relying on the

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[7] The closest Plaintiffs come is their allegation that 5A and 5B's child, 5C, once "ran away from home" at age 13. But Plaintiffs make no claim that 5C ran away to a licensed shelter, did so without parental permission, or is seeking or receiving gender-affirming care. *See* Wash. Rev. Code § 13.32A.082(1)(b)(i). In any event, the allegation that 5C ran away once is not sufficient to suggest that 5C will do so again in the future. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983) ("That Lyons may have been illegally choked by the police . . . does nothing to establish a real and immediate threat that he would again be stopped . . . by an officer or officers who would illegally choke him into unconsciousness[.]").

concept of a "probabilistic harm"—the idea that "[e]ven a small probability of injury is sufficient to create a case or controversy"—Plaintiffs assert that they have demonstrated a sufficient probability of harm to satisfy standing here. *Massachusetts v. EPA*, 549 U.S. 497, 525 n.23 (2007) (quoting *Village of Elk Grove Village v. Evans*, 997 F.3d 328, 329 (7th Cir. 1993)).

We agree that, in light of the "probabilistic" nature of the injury-in-fact requirement, *Cent. Delta Water Agency v. United States*, 306 F.3d 938, 948 (9th Cir. 2002) (quoting *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 160 (4th Cir. 2000) (en banc)), "increased . . . risk of future harm" may be sufficient to confer standing, *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1143 (9th Cir. 2010). *See Covington v. Jefferson Cnty.*, 358 F.3d 626, 638 n.15 (9th Cir. 2004). But Plaintiffs misstate the implications of this principle. Although probabilistic harm can create standing, it does not replace the foundational rule that a future injury must be imminent in order to satisfy the injury-in-fact requirement. *Lujan*, 504 U.S. at 564 n.2. The notion of probabilistic harm merely recognizes that a plaintiff may reach that bar by showing that his likelihood of harm has significantly increased, bringing his potential for injury from certainly imaginable to "certainly impending." *Clapper*, 568 U.S. at 414; *see, e.g.*, *Krottner*, 628 F.3d at 1143 (plaintiffs' "increased [] risk of future harm" created a "credible threat of real and immediate harm" that was sufficient to create standing); *Covington*, 358 F.3d at 641 (same); *Nat. Res. Def. Council v. U.S. EPA*, 735 F.3d 873, 878–79

(9th Cir. 2013) (same); *Harris v. Bd. of Supervisors*, 366 F.3d 754, 762 (9th Cir. 2004) (same). For the aforementioned reasons, Plaintiffs have not made that showing here.

Plaintiffs also argue that they need not demonstrate a high likelihood of impending injury because the potential injuries they face are "drastic." In support of this argument, Plaintiffs quote *Massachusetts* for the proposition that "[t]he more drastic the injury that government action makes more likely, the lesser the increment in probability to establish standing." 549 U.S. at 525 n.23 (quoting *Mountain States Legal Found. v. Glickman*, 92 F.3d 1228, 1234 (D.C. Cir. 1996)). Yet Plaintiffs miscast the context of this comment, which arose in a discussion about the redressability requirement, not the injury-in-fact requirement. Specifically, in *Massachusetts*, the defendant agency had argued that the plaintiff states could not demonstrate redressability because the regulation they challenged "contribute[d] so insignificantly to [their] injuries that the Agency [could] not be haled into federal court to answer for them." *Id.* at 523. The Supreme Court relied on the severity of the states' injuries only in rejecting this specific argument. *Id.* It reasoned that, although vacating the regulation might not fully redress the states' injuries, the "potential consequences" it presented were so drastic that it was worth litigating the issue. *Id.* at 525 & n.3. That principle has no bearing on the question here—whether Plaintiffs have demonstrated an adequate injury in fact based on future injuries.

Plaintiffs finally attempt an analogy to pre-enforcement standing injuries, but this argument is also unavailing. Article III standing in the pre-enforcement context arises when an individual is subject to a credible threat of government action. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). When the threatened enforcement is sufficiently imminent, "an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Id.* But Plaintiffs concede that this concept is not directly applicable here. Moreover, standing in pre-enforcement cases still requires "circumstances that render the threatened enforcement sufficiently imminent." *Id.* at 159; *see also Clark v. City of Seattle*, 899 F.3d 802, 813 (9th Cir. 2018). Because Plaintiffs have not demonstrated that their injuries are imminent, their self-described "analog[y]" to pre-enforcement cases does not help their cause.

III. The Organizational Plaintiffs Lack Standing.

In the alternative, Plaintiffs argue that IPEC, one of the two Organizational Plaintiff, has standing to pursue its claims. Plaintiffs specifically contend that IPEC has associational standing because it has one member who is a Washington resident with custody of a gender-dysphoric minor. Plaintiffs do not contend that IPEC has organizational standing on its own behalf, and they offer no assertion that APC, the other Organizational Plaintiff, has any type of standing.

Associational standing is a form of derivative standing that allows an organization to bring suit on

behalf of its members. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 342–43 (1977). An organization has associational standing to bring suit (1) "when its members would otherwise have standing to sue in their own right," (2) "the interests at stake are germane to the organization's purpose," and (3) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000); *see also Ecological Rts. Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1147 (9th Cir. 2000).

IPEC does not satisfy this standard. As noted, IPEC claims standing based on the alleged injury suffered by one of its members, who is "a Washington parent with custody of a minor child who has struggled with gender dysphoria." But this individual IPEC member lacks standing for the same reasons as the Individual Plaintiffs: He or she has not suffered a cognizable current injury, and the FAC fails to offer allegations showing that a future injury is certainly impending. Therefore, because IPEC has not demonstrated that its individual members have standing to sue, its claim to associational standing fails at the first step. *See Friends of the Earth*, 528 U.S. at 181; *see, e.g.*, *Wilderness Soc., Inc. v. Rey*, 622 F.3d 1251, 1255–57 (9th Cir. 2010) (finding an organization lacked associational standing where its member had not demonstrated a sufficiently specific injury in fact).

CONCLUSION

For the foregoing reasons, we conclude that Plaintiffs have not demonstrated standing to bring

their claims. Because none of the Individual Plaintiffs has alleged a cognizable injury that is presently being suffered, Plaintiffs lack standing on the basis of current injuries. Further, because none of the Individual Plaintiffs has alleged sufficient facts to make out a clearly impending injury, Plaintiffs also lack standing on the basis of future injuries. IPEC lacks associational standing for the same reasons. As a result, we agree with the district court that Plaintiffs have failed to demonstrate standing under Article III, and we affirm the dismissal of their action.

AFFIRMED.

Appendix B

Case 3:23-cv-05736-DGE Document 50
Filed 05/15/24

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

INTERNATIONAL PARTNERS FOR ETHICAL CARE, INC., et al., Plaintiffs, v. JAY INSLEE, Governor of Washington, et al., Defendants.	CASE NO. 23-05736 DGE-RJB ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint (Dkt. 37). The Court has considered the documents filed in support of, and in opposition to, the motion, and the contents of the file.

The Washington State Legislature passed those laws that are of interest here: ESSB 5599, SHB 1406 and RCW 71.34.530. Plaintiffs disagree with those laws, as is their right. Plaintiffs' attempt to develop this lawsuit into a mechanism to attack those laws and declare them void, however, fails for lack of standing.

To have standing to prosecute such claims, Plaintiffs - Plaintiff parents, International Partners

for Ethical Care, Inc. ("IPEC"), and Advocates Protecting Children ("APC") - must establish Article III standing.

To establish Article III standing, Plaintiff parents must plead an injury that is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). Plaintiff parents do not make such a showing. (*See* Dkt. 37 at 6-10 for a listing of Plaintiffs' allegations.) 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, which is insufficient to confer standing. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992).

Plaintiffs IPEC and APC must make a showing of "associational" standing or "organizational" standing. "An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). An organization has standing on its own behalf if it can show: (1) that the defendant's actions have frustrated its mission; and (2) that it has spent resources counteracting that frustration. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013). An organization cannot manufacture an injury by

incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all. *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010). Plaintiffs IPEC and APC have not pled facts to justify a finding of associational or organizational standing.

In analyzing standing issues in this case, it is interesting to note that, in the prayer of Plaintiffs' Amended Complaint (Dkt. 34 at 64-67), Plaintiffs couched the harm suffered as "threatened" in paragraphs 1, 2, 3, 4, 5, 6, and 7. The Plaintiffs' "speculative chain of possibilities" does not establish that injury based on these potential generalized threats is "certainly impending." *Clapper* at 414. The Plaintiffs' "threats" alone do not show standing.

Couching Plaintiffs' claims in terms of the United States Constitution (Due Process, Free Exercise Clause, Free Speech, Vagueness, etc.) does not create standing when it is not adequately pled. References to the Constitution do not show standing here.

Plaintiffs' pleadings have not alleged facts showing standing to sue, and on that basis, Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint (Dkt. 37) should be **GRANTED** under Fed. R. Civ. P. 12(b)(1) and (6).

Further, the Plaintiffs, in response to the Defendants' first motion to dismiss, filed an Amended Complaint, which was the operative complaint for purposes of this motion. Dkt. 34 and 46. The Plaintiffs again have failed to articulate sufficient grounds to establish Article III standing. Accordingly, dismissal

of this case should be with prejudice and without leave to amend because further amendment would be futile. *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1039 (9th Cir. 2002) (holding that amendment would be futile so that there was no need to prolong the litigation by permitting further amendment).

IT IS SO ORDERED. This case is hereby **DISMISSED WITH PREJUDICE**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 15th day of May, 2024.

/s/
ROBERT J. BRYAN
United States District Judge

Appendix C

Case: 24-3661, 12/05/2025, DktEntry: 64.1

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INTERNATIONAL PARTNERS FOR ETHICAL CARE INC; ADVOCATES PROTECTING CHILDREN; PARENT 1A; PARENT 1B; PARENT 2A; PARENT 2B; PARENT 3A; PARENT 3B; PARENT 4A; PARENT 4B; PARENT 5A; PARENT 5B, *Plaintiffs - Appellants*, v. ROBERT FERGUSON, Governor; NICK BROWN, Attorney General of Washington; TANA SENN, Secretary of the Washington Department of Children, Youth, and Families, *Defendants - Appellees*.	No. 24-3661 D.C. No. 3:23-cv-05736-DGE ORDER

Filed December 5, 2025

Before: Sidney R. Thomas, Milan D. Smith, Jr., and Daniel A. Bress, Circuit Judges.

SUMMARY*

Article III Standing

The panel denied a petition for panel rehearing and a petition for rehearing en banc in a case in which the panel affirmed the district court's dismissal, for lack of Article III standing, of a challenge to three Washington laws regulating the rights and privileges of Washington minors seeking access to mental health care and shelter services, particularly minors who are transgender.

Dissenting from the denial of rehearing en banc, Judge VanDyke, joined by Judge Bumatay, stated that Washington's legal regime governing the treatment of gender dysphoria infringes on the plaintiff parents' right to direct the care and upbringing of their children. Plaintiffs plausibly allege an unconstitutional interference with their fundamental right to parent, and the panel's decision to the contrary narrows the parental right unjustly—creating a clean split with the Fifth Circuit in the process.

Dissenting from the denial of rehearing en banc, Judge Tung, joined by Judges Bumatay and VanDyke, stated that the facts, as alleged in the complaint, should have been more than enough to establish

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

standing. The parents alleged that Washington law poses a substantial risk of harm to their ability to direct the upbringing of their children and that the law violates their constitutional rights. In concluding that the parents' allegations were insufficient to state an injury-in-fact, the panel runs afoul of Supreme Court and Ninth Circuit jurisprudence governing standing, improperly construes the parents' complaint in the light most disfavorable to them, and is inconsistent with the holdings of other circuits.

ORDER

The panel voted to deny the petition for panel rehearing. Judge M. Smith and Judge Bress voted to deny the petition for rehearing en banc, and Judge S.R. Thomas so recommended.

The full court was advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 40. The petition for panel rehearing and the petition for rehearing en banc are **DENIED.**

VANDYKE, Circuit Judge, joined by BUMATAY, Circuit Judge, dissenting from the denial of rehearing en banc:

Time and again, the Supreme Court has reminded lower courts that "the interest of parents in the care, custody, and control of their children" sits among "the oldest of the fundamental liberty interests" recognized in our Nation. *Troxel v. Granville*, 530 U.S. 57, 65

(2000) (plurality op.). Wherever the outer bounds of that right may lie, the Supreme Court has not been shy in insisting that "the state can neither supply nor hinder" the "cardinal" role of fit parents in "the custody, care and nurture of the child." *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). This case teaches that apparently the state can, so long as it keeps parents in the dark about what it's doing.

Washington's legal regime governing gender-confused children now empowers its state-run shelters to hide minors from parents and to encourage them to travel further down the path of gender ideology—all while hiding from fit parents what the state or other actors do in those shelters. That odious framework inverts the age-old, common-sense principle that parents—not the state and certainly not the child—hold primacy over the parent–child relationship.

The panel opinion doesn't dispute this basic point and—one hopes—would not attempt to uphold Washington's legal regime if it squarely addressed it. But its holding that parents aren't even harmed by this state of affairs presents a no less extreme position and one that departs from both our sister circuit and Supreme Court guidance. Under its rationale, Washington doesn't harm any parent until the moment that it gets caught secretly subjecting a child to so-called gender transition services—something that parents might never know until it's too late. Such a reductionist view of parental rights mistakes parental authority for a mere property interest in the physical possession of a child—a view long rejected by our court and others.

The parents in this case have plausibly alleged that they cannot counsel their gender-confused children in the way they see fit, lest those children, prompted by Washington's novel law, leave home for a state-run shelter that will help them undergo transition procedures in secret. Washington's legal regime therefore chills the rights of these parents to direct the care and upbringing of their children, strikes at the heart of what the parental right protects, and constitutes a current and ongoing invasion of the parents' constitutional rights.

By denying rehearing en banc, our court missed an opportunity to correct the panel's erroneous view that parents only have an interest in the physical custody of their children. Our failure to do so is particularly troubling here where our court had a unique and well-presented opportunity to weigh in on a clear collision between gender ideology and parental rights. Without rehearing, our court now joins a growing crowd of lower courts that appear to have made every effort to avoid addressing a constitutional confrontation occurring all across our Nation. *See Lee v. Poudre Sch. Dist. R-1*, No. 25-89, 2025 WL 2906469, at *1 (U.S. Oct. 14, 2025) (Alito, J., concurring in the denial of certiorari) ("But I remain concerned that some federal courts are 'tempt[ed]' to avoid confronting a 'particularly contentious constitutional questio[n.]'") (alterations in original). The plaintiffs plausibly allege an unconstitutional interference with their fundamental right to parent, and our court should have reheard this case and recognized that they have alleged sufficient injury to confer standing. I respectfully dissent from our failure to do so.

I.

This case arises from Washington's regulatory regime, which—through a series of amendments and a patchwork of interacting statutes—now systematically facilitates the covert transitioning of children without parental knowledge or consent. In 1985, Washington enacted a series of laws to "ensure that minors in need of mental health care and treatment receive appropriate care and treatment." 1985 Wash. Sess. Laws, ch. 354, § 1. Those laws ensured that minors 13 years and older could receive outpatient health treatment without the consent of their parents. Wash. Rev. Code § 71.34.530.

But Washington, for decades, did not allow that treatment to happen in secret. Instead, whenever a shelter learned that a "child [wa]s away from a lawfully prescribed residence or home without parental permission," that shelter was required by law to contact the child's parents within 72 hours. Wash. Rev. Code § 13.32A.082(1)(b)(i). The only exception to this general rule was "[i]f there [were] compelling reasons not to notify the parent" of the child's presence at the shelter. *Id.* And those "compelling reasons" were, predictably, only those circumstances where "notifying the parent or legal guardian [would] subject the minor to abuse or neglect." *Id.* § 13.32A.082(2)(c). That changed in 2023 when Washington amended its parental notification statute. 2023 Wash. Legis. Serv., ch. 408, § 2. While the parental notification statute still generally requires parental notification "within 72 hours" of the minor leaving home for health treatment, the "compelling reasons" exception was expanded to include any scenario where "a minor is

seeking or receiving protected health care services," which includes so-called "gender-affirming treatment." Wash. Rev. Code § 13.32A.082(2)(c)(ii). That amendment now treats the parents of children suffering from gender dysphoria as per se neglectful or abusive and does not require the shelter to contact them.[1]

What's worse, even if the shelter does contact a minor's parents to inform them that a child has run away from home, Washington law still requires it "to make referrals on behalf of the minor for appropriate behavioral health services"—meaning services intended to transition that child to a different gender. *Id.* § 13.32A.082(3).

A group of plaintiffs—Washington parents with children suffering from gender dysphoria—and two aligned organizational plaintiffs sued to enjoin this regulatory regime. Relevant here, two sets of parents—1A and 1B, alongside 2A and 2B—alleged that Washington's legal regime has interfered with their ability to parent their children as they see fit. Both sets of parents have children who have expressed confusion about their gender, including a desire to transition to a different gender. Both sets of parents also believe that it is in the best interest of their children to raise them in conformity with their biological sex. But unlike most parents, these parents have to navigate this disagreement with the full

[1] The Complaint and Petition for Rehearing En Banc both refer to these children as experiencing "gender confusion" or "gender dysphoria." Consistent with the plaintiffs' pleadings and the motion-to-dismiss stage of this case, this dissent adopts that terminology.

knowledge that, at any moment, their children can veto their decisions about gender and leave home for a state-run shelter to begin transitioning in secret. That possibility understandably has changed the behavior of these parents who, as a result, have declined to discuss issues of gender with their children, inculcate their views about gender identity, or address their children's gender dysphoria consistent with the parents' beliefs. These parents alleged that their First and Fourteenth Amendment rights had been violated by Washington and sued to enjoin the relevant statutes.

But the district court dismissed the plaintiffs' claims as too speculative, holding that the parents failed to allege that Washington's legal regime had actually harmed them. Instead, the district court concluded that the allegations rested on "speculation and conjecture" and dismissed the case for lack of standing. A panel of our court agreed, holding that the parents complained of "[d]amages 'inflicted by [their] own hand.'" Such a decision enervates the well-established right of parents to direct the care and upbringing of their children, and perversely encourages states to be clandestine when intentionally interfering with such rights.

II.

It is well established that parents have the right and duty to direct the care and upbringing of their minor children. This right extends beyond just a mere liberty interest in the custody of their children but also protects the parent–child relationship from infringement by state actors.

Washington's legal regime intentionally infringes on that relationship by granting minor children a veto over their parents' decisions on gender and gender identity. Parents cannot be free—and as alleged by plaintiffs, are not free—to inculcate their children with traditional views of gender so long as Washington creates a system facilitating the transition of those children without their parents' involvement and against their parents' wishes.

Our court erred in concluding otherwise. In doing so, our cursory holding splits with the Fifth Circuit's far more rigorous analysis on the scope of parental rights. The panel's decision goes too far in cabining parental rights, and the full court should have corrected that error. Washington's legal regime not only infringes on parental rights but, as the Fifth Circuit explained, effectively debilitates them.

This case presented an ideal opportunity to confront the ongoing and intensifying conflict between longstanding conceptions of parental rights and the ever-growing encroachment of state actors with a particular view of gender ideology. And because it is relatively free of the complicating factual issues that often accompany school gender ideology cases, this case would have allowed for both an authoritative ruling on a contentious constitutional issue and much-needed guidance to lower courts.

A.

The Supreme Court has long held "that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can

neither supply nor hinder." *Prince*, 321 U.S. at 166. This parental right to direct the care and upbringing of children preexists our own constitutional order and flows from the "natural bonds of affection" that "lead parents to act in the best interests of their children." *Parham v. J.R.*, 442 U.S. 584, 602 (1979); *see also* 1 William Blackstone, *Commentaries on the Laws of England* *447 (1753) ("Providence has … implant[ed] in the breast of every parent that natural … affection, which not even the deformity of person or mind … can totally suppress.").

It is also well settled that the parental right over children includes "a 'high duty' to recognize symptoms of illness and to seek and follow medical advice." *Parham*, 442 U.S. at 602. It would be plainly illegal for Washington to subject a minor child to medical procedures without parental consent under our precedent. *See Mann v. County of San Diego*, 907 F.3d 1154, 1160–61 (9th Cir. 2018) (holding that the state may not perform medical examinations on children without parental notification and consent or judicial authorization). But because Washington has not yet used its state-run shelters to start transitioning a plaintiff's child—or at least we don't know that it has—the panel held that no parent could allege a harm sufficient to confer standing.

That decision misunderstands the nature and contours of parental rights. Centuries of American and English tradition recognize that fit parents hold a near-absolute right to make decisions about the care and upbringing of their children, free from state interference. *See Troxel*, 530 U.S. at 65 (plurality opinion) ("[T]he interest of parents in the care,

custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court."). Parental rights encompass more than a bar against the state removing a child from the home. *See Hardwick v. Cnty. of Orange*, 980 F.3d 733, 741 (9th Cir. 2020) (noting the parental right encompasses both the right to companionship of children and the right in raising those children). Rather "*the relationship* between parent and child is constitutionally protected," which "the state can … no[t] hinder." *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) (emphasis added). This relationship extends beyond mere custody of a child, but also encompasses choices broadly implicated in a parental duty to direct the upbringing and preparation of the child for life's future obligations. *See Troxel*, 530 U.S. at 65–66 (collecting cases); *see also Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987) (holding that the "constitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationships with their parents"), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (1999); *Michael H. v. Gerald D.*, 491 U.S. 110, 142 (1989) (Brennan, J., dissenting) ("Where the interest under consideration is a parent-child relationship, we need not ask, over and over again, whether that interest is one that society traditionally protects.").

B.

Washington's new statutory scheme strikes at the heart of this parental right and, as alleged by plaintiffs, chills the fundamental right of Washington parents to direct the care and upbringing of their

children. Parents 1A and 1B, for example, are parents to a gender-confused daughter, who began expressing gender dysphoria at a Washington public school. The public school encouraged the daughter to "socially transition" and present as a boy without notifying the parents. Although the parents removed their daughter from the school after discovering what happened, Washington's statutory framework governing runaway children still instills reasonable fear in 1A and 1B. And that fear—that their daughter could run away for a state-run gender transition facility—has understandably chilled their approach to parenting. As alleged by 1A and 1B, the parents have hesitated to discipline their daughter from a reasonable concern that doing so would incentivize her to run away and transition without parental consent.

Parents 2A and 2B also altered their parenting in reaction to Washington's regulatory scheme. Those parents have two gender confused daughters, one eighteen years old and one who is thirteen. Both daughters have accused the parents of being "transphobic" for refusing to affirm the daughters' transgender beliefs, and the older sister has explicitly threatened to take her younger sister to a "safe place" where her transgender identity will be affirmed. In the face of this threat, and with the knowledge that Washington law facilitates carrying out the threat, the parents now decline to refer to their daughter by her given name, don't use any pronouns when describing her, and refuse to inculcate the parents' values and beliefs about gender at all when around her.

It is difficult to see how these parents, who allege that they cannot raise their children as they see fit

because of Washington's regulatory scheme, have not been harmed in a manner sufficient to confer standing. *See Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) ("An injury in fact can be a physical injury, a monetary injury, … or an injury to one's constitutional rights, to take just a few common examples."). The very existence of a state regulatory regime that encourages and facilitates the transition of children without the consent of their parents presently interferes with the protected parent–child relationship by subverting a parent's authority to direct the upbringing of her child. The plaintiffs have alleged exactly that and have been injured by Washington's statutes.

C.

The panel nonetheless concluded that these constraints on parenting do not arise to the level of concrete and particularized harm. In doing so, it fundamentally misunderstood the nature of parental rights by concluding that the plaintiff parents have only alleged "self-inflicted injuries" in describing how Washington's legal regime has chilled and interfered with their parenting. In the panel's view, the parents cannot show standing until the moment that "their children's behavior has … brought them within the reach of the Statutes." "[W]ithin the reach of the Statutes" presumably means that Washington must first hide a gender-confused child from their parents before a parent may sue.

But the real harm to parents from Washington's legal regime happens long before a child runs away. Such an intentional interference with the parent–child

relationship, be it direct or indirect, creates an injury to the fundamental right to parent. *See, e.g.*, *Troxel*, 530 U.S. at 75 ("[T]he burden of litigating a domestic relations proceeding can itself be so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated.") (internal quotations omitted); *see also City of Huntington Beach v. Newsom*, 2025 WL 1720210, at *6 (C.D. Cal. June 16, 2025) (finding injury where "parents and children are at odds with each other regarding how to address … gender identity issues, resulting in difficulties parenting the children in the manner the parents want to raise them"); *City of Fontana*, 818 F.2d at 1418 (identifying "the many times the Supreme Court has interpreted the due process clause to protect the interests of parents in maintaining a relationship with their children" (simplified) and describing *Kelson v. City of Springfield*, 767 F.2d 651 (9th Cir. 1985), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986), as holding that "a parent has a constitutionally protected liberty interest in the companionship and society of his or her child").

The Fifth Circuit carefully explained this point just a few years ago in *Deanda v. Becerra*, 96 F. 4th 750 (5th Cir. 2024). There a parent (Deanda) sued the Secretary of Health and Human Services over the implementation of Title X, which funded programs that offered contraceptives to minors without parental consent. *Id.* at 754–55. Deanda sought to raise his children under a traditional Christian worldview, which includes a belief in abstaining from pre-martial

sexual relations. *Id.* at 754. He argued that the Secretary's funding of any program that offered contraceptives to children without parental consent violated "his constitutional right to direct his children's upbringing." *Id.* at 755.

Deanda never alleged that any child of his had actually received contraceptives under these programs or even, as the plaintiffs here allege in detail, that his children were at a heightened risk of availing themselves of that program. *Id.* at 758. And the Secretary made the same argument against standing that the panel adopted in this case: that since Deanda never alleged that his children took advantage of the contraception program, it did not injure him. *Id.*

The Fifth Circuit properly rejected that view as "a puzzling argument," holding that Deanda's "parental right[] to notice and consent" was invaded by the mere existence of the state-run program that provided contraceptives to minors without informing parents or obtaining their consent. *Id.* at 759. As the court explained, the program acted to "nullify[] [Deanda's] parental rights" by creating a workaround to parental consent. *Id.* at 760. That conferred standing for Deanda "because the Secretary [sought] to preempt his … right to consent to his children's obtaining contraceptives." *Id.*[2]

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[2] The Fifth Circuit considered Deanda's right in the context of "his state-conferred right" to direct the care and upbringing of his children. *Deanda*, 96 F.4th at 760. But I don't read *Deanda*'s analysis as dependent on that state right since, unless that state right mapped onto the federal parental right, the Fifth Circuit could not have held that it preempted Title X's regulations. *See id.* at 768 (enjoining the implementation of Title X); *see also*

Deanda's reasoning maps neatly onto this case. There's no reasonable dispute that Washington's legal regime intentionally allows for and encourages minors to seek and obtain gender transition services over the objections of fit parents. There's also no reasonable dispute that fit parents have a constitutional right to make major health decisions on behalf of their minor children. So just like Title X's contraceptive distribution program, Washington's legal regime does "not merely 'inva[de]' [plaintiffs'] parental rights …. [i]t w[ill] obliterate them." *Deanda*, 96 F.4th at 757 (first alteration in original) (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)).

I wonder if my colleagues would fault these parents for complaining of "[d]amages 'inflicted by [their] own hand'" if this case involved injuries that were not yet so strongly championed by political actors in Washington. For now, Washington law defines "protected healthcare services" as so-called "gender-affirming treatment," which excuses these shelters from notifying parents that their children are receiving these procedures. 2023 Wash. Legis. Serv., ch. 408, § 13.32A.082(2)(c)(ii). But what if Washington expanded that definition to include "Medical Assistance in Dying" among the "protected healthcare services"? When exactly would the panel concede that the parental right was implicated by a state-run, assisted-suicide-in-secret program? Would parents of a suicidal teenager who threatened to run away have standing to sue? What if these parents lived in fear

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United States v. Missouri, 114 F.4th 980, 986 (8th Cir. 2024), *cert. denied*, No. 24-796, 2025 WL 2823708 (U.S. Oct. 6, 2025) ("[A] State cannot invalidate federal law to itself.").

that their child would commit suicide at this state-run shelter without their involvement and accordingly altered their parenting style to discourage that from happening?[3] Following its logic in this case, the panel would hold that the parents haven't actually been injured until "their children's behavior has … brought them within the reach of the Statutes," and that any pain involved in avoiding that outcome is merely self-inflicted. Is our court's position really that, in such a hypothetical, a parent must first have a dead child before it could sue? If not, then why must *these* parents first have a secretly transitioning child before suing? And what a perverse incentive we have now created in parental rights cases: only those parents willing to first subject their child to irreparable injury can ever have their day in court.

Our court's holding is as unworkable as it is illogical. So long as Washington encourages minors to take the plunge into gender transitions without the knowledge (or even over the objection) of fit parents, parents lose their ability to direct the care and upbringing of their children, regardless of whether § 13.32A.082(2)(c)(ii)'s sword of Damocles ever falls on that particular parent. The Fifth Circuit got this right and our own court has tragically erred.

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[3] It's not difficult to come up with examples of how this might work. Parents could decide that their child could never leave the house unsupervised, preventing him from attending school sports events, spending time with friends, or even attending prom—all healthy parts of a child's development that parents might reasonably forbid due to the heightened risks that would accompany such a hypothetical legal regime.

D.

Unfortunately, today's confrontation isn't unique. Differing "approaches to parental rights are increasingly clashing in courtrooms as parents challenge attempts by state actors to substitute the state's judgment for that of parents with respect to children struggling with gender identity." Ryan Bangert, *Parental Rights in the Age of Gender Ideology*, 27 Tex. Rev. L. & Pol. 715, 724 (2023). With 6,000 public schools estimated to have procedures in place facilitating the secret transition of children against their parents' wishes, courts cannot continue to dodge this growing conflict between gender identity and parental rights indefinitely. *See Poudre Sch. Dist. R-1*, 2025 WL 2906469, at *1 (Alito, J., concurring in the denial of certiorari). Our court will need to weigh in on this "question of great and growing national importance" soon, and this case presented an ideal opportunity to do so. *Parents Protecting Our Child., UA v. Eau Claire Area Sch. Dist., Wisconsin*, 145 S. Ct. 14 (2024) (Alito, J., dissenting in the denial of certiorari).

Although public education is probably the environment where gender ideology most often runs up against parental rights, that setting presents unique and fact-specific considerations that have made appellate review challenging to obtain. For example, *how* a school implements its guidance on gender ideology appears to matter a great deal to our sister circuits. *See Parents Protecting Our Child., UA v. Eau Claire Area Sch. Dist., Wisconsin*, 95 F.4th 501, 505–06 (7th Cir.), *cert. denied*, 145 S. Ct. 14 (2024) ("All we have before us is a policy on paper without

concrete facts about its implementation."); *Lee v. Poudre Sch. Dist. R-1*, 135 F.4th 924, 935 (10th Cir. 2025), *cert. denied*, No. 25-89, 2025 WL 2906469 (U.S. Oct. 14, 2025) ("The parents don't explain how policies that presume the district knows better than parents, or that discourage disclosure, directly caused district staff to [harm the plaintiffs]."). That fact-specific inquiry often limits opportunities to squarely address a government's infringement on parental rights surrounding gender ideology, since a plaintiff will remain unable to contest the factual findings about how a school policy is effectuated even if the court resolves constitutional questions about what rights parents have vis-à-vis gender ideology. *See Poudre Sch. Dist. R-1*, 2025 WL 2906469, at *1 (Alito, J., concurring in the denial of certiorari) (noting the plaintiff's failure to challenge the appellate court's dispositive holding that they had not plausibly alleged municipal liability).

This case presents no such issues. The plaintiffs plausibly allege that their right to parent has been abridged by Washington's fixed statutory regime governing the treatment of runaway children experiencing gender dysphoria—allegations this court must accept as true at this stage of the proceedings. Their argument does not depend on the factual nuances of how a school implements its own informal guidance documents, which are subject to change at a moment's notice. Rather, the plaintiffs here sue to enjoin the operation of several statewide laws that Washington shelters are now obligated to follow. This court was well equipped to interpret those statutes, alongside state shelters' legal obligations under them,

and to determine their interference with established parental rights. We should have taken the opportunity to do just that.

E.

Washington's legal regime governing the treatment of gender dysphoria infringes on the plaintiff parents' right to direct the care and upbringing of their children. Plaintiffs plausibly alleged that they are chilled in carrying out this constitutionally protected duty, and the panel's decision to the contrary narrows the parental right unjustly—creating a clean split with the Fifth Circuit in the process. Because the panel erred in construing injury to parental rights too narrowly, the full court should have reheard this case to properly define and apply that right in this context.

I respectfully dissent.

TUNG, Circuit Judge, joined by BUMATAY and VANDYKE, Circuit Judges, dissenting from the denial of rehearing en banc:

This case is about whether parents with children who suffer from gender dysphoria and are at risk of running away have standing to challenge a Washington State law that would prohibit shelters from notifying parents of the location of their runaway child. The panel held that such parents lack standing. Respectfully, I disagree. In concluding that the parents' allegations were insufficient to state an injury-in-fact, the panel runs afoul of Supreme Court and Ninth Circuit jurisprudence governing standing, improperly construes the parents' complaint in the

light most disfavorable to them, and is inconsistent with the holdings of other circuits. En banc review should have been granted to fix these errors.

I.

Under Washington law, when a licensed shelter takes in a runaway child, it usually must notify the parents immediately. *See* Wash. Rev. Code § 13.32A.082(1)(b)(i) (2024). A longstanding exception provides that a shelter is barred from notifying the parents if circumstances indicate abuse or neglect; in that case, the shelter must instead make a report to the State's Department of Children, Youth, and Families (the "Department"). *See id.* and § 13.32A.082(2)(c)(i) (2024).

But recently, the legislature added another exception: a shelter is prohibited from notifying the parents when the runaway child "is seeking or receiving . . . gender-affirming treatment." Wash. Rev. Code §§ 13.32A.082(2)(c)(ii) and 13.32A.082(2)(d) (2024); *see also* 1 ER 11 (Mot. to Dismiss) ("the shelter must contact [the Department] instead of contacting the youth's parents directly"). In the legislature's view, a child suffering from gender dysphoria must be "protected" from parents who do not seek "gender-affirming treatment" for their child and do not "affirm" the child's gender identity. State law thus places such parents, who wish to raise their child in accordance with the child's biological sex, in the same category as parents who are abusive or neglectful. Both categories of parents lose any entitlement to be notified of their runaway child's location.

State law restricts parental control in another way. Upon receipt of the shelter's report of the runaway child, the Department "shall" offer to make "referrals on behalf" of the child "for appropriate behavioral health services," *see* Wash. Rev. Code § 13.32A.082(3)(b)(i) (2024), which can include "gender-affirming" treatment. And all this, too, can occur without the parents' knowledge or consent. Indeed, the law appears designed to do just that—to prevent parents from reuniting with their child (unless they "affirm" the child's gender identification) and to clear the path of obstacles for the child to receive "gender-affirming" treatment.

II.

Perhaps unsurprisingly, several concerned parents challenged this law. The individual plaintiffs here—including four sets of parents—have children who suffer from gender dysphoria. 1 ER 16, 18–19, 22. They do not believe it is healthy or consistent with their deeply held convictions to "affirm" their child's gender identity contrary to the child's biological sex. 1 ER 16, 19, 23. They also fear that "gender-affirming" treatment could result in permanent bodily and psychological damage to their child. 1 ER 23.

Such views have caused divisions within the families here. The parents' children, defying their parents' beliefs, have threatened to run away—indeed, one child has already done so (about a year before the filing of the complaint) and another child has threatened to take a younger sibling to a "safe place" away from their parents. 1 ER 18, 22, 45. Having "socially transitioned," the children accuse their

parents of being "transphobic" because the parents would not use their children's preferred pronouns. 1 ER 18, 22. Another child was encouraged "to run away" by a "friend's family" because the parents "did not believe that a 'trans identity' was authentic or healthy for him." 1 ER 20. The parents fear that the child's younger brother (who suffers from gender dysphoria too) will also run away and that, by dint of these statutes, they will lose control over their younger child's treatment. 1 ER 20–21.

III.

All these facts, as alleged in the complaint, should have been more than enough to establish standing—and in several different ways. Standing requires an "injury in fact" that is "actual or imminent, not conjectural or hypothetical," *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (quotation marks omitted), and an injury is "imminent" if it is "certainly impending" or "there is a substantial risk that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quotation marks omitted); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013).

First, the parents' asserted injuries are "certainly impending"; at the very least, there is a "substantial risk" of harm. *Department of Commerce v. New York*, 588 U.S. 752, 767 (2019) (citation omitted). More specifically, there is a "substantial risk" that at least one child of the parents, having run away before, would run away to a shelter offering precisely the kind of "safe place" that would require concealment from parents. Once the child arrives at the shelter, and as

a direct result of the challenged law, the parents would be kept in the dark as to their child's location and course of medical treatment—a clear interference with the parents' asserted constitutional right to direct the upbringing of their child.

The parents' concern that the State would displace their role as their child's guardians with respect to the proper treatment of gender dysphoria is plainly reasonable and far from speculative. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 183–84 (2000) ("reasonable concerns" of harm are sufficient to show injury-in-fact); *Covington v. Jefferson Cnty.*, 358 F.3d 626, 639 (9th Cir. 2004) (same). The parents should not have to wait until their child has run away to a shelter and received life-altering treatment before they are afforded the opportunity to challenge the law—a law whose very object is to prevent the parents from knowing, in the first place, of their child's arrival at the shelter and his or her receipt of "gender-affirming" treatment. *See Harris v. Bd. of Supervisors, Los Angeles Cnty.*, 366 F.3d 754, 762 (9th Cir. 2004) (plaintiffs need not "wait until they suffer" injury to sue); *see also Mahmoud v. Taylor*, 606 U.S. 522, 559–60 (2025) (plaintiffs need not "wait and see" how a particular book is used in a particular classroom before suing); *Clapper*, 568 U.S. at 414 n.5 ("Our cases do not uniformly require plaintiffs to demonstrate that it is literally certain that the harms they identify will come about."). By that time, it may be too late to rehabilitate (in the parents' view) the damage done to their child. The requirements of standing are strict, but they are not cruel.

Injury-in-fact is readily apparent here. When the parents' gender-dysphoric children have called the parents "transphobic," have already "socially transitioned," have been encouraged by others to leave their parents, and have threatened to escape to a "safe place"—indeed, one of them has already run away before—the risk of at least one child's flight to a shelter that would interfere with the parents' right to direct the child's upbringing is substantial.

Second, the incentive that Washington law has created for gender-dysphoric children to run away to licensed shelters is also enough to confer standing. State law requires licensed shelters to withhold parental notification with respect to runaway children who are seeking or receiving "gender-affirming" treatment. Shelters instead must report to the Department, which in turn is obligated to offer referrals on behalf of minors for "gender-affirming" treatment. The law thus makes running away to those shelters attractive for children suffering from gender dysphoria and seeking "gender-affirming" treatment, and accordingly, produces an increased risk of harm to the parents of state interference with their child's upbringing. Combine that risk with the severity of the harm—potential irreparable damage wrought upon children by such treatment—and the parents have easily shown standing. *See, e.g.*, *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.").

Third, as the objects of the challenged Washington law, the parents have standing to sue. "When a plaintiff is the 'object' of a government regulation, there should 'ordinarily' be 'little question' that the regulation causes injury to the plaintiff and that invalidating the regulation would redress the plaintiff's injuries." *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 114 (2025) (citing *Lujan*, 504 U.S. at 561); *see also Meland v. Weber*, 2 F.4th 838, 845 (9th Cir. 2021). That holds true here: Washington law deems parents who refuse to affirm their child's gender identity or support "gender-affirming" treatment as falling within the same category as parents who abuse or neglect their child (for purposes of the state's shelter laws). Washington law directs, as to such parents whose child runs away, that shelters withhold notice.

That the law regulates shelters directly (and not parents) does not render parents any less the objects of the law for purposes of standing: the law seeks to alter the parents' behavior by compelling them to "affirm" their child's gender identity, or suffer the consequences of not being able to reunite with their runaway child and participate in their child's treatment for gender dysphoria. *See Diamond Alt. Energy*, 606 U.S. at 115. Its object is to "protect" runaway children with gender dysphoria *from their parents* who might hinder their desired treatment. Those parents are the clear "targets" of the law. *Id.* at 125.

Each of these different ways of viewing the injuries is enough to establish standing. Together, they compel that conclusion.

IV.

Unfortunately, the panel disregarded each of these points that go to establish standing and thus erred in holding that the parents failed to allege it. In several ways, the panel's ruling contravenes Supreme Court and Ninth Circuit precedent and is inconsistent with the rulings of our sister circuits. This court should have granted en banc review to correct the panel's errors.

The panel contravenes Supreme Court and Ninth Circuit precedent by failing to properly analyze whether the facts as alleged created a "substantial risk that harm will occur" and whether the parents are the objects of the challenged law that would give rise to standing—nowhere does the panel opinion expressly acknowledge or apply these legal standards. *See Susan B. Anthony List*, 573 U.S. at 158 (2014) ("substantial risk") (quotations omitted); *Mahmoud*, 606 U.S. at 560 (same); *Department of Commerce*, 588 U.S. at 767 (same); *Monsanto Co. v. Geerston Seed Farms*, 561 U.S. 139, 153–54 (2010) (same); *Flaxman v. Ferguson*, 151 F.4th 1178, 1185, 1187 (9th Cir. 2025) (same); *Diamond Alt. Energy*, 606 U.S. at 114 ("'object' of a government regulation"); *Lujan*, 504 U.S. at 561–62 ("object of the action").

Further, the panel's opinion is inconsistent with other circuits' rulings recognizing that incremental risk (particularly when viewed in light of the gravity of the harm) presented by a challenged law is enough to show standing. *See, e.g.*, *Glickman*, 92 F.3d at 1234–35. While the panel claims that the incremental-risk analysis is relevant only to the redressability prong of

standing (rather than injury-in-fact), *see* Op. at 23—a questionable contention—the panel makes no attempt to reconcile its holding with other circuit holdings that such an analysis *does* bear on injury-in-fact. *See, e.g.*, *Glickman*, 92 F.3d at 1234–35; *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."). This divergence justifies en banc review.

In refusing to find standing, the panel relies on *Lujan*. But *Lujan* provides no such support. The plaintiffs there failed to show "injury in fact"—which would have allowed them to challenge a regulation limiting the scope of the consultation requirements under the Endangered Species Act—because, in the Court's view, their "mere profession of an intent, some day, to return" to places where endangered species were located was "simply not enough." *Lujan*, 504 U.S. at 564 & n.2. The Court reasoned that the concept of "imminence" required for standing, though "somewhat elastic," has been "stretched beyond the breaking point when, as here, the plaintiff alleges only an injury at some indefinite future time, and the acts necessary to make the injury happen are at least partly *within the plaintiff's own control*." *Id.* (emphasis added).

Not so here. The parents' alleged injuries are *not* within their own control, and thus do not stretch the "imminence" standard beyond the breaking point but comfortably meet it. The parents' children, unfortunately, present a flight risk and, by operation of state law, licensed shelters who receive them are

banned from notifying the parents and must instead report the incident to a state agency that would facilitate "gender-affirming" treatment for those children.[1] And again, by the law's design, this could all be done without the parents' knowledge or consent. The parents have thus alleged a credible threat of future injuries.[2]

The panel erred in another fundamental way. Undisputed here, basic principles of pleading require that courts, at the motion-to-dismiss stage, accept all plaintiffs' factual allegations as true and draw all reasonable inferences in the plaintiffs' favor. *See Thomas v. County of Humboldt, California*, 124 F.4th 1179, 1186 (9th Cir. 2024); *see also National Rifle Association of America v. Vullo*, 602 U.S. 175, 181 (2024). The panel did the very opposite.

One example is enough to prove the point. The panel appears to acknowledge, in a footnote, that the parents who have alleged (among other things) that their child previously "ran away from home" present

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[1] Even those unlicensed shelters or individuals (such as family friends) who receive a runaway child need not notify the parents under Washington law, but can notify the Department instead. *See* Wash. Rev. Code § 13.32A.082(1)(a) ("[A]ny person, unlicensed youth shelter, or runaway and homeless youth program" who provides shelter to a runaway child "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*.") (emphasis added).

[2] Judge VanDyke's forceful dissent concludes that "actual" injury exists; to the extent that the parents experience a *current* interference with their ability to direct the upbringing of their children—due to the credible threat of injury that Washington law poses—I would also find standing on that basis.

the strongest case for standing. *See* Op. at 21 n.7. But in dismissing those allegations, the panel reasoned that "Plaintiffs make no claim that 5C ran away to a licensed shelter, did so without parental permission, or is seeking or receiving gender-affirming care." *See id.* That reasoning is deeply flawed and construes the parents' allegations in the most *disfavorable* light.

First, contrary to the panel, the parents are not required to allege that 5C ran away to a "licensed shelter." The fact that 5C ran away because of disagreement with 5C's parents about gender-identity affirmation supports a "substantial risk" that 5C would run away again and that, next time, 5C would run away to a shelter subject to the law requiring the shelter to withhold parental notification, since that is the sort of "safe place" affording the most "protection" (and thus posing the most attraction) for a gender-dysphoric child. 1 ER 22–23. That is enough for standing. Only by drawing inferences in favor of the State (rather than the plaintiffs) could the panel conclude that standing was lacking.

Second, the panel faults the parents for not expressly claiming that 5C ran away "without parental permission." Op. at 21 n.7. Respectfully, that criticism borders on the risible. When the parents alleged that 5C "ran away," the only reasonable inference is that 5C ran away without their permission. *See* Black's Law Dictionary 1603 (12th ed. 2024) (defining "runaway" as "[s]omeone who is fleeing or has escaped from custody, captivity, restraint, or control; esp. a minor who has voluntarily left home *without permission* and with no intent to return") (emphasis added). Simply grasping at straws here, the

panel essentially required the parents to recite vacuous "magic words" in their complaint, while construing the parents' complaint "in the least charitable light." *Flaxman*, 151 F.4th at 1187. Our cases have repeatedly rejected that approach. *See, e.g.*, *id.* at 1184 (citing *Manzarek v. Saint Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1030–31 (9th Cir. 2008)).

And finally, the panel says that the parents failed to allege that 5C was "seeking or receiving gender-affirming care." The panel is wrong here, too. The parents alleged that, after having run away once, their child (5C) "still identifies as 'transgender' at school" and "currently sees a school counselor" who supports 5C "in 'transitioning.'" 1 ER 23. Moreover, the parents alleged, "5C has . . . in the past seen therapists for a couple of years, and she has had conversations with numerous therapists and behavior health specialists about gender identity and 'transitioning.'" *Id.* Drawing inferences in the parents' favor, one must conclude that the fear they harbor that their child would seek or receive "gender-affirming care" (as defined broadly under Washington law) is reasonable and justifies standing. *See* Wash. Rev. Code § 74.09.675(3) ("gender-affirming treatment" means "a service or product that a health care provider . . . prescribes to an individual to support and affirm the individual's gender identity.").

Perhaps recognizing the weakness of these arguments, the panel pivots to another. "In any event," the panel states, "the allegation that 5C ran away once is not sufficient to suggest that 5C will do so again in the future." Op. at 21 n.7. But even here, the panel

errs. Is it so unreasonable to "suggest" that a child who suffers from gender dysphoria and has run away because of the parents' views on the matter could run away again? Particularly, where the parents have not changed their views in refusing to "affirm" the child's gender identity? We must draw all reasonable inferences in the parents' favor. Doing so requires us to conclude that their concerns about their child's flight risk are reasonable and thus create standing.

City of Los Angeles v. Lyons, 461 U.S. 95 (1983), which the panel cites, is hardly analogous. There was no indication there that the plaintiff would commit another crime that would subject him to the city's chokehold policy and that the police "would illegally choke him into unconsciousness" (again). *Id. at* 105–06. But here, there is a substantial risk that the parents' child would seek shelter considering the child's past behavior, particularly where the motivations for the child's running away the first time remain. Indeed, the whole point of the law was "to remove barriers" to accessing shelters that would facilitate "gender-affirming" treatment for runaway children. *See* Engrossed Substitute S.B. 5599 § 1, 68th Leg., Reg. Sess. (Wash. 2023), *enacted as* 2023 Wash. Sess. Laws, ch. 408; *see also* 1 ER 10 (Mot. to Dismiss) (same). It is "odd" for the State to champion the law's intended effects while denying them here in an attempt to defeat standing. *Diamond Alt. Energy*, 606 U.S. at 118–19.

* * *

This court has routinely found standing based on future injuries in cases with alleged facts that appear more attenuated than the facts alleged here. In cases

where plaintiffs have alleged risk of harms to aesthetic and recreational enjoyment, harms to privacy interests, potential exposure to chemicals, and other types of future harms, the Court has had no problem finding standing.[3]

But when it comes to the fraught topic of gender identity and whether parents have the right to direct the treatment of a child suffering from gender dysphoria, courts have appeared to use standing doctrine to dodge the issue, characterizing the parents'

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[3] *See, e.g.*, *Harris*, 366 F.3d at 761–62 (holding that county residents who claim to rely on the county health care system for their health needs had standing to challenge the county's decision to reduce the number of hospital beds at a county hospital—even though they had no immediate need for those beds—because plaintiffs alleged a "concrete *risk* of harm," and because the county's "decision to pare down its healthcare system . . . presents the proverbial accident waiting to happen" (citation omitted)); *Covington*, 358 F.3d at 638–39 (holding that "the relevant inquiry" for standing is whether defendants' "actions have caused 'reasonable concern' of injury to" the plaintiffs, and concluding that there was a reasonable concern, where the plaintiffs alleged that violations of the Resource Conservation and Recovery Act "increase[d] the risks of . . . injuries to [them]" by threatening the "aesthetic and recreational enjoyment of their property") (quoting *Laidlaw Env't Servs.*, 528 U.S. at 183); *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1140–43 (9th Cir. 2010) (holding that plaintiffs "whose personal information has been stolen but not misused" nevertheless have "suffered an injury sufficient to confer standing" where they "had alleged an act that increased their risk of future harm," and holding, too, that a plaintiff's allegation that he "has generalized anxiety and stress" as a result of the theft suffices as "present injury"); *Nat. Res. Def. Council v. EPA*, 735 F.3d 873, 878 (9th Cir. 2013) (holding that an entity had standing to challenge EPA's decision to approve a pesticide, where the entity alleged that the decision posed a "'credible threat' that its members' children will be exposed to [the allegedly harmful pesticide]").

alleged harms as speculative when they appear actual or imminent.[4]"Article III standing is an important component of our Constitution's structural design," and "[t]hat doctrine is cheapened when the rules are not evenhandedly applied." *Murthy v. Missouri*, 603 U.S. 43, 98 (2024) (Alito, J., dissenting).

In this case, the parents have alleged that Washington law poses a substantial risk of harm to their ability to direct the upbringing of their children and that the law violates their constitutional rights. However difficult this issue may be for us to resolve, this court should have grasped the nettle and held that there was standing in accordance with settled Supreme Court and Ninth Circuit law. Respectfully, I dissent from the denial of rehearing en banc.

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[4] *See John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 636 (4th Cir. 2023) (Niemeyer, J., dissenting) (arguing the majority "reads the Parents' complaint" in "an unfairly narrow way" to deny standing), *cert. denied sub nom. Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 144 S. Ct. 2560 (2024); *Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist., Wisconsin*, 95 F.4th 501, 506 (7th Cir. 2024); *see generally Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist., Wisconsin*, 145 S. Ct. 14, 14–15 (2024) (Alito, J., dissenting from denial of certiorari) ("I am concerned that some federal courts are succumbing to the temptation to use the doctrine of Article III standing as a way of avoiding some particularly contentious constitutional questions."); *Lee v. Poudre Sch. Dist. R-1*, 607 U.S. --- (2025) (Alito, J., concurring in denial of certiorari) (similar).

Appendix D

Case 3:23-cv-05736-DGE Document 34
Filed 11/06/23

Judge David G. Estudillo

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

International Partners For Ethical Care, Inc., Advocates Protecting Children, Parents 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, and 5B,[1] Plaintiffs, v. **Jay Inslee,** Governor of Washington, in his official capacity; **Robert Ferguson,** Attorney General of Washington, in his official capacity; and **Ross Hunter,** Secretary of the Washington Department of Children, Youth, and Families, in his official capacity; Defendants.	Case No. 3:23-cv-05736-DGE **Verified First Amended Complaint**

[1] Pursuant to the Court's order of October 25, 2023 [Doc. 32], the individual plaintiffs have been permitted to proceed under pseudonyms. Accordingly, only redacted verifications are being filed. If the Court wishes the individual plaintiffs to file unredacted verifications under seal, the plaintiffs will comply.

INTRODUCTION

1. This lawsuit against Washington state officials is about whether a minor child who is receiving or even just seeking so-called "gender-affirming treatment"—which includes services that alter body parts, prescribe life-altering medications, provide life-altering counseling, and other related things—showing up at a youth shelter, homeless shelter, or a host home, provides sufficient grounds to steamroll parental constitutional rights. Under recently amended Wash. Rev. Code § 13.32A.082, that answer is "yes." Under the United States Constitution, however, that answer is "no."

2. This lawsuit challenges recent amendments to Wash. Rev. Code § 13.32A.082 through engrossed Senate Substitute Bill (ESSB) 5599 and Substitute House Bill (SHB) 1406 of the 2023 Regular Session of the 68th Legislature of Washington State, which is codified in relevant part at Revised Code of Washington (Wash. Rev. Code.) § 13.32A.082(3), and took effect July 23, 2023. The amended statute infringes on parental constitutional rights.

3. The amended statute prevents or delays notice to parents of runaway children who express a desire to receive "gender-affirming treatment" and automatically involves the Department of Children, Youth and Families ("the Department"), even though no assessment or finding of abuse or neglect is made or even required.

4. It authorizes the State to refer a minor for "behavioral health services" without defining what that entails, potentially meaning that a minor could

receive—at least—mental health services that promote "gender transitions" and are services the parents would not endorse. And at worst, these undefined services could include "medical treatment" that the parents would not authorize and would be permanently harmful to the minor. There is no age minimum in the statute for such services.

5. The amended statute also delays when parents can get their children back from the State's control.

6. In short, this amended statute allows shelters and homes to keep children at locations without their parents' knowledge and refer those children for health interventions without their parents' knowledge or approval. It does not require children to be returned on any particular timetable or under any particular conditions but subject to unfettered discretion of the Department.

7. Additionally, this lawsuit challenges the constitutionality of RCW § 71.34.530, which allows children as young as 13 to receive outpatient treatment without a parent's or guardian's consent. In conjunction with SB 5599 and HB 1406, this statute enables the state to interject itself between the parents and their child in directing certain treatment. This violates deeply rooted parental rights.

8. This suit is thus brought as a facial challenge against statewide officials, in their official capacities, over these Washington statutes that discriminatorily deprive certain parents—but not all parents—of their fundamental right under the U.S. Constitution to the custody of their children, to refuse treatment for their

children, as well as their rights to the free exercise of religion, due process, and free speech. Plaintiffs bring this suit pursuant to 42 U.S.C. § 1983 because Defendants are acting under color of state law in violating Plaintiffs' rights under the First and Fourteenth Amendments to the U.S. Constitution.

PARTIES

9. Plaintiff International Partners for Ethical Care, Inc., is a nonprofit organization incorporated in the State of Illinois and recognized as a charitable or educational public benefit organization under Section 501(c)(3) of the Internal Revenue Code. 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." Partners for Ethical Care Homepage, https://tinyurl.com/4nrp5vn9 (last visited Aug. 15, 2023). Members of this organization include approximately two dozen parents in the State of Washington, including at least one resident of the State of Washington who is a parent in the state with a minor child who experiences gender confusion, has received counseling for such, and is at risk of running away.

10. Advocates Protecting Children is a nonprofit 501(c)(3) organization. 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. 16, 2023).

11. Parent 1A is a citizen of Washington and the mother of a 14-year-old biological girl who struggles with gender identity[2] issues, who will be referred to as 1C.

12. Parent 1B is the husband of Parent 1A and father of 1C. He is a citizen of Washington.

13. Unbeknownst to her parents, 1C began expressing signs of gender dysphoria at school. Then, without notice to her parents, 1C's school encouraged her to socially "transition" to being recognized as a boy, including through meetings with a school counselor that lasted for two and a half months. Upon learning of 1C's struggles, 1A and 1B sought proper treatment for 1C and removed her from public school. Her gender confusion has eased some.

14. Given 1C's vulnerability, 1A and 1B are concerned that she will again be pressured at school to again adopt a gender identify inconsistent with her biological sex and that the information will again be kept from 1A and 1B. Previously, such pressure created tension between 1A and 1B and their child, creating a situation where 1C was at risk of running away over a disagreement of her gender identity. Should that occur again, 1C would be a child subject

[2] Plaintiffs use of the term "gender identity" in this Complaint is strictly for ease of reference, since it is a concept assumed by the legislation challenged here. There is no scientific definition for "gender identity," and Plaintiffs in no way endorses the existence of a gender identity for anyone; it can neither be proven nor disproven.

to the provisions of the amended statute and 1A and 1B would be denied information on 1C's whereabouts and her condition, and 1A and 1B would be left without input for the Department to refer 1C for behavioral health services that promote an alternate gender identity contrary to 1A and 1B's beliefs and desires for their daughter.

15. For these reasons, the passage of the FRA amendments has caused Parent 1B daily fear.

16. Additionally, the passage of the FRA amendments has caused 1A to be hesitant to discipline 1C for fear it will cause a rift that others might take advantage of. The FRA amendments thus make it very difficult to parent, leaving 1A uncomfortable every time she has a disagreement with 1C.

17. 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 "re-transition." The FRA amendments function to undermine 1A's authority as a parent, making it very easy for others to create a wedge between her and her child. By putting all the cards in the hands of a child who isn't qualified to make important decisions yet, the FRA amendments make it very hard for 1A to parent and protect 1C.

18. 1A and 1B fear that 1C could seek to "transition" again and be incentivized to run away given that the FRA amendments provide her an option to go around her parents. They also fear that 1C 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.

19. If 1C were to run away, the provisions of the amended FRA would greatly harm 1A and 1B's ability to care for and raise their daughter by allowing state actors and those they authorize to promote ideas that are contrary to what 1A and 1B believe and know is best for 1C, or by forever altering 1C physically, or both.

20. 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.

21. Parent 2A is the mother of two children who struggle with gender identity issues: 2C, a biological girl suffering gender confusion who recently turned age 18, and 2D, another biological girl suffering gender confusion, who is age 13. 2A is a citizen of Washington.

22. Parent 2B is the husband of Parent 2A, the father of 2C and 2D, and a citizen of Washington.

23. The school of 2D socially transitioned her without her parents' knowledge.

24. The older sister, 2C, threatened to take 2D to a "safe place" because 2B would not use 2D's preferred pronouns. Both 2C and 2D have accused 2A and 2B of being "transphobic."

25. 2D still has her chosen name up in her room and "identifies herself as male" on a popular tech platform profile.

26. 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.

27. Parents 2A and 2B also do not know, should their minor daughter run away to a shelter, when or if they would be allowed to reunite with their daughter unless they supported or affirmed the State's preferred gender ideology, including calling their daughter by a chosen, nonbirth name and using opposite-sex or non-biologically aligned pronouns.

28. Because of the FRA amendments, Parent 2A is afraid to use 2D's given name and pronouns that match her biology in most public places, 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.

29. Also because of the FRA amendments, Parents 2A and 2B avoid talking about gender at all with 2D or near her.

30. Every time 2D leaves the house with 2C, especially if it is not planned well in advance, 2A and 2B fear because of the FRA amendments.

31. Parent 3A is the mother of 3C, a 14-year-old biological boy who struggles with gender identity issues. 3C is also autistic. 3A is a citizen of Washington.

32. Parent 3B is the husband of Parent 3A and the father of 3C. He is a citizen of Washington.

33. 3A and 3B are Roman Catholic. They believe in the teachings of the Roman Catholic Church on gender. They are skeptical of gender ideology and their religious beliefs inform their understanding that a boy is a male child with any personality, regardless of whether his personality conforms to stereotypes of masculinity.

34. 3C is in a sometimes fragile state as a young autistic adolescent. He is frequently ambivalent about his gender. For example, recently he indicated he was going to stop "identifying as a girl," but then shortly thereafter he reversed himself after hanging out with his friends.

35. His gender issues are tied up in a very negative idea of men and maleness- it sometimes seems that it's not that he wants to be a girl so much as he doesn't want to be associated with maleness. As he was bullied by boys at school, he doesn't want to be like the boys who bullied him. Additionally, his therapist believes that 3C is fearful of growing up.

36. 3C has been experimenting with a new name and female pronouns with friends and at school.

37. His gender confusion was accelerated by school staff who repeatedly asked him if he wanted another name and pronouns, to which he initially resisted but eventually relented.

38. Because a friend's family encouraged 3C's older brother to run away and live with them when he was suffering from gender confusion since 3A and 3B

did not believe that a "trans identity" was authentic and healthy for him, 3A and 3B fear that 3C might run away.

39. Due to 3C's autism and being a minor, should he run away, he would be incapable of meaningfully consenting to "appropriate behavioral health services," especially those that would enforce a "transgender identity" or provide irreversible medical procedures.

40. If 3C were to run away and receive counseling to affirm a "transgender identity," 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. 3C is not able to give meaningful informed consent to life altering treatments. The fact that he has autism only makes rebuilding trust when someone else damages it by giving him conflicting messages on what is right and wrong that much more difficult.

41. 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. SB 5599 provides state actors with arbitrary discretion to determine what 3A and 3B would have to do to get their son back.

42. Parent 4A is the mother of three children: 4C, who is an eight-year-old girl, 4D, a seven-year-old boy, and 4E, a 17-year-old boy. 4A is a citizen of Washington.

43. Parent 4B is the husband of 4A and the father of 4C, 4D, and 4E. He is a citizen of Washington.

44. 4A and 4B are non-denominational Christians who believe the Bible is the Word of God and, as such, is authoritative on every issue to which it speaks. They believe the topics on which the Bible provides teachings, including gender.

45. Each of 4A and 4B's children are part of social activities where they could be especially at risk of pressure to take on an alternate gender identity from their actual sex.

46. Parents 4A and 4B fear that their children, if they succumb to that pressure, could run away knowing that 4A and 4B's religious beliefs do not support the idea that a child can change from being a boy to a girl or from being a girl to a boy.

47. And so 4A and 4B fear that because of the FRA amendments and their children's realization that 4A and 4B believe differently, their children would run away to receive the counseling and "medical treatment" they confusingly thought they wanted. 4A and 4B would be kept entirely out of the process.

48. Parent 5A is the father of a 15-year-old daughter, 5C, both residents of Washington. 5A has primary legal and physical custody of 5C.

49. Parent 5B is also a resident of Washington, is the stepmother of 5C, and is married to 5A. 5C primarily resides in the home of 5A and 5B.

50. 5C began suffering from rapid onset gender dysphoria when she was 12. 5A and 5B do not affirm 5C's claim to be a boy.

51. At the age of 12, 5C was hospitalized for suicidality. The hospital asked permission to put her on puberty blockers, but 5A and 5B declined.

52. 5C's school district transitioned her behind her parents' back, starting in the 8th grade. She is now in the 10th grade. She still "identifies as transgender" at school.

53. When 5C was 13, she got upset when 5B called 5C by her birth name.

54. Later, at age 13, 5C ran away from home.

55. Since turning 13, 5C has had subsequent hospitalizations, but has refused to talk to 5A and 5B about the details.

56. 5C is now in the 10th grade. She still identifies as "transgender" at school.

57. 5C currently sees a school counselor. That counselor has challenged 5A for not supporting 5C in "transitioning" and the counselor has gotten upset at 5A for not calling 5c by her preferred pronouns. 5C has also in the past seen therapists for a couple of years, and she has had conversations with numerous therapists and behavioral health specialists about gender identity and "transitioning."

58. 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 "behavioral health services" without 5A's consent, permanently harming her daughter.

59. Defendant Jay Inslee is the Governor of the State of Washington. As such, he must enforce the

laws of that state. See Wash. Const. art. III, § 5. Governor Inslee also supervises the Department Secretary who administers the amended statute, and the Governor has the authority to remove the Secretary, as discussed below.

60. Governor Inslee signed SB 5599 on May 9, 2023, and SHB 1406 on April 20, 2023.

61. Governor Inslee is sued in his official capacity.

62. Defendant Robert Ferguson is the Attorney General of Washington. As such, he is responsible for the legal defense of state statutes, including the amended Wash. Rev. Code § 13.32A.082 and § 71.34.530. See Wash. Const. art. III, § 1; Wash. Rev. Code § 43.10.

63. Attorney General Ferguson is sued in his official capacity.

64. The amended Wash. Rev. Code § 13.32A.082 is administered by the Washington State Department of Children, Youth, and Families ("the Department" or "DCYF").

65. The Department is an agency in the executive branch of the State of Washington. Wash. Rev. Code § 43.216.015.

66. Defendant Ross Hunter is Secretary of the Washington State Department of Children, Youth, and Families.

67. Secretary Hunter "has the complete charge and supervisory powers over the department." Wash. Rev. Code § 43.216.025; see also Matter of W.W.S., 469

P.3d 1190, 1204 (Wash. Ct. App. 2020) (outlining the Secretary's vast authority over the Department).

68. Secretary Hunter has authority over the Assistant Secretaries who issued the implementation Memo discussed below.

69. Secretary Hunter was appointed by Governor Inslee, with the consent of the Washington State Senate, and serves at the pleasure of the Governor. See Wash. Rev. Code § 43.216.025.

70. Secretary Hunter is sued in his official capacity.

JURISDICTION AND VENUE

71. This case presents federal questions arising under the Constitution of the United States and seeks relief for the deprivation of federal rights under color of state law. This Court accordingly has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343.

72. This Court has authority to award Plaintiffs declaratory relief pursuant to 28 U.S.C. § 2201, and injunctive relief under 28 U.S.C. §§ 1343, 2202, and Fed. R. Civ. P. 65.

73. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the facts complained of herein occurred within this District and because this District is the seat of government of the State of Washington and therefore Defendants are domiciled in this District.

FACTUAL BACKGROUND

Statutory Scheme

74. During its most recent session, the Washington State Legislature enacted two statutes that amended Wash. Rev. Code § 13.32A.082, the Family Reconciliation Act ("FRA"). See 2023 Wash. Legis. Serv. Ch. 151 (SHB 1406); 2023 Wash. Legis. Serv. Ch. 408 (ESSB 5599). Both acts went into effect on July 23, 2023.

75. These two bills ("the FRA amendments") modified the rights and procedures of Washington state law concerning parents in the upbringing and custody of their children.

76. In Washington, the baseline rule governing parental rights when children go to a shelter 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). 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.*

77. 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, as well as how the child is doing, and how the child ended up at the

shelter. The parents are free to go pick up their child and take him or her home.

78. The only exception to this statutorily imposed duty of 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. *Id*. (emphasis added).

79. Additionally, "compelling reasons" were previously defined as "circumstances 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).

80. 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." *Id*. § 13.32A.082(2)(c)(ii). And "'protected health care services' means 'gender-affirming treatment.'"[3] *Id*. § 13.32A.082(2)(d).

81. As a result of this change, "compelling reasons" are automatically present whenever a minor shows up at a shelter seeking "gender-affirming

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[3] "Gender-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 "facial 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).

treatment" even though a parent's refusal to "affirm" a child's gender dysphoria or provide "gender-affirming treatment" is *not* in fact abuse or neglect.

82. Children run away for a host of reasons, including much less serious ones, 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;"
- "kids . . . drinking alcohol or taking drugs,"

Running Away, Nemours KidsHealth (June 2018), https://tinyurl.com/5n6vjpev (medically reviewed by Steven Dowshen, MD).

83. As modified by the FRA amendments, the statute now reads 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.*
>
> (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) (emphasis added).

1. Notice to Parents Now Not Required or At Least Delayed

84. 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 time period for notifying parents or obtaining their consent before referring the minor for "behavioral health services."

85. Paragraph 3 covers "compelling reasons" with Paragraph 3(a) being general but Paragraph 3(b) being specific to minors seeking "gender-affirming treatment." Both require plans for reunification but use different language (*reconciliation* versus *reunification*) and Paragraph 3(b) provides no time

period for the provision of the services set forth in the Paragraph. 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).

86. And since the relationship between 3(a) and 3(b) is at least ambiguous, then 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 3(b) to minors seeking "gender-affirming treatment" and 3(a) to all other minors who trigger "compelling reasons."

87. 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. 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.").

88. Additionally, when statutory language is unclear, conflicting, or silent, Washington state courts 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.").

89. The legislative history strongly indicates that the Washington State Legislature intended to deprive parents of their rights when their child presents 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., 2023 Sess. (Feb. 14, 2023) (statement of Alison Mendiola, Coordinator & Counsel for the Comm, at 28:44-29:03), *available at* https://tinyurl.com/mry8dwta

90. Remarkably, under the text and legislative history of SB 5599, it appears that parents of children who seek or receive protected health services will not receive notification.

91. Nevertheless, Secretary Ross's subordinates insist that SB 5599 would not operate entirely in this manner, despite the statute's plain text and the statements above and below from the statute's sponsors and legislative supporters.

92. Natalie Green is Assistant Secretary of Child Welfare Field Operations at the Department, and Steve Grilli is Assistant Secretary of Partnership, Prevention, and Services at the Department. *See Our Leadership*, Wash. State Dep't of Children, Youth & Families, https://tinyurl.com/9ryktvwh (last visited Aug. 15, 2023).

93. On July 21, 2023, Green and Grilli issued a Policy Memo in which they claimed 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." Natalie Green & Steve Grilli, *Policy Memo: Changes to 3100, Family Reconciliation Services Policy*, Wash. Dep't of Children, Youth & Families 2 (July 21, 2023), https://tinyurl.com/u5fzeu2x.

94. The Memo goes on to specify that "[w]hen making a good faith attempt, caseworkers must at minimum do the following," and specifies as two of the items on that list, "[a]sk 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). Should the child not provide such contact information, 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.

95. The Memo provides no explanation for why the lawmakers quoted below who wrote, sponsored, and supported SB 5599, as well as the lawmakers quoted below who opposed the bill, were all of one mind regarding the bill's effect of denying parents notification when their children are seeking or receiving protected health services. Nor does the Memo explain away the clear meaning of the bill's words, which contradict the Memo.

96. Even if one reads the statute to violate the general-specific and anti-surplusage canons such that Subsection 3(a) also applies to everyone under Subsection 3(b), the FRA amendments still change the timing of the notice to parents in a way that substantially impairs parental rights. Before the amendments, a parent of a child receiving "gender-affirming treatment" who showed up at a shelter without providing personnel with any reason to suspect abuse or neglect would receive notification within 72 hours. *See* Wash. Rev. Code § 13.32A.082(1)(b)(i).

97. But now, under the revised Subsection 3(a), assuming it even applies to these parents, the Department does not have to provide parental notification until three business days after they receive a report from the shelter. And the shelter does not have to provide a report to the Department until 72 hours have elapsed (if there is even any time requirement at all in a compelling reasons scenario—the statute is not clear).

98. Thus, SB 5599 and SHB 1406 change the notification time from 72 hours to as many as ten

days—an additional week without notification can be an eternity for parents whose child has run away.

99. This is illustrated by the following 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. The two days after that are a Saturday and Sunday. So the start of the three business days with which the Department has to notify parents is not until Monday morning, meaning by Thursday morning—10 days after the child showed up at the shelter—the Department would need to give notice to the parents.

100. Hence, the FRA Amendments add three to seven actual 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 the very least, the timing allowed for parental notification for parents of minor children arriving at a shelter and seeking or receiving "protected health services" has now been doubled or more than tripled. And at worst, no notification is required.

2. If Given Notice, Parents Mostly Kept in the Dark

101. 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).

102. But after the FRA amendments, for minors seeking "protected health care services," all the Department must provide in its notice about the child is that the Department received a report from a shelter. *Id.* § 13.32A.082(3)(a). Nothing requires the Department to provide the location, condition, or circumstances. 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. So this change in the law deprives certain parents—for whom there is no suspicion of neglect or abuse—of crucial knowledge about their child and the ability to get their child from the shelter.

3. Parents Bypassed in Treatment for Child

103. 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." *Id.* § 13.32A.082(3)(b)(i). Nowhere is "appropriate behavioral health services" defined in the statute or elsewhere in Washington state law, but in context it can only mean services to affirm a gender identity contrary to the child's biological sex.

104. This statutory silence requires a resort to 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 court may look beyond the language of [an] Act to legislative history.

. . . he remarks of . . . sponsor[s] and drafter[s] of . . . bill[s], are appropriately considered to determine th[at] purpose . . . .”). And 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,” as explained by SB 5599’s sponsor.

105. Washington State 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 there, and we need to focus on the essential needs of the young person. In short, *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.

106. And Governor Inslee, whose signature made the FRA amendments law, declared 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://www.knkx.org/law/2023-05-09/trans-minors-protected-from-parents-under-washington-law (emphasis added).

107. In sum, the amended FRA now allows the State, over parents' objections or without their knowledge, to 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.

108. Even if "behavioral health services" is narrowly interpreted to only mean mental therapy, the damage can be long lasting or permanent. That is because 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*. *See* Riittakerttu Kaltiala-Heino et al., "Gender Dysphoria in Adolescence: Current Perspectives," 9 Adolesc. Health Med. Ther. 31 (2018).[4] Thus, by referring minor children even to counseling that affirms they are something other than their biological sex, the Department is likely cementing in—perhaps for a lifetime—a struggle and confusion that the overwhelming majority of children would otherwise mature out of.

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[4] Available at https://www.dovepress.com/gender-dysphoria-in-adolescence-current-per-spectives-peer-reviewed-fulltext-article-AHMT.

109. Nor, for at least two reasons, does it mitigate this harm that there is an existing law that essentially emancipates children from parental control and notice regarding outpatient services, such as mental counseling. *See* RCW § 71.34.530 (authorizing that "[a]ny adolescent [age 13 years or older] may request and receive outpatient treatment without the consent of the adolescent's parent").

110. First, the FRA amendments do not specify an age minimum for the referral. Thus, the amended FRA allows the State to refer children of any age for "behavioral health services." That is true under the specific-general canon of construction noted above, given the amended FRA applies specifically to children in a shelter who are seeking or receiving "gender-affirming treatment," whereas RCW § 71.34.530 deals generally with all children in the state. *See Waste Mgmt. of Seattle, Inc. v. Utilities & Transp. Comm'n*, 123 Wash. 2d 621, 630, 869 P.2d 1034, 1039 (1994) ("A specific statute will supersede a general one when both apply."). That is also true under the canon of construction that a later statute controls over an earlier statute. *See, e.g., Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) ("[A] specific policy embodied in a later . . . statute should control our construction of the earlier statute, even though it has not been expressly amended.").

111. Second, the amended FRA now interjects the State between parents and children when it would otherwise not have authority to be involved. Normally, the Department, absent a finding of abuse or neglect, cannot reach out to a child and refer them for

"behavioral health services." In fact, the Department cannot even do that with runaways in a shelter, unless "compelling reasons" are triggered, which used to be abuse or neglect prior to the FRA amendments. So, the amended FRA has changed the status quo in a way that is harmful to parental rights (and to children), facilitating, if not implicitly pressuring, minors to get these services without parental involvement.

4. Timing of Child's Return Significantly to Indefinitely Delayed

112. Finally, the FRA amendments significantly delay the return of a child back to his or her parents. That is not only because parents will not know their child's location so they can pick the child up, but also because nothing in these statutory changes requires the Department to return the child, and certainly not on any specific timeline. All that Paragraph 3(b)(ii) does is require the Department to "[o]ffer services designed to resolve the conflict and accomplish reunification of the family." But, until that conflict is resolved—to whose satisfaction the statute does not say, but likely, to 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 a *plan* for reunification on no specific timetable. *Id.* § 13.32A.082(3)(b)(ii).

113. 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 there, and we need to focus on the essential needs of the young person. In short, they're getting the care they deserve. And *then* focus on the important reunification process." Senate Floor Debate on SB 5599 (Mar. 1, 2023) (statement of Sen. Marko Liias, Sponsor, at 1:24:48–1:26:00). In other words, when the Department can provide the services it thinks the child needs without parental consent, it will attempt reunification at some point following those services. But the statute is silent about what triggers reunification and when that would occur. And that silence creates a serious additional risk that parent's constitutional rights will be impaired.

114. 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 recalcitrant 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" children seeking these services would face and how "a family is standing between their young person and essential health care services." Senate Floor Debate on SB 5599 (Mar. 1, 2023) (statement of Sen. Marko Liias, Sponsor, at 1:24:48–1:26:00); *see also* Taija Perry Cook & Joseph O'Sullivan, *WA Transgender Youth Bill Targeted in National Culture War*, Crosscut (May 1, 2023), https://tinyurl.com/mva94s (quoting Sen. Liias as stating that "family members are actively 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, in some cases, sterilization.

115. On the floor of the Washington State House, Representative Jamila Taylor likewise 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, you cannot be here. If you want to 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. Mr. Speaker, the microaggressions, the language a parent—I really wish more parents had the skills that the parents were in this room talking about how they would want to affirm their children, but say no. I wish more parents had that. But I see a young person come to me on a regular basis saying I can't go home. Home is not safe. . . . I tell you there are some unhealthy family dynamics out there and that child, that child wants to go home, wants to see the love from their parents. They need some way to communicate better with their parent. Their parent needs another way to speak to

> this child, to get them through the toughest parts part of their life. We must step in. We must provide a place for this child."

House Floor Debate on SB 5599 (Apr. 12, 2023) (statement of Rep. Jamila Taylor, Representative, at 1:42:32–1:44:55), *available at* https://tinyurl.com/4wdbhape.

116. Senator Yasmin Trudeau similarly declared:

> "And what ends up driving, you know, that the driving force often, especially for, for our trans youth is the lack of acceptance. And we 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 as support this bill."

Senate Floor Debate on SB 5599 (Mar. 1, 2023) (statement of Sen. Yasmin Trudeau, at 1:55:00–1:57:00).

117. 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. In the eyes of these legislators, the parents' "sin" need be nothing more than the parents' desire to allow their child to mature before making permanent life-altering decisions.

118. In sum, because of the FRA amendments, where there is no indication of past or future abuse or neglect, parents are treated differently under the law depending on whether their minor children, when showing up to a shelter, are seeking or receiving "protected health care services," which includes "gender-affirming treatment."

119. There is thus no process or procedure for determining if parents should be notified of the location and well-being of their children or instead denied control over the treatment of their child and denied having their child at home for a longer, indefinite period. The absence of such a process or procedure is a serious deprivation of a parent's constitutional rights.

Religious Beliefs of Some Plaintiffs

120. SB 5599 also interferes with the ability of some parents to comply with their religious beliefs on matters of "gender-affirming treatment."

121. For example, the Roman Catholic Church teaches that a human body is intentionally and purposefully created by God as either male or female.

122. As embraced by Parents 3A and 3B, the Roman Catholic Church teaches:

> Everyone, man and woman, should acknowledge and accept his sexual identity. Physical, moral, and spiritual difference and complementarity are oriented toward the goods of marriage and the flourishing of family life. The harmony of the couple and of society depends in part on the way in which the complementarity, needs, and mutual support between the sexes are lived out.

Catechism of the Catholic Church para. 2333, *available at* https://tinyurl.com/rwsdv27e (last visited Aug. 16, 2023).

123. Those Plaintiffs additionally adhere to the doctrine of the Roman Catholic Church, when it teaches, "By creating the human being man and woman, God gives personal dignity to the one and the other. Each of them, man and woman, should acknowledge and accept his sexual identity." Catechism of the Catholic Church para. 2393.

124. As to the religious faith of Parents 4A and 4B, whose beliefs on these issues are informed by the Bible as they understand it, they know the Bible to teach that man and woman are created by God as male or female, respectively, see Genesis 1:27 ("So God created man in his own image, in the image of God he created him; male and female he created them."),[5] that sexual activity is to be confined to a marriage relationship of a person of the opposite biological sex, see Leviticus 18:22 ("You shall not lie with a male as with a woman; it is an abomination"), and that

[5] All quotations to the Bible are from the English Standard Version (ESV).

biological males and females are not to embrace gender expressions in their manner of dress that reflects society's expression of the opposite biological sex, see 1 Corinthians 11:14–15 (discussing manners of dress associated with men and distinct from those associated with women).

125. Parents 3A and 3B believe that their faith places upon them a religious obligation to teach these religious beliefs to their children and guide them in living them. As the Catechism teaches, "Through the grace of the sacrament of marriage, parents receive the responsibility privilege of evangelizing their children. Parents should initiate their children at an early age not the mysteries of the faith of which they are the 'first heralds' of their children. They should associate them from their tenderest years with the life of the Church . . . ." *Catechism of the Catholic Church* para. 2225, *available at* https://tinyurl.com/5t328kwa (last visited Aug. 16, 2023).

126. Parents 4A and 4B likewise hold this belief, as they believe God commands them to do so in the Bible. *See, e.g.*, Deuteronomy 6:6–7 ("And these words that I command you today shall be on your heart. You shall teach them diligently to your children, and shall talk of them when you sit in your house, and when you walk by the way, and when you lie down, and when you rise."); Ephesians 6:4 ("Fathers, do not provoke your children to anger, but bring them up in the discipline and instruction of the Lord."); 2 Timothy 3:16–17 ("All Scripture is breathed out by God and profitable for teaching, for reproof, for correction, and for training in righteousness, that the man of God may be complete, equipped for every good work.").

The FRA Amendments Interfere with First and Fourteenth Amendment Rights

127. Notwithstanding parents' constitutional rights to direct the upbringing of their children, with the FRA amendments, children of any age professing to seek "gender-affirming treatment" can do so through the Department if that child is in a homeless shelter or host home.

128. Guidelines from the World Professional Association of Transgender Health (WPATH) dangerously and irresponsibly recommend no age restrictions for transition therapy. Children as young as 8 have received puberty blockers and opposite-sex hormones, and girls as young as 12 have received mastectomies.

129. Moreover, as the bill's proponents made clear in the legislative history, SB 5599 penalizes parents of gender-confused children who both use the pronouns that correspond to the children's biological sex and refuse to use those children's preferred pronouns or name. By penalizing parents' refusal to engage in "gendering-affirming" speech and speaking contrary to it, SB 5599 equates such speech and refusal to speak with child abuse.

130. Governor Inslee appears to agree. He has declared regarding SB 5599, "With this bill, Washington leads the way . . . to support these youth as they access gender-affirming treatment." *Trans Minors Protected from Parents under Washington Law*, Associated Press (May 9, 2023), https://tinyurl.com/ynx7nm95. In other words, the

FRA amendments provide minors access to treatments that their parents would not approve.

131. Additionally, given the vagueness of what parents need to do to convince the Department to return their child and "accomplish a reunification of the family," it is highly likely the Department will require parents to affirm through their speech their child's choices as to gender identity, thus compelling the parents' speech.

132. Likewise, given how the FRA amendments now incentivize youth to run away, knowing how SB 5599 will allow the State to keep their child from them will result in chilling the parents' speech. For example, parents may cease using the child's given name and pronouns that correspond with the child's biological sex out of fear caused by SB 5599, such as Parent 2A in most public places.

133. Additionally, the immediate likelihood of harm from the FRA amendments is present because several of the Plaintiffs here have dealt with potential runaway children and two Plaintiff had their gender-dysphoric child run away.

134. Parent 2A and Parent 2B have two gender-confused children who have credibly threatened to run away and explore places they could go. Both children are biological females. This included one instance where the older, driving-age child was ready to provide transportation to take the younger child (too young to drive) to an environment that would provide gender affirmation.

135. A primary reason the children of Parent 2A and Parent 2B threatened to run away and explored

doing so is because the parents declined to refer to the children by their preferred names and pronouns, and instead referred to them by their birth names and biological pronouns.

136. Parent 3A and Parent 3B also dealt with a potential runaway situation. Their older son, who is fully desisted from a "transgender identity," was, when he was still "identifying as a girl," encouraged by a peer to run away from their home and live in a place where the peer's parents would verbalize gender affirmation by using opposite-sex names and pronouns.

137. Parents 3A and 3B believe that a similar episode recently occurred with 3C, in which the parents of a school friend surreptitiously arranged for their child to spend time outside their home with school friend and her mom, during which time the mom of the school friend would speak to the child of Parents 3A and 3B with the child's preferred name and preferred pronouns.

138. And Parents 5A and 5B have a gender-dysphoric daughter who has run away—just last year.

139. Even for those Plaintiffs whose children have not threatened to run away, the FRA amendments change the legal landscape such that children who may not have considered running away before now have an incentive to do so under the law because they can obtain health care services they desire without parental permission.

140. For all these reasons, the FRA amendments create a significant risk that if one of Plaintiffs' children wishes "to transition" or further a

"transition," either socially or medically, to a sex different from their biological sex—and that is a substantial risk for most of the children described above—one of the Defendants or their agents would facilitate the child's obtaining such a transition, contrary to the parents' desires for their children, or contrary to their religious beliefs, or both. Such an action by an agent of the State of Washington would violate the affected Plaintiffs' constitutional right to direct their child's upbringing, and their First Amendment right to teach and guide their child's activities in a manner consistent with the parents' faith commitments. This significant risk of a constitutional violation is the proximate result of SB5599.

Standing

141. For Article III standing, a "'plaintiff must have suffered an injury in fact,' *i.e.*, one that 'is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical,' (2) the injury must 'be fairly traceable to the challenged action of the defendant,' and (3) it must be 'likely' that the injury is redressable by a favorable decision.'" *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 680 (9th Cir. Sept. 13, 2023) (en banc) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)).

142. As to the injury-in-fact, the Supreme Court has observed that "[t]he more drastic the injury that government action makes more likely, the lesser the increment in probability to establish standing." *Massachusetts v. E.P.A.*, 549 U.S. 497, 525 n.23 (2007)

(internal quotation marks omitted). "[E]ven a small 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 omitted).

143. Here the threatened injuries are "drastic"—the loss of the custody and control of one's child, the resultant irreversible harm to that child, and the infringement of First 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 526. And the probability of Plaintiffs suffering the government-induced injuries noted above has significantly increased in the wake of amending the FRA. That is sufficient for standing.

144. Plaintiffs do not need to have children who are currently in a shelter to satisfy the injury-in-fact requirement. The "risk of future injury" can satisfy standing, and "[t]he anticipation of future injury may itself inflict present injury." *See* Wright & Miller, § 3531.4. Thus, plaintiffs in *Harris v. Board of Supervisors, Los Angeles County*, 366 F.3d 754, 760–764 (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.

145. In the Ninth Circuit, "an injury is 'actual or imminent' where there is a 'credible threat' that a probabilistic harm will materialize." *Natural Resources Defense Council v. U.S. E.P.A.*, 735 F.3d 873, 878–79 (9th Cir. 2013). Hence, 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).

146. Likewise, here there is a credible threat that the probabilistic harm of at least one of the Parent Plaintiffs' children running away to a shelter and triggering the amended FRA will materialize. After all, four of the families have minor children who currently struggle or recently struggled with gender dysphoria, and all of those have children were "socially transitioned" by the State (through the public schools) behind the parents' backs. Furthermore, one of those children had previously run away. That means these parents have children who are exactly the kids targeted by the FRA amendments. Just like it would be too late once a child is exposed to a pesticide, thus allowing standing to challenge before the injury occurs, so too here. Also, similar to the pesticide case, the FRA amendments have increased the odds of parents suffering constitutional harms, which odds were zero before its passage. Furthermore, parents

cannot fully control whether their children run away to a shelter. And 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. Injury in fact is thus satisfied.

147. Additionally, children often hide their gender dysphoria and social transitioning from their parents, as some of the children of the Parent Plaintiffs did. 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 amended FRA has been triggered and the parents' constitutional rights are being violated by Defendants.

148. Plaintiffs also satisfy the second and third requirements of standing. Before the FRA amendments, the probability of constitutional injuries here was zero—the threat is entirely due to the statute's amendments, thus satisfying traceability. And so, holding unconstitutional the FRA amendments will entirely redress the threat of injury.

149. As to IPEC's standing, in the Ninth Circuit "[a]n organization has standing to bring suit on behalf of its members if (1) at least one of its members would have standing to sue in his own right, (2) the interests the suit seeks to vindicate are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Fellowship of Christian Athletes*, 82 F. 4th at 681 (internal quotation marks and citation omitted). IPEC satisfies all three requirements.

150. First, one of its members is a Washington parent with custody of a minor child who has struggled with gender dysphoria, thus meaning the member has independent standing to sue. Second, IPEC's very purpose is to advocate for parents' constitutional rights in the context of gender dysphoria issues and to "stop the unethical treatment of children . . . under the duplicitous banner of gender identity affirmation," *supra* ¶ 9, and IPEC is in this lawsuit to vindicate these interests. Third, the participation of IPEC members is not necessary as this is a suit about the law, not about the facts of individuals.

151. Finally, it only takes one plaintiff to provide standing. *See Richmond v. Home Partners Holdings LLC*, No. 3:22-CV-05704-DGE, 2023 WL 2787221, at *3 (W.D. Wash. Apr. 5, 2023) (citing *Leonard v. Clark*, 12 F.3d 885, 888 (9th Cir. 1993), *as amended* (Mar. 8, 1994); *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 53 n.2 (2006)). This low bar is cleared here. All the Parent plaintiffs have minor children to which the amended FRA would apply, and four have minor children who are or have suffered gender confusion, with running away a credible threat for some of these minor children and a reality for one. Standing is satisfied for at least one of Plaintiffs, and thus for all of them.

Ripeness

152. In the Ninth Circuit, a "claim is usually ripe if the issues raised are primarily legal, do not require further factual development, and the challenged action is final." *Center For Biological Diversity v. Kempthorne*, 588 F.3d 701, 708 (9th Cir. 2009)

(citation and internal quotation marks omitted). Additionally, "[i]n considering these elements, the court must evaluate the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Id.* (cleaned up).

153. This is a facial challenge against enacted laws requiring no factual development. It is thus ripe for judicial review. And as the Ninth Circuit has declared, "[i]n the context of a facial challenge, a purely legal claim is presumptively ripe for judicial review because it does not require a developed factual record." *Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1308 (11th Cir. 2009); *see also Freedom to Travel Campaign v. Newcomb*, 82 F.3d 1431, 1435 (9th Cir. 1996) (determining claims were ripe in the context of a purely legal issue where organization which arranged trips to Cuba challenged regulation restraining right to travel to Cuba, even though organization had not applied for, and had not been denied, the specific license required under regulation).

154. "As to the hardship of denying decision, some rights are thought more precious than others. . . . When such rights are at issue, ripeness may require a lower probability and gravity of any predicted intrusion." Wright & Miller, § 3532.3, "Foundation For Decision And Hardship." So, for example, "when free speech is at issue, concerns over chilling effect call for a relaxation of ripeness requirements." *Sullivan v. City of Augusta*, 511 F.3d 16, 31 (1st Cir. 2007). Not only is free speech at issue in this case, but also parental rights deemed "essential" and "far more precious . . . than property rights," *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

See also Troxel v. Granville, 530 U.S. 57, 65 (2000) ("The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court."); *Michael H. v. Gerald D.*, 491 U.S. 110, 123 (1989) (noting "the historic respect—indeed, sanctity would not be too strong a term—traditionally accorded to the relationships that develop within the unitary family").

155. Given the "essential," "precious," "historic" "sanctity" of the rights at issue here, a lower probability of intrusion satisfies the hardship element of ripeness doctrine. The Plaintiffs' claims are thus sufficiently ripe for judicial review.

CLAIMS FOR DECLARATORY JUDGMENT AND INJUNCTION

Count I
Federal Due Process Clause—Parents' Right to Refuse Treatment of their Minor Children
U.S. Const. Amend. XIV, § 1, Cl. 3

156. Plaintiffs hereby incorporate the allegations made in each preceding paragraph of this Complaint as if fully set forth herein.

157. The Supreme Court has held that the Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, includes certain substantive rights. Fundamental rights under the Constitution of the United States are those "deeply rooted in this Nation's history and tradition" or "fundamental to our scheme of ordered liberty." *McDonald v. City of*

Chicago, 561 U.S. 742, 767 (2010) (internal quotation marks and emphasis omitted).

158. Among these is parents' fundamental right to direct their children's upbringing. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925); *see also Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion) (discussing a long line of cases where the Supreme Court has "recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children").

159. More specifically, the Ninth Circuit has observed that the Fourteenth Amendment "includes the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state." *Wallis v. Spencer*, 202 F.3d 1126, 1136, 1141 (9th Cir. 2000); *see also Jordan v. D.C.*, 161 F. Supp. 3d 45, 62 n.15 (D.D.C. 2016), *aff'd*, 686 F. App'x 3 (D.C. Cir. 2017) ("[T]he Supreme Court has suggested, and other courts have held, that a minor has no independent liberty interest to refuse medical treatment and that, before she reaches the age of maturity, the liberty interest is held by a minor's parents or guardian."); *Kanuszewski v. Mich. Dep't of Health & Hum. Servs.*, 927 F.3d 396, 414–15 (6th Cir. 2019) ("[T]he Supreme Court has strongly suggested that minor children lack a liberty interest in directing their own medical care. Instead, children must instead rely on parents or legal guardians to do so until they reach the age of competency.").

160. That is because "children, even in adolescence, simply are not able to make sound

judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments." *Parham*, 442 U.S. at 603. And "[t]he fact that a child may . . . complain about a parental refusal to provide [treatment] does not diminish the parents' authority to decide what is best for the child." *Id.* at 604. Thus, "[s]imply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state." *Id.* at 603.

161. Further, federal courts have treated medical and mental-health treatment as implicating the same constitutional parental rights. *Compare Mueller v. Auker*, 576 F.3d 979, 995 (9th Cir. 2009) (medical treatment) *with Parham*, 442 U.S. at 602–04 (mental-health treatment).

162. This right is deeply rooted in American history and tradition. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Bellotti v. Baird*, 443 U.S. 622, 638 (1979); *Moore City of East Cleveland*, 431 U.S. 494, 503 (1977).

163. The amended FRA violates that right by giving the Department authority to make referrals, without notice to or consultation with parents, for "appropriate behavioral health services" for a child seeking "gender-affirming treatment."

164. The FRA amendments thus interfere with the fundamental right of parents to refuse treatment on their minor child's behalf by authorizing the child

to engage in "treatment" not authorized by the parent and by authorizing others to provide such treatment.

165. Because the "right to rear children without undue governmental interference is a fundamental component of due process," laws that burden that right are subject to strict scrutiny, whereby the Fourteenth Amendment "forbids the government to infringe certain fundamental liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling government interest." *Nunez v. City of San Diego*, 114 F.3d 935, 951–52 (9th Cir. 1997) (emphasis omitted) (internal quotation marks omitted).

166. For an interest to be compelling, it must be more than just the general welfare of the child, which alone is not sufficient to justify interfering with the parental rights at issue here. *See In re Parentage of C.A.M.A.*, 154 Wash. 2d 52, 64, 109 P.3d 405, 412 (2005) ("Short of preventing harm to the child, the standard of 'best interest of the child' is insufficient to serve as a compelling state interest overruling a parent's fundamental rights."); *see also Troxel,* 530 U.S. at 68–70. Cases justifying infringing parental rights tend to deal with something akin to clear abuse or imminent physical threats. *E.g.*, *Mueller v. Auker*, 700 F.3d 1180, 1187 (9th Cir. 2012). Even with those circumstances, whenever possible, courts must still give weight to the parental determinations. *Mann v. County of San Diego*, 907 F.3d 1154, 1160–61 (9th Cir. 2018).

167. Here, the amended FRA does not do so. The amended FRA categorically does not require evidence

of abuse or extreme distress on the part of the child when it comes to "gender-affirming treatment."

168. Similarly, FRA's new provisions are not narrowly tailored, because they are not confined to special circumstances and give no weight to a fit parent's views. Under FRA, a runaway child's desire alone eviscerates parental rights, but that is not the constitutional standard.

169. Plaintiffs have no adequate remedy at law.

170. The actions Defendants are now required to take under the amended FRA violate federal law, specifically by violating Plaintiffs' right to refuse treatment of their children when there is no abuse or neglect and no health emergency for the child. Absent relief, Defendants' actions continue to threaten to harm Plaintiffs by impairing their enjoyment of this right.

Count II
Federal Due Process Clause—Parents' Right to Custody of Children
U.S. Const. Amend. XIV, § 1, Cl. 3

171. Plaintiffs hereby incorporate the allegations made in each preceding paragraph of this Complaint as if fully set forth herein.

172. The Supreme Court has held that the Due Process Clause secures the related substantive right of parents to have custody of their children. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (recognizing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"). Here,

this is inextricably intertwined with the right of a family to live together. *Moore*, 431 U.S. at 498–500; *Halet v. Wend Inv. Co.*, 672 F.2d 1305, 1311 (9th Cir. 1982).

173. The Supreme Court has consistently "afforded protection against temporary deprivations in the parent-child relationship as part of the right to familial integrity." *Strail ex rel. Strail v. Dep't of Child., Youth & Fams.*, 62 F. Supp. 2d 519, 526 (D.R.I. 1999); *accord also David v. Kaulukukui*, 38 F.4th 792, 803-04 (9th Cir. 2022); *Keates v. Koile*, 883 F.3d 1228, 1238–39 (9th Cir. 2018). As multiple circuits have held, the "'separation of parent from child, even for a short time, represents a serious infringement upon both the parents' and child's rights.'" *Brokaw v. Mercer Cnty.*, 235 F.3d 1000, 1019 (7th Cir. 2000) (quoting *J.B. v. Washington Cnty.*, 127 F.3d 919, 925 (10th Cir. 1997)). After all, "the importance of the familial relationship . . . stems from the emotional attachments that derive from the intimacy of *daily* association." *Smith v. Org. of Foster Fams. For Equal. & Reform*, 431 U.S. 816, 844 (1977) (emphasis added). Thus, "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).

174. By denying to parents of children who seek the aforementioned health care services information about the location of their children, as well as the custody and control of their children, whether for an additional 3–7 days or indefinitely, the FRA

amendments interferes with the fundamental right of parents to have custody of their children and keep the family unit together as a household when there is no finding of abuse or neglect, even if that separation is only for an additional short period of time.

175. Plaintiffs have no adequate remedy at law.

176. The actions Defendants are now required to take violate federal law, specifically by violating Plaintiffs' right to custody of their children and their right to keep their family together. Absent relief, Defendants' actions continue to threaten to harm Plaintiffs by impairing their enjoyment of this right.

Count III
Federal Free Exercise Clause
U.S. Const. Amend. I, Cl. 2

177. Plaintiffs hereby incorporate the allegations made in each preceding paragraph of this Complaint as if fully set forth herein.

178. The Free Exercise Clause of the First Amendment to the United States Constitution mandates that no instrumentality of any government in the United States shall enact any "law . . . prohibiting the free exercise" of religion. U.S. Const., amend. I, cl. 2. That right applies to the States through the Fourteenth Amendment. *See Carson v. Makin*, 142 S. Ct. 1987, 1996 (2022).

179. The Free Exercise Clause protects the right of individuals "to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v. Bremerton Sch. Dist.*, 142

S. Ct. 2407, 2421 (2022) (internal quotation marks omitted).

180. Also, "[t]he Free Exercise Clause of the First Amendment protects against indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." *Carson*, 142 S. Ct. at 1996 (internal quotation marks omitted).

181. The free exercise of religion is a fundamental right, and a law goes to the core of that protected right when it involves raising children in accordance with the parents' religious faith. *See Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972).

182. The amended FRA interferes with the right to free exercise of religion in multiple ways. First, by interfering with certain parents' custody and thus making it impossible to raise their children in accord with their faith during the time that the Defendants keep the child away from parents without allowing contact—either directly, or indirectly through the time it takes to notify parents of their child's location.

183. Second, FRA overrides parent's religiously motivated decisions regarding healthcare. The amended FRA violates that right by giving the Department authority to make referrals for "appropriate behavioral health services" for a child seeking "gender-affirming treatment" in opposition to some of the Plaintiff Parents' religious beliefs.

184. Third, the amended FRA requires that the Department offer "*services* designed to resolve the conflict and accomplish a reunification of the family." RCW § 13.32A.082(3)(b)(ii). This directly violates the religious beliefs of Parents 3A, 3B, 4A, and 4B, and

others like them, who decline to affirm a gender identity that is incongruent with their child's biological sex, by giving the runaway minor "medical treatments" or "mental-health services" that parents disapprove of and then forcing a reconciliation of the "conflict" that the State has now exacerbated.

185. The law thus necessarily infringes a hybrid right of free exercise and parental rights. *See, e.g., Employment Division v. Smith,* 494 U.S. 872, 881-882 & n.1 (1990) (discussing infringement of hybrid rights as a basis for requiring strict scrutiny). Thus, FRA must satisfy strict scrutiny even if it is generally applicable because it involves fundamental rights of free exercise *and* raising children. In such hybrid cases, strict scrutiny must be employed, even if the burden on these combined rights is only incidental. *See Yoder*, 406 U.S. at 215.[6]

186. In the Ninth Circuit, "to assert a hybrid-rights claim, a free exercise plaintiff must make out a colorable claim that a companion right has been

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[6] The Supreme Court has never disavowed hybrid rights, and re-affirmed such in *City of Boerne v. Flores*, 521 U.S. 507, 514 (1997). So as the Supreme Court has commanded, "[i]f 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." *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (cleaned up). If that is not enough, the Ninth Circuit has repeatedly recognized the *Smith* hybrid-rights doctrine. *See, e.g.*, *Thomas v. Anchorage Equal Rights Comm'n,* 165 F.3d 692, 704 (9th Cir. 1999), *withdrawn and reh'g granted*, 192 F.3d 1208 (9th Cir. 1999), *vacated en banc as not ripe*, 220 F.3d 1134 (9th Cir. 2000); *Miller v. Reed*, 176 F.3d 1202, 1207–08 (9th Cir. 1999); *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1032 (9th Cir. 2004) ("SJCC"); *Ohno v. Yasuma*, 723 F.3d 984, 1012 (9th Cir. 2013).

violated—that is, a fair probability or a likelihood, but not a certitude, of success on the merits." *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1032 (9th Cir. 2004) ("SJCC") (quoting *Miller v. Reed*, 176 F.3d 1202, 1207 (9th Cir. 1999)). Upon doing so, strict scrutiny is triggered. *Ohno v. Yasuma*, 723 F.3d 984, 1012 (9th Cir. 2013) (citing *SJCC*, 360 F.3d at 1031). As noted in this complaint, Plaintiffs have made out colorable federal constitutional claims implicating parental rights, free speech, and due process, thus requiring strict scrutiny of the amended FRA.

187. Turning to *Yoder*, it is clear that the FRA violates this combination of free exercise rights and parental rights. Any substantial interference with religious upbringing is enough to trigger this right. Interference need not cause rejection of religious tenets or practice. As *Yoder* explained, "[n]or is the impact of the . . . law confined to grave interference with important Amish religious tenets from a subjective point of view. It carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent." 406 U.S. at 218.

188. Here, the threat is at least as strong as the speculative threat identified in *Yoder*—and exponentially more concrete. Providing "gender-affirming treatment" without parental knowledge or consent does not just create a "real threat" of undermining religious belief or practice; it guarantees it. Even providing the incentive to run away, by offering treatment against parental wishes, creates the "real threat." And beyond that, an extended interference with parental custody, by a state agency

that is at best in disagreement with parents' religious beliefs, and possibly even hostile to them, creates a very real threat of undermining the parents' religious authority and ability to raise their children consistent with their faith.

189. By directly authorizing the Department to refer a minor for "behavioral health services" consistent with the child's desire for "gender-affirming treatment," the amended FRA and RCW § 71.34.530 directly undermine the parents' religious and parental rights in the upbringing of their children, damage the parent-child relationship, and further harm the child by having a person in authority "affirm" an incongruent sexual identity.

190. Accordingly, to invoke *Yoder* again, "[t]he conclusion is inescapable" that the amended FRA "substantially interfere[es] with the religious development of [Plaintiffs'] child[ren] . . . at the crucial adolescent stage of development," and "contravenes the basic religious tenets and practices of [Plaintiffs'] faith, both as to the parent and the child." *Id.* at 218. It is "inescapable" because parents have no recourse once the child is at the shelter, save for reunification after approval under nebulous standards by a state agent and after the child is referred to "behavioral health services" almost assuredly in conflict with the parent's religious beliefs. *Id.* Under the circumstances present here, Parents' hybrid rights are clearly infringed. *Hooks*, 228 F.3d at 1042. It is difficult to imagine more important rights. *See Pierce,* 268 U.S. 510, 534–35; *Meyer*, 262 U.S. at 399.

191. Parental rights to raise their children according to their faith and direct their upbringing are precisely the kinds of rights "beyond the power of the State to control," particularly when it comes to overriding parental judgment when it comes to declining to encourage a gender identity inconsistent with their child's biological sex. Yet that is just what the amended FRA is attempting to do. It thus triggers strict scrutiny.

192. Strict scrutiny is a high bar. As the U.S. Supreme Court has emphasized, a law "can survive strict scrutiny only if it advances 'interests of the highest order' and is narrowly tailored to achieve those interests." *Fulton v. City of Phila.*, 141 S. Ct. 1868, 1881 (2021) (quoting *Church of the Lukumi Babalu Aye, Inc., v. City of Hialeah*, 508 U.S. 520, 546 (1993)). "Put another way, so long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Id.*

193. Defendants cannot satisfy strict scrutiny here. First, Defendants cannot claim an interest here that approaches the importance of the one identified in *Yoder*. Promoting "gender-affirming treatment" or placing children's wishes ahead of their parents' judgment is nowhere near "the very apex of the function of the State." *Id.* at 213.

194. Nor can the State's general interest in preventing harm against children in general suffice, because "the First Amendment demands a more precise analysis." *Fulton*, 141 S. Ct. 1881. Defendants have no legitimate interest in providing "gender-affirming treatment" contrary to parental wishes

absent some specific threat of abuse from the parents, because "[t]here can be no assumption that today's majority is 'right' and the [Plaintiffs] and others like them are 'wrong.' A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different." *Yoder*, 406 U.S. at 223–24. Nor can any possible workarounds excuse the infringement. Indeed, the pressure to create such workarounds shows all too well the danger to constitutional rights. *Yoder*, 406 U.S. at 218 n.9.

195. Further, the law is not narrowly tailored because it is overinclusive, sweeping in situations where there is no abuse or neglect, as well as situations where the child may have shown up at a shelter having nothing to do with "gender-affirming treatment." *See Lukumi*, 508 U.S. at 538 (finding laws violated the Free Exercise Clause because "they proscribe more religious conduct than is necessary to achieve their stated ends"). Indeed, FRA does not even tie providing treatment to the reason the child ran away. Instead, the amended statute now says, in essence, "if you run away *for any reason* and want 'gender-affirming treatment,' you can get it regardless of what your parents want."

196. Plaintiffs have no adequate remedy at law.

197. The actions Defendants are now required to take violate federal law, specifically by violating Plaintiffs' right to raise their children according to the parents' faith. Absent relief, Defendants' actions continue to threaten to harm Plaintiffs.

Count IV
Federal Free Speech Clause
U.S. Const. Amend. I, Cl. 3

198. Plaintiffs hereby incorporate the allegations made in each preceding paragraph of this Complaint as if fully set forth herein.

199. The Free Speech Clause of the First Amendment to the United States Constitution mandates that no instrumentality of any government in the United States shall enact any "law . . . abridging the freedom of speech." U.S. Const. amend. I, cl. 3. That right applies to the States through the Fourteenth Amendment. *Prete v. Bradbury*, 438 F.3d 949, 961 (9th Cir. 2006).

200. Yet another reason for First Amendment protections is "because the freedom of thought and speech is indispensable to the discovery and spread of political truth. By allowing all views to flourish, the framers understood, we may test and improve our own thinking both as individuals and as a Nation." *303 Creative*, 143 S. Ct. at 2311 (internal quotation marks omitted). "Gender-affirming treatment" is one of the most controversial political, social, and medical issues in American life, meriting the apex of First Amendment protection.

201. The amended FRA has the effect of simultaneously compelling and chilling speech in accordance with the views of the majority of the state legislature and the Governor.

202. The legislative history of SB 5599 shows the statute's supporters equate a parent who does not verbally affirm a child's gender identity by using the

child's preferred names and pronouns with an abusive environment, arguing that such abuse is what makes the statute's provisions necessary.

203. By doing so, SB 5599 and HB 1406 chill protected speech, as parents with a gender-confused child may fear to use certain speech (birth name, preferred pronouns) or say certain things ("You are still the same gender as when you were born") that could lead to the child seeking to trigger the amended FRA. And chilling free speech can violate the Constitution. *See Bd. of Cnty. Comm'rs v. Umbehr*, 518 U.S. 668, 674 (1996) ("[C]onstitutional violations may arise from the deterrent, or 'chilling,' effect of governmental efforts that fall short of a direct prohibition against the exercise of First Amendment rights . . . .") (internal quotation marks omitted).

204. Likewise, the vagueness associated with what parents must do to qualify for reunification with their child violates the First Amendment by chilling speech. *See F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253–54 (2012) ("When speech is involved, rigorous adherence to [void for vagueness doctrine] requirements is necessary to ensure that ambiguity does not chill protected speech."); *see also Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 588 (1998).

205. When parents speak on issues of "gender-affirming treatment" with their children, the right to free speech converges with the fundamental right to raise children.

206. For Plaintiffs 3A, 3B, 4A, and 4B, this aspect of the amended FRA infringes upon a third

fundamental right. Speaking words based on faith is protected by both the Free Speech Clause and the Free Exercise Clause. An example is prayer, regarding which the Supreme Court held that "[b]oth the Free Exercise and Free Speech Clauses of the First Amendment protect [those] expressions . . . ." *Kennedy*, 142 S. Ct. at 2416. Given that the right to direct the upbringing of children is implicated as well, when the parent speaks on gender identity from the vantage point of religious faith, the amended FRA sits on a nexus of at least three violations of fundamental rights.

207. As to compelled speech, the amended FRA provides that the Department shall offer "services designed to resolve the conflict and accomplish a reunification of the family." Wash. Rev. Code § 13.32A.082(3)(b)(ii). To the extent that such "reunification" would be contingent on the parents' using a child's preferred name and preferred pronouns, the Department would be compelling speech by coercing a parent to say words they do not believe.

208. For parents such as Plaintiffs here, even when LGBT issues and children are concerned, the Supreme Court has held that the First Amendment does not allow the State to "interfere with [their] choice not to propound a point of view contrary to [their] beliefs." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 654 (2000). So, "the First Amendment protects an individual's right to speak his mind regardless of whether the government considers his speech sensible and well intentioned or deeply misguided, and likely to cause anguish or incalculable grief." *303 Creative*, 143 S. Ct. at 2312 (internal quotation marks omitted).

209. These protections are heightened, if anything, where the State commands that a person must give utterance to particular views because, as a general matter, "the government may not compel a person to speak its own preferred messages." *Id.*

210. The amended FRA thus abridges free speech in three regards. First, it penalizes parents for expressing their views on gender identity.

211. Second, this is also compelled speech. SB 5599 penalizes parents for not expressing support for a child's gender identity, including not using "preferred pronouns" or a preferred name when speaking to or referring to a gender-confused child, equating such speech with child abuse. Compelled speech violates the Free Speech Clause. *See Janus v. Am. Fed'n of State, Cnty., & Mun. Emps.*, 138 S. Ct. 2448, 2463 (2018) ("We have held time and again that freedom of speech 'includes both the right to speak freely and the right to refrain from speaking at all.'") (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)); *see also W. Va. Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or *force citizens to confess by word or act their faith therein*.") (emphasis added).

212. Third, SB 5599 chills parents' speech. That is currently occurring with some of the Parent Plaintiffs and their unwillingness to use the names and pronouns they would prefer to use regarding their

child to their child, out of fear it will lead to the child relying on the FRA amendments to run away.

213. Plaintiffs have no adequate remedy at law.

214. The actions Defendants are now effectively required and allowed to take violate the U.S. Constitution, specifically by posing a substantial threat to Plaintiffs' rights to freely express their views on these issues and to refrain from speech that contradicts the State's preferred views. Absent relief, Defendants' actions continue to threaten to harm Plaintiffs.

Count V
Federal Due Process Clause—Deprivation of Parental and Religious Rights Without Procedural Due Process
U.S. Const. Amend. XIV, § 1, Cl. 3

215. Plaintiffs hereby incorporate the allegations made in each preceding paragraph of this Complaint and the attached declarations as if fully set forth herein.

216. The Due Process Clause of the Fourteenth Amendment guarantees that no State shall "deprive any person of life, liberty, or property without due process of law." U.S. Const., amend. XIV, § 1, cl. 3.

217. Moreover, "[c]ourts have characterized the right to familial association as having . . . a procedural component." *Keates*, 883 at 1236. The "procedural" component is the principle that officials may interfere with this "liberty interest" only if they "provide the parents with fundamentally fair procedures." *Id.* (quoting *Santosky*, 455 U.S. at 754). The Fourteenth

Amendment guarantees "that parents and children will not be separated by the state without due process of law except in an emergency." *Wallis*, 202 F.3d at 1136.

218. Further, because "parent[s] ha[ve] a constitutionally protected right to the care and custody of [their] children," parents "c[an]not be summarily deprived of that custody without notice and a hearing, except when the children [a]re in imminent danger." *Ram v. Rubin*, 118 F.3d 1306, 1310 (9th Cir. 1997). And, of critical importance here, "the continued separation of a child from her custodial parent is constitutional only if the scope, degree, and duration of the intrusion is reasonably necessary to avert the specific injury at issue." *David*, 38 F.4th at 803 (internal quotation marks omitted).

219. Here, the amended FRA deprives parents of their liberty interest in the custody of their children without the procedural safeguards required by the Due Process Clause. Prior to the amendments, the FRA already provided safeguards for children who were subject to abuse or neglect. The amendments, therefore, concern children who are not subject to abuse or neglect, are not in imminent danger, and where there is no emergency, with the FRA now prolonging the separation of parent and child solely because the child is seeking or receiving certain treatment. This failure to notify parents and unreasonably delay or prohibit parent-child reunification supports no governmental interest, certainly not an important or compelling one.

220. The amended FRA authorizes potentially life-changing treatments, even if limited to "appropriate behavioral health services," before notification to parents. At a minimum, the lack of adequate notice allows shelters, acting as the State's agents, to interpose themselves between parents and their children for a protracted period without just cause or procedural safeguards.[7] The statutory framework thereby deprives Washington parents, such as Plaintiffs, of their procedural due process rights. Multiple aspects of that framework are constitutionally objectionable.

221. First, as explained above, the amended FRA and RCW § 71.34.530 allow the State to interpose other decision-makers between parents and their children on matters of medical and mental-health treatment. Because the amended FRA and RCW § 71.34.530 allow at least some treatments to be performed on children without notice to their parents or any other procedures to protect parental rights, the statute violates the Due Process Clause.

222. Secondly, the amended FRA imposes undue physical separation of parents and their children. The statute plainly exempts from the prompt parental-

[7] A shelter, in taking these statutorily required steps, is a state actor subject to the Fourteenth Amendment's strictures. "Conduct that is formally 'private' may become so entwined with governmental policies . . . as to become subject to the constitutional limitations placed upon state action." *Evans v. Newton*, 382 U.S. 296, 299 (1966). The FRA requires shelters to contact the Department and to refrain from contacting parents, when "compelling reasons" under the statute exist. In so doing, shelters act as the state's agents. *See Kia P. v. McIntyre*, 235 F.3d 749, 756 (2d Cir. 2000).

notice requirement cases where minors are seeking or receiving "gender-affirming treatment." Even if Paragraph 3(a) of FRA also applies to situations covered by Paragraph 3(b), the timing of parental notice substantially impairs parental rights by delaying notice from at most 72 hours to potentially 10 days, with no promise of reunification.

223. The amended FRA thus unconstitutionally infringes upon parents' "constitutionally protected right to the care and custody of [their] children . . . without notice and a hearing," even where there is no evidence that "the children [a]re in imminent danger." *Ram*, 118 F.3d at 1310. While the FRA does not set out procedures to terminate parental rights, it arbitrarily delays family reunification under non-exigent circumstances. The delayed-notice regime established by amended FRA, as well as RCW § 71.34.530, deny parents the "opportunity to exercise th[e] right . . . to participate in [their] child's care and management," especially given the State's intent to provide behavioral health services during the separation without parental consent. *See James v. Rowlands*, 606 F.3d 646, 655 (9th Cir. 2010); *see also* Gregory A. Loken, *"Thrownaway" Children and Throwaway Parenthood*, 68 Temp. L. Rev. 1715, 1762 n.241 (1995) ("[P]roperly drawn runaway . . . youth statutes include a requirement that parents be notified of the child's whereabouts.").

224. When due process is implicated, "the question remains what process is due." *FDIC v. Mallen*, 486 U.S. 230, 240 (1988) (internal quotation marks omitted). "The fundamental requirement of due process is the opportunity to be heard at a meaningful

time and in a meaningful manner." *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation marks omitted).

225. Generally, the Due Process Clause ensures a fair hearing by an unbiased decision maker. *See, e.g.*, *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972). Here, however, parents of children who claim to be receiving or seeking certain treatment are immediately deprived of their rights to the custody and companionship of their children, to refuse treatment for their children, and to raise children in the parents' faith tradition with no process whatsoever.

226. Even for accusations of domestic violence or severe substance abuse, Subsection 3 provides due process by allowing for an individualized assessment to see if there is a compelling reason to withhold information about the child's whereabouts from the parents. But for parents of children seeking "gender-affirming treatment," there is not even a minimal procedure to provide due process. This lack of even minimal process is a violation of due process.

227. Plaintiffs have no adequate remedy at law.

228. The actions Defendants are now required or allowed to take violate the U.S. Constitution, specifically by posing a substantial threat to Plaintiffs' right not to be deprived of any liberty interest without due process of law. Absent relief, Defendants' actions continue to threaten to harm Plaintiffs.

Count VI
Federal Due Process Clause—Void for Vagueness
U.S. Const. Amend. XIV, § 1, Cl. 3

229. Plaintiffs hereby incorporate the allegations made in each preceding paragraph of this Complaint as if fully set forth herein.

230. Due process requires that laws not be "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (internal quotation marks omitted).

231. While the void-for-vagueness doctrine is most often employed in challenges to criminal statutes, the Supreme Court has also applied it to civil statutes. *See, e.g., A. B. Small Co. v. American Sugar Ref. Co.*, 267 U.S. 233, 239-42 (1925); *Giaccio v. Pennsylvania*, 382 U.S. 399, 402–03 (1966).

232. Additionally, the Supreme Court has determined that a statute can be held unconstitutionally vague not only for failing to provide sufficient warning of the conduct prohibited by law but also for lacking standards restricting the discretion of governmental authorities who apply the statute. *See, e.g., Papachristou v. City of Jacksonville*, 405 U.S. 156, 165–70 (1972); *Giaccio*, 382 U.S. at 402–03; *Lanzetta v. New Jersey*, 306 U.S. 451 (1939).

233. It is not clear whether the amended FRA's provision regarding reconciliation and reunification services allows the Department or a provider to condition such reconciliation or reunification on the

parents agreeing to call a gender-confused child by the child's preferred name or pronouns or agreeing to allow the child to receive treatment that the child needs parental permission for but that the parents oppose. Multiple Plaintiffs are not sure what they would have to do to get their child back.

234. What is more, the FRA amendments provide Department actors unfettered discretion on whether to allow reunification, thus creating a risk of arbitrary or excessive discretion in applying the law, which violates the void-for-vagueness doctrine.

235. Plaintiffs have no adequate remedy at law.

236. The actions Defendants are now required to take violate federal law, specifically by posing a substantial threat to Plaintiffs' right not to be deprived of any liberty interest without due process of law. Absent relief, Defendants' actions continue to threaten to harm Plaintiffs.

Count VII
14th Amendment Due Process Clause—Parents' Substantive Due Process Right to Reject Treatment for their Children

237. Plaintiffs hereby incorporate the allegations made in each preceding paragraph of this Complaint as well as the attached declarations as if fully set forth herein.

238. The Ninth Circuit has observed that the Fourteenth Amendment "includes the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state." *Wallis*, 202

F.3d at 1136, 1141. *See also Jordan v. D.C.*, 161 F. Supp. 3d 45, 62 n.15 (D.D.C. 2016), *aff'd*, 686 F. App'x 3 (D.C. Cir. 2017) ("[T]he Supreme Court has suggested, and other courts have held, that a minor has no independent liberty interest to refuse medical treatment and that, before she reaches the age of maturity, the liberty interest is held by a minor's parents or guardian."); *Kanuszewski v. Mich. Dep't of Health & Hum. Servs.*, 927 F.3d 396, 414–15 (6th Cir. 2019) ("[T]he Supreme Court has strongly suggested that minor children lack a liberty interest in directing their own medical care. Instead, children must instead rely on parents or legal guardians to do so until they reach the age of competency.").

239. That is because "children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments." *Parham*, 442 U.S. at 603. And "[t]he fact that a child may . . . complain about a parental refusal to provide [treatment] does not diminish the parents' authority to decide what is best for the child." *Id.* at 604. Thus, "[s]imply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state." *Id.* at 603.

240. Further, federal courts have treated medical and mental-health treatment as implicating the same constitutional parental rights. *Compare Mueller v. Auker*, 576 F.3d 979, 995 (9th Cir. 2009) (medical

treatment) *with Parham*, 442 U.S. at 602–04 (mental-health treatment).

241. This right is deeply rooted in American history and tradition. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Bellotti v. Baird*, 443 U.S. 622, 638 (1979); *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977).

242. In Washington, "[a]ny 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." Wash. Rev. Code Ann. § 71.34.530.

243. Section 71.34.530 essentially emancipates children from their parents as to outpatient treatment once they reach the age of 13.

244. This violates the federal constitutional right parents possess to refuse treatment for their children until they reach age 18.

245. Some of the Parent Plaintiffs have had their parental rights violated under this statute when, for example, at the school's facilitation, their child received treatment from a school counselor to socially transition.

246. Additionally, in the context of the amended FRA, Defendants rely on Section 71.34.530 in conjunction with the amended FRA's Paragraph 3(b)(i) to facilitate "behavioral health services" for youth covered by Paragraph 3(b). The "behavioral health

services" or any other potential medical services referrals available under the amended FRA are not necessary to protect the health of the child, but actually harm the child by encouraging an alternate gender identity that the overwhelming majority of children abandon after puberty when such "affirming" treatments are not offered. This is not a case where such services are necessary to protect or save the life of the child, but actually do the opposite and override the wishes of parents such as Plaintiff parents.

247. Section 71.34.530 thus violates Plaintiffs' parental rights under the Fourteenth Amendment.

248. Plaintiffs have no adequate remedy at law.

249. The actions Defendants are now required to take violate state law, specifically by posing a substantial threat to Plaintiffs' right not to be deprived of any liberty interest without due process of law. Absent relief, Defendants' actions continue to threaten to harm Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court issue an order and judgment:

1. Declaring that under Count I, the threatened denial by Defendants pursuant to SB5599 and/or HB 1406 of Plaintiffs' right to refuse treatment for their minor children violates the federal Due Process Clause of the Fourteenth Amendment.

2. Declaring that under Count II, the threatened denial by Defendants pursuant to SB5599 and/or HB 1406 of Plaintiffs' right to the custody of their children, and the consequent ability to keep their family

together, violates the federal Due Process Clause of the Fourteenth Amendment;

3. Declaring that under Count III, the threatened denial by Defendants pursuant to SB5599 and/or HB 1406 of Plaintiffs' right to raise their children according to the parents' faith violates the federal Free Exercise Clause of the First Amendment as applicable to the States through the Fourteenth Amendment;

4. Declaring that under Count IV, the threatened denial by Defendants pursuant to SB5599 and/or HB 1406 of Plaintiffs' rights to express to their children and others their views regarding gender identity, and requiring certain speech to get their children back, violates the federal Free Speech Clause of the First Amendment as applicable to the States through the Fourteenth Amendment;

5. Declaring that under Count V, the threatened denial by Defendants pursuant to SB5599, HB 1406, and/or Washington Revised Code Annotated § 71.34.530 of Plaintiffs' right not to be deprived of their liberty interests in raising their children without due process of law violates the federal Due Process Clause of the Fourteenth Amendment;

6. Declaring that under Count VI, the threatened denial by Defendants pursuant to SB5599 and/or HB 1406 of Plaintiffs' right to have adequate notice of what the law commands or forbids and right to not have state actors arbitrarily enforce the law leads to the result that SB 5599 and/or HB 1406 is void for vagueness and thus violates the federal Due Process Clause;

7. Declaring that under Count VII, the threatened denial by Defendants pursuant to Washington Revised Code Annotated § 71.34.530 of Plaintiff's right to refuse treatment for their minor child violates the Due Process Clause of the Fourteenth Amendment.

8. Enjoining Defendants through a preliminary injunction, to be succeeded by a permanent injunction, from enforcing the challenged provisions of SB 5599, HB 1406, and Section 71.34.530;

9. Awarding reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable laws; and

10. Granting any other relief the Court deems just, proper, and appropriate.

Dated: November 6, 2023 Respectfully submitted.

/s/ Jonathan F. Mitchell
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* admitted *pro hac vice*
** *pro hac vice* application forthcoming

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on November 6, 2023, this document was served through the Court's CM/ECF document filing system upon:

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Counsel for Plaintiffs

Case 3:23-cv-05736-DGE Document 34-1
Filed 11/06/23

VERIFICATION OF FIRST AMENDED COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, Martha Shoultz, on behalf of the International Partners for Ethical Care, Inc. (IPEC), declare under penalty of perjury that the foregoing allegations that pertain to IPEC are true and correct to the best of my knowledge.

/s/
Martha Shoultz

Dated: 11/6/23

Verification of Marsha Shoultz on behalf of IPEC

Case 3:23-cv-05736-DGE Document 34-2
Filed 11/06/23

VERIFICATION OF FIRST AMENDED COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, [REDACTED] appearing in this case as Parent 1A, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

[REDACTED]

Dated: 11/6/23

Verification of Parent 1A

Case 3:23-cv-05736-DGE Document 34-3
Filed 11/06/23

VERIFICATION OF FIRST AMENDED COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, [REDACTED] appearing in this case as Parent 1B, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

[REDACTED]

Dated: 11/6/23

Verification of Parent 1B

VERIFICATION OF FIRST AMENDED COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, [REDACTED] appearing in this case as Parent 2B, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

[REDACTED]

Dated: 11/6/23

Verification of Parent 2B

VERIFICATION OF FIRST AMENDED COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, [REDACTED] appearing in this case as Parent 2A, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

[REDACTED]

Dated: 11/6/23

Verification of Parent 2A

Case 3:23-cv-05736-DGE Document 34-5
Filed 11/06/23

VERIFICATION OF FIRST AMENDED COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, [REDACTED] appearing in this case as Parent 3A, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

[REDACTED]

Dated: 11/6/23

Verification of Parent 3A

Case 3:23-cv-05736-DGE Document 34-6
Filed 11/06/23

VERIFICATION OF FIRST AMENDED COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, [REDACTED] appearing in this case as Parent 3B, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

[REDACTED]

Dated: 11/6/23

Verification of Parent 3B

Case 3:23-cv-05736-DGE Document 34-7
Filed 11/06/23

VERIFICATION OF FIRST AMENDED COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, [REDACTED] appearing in this case as Parent 4A, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

[REDACTED]

Dated: 11/6/23

Verification of Parent 4A

VERIFICATION OF FIRST AMENDED COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, [REDACTED] appearing in this case as Parent 4B, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

[REDACTED]

Dated: 11/6/23

Verification of Parent 4B

Case 3:23-cv-05736-DGE Document 34-8
Filed 11/06/23

VERIFICATION OF FIRST AMENDED COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, [REDACTED] appearing in this case as Parent 5A, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

[REDACTED]

_____

[REDACTED]

Dated: 11/6/23

Verification of Parent 5A

Case 3:23-cv-05736-DGE Document 34-9
Filed 11/06/23

VERIFICATION OF FIRST AMENDED COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, [REDACTED] appearing in this case as Parent 5A, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

[REDACTED]
[REDACTED]

Dated: 11/6/23

Verification of Parent 5B

Appendix E

U.S. Constitution

Article III. The Judiciary [excerpted]

* * *

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;–to all Cases affecting Ambassadors, other public Ministers and Consuls;–to all Cases of admiralty and maritime Jurisdiction;–to Controversies to which the United States shall be a Party;–to Controversies between two or more States; –between a State and Citizens of another State; –between Citizens of different States,–between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any

State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

* * *

Appendix F

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5599

Chapter 408, Laws of 2023

68th Legislature
2023 Regular Session

YOUTH SHELTERS, HOMELESS YOUTH PROGRAMS, AND HOST HOMES—PROTECTED HEALTH CARE SERVICES

EFFECTIVE DATE: July 23, 2023

Passed by the Senate
April 19, 2023

Yeas 29 Nays 20

DENNY HECK
President of the Senate

Passed by the House
April 12, 2023

Yeas 57 Nays 39

LAURIE JINKINS
Speaker of the House of Representatives

Approved May 9, 2023
3:42 PM

JAY INSLEE
Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5599** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER
Secretary

FILED
May 10, 2023

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 5599

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature
2023 Regular Session

By Senate Human Services (originally sponsored by Senators Liias, C. Wilson, Dhingra, Lovelett, Nguyen, and Randall)

READ FIRST TIME 02/15/23.

AN ACT Relating to supporting youth and young adults seeking protected health care services; amending RCW 13.32A.082 and 74.15.020; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** The legislature finds that unsheltered homelessness for youth poses a serious threat to their health and safety. The Trevor project has found that one in three transgender youth report attempting suicide. Homelessness amongst transgender youth can further endanger an already at-risk population. The legislature further finds that barriers to accessing shelter can place a chilling effect on exiting unsheltered homelessness and therefore create additional risk and dangers for youth. Youth seeking certain medical services are especially at risk and vulnerable. Therefore, the legislature intends to remove barriers to accessing temporary, licensed

shelter accommodations for youth seeking certain protected health care services.

Sec. 2. RCW 13.32A.082 and 2013 c 4 s 2 are each amended to read as follows:

(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~~)):

(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 designed to resolve the conflict and accomplish a reunification of the family.

(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.

Sec. 3. RCW 74.15.020 and 2021 c 176 s 5239 are each amended to read as follows:

The definitions in this section apply throughout this chapter and RCW 74.13.031 unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers, or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter

13.32A RCW, in the manner provided in RCW 43.185C.295 through 43.185C.310;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis. "Group care facility" includes but is not limited to:

(i) Qualified residential treatment programs as defined in RCW 13.34.030;

(ii) Facilities specializing in providing prenatal, postpartum, or parenting supports for youth; and

(iii) Facilities providing high quality residential care and supportive services to children who are, or who are at risk of becoming, victims of sex trafficking;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, excluding Saturdays, Sundays, and holidays to children who have been removed from their parent's or guardian's care by child protective services or law enforcement;

(j) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(k) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection (2), even after the marriage is terminated;

(v) Relatives, as named in (a)(i), (ii), (iii), or (iv) of this subsection (2), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States citizenship and immigration services, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and assisted living facilities licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(o) (i) A host home program, and host home, operated by a tax exempt organization for youth not in the care of or receiving services from the department except as provided in subsection (2)(o)(iii) of this section, if that program: (A) Recruits and screens potential homes in the program, including performing background checks on individuals over the age of eighteen residing in the home through the Washington state patrol or equivalent law enforcement agency and performing physical inspections of the home; (B) screens and provides case management services to youth in the program; (C) obtains a notarized permission slip or limited power of attorney from the parent or legal guardian of the youth authorizing the youth to participate in the program and the authorization is updated every six months when a youth remains in a host home longer than six months, unless there is a compelling reason to not contact the parent or guardian; (D) obtains insurance for the program through an insurance provider authorized under Title 48 RCW; (E) provides mandatory reporter and confidentiality training; and (F) registers with the secretary of state under RCW 74.15.315.

(ii) If a host home program serves a child without parental authorization who is seeking or receiving protected health care services, the host home program must:

(A) Report to the department within 72 hours of the youth's participation in the program and following this report the department shall make a good faith attempt to notify the parent of this report and offer services designed to resolve the conflict and accomplish a reunification of the family;

(B) Report to the department the youth's participation in the host home program at least once every month when the youth remains in the host home longer than one month; and

(C) Provide case management outside of the host home and away from any individuals residing in the home at least once per month.

(iii) A host home program and host home that meets the other requirements of subsection (2)(o) of this section may provide care for a youth who is receiving services from the department if the youth is:

(A) Not subject to a dependency proceeding under chapter 13.34 RCW; and

(B) Seeking or receiving protected health care services.

(iv) For purposes of this section, ((~~a "host~~)) the following definitions apply:

(A) "Host home" ((~~is~~)) means a private home that volunteers to host youth in need of temporary placement that is associated with a host home program.

(((~~(iii) For purposes of this section, a "host~~)) (B) "Host home program" is a program that provides

support to individual host homes and meets the requirements of (o)(i) of this subsection.

(((~~(iv)~~))) (C) "Compelling reason" means the youth is in the host home or seeking placement in a host home while 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.

(v) Any host home program that receives local, state, or government funding shall report the following information to the office of homeless youth prevention and protection programs annually by December 1st of each year: The number of children the program served, why the child was placed with a host home, and where the child went after leaving the host home, including but not limited to returning to the parents, running away, reaching the age of majority, or becoming a dependent of the state;

(p) Receiving centers as defined in RCW 7.68.380.

(3) "Department" means the department of children, youth, and families.

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Performance-based contracts" or "contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the

contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts may also include provisions that link the performance of the contractor to the level and timing of the reimbursement.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(8) "Secretary" means the secretary of the department.

(9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(10) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer

skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the workforce innovation and opportunity act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs.

NEW SECTION. **Sec. 4.** (1) The office of homeless youth prevention and protection programs shall contract with an outside entity to:

(a) Gather data regarding the number of unsheltered homeless youth under age 18 in Washington state; and

(b) Develop recommendations for supporting unsheltered homeless youth under age 18 in Washington state.

(2) By July 1, 2024, and in compliance with RCW 43.01.036, the office of homeless youth prevention and protection programs shall submit the information and recommendations described in subsection (1) of this section to the appropriate committees of the legislature.

Passed by the Senate April 19, 2023.
Passed by the House April 12, 2023.
Approved by the Governor May 9, 2023.
Filed in Office of Secretary of State May 10, 2023.

--- END ---

Appendix G

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1406

Chapter 151, Laws of 2023

68th Legislature
2023 Regular Session

HOMELESS OR RUNAWAY YOUTH—VARIOUS PROVISIONS

EFFECTIVE DATE: July 23, 2023

Passed by the House
March 2, 2023

Yeas 96 Nays 0

LAURIE JINKINS
Speaker of the House of Representatives

Passed by the Senate
April 8, 2023

Yeas 48 Nays 0

DENNY HECK
President of the Senate
Approved April 20, 2023
2:50 PM

JAY INSLEE
Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1406** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN
Chief Clerk

FILED
April 21, 2023

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 1406

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature
2023 Regular Session

By House Human Services, Youth, & Early Learning (originally sponsored by Representatives Cortes, Senn, Berry, Ortiz-Self, Goodman, Thai, Alvarado, Simmons, Orwall, Taylor, Bateman, Lekanoff, Peterson, Ramel, Macri, Bergquist, Pollet, Reed, Ormsby, Doglio, and Davis)

READ FIRST TIME 02/07/23.

AN ACT Relating to youth seeking housing assistance and other related services; amending RCW 13.32A.040, 13.32A.082, 43.185C.010, and 43.185C.265; and adding a new section to chapter 43.330 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 13.32A.040 and 2020 c 51 s 2 are each amended to read as follows:

(1) The department, or a designated contractor of the department, shall ((~~offer~~)):

(a) Offer family reconciliation services to families or youth who are experiencing conflict and who may be in need of services upon request from the family or youth and subject to the availability of funding appropriated for this specific purpose; and

(b) Offer family reconciliation services to families or youth after receiving a report that a youth is away

from a lawfully prescribed residence or home without parental permission under RCW 13.32A.082(1). If the family or youth is being served by the community support team created under section 5 of this act, the department or designated contractor of the department must:

(i) Still offer family reconciliation services; and

(ii) Coordinate with the community support team created in section 5 of this act.

(2) The department may involve a local multidisciplinary team in its response in determining the services to be provided and in providing those services. Such services shall be provided to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the child or family and to maintain families intact wherever possible.

Sec. 2. RCW 13.32A.082 and 2013 c 4 s 2 are each amended to read as follows:

(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~~)) 72 hours, but preferably within ((~~twenty-four~~)) 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, 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, 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 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.

(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.

Sec. 3. RCW 43.185C.010 and 2019 c 124 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the individual who has the daily administrative responsibility of a crisis residential center.

(2) "Child in need of services petition" means a petition filed in juvenile court by a parent, child, or the department of children, youth, and families seeking adjudication of placement of the child.

(3) "Community action agency" means a nonprofit private or public organization established under the economic opportunity act of 1964.

(4) "Crisis residential center" means a secure or semi-secure facility established pursuant to chapter 74.13 RCW.

(5) "Department" means the department of commerce.

(6) "Director" means the director of the department of commerce.

(7) "Home security fund account" means the state treasury account receiving the state's portion of income from revenue from the sources established by RCW 36.22.179 and 36.22.1791, and all other sources directed to the homeless housing and assistance program.

(8) "Homeless housing grant program" means the vehicle by which competitive grants are awarded by the department, utilizing moneys from the home security fund account, to local governments for programs directly related to housing homeless individuals and families, addressing the root causes of homelessness, preventing homelessness, collecting

data on homeless individuals, and other efforts directly related to housing homeless persons.

(9) "Homeless housing plan" means the five-year plan developed by the county or other local government to address housing for homeless persons.

(10) "Homeless housing program" means the program authorized under this chapter as administered by the department at the state level and by the local government or its designated subcontractor at the local level.

(11) "Homeless housing strategic plan" means the five-year plan developed by the department, in consultation with the interagency council on homelessness, the affordable housing advisory board, and the state advisory council on homelessness.

(12) "Homeless person" means an individual living outside or in a building not meant for human habitation or which they have no legal right to occupy, in an emergency shelter, or in a temporary housing program which may include a transitional and supportive housing program if habitation time limits exist. This definition includes substance abusers, people with mental illness, and sex offenders who are homeless.

(13) "HOPE center" means an agency licensed by the secretary of the department of children, youth, and families to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for ((~~thirty~~)) 90 days while services are arranged and permanent placement is coordinated. No street youth may stay longer than ((~~thirty~~)) 90 days unless approved by the department

and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to ((~~thirty~~)) 90 days.

(14) "Housing authority" means any of the public corporations created by chapter 35.82 RCW.

(15) "Housing continuum" means the progression of individuals along a housing-focused continuum with homelessness at one end and homeownership at the other.

(16) "Interagency council on homelessness" means a committee appointed by the governor and consisting of, at least, policy level representatives of the following entities: (a) The department of commerce; (b) the department of corrections; (c) the department of children, youth, and families; (d) the department of veterans affairs; and (e) the department of health.

(17) "Local government" means a county government in the state of Washington or a city government, if the legislative authority of the city affirmatively elects to accept the responsibility for housing homeless persons within its borders.

(18) "Local homeless housing task force" means a voluntary local committee created to advise a local government on the creation of a local homeless housing plan and participate in a local homeless housing program. It must include a representative of

the county, a representative of the largest city located within the county, at least one homeless or formerly homeless person, such other members as may be required to maintain eligibility for federal funding related to housing programs and services and if feasible, a representative of a private nonprofit organization with experience in low-income housing.

(19) "Long-term private or public housing" means subsidized and unsubsidized rental or owner-occupied housing in which there is no established time limit for habitation of less than two years.

(20) "Performance measurement" means the process of comparing specific measures of success against ultimate and interim goals.

(21) "Secure facility" means a crisis residential center, or portion thereof, that has locking doors, locking windows, or a secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff.

(22) "Semi-secure facility" means any facility including, but not limited to, crisis residential centers or specialized foster family homes, operated in a manner to reasonably assure that youth placed there will not run away. Pursuant to rules established by the facility administrator, the facility administrator shall establish reasonable hours for residents to come and go from the facility such that no residents are free to come and go at all hours of the day and night. To prevent residents from taking unreasonable actions, the facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or

the administrator's designee and the resident may be required to notify the administrator or the administrator's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to the center.

(23) "Staff secure facility" means a structured group care facility licensed under rules adopted by the department of children, youth, and families with a ratio of at least one adult staff member to every two children.

(24) "Street outreach services" means a program that provides services and resources either directly or through referral to street youth and unaccompanied young adults as defined in RCW 43.330.702. Services including crisis intervention, emergency supplies, case management, and referrals may be provided through community-based outreach or drop-in centers.

(25) "Washington homeless census" means an annual statewide census conducted as a collaborative effort by towns, cities, counties, community-based organizations, and state agencies, with the technical support and coordination of the department, to count and collect data on all homeless individuals in Washington.

(26) "Washington homeless client management information system" means a database of information about homeless individuals in the state used to coordinate resources to assist homeless clients to obtain and retain housing and reach greater levels of self-sufficiency or economic independence when appropriate, depending upon their individual situations.

Sec. 4. RCW 43.185C.265 and 2019 c 312 s 16 are each amended to read as follows:

(1) An officer taking a child into custody under RCW 43.185C.260(1) (a) or (b) shall inform the child of the reason for such custody and shall:

(a) Transport the child to his or her home or to a parent at his or her place of employment, if no parent is at home. The parent may request that the officer take the child to the home of an adult extended family member, responsible adult, crisis residential center, the department of children, youth, and families, or a licensed youth shelter. In responding to the request of the parent, the officer shall take the child to a requested place which, in the officer's belief, is within a reasonable distance of the parent's home. The officer releasing a child into the custody of a parent, an adult extended family member, responsible adult, or a licensed youth shelter shall inform the person receiving the child of the reason for taking the child into custody and inform all parties of the nature and location of appropriate services available in the community; or

(b) After attempting to notify the parent, take the child to a designated crisis residential center's secure facility or a center's semi-secure facility if a secure facility is full, not available, or not located within a reasonable distance if:

(i) The child expresses fear or distress at the prospect of being returned to his or her home which leads the officer to believe there is a possibility that the child is experiencing some type of abuse or neglect;

(ii) It is not practical to transport the child to his or her home or place of the parent's employment; or

(iii) There is no parent available to accept custody of the child; or

(c) After attempting to notify the parent, if a crisis residential center is full, not available, or not located within a reasonable distance, request the department of children, youth, and families to accept custody of the child. If the department of children, youth, and families determines that an appropriate placement is currently available, the department of children, youth, and families shall accept custody and place the child in an out-of-home placement. Upon accepting custody of a child from the officer, the department of children, youth, and families may place the child in an out-of-home placement for up to seventy-two hours, excluding Saturdays, Sundays, and holidays, without filing a child in need of services petition, obtaining parental consent, or obtaining an order for placement under chapter 13.34 RCW. Upon transferring a child to the department of children, youth, and families' custody, the officer shall provide written documentation of the reasons and the statutory basis for taking the child into custody. If the department of children, youth, and families declines to accept custody of the child, the officer may release the child after attempting to take the child to the following, in the order listed: The home of an adult extended family member; a responsible adult; or a licensed youth shelter. The officer shall immediately notify the department of children, youth, and families if no placement option is available and the child is released.

(2) An officer taking a child into custody under RCW 43.185C.260(1)(c) shall inform the child of the reason for custody. An officer taking a child into custody under RCW 43.185C.260(1)(c) may release the child to the supervising agency, may return the child to the placement authorized by the supervising agency, or shall take the child to a designated crisis residential center.

(3) Every officer taking a child into custody shall provide the child and his or her parent or parents or responsible adult with a copy of the statement specified in RCW 43.185C.290(6).

(4) Whenever an officer transfers custody of a child to a crisis residential center or the department of children, youth, and families, the child may reside in the crisis residential center or may be placed by the department of children, youth, and families in an out-of-home placement for an aggregate total period of time not to exceed seventy-two hours excluding Saturdays, Sundays, and holidays. Thereafter, the child may continue in out-of-home placement only if the ((~~parents have consented~~)) parent has not requested that the child return home, a child in need of services petition has been filed, or an order for placement has been entered under chapter 13.34 RCW.

(5) The department of children, youth, and families shall ensure that all law enforcement authorities are informed on a regular basis as to the location of all designated secure and semi-secure facilities within centers in their jurisdiction, where

children taken into custody under RCW 43.185C.260 may be taken.

NEW SECTION. **Sec. 5.** A new section is added to chapter 43.330 RCW to read as follows:

(1) Subject to the amounts appropriated for this specific purpose, the office of homeless youth prevention and protection programs shall provide additional funding and assistance to contracted youth service providers or other entities who convene a community support team as described in this section. The purpose of the community support team is to help identify supports for a youth focused on resolving family conflict and obtaining or maintaining long-term and stable housing.

(a) The community support team is required to prioritize reunification between the youth and the youth's family to the extent possible without endangering the health, safety, or welfare of the child.

(b) The community support team may not engage with a family member other than the youth if the parent, guardian, or legal custodian objects to the support or assistance that is offered or provided.

(2) A community support team under this section must include:

(a) The youth; and

(b) Supportive adults identified by the youth, which may include:

(i) Licensed shelter staff;

(ii) A case manager;

(iii) Individuals from the youth's school;

(iv) Juvenile court staff;

(v) The youth's attorney;

(vi) Behavioral health providers;

(vii) Community support providers;

(viii) Family members;

(ix) Mentors;

(x) Peer support;

(xi) Housing navigation;

(xii) Legal assistance; or

(xiii) Other community members.

(3) The community support team described in this section shall develop a process that allows youth who enter a licensed overnight youth shelter, or another licensed organization with a stated mission to provide services to homeless or runaway youth and their families to request assistance from the community support team.

(4) Any youth who enters a licensed overnight youth shelter, or another licensed organization with a stated mission to provide services to homeless or runaway youth and their families in an area served by the community support team is eligible for the community support team.

(5) The community support team described in this section shall coordinate efforts, if appropriate, with:

(a) The department or the designated contractor of the department providing family reconciliation services to a youth or family;

(b) Multidisciplinary teams established under RCW 43.185C.250 and 43.185C.255; and

(c) Other nearby youth homelessness assistance programs that may provide assistance to the youth.

Passed by the House March 2, 2023.
Passed by the Senate April 8, 2023.
Approved by the Governor April 20, 2023.
Filed in Office of Secretary of State April 21, 2023.

--- END ---

Appendix H

Revised Code of Washington 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.

Appendix I

Revised Code of Washington
70.02.240. Mental health services--Minors--Permitted disclosures

Effective: June 6, 2024

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

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

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

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

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

(5) By a care coordinator, including an Indian health care provider, under RCW 71.34.755 or 10.77.575

assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 or 10.77 RCW;

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

(7) To law enforcement officers, including tribal law enforcement officers, or public health officers, including tribal public health officers, as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address must be disclosed upon request;

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

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

> "As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, ..., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.
>
> I recognize that unauthorized release of confidential information may subject me to civil liability under state law.
>
> /s/ .....";

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

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

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

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

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

(15) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW

9.41.040(2)(a)(iii). The extent of information that may be released is limited as follows:

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

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

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

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

(16) This section may not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the director of the health care authority or the secretary of the department of social and health services, where applicable. The fact of admission and all information obtained pursuant to chapter 71.34 RCW are not admissible as evidence in any legal proceeding outside chapter 71.34 RCW,

except guardianship or dependency, without the written consent of the minor or the minor's parent;

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

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

Appendix J

Revised Code of Washington
70.02.265. Adolescent behavioral health services--Disclosure of treatment information and records--Restrictions and requirements--Immunity from liability

Effective: July 28, 2019

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

(b) In the event a mental health professional discloses information or releases records, or both, that relate solely to mental health services of an adolescent, to a parent pursuant to RCW 70.02.240(3), the mental health professional must provide notice of this disclosure to the adolescent and the adolescent must have a reasonable opportunity to express any concerns about this disclosure to the mental health professional prior to the disclosure of the information or records related solely to mental health services. The mental health

professional shall document any objections to disclosure in the adolescent's medical record if the mental health professional subsequently discloses information or records related solely to mental health services over the objection of the adolescent.

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

(a) Diagnosis;

(b) Treatment plan and progress in treatment;

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

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

(e) Referrals to community resources;

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

(g) Crisis prevention planning and safety planning.

(3) If, after receiving a request from a parent for release of mental health treatment information relating to an adolescent, the mental health professional determines that disclosure of information

or records related solely to mental health services pursuant to RCW 70.02.240(3) would be detrimental to the adolescent and declines to disclose such information or records, the mental health professional shall document the reasons for the lack of disclosure in the adolescent's medical record.

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

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

(6) A chemical dependency professional or mental health professional providing inpatient or outpatient substance use disorder evaluation or treatment is not civilly liable for the decision to disclose information or

records related to substance use disorder treatment information with the written consent of the adolescent or to not disclose such information or records to a parent without an adolescent's consent pursuant to this section so long as the decision was reached in good faith and without gross negligence.

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

Appendix K

Revised Code of Washington
71.24.025. Definitions
[excerpted]

Effective: July 27, 2025

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

* * *

(42) Mental health "treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department of social and health services or the authority, by behavioral health administrative services organizations and their staffs, by managed care organizations and their staffs, or by treatment facilities. "Treatment records" do not include notes or records maintained for personal use by a person providing treatment services for the entities listed in this subsection, or a treatment facility if the notes or records are not available to others.

* * *

Appendix L

Revised Code of Washington 71.34.430. Release of adolescent's mental health information to parent without adolescent's consent

Effective: June 6, 2024

A mental health agency, *psychiatric hospital, evaluation and treatment facility, crisis stabilization unit, or 23-hour crisis relief center may release mental health information about an adolescent to a parent of the adolescent without the consent of the adolescent by following the limitations and restrictions of RCW 70.02.240 and 70.02.265.

*Reviser's note: The term "psychiatric hospital" was changed to "behavioral health hospital" by 2024 Ch. 121, § 19.

Appendix M

Revised Code of Washington
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.

Appendix N

Revised Code of Washington
74.09.675. Gender-affirming care services--
Prohibited discrimination
[excerpted]

Effective: July 25, 2021

* * *

(3) For the purposes of this section, "gender-affirming treatment" means a service or product that a health care provider, as defined in RCW 70.02.010, prescribes to an individual to support and affirm the individual's gender identity. Gender-affirming treatment includes, but is not limited to, treatment for gender dysphoria. Gender-affirming treatment can be prescribed to two spirit, transgender, nonbinary, and other gender diverse individuals.

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