No. 23-_____

In the Supreme Court of the United States

M.C. AND J.C.,

Petitioners,

v.

INDIANA DEPARTMENT OF CHILD SERVICES,

Respondent.

On Petition for a Writ of Certiorari to the Indiana Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

M.C. and J.C. are devout Christians who believe that God creates each person as immutably male or female and that, based on those beliefs and scientific evidence, raising their children according to their biological sex is best for them.

The Indiana Department of Child Services ("DCS") initiated an investigation of the Parents' home because they were not referring to their child, A.C. (a biological male), using a cross-gender name and cross-gender pronouns. (App.127a-128a) ("…She should be in a home where she is excepted [sic] for who she is.") The trial court then removed A.C. from the Parents' custody —and never returned A.C. to their home—even after DCS voluntarily dismissed all allegations of neglect and abuse against them. The trial court also barred M.C. and J.C. from speaking to A.C. about the entire topic of sex and gender while allowing and even requiring speech from an opposite viewpoint.

Despite acknowledging that the Parents here are fit parents, the Indiana Court of Appeals astonishingly upheld the removal of A.C. from the Parents' home and determined that the trial court's orders barring the Parents' speech were permissible prior restraints. *See Troxel v. Granville*, 530 U.S. 57, 68 (2000) (plurality opinion); *see Reed v. Town of Gilbert, Ariz.,* 576 U.S. 155, 163 (2015). The Indiana Supreme Court denied the Parents' Petition to Transfer. The questions presented are:

1. Whether a prior restraint barring a religious parent's speech about the topic of sex and gender with their child while allowing and even requiring speech on the same topic from a different viewpoint violates

the Free Speech or Free Exercise clause of the First Amendment.

2. Whether a trial court's order removing a child from fit parents without a particularized finding of neglect or abuse violates their right to the care, custody, and control of their child under the Fourteenth Amendment.

PARTIES TO THE PROCEEDINGS

Petitioners

- M.C. and J.C. are the parents of A.C.

Respondent

- Indiana Department of Child Services is a department of the state of Indiana

LIST OF PROCEEDINGS

Indiana Supreme Court, Court of Appeals
No. 22A-JC-00049, *M.C. (Mother) and J.C. (Father)*,
Appellants v. *Indiana Department of Child Services*,
Appellees, transfer denied on April 27, 2023

Indiana Court of Appeals, *In the Matter of A.C.*,
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final judgment entered on October 21, 2022,
and rehearing denied on December 22, 2022

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OPINIONS BELOW

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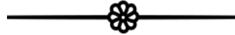
JURISDICTION

The Indiana Supreme Court denied the Parents' Petition for Transfer on April 27, 2023. This Court granted an application for extension to file through September 24, 2023. No.23A32. This Court has jurisdiction under 28 U.S.C.A. § 1257(a).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I, in relevant part

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.

U.S. Const. amend. XIV, § 1, in relevant part

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

Relevant portions of the Indiana Child in Need of Services statute appear in the Appendix. (App.34a-38a).

INTRODUCTION

Even though the trial court determined and the Indiana Court of Appeals acknowledged that the Petitioners here are fit parents, their child was taken from their home—and never returned to their custody—due to the Parents' beliefs about sex and gender and the exercise of their best judgment in raising their child.

Further, the Indiana Court of Appeals upheld a prior restraint on the Parents' religious instruction to A.C. in their own home on the entire topic of sex and gender—while encouraging and even enforcing speech from an opposite viewpoint. Despite these significant constitutional issues, the Indiana Supreme Court declined to review this case. The Parents are asking this court to intervene in defense of parental rights, free speech, and the free exercise of religion.

The Indiana Department of Child Services ("DCS") initiated an investigation of M.C. and J.C. due to a report that they were not referring to A.C. using a cross-gender name and cross-gender pronouns. (App.147a-163a). After completing the investigation, DCS filed a Child in Need of Services ("CHINS") petition and a motion with the trial court requesting that A.C. be removed from the home. In support of that motion, DCS cited the

Parents' refusal to accept LGBTQ resources that contradicted the Parents' religious beliefs. (App.152a, 172a-173a). DCS also alleged that the Parents were not using a cross-gender name and pronouns and falsely claimed (despite exculpatory evidence) that the Parents admitted that they were not pursuing medical treatment for a potential eating disorder. (App.166a-167a).

The Parents testified at the Initial/Detention Hearing that they are devout Christians who believe that God creates each person with an immutable biological sex—male or female—as an expression of His image and nature. For this reason, they could not, in good conscience, use a cross-gender name or cross-gender pronouns. (App.120a-121a).

In addition to the Parents' religious views, based on scientific evidence and their own experience as A.C.'s parents, M.C. and J.C. believed that using cross-gender pronouns or a name inconsistent with A.C.'s biological sex would negatively impact A.C.'s mental health and was not in A.C.'s best interest. (App.122a).

The trial court determined that M.C. and J.C. were neglecting A.C. prior to the Parents' being given an opportunity to testify at the initial hearing. (App.109a). And, despite M.C. and J.C. providing evidence that they were caring for all of A.C.'s educational, medical, mental health, and physical needs, the trial court removed A.C. from the Parents' custody. (App.113a-120a, 234a-239a). The trial court then placed A.C. in a home with a specific qualification: the placement must refer to A.C. using a cross-gender name and cross-gender pronouns. (App.104a-105a). The trial court also entered a vague order at the Initial/Detention Hearing that barred the Parents from speaking about their

religiously prescribed and carefully researched viewpoint about sex and gender with A.C. as a condition of unsupervised visitation. (App.52a, 132a).

After litigating this matter for more than five months, DCS filed an amended CHINS Petition alleging that A.C. was endangering A.C.'s own health. (App. 134a-146a). At the initial hearing on the amended Petition on November 15, 2021, DCS voluntarily dismissed and agreed to unsubstantiate all allegations of abuse and neglect against the Parents. (App.86a-90a). And A.C. admitted to a finding of self-endangerment due to refusing treatment for an eating disorder and due to self-isolation from the Parents. The Parents did not object. (App.86a-90a).

The trial court then surprised the Parents at the Dispositional Hearing by determining that it was in A.C.'s best interest to remain out of the Parents' home—despite previously dismissing all allegations of neglect against them. (App.80a-82a). DCS produced no medical evidence to support this position, and the Parents testified that it would be best for A.C. to return home while receiving treatment for the eating disorder. (App.53a-71a). The trial court also continued the prior restraint on the Parents' speech and maintained the placement of A.C. in a home that referred to A.C. using a cross-gender name and cross-gender pronouns contrary to the Parents' deeply held religious beliefs and best judgment. (App.40a-46a, 81a-82a).

In sum, the trial court determined that M.C. and J.C. are fit parents, then removed their child from their custody and barred them from speaking to that child about an entire topic while enforcing speech from a different viewpoint. (App.81a-82a, 85a-90a).

This case is novel and chilling. This Court has long recognized the right of parents to instruct their children and direct their care and upbringing. *See Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923); *see Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35, (1925); *see Wisconsin v. Yoder*, 406 U.S. 205, 217 (1972); *see Stanley v. Illinois*, 405 U.S. 645, 657-58 (1972); *see Parham v. J.R.*, 442 U.S. 584, 604 (1979); *see Troxel v. Granville*, 530 U.S. 57, 68 (2000) (plurality opinion). The Indiana Court of Appeal's decision, undisturbed by the Indiana Supreme Court, empowers the government to remove children from fit parents without a particularized finding of neglect or abuse.

Further, the First Amendment prohibits the government from "restrict[ing] expression because of its message, its ideas, its subject matter or its content." *See Reed v. Town of Gilbert, Ariz.,* 576 U.S. 155, 163 (2015). The Indiana Court of Appeals held that the trial court's bar on the Parents' speech on an entire topic as a condition of unsupervised visitation was, in fact, a prior restraint—but that the prior restraint survived strict scrutiny despite allowing speech on the same topic from a different viewpoint. *Matter of A.C.*, 198 N.E.3d at 1, 19 (Ind. Ct. App. 2022).

M.C. and J.C. seek only to raise their children according to their religious beliefs and best judgment. They fear that the state of Indiana may, in reliance on the Court of Appeal's decision, interfere in their home and in the care and custody of their other children. For these reasons, the Court of Appeal's decision in this matter is an egregious violation of the Parents' right to the care, custody, and control of their children; their right to the free exercise of religion; and their free speech rights. *See Troxel*, 530 U.S. at 68 (plurality

opinion); *see Wisconsin*, 406 U.S. at 217; *see Reed*, 576 U.S. at 163. The intervention of this court is needed. Petition should be granted.

STATEMENT OF THE CASE

A. Preservation of Federal Claims

The Parents, M.C. and J.C., raised federal constitutional claims at the Initial/Detention Hearing and at the Dispositional Hearing. (App.79a, 126a). They also raised these issues in their briefs filed with the Indiana Court of Appeals and Indiana Supreme Court, and the Indiana Court of Appeals acknowledged these claims as follows:

> The Parents also argue that the Dispositional Order violates their fundamental rights to the care, custody, and control of their child under the Fourteenth Amendment to the United States Constitution, their rights to the free exercise of religion under the First Amendment, and their rights to free speech under the First Amendment.

Matter of A.C., 198 N.E.3d at 14.

B. The Parents, M.C. and J.C.

M.C. and J.C. have been married for twenty-five years, and they are both gainfully employed. (App.175a). M.C. has a Masters of Science degree in Biochemistry and Molecular Biology and works as a clinical studies manager; and J.C. works as a software engineer. (App.175a). Prior to this matter, M.C. and J.C. had never interacted with the Department of Child Services.

(App.158a). M.C. and J.C. have cared for A.C's medical, educational, physical, and mental health needs since birth. (App.175a).

M.C. and J.C. are devout Christians who believe that each person's sex is fixed by biology from birth, rather than assigned by another person; that this sex is an immutable gift from God; and that it is not possible to change a person's sex. (App.120a-122a). M.C. and J.C.'s faith does not prevent them from using nicknames or attempting to work and live with others that hold different beliefs; however, their faith requires them to refrain from speaking in a manner that their faith instructs is immoral, dishonest, or harmful. (App.151a-153a).

In addition to the Parents' religious views, based on scientific evidence and their own experience as parents, M.C. and J.C. believe that using crossgender pronouns or names inconsistent with a child's biological sex is not in a child's best interest. (App.122a, 214a-223a).

The Parents understand and understood that most children who at some point express a gender identity inconsistent with their sex will eventually return to expressing an identity in harmony with their sex. (App.App.122a, 214a-223a). The Parents want to protect their children from making potentially irreversible and life-changing decisions that they may later regret. (App.App.122a, 214a-223a).

C. Background Concerning A.C.'s Medical and Mental Health Treatment

In December of 2019, A.C. left a note for the Parents stating that A.C. identifies as a girl. (App.115a, 176a). By February of 2020, the parents had sought and

procured therapeutic care for A.C. (App.115a, 178a). During a wellness check in February of 2020, A.C.'s primary care physician expressed concerns about A.C.'s lack of weight gain but did not make a referral for further treatment. (App.178a).

In December of 2020, after 10 months of therapeutic care, the parents determined that A.C.'s therapist was not providing substantial assistance with the identity issue or with family dynamics and sought out a new therapist. (App.115a-116a). During the 2020-2021 school year, A.C. attended the Indiana Academy of Science, Mathematics, and Humanities, a residential high school on the campus of Ball State University. (App.140a).

While A.C. was attending Indiana Academy of Science, Mathematics, and Humanities, the Parents monitored A.C.'s weight and eating habits. (App.114a-115a). A.C. completed the 2020-2021 school year, and the Parents unenrolled A.C. from the Indiana Academy of Science, Mathematics, and Humanities upon completion of the school year due to concerns about A.C.'s weight and academic performance and because A.C. did not want to continue at the Academy as a commuter student. (App.114a-115a). On May 18, 2021, J.C. began the process of enrolling A.C. at Indiana Connections Academy. (App.234a-235a).

At a wellness check in April of 2021, A.C.'s primary care physician referred A.C. to a specialist on eating disorders and recommended a psychosocial evaluation. (App.178a).

The Parents followed up on these referrals and requested appointments with a specialist on eating disorders and a psychotherapist by the end of April of

2021. (App.236a-239a). On May 7, 2021, A.C. attended an initial appointment—scheduled by the Parents—at the specialist for eating disorders to determine further treatment. (App.117a, 236a-237a). On May 18, 2021, M.C. attended an on-boarding appointment with a psychotherapist and scheduled a full mental health evaluation for A.C. on June 3, 2021. (App.174a, 238a-239a).

In seeking treatment for concerns about A.C.'s weight loss and eating habits, the Parents followed the recommendations of A.C.'s primary care physician. (App.175a-180a). Throughout this period, the Parents engaged in conversations with A.C. concerning their religious beliefs and gender identity and attempted to find middle ground by using the nickname "A." (App.120a, 151a-153a).

The Parents completed (or at least scheduled) all of the above measures to care for A.C. prior to the state's interference in their home.

D. DCS Investigation and Initial/Removal Hearing.

DCS initiated an investigation of M.C. and J.C. because reporting sources stated that they were not referring to their child, A.C., using a cross-gender name and cross-gender pronouns. (App.148a-149a). The reporting source also claimed that M.C. was using vulgar language toward A.C. (App.148a-150a). The parents denied this claim, and no written evidence was submitted or testimony given to support this allegation. (App.96a-133a). To the extent DCS was concerned about vulgar or disparaging language, the agency later voluntarily dismissed all concerns of neglect and abuse against the Parents. (App.85a-90a).

DCS then prepared a Preliminary Inquiry Report ("PIR") riddled with factual errors. DCS falsely claimed that the Parents admitted that they had concerns about an eating disorder for a year and failed to seek treatment for that disorder. (App.150a). In fact, the Parents were following the recommendations of A.C.'s primary care physician and had already scheduled and attended an appointment at a specialist for an eating disorder. (App.117a, 236a-237a).

DCS included a statement in the PIR that A.C. had been pulled from therapy after two to three months. (App.150a). In fact, the Parents informed DCS that A.C. had been in therapy for approximately ten months, that they were actively seeking a new therapist, and that they were following their primary care physician's recommendation in procuring a full mental health exam. (App.115a, 238a-239a).

DCS also alleged in the PIR that the Parents unenrolled A.C. from Indiana Academy of Science, Mathematics, and Humanities on May 14, 2021, and that the school had received no correspondence from the Parents about future educational plans for A.C. (App.149a). DCS did not include any statement or evidence that A.C. had completed the 2020-2021 academic school year. (App.149a-150). In fact, A.C. had completed the 2020-2021 academic school year by May 14, 2021, and the Parents had already begun the enrollment process at another school. (App.114a-115a).

DCS stated in the PIR that, "there is no specific mental health diagnoses in regards to the child." (App.160a). Yet, DCS stated in the PIR that A.C. would be more likely to have thoughts of self-harm if allowed to remain in the home. (App.162a). No medical evidence was cited in support of this claim. (App.162a).

DCS specifically claimed that the Parents failed to support A.C. by using A.C.'s preferred name and pronouns while DCS repeatedly used A.C.'s birth name and masculine pronouns in the PIR. (App.147a-163a). DCS also filed a Request for Taking or Continued Custody and alleged that the Parents refused to accept LGBTQ resources related to parenting non-cisgender children as a reason for taking custody of A.C. (App.152a, 172a).

On June 1, 2021, DCS filed a Verified Petition Alleging a Child to be a Child in Need of Services under Ind. Code § 31-34-1-1 ("CHINS-1") and Ind. Code § 31-34-1-2 ("CHINS-2") based on the allegations in the initial report.

The Initial/Detention Hearing was held on June 2, 2021. (App.96a). At the hearing, DCS restated the false allegations set out in its initial report, and the trial court determined that probable cause existed that A.C. was a child in need of services prior to the Parents being given an opportunity to testify. (App.109a). DCS then recommended that A.C. be placed in a kinship placement with a specific qualification: the placement must affirm A.C.'s identification as a girl and use A.C.'s cross-gender pronouns and name. (App.104a-105a).

The Parents produced evidence at the Initial/Detention Hearing that they were caring for the physical, educational, and mental health needs of A.C. and that they had engaged in difficult but appropriate conversations with their teenage son. (App.113a-120a, 234a-239a). The Parents testified and entered evidence that they were following the recommendations of their primary care provider concerning weight loss, had previously scheduled and attended an appoint-

ment with a specialist on that issue, had previously scheduled a mental health exam, and that they were in the process of enrolling A.C. in a school for the next academic year. (App.113a-120a).

At the conclusion of the hearing, DCS summarized it reasons for removal as follows:

> We just feel that at this point in time this child needs to be in a home that's not going to teach her that trans, like everything about transgender… tell her how she should think and how she should feel. However, she should be in a home where she is excepted [sic] for who she is.

(App.127a-128a).

The trial court then removed A.C. from the Parents' custody, placed A.C. in a home that would refer to A.C. using cross-gender pronouns and a cross-gender name, and held, "The parents shall have unsupervised visitation so long as certain topics are not addressed." (App.52a). The Parents' visitation with their child was also limited to a few hours one day a week. (App.69a). The trial court also ordered A.C. to attend the same medical appointments the Parents had previously scheduled and did not require additional medical appointments. (App.52a).

At the Pre-Trial Conference on October 5, 2021, the Parents asked for clarification of the prior restraint on their speech out of concern that they would violate the order by engaging in mediation. (App.94a-95a). Only then did the trial court explain that the prior restraint applied to conversations during in-person visitation and did not apply to discussions during therapy. (App.94a-95a).

E. The Amended Petition and Dispositional Hearing.

After litigating this matter for almost five months, DCS filed an amended Petition including allegations under Ind. Code § 31-34-1-6 ("CHINS-6")—danger to self/others. (App.134a-146a).

DCS stated, "Since the filing of the original CHINS petition, DCS has learned that the child's eating disorder has worsened." DCS continued, "The child has been throwing away and hiding food, as well as neglecting to eat full meals as dictated by a professionally developed meal plan. The child denies both that an eating order exists and that weight has been lost, and the child further believes that additional treatment is unnecessary." (App.134a-135a). All of these developments occurred while out of the Parents' home and in the custody of the state. (App.52a).

At a combined Initial and Fact-Finding Hearing on November 15, 2021, DCS moved to voluntarily dismiss all allegations against the Parents, and the trial court accepted the dismissal of those allegations. (App.89a-90a). DCS also agreed to unsubstantiate all neglect and abuse allegations against the Parents. (App.89a-90a).

A.C. then agreed to a CHINS finding under CHINS-6 (self-endangerment) based on the allegations in the Amended Petition, and the Parents did not object (App.87a-89a).

At the Dispositional Hearing on December 8, 2021, DCS surprised M.C. and J.C. by testifying that the disagreement between the Parents and Child over transgenderism remained a barrier to return to home—after voluntarily dismissing and unsubstantiating all

allegations of neglect and abuse against them. (App. 61a). DCS produced no medical testimony or records at the hearing determining that the Parents' beliefs about sex and gender were harmful to A.C., and the reports from mental health professionals in this matter did not support removal from the home. (App.53a-71a, 174a-233a).

Despite determining that M.C. and J.C. were fit parents and despite the Parents' objection, the trial court concluded that A.C. should be removed from the Parents' home. (App.80a-82a). Because no medical evidence was presented by DCS at the Dispositional Hearing, the trial court relied solely on A.C.'s admittedly self-endangering testimony to determine that it was in the child's best interest to be removed from the home (though A.C. was never returned to the home). (App.53a-82a). The Parents clearly objected to this continued removal by stating, "There is no reason for him to be outside of our home." (App.78a).

Further, the trial court continued its order barring the Parents' speech about sex and gender during visitation as a condition of unsupervised visitation. (App. 80a).

The Parents appealed the Order on Initial/ Detention Hearing and the Dispositional Order and included constitutional arguments concerning their right to the care, custody, and control of their child as well as the right to free exercise of religion and free speech under the Indiana and federal constitutions. (App.20a).

On October 21, 2022, the Indiana Court of Appeals ruled that the trial court's decisions did not violate the Indiana and federal constitutions. The Parents filed a

Petition for Rehearing on November 21, 2022, and a Motion to Supplement the Record on December 6, 2022. The Court of Appeals denied the Parents' Petition for Rehearing and Motion to Supplement the Record on December 22, 2022.

The Indiana Supreme Court denied the Parents' Petition to Transfer on April 27, 2023.

This Petition to Transfer was timely filed (after Justice Barrett granted the Parents' Motion for Extension of Time) through September 24, 2023.

REASONS FOR GRANTING THE PETITION

The Parents are requesting intervention by this Court in defense of long-standing constitutional principles. First, courts may not enter a prior restraint on a parent's religiously motivated speech on an entire topic, especially while allowing and promoting an opposite viewpoint. *See Reed*, 576 U.S. at 163. Second, a court may not remove a child from a parent's custody without a particularized finding of unfitness. *See Troxel*, 530 U.S. at 68-69 (plurality op.). The Indiana Court of Appeals has now created a precedent that directly contradicts with this Court's free speech and parental rights doctrines as well as precedent from other state courts that have reviewed similar cases. And the Indiana Supreme Court failed to address these constitutional violations and allowed them to stand as state policy. This Court's intervention is needed.

I. The Decision Below Is Egregiously Wrong And Conflicts With This Court's Precedent and Other State Court Decisions Concerning Free Speech and Free Exercise.

The First Amendment, as applied to the states and local governments through the Fourteenth Amendment, prohibits the government from "restrict[ing] expression because of its message, its ideas, its subject matter or its content." *See Reed,* 576 U.S. at 163. Because the prior restraint of speech carries with it an "immediate and irreversible sanction," it is the "most serious and the least tolerable infringement on First Amendment rights" and comes to court bearing a heavy presumption against its constitutional validity. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).

Further, religious speech possesses the full protection of the speech clause, and this Court and Indiana law has long recognized the right of religious parents to instruct their children and direct their upbringing. *See Widmar v. Vince*nt, 454 U.S. 263, 269 (1981); *see Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35, (1925); *see Wisconsin v. Yoder*, 406 U.S. 205, 217 (1972); *see* Ind. Code § 31-34-1-15.

The Massachusetts Supreme Court recently reviewed this Court's precedent concerning prior restraints and applied that precedent in the context of parental communication in child custody cases. *See Shak v. Shak*, 144 N.E.3d 274, 277 (Ma. 2020). According to *Shak*, prior restraints are "one of the most extraordinary remedies known to our jurisprudence" and are only permissible if the harm from the unrestrained speech is "truly exceptional." *Id.*

The Massachusetts Supreme Court further noted in *Shak* that other state courts have "...ruled on prior restraint claims in the context of divorce, child custody, and child welfare cases and, in doing so, have used various language to describe the applicable standard. The common theme is that the bar for a prior

restraint is extremely high." *Id.* at 280, n. 7; *see, e.g.*, *In re Marriage of Newell*, 192 P.3d 529, 535-537 (Colo. Ct. App. 2008); *In re Summerville*, 547 N.E.2d 513, 517 (Ill. Ct. App. 1989); *Johanson v. Eighth Judicial Dist. Court*, P.3d 94, 99 (Nev. 2008); *Matter of Adams v. Tersillo*, 245 A.D.2d 446, 447 (1997); *Grigsby v. Coker*, 904 S.W.2d 619, 621 (Tex. 1995).

According to *Shak*, courts have generally held that states have a compelling interest in protecting children from disparagement between parents in front of children and in safeguarding children's psychological well-being. 144 N.E.3d at 279; *Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 607 (1982). But merely reciting that interest is not enough to satisfy the heavy burden of justifying a prior restraint. *Id.*; *see Felton v. Felton*, 418 N.E.2d 606, 607 (Ma. 1981). Harm to the child should not be simply assumed or surmised; it must be demonstrated in detail. *Shak*, 144 N.E.3d at 279.

Further, a state may not bar religious instruction by a parent to a child on religious matters absent a detailed, extreme showing that such instruction or discussion will be harmful to the child. *Id.*; *see Felton v. Felton*, 418 N.E.2d 606, 607 (Ma. 1981); *see Easterday v. Everhart*, 201 N.E.3d 264, 268 (Ind. Ct. App. 2023).

In this case, the Indiana Court of Appeals determined that the trial court's order barring the Parents' speech was, in fact, a prior restraint subject to strict scrutiny—but held that it was permissible. *Matter of A.C.*, 198 N.E.3d at 18-19.

The Indiana Court of Appeals applied strict scrutiny and determined that the state had a compelling interest in protecting A.C.'s physical and psycho-

logical health. *Id.* Then, curiously, the court determined that the Parents' speech was private speech rather than public speech, was unimportant to "the marketplace of ideas," and did not merit heightened protection. *Id.*

This holding clearly contradicts the precedent set out by this Court, the other state courts listed in *Shak*, and the Indiana Court of Appeal's own strict scrutiny analysis. *See Nebraska Press Ass'n*, 427 U.S. at 559 (1976); *Shak*, 144 N.E.3d at 280, n. 7; *see Matter of A.C.*, 198 N.E.3d at 18-19. Speech by parents to their children in their own home and especially religious instruction by fit parents to their own children in their own home is due heightened protection and may only be restrained with a concrete, exceptional showing of abuse or harm. *Shak*, 144 N.E.3d at 278.

In its determination that the Parents' speech here is "private" speech, the Indiana Court of Appeals cited two cases that involve disparaging or defamatory speech. *See Paternity of G.R.G*, 829 N.E.2d 114, 125 (Ind. Ct. App. 2005) (disparaging speech between parents in front of a child); *see Barlow v. Sipes*, 744 N.E.2d 1, 10 (Ind. Ct. App. 2001)(defamatory speech by an insurance adjuster against a body shop owner). But those cases are inapplicable here because the trial court accepted the dismissal and unsubstantiation of all allegations of neglect and abuse against the Parents, and there was no particularized proof of disparaging or defamatory speech by the Parents at the time of the Dispositional Hearing. (App.85a-89a).

In sum, the Indiana Court of Appeal's decision in this case authorizes the state to restrain any speech between parent and child, even without a showing of harm, by categorizing all such speech as "private

speech" that does not contribute to the "marketplace of ideas." *See Matter of A.C.*, 198 N.E.3d at 19; *In re Paternity of G.R.G.*, 829 N.E.2d 114 (Ind. Ct. App. 2005). This is clearly error.

Further, the trial court restrained the Parents' religious instruction to their own child on an entire topic based on an assumption of harm rather than concrete, particularized proof of harm. *See Shak*, 144 N.E.3d at 280. At the Dispositional Hearing, the trial court stated, "I am going to need a therapist or someone to tell me it is a safe conversation... and I am just not sure it's in the best interest of [Child] to have that conversation at this point yet." (App.80a). Respectfully, this standard is exactly backward. Harm to the child should not be "...simply assumed or surmised; it must be demonstrated in detail." *Shak*, 144 N.E.3d at 280. Stated differently, the trial court must allow speech unless there is a concrete showing that it is harmful, not ban speech unless there is a clinical finding that it is safe. *Id.*

Further, the record in this case is entirely devoid of the detailed, particularized harm necessary to justify a prior restraint. (App.53a-80a, 211a-213a); *Id.* Most importantly, A.C. admitted and the trial court determined that A.C.'s behaviors and beliefs—not the Parents' speech—was the source of danger or harm to A.C. *See* I.C. § 31-34-1-6; (App.85a-90a).

Also, to the extent that DCS was concerned about the initial allegations of vulgar or disparaging speech between the Parents and A.C., DCS voluntarily dismissed and unsubstantiated those allegations. (App. 85a-90a). So, the speech at issue in this case is religiously motivated instruction by fit parents to their child in their own home concerning sex and gender.

(App.120a). DCS produced no medical testimony that the Parents' beliefs about sex and gender, consistently held by devout Christians for more than twenty centuries, were harmful to the child. (App.53a-84a, 96a-132a). In fact, the medical evidence in this case supported the Parents' contention that they were providing for all of A.C.'s physical needs, that they had not abused or neglected A.C., and that A.C. needed to learn to respect the Parents' religious beliefs even if A.C. strongly held a different viewpoint. (App.211a-213a).

The error of the Court of Appeal's opinion is further obviated by the record of this case. At the time that A.C. was adjudicated as Child in Need of Services due to CHINS-6 (self-endangerment), A.C. had been out of the Parents' home and in the state's custody for more than five months. (App.50a, 85a). And the Parents were barred from having conversations about sex and gender in their home with A.C. that entire time. (App.50a).

How is it possible for A.C.'s "eating disorder and self-isolation" to be connected to the "discord at home regarding Child's transgender identity" when A.C. was not at home and when there had been no conversation between the Parents and A.C. about that issue for more than five months—the same months during which A.C. started throwing food away and denying that an eating disorder existed? *See Matter of A.C.*, 198 N.E.3d at 19; (App.50a, 134a-135a). Clearly, neither the trial court nor the Indiana Court of Appeals properly accounted for the dismissal of the allegations against the Parents and the fact that A.C.'s mental health significantly deteriorated in the state's custody, not the Parents'. (App.134a-135a).

The trial court and the Indiana Court of Appeals also ignored the effect of the trial court's mistaken removal of A.C. from the Parents' home based on a later-dismissed finding of neglect. (App.1a-31a, 85a-89a). The trial court removed A.C. from fit parents, held that their beliefs and best judgment equaled neglect, shut down meaningful conversation about their core disagreement even in therapy (until the Parents requested clarification), and limited visitation to a few hours one day a week. (App.91a-133a). Yet, there is not a single statement in the record considering the effect of the state's own actions on A.C.'s mental health. (App.1a-249a).

In this case, the trial court specifically found A.C.'s behavior, not the Parents' speech, was the source of harm or danger to A.C.—then extended its prior restraint on the Parents' speech unless or until they could prove to the trial court that their speech was safe. (App.80a, 85a-89a). This is a grievous constitutional violation. *See Nebraska Press Ass'n*, 427 U.S. at 559 (1976); *see Shak*, 144 N.E.3d at 280, n. 7.

Further, even if the state had a compelling interest and a showing of harm sufficient to limit the Parents' speech, the trial court's prior restraints were not narrowly tailored because (1) the prior restraints barred discussion of an entire topic while allowing speech from a different viewpoint, and (2) because the trial court could have employed a number of less restrictive means.

First, as noted by the Indiana Court of Appeals, "…[A] government… 'has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Reed*, 576 U.S. at 163; *Matter of A.C.*, 198 N.E.3d at 18. But the Order on Initial

/Detention Hearing and the Dispositional Order did just that. They barred the Parents from discussing an entire topic or subject matter—sex and gender—with A.C. (App.50a, 80a).

And the trial court entered those orders while allowing and even enforcing speech on the same subject matter from a different viewpoint. (App.104a-105a). This is clearly an unconstitutional prior restraint and the very opposite of a narrowly tailored order. *See Reed*, 576 U.S. at 163.

Next, the trial court could have employed any number of less restrictive means. The Court of Appeals held that the trial court's prior restraint was narrowly tailored because it barred the discussion during visitation but allowed discussion of the topic with the child during therapy. *See Matter of A.C.*, 198 N.E.3d at 19. This holding ignored the fact that the trial court knew A.C. was refusing to participate in family therapy and that the conversation in therapy would be reported to the trial court (App.57a-58a, 80a). An order concluding that the state's censorship survives constitutional scrutiny because parents can speak while under the state's surveillance demonstrates rather than "... obviates the dangers of a censorship system." *See Nebraska Press Ass'n*, 427 U.S. at 559 (1976); *Shak*, 144 N.E.3d at 278, 280, n. 7.

Further, since the trial court was concerned about A.C.'s safety and mental health, the trial court could have simply cautioned the Parents about disparaging comments and clarified that the Parents' religious beliefs and opinions about sex and gender did not constitute derogatory or abusive language or a threat to A.C.'s mental health. *See Easterday*, 201 N.E.3d at 270-271. There is even precedent for this approach in

the findings of a mental health professional that evaluated A.C. (App.211a-213a).

The trial court's orders also violate the Free Exercise clause for the same reason. They were not narrowly tailored, and CHINS cases clearly include "...a mechanism for individualized assessment." *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1877 (2021); See *Easterday*, 201 N.E.3d at 270-271.

In sum, this Court's precedents and those of a number of other states hold that protected religious speech by a parent to their child may only be restrained in a viewpoint-neutral manner after a detailed, extraordinary showing of harm to the child. *See Nebraska Press Ass'n*, 427 U.S. at 559 (1976); *see Shak*, 144 N.E.3d at 280, n. 7; *see* Eugene Volokh, *Parent-Child Speech and Child Custody Speech Restrictions*, 81 N.Y.U. L. REV. 631, 707 (2006). The prior restraints here cut against those precedents and the general principle that prior restraints should be used surgically if at all and that they are presumptively unconstitutional. *see Nebraska Press Ass'n*, 427 U.S. at 559 (1976). This Court's intervention is warranted.

II. The Decision Below Is Egregiously Wrong and Squarely Conflicts with This Court's Precedents and Other State Court Decisions Concerning Parental Rights.

This case is about the state taking a child from fit parents. In its Opinion, the Court of Appeals declined to review the Initial/Detention Order on mootness grounds and stated that the Dispositional Order did not violate the Parents' constitutional rights to the care, custody, and control of their Child. *Matter of A.C.*, 198 N.E.3d at 14-15. As explained below, this

holding directly contradicts this Court's precedents and those of other states concerning a parent's fundamental right to raise their children without undue influence of the government. *See Troxel*, 530 U.S. at 68 (plurality op.).

According to *Troxel*, there is a presumption that fit parents act in the best interest of their children. *Id.* 530 U.S. at 68-69 (plurality op.). And this presumption extends to parental decisions concerning a child's mental health treatment. *See Parham v. J.R.*, 442 U.S. 584, 604 (1979).

In *Parham*, this Court reviewed the respective rights of parents and children in the context of mental health decisions and concluded that its precedents "... [P]ermit the parents to retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse, and that the traditional presumption that the parents act in the best interests of their child should apply." 442 U.S. at 604;

Further, in *Stanley v. Illinois*, this Court held that the state of Illinois was barred from taking custody of the children of an unwed father, absent a hearing and a particularized finding that the father was an unfit parent. 405 U.S. 645, 657-58 (1972). This Court declared, "The State's interest in caring for Stanley's children is de minimis if Stanley is shown to be a fit father." *Id.*

Taken together, these cases set out a clear standard for removal of a child from a parent's custody. There must be a hearing and a particularized finding of unfitness. *Id.*

State courts have also held, based on this Court's precedent, that there is a presumption that parents—not a court—determine the best interest of a child

absent a finding of abuse or neglect against the parents. *See Matter of Guardianship of L.Y.*, 968 N.W.2d 882, 894 (Iowa 2022); *see In re A.A.*, 951 N.W.2d 144, 166 (Neb. 2020); *see In re C.J.C.*, 603 S.W.3d 804, 817 (Tex. 2020); *see Matter of Guardianship of W.L.*, 467 S.W.3d 129, 134 (Ark. 2015); *see Tourison v. Pepper*, 51 A.3d 470, 473 (Del. 2012); *see Ex parte E.R.G.*, 73 So.3d 634, 644 (Ala. 2011).

The Indiana Court of Appeal's opinion in this case contradicted these precedents because (1) the trial court removed A.C. from A.C.'s fit parents and substituted its judgment for that of the Parents and (2) because M.C. and J.C. did not consent to the removal.

M.C. and J.C. are fit parents. Beyond the general presumption of fitness, DCS and the trial court specifically found this to be true after a five-month investigation. *See Troxel*, 530 U.S. at 68 (plurality op.). The Court of Appeals then confirmed the Parents' fitness by stating: "A CHINS-6 adjudication is made 'through no wrongdoing on the part of either parent.'" *See In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010); *Matter of A.C.*, 198 N.E.3d at 9-10.

Given the fact that the Parents here are fit parents, the trial court should have acted with a presumption that the Parents were acting in the best interest of their child. *See Troxel*, 530 U.S. at 68-69 (plurality op.); *see Parham*, 442 U.S. at 603-604. The trial court should have given special weight to the Parents' determination of their child's best interest and specifically the Parents' testimony at the Dispositional Hearing that A.C. should return to their home while receiving treatment for the eating disorder. *See Stanley*, 405 U.S. at 658; *see Troxel*, 530 U.S. at 68-69 (plurality op.); *see Parham*, 442 U.S. at 603-604; (App.78a).

Instead, DCS and the trial court gave no special weight to the Parents' determination of their Child's best interest and applied the exact opposite presumption—that the state new best. *See Troxel*, 530 U.S. at 68-69 (plurality op.); *see Parham*, 442 U.S. at 603-604; (App.40a-46a; 67a-68a).

The trial court stated the following after accepting the dismissal of all allegations of neglect and abuse against the Parents: "The Court finds that it is in the best interests of the child to be removed from the home environment and remaining in the home would be contrary to the welfare of the child because of the allegations admitted." (App.48a).

This holding directly contradicts federal precedent and state court decisions. A state may not remove a child from a fit parent's custody simply because the state determines it is in the child's best interest. *See Quilloin v. Walcott*, 434 U.S. 246, 255 (1978). Stated differently, the state is not a parent in a custody dispute and may not award itself custody of a child simply because the state believes it can better parent a child. *See Id.*

The Parents specifically point to CHINS-6 as the culprit for these constitutional violations. CHINS-6 gives DCS and trial courts authority to address the claims and behavior of defiant children, and that is exactly what the fit Parents in this case asked the trial court to do. *See* I.C. § 31-34-1-6. *See Matter of M.O.*, 72 N.E.3d at 527, 531 (Ind. Ct. App. 2017). They asked the trial court to remedy the results of its mistaken removal of A.C. from their home based on later-dismissed allegations of neglect by ordering A.C. (something the Parents could not do) to participate in treatment for the eating disorder that had

worsened in the state's custody and to encourage and then require A.C. to return to their home during that treatment as there was no particularized finding of harm or unfitness against them. (App.78a, 81a-89a).

Instead, as noted above, the trial court ignored the Parents' determination that A.C. would do best in their home while receiving treatment for the eating disorder and substituted its judgment for that of the Parents. (App.48a, 78a). This clearly violated the Parents' rights to the care, custody, and control of A.C. *See Troxel*, 530 U.S. at 68-69 (plurality op.); *see Parham*, 442 U.S. at 603-604.

CHINS-6 does not, pursuant to this Court's precedent, authorize the state to remove defiant children from fit parents without their consent. *See Troxel*, 530 U.S. at 68-69 (plurality op.); *see Parham*, 442 U.S. at 603-604; *see Matter of M.O.*, 72 N.E.3d at 531. CHINS-1 and CHINS-2 are in the Indiana code to address situations involving unfit parents, but DCS and the trial court agreed that those statutes are inapplicable to this case. (App.85a-89a); *see* I.C. § 31-34-1-1, I.C. § 31-34-1-2.

As applied by the trial court and now the Court of Appeals, CHINS-6 may be used by the state against fit parents to remove any child that claims that their mental health is negatively affected by their parents' rules or religious beliefs. Respectfully, thus applied, CHINS-6 violates federal constitutional provisions that guarantee parents the right to the care, custody, and control of their children. *See Troxel*, 530 U.S. at 68-69 (plurality op.); *see Parham*, 442 U.S. at 603-604.

Further, the Parents did not consent to the removal of A.C. from their home. *Matter of A.C.*, 198 N.E.3d at

12. DCS alleged in its Amended CHINS Petition that A.C. was refusing to recognize an eating disorder and that A.C.'s eating disorder was fueled in part by self-isolation, a "…behavior that the child has indicated will be returned to if placed back with parents." (App.142a). A.C. then made the same self-endangering claim at the Initial Hearing on the Amended Petition. (App.85a-86a).

These allegations were set out as self-endangering beliefs or behaviors by A.C. that needed to be corrected by the trial court. (App.142a). And A.C.'s claim that A.C. would self-isolate if placed back in the home was not supported by medical evidence and was a self-fulfilling self-diagnosis. (App.137a, 142a).

Federal law presumes that children do best with their natural parents absent a particularized finding of unfitness, and the state dismissed all allegations against M.C. and J.C. *See Stanley*, 405 U.S. at 658; *see Troxel*, 530 U.S. at 68-69 (plurality op.). (App.85a-89a). Therefore, the Parents had every reason to believe that the trial court would address A.C.'s dangerous claims concerning self-isolation from the Parents through reunification with the Parents just as the trial court addressed A.C.'s claim that the eating disorder did not exist through required treatment. (App.81a-89a). Reunification was, after all, the stated goal of the case. (App.57a). For these reasons, the Parents did not object to the CHINS-6 finding.

DCS and the trial court then surprised the Parents at the Dispositional Hearing by determining that A.C.'s eating disorder would, based solely on A.C.'s admittedly self-endangering claim, worsen if placed back in their home and that the disagreement over transgenderism remained a barrier to A.C.s' return to

their home. (App.61a-80a). As soon as the state clarified its position, the Parents objected to the continued removal of A.C. from their home. (App.78a). Even if the trial court interpreted the Parents' agreement with the CHINS-6 finding as consent to continued removal of the home, the trial court should have amended its orders out of deference to their judgment once the Parents objected at the Dispositional Hearing. (App.78a); *Stanley*, 405 U.S. at 658; *see Troxel*, 530 U.S. at 68-69 (plurality op.).

DCS also did not fully inform the Parents of its position in the Amended CHINS Petition or in the pre-dispositional report. At the Dispositional Hearing, DCS announced that there were "other issues" apart from the eating disorder and self-isolation listed in the CHINS Petition that would prevent the return of A.C. to the Parents' home. (App.61a-62a). Surprised, the Parents requested clarification concerning these "other issues," and DCS responded: "Uh the child identifies as transgender. [A.C.] identifies as a female um and that has been a point of contention within the family." (App.61a). DCS then admitted that these "other issues" were not spelled out in the pre-dispositional report, and the Amended CHINS Petition does not specifically claim that A.C. was endangering A.C. due to the disagreement over transgenderism. (App.62a, 137a-145a). For these reasons, the parents did not consent to the continued removal of A.C. from their home.

This testimony at the Dispositional Hearing highlights the egregious constitutional violations at play in this case. DCS initiated their investigation of M.C. and J.C. because they were not using a cross-gender name and cross-gender pronouns. (App.148a-149). Then,

after dismissing all allegations against them, DCS still conjectured without medical proof that the Parents' beliefs about sex and gender were causing A.C.'s mental health issues. (App.61a) ("I think that the eating disorder there is probably some sort of correlation..."). And the trial court relied on this speculative testimony in determining that a nexus existed between the Parents' beliefs and the child's mental health issues. (App.81a).

In sum, the state removed A.C. from A.C.'s fit parents without a finding of unfitness and without the Parents' consent. The trial court, therefore, violated the Parents' right to the care, custody, and control of their child, and the Court of Appeals affirmed that decision. This Court's intervention is warranted.

III. This Case is Exceptionally Important and is the Proper Vehicle for Review.

The Indiana Court of Appeal's decision in this case fundamentally reorders the role of home and state in Indiana in disregard for this Court's precedent and the decisions of other state courts that have reviewed similar cases. In essence, Indiana law has dispensed with long-standing free speech protections and the fitness test for removal of a child from a parent's custody. In similar cases in which a state's domestic policy has grievously ignored constitutional rights, this Court has acted. *Troxel,* 530 U.S. at 68; *Santosky v. Kramer*, 455 U.S. 745 (1982); *Stanley*, 405 U.S. at 657-58. And the Parents are simply asking for this Court to do the same now.

The Parents respectfully request this Court's review due to the constitutional rights at stake, the fact that cases like this one will reoccur until this Court pro-

vides an answer, and because this Court's precedents concerning parental rights are being disregarded or ignored by state courts and legislatures.

The very subject matter of this case argues for review. Though many pressing and urgent matters are presented to this Court, this case involves the right of parents to raise their children according to their beliefs and best judgment and to be free from fear that government will take their children without a finding of abuse or neglect. This is an enduring and sacred right and one that calls for vigilance and attention from this Court. *See Moore v. Cleveland*, 431 U.S. 494, 503 (1977).

Whatever justifications the state raises for its actions here, the painful facts remain. M.C. and J.C.—fit parents by the state's own admission—had their child forcibly removed from their home, that child was placed in a home that directly contradicted their beliefs and best judgment while they were barred from sharing their own beliefs, and they watched helplessly as their child's medical condition grew worse under the care and custody of the state. (App.53a-164a). The trial court then held, without medical evidence, that their firm but loving instruction toward their child exacerbated their child's mental health issues. And, despite complying with every order of the trial court, their child was never returned to their custody. (App.80a).

Given the facts of this case and the arbitrary and almost absolute power it grants to juvenile courts over custody and parental speech, no parent in Indiana—and especially no parent with a child that struggles with mental health issues—should sleep easy tonight. *See Matter of A.C.*, 198 N.E.3d at 14-19.

Further, this case is not an anomaly unlikely to reoccur due to Indiana law and cultural developments. Concerning its published decision upholding the prior restraints on the Parents' speech, the Indiana Court of Appeals referenced several other recent decisions and tied its decision to that precedent. *Id.*

According to this decision, Indiana trial courts may now prevent fit parents from speaking to their children about entire subject matters as a condition of unsupervised visitation as long as the trial court declares (even without medical justification or other specified harm) that the discussion of the topic will negatively impact the child's mental health. *See Id.*

Also, the Indiana statute that allows a trial court to detain a child makes no distinction between cases that involve a finding of unfitness and a CHINS-6 case that involves "…no wrongdoing on the part of either parent.'" *See* I.C. § 31-34-5-3; *see In re N.E.*, 919 N.E.2d at 105; *Matter of A.C.*, 198 N.E.3d at 9-10. The Court of Appeal's decision in this matter relied only on cases referencing CHINS-1 findings (involving parental neglect and abuse) in reaching its decision and made no distinction between CHINS-1 and CHINS-6 matters. *See In re D.J.*, 68 N.E.3d 574, 580 (Ind. 2017); *Matter of A.C.*, 198 N.E.3d at 14-15. Stated differently, Indiana law now clearly holds that the state can remove a child from a parent's custody without a finding of unfitness. *Id.* And this interpretation has been confirmed by the Indiana Court of Appeals and, by its denial of the Parents' Petition for Review, the Indiana Supreme Court.

Further, cases similar to this one are likely to reoccur due to developing conflicts between parents and their children concerning gender identity. This

element played a central role in this case. (App.61a, 80a). A.C. disagreed with the Parents' beliefs about sex and gender and initially claimed that they were transphobic. (App.153a-155a). Even after DCS dismissed all claims of neglect against the parents, it still maintained that the disagreement over transgenderism was negatively impacting A.C.'s mental health. (App. 61a). There was no medical proof of this claim, yet the trial court accepted it without question and continued A.C.'s removal from the home over the objections of A.C.'s fit parents. (App.78a-80a).

Other states are also formalizing the legal standards at issue in this case. California law now allows a state juvenile court to take temporary custody of a child without a finding of parental unfitness if the child has been unable to obtain "…gender-affirming mental health care." Cal. Fam. Code § 3424(a). The state of Washington also recently passed a law that allows the state to legally hide runaway children from their parents if the parents do not consent to their child receiving "…gender affirming treatment." Wash. Rev. Code Ann. § 13.32A.082(1)(d). Due to such state laws, cases such as this one, "will keep coming until the Court... suppl[ies] an answer." *See Fulton v. City of Philadelphia, Pennsylvania*, 141 S.Ct. at 1931.

Fortunately, this Court has previously set out bright line rules in the context of the state's role in such conflicts. A state may only remove a child from a parent's custody with a particularized finding of unfitness. *Stanley*, 405 U. S. at 657-58. Absent such a finding, the state must defer to the fit parents' decisions concerning mental health, education, custody, and treatment. *see Parham*, 442 U.S. at 603-604; *see Troxel*, 530 U.S. at 68.

Unfortunately, many of these key parental rights cases are almost a quarter to a half-century old; and state juvenile codes and state juvenile courts are interpreting them loosely or even ignoring them amidst the rapid change in family dynamics and, thus, family law. *See Matter of A.C.*, 198 N.E.3d at 14; *see* I.C. § 31-34-1-6; *see* Cal. Fam. Code § 3424(a); *see* Wash. Rev. Code Ann. § 13.32A.082(1)(d). A strong restatement of the principles set out in these cases is needed now to protect parental rights and free speech.

Nor does this case need to percolate further. As noted above, the competing interests have been carefully weighed and previously decided. And, in the parental rights context, this Court has often ruled on clearly unconstitutional state statutes and decisions without repeated notice or circuit splits.

In *Troxel,* this Court ruled that a Washington statute concerning non-parent visitation was an unconstitutional infringement on the right of parents based on previous precedent. *Troxel*, 530 U.S. at 68. In *Santosky v. Kramer*, this Court reviewed a New York statute and held that its "fair preponderance of the evidence" standard for terminating parental rights violated due process protections. 455 U.S. 745 (1982). And, in *Stanley*, this Court ruled that an Illinois statute that declared unwed fathers as presumptively unfit was an unconstitutional infringement based on previous precedent. 405 U.S. at 657-58. Stated differently, this Court has often stepped in to protect parental rights when state legislatures or courts have stepped out of their constitutionally prescribed role.

In sum, parents, and especially religious parents with minority beliefs and cultural practices outside the mainstream, have long relied on this Court's

precedents to protect their homes from government interference. *Meyer*, 262 U.S. at 400-401; *Pierce*, 268 U.S. at 534-35; *see Wisconsin*, 406 U.S. at 217. And parents in difficult circumstances have often sought and obtained relief from this Court in efforts to protect their right to the care, custody, and control of their children. *See Parham v. J.R.*, 442 U.S. at 604; *see Stanley*, 405 U.S. at 657-58. The Parents here are simply asking this Court to reaffirm those bedrock constitutional principles amidst state legislation and court opinions that are neglecting or eroding them.

No other fit parent should lose custody of their child or face a government muzzle on their deeply held religious beliefs and best judgment. M.C. and J.C. have exhausted every other remedy and are gravely concerned that the state of Indiana will come for their other children. This Court's intervention is needed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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