PARENTAL AUTHORITY OVER CHILDREN'S LITIGATION

LISA V. MARTIN

INTRODUCTION 2183
I. THE DISCORDANT STATE OF PARENTAL LITIGATION AUTHORITY 2190
A. Authority to Choose to Litigate Pro Se or with Counsel 2190
B. Authority to Bring First-Party Claims 2198
1. Article III Standing 2199
2. Third-Party Standing 2203
3. Statutory Standing 2207
C. Authority to Bring Children's Claims 2211
1. Eligibility to Serve 2213
2. Nature of Decision-Making Authority 2218
II. PARENTAL LITIGATION AUTHORITY AS PROTECTED DECISION-MAKING 2220
A. Parents' Authority Outside of Federal Courts 2221
B. Litigation Authority as Parenting Authority 2223
C. Protecting Child Litigants' Interests 2230
CONCLUSION 2233

PARENTAL AUTHORITY OVER CHILDREN'S LITIGATION

LISA V. MARTIN*

Abstract: This Article examines a critical yet overlooked factor shaping children's access to civil justice: the scope of parental authority. Children have legal rights, but their status as legal minors often prevents them from enforcing those rights independently. Parents typically step in as children's legal proxies, but doing so is far from straightforward.

Two major hurdles stand in parents' way. First, the "counsel mandate," a court-made doctrine, prohibits non-lawyer parents from advancing their children's claims pro se, forcing them to hire counsel at their own expense or face dismissal of the case. This effectively creates a pay-to-play system that excludes low-income families from the courts. Parents can theoretically circumvent this obstacle, in part, by asserting their own claims for relief, but in attempting to do so, they confront the second major hurdle: the legal framework governing parents' authority to litigate claims relating to their children is fragmented and unclear. Specifically, it is often unclear whether a claim belongs to a parent, a child, or both, and thus whether a parent can pursue it without counsel. Moreover, when a parent brings a child's claim, it is also frequently unclear in what role a parent should operate, whether the parent needs court approval, and what entitlement a parent has to serve as a child's litigation representative over other candidates.

Understanding the scope of parents' litigation authority is critical because it effectuates children's legal rights. Rights mean little if they cannot be enforced, and it is parents who typically seek to enforce children's. Recognizing this problem, the Fifth Circuit recently outlined an initial path around the counsel mandate for some parents in *Raskin v. Dallas Independent School District*. This Article builds upon that work.

Through a detailed analysis of federal procedural doctrines, including those governing the counsel mandate, standing, and litigation representatives, the Article maps the current contours of parental litigation authority and highlights its inconsistencies and inequities. It argues that courts should adopt a "familial framework" that conceives of parental litigation authority as part of a unified familial right to vindicate a child's interests through the parent because the child cannot

* Professor, University of South Carolina Joseph F. Rice School of Law. This Article was made possible by generous support from the University of South Carolina Joseph F. Rice School of Law. For helpful comments, I thank Professors Emily Suski, Claire Raj, Michael Pinard, Jyoti Nanda, Alex West, Meghan Brooks, Jesse Cross, Laura Lane-Steele and other participants in the *NYU Clinical Law Review* and USC Joseph F. Rice School of Law faculty workshops. For editorial assistance, I thank Vanessa McQuinn. For excellent research assistance, I thank Tony Jones, Carolyn Barrett, Di'Avian Foster, Jacob Snyder, and Cameron Newton.

do so alone. Among other things, this approach would allow parents to make all litigation decisions on behalf of their children—including whether to proceed with or without counsel—unless a party shows a substantive conflict of interest. By grounding procedural doctrine in the realities of family life and constitutional principles, the Article offers a path forward that promotes fairness, access to justice, and respect for both parental authority and children's rights.

INTRODUCTION

Children are persons under the law, vested with legal rights.[1] Yet, these rights have little value if they cannot be enforced. The enforceability of children's rights often depends upon parents' authority over children's litigation.

The scope of parental authority is critical because the law deems children to be legal "minors."[2] As minors, children generally lack the capacity to undertake many legal actions for themselves, including litigation.[3] Instead, when

---

[1] *See* 1 U.S.C. § 8(a) (defining "person" and "child" as including "every infant member of the species homo sapiens who is born alive at any stage of development"); Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 74 (1976) ("Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."); Raskin *ex rel.* J.D. v. Dall. Indep. Sch. Dist., 69 F.4th 280, 292 (5th Cir. 2023) (Oldham, J., dissenting in part and concurring in the judgment) ("[U]nless context dictates otherwise, congressional enactments generally treat adults and minors as equal 'persons.'" (citing 1 U.S.C. § 8(a))); *see also* Planned Parenthood of Mont. v. State, 554 P.3d 153, 164 (Mont. 2024) ("[P]ersons under the age of majority have all the fundamental rights of the Declaration of Rights. The only exceptions permitted . . . are in cases in which rights are infringed by laws designed and operating to enhance the protection for such persons." (quoting *In re* C.H., 683 P.2d 931, 940 (Mont. 1984))); Glaskox *ex rel.* Denton v. Glaskox, 614 So. 2d 906, 911 (Miss. 1992) ("There is no justification for barring children from enjoying the same rights of legal redress for wrongs done to them that others enjoy."); Wilbon v. D. F. Bast Co., 382 N.E.2d 784, 790–91 (Ill. 1978) ("[A] minor should not be precluded from enforcing his rights unless clearly debarred from so doing by some statute or constitutional provision." (quoting Walgreen Co. v. Indus. Comm'n, 153 N.E. 831, 833 (Ill. 1926))); Lee v. Comer, 224 S.E.2d 721, 722–23 (W. Va. 1976) (ruling that there is "no reason why minor children should not enjoy the same right to legal redress for wrongs done to them as others enjoy"); Sorensen v. Sorensen, 339 N.E.2d 907, 912 (Mass. 1975) (noting that, absent a valid statute or constitutional provision to the contrary, "[c]hildren enjoy the same right to protection and to legal redress for wrongs done [to] them" as adults); Petersen v. City & County of Honolulu, 462 P.2d 1007, 1009 (Haw. 1969) ("[I]n general, minor children are entitled to the same redress for wrongs done them as are any other persons.").

[2] *See Minority*, BLACK'S LAW DICTIONARY (12th ed. 2024) (defining minority as "[t]he quality, state, or condition of being under legal age"); *see also* 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN § 14:2, at 979–80 (rev. 2d ed. 2005) ("The age of majority is the age at which the disabilities of minority are removed and the young person legally becomes an adult, free of parental authority and control, and entitled to the full enjoyment of all civil rights and decision-making authority over his or her own life."). The District of Columbia and all but three states designate eighteen as the age of legal majority/adulthood. NATIONAL SURVEY OF STATE LAWS 834–44 tbl.46 (Richard A. Leiter & Wendy Leiter eds., 9th ed. 2022). The age of majority is nineteen in Alabama and Nebraska and twenty-one in Mississippi. ALA. CODE § 26-1-1(a) (2025); MISS. CODE ANN. § 1-3-27 (2025); NEB. REV. STAT. § 43-2101(1) (2025).

[3] *See Capacity*, BLACK'S LAW DICTIONARY, *supra note* 2 (defining capacity as the power to enter into a legal relationship, including the "ability to sue or be sued," which is determined by their "satis-

children suffer legal harms, their parents typically must act to vindicate their rights and interests before the civil courts.[4] Parents' efforts to this end have contributed to landmark achievements, including the desegregation of public schools in *Brown v. Board of Education*, recognition of children's speech rights in schools in *Tinker v. Des Moines*, and establishment of due process and attorney representation rights in juvenile proceedings in *In re Gault*.[5] More recently, this trend has continued, with parents and guardians asserting their children's rights to a healthy climate,[6] freedom from school speech restrictions off campus and outside of school hours,[7] and access to gender-affirming medical care.[8]

Parents are critical to children's court access for practical reasons. Their relationships often enable them to learn about harms that befall their children, understand their children's needs and interests, and accept the burdens of time, stress, and money that litigation imposes.[9] Yet, parents' legal authority, *as parents*, to seek legal relief for harms to their children remains remarkably unclear.

---

faction of a legal qualification such as legal age or soundness of mind"); 4 MOORE'S FEDERAL PRACTICE § 17.21[3][a] & n.16 (3d ed. 1997), LEXIS (database updated Sep. 2026) (discussing the rule that minors generally lack the capacity to sue and required procedures in minors' cases); *see also* FED. R. CIV. P. 17(b)(1) (noting that capacity to sue or be sued "for an individual who is not acting in a representative capacity" is determined by the individual's domicile). The Federal Rules further dictate the procedures that apply to cases in which a minor is a party. FED. R. CIV. P. 17(c).

[4] *See* Lisa V. Martin, *Litigation as Parenting*, 95 N.Y.U. L. REV. 442, 454 & n.54 (2020) (finding that parents filed the majority of federal civil cases on behalf of children identified across a three-year period); *infra* note 206 and accompanying text (comparing cases in which parents file cases on behalf of children).

[5] *See generally* Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969) (holding that children have rights to free speech in education); *In re* Gault, 387 U.S. 1 (1967) (ruling that juveniles have a federal right to due process and attorney representation in juvenile delinquency adjudications); Brown v. Bd. of Educ. (*Brown I*), 347 U.S. 483 (1954) (overturning public school segregation); Brown v. Bd. of Educ. (*Brown II*), 349 U.S. 294 (1955) (addressing how to implement *Brown I*).

[6] *See generally* Juliana v. United States, 947 F.3d 1159, 1164 (9th Cir. 2020) (asserting a Fifth Amendment challenge to a federal fossil fuel policy claiming a right to a "climate system capable of sustaining human life"); Lighthiser v. Trump, No. 25-cv-0054 (D. Mont. filed May 29, 2025) (bringing claims against three energy executive orders, including minors proceeding through their parents as guardians, alleging violations of rights to life, liberty, and personal security); Held v. State, 560 P.3d 1235 (Mont. 2024) (confirming the standing of sixteen youth plaintiffs to challenge state energy policy as a violation of their constitutional rights).

[7] Mahanoy Area Sch. Dist. v. B.L., 594 U.S. 180, 184–85 (2021).

[8] United States v. Skrmetti, 605 U.S. 495, 507 (2025).

[9] Lisa V. Martin, *Modernizing Capacity Doctrine*, 73 FLA. L. REV. 821, 880 (2021); E. Gary Spitko, *Reclaiming the "Creatures of the State": Contracting for Child Custody Decisionmaking in the Best Interests of the Family*, 57 WASH. & LEE L. REV. 1139, 1204–08 (2000); *see* MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 46 (2005) ("[T]he core of the parental rights doctrine guarantees children at least that the important decisions in their lives will be made by those who are likely to know them best and to care the most for them."); David H. Neely, *Handicapped Advocacy: Inherent Barriers and Partial Solutions in the Representation of Disabled Children*, 33 HASTINGS L.J. 1359, 1363 (1982) (noting that "parents in most cases have a more intimate familiarity with their children's communications and intentions than anyone else"); *Developments in the Law—The Constitution and the Family*, 93 HARV. L. REV. 1156, 1353–54 (1980) (arguing that parental

When children are harmed, parents may seek civil legal relief from the courts in three ways.[10] First, parents bring claims for relief on their children's behalf as "next friend" or "guardian."[11] In this circumstance, the child is the party to the case; the parent simply serves as the child's representative in the litigation and makes decisions on the child's behalf.[12] Second, parents bring their own claims for relief in cases where conduct that infringes on their children's legal rights also infringes on parents' legal rights.[13] Third, parents bring their own claims and exercise "third-party standing," raising their children's rights and interests in support of parents' own claims without filing separate claims on behalf of their children.[14]

Although parents may pursue one or more of these paths in a case, they must surmount two substantial challenges to do so. First, parents bringing children's claims must overcome what I have called the counsel mandate.[15] Second, even if parents overcome the counsel mandate, they must navigate the

---

authority in raising their children serves a variety of interests including a knowledge of their child's needs that the "state cannot match").

[10] This Article focuses on parents' pursuit of civil remedies, by which I mean remedies in civil actions filed between private parties or by private parties against the state, not remedies issued by the criminal legal system. This Article also does not evaluate actions between parents or third parties seeking orders regarding custody of children or actions by the state for alleged abuse and neglect of children in family or juvenile courts, as different procedural rules often govern these proceedings. I undertake a cross-tribunal comparison of child litigants' procedural rights in a forthcoming article.

[11] *See infra* notes 203–244 and accompanying text.

[12] *See infra* note 205 and accompanying text (describing parents' roles as next friends and guardians ad litem).

[13] *See, e.g.*, Weinbaum v. City of Las Cruces, 541 F.3d 1017, 1028–29 (10th Cir. 2008) (finding that parents have Article III standing to challenge display of cross as city logo in public schools after citing harm to himself and his minor child); Doe v. Porter, 370 F.3d 558, 561–62 (6th Cir. 2004) (holding parents had Article III standing to challenge children receiving religious instruction in their public school); Fleischfresser v. Dirs. of Sch. Dist. 200, 15 F.3d 680, 683–84 (7th Cir. 1994) (recognizing that because "[t]he parents, not the students by their parents, have brought this suit," the court must evaluate the parents' standing, and holding that "the impermissible establishment of religion might inhibit [parents'] right to direct the religious training of their children"); Sullivan v. Syracuse Hous. Auth., 962 F.2d 1101, 1110 (2d Cir. 1992) (holding that parent has Article III standing to raise free exercise and establishment claims from harms by son's exposure to government endorsement of religion).

[14] *See infra* notes 142–170 and accompanying text.

[15] *See generally* Lisa V. Martin, *No Right to Counsel, No Access Without: The Poor Child's Unconstitutional Catch-22*, 71 FLA. L. REV. 831 (2019) (coining the term to encompass federal requirements that parents retain counsel on behalf of their children or face dismissal of their claims). Some courts have adopted this terminology. *See, e.g.*, Grizzell v. San Elijo Elementary Sch., 110 F.4th 1177, 1179 (9th Cir. 2024) (recognizing the policy arguments of the counsel mandate and adopting the term), *cert. denied*, 145 S. Ct. 2701 (2025); Warner v. Sch. Bd. of Hillsborough Cnty., No. 23-12408, 2024 WL 2053698, at *3 (11th Cir. May 8, 2024) (per curiam) (acknowledging the policy arguments of the counsel mandate), *cert. denied sub nom.* Warner v. Hillsborough Cnty. Sch. Bd., 145 S. Ct. 2699 (2025).

messy procedural doctrines regarding standing and litigation representatives that artificially limit the viability of the claims.[16]

Under the court-made counsel mandate, when a child has standing to assert a claim and the parent brings suit on the child's behalf, courts typically require the parent to retain counsel and prohibit the parent from bringing the child's claim pro se.[17] Courts reason that litigants may only bring their own claims pro se, not those belonging to others. Because children's claims are not parents' "own," parents must retain counsel to pursue them.[18] Through this requirement, the counsel mandate deprives parents of the ability to choose whether to dedicate family resources to attorneys' fees, substituting courts' judgment for that of the parents.[19] It also excludes indigent children and their parents from the courts.[20]

There is no general right to appointed counsel in civil cases.[21] Courts also rarely exercise their discretion to request pro bono counsel for unrepresented litigants.[22] Instead, federal courts routinely dismiss children's claims for lack of counsel.[23] The counsel mandate thus creates a pay-to-play system for the adjudication of children's rights in which a parent's ability to pay for private counsel determines whether a child's case will be heard. Children whose parents can afford counsel can access the courts; children whose parents cannot afford counsel cannot.

Beyond the counsel mandate barrier, parents also must overcome the challenges of establishing standing and securing appointment as a child's liti-

---

[16] *See infra* notes 52–103 and accompanying text.

[17] *See* Martin, *supra* note 15 (defining the term). Although courts have cited various legal justifications for the mandate, several circuits recently have coalesced around 28 U.S.C. § 1654 (the "Judiciary Act") as its legal source. *See, e.g.*, *Grizzell*, 110 F.4th at 1179 (noting plaintiff's argument that children have a right to proceed "personally" under the Judiciary Act); Raskin *ex rel.* J.D. v. Dall. Indep. Sch. Dist., 69 F.4th 280, 283 (5th Cir. 2023) (analyzing the effect of the Judiciary Act's language on the application of the counsel mandate); United States *ex rel.* Mergent Servs. v. Flaherty, 540 F.3d 89, 92 (2d Cir. 2008) (stating that under the Judiciary Act civil litigants may appear without counsel only when they "plead and conduct their *own* cases personally" (quoting 28 U.S.C. § 1654)); *see also infra* notes 52–103 (discussing the scope and application of the counsel mandate).

[18] *Grizzell*, 110 F.4th at 1181; *Raskin*, 69 F.4th at 283; *Warner*, 2024 WL 2053698, at *3.

[19] *See* Martin, *supra* note 15, at 870–72 (discussing the impact of the counsel mandate on the ability of parents to make informed, financial decisions on behalf of their families and children).

[20] *See id.* at 856–58 (finding that available legal services cannot meet the needs of indigent children, leaving a substantial number of families unable to satisfy the counsel mandate).

[21] Lisa V. Martin, *Securing Access to Justice for Children*, 57 HARV. C.R.-C.L. L. REV. 615, 629–39 (2022); *see* Turner v. Rogers, 564 U.S. 431, 432 (2011) (holding that the appointment of counsel is not categorically required in civil contempt proceedings that threaten incarceration).

[22] Lassiter v. Dep't of Soc. Servs. of Durham Cnty., 452 U.S. 18, 25–27 (1981) (holding that the right to appointment of counsel for indigent litigants attaches only where a litigant's physical liberty is at risk).

[23] *See infra* notes 52–103 and accompanying text (analyzing the impact of enforcing the counsel mandate).

gation representative.[24] Parents face challenges establishing independent standing to bring claims when a child is harmed, first, because the precise scope of parents' protected decision-making authority under both the U.S. Constitution and state law is often unclear. The Supreme Court recognizes that parents enjoy a fundamental right to decision-making regarding the "care, custody, and control of their children,"[25] which generally shields parents from government (including court) interference in child-rearing decisions,[26] but gives way to state action necessary to protect children's health and welfare.[27] Likewise, although state laws also broadly empower parents as guardians and custodians to make important decisions for their children, states often fail to fully specify what this authority entails.[28] Thus, it is frequently unclear whether a parent has

---

[24] *See infra* notes 104–202 and accompanying text (discussing the challenges of standing); *infra* notes 203–230 and accompanying text (analyzing the difficulties faced by court-appointed litigation representatives).

[25] Troxel v. Granville, 530 U.S. 57, 66 (2000) (plurality opinion) ("[I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."); Santosky v. Kramer, 455 U.S. 745, 753 (1982) (recognizing this enduring fundamental liberty interest of natural parents even when parents have lost temporary custody or other adverse circumstances); Parham v. J.R., 442 U.S. 584, 602 (1979) (noting that "[o]ur jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children"); 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."); Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977) (plurality opinion) ("A host of [Supreme Court] cases . . . have consistently acknowledged a 'private realm of family life which the state cannot enter.'" (quoting Prince v. Massachusetts, 321 U.S. 158, 166 (1944))); *Prince*, 321 U.S. at 166 ("[T]he custody, care and nurture of the child reside first in the parents . . . .").

[26] *Troxel*, 530 U.S. at 72–73 (plurality opinion) ("[T]he Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a 'better' decision could be made."). The Court further held that as long as the parent is fit, there is normally no reason to question the child-rearing decisions of the parent further. *Id.* at 68–69. Circuit courts have similarly followed this approach. *See* Foote v. Ludlow Sch. Comm., 128 F.4th 336, 344 (1st Cir. 2025) (following the Supreme Court's approach of framing parents' liberty interests broadly as "the right to direct the . . . upbringing of [one's child]"), *cert. denied mem.*, 224 146 S. Ct. 2571 (2026); Kanuszewski v. Mich. Dep't of Health & Hum. Servs., 927 F.3d 396, 415 (6th Cir. 2019) (noting that Supreme Court precedent on parents' substantive due process rights "does not address the issue of parents' right to control their children's medical care"); C.N. v. Ridgewood Bd. of Educ., 430 F.3d 159, 182 (3d Cir. 2005) ("The Supreme Court has never been called upon to define the precise boundaries of a parent's right to control a child's upbringing and education.").

[27] RESTATEMENT OF CHILDREN AND THE LAW, pt. 1, ch.1 Intro. Note (A.L.I., Tentative Draft No. 1, 2018).

[28] Some states, for example, grant parents as natural guardians the right to make "decisions of substantial legal significance" for their children. *See, e.g.*, D.C. CODE § 16-2301(20)(A) (2025); HAW. REV. STAT. § 571-2 (2025); IDAHO CODE § 16-2002(7)(a) (2025); TEX. FAM. CODE ANN. § 151.001 (a)(7) (West 2025). This state protection is acknowledged as well by courts. *See* Bellotti v. Baird, 443 U.S. 622, 637 (1979) (plurality opinion) ("The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors.").

a legally protected right at stake in the specific context in which a child suffers harm.[29]

Further, although some state laws specifically authorize parents to pursue litigation, generally,[30] and/or to bring certain claims for their children,[31] these provisions often fail to clarify whether they grant parents independent standing to do so or simply authorize parents to bring the child's claims as the child's representative.[32] Finally, although parents typically seek to bring children's claims as their litigation representatives, procedural doctrine often fails to address whether parents have any entitlement to serve in this role.[33] Thus, when parents bring claims regarding harm to a child, courts confront complex questions about standing and procedure with scant direction from the Constitution, the Supreme Court, or state law.[34] In the face of this widespread ambiguity, courts routinely view parental authority restrictively or simply ignore it.[35] Either way, they interpret procedural doctrine in ways that inhibit children's access to the courts.

This Article, the fifth in a series exploring procedural issues that obstruct children's access to the civil courts, takes on these critical and overlooked questions about parents' legal authority *as parents* over their children's litigation. Part I first evaluates the counsel mandate as an obstacle to children's access to justice and an infringement upon parental authority to make significant decisions for their children.[36] It then undertakes the first effort to comprehensively map legal sources of parents' authority to pursue civil litigation relating to their children.[37] It examines the extent to which parents have independent

---

[29] *See Troxel*, 530 U.S. at 78 (Souter, J., concurring) ("[C]ases, it is true, have not set out exact metes and bounds to the protected interest of a parent in the relationship with his child . . . ."); *Moore*, 431 U.S. at 498–99 (plurality opinion) (discussing the early stages of development of children's and parents' constitutional rights); Vivian E. Hamilton, *Immature Citizens and the State*, BYU L. REV. 1055, 1085–86 (2010) (explaining that the "magnitude and contours" of the substantive right to parent are "notoriously indistinct"); David D. Meyer, *The Paradox of Family Privacy*, 53 VAND. L. REV. 527, 529 (2000) ("[T]he Court's family privacy cases have left pointedly unclear both what sorts of private conduct are deserving of heightened protection and what form that protection should take.").

[30] *See, e.g.*, FLA. STAT. § 744.301(2)(a) (2025) (authorizing parents to settle children's claims valued under $15,000 without appointment); IOWA CODE § 600A.2 (2025) (authorizing parents to represent children in legal actions); N.Y. C.P.L.R. § 1201 (McKinney 2025) (giving the parent with legal custody the right to sue on child's behalf absent appointment of a guardian ad litem); TEX. FAM. CODE ANN. § 151.001(a)(7) (West 2025) (authorizing parents to "to represent the child in legal action and to make other decisions of substantial legal significance concerning the child"); MD. R. 3-202 (giving parent with sole custody exclusive right to sue on child's behalf for first year after cause of action arises and authorizing parents to settle children's claims without court approval).

[31] *See infra* notes 171–188 and accompanying text.

[32] *See infra* notes 171–230 and accompanying text.

[33] *See infra* notes 189–230 and accompanying text.

[34] *See infra* notes 189–230 and accompanying text.

[35] *See infra* notes 196–220 and accompanying text.

[36] *See infra* notes 52–103 and accompanying text.

[37] *See infra* notes 104–230 and accompanying text.

rights or "standing" to bring claims relating to their children as well as rights to serve as children's litigation representatives.[38] It finds the law largely ambiguous, leaving parents and courts with little guidance.[39]

Part II evaluates a core problem in federal courts' application of these doctrines: courts fail to treat parents as *parents* when they enter the courtroom.[40] Courts overlook parents' general decision-making authority and the parent-child relationship in evaluating parents' authority within litigation.[41] Without this shared grounding, court approaches to parents are overly formalistic and unpredictable.[42] Courts also lack a consistent constraint on overriding parents' judgments.[43] This reality generates concerns about process, fairness, child well-being, and democracy that warrant attention and remediation.[44]

This Article thus proposes a new way forward. It argues that federal courts should apply a familial framework, which conceives of parental litigation authority as a unified familial right to vindicate a child's interest through the parent's actions given the child's inability to do so alone.[45] From this perspective, parental litigation authority vindicates both the parent's right to sue on the child's behalf and the child's right to have the parent, rather than another adult, vindicate the child's interests. Courts employing this framework would generally presume alignment between parents' and children's interests and center parents' protected authority as the principle guiding the application of procedural doctrine to parents and children. Taking this approach, courts would presume that parents generally should have separate standing to sue when statutes authorize them to bring particular claims relating to their children. Courts would also permit parents to raise children's rights in support of their own claims, serve as representatives for children's claims, and make the litigation decisions children would make for themselves if they had the capacity, including whether to retain counsel or proceed pro se. This Article submits that courts can take this approach while continuing to respect children as independent rightsholders and protecting children's interests. Applying a family framework within these determinations would support parents, promote children's court access, and ensure that decisions about children's litigation are made by those who know them best.

---

[38] *See infra* notes 104–230 and accompanying text.

[39] *See infra* notes 139–141 and accompanying text (noting the unclear scope of parents' liberty interests); *infra* notes 198–220 and accompanying text (discussing the absence of consensus on Rule 17 criteria for parental appointment); *infra* notes 221–222 and accompanying text (analyzing that representatives have "significant, but vague authority").

[40] *See infra* notes 231–304 and accompanying text.

[41] *See infra* notes 234–253 and accompanying text.

[42] *See infra* notes 258–266 and accompanying text.

[43] *See infra* notes 252–254 and accompanying text.

[44] *See infra* notes 254–270 and accompanying text.

[45] *See infra* notes 254–288 and accompanying text.

I. The Discordant State of Parental Litigation Authority

This Part maps the present contours of parents' authority to seek civil legal relief from the federal courts when children are harmed, focusing on three procedural doctrines.[46] Section A first explores parents' authority to choose whether to litigate children's claims pro se or with counsel, finding it frequently determinative of parents' ability to vindicate children's claims.[47] Court-made doctrine known as the counsel mandate prohibits parents from bringing their children's claims pro se and requires parents to retain counsel. Because there is no general right to appointed counsel in federal civil cases, courts require parents to retain counsel at their own expense or face dismissal of their children's cases. Courts frequently dismiss children's claims pursuant to the mandate when parents fail to obtain counsel.

Importantly, the Fifth Circuit holds that the counsel mandate gives way when children's legal claims are also parents' "own" according to applicable statutory causes of action or the scope of parents' protected authority under state law.[48] Moreover, parents who have independent standing when children are harmed can choose to bring their own claims pro se or with counsel. When a parent cannot afford counsel, the survival of their case thus turns on whether the claims they assert are their "own" or their child's.

Section B therefore examines parents' ability to assert Article III, third-party, and statutory standing and the distinctive authority each provides.[49] It finds the law largely ambiguous and the federal courts too often inclined to construe these doctrines, like the counsel mandate, in ways that restrict or overlook parental authority and the importance of parent-child relationships.

Finally, Section C examines the scope of parents' authority to represent their children in litigation, and, coming full circle, whether such authority confers upon parents the power to decide whether to proceed with counsel or pro se.[50] Taken together, this Part reveals the scope of parents' litigation authority to be tangled, confused, and difficult to assert as they seek redress for harms to their children.[51]

A. Authority to Choose to Litigate Pro Se or with Counsel

A seemingly small but enormously impactful component of parents' litigation authority concerns their ability to choose whether to litigate their chil-

---

[46] *See infra* notes 52–230 and accompanying text.

[47] *See infra* notes 52–103 and accompanying text.

[48] *See* Raskin *ex rel.* J.D. v. Dall. Indep. Sch. Dist., 69 F.4th 280, 282 (5th Cir. 2023) (holding that parents may proceed pro se on behalf of parents when the parent's claims belong to the parent).

[49] *See infra* notes 104–188 and accompanying text.

[50] *See infra* notes 189–230 and accompanying text.

[51] *See infra* notes 52–230 and accompanying text.

dren's claims pro se or with counsel. Court-made doctrine known as the "counsel mandate" generally dictates that adult representatives litigating claims on behalf of children may not do so pro se—they must retain private counsel or face dismissal of the case.[52] The counsel mandate thereby removes the decision whether to retain counsel from those that litigation representatives are authorized to make on behalf of child parties.[53] It does so even when the litigation representative is a parent, without justifying why a court should make that decision in place of a parent.

Yet, the parent must shoulder the cost. Because there is no right to counsel in federal civil litigation, the counsel mandate requires that adult representatives for child litigants retain counsel at their own expense.[54] The dearth of available legal services for people who cannot afford to pay leaves those with little wealth unable to satisfy this demand.[55] Courts have the authority to request counsel for indigent litigants, but they rarely do, even in children's cases.[56] Instead, when adult representatives fail to retain counsel, courts applying the counsel mandate routinely dismiss children's claims outright, regardless of their ability to pay.[57] In practice, the counsel mandate creates a pay-to-play civil justice system for children's claims, permitting court access only to those whose parents can afford it.[58]

---

[52] *See* Grizzell v. San Elijo Elementary Sch., 110 F.4th 1177, 1178 (9th Cir. 2024) (referring to the doctrine as the "counsel mandate"), *cert. denied*, 145 S. Ct. 2701 (2025); Martin, *supra* note 15 (coining the term); *see also* Warner v. Sch. Bd. of Hillsborough Cnty., No. 23-12408, 2024 WL 2053698, at *3 (11th Cir. May 8, 2024) (per curiam) (invoking the counsel mandate), *cert. denied sub nom.* Warner v. Hillsborough Cnty. Sch. Bd., 145 S. Ct. 2699 (2025).

[53] *See Raskin*, 69 F.4th at 294 (Oldham, J., dissenting in part and concurring in the judgment) (arguing that § 1654 only offers minors the choice to litigate with counsel, i.e., not their parents, or not at all).

[54] *See* Turner v. Rogers, 564 U.S. 431, 432 (2011) (holding that appointment of counsel is not a right in civil proceedings even if an individual faces incarceration); Lassiter v. Dep't of Soc. Servs. of Durham Cnty., 452 U.S. 18, 25 (1981) (holding that the right to appointment of counsel for indigent litigants attaches only where a litigant's physical liberty is at risk); Martin, *supra* note 15, at 835–39 (noting this concern and arguing that the counsel mandate thus infringes on the constitutional rights of parents).

[55] Martin, *supra* note 15, at 856–58.

[56] 28 U.S.C. § 1915(e)(1); *see* Mallard v. U.S. Dist. Ct., 490 U.S. 296, 298 (1989) (holding that courts have authority under 28 U.S.C. § 1915 to request, but not compel, uncompensated attorney service).

[57] My research of over 300 cases applying the counsel mandate to children's litigation from 2019–2025 identified only six in which a court appointed counsel for a child litigant. *See also* Martin, *supra* note 15, at 835–39 (documenting nearly 600 cases dismissed under the counsel mandate without appointment of counsel).

[58] Several courts have expressed misgivings about the injustices caused by the counsel mandate—but concluded they were bound to impose it anyway. *See, e.g.*, Grizzell v. San Elijo Elementary Sch., 110 F.4th 1177, 1181 (9th Cir. 2024) (recognizing that the mother's challenge raised "concerns with grave implications for children's access to justice" but ruling that the counsel mandate applied nonetheless), *cert. denied*, 145 S. Ct. 2701 (2025); Tindall v. Poultney High Sch. Dist., 414 F.3d 281, 286 (2d Cir. 2005) (cautioning that rigid application of the rule may exclude minors from court entirely, while still applying the counsel mandate as precedent requires); Warner v. Sch. Bd. of Hillsborough

The counsel mandate was first announced by the Tenth Circuit Court of Appeals with no justification.[59] All federal courts that have considered the question have since adopted it.[60] Over time, courts have offered several justifications for the mandate, citing the Judiciary Act, the common law prohibition against non-lawyer representation, capacity rules, and courts' obligation to protect child litigants.[61] The Supreme Court has never ruled upon the validity of the doctrine.[62]

In three recent opinions, the Fifth, Ninth, and Eleventh Circuits have coalesced around the Judiciary Act as the counsel mandate's legal source.[63] The Judiciary Act codifies the historic common law right to self-representation.[64] Applying the Judiciary Act, courts have articulated multiple rationales for imposing the counsel mandate in children's cases.[65] First, courts have held that

---

Cnty., No. 23-12408, 2024 WL 2053698, at *3 (11th Cir. May 8, 2024) (per curiam) (acknowledging the policy arguments against the counsel mandate but holding that the court was bound by precedent), *cert. denied sub nom.* Warner v. Hillsborough Cnty. Sch. Bd., 145 S. Ct. 2699 (2025); Hootstein v. Amherst-Pelham Reg'l Sch. Comm., 361 F. Supp. 3d 94, 102 (D. Mass. 2019) ("[C]hildren are denied access to our legal system if their guardians are not attorneys, cannot afford counsel, or cannot find an attorney willing to take a case on contingency."). The Ninth and Eleventh Circuits recently concluded that only an en banc panel could overturn the counsel mandate precedent in their circuits; both courts declined en banc review. *Grizzell*, 110 F.4th at 1180–81, 1181 n.4; *Warner*, 2024 WL 2053698, at *3, *reh'g en banc denied* (11th Cir. Sep. 4, 2024).

[59] Meeker v. Kercher, 782 F.2d 153, 154 (10th Cir. 1986) (per curiam).

[60] Raskin *ex rel.* J.D. v. Dall. Indep. Sch. Dist., 69 F.4th 280, 283 (5th Cir. 2023); Myers v. Loudoun Cnty. Pub. Schs., 418 F.3d 395, 401 (4th Cir. 2005); Shepherd v. Wellman, 313 F.3d 963, 970 (6th Cir. 2002); Navin v. Park Ridge Sch. Dist. 64, 270 F.3d 1147, 1148–49 (7th Cir. 2001); Crozier *ex rel.* A.C. v. Westside Cmty. Sch. Dist., 973 F.3d 882, 887–88 (8th Cir. 2020); Johns v. County of San Diego, 114 F.3d 874, 876–77 (9th Cir. 1997); Devine v. Indian River Cnty. Sch. Bd., 121 F.3d 576, 581 (11th Cir. 1997), *overruled in part by* Winkelman *ex rel.* Winkelman v. Parma City Sch. Dist., 550 U.S. 516 (2007); Osei-Afriyie *ex rel.* Osei-Afriyie v. Med. Coll. of Pa., 937 F.2d 876, 883 (3d Cir. 1991); Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59, 61 (2d Cir. 1990), overruled; Crippa v. Johnston, No. 91-1676, 1992 WL 245716, at *2 (1st Cir. Oct. 1, 1992); *see also* Georgiades v. Martin-Trigona, 729 F.2d 831, 834 (D.C. Cir. 1984) (noting non-lawyers may not represent other parties).

[61] Martin, *supra* note 15, at 839–54.

[62] The Supreme Court had the opportunity to rule on the counsel mandate in *Winkelman* ex rel. *Winkelman v. Parma City School District* but did not reach the question. 550 U.S. at 535. Justice Scalia asserted in a footnote in his concurrence that the counsel mandate was an established common law doctrine. *Id.* at 536 n.1 (Scalia, J., concurring). Some, however, have questioned that analysis and note that it is not binding. *See Raskin*, 69 F.4th at 298–99 (Oldham, J., dissenting in part and concurring in the judgment) (reasoning that parental decision-making authority should clearly encompass representing one's child). The Court recently denied two petitions for certiorari that sought a ruling on the counsel mandate's legality. Grizzell v. San Elijo Elementary Sch., 145 S. Ct. 2701 (2025) (mem.); Warner v. Hillsborough Cnty. Sch. Bd., 145 S. Ct. 2699 (2025) (mem.).

[63] *Grizzell*, 110 F.4th at 1179; *Raskin*, 69 F.4th at 283; *Warner*, 2024 WL 2053698, at *3.

[64] *See* 28 U.S.C. § 1654 (providing that "[i]n all courts of the United States the parties may plead and conduct their own cases personally or by counsel"). This right has been codified in the Judiciary Act since it was first adopted in 1789. Judiciary Act of 1789, ch. 20, § 35, 1 Stat. 73 (1789).

[65] *See generally* Martin, *supra* note 15 (tracing the history, sources, and impact of this counsel mandate on children's civil claims).

the right of self-representation neither extends to children nor to the adult representatives acting on their behalf. Some courts conclude that children do not have a right to self-representation.[66] Others would hold that children do have it, but cannot exercise it because of their incapacity.[67] Some hold that adult representatives have no right to self-representation in children's cases because they are not representing themselves/the cases are not their "own."[68] Still other courts construe the right as one to retain counsel, which belongs to the child alone and cannot be disavowed by an adult representative on the child's behalf.[69] Finally, some courts suggest that adult representatives who are lawyers may represent children's claims without retaining separate counsel.[70]

Courts not only disagree about the source of the doctrine, but also its scope. Some circuits hold that the counsel mandate is an absolute prohibition and recognize no exceptions to the rule.[71] Others hold the counsel mandate is not absolute and identify fact-based[72] and claim-based exceptions.[73] Federal

---

[66] *See, e.g.*, Johns v. County of San Diego, 114 F.3d 874, 876–78 (9th Cir. 1997) (agreeing that there is no choice, and therefore right, for children to appear pro se); Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59, 61 (2d Cir. 1990) (holding that there is no real choice for children to appear pro se and non-attorney parents may not represent them as such).

[67] *See, e.g.*, *Raskin*, 69 F.4th at 290–93 (Oldham, J., dissenting in part and concurring in the judgment) (noting the importance of adult guardians asserting claims on behalf of their incapacitated children).

[68] *See, e.g.*, Myers v. Loudoun Cnty. Pub. Schs., 418 F.3d 395, 400 (4th Cir. 2005) ("The right to litigate for *oneself*, however, does not create a coordinate right to litigate for *others*.").

[69] *See, e.g.*, Osei-Afriyie *ex rel.* Osei-Afriyie v. Med. Coll. of Pa., 937 F.2d 876, 883 (3d Cir. 1991) (holding that the parent cannot "waive" this right by appearing pro se, which belongs to the child).

[70] *See, e.g.*, Berrios v. N.Y.C. Hous. Auth., 564 F.3d 130, 134 (2d Cir. 2009) ("If the representative of the minor or incompetent person is not himself an attorney, he must be represented by an attorney in order to conduct the litigation."); Fisher v. PGCPS Bd. of Educ., Civ. No. 23-1693, 2024 WL 989558, at *2 (D. Md. Mar. 6, 2024) (holding that an attorney-parent may represent herself and her child pro se).

[71] *See* Grizzell v. San Elijo Elementary Sch., 110 F.4th 1177, 1179–80 n.2 (9th Cir. 2024) (identifying circuits applying the counsel mandate as a general rule), *cert. denied*, 145 S. Ct. 2701 (2025); Warner v. Sch. Bd. of Hillsborough Cnty., No. 23-12408, 2024 WL 2053698, at *3 (11th Cir. May 8, 2024) (per curiam) (rejecting plaintiff's arguments to loosen application of the counsel mandate), *cert. denied sub nom.* Warner v. Hillsborough Cnty. Sch. Bd., 145 S. Ct. 2699 (2025); *see also* Matthew F. Gillam, Note, *In Defense of Pro Se Parents*, 93 FORDHAM L. REV. 1827, 1844–56 (2025) (analyzing the current circuit split relating to pro se representation by parents); Alexander C. Kurtz, Comment, *What Child Is This:* Raskin *and the Right to Represent Your Children Pro Se*, 66 B.C. L. REV. 1983, 1991–96 (2025) (discussing the ten circuits that hold the counsel mandate is an absolute bar).

[72] *See, e.g.*, Elustra v. Mineo, 595 F.3d 699, 706–07 (7th Cir. 2010) (permitting consideration of motion to set aside judgment filed by a pro se parent because the filing deadline had passed and thus the motion provided the sole means for the child to challenge the judgment).

[73] Courts in at least five circuits permit parents to bring social security appeals on children's behalf pro se. *See, e.g.*, Crozier *ex rel.* A.C. v. Westside Cmty. Sch. Dist., 973 F.3d 882, 887 (8th Cir. 2020) ("Parents may litigate *pro se* if their minor child is denied social security benefits."); Adams *ex rel.* D.J.W. v. Astrue, 659 F.3d 1297, 1301 (10th Cir. 2011) (holding that non-attorney parent who meets statutory competency standards may pursue a child's SSI appeal pro se); Machadio v. Apfel, 276 F.3d 103, 107 (2d Cir. 2002) (permitting a non-attorney parent to bring a child's SSI appeal pro se

courts applying the counsel mandate generally treat parents advancing their children's claims the same as other adults bringing claims on behalf of children or other parties,[74] rarely considering the special nature of the parent-child relationship or parents' decision-making authority.[75]

Until the Fifth Circuit's decision in 2023 in *Raskin ex rel. J.D. v. Dallas Independent School District*,[76] the limited counsel mandate exceptions recognized by courts had typically not specifically addressed the special relationship between parents and children. Nonetheless, courts established the sole claim-based exception for children's Supplemental Security Income ("SSI") benefits appeals, recognizing the shared interests of adults (usually parents) and children in these cases and the barrier that poverty would otherwise erect to the remedy.[77] Although the SSI benefits at issue in these cases belong to children, adult "representative payees" (typically parents) receive the payments and decide how to best allocate them to cover qualifying expenses.[78] SSI payments thus benefit the parent as well as the child, as they not only alleviate the expenses that parents must pay for the child but also allow the parent to free up resources to meet other family needs.[79] Courts find the intertwinement of parents' and children's interests to justify this SSI exception: they hold that parents' interests are "squarely at stake" in these cases.[80] Indeed, some courts have framed the

where the parent has "sufficient interest in the case and meets basic standards of competence"); Harris *ex rel.* Harris v. Apfel, 209 F.3d 413, 417 (5th Cir. 2000) (reasoning that barring non-attorney parents from SSI appeals would "jeopardize seriously the child's statutory right to judicial review"); Price v. Barnhart, 129 F. App'x 699, 700 (3d Cir. 2005) (allowing a mother to bring her daughter's SSI appeal because the parent's own interests were at stake). District courts within the Fourth Circuit have also recognized the SSI exception. *See, e.g.*, Sechrist *ex rel.* V.S. v. Soc. Sec. Admin., No. 20-cv-175, 2020 WL 8085099, at *2–3 (E.D.N.C. Nov. 10, 2020) (recommending that the court permit non-attorney parents to proceed pro se, subject to the statutory competence standards).

[74] *See, e.g.*, Iriele v. Griffin, 65 F.4th 1280, 1284–85 (11th Cir. 2023) (holding an executor may not represent an estate with additional beneficiaries pro se); C.R. v. Mo. Dep't of Soc. Servs., No. 21-cv-04129, 2021 WL 4303688, at *1 (W.D. Mo. Sep. 21, 2021) (holding that a grandparent cannot bring grandchild's claim pro se).

[75] *But see* Raskin *ex rel.* J.D. v. Dall. Indep. Sch. Dist., 69 F.4th 280, 283 (5th Cir. 2023) (considering the special nature of parent-child relationships); Thomas *ex rel.* N.T. v. Astrue, 674 F. Supp. 2d 507, 511 (S.D.N.Y. 2009) ("[I]f a district court, after an 'appropriate inquiry [into] the particular circumstances of the matter at hand,' determines that the non-attorney parent has a 'significant stake in the outcome of the litigation,' a parent may bring an action in federal court on behalf of their child without an attorney." (quoting *Machadio*, 276 F.3d at 107)), *abrogated by* Nambiar v. Cent. Orthopedic Grp., LLP, 158 F.4th 349 (2d Cir. 2025).

[76] 69 F.4th 280.

[77] *Machadio*, 276 F.3d at 106–07; *Harris*, 209 F.3d at 416–17.

[78] 20 C.F.R. § 416.610(b). Qualifying parents are preferred to serve in the representative payee role for child beneficiaries. 20 C.F.R. § 416.621(b)(1); *Machadio*, 276 F.3d at 106–07.

[79] *Machadio*, 276 F.3d at 107; *Thomas*, 674 F. Supp. 2d at 512; *see Harris*, 209 F.3d at 416 (noting the parent's financial stake in the action).

[80] *Machadio*, 276 F.3d at 106–07.

exception as applying more broadly to circumstances where the case implicates the parent's interests, potentially beyond the SSI context.[81]

Moreover, the family's poverty justifies the exception because SSI benefit income requirements mean that the parents and children involved in these appeals by definition live in poverty and need the benefits to meet real-time needs, occurring during childhood.[82] Thus applying the counsel mandate to this group would essentially foreclose access to the SSI appeal remedy.[83] Importantly, in recognizing the SSI exception, courts portray parents' and children's shared interests and financial precarity as anomalous: these decisions imply that in the typical non-SSI case, children's and parents' interests are distinct and their financial resources are not the courts' concern. Some courts have indicated an openness to waiving the mandate in other cases where a parent has a substantial, direct interest in the resolution of the claims[84] but have yet to find other claims warranting this exception.

In *Raskin*, Fifth Circuit jurists specifically debated for the first time whether and to what extent the counsel mandate applies in cases where parents act on behalf of their children. The *Raskin* majority held that parents have the right to litigate children's claims pro se when those claims are parents' "own."[85] Children's claims are parents' own for purposes of the Judiciary Act whenever federal or state law designates children's claims as "belonging to" a parent.[86] This occurs in two ways.[87] First, statutes might designate children's

---

[81] Price v. Barnhart, 129 F. App'x 699, 700 (3d Cir. 2005).

[82] *See* Adams *ex rel.* D.J.W. v. Astrue, 659 F.3d 1297, 1300–01 (10th Cir. 2011) (noting the stringent limitations required to award SSI benefits); Maldonado *ex rel.* Maldonado v. Apfel, 55 F. Supp. 2d 296, 305 (S.D.N.Y. 1999) ("[C]hild SSI benefits are intended to aid disabled children while they are children and therefore those rights must be vindicated in a timely manner.").

[83] *Adams*, 659 F.3d at 1301; *Harris*, 209 F.3d at 417; *Maldonado*, 55 F. Supp. 2d at 303.

[84] *See Thomas*, 674 F. Supp. 2d at 511 (noting an interest in potentially waiving the counsel mandate where the "parent has a 'significant stake in the outcome of the litigation'" (quoting *Machadio*, 276 F.3d at 106)). Some courts have, for example, identified similarities between the intertwinement of parents' and children's interests in SSI claims and other causes of action, but have not yet recognized another claim-based exception to the mandate in these or any other cases. *See, e.g.*, Winkelman *ex rel.* Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 535 (2007) (explicitly declining to decide whether parents can advance children's IDEA claims pro se); Tindall v. Poultney High Sch. Dist., 414 F.3d 281, 285 (2d Cir. 2005) (noting that some of the same factors found to warrant finding children's SSI claims to be parents' own "such as the intertwining of the interests of the parent and the child—are arguably present" in education and disability rights claims, but deferring to precedent in declining to permit parents to pursue the case pro se); *cf.* Stanton v. Stanton, 421 U.S. 7, 11 (1975) (disregarding objection to a mother raising violation of her daughter's equal protection rights in challenging statute that terminated child support at eighteen for girls and twenty-one for boys). The court stated, "[w]e are satisfied that it makes no difference whether the appellant's interest in any obligation of the appellee, under the divorce decree, for Sherri's support between ages 18 and 21, is regarded as an interest personal to appellant or as that of a fiduciary." *Id.*

[85] Raskin *ex rel.* J.D. v. Dall. Indep. Sch. Dist., 69 F.4th 280, 283–84 (5th Cir. 2023).

[86] *Id.* at 282–83. The court held that these circumstances are broader than only those in which the parent is a named party in the litigation. *Id.* at 283–84.

[87] *Id.* at 283–85.

claims as also belonging to a parent, or otherwise permit a parent to advance such claims pro se.[88] The *Raskin* majority identified children's SSI claims as belonging to parents for purposes of this rule, and opined that IDEA claims might also qualify.[89] Second, the *Raskin* majority held that state law may grant parents, generally, the right to represent their child pro se.[90] When state law grants parents the right to advance children's claims pro se, the majority treats the claims as parents' own because state law assigns the child's litigation choice to the parent.[91] The *Raskin* majority gave no examples of states that take this step, but made clear that states have this authority and federal courts must respect states' choices on this question.[92]

The *Raskin* majority's "parents' own" test thus suggests a loosening of the counsel mandate for parents bringing children's claims according to legislative directives. Parents in the Fifth Circuit can now advance their children's claims pro se if they can demonstrate either that a particular statute or their state generally authorizes them to do so as part of their protected parenting authority. Yet, this may be a hollow promise. No published opinions issued since *Raskin* have identified additional children's claims that "belong to" parents, and only a few have even evaluated whether claims meet this standard.[93] This is perhaps

---

[88] *Id.* at 284.

[89] *Id.* (citing *Winkelman*, 550 U.S. at 535).

[90] *Id.* The court held that state laws may grant this right to parents, thus conferring upon the parents the authority to act within the parent-child relationship "as the child's *pro se* alter ego." *Id*.

[91] *See id.* (holding that the state "assigns to the parent the child's 'individual choice to proceed *pro se*,' signals that 'the minor's interests would be furthered by [the parent's] representation,' permits the parent to waive the child's right to counsel, and trusts the parent to represent the child" (citations omitted)).

[92] *See id.* at 284–86 (noting that Congress left the authorization of non-attorney parents representing their children pro se up to the states). As discussed further in Section II.C.2, below, Judge Oldham argues, dissenting in part and concurring in the judgment, that state law already makes parents children's litigation alter egos in Texas. *Id.* at 292–93 (Oldham, J., dissenting in part and concurring in the judgment); *infra* notes 221–230 and accompanying text. Where state law does take this step, parents not only have the authority to proceed without counsel under the Judiciary Act, they also arguably should be recognized to have third-party standing as guardians to initiate all claims on behalf of their children under Rule 17(a). *See infra* notes 142–170 and accompanying text.

[93] *See, e.g.*, Gray v. Northside Indep. Sch. Dist., No. SA-25-cv-00443, 2025 U.S. Dist. LEXIS 142807, at *3 (W.D. Tex. July 25, 2025) (noting that the 5th Circuit has not deemed Section 1983 and Title VI claims as parents' own); Okoro v. State, No. 25-cv-00501, 2025 WL 1672141, at *3 (W.D. Tex. May 12, 2025) (holding that constitutional claims entailed injuries suffered by the parent's children, not the parent herself and, therefore, were not the parent's own); Winston v. Wal-Mart Stores Tex., LLC, No. 24-cv-00185, 2025 WL 923450, at *2 (E.D. Tex. Mar. 4, 2025) ("Plaintiff's filings do not indicate that Plaintiff's children's claims are Plaintiff's own claims via the Social Security Act or any other law."); Amaru v. Rhome Police Dep't, No. 22-cv-01090, 2024 WL 4008789, at *17 (N.D. Tex. Aug. 1, 2024) ("Except for certain types of cases where a statute permits parents to represent their children pro se, the law generally prohibits them from doing so."); Fisher v. Harmony Pub. Schs., No. 23-cv-183, 2023 WL 9102235, at *4 (N.D. Tex. Oct. 30, 2023) (dismissing in part because pro se parents failed to hire a lawyer or demonstrate the children's claims were their own); *see also* Pete v. Prevose, Civ. Action No. 24-1614, 2025 WL 1074789, at *2–3 (E.D. La. Mar. 5, 2025) (holding that neither 42 U.S.C. § 1983 nor state law makes minor child's claim grandparent's own); Hall v. Livingston Par.

unsurprising because the burden falls to self-represented parents, first, to raise this issue with the courts and, second, to identify a governing authority.[94] Likewise, my research has not identified a single state that expressly confers upon parents the right to bring their children's claims pro se.[95] From a theoretical perspective, the Fifth Circuit's grounding of parental authority in "ownership" of children's claims is also somewhat regressive; it harkens back to the law's past construction of children as parents' property rather than as separate legal persons with distinct rights, despite often blended interests.[96]

Judge Andrew S. Oldham, in a dissenting opinion concurring with the *Raskin* judgment, held that many parents already have the second, generalized right to bring their children's claims pro se under state procedural laws that permit parents to represent children in litigation, just as parents acting as litigation representatives vindicate other rights on children's behalf.[97] For example, Judge Oldham concludes that Texas law already extends parents this right.[98] Judge Oldham argues that courts must treat parents acting on behalf of child litigants differently than other parties because of the singularity of and historic, well-enshrined legal respect for their bond.[99] To this end, Judge Oldham concludes that parent representatives are authorized to make all litigation deci-

---

Gov't, No. 23-cv-1686, 2024 WL 3796173, at *5 (M.D. La. Aug. 12, 2024) (holding that an adult child cannot bring claims on behalf of her mentally incompetent father pro se when she failed to show the claims were her own under federal or state law).

[94] *See* Raskin *ex rel.* J.D. v. Dall. Indep. Sch. Dist., 69 F.4th 280, 287 (5th Cir. 2023) (stating it was a mother's "burden to establish that under § 1654, federal or state law authorizes her to proceed *pro se* on behalf of her children"); Elmore v. Aucoin, 2026 U.S. Dist. LEXIS 40920, No. 25-cv-1527, (N.D. Tex. Feb. 3, 2026) (dismissing child's claims because parent failed to show federal or state law authorized parent to proceed pro se); Garcia v. City of McAllen, Civ. No. 25-cv-00364, 2026 U.S. Dist. LEXIS 33902, (S.D. Tex. Jan. 16, 2026) (same); Wilt v. Smith Cnty. Sheriff's Off., Civ. Action No. 25-cv-00118, 2025 U.S. Dist. LEXIS 210073, (E.D. Tex. July 21, 2025) (same); Krempel v. Hurst-Euless-Bedford Indep. Sch. Dist., Civ. Action No. 24-cv-01071, 2025 WL 1698729, at *2 (N.D. Tex. May 28, 2025) (same); Davis v. Logan, Civ. Action No. 24-cv-00015, 2024 WL 4627646, at *7 (N.D. Tex. Oct. 7, 2024) (same); Clark v. City of Pasadena, Civ. Action No. 23-cv-04050, 2024 WL 4354819, at *4 (S.D. Tex. Sep. 30, 2024) (same); JD1 *ex rel.* Raskin v. Dall. Indep. Sch. Dist., Civ. Action No. 21-cv-2429, 2024 WL 4361608, at *9 (N.D. Tex. Sep. 30, 2024) (same).

[95] *See infra* notes 171–188 and accompanying text.

[96] *See* RESTATEMENT OF CHILDREN AND THE LAW, pt. 1, ch.1 Intro. Note (A.L.I., Tentative Draft No. 1, 2018) ("Early common-law courts granted so much deference to parents that parental rights could be understood as grounded in notions of property."). *See generally* MARY ANN MASON, FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES (1994) (documenting the historical shift in American law from treating children as paternal property to recognizing them as individuals with independent interests); Barbara Bennett Woodhouse, *"Who Owns the Child?":* Meyer *and* Pierce *and the Child as Property*, 33 WM. & MARY L. REV. 995 (1992) (analyzing the effect of early due process doctrine's conception of children as parental property).

[97] *Raskin*, 69 F.4th at 292–93 (Oldham, J., dissenting in part and concurring in the judgment).

[98] *See id.* (noting that Texas law decrees that a child's parent has the "right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child" (quoting TEX. FAM. CODE ANN. § 151.001(a)(7) (West 2025))).

[99] *Id.* at 298.

sions that children themselves would make were they vested with the capacity to do so, including the choice to retain counsel or proceed pro se.[100] Judge Oldham disagrees that states need expressly authorize parents to represent their children pro se to recognize this general right.[101] Instead, he posits that parents' historically protected relationships with their children give parents primary authority over litigation decision-making for their children, which courts cannot override through blanket prohibitions against certain decisions merely because they distrust an otherwise fit parent's ability to make sound choices.[102]

Judge Oldham's understanding of Texas law is significant not only because it would exempt many parents from the counsel mandate and expand children's access to justice, but also because it presents a capacious account of parental litigation authority beyond the margins of the counsel mandate. The debate among the *Raskin* jurists raises important general questions about parents' roles within and power over their children's cases. These issues depend upon federal and state statutes creating causes of action, state laws on parental authority, and procedural doctrine governing litigation representatives, all of which turn out to be remarkably unclear. The next sections investigate the contours of parental authority to litigate children's claims under these doctrines.[103] They find the law largely ambiguous, and the courts are often inclined to construe these doctrines restrictively in the absence of clear guidance.

B. Authority to Bring First-Party Claims

A second major component of parents' authority over children's litigation entails their ability to bring their own claims for relief when children are harmed—in other words, their own standing to sue.[104] Standing ensures that a litigant is a proper person to bring a particular claim before the court. Courts have identified constitutional, prudential, and statutory sources of standing.[105] Like adults, children have legal rights and enjoy standing to sue when those rights are violated.[106] Because children lack legal capacity, a parent must ordinarily advance

---

[100] *See id.* at 293–99 (dissenting in part due to his analysis that Raskin and her children should be allowed to proceed "*pro se*, full stop").

[101] *Id.* at 297–98.

[102] *Id.* at 296.

[103] *See infra* notes 104–230 and accompanying text.

[104] Standing is the "right to make a legal claim or seek judicial enforcement of a duty or right." *Standing*, BLACK'S LAW DICTIONARY, *supra* note 2.

[105] Standing doctrine remains in flux and subject to voluminous critique from courts and scholars. The Supreme Court recently has questioned whether the concepts commonly understood as prudential and statutory standing truly involve "standing" at all. *See* Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 127 n.3, 128 n.4 (2014) (discussing the concepts of prudential and statutory standing). Because the Supreme Court has not resolved this point and lower courts continue to recognize and apply these concepts, this Article evaluates them. *See, e.g.*, *infra* notes 112–188.

[106] *See supra* note 1 and accompanying text (describing children's legal rights to sue).

claims for which the child has standing, and under the counsel mandate, must also be represented by counsel.[107] Moreover, when children are harmed, parents also may have standing to bring their own legal claims, which they may advance pro se or by counsel.[108] Consequently, when a parent is pro se, the survival of their case under the counsel mandate turns on whether their claims are their own or their child's—whether the parent or the child has standing.

This Section evaluates three sources of authority that shape a parent's ability to assert their own claims arising out of harm to their child. Subsection 1 of this Section considers when a parent may have Article III standing to sue arising from harm to their child.[109] Subsection 2 analyzes the authority parents may have to assert third-party standing to raise their children's rights and interests in support of parents' own claims.[110] Finally, subsection 3 evaluates how statutory causes of action may grant parents authority to assert claims relating to their children as parents' own.[111] As the subsections demonstrate, determining whether a parent, a child, or both have standing to bring particular claims can be extremely difficult.

1. Article III Standing

When children suffer harm, both they and their parents may have standing to sue. Standing doctrine enforces Article III's case-or-controversy requirement,[112] which confines the exercise of the federal judicial power to justiciable disputes[113]—those that entail the "adjudication of actual disputes between adverse parties"[114] who are incentivized to effectively argue their claims.[115]

---

[107] *See supra* notes 2–4, 52–103 and accompanying text.

[108] *See supra* notes 52–103 and accompanying text.

[109] *See infra* notes 112–141 and accompanying text.

[110] *See infra* notes 142–170 and accompanying text.

[111] *See infra* notes 171–188 and accompanying text.

[112] *See* Carney v. Adams, 592 U.S. 53, 58 (2020) (holding the doctrine of standing implements the Article III requirement "that a case embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions"); *see also* DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342 (2006) (noting the crucial interplay between Article III standing and the Constitution's "case-or-controversy requirement"); Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11 (2004) (noting the balance Article III courts must show between the "obligation to exercise jurisdiction" and the necessity of adjudication (quoting Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 820 (1976)); Lujan v. Defs. of Wildlife, 504 U.S. 555, 559–62 (1992) (holding that Article III limits the jurisdiction of federal courts to "Cases" and "Controversies" but fails to define those terms).

[113] Warth v. Seldin, 422 U.S. 490, 498–99 (1975).

[114] Richardson v. Ramirez, 418 U.S. 24, 36 (1974); *see* Clapper v. Amnesty Int'l USA, 568 U.S. 398, 408–09 (2013) (noting the policy goals of Article III standing, and its prevention of the judiciary's infringement on other political branches); *DaimlerChrysler Corp.*, 547 U.S. at 341 (requiring plaintiffs, as parties asserting jurisdiction, to establish standing).

These requirements promote the development of sound precedent by ensuring that specific facts will ground the legal issues[116] and preventing the issuance of advisory opinions.[117] The requirements also promote separation of powers by avoiding unnecessary decisions[118] and reserving the resolution of generalized grievances and "abstract questions of wide public significance"[119] to the Executive and Legislative branches.[120] Article III standing assesses whether a litigant's claims are worthy of court intervention.[121] In the words of Justice Scalia, standing essentially asks litigants "What's it to you?"[122]

Children (like adults) have Article III standing when they have suffered a concrete, particularized, and actual "injury in fact" that is "fairly traceable" to the conduct at issue and redressable by a favorable judgment.[123] Thus, for example, a child prohibited by state law from learning a language other than English in school has standing to assert injuries to their interests in acquiring

---

[115] *See generally* 13A WRIGHT & MILLER'S FEDERAL PRACTICE & PROCEDURE § 3531 (3d ed. 2008), Westlaw (database updated Apr. 2026) (explaining that current doctrine expresses Article III's requirements by demanding a "personal stake" that makes the plaintiff an effective litigant).

[116] Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 472 (1982).

[117] *Carney*, 592 U.S. at 58; Fed. Election Comm'n v. Akins, 524 U.S. 11, 24 (1998).

[118] WRIGHT & MILLER, *supra* note 115, § 3531.3.

[119] Warth v. Seldin, 422 U.S. 490, 498–500 (1975).

[120] *Id.*; Food & Drug Admin. v. All. for Hippocratic Med., 602 U.S. 367, 381 (2024); Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 127 n.3 (2014); Kowalski v. Tesmer, 543 U.S. 125, 129 (2004); Lujan v. Defs. of Wildlife, 504 U.S. 555, 576 (1992); Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 220–22 (1974). Although the propriety of this formulation of Article III standing is beyond the scope of this Article, it has been widely criticized by scholars. *See generally* Raoul Berger, *Standing to Sue in Public Actions: Is It a Constitutional Requirement?*, 78 YALE L.J. 816 (1969) (discussing the historical developments and conceptions of standing); Louis L. Jaffe, *The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff*, 116 U. PA. L. REV. 1033 (1968) (arguing a Hohfeldian plaintiff is not a prerequisite necessary to a case); Brian Charles Lea, *The Merits of Third-Party Standing*, 24 WM. & MARY BILL RTS. J. 277 (2015) (collecting critiques); Gene R. Nichol, Jr., *Justice Scalia, Standing, and Public Law Litigation*, 42 DUKE L.J. 1141 (1993) (arguing that Justice Scalia's opinion in *Lujan v. Defenders of Wildlife* would transform the doctrine of standing); John G. Roberts, Jr., *Article III Limits on Statutory Standing*, 42 DUKE L.J. 1219, 1222 (1993) (collecting critiques); Cass R. Sunstein, *Standing and the Privatization of Public Law*, 88 COLUM. L. REV. 1432 (1988) (describing the development of standing in administrative law); Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 STAN. L. REV. 1371 (1988) (discussing underlying concepts of standing).

[121] *See Warth*, 422 U.S. at 498–99 (asking whether the plaintiff alleges "'such a personal stake in the outcome of the controversy' as to warrant *his* invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf" (quoting Baker v. Carr, 369 U.S. 186, 204 (1962))).

[122] *All. for Hippocratic Med.*, 602 U.S. at 379 (quoting Antonin Scalia, *The Doctrine of Standing as an Essential Element of The Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 882 (1983)).

[123] *Lexmark Int'l*, 572 U.S. at 125. *See Lujan*, 504 U.S. at 560–61 (establishing the standards for Article III standing); Gonzalez *ex rel.* Gonzalez v. Reno, 86 F. Supp. 2d 1167, 1180–81 (S.D. Fla. 2000) ("A plaintiff's age is not determinative of standing; children possess certain personal rights that are enforceable in federal court."), *aff'd sub nom.* Gonzalez v. Reno, 212 F.3d 1338 (11th Cir. 2000).

knowledge.[124] In addition, conduct that harms children as individuals might also harm the parent-child relationship or interfere with parents' protected authority.[125] Parents have constitutionally protected liberty interests in the companionship, care, custody, and control of their children[126] as well as protected decision-making authority and caretaking responsibilities under state law as children's guardians and custodians.[127] Thus, when children have standing, parents might also have standing to assert their own claims for relief for injuries to their protected interests as parents.

To return to the prior example, the parents of a child prohibited from learning a non-English language in school have standing to assert injuries to their interest in directing their children's education.[128] In addition, courts have (implicitly or explicitly) recognized parents' standing to bring their own claims challenging infringements on their liberty interests caused by actions including: state ordered medical examinations of children,[129] government failure to require health warnings on smokeless tobacco (harming adolescent children),[130] state removals of children from their custody,[131] state transportation of children outside of the United States,[132] government imposed curfews,[133]

---

[124] *See* Meyer v. Nebraska, 262 U.S. 390, 401 (1923) (holding that a ban on learning in languages other than English materially interfered with the "opportunities of pupils to acquire knowledge").

[125] *See, e.g.*, Troxel v. Granville, 530 U.S. 57, 66 (2000) (holding that the Due Process Clause "protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children"); Stanley v. Illinois, 405 U.S. 645, 658–59 (1972) (holding that a state law violated parental authority by failing to provide a father with a hearing on his fitness as a parent prior to removing his child from his custody); Doe v. Sch. Bd. of Ouachita Par., 274 F.3d 289, 292 (5th Cir. 2001) (finding both parents and students had Article III standing to challenge prayer practices in school and recognizing that "students and parents of students attending public schools . . . enjoy a cluster of rights vis-a-vis their schools"); Pub. Citizen v. F.T.C., 869 F.2d 1541, 1550 (D.C. Cir. 1989) ("[A] parent has his or her own direct, legally cognizable interest in preserving the highest level of health for his or her child."); Johnson v. Stuart, 702 F.2d 193, 197 (9th Cir. 1983) (holding parents "may assert claims of constitutional violation primarily affecting their children's education").

[126] *See supra* note 25 and accompanying text (discussing parents' rights under the Constitution).

[127] *See, e.g.*, ACLU of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd., 557 F.3d 1177, 1195 (11th Cir. 2009) (holding that father had standing to assert his own claim to challenge removal of book from school library as well as his son's because school policy allowed parents and children to borrow books).

[128] *Meyer*, 262 U.S. at 401.

[129] *See, e.g.*, van Emrik v. Chemung Cnty. Dep't of Soc. Servs., 911 F.2d 863, 867 (2d Cir. 1990) (recognizing that parents' substantive and procedural due process rights are implicated by state actors subjecting children to medical examinations without parental consent).

[130] *See, e.g.*, *Pub. Citizen*, 869 F.2d at 1550 (recognizing a parent's own legal interest in bringing claims relating to the health of his or her child).

[131] *See, e.g.*, Malik v. Arapahoe Cnty. Dep't of Soc. Servs., 191 F.3d 1306, 1316 (10th Cir. 1999) (holding that a parent may assert both a personal cause of action and one on behalf of their child when the state removes the child from the parent's custody).

[132] *See, e.g.*, Morrison v. Jones, 607 F.2d 1269, 1275 (9th Cir. 1979) (holding that the parent has standing to assert her interest as mother and on behalf of the injuries caused "with respect to her relationships with her son").

school board removals of books from school libraries,[134] displays of crosses by a public school district,[135] policies limiting the school curriculum,[136] actions by schools and public housing authorities that infringe on parents' right to direct the religious upbringing of their children,[137] and policies restricting parents' authority to seek voluntary commitment of children.[138]

Parents may face several challenges in establishing standing to assert parental rights claims. First, parents must establish that their rights encompass the aspects of the relationship or authority they allege was injured. This task is challenging, in part, because although parents' constitutional liberty interests are firmly established as fundamental, the protected scope of those interests remains unclear.[139] Second, parents who are unmarried, not biologically related to children they are raising, have not registered their parentage, or have had their rights limited by court order may have fewer rights than the full panoply potentially available under state law and the Constitution.[140] Third, parents must clarify

---

[133] *See, e.g.*, Nunez *ex rel.* Nunez v. City of San Diego, 114 F.3d 935, 952 (9th Cir. 1997) (holding that a city juvenile curfew ordinance infringed parents' "fundamental right to rear children without undue interference").

[134] *See, e.g.*, ACLU of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd., 557 F.3d 1177, 1195 (11th Cir. 2009) (holding that a father had standing to sue both on behalf of himself and his child because the school permitted both parents and children to borrow books).

[135] *See, e.g.*, Weinbaum v. City of Las Cruces, 541 F.3d 1017, 1028–29 (10th Cir. 2008) (holding that a father established Article III standing by showing that the display of crosses affected both him and his child).

[136] *See, e.g.*, Johnson v. Stuart, 702 F.2d 193, 197 (9th Cir. 1983) (finding that standing applies to both students and their parents when asserting constitutional violations for the education of their children).

[137] *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205, 208–09 (1972) (recognizing parents as asserting individual free exercise and parental rights claims in opposing State compulsory schooling); Fleischfresser v. Dirs. of Sch. Dist. 200, 15 F.3d 680, 683 (7th Cir. 1994) ("[P]arents have standing to raise their claim alleging a violation of the Establishment Clause because the impermissible establishment of religion might inhibit their right to direct the religious training of their children."); Sullivan v. Syracuse Hous. Auth., 962 F.2d 1101, 1108 (2d Cir. 1992) (finding a public housing tenant had standing to assert establishment clause claims against the housing authority for injury to his parental interest by his son's exposure to unwelcome religious content in their building).

[138] Parham v. J.R., 442 U.S. 584, 604 (1979).

[139] *See, e.g.*, Troxel v. Granville, 530 U.S. 57, 78 (2000) (Souter, J., concurring) ("Our cases, it is true, have not set out exact metes and bounds to the protected interest of a parent in the relationship with his child . . . ."); Calgaro v. St. Louis County, 919 F.3d 1054, 1059 (8th Cir. 2019) (holding that the scope of parents' protected authority regarding access to school records is unclear and so school official had qualified immunity from suit for failing to produce records for parent); *see also* Hamilton, *supra* note 29, at 1085–86 (noting the "magnitude and contours" of parents' constitutional rights are "notoriously indistinct"); Nancy J. Moore, *Conflicts of Interests in the Representation of Children*, 64 FORDHAM L. REV. 1819, 1846, 1851–52 (1996) (suggesting the contours of children's versus parents' constitutional rights remain in early stages of doctrinal development).

[140] *See, e.g.*, Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11–13 (2004) ("[I]t is improper for the federal courts to entertain a claim by a plaintiff whose standing to sue is founded on family law rights that are in dispute when prosecution of the lawsuit may have an adverse effect on the person who is the source of the plaintiff's claimed standing."); Quilloin v. Walcott, 434 U.S. 246, 255 (1978) (holding that an unmarried parent who had never lived with or exercised legal custody over a

whose rights and interests they are asserting—the parent's, the child's or both. The common interrelatedness of parents' and children's interests makes this task challenging for courts, let alone pro se parents.[141] Yet establishing these distinctions is vital to the survival of the case—if parents raise their children's rights and interests, they must either satisfy the requirements for the exercise of third-party standing or retain counsel to advance the claims on the child's behalf.

2. Third-Party Standing

Parents who have standing to assert their own claims for relief may be able to assert third-party standing to raise their children's rights and interests in support of the parents' own claims. In addition to the standing limits imposed by Article III, prudential principles "limit access to the federal courts to those litigants best suited to assert a particular claim."[142] Prudential standing limits[143] include the general prohibition against third-party standing.[144] This prohibition

---

child had more limited rights to contest the child's adoption than an involved parent); Michael H. v. Gerald D., 491 U.S. 110, 118–19 (1989) (finding the State could constitutionally limit the claim of an unregistered biological father's claim to parental rights); Fuentes v. Bd. of Educ. of N.Y., 540 F.3d 145, 151–53 (2d Cir. 2008) (holding that state law on parental authority determines whether father qualified to exercise the parental rights conferred by the IDEA); Joanna L. Grossman, *Constitutional Parentage*, 32 CONST. COMMENT. 307, 318–30 (2017) (discussing treatment of parentage across categories like "unwed fathers," "sperm donors," and "surrogacy"); Serena Mayeri, *Foundling Fathers: (Non-)Marriage and Parental Rights in the Age of Equality*, 125 YALE L.J. 2292, 2295–96 (2016) (detailing the limited rights of unwed fathers); Doug NeJaime, *The Constitution of Parenthood*, 72 STAN. L. REV. 261, 264–66 (2020) (arguing that the Constitution protects biological and nonbiological parents).

[141] *See* Stanton v. Stanton, 421 U.S. 7, 11 (1975) (disregarding objection to mother raising violation of daughter's equal protection rights in challenging statute that terminated child support at eighteen for girls and twenty-one for boys, stating: "We are satisfied that it makes no difference whether the appellant's interest in any obligation of the appellee, under the divorce decree, for Sherri's support between ages 18 and 21, is regarded as an interest personal to appellant or as that of a fiduciary"); Johnson v. Stuart, 702 F.2d 193, 197 (9th Cir. 1983) (holding without discussion that finding that students had standing to challenge policy limiting text selection "applies equally to the parents, for they may assert claims of constitutional violation primarily affecting their children's education"). By contrast, some courts are careful about distinguishing parent's from children's standing. *See, e.g.*, Fleischfresser v. Dirs. of Sch. Dist. 200, 15 F.3d 680, 683 (7th Cir. 1994) (noting, in evaluating standing to challenge a school curriculum, "[t]he parents, not the students by their parents, have brought this suit"); *Sullivan*, 962 F.2d at 1108 (evaluating the parent's Article III standing to raise free exercise and establishment claims from harms by their son's exposure to government endorsement of religion).

[142] Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99–100 (1979).

[143] The Supreme Court previously identified generally shared injuries and zone of interests as additional prudential limitations but has more recently identified these restrictions, respectively, as components of Article III and statutory standing analyses. Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 127 n.3 (2014); WRIGHT & MILLER, *supra* note 115, § 3531.

[144] Like standing doctrine writ large, third-party standing doctrine draws criticism as "in need of what may charitably be called clarification," Miller v. Albright, 523 U.S. 420, 454 n.1 (1998) (Scalia, J., concurring), and "an undertheorized muddle." Lea, *supra* note 120, at 278, with one court declaring, "[e]ven with respect to parents, the third-party standing issue in such a situation is less than clear." Hawkins v. Grese, 809 S.E.2d 441, 450–51 (Va. Ct. App. 2018).

means that litigants generally must assert only their own rights and interests, not those of third parties who are not before the court.[145] The rule generally applies "even when the very same allegedly illegal act that affects the litigant also affects a third-party."[146] The rule aims to ensure that litigants vigorously present their cases and avoid adjudication of the rights of individuals who do not wish to assert them.[147] Importantly, parties may overcome this general prohibition in certain circumstances,[148] including, most importantly for this discussion, where the litigant enjoys a close relationship with the third-party.[149]

To exercise third-party standing based on a close relationship, a litigant typically first must have their own standing to assert a claim for relief.[150] Sec-

---

[145] *See Newdow*, 542 U.S. at 11–13 (describing the general restriction against a litigant raising another's legal rights); Duke Power Co. v. Carolina Env't Study Grp., Inc., 438 U.S. 59, 80 (1978) (noting the narrow limitation in precedent for permitting assertion of a claim on behalf of another); Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 166 (1972) (holding a plaintiff "has standing to seek redress for injuries done to him, but may not seek redress for injuries done to others"); Marin-Garcia v. Holder, 647 F.3d 666, 670 (7th Cir. 2011) (noting that although a person may suffer injury satisfying Article III, "[they] generally may not redress [their] injury by reference to someone else's rights." (first citing Singleton v. Wulff, 428 U.S. 106, 112–13 (1976); and then citing Barrows v. Jackson, 346 U.S. 249, 255 (1953))). The Supreme Court has questioned (but not resolved) whether, rather than a matter of prudence, third-party standing was better conceived as a question of the merits of a party's claim. *Lexmark Int'l*, 572 U.S. at 127 & n.3 (noting that the question of third-party standing is one of "whether a person in the litigant's position would have a right of action on the claim" (quoting United States Dep't of Lab. v. Triplett, 494 U.S. 715, 721 (1990)).

[146] *Triplett*, 494 U.S. at 720.

[147] *See* Kowalski v. Tesmer, 543 U.S. 125, 129 (2004) (describing that the general rule restricting third-party claim assertion rests, in part, on the assumption "that the party with the right" will challenge government action "with the necessary zeal and appropriate presentation"); *Duke Power Co.*, 438 U.S. at 80 (noting the policy behind the limited availability of permitting third-party claim assertion, while also noting that hat some individuals may wish not to bring their own claims); WRIGHT & MILLER, *supra* note 115, § 3531.9.3 (discussing third-party claim assertion as it applies to parental authority). As the Eleventh Circuit cogently explained in declining to adjudicate a free speech claim brought on behalf of the plaintiffs' talking cat, "Blackie," "even if Blackie had such a right, [the court saw] no need for appellants to assert his right *jus tertii*. Blackie can clearly speak for himself." Miles v. City Council of Augusta, Ga., 710 F.2d 1542, 1544 n.5 (11th Cir. 1983).

[148] *See, e.g.*, *Duke Power Co.*, 438 U.S. at 80 ("We have . . . narrowly limited the circumstances in which one party will be given standing to assert the legal rights of another."); Craig v. Boren, 429 U.S. 190, 193–97 (1976) ("[O]ur decisions have settled that limitations on a litigant's assertion of *jus tertii* are not constitutionally mandated, but rather stem from a salutary 'rule of self-restraint . . . .'"). Other circumstances in which courts authorize third-party standing include organizations bringing claims to redress injuries to their members, litigants challenging statutory provisions that are inseverable from provisions that violate third parties' rights, and litigants raising infringements on third-party rights in support of First Amendment overbreadth claims. WRIGHT & MILLER, *supra* note 115, § 3531.9; Lea, *supra* note 120, at 284–87.

[149] Campbell v. Louisiana, 523 U.S. 392, 397–98 (1998); Powers v. Ohio, 499 U.S. 400, 411 (1991).

[150] *See* Hollingsworth v. Perry, 570 U.S. 693, 710 (2013) (doubting that "mere authorization to represent a third-party's interests is sufficient to confer Article III standing on private parties with no injury of their own"); Tileston v. Ullman, 318 U.S. 44, 46 (1943) (finding that doctor lacked standing to litigate constitutional rights of his patients when he failed to claim that challenged policy infringed on his own constitutional rights). Commentators have questioned whether third-party standing could

ond, the litigant and the third-party must have a sufficiently close relationship[151] "such that the former is fully, or very nearly, as effective a proponent of the right as the latter"[152] and their interests in the litigation must align.[153] Moreover, a "genuine obstacle" must prevent the third-party from bringing their own claims before the court.[154] This requirement ensures that the party is absent because they are unable to assert their claims themselves, not because they do not wish to do so.[155] Finally, some courts also evaluate the impact of the litigation on the rights of the third-party.[156]

Courts often permit parent litigants to overcome the general prohibition and exercise third-party standing to raise the rights and interests of their minor children to support parents' own claims, in part, because parents and children typically have close relationships.[157] These relationships often make parents "fully, or very nearly fully, or very nearly, as effective a proponent of the right" as the child would be.[158] Courts frequently find that children's legal incapacity

---

be asserted by a party without Article III standing, but courts generally hold that injury in fact is constitutionally required for *jus tertii* standing. *See* WRIGHT & MILLER, *supra* note 115, § 3531.9.1; Curtis A. Bradley & Ernest A. Young, *Unpacking Third-Party Standing*, 131 YALE L.J. 1, 66 (2021).

[151] *See generally Campbell*, 523 U.S. 392 (litigant/juror); *Powers*, 499 U.S. 411 (litigant/juror); *Triplett*, 494 U.S. 715 (lawyer/client); *Craig*, 429 U.S. 190 (vendor/customer); Griswold v. Connecticut, 381 U.S. 479 (1965) (doctor/patient); Pierce v. Soc'y of Sisters, 268 U.S. 510 (1925) (school or school board/parent); Majors v. Abell, 317 F.3d 719 (7th Cir. 2003) (candidate for public office/voter); Clark v. City of Lakewood, 259 F.3d 996 (9th Cir. 2001) (employer/employee); Akron Bd. of Educ. v. State Bd. of Educ. of Ohio, 490 F.2d 1285 (6th Cir. 1974) (school or school board/student); WRIGHT & MILLER, *supra* note 115, § 3531.9.3 (describing the "relationship model" of third-party standing, under which a litigant may invoke a non-party's rights in order to protect a beneficial relationship).

[152] Singleton v. Wulff, 428 U.S. 106, 115 (1976).

[153] *See* Hang On, Inc. v. City of Arlington, 65 F.3d 1248, 1251–53 (5th Cir. 1995) (noting the aligned interests of the party suing and the third-party on behalf of whom it asserted claims).

[154] *Singleton*, 428 U.S. at 116–17.

[155] *See id.* at 115–16 (noting that when there is a "genuine obstacle" the party who is in court becomes, by default, the best proponent of the disadvantaged party's rights).

[156] Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 623 n.3 (1989); Hutchins *ex rel.* Owens v. District of Columbia, 144 F.3d 798, 803 (D.C. Cir. 1998), *vacated and reh'g en banc granted*, 156 F.3d 1267 (D.C. Cir. 1998) (per curiam), *rev'd en banc sub nom.* Hutchins v. District of Columbia, 188 F.3d 531 (D.C. Cir. 1999).

[157] Sessions v. Morales-Santana, 582 U.S. 47, 57 (2017) (finding a parent-child relationship "easily satisfies" the "close relationship" requirement for third-party standing). These relationships have been recognized as "much closer than [the relationship] in leading cases where standing has been found to exist, as between a physician and a patient or between a beer vendor and a class of potential purchasers of the product." Lindley *ex rel.* Lindley v. Sullivan, 889 F.2d 124, 129 (7th Cir. 1989) (citation omitted); *see also* Marin-Garcia v. Holder, 647 F.3d 666, 670 (7th Cir. 2011) (granting father third-party standing to raise minor daughters' interests, in part, because "he is by definition closely related to his daughters"); Payne-Barahona v. Gonzales, 474 F.3d 1, 2 (1st Cir. 2007) (recognizing the parental relationship as a close one).

[158] *See Singleton*, 428 U.S. at 114–15 (noting the policy considerations underlying allowing close relationships to permit third-party claim assertion); *Hutchins*, 144 F.3d at 803 (holding that parent-child relationship is "sufficiently close to meet prudential standing requirements").

hinders them from bringing suit.[159] By contrast, courts are less willing to permit children to raise parents' rights and interests, and parents to raise adult children's,[160] because adults can assert their own rights before the courts.[161] Finally, courts recognize parents and children to have interconnected interests that are impacted by harms to the other.[162] Courts have permitted parents to assert third-party standing to raise children's rights in support of parents' claims challenging, *inter alia*: ineligibility for cancellation of removal,[163] state removals of children from parents' custody,[164] state imposition of a mandatory juvenile curfew,[165] and state policies entitling sons to receive child support until age twenty-one but daughters only to age eighteen.[166]

Moreover, courts have sometimes permitted parents to exercise third-party standing in circumstances where courts would not permit other litigants to do so, for example, in cases where their children are also parties and parents are not their representatives.[167] Conversely, courts may preclude parents from

---

[159] *See, e.g.*, *Marin-Garcia*, 647 F.3d at 670 ("As to the third requirement, his daughters are minor children and therefore are 'hindered' from bringing suit themselves." (quoting Smith v. Org. of Foster Fams. for Equal. & Reform, 431 U.S. 816, 841, (1977)); *Payne-Barahona*, 474 F.3d at 2 (finding the hindrance factor "rather obvious in the case of minor children"); *see also* Aid for Women v. Foulston, 441 F.3d 1101, 1114 (10th Cir. 2006) (finding minority to be a hindrance that justified doctors exercising third-party standing to assert the rights of minor patients).

[160] *Compare* Leonhard v. United States, 633 F.2d 599, 618 (2d Cir. 1980) (precluding a child from asserting third-party standing on behalf of parent), *and* United States v. Flores-Villar, 536 F.3d 990, 998 (9th Cir. 2008) (rejecting standing for a child to assert his father's rights without a genuine obstacle preventing the father from bringing his own claims), *aff'd by an equally divided Court without opinion*, 565 U.S. 210 (2011), *with Sessions*, 582 U.S. at 57 (finding the child the best person to bring the claim because his father was deceased), *and* Dent v. Sessions, 900 F.3d 1075, 1080 (9th Cir. 2018) (permitting child to exercise third-party standing when parent was hindered in asserting own rights), *and* Breyer v. Meissner, 214 F.3d 416, 423 (3d Cir. 2000) (same).

[161] *See, e.g.*, Diamond v. Charles, 476 U.S. 54, 67 (1986) (denying standing for a litigant who sought it as the "father of a daughter of childbearing years" without showing the daughter was a minor or otherwise unable to bring the claim herself). This has been true in some circumstances even when such adult children are actually hindered from raising their rights. *See, e.g.*, Muthana v. Pompeo, 985 F.3d 893, 901–03 (D.C. Cir. 2021) (denying plaintiff standing to assert his adult daughter's claim to citizenship but permitting him to bring claims as next friend of his minor grandson, including claims grandson raises asserting his mother's rights, when both the daughter and grandson were in a Syrian refugee camp).

[162] *See Lindley*, 889 F.2d at 129 ("David's assertion of his parents' equal protection interests is inextricably bound up with his own financial well-being as a member of the Lindley family.").

[163] *Payne-Barahona*, 474 F.3d at 2; *Marin-Garcia*, 647 F.3d at 670.

[164] J.B. *ex rel.* L.B. v. Washington County, 127 F.3d 919, 928 (10th Cir. 1997).

[165] Hutchins *ex rel.* Owens v. District of Columbia, 144 F.3d 798, 803 (D.C. Cir. 1998), *vacated and reh'g en banc granted*, 156 F.3d 1267 (D.C. Cir. 1998) (per curiam), *rev'd en banc sub nom.* Hutchins v. District of Columbia, 188 F.3d 531 (D.C. Cir. 1999); Johnson v. City of Opelousas, 658 F.2d 1065, 1072 (5th Cir. 1981).

[166] Stanton v. Stanton, 421 U.S. 7, 11–12 (1975).

[167] *See* Smith v. Org. of Foster Fams. for Equal. & Reform, 431 U.S. 816, 841 n.44 (1977) (holding that foster parents did have standing to assert claims on behalf of their foster children). By contrast, several circuits generally hold that no hindrance exists where a third-party asserts his or her own claims. Phila. Marine Trade Ass'n-Int'l Longshoremen's Ass'n Pension Fund v. Comm'r, 523 F.3d

exercising third-party standing where a parent's legal authority has been limited and a parent with sole or shared authority opposes the litigation.[168]

As a practical matter, third-party standing provides an alternative, though inferior, means for self-represented parents to raise their children's rights and interests before the courts. Third-party standing permits self-represented parents to vindicate children's interests indirectly. Parents exercising third-party standing may tell their children's stories and educate courts about their interests, and children may benefit when parents are awarded legal relief. Nonetheless, raising children's rights and interests to support parents' claims does not secure children legal remedies. And, to take advantage of this alternative, self-represented parents must understand third-party standing doctrine and be able to articulate that they seek to exercise it and not bring a claim on behalf of a child. Given that courts themselves often confuse this law, this seems a tall order for a pro se party to fill.

Notably, as a prudential rule, a statute can override the third-party standing prohibition.[169] As discussed below, some statutes may be understood to authorize a different type of third-party standing—one that allows parents to bring claims in parents' names for the benefit of their children.[170]

3. Statutory Standing

In addition to Article III and third-party standing doctrine, parents' authority over children's litigation is also shaped by statutes creating causes of action. Such statutes create standing by establishing legal rights and associated legal injuries.[171] To evaluate statutory standing, courts apply standard principles of statutory interpretation to determine whether an individual is a member

---

140, 145 (3d Cir. 2008); Hodak v. City of St. Peters, 535 F.3d 899, 905 (8th Cir. 2008); Benjamin v. Aroostook Med. Ctr., Inc., 57 F.3d 101, 105 (1st Cir. 1995); Knight v. Alabama, 14 F.3d 1534, 1554 (11th Cir. 1994); Wedges/Ledges of Cal., Inc. v. City of Phoenix, 24 F.3d 56, 62 (9th Cir. 1994).

[168] Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 17–18 (2004).

[169] *See infra* notes 174–175 and accompanying text (discussing statutory exceptions to third-party standing).

[170] *See infra* notes 171–188 and accompanying text.

[171] *See* Linda R.S. v. Richard D., 410 U.S. 614, 617 n.3 (1973) ("Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute."). The Supreme Court recently has distanced itself from the concept of statutory standing. Previously, the Court identified "the standing question" in statutory standing cases as "whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief." Warth v. Seldin, 422 U.S. 490, 500 (1975). More recently, however, it has reframed this inquiry as not truly one of standing in a jurisdictional sense, but rather one that assesses the merits of the litigant's claim. Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 128 n.4 (2014). Thus, the continued doctrinal use of the term "statutory standing" is in doubt. Nonetheless, because federal courts presently continue to use the term, this Article does so when discussing those decisions.

of the class of litigants whom the statute authorized to sue.[172] In doing so, courts presume that statutory causes of action include plaintiffs the statute was meant to protect and whose harms are a proximate result of the statutory violation.[173]

When creating statutory causes of action, legislatures are constrained by Article III's limits, but have the discretion to award standing to the fullest extent it permits, even overriding prudential limitations if they choose.[174] For example, federal statutes override the prudential limitation against asserting third-party rights in cases involving challenges to warrantless surveillance directives under the Foreign Intelligence Surveillance Act and compensation for vaccine injuries.[175] Moreover, federal and state statutes empower parents to bring claims under several causes of action relating to their children. These statutes grant parents authority to sue in several contexts.[176] Such legislation

---

[172] *Lexmark Int'l*, 572 U.S. at 128; *see also* Graden v. Conexant Sys. Inc., 496 F.3d 291, 294–95 (3d Cir. 2007) ("Statutory standing is simply statutory interpretation: the question it asks is whether Congress has accorded *this* injured plaintiff the right to sue the defendant to redress his injury.").

[173] *Lexmark Int'l*, 572 U.S. at 128.

[174] *See, e.g.*, Havens Realty Corp. v. Coleman, 455 U.S. 363, 372 (1982) ("'Congress intended standing under [the Fair Housing Act] to extend to the full limits of Art. III' and that the courts accordingly lack the authority to create prudential barriers to standing in suits brought under that section." (quoting Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 103 n.9, 109 (1979)); FED. R. CIV. P. 17(a)(1), (1)(G) (permitting "a party authorized by statute" to sue in their own name, "without joining the person for whose benefit the action is brought," as an exception to the general rule that actions must be brought in the name of the real party in interest). *See generally* 13B WRIGHT & MILLER, *supra* note 115, § 3531.13 (discussing that Congress can expand standing).

[175] *See* W.J. *ex rel.* R.J. v. Sec'y of Health & Hum. Servs., 93 F.4th 1228, 1233 (Fed. Cir. 2024) (parents brought suit pro se on behalf of their son under National Childhood Vaccine Injury Act), *cert. denied sub nom.* W.J. *ex rel.* R.J. v. Becerra, 145 S. Ct. 440 (2024); *In re* Directives Pursuant to Section 105B of Foreign Intelligence Surveillance Act, 551 F.3d 1004, 1008–09 (F.I.S.C.R. 2008) ("[I]f Congress, either expressly or by fair implication, cedes to a party a right to bring suit based on the legal rights or interests of others, that party has standing to sue; provided, however, that constitutional standing requirements are satisfied."). The National Childhood Vaccine Act authorizes parents to file claims on behalf of minor children. 42 U.S.C. § 300aa-11(b)(1)(A), 33(2); Kennedy *ex rel.* Kennedy v. Sec'y of Health & Hum. Servs., 99 Fed. Cl. 535, 541–42 (2011) (holding that application of the "last antecedent rule" suggests that the Vaccine Act authorizes all parents to represent their children's claims, regardless of state law), *aff'd*, 485 F. App'x 435 (Fed. Cir. 2012).

[176] These include matters addressing children's education rights. *See, e.g.*, Individuals with Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1142 (1990) (codified as amended at 20 U.S.C. § 1400(d)(1)(B)) (describing the Individuals with Disabilities Education Act's ("IDEA") purposes to include ensuring "that the rights of children with disabilities and parents of such children are protected"); IDAHO CODE § 6-2205(1) (2025) (providing parental standing to sue if a school fails to provide constitutionally required educational services); KY. REV. STAT. ANN. § 158.153 (West 2025) (providing a civil cause of action to child and parent (or guardian) for wrongful disclosure of education records or school disciplinary actions); Winkelman *ex rel.* Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 523–31 (2007) (holding that the IDEA vests rights both in parents and in children to bring claims to enforce children's rights under the statute and evaluating several illustrative parental rights conferring provisions of the Act). Parents may also sue to enforce entitlement to child support. *E.g.*, CAL. FAM. CODE § 4000 (West 2025). Likewise, wrongful death and personal injury statutes authorize parents to recover for harm to their children. *E.g.*, ALA. CODE § 6-5-390 (2025); ARIZ. REV. STAT. ANN. § 12-641 (2025); CAL. CIV. PROC. CODE § 376 (West 2025); DEL. CODE ANN. tit. 13, § 704

has expanded in recent years with the enactment of "parents' rights" policy initiatives.[177] Additionally, in at least one circumstance, Congress enacted a statute authorizing a particular set of parents to bring a federal claim to assert the constitutional rights of their incapacitated adult daughter.[178]

Although these statutes clearly extend some kind of litigation authority to parents in these cases, they often fail to specify the nature of that authority—whether they grant parents independent standing to bring child-related claims or simply authorize parents to bring the child's claims on the child's behalf. Stated another way, do the statutes create rights in parents, the infringement of which causes legal injuries to parents that they can seek to remedy? Or do the statutes create rights and corresponding legal injuries for children, and authorize parents to bring claims for relief on children's behalf? Or both? Relatedly, under *Raskin*, do such statutes create children's claims that are parents' "own" by specifically referring to parents?

(2025); IDAHO CODE § 5-310 (2025); IND. CODE § 34-23-2-1 (2025); KY. REV. STAT. ANN. § 405.010 (2025); LA. CIV. CODE ANN. art. 2315.2 (2025); MASS. GEN. LAWS ch. 231, § 85X (2025); MINN. STAT. § 540.08 (2025); MONT. CODE ANN. § 27-1-512 (2025); NEV. REV. STAT. § 12.080 (2025); OR. REV. STAT. § 30.010 (2025); R.I. GEN. LAWS § 9-1-41 (2025); TENN. CODE ANN. § 20-1-105 (2025); UTAH CODE ANN. § 78B-3-102 (LexisNexis 2025); WASH. REV. CODE § 4.24.010 (2025); PA. R. CIV. P. 2228. Some states also permit parents to seek protection for their children from domestic, dating, and sexual abuse and from stalking. *E.g.*, ALASKA STAT. § 18.66.100(a) (2025); ARIZ. REV. STAT. ANN. § 13-3602(A) (2025); DEL. CODE ANN. tit. 10, § 1041(4)(a) (2025); D.C. CODE § 16-1003(d)(1) (2025); FLA. STAT. § 741.30(1)(a) (2025); IND. CODE § 34-26-5-2(c) (2025); IOWA CODE § 236.3(1) (2025); KAN. STAT. ANN. § 60-3104(b) (2025); KY. REV. STAT. ANN. § 456.030(1) (West 2025); LA. REV. STAT. ANN. § 46:2133(d) (2025); MISS. CODE ANN. § 93-21-7(1) (2025); MONT. CODE ANN. § 40-15-102(3) (2025); OHIO REV. CODE ANN. § 3113.31(C) (LexisNexis 2025); 23 PA. CONS. STAT. § 6106(a) (2025); VT. STAT. ANN. tit. 15, § 1103(a) (2025). Parents in some states may also have rights to appeal juvenile dispositions. *See, e.g.*, *In re* J.L.B., 634 S.E.2d 514, 515 (Ga. Ct. App. 2006) (noting that Georgia law makes parents necessary parties to juvenile proceedings and that parents may thereby independently appeal juvenile dispositions, with or without counsel). Still other statutes create parental causes of action against those who supply minors with alcohol, illegal drugs, or drug paraphernalia, who permit minors to gamble, or who perform an abortion without parental consent. *E.g.*, ALA. CODE § 6-5-70 (2025); ALA. CODE § 26-21-1 (2025); ARK. CODE ANN. § 16-118-108(b)(2) (2025); GA. CODE ANN. § 51-1-18 (2025); N.M. STAT. ANN. § 44-5-6 (2025); N.Y. GEN. OBLIG. LAW § 11-101 (McKinney 2025); WASH. REV. CODE § 69.50.414 (2025). Certain states further recognize claims for interference with parental custody, including by abduction, enticement, harboring, prostitution, or seduction of a child. *E.g.*, ALASKA STAT. § 09.15.020 (2025); OKLA. STAT. ANN. tit. 76, § 8 (2025); S.D. CODIFIED LAWS § 20-9-7 (2025); TEX. FAM. CODE ANN. § 42.002 (West 2025); W. VA. CODE § 61-2-14 (2025).

[177] These statutes include causes of action for violation of parents' statutory and constitutional rights. *E.g.*, ARIZ. REV. STAT. ANN. § 1-602(E) (2025). Others create claims for the deprivation of sports opportunities due to the participation of transgender children. *E.g.*, MO. REV. STAT. § 163.048 (2025); TENN. CODE ANN. § 49-6-310(c) (2025). Still others guarantee parental access to education records and a right to be informed of changes in children's health and well-being. *E.g.*, WYO. STAT. ANN. § 21-3-135 (2025). Some states have also enacted statutes addressing children's exposure to "harmful" reading materials at libraries and information that promotes "gateway sexual activity" in schools. *E.g.*, IDAHO CODE § 18-1517B (2025); TENN. CODE ANN. § 49-6-1306 (2025).

[178] An Act for the Relief of the Parents of Theresa Marie Schiavo, Pub. L. No. 109-3, § 2, 119 Stat. 15 (2005).

Courts historically have recognized some child related claims to belong to parents, such as claims for recoupment of medical expenses and loss of companionship, wage, and services upon the injury or death of a child,[179] but have not yet addressed this issue for many others.[180] The counsel mandate makes resolving these questions central to the viability of a case, as parents with separate standing, or, in the Fifth Circuit, who assert children's claims that belong to them, can represent themselves.

For example, in 2007, in *Winkelman ex rel. Winkleman v. Parma City School District*, self-represented parents brought an action challenging their child's placement in a public school as a denial of a free and appropriate education under the IDEA.[181] The Circuit Court dismissed the parents' appeal for lack of counsel, holding that the IDEA confers rights solely upon children; thus parents bringing IDEA claims are advancing the claims on behalf of their children and must be represented by counsel.[182] The Supreme Court reversed, holding that the IDEA grants parents enforceable rights independent from those granted to their children, which parents are entitled to litigate on their own behalf, with or without counsel.[183] Because it held the IDEA grants parents independent rights, the Court declined to determine whether the IDEA also accords parents the authority to litigate their children's claims pro se.[184]

Likewise, statutes in several states authorize parents to file cases seeking civil protection orders to protect their children from intimate partner, sexual, or family violence.[185] These provisions could be read to vest parents with independent rights to advance these claims to ensure their children's welfare. Under this reading, the statutes could be understood to create a different type of third-party standing for parents—one that allows parents to assert separate

---

[179] *See, e.g.*, Piselli v. 75th St. Med., 808 A.2d 508, 520 (Md. 2002) (two separate causes of action arise upon negligent injury of a minor—one belonging to the child and one belonging to the parent); Gillispie v. Beta Constr. Co., 842 P.2d 1272, 1272–73 (Alaska 1992) (holding that a wrongful death statute grants parents a separate cause of action for a child's death); Wright v. Colleton Cnty. Sch. Dist., 391 S.E.2d 564, 569 (S.C. 1990) (holding that a parent's loss upon a child's injury is a separately cognizable claim); Joseph W. v. Catholic Diocese of Madison, 569 N.W.2d 795, 800 (Wis. Ct. App. 1997) (describing separate causes of action for children and parents); *see also* IOWA R. CIV. P. 1.206 (permitting parents to sue for injury or death of a child). Some courts have clarified that parents can bring their own cause of action pro se but must retain counsel to advance the child's. *See, e.g.*, Goodwin v. Hobza, 762 N.W.2d 623, 627 (Neb. Ct. App. 2009) (holding that non-attorney parents are barred from litigating children's negligence actions pro se).

[180] *See, e.g.*, Boykin v. Magnolia Bay, Inc., 570 So. 2d 639, 642 (Ala. 1990) (holding that a statute granting parents' right to notice about child's intended abortion creates a right of action for the parents where right is violated); *infra* note 186 and accompanying text (discussing instances of courts allowing parents to bring actions or file motions on behalf of minor children).

[181] Winkelman *ex rel.* Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 520–21 (2007).

[182] *Id.* at 522.

[183] *Id.* at 535.

[184] *Id.*

[185] *See supra* notes 186–187 and accompanying text.

standing to pursue a remedy that benefits their child; indeed, some courts have adopted this understanding.[186] Arguably, this could occur consistently with Article III, as a parent whose child is victimized suffers an injury to their protected parenting authority that the protection order statute can redress by protecting the child from further harm. This interpretation seems especially apt for statutes like those in Florida, which use the term "standing" to describe parents' authority to pursue protection orders for their children.[187] By contrast, the provisions could be read to simply authorize parents to bring children's protection order claims on children's behalf without needing to secure court approval to represent the child in the case. Under these circumstances, parents seeking relief in jurisdictions that apply the counsel mandate could only proceed with counsel.

In summary, some statutes may grant parents separate rights to bring claims that benefit their children. Just as with constitutional claims, parents' ability to assert statutory standing relating to their children not only depends upon whether the injuries they assert fall within the interests protected by the statute, but also upon the scope of their parental authority under state law and any applicable court orders.[188] And just as with third-party standing, it may be challenging for pro se parents to successfully assert statutory standing in jurisdictions with ambiguous laws. Importantly, any success parents have in surmounting the counsel mandate by framing claims as their own still leaves low-income children without enforceable rights. Courts in such cases may have grounds to evaluate only the damage to parental authority when children suffer harm, not damage children themselves suffer. This deprives children of the chance to receive direct legal relief and stunts law development in its application to children.

C. Authority to Bring Children's Claims

A third significant component of parents' litigation authority concerns their ability to bring legal claims on their child's behalf as the child's repre-

---

[186] *See, e.g.*, Parrish v. Price, 71 So. 3d 132, 133 (Fla. Dist. Ct. App. 2011) (holding that a spouse has standing to seek a domestic violence protection order against another spouse on behalf of the parties' children); Lujan *ex rel.* Lujan v. Casados-Lujan, 87 P.3d 1067, 1070 (N.M. Ct. App. 2004) (holding that a protection order statute authorizes a parent to "file the petition for an order of protection in her own right" to address harm to her child); Anderson v. McGuffey *ex rel.* McGuffey, 746 So. 2d 1257, 1258 (Fla. Dist. Ct. App. 2001) (declining to question parents' standing to adjudicate an appeal of a restraining order obtained by parent pro se on behalf of minor daughter); *cf.* Green v. Dinh, No. S-18080, 2023 WL 4926685, at *1 (Alaska Aug. 2, 2023) (permitting father to seek protection orders for his children pro se without discussion).

[187] *See, e.g.*, FLA. STAT. § 784.046(2)(a) (2025) ("[A]ny person who is the victim of repeat violence or the parent or legal guardian of any minor child who is living at home and who seeks an injunction for protection against repeat violence on behalf of the minor child has standing in the circuit court to file a verified petition . . . .").

[188] Fuentes v. Bd. of Educ. of N.Y., 540 F.3d 145, 149 (2d Cir. 2008) (holding that state law on parental authority determines whether father qualified to exercise the parental rights conferred by the IDEA).

sentative (as a next friend, guardian, or guardian ad litem). The representative role exists because children and other litigants who lack legal capacity generally are prohibited from presenting their own claims before the courts.[189] Instead, an authorized adult must represent their interests.[190] In such cases, the incapacitated party must have standing to assert the claims at hand, but the representative need not—representatives are only nominal parties to the case.[191] When both parents and children have standing, parents can serve two roles in a case: as a party and as a child's representative.

In practice, parents are typically the adults who represent their children in litigation.[192] This follows logically, as parents who are involved in their children's lives have uniquely significant relationships with children and routinely make important decisions and take legal actions on their behalf.[193] Yet their legal au-

---

[189] *See* FED. R. CIV. P. 17(c) (providing that minors who lack an appointed representative fiduciary generally must sue through a next friend or guardian ad litem). Federal law permits next friend representation of detained prisoners in habeas corpus proceedings where prisoners are unable to represent themselves because of inaccessibility or mental incapacity. Whitmore v. Arkansas, 495 U.S. 149, 162–63 (1990); *see also* 28 U.S.C. § 2242 (enacting statutory authority for application for writ of habeas corpus by "the person for whose relief it is intended or by someone acting in his behalf").

[190] FED. R. CIV. P. 17.

[191] *See Whitmore*, 495 U.S. at 163 ("A 'next friend' does not himself become a party to the habeas corpus action in which he participates, but simply pursues the cause on behalf of the detained person, who remains the real party in interest."); Morgan v. Potter, 157 U.S. 195, 198 (1895) ("The next friend, by whom the suit is brought on behalf of the infant, is neither technically nor substantially the party, but resembles an attorney, or a guardian ad litem, by whom a suit is brought or defended in behalf of another."); Fong Sik Leung v. Dulles, 226 F.2d 74, 80 (9th Cir. 1955) (holding that a parent next friend is not a party and therefore not subject to discovery request to undergo medical examination); Caban *ex rel.* Crespo v. 600 E. 21st St. Co., 200 F.R.D. 176, 179–80 (E.D.N.Y. 2001) ("Whether suing as a natural guardian . . . as a next friend, or as a court-appointed guardian ad litem, 'the representative is a nominal party only; the action must be brought in the name of the real party in interest—the infant.'" (citation omitted)).

[192] *See, e.g.*, Smith v. Org. of Foster Fams. for Equal. & Reform, 431 U.S. 816, 841 n.44 (1977) ("[C]hildren usually lack the capacity to make [decisions about their interests;] . . . their interest is ordinarily represented in litigation by parents or guardians."); Bank of the U.S. v. Ritchie, 33 U.S. (8 Pet.) 128, 144 (1834) ("[Infants] defend by guardian to be appointed by the court, who is usually the nearest relation not concerned, in point of interest, in the matter in question."); *see also* Johnson v. Collins, 5 F. App'x 479, 485 (7th Cir. 2001) ("To maintain a suit in a federal court, a child or mental incompetent must be represented by a competent adult, ordinarily a parent or relative."); Gonzalez-Jimenez de Ruiz v. United States, 231 F. Supp. 2d 1187, 1196 (M.D. Fla. 2002) ("Typically, 'the next friend who sues on behalf of the minor is that minor's parent.'" (quoting Gonzalez *ex rel.* Gonzalez v. Reno, 86 F. Supp. 2d 1167, 1183 (S.D. Fla.), *aff'd sub nom.* Gonzalez v. Reno, 212 F.3d 1338 (11th Cir. 2000)), *aff'd*, 378 F.3d 1229 (11th Cir. 2004); Moore, *supra* note 139, at 1846 ("[E]xcluding cases of inherent conflict such as custody, abuse or neglect, and termination of parental rights . . . parents are expected not only to 'foot the bill [for counsel],' but also to play an active role in directing the course of the representation." (footnote omitted)).

[193] Bellotti v. Baird, 443 U.S. 622, 637 (1979) (plurality opinion) ("The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors."); Parham v. J.R., 442 U.S. 584, 602 (1979) ("[H]istorically [the law] has recognized that natural bonds of affection lead parents to act in the best interests of their children."); Martin, *supra* note 4, at 444–45.

thority to do so is unclear. This Section examines parental authority to bring children's claims, highlighting two primary considerations. First, Subsection 1 discusses parents' eligibility to serve as a child's representative.[194] Next, Subsection 2 analyzes the nature of parents' decision-making authority when acting as a representative.[195] The law governing each of these considerations is vague at best.

1. Eligibility to Serve

Although parents typically serve as children's litigation representatives in practice, both their eligibility and their entitlement to do so remain unclear. Indeed, there is neither legislative history nor Supreme Court precedent to guide interpretation of the primary federal governing rule.[196] In the absence of clear guidance, federal court approaches to these questions run the full gamut of possibilities. Federal courts have neither reached a consensus on the criteria and process for parents to serve, nor the law that governs these determinations.[197]

Parents' authority to serve as a child's litigation representative is shaped by Federal Rule of Civil Procedure 17, state statutory causes of action, state statutes governing parents' authority, parents' general litigation authority, and arguably, parents' constitutional rights. Rule 17 dictates how federal courts must proceed in cases where litigants are minor children.[198] It obliges courts to protect the interests of minors, in part, by ensuring appropriate representatives advance their cases.[199] Rule 17 first empowers adults who qualify as general representa-

---

[194] *See infra* notes 196–220 and accompanying text.

[195] *See infra* notes 221–230 and accompanying text.

[196] Gaddis v. United States, 381 F.3d 444, 452 (5th Cir. 2004) (noting "the Supreme Court has never construed, interpreted, or applied" Federal Rule of Civil Procedure 17(c)); Martin, *supra* note 4, at 452 n.50 (evaluating the lack of legislative history).

[197] Martin, *supra* note 4, at 449–71.

[198] The full text of Federal Rule of Civil Procedure 17(c) provides:

> (c) Minor or Incompetent Person.
>
> (1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:
>
> (A) a general guardian;
>
> (B) a committee;
>
> (C) a conservator; or
>
> (D) a like fiduciary.
>
> (2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

FED. R. CIV. P. 17(c).

[199] Coulson v. Walton, 34 U.S. (9 Pet.) 62, 84 (1835) ("It is the duty of the court to protect the interests of minors . . . ."); *see also* Bank of the U.S. v. Ritchie, 33 U.S. (8 Pet.) 128, 144 (1834) ("In all suits brought against infants, whom the law supposes to be incapable of understanding and managing their own affairs, the duty of watching over their interests devolves, in a considerable degree, upon the court."); Gardner *ex rel.* Gardner v. Parson, 874 F.2d 131, 140 (3d Cir. 1989) ("The purpose of Rule

tives by sharing certain legal relationships with children, including general guardians and "like fiduciaries" as well as persons authorized by statute, to bring suit on the child's behalf without needing court appointment or authorization.[200] These persons are presumed eligible absent evidence of a conflict of interests.[201] Federal courts diverge as to whether parents qualify as any of these categories and whether the matter is governed by federal or state law.[202] Some states expressly vest parents with the right to litigate on behalf of their children as part of their role as legal guardians and custodians.[203] If state law governs qualifications for guardianship under Rule 17, parents in these states should be permitted to bring cases as general guardians. Parents also may serve as children's representatives without needing court appointment or authorization where statutes creating the causes of action at issue in the case authorize parents to bring claims for their children.[204]

Parents whom courts deem unqualified as general guardians and who do not bring statutory claims that authorize them to sue for children may seek to bring their children's claims as "special representatives," namely as the child's next friend or guardian ad litem.[205] Courts differ as to whether parents must

---

17(c) is to further the child's interest in prosecuting or defending a lawsuit, or at least to allow an evaluation of the merits of the suit relative to the child's best interests."); Garrick v. Weaver, 888 F.2d 687, 693 (10th Cir. 1989) ("Rule 17(c) flows from the general duty of the court to protect the interests of infants and incompetents in cases before the court."); Adelman *ex rel.* Adelman v. Graves, 747 F.2d 986, 989 (5th Cir. 1984) (holding "the district court's primary concern in the instant case must be to assure, under Rule 17(c)" that the minors' rights are protected); Martin, *supra* note 4, at 449–50 (discussing the impact of Rule 17(c) on protecting child litigants).

[200] FED. R. CIV. P. 17(a), (c)(1). Although the language of these rules suggests that persons who qualify as guardians, persons authorized by statute, and general representatives are authorized to sue and do not need court appointment, in practice, some courts appoint them to serve as next friends anyway. Martin, *supra* note 4, at 460.

[201] Martin, *supra* note 4, at 455.

[202] *Compare* Gibbs *ex rel.* Gibbs v. Carnival Cruise Lines, 314 F.3d 125, 134–35 (3d Cir. 2002) ("[S]tate rules regarding the appointment of guardians ad litem are procedural and therefore do not apply, in the first instance, to cases brought in federal courts."), *with* Martin, *supra* note 4, at 452–53, 455–61 (noting the variety of conclusions courts have reached regarding whether Rule 17(c) is substantive or procedural).

[203] *E.g.*, ARIZ. REV. STAT. ANN. § 8-531(8)(a) (2025); D.C. CODE § 16-2301(20)(A) (2025); HAW. REV. STAT. § 571-2 (2025); IDAHO CODE § 16-2002(7)(a) (2025); 750 ILL. COMP. STAT. 22/302 (2025); IOWA CODE § 600A.2 (2025); MONT. CODE ANN. § 27-1-511 (2025); N.Y. C.P.L.R. LAW § 1201 (McKinney 2025); TEX. FAM. CODE ANN. § 151.001(a)(7) (West 2025); MD. R. 3-202(b)(1); Clements v. Clements, 184 A.2d 195, 196 (D.C. 1962) (holding that parents are natural guardians of their children's person); Martin v. Vincent, 201 P. 492, 493 (Idaho 1921) ("The parents of children are recognized as their natural guardians . . . ."); Blackwood v. Carpenter, No. 77458, 1993 Mont. Dist. LEXIS 673, at *14 (Mont. Dist. Ct. Sep. 14, 1993) (holding that a parent is a proper party to bring suit on behalf of a minor child); *In re* Bridgestone Ams. Tire Ops., LLC, 459 S.W.3d 565, 572 n.9 (Tex. 2015) (holding that a parent qualifies as a legal guardian who may sue on behalf of a child under Texas Rule of Civil Procedure 44).

[204] FED. R. CIV. P. 17(a)(1)(G); *see also supra* notes 171–188 and accompanying text.

[205] FED. R. CIV. P. 17(c). Next friends and guardians ad litem play equivalent roles in federal civil litigation. Historically, next friends represented the interests of plaintiffs whereas guardians ad litem

secure court appointment to serve in these roles[206] and, if so, what qualifications they must meet for service. Regarding qualifications, some courts employ a framework similar to that used to evaluate the propriety of third-party standing, assessing whether the litigant whom the next friend seeks to represent cannot represent themselves and whether the next friend is "truly dedicated to the best interests" of the (child) litigant.[207] Courts also often consider whether the next friend and the litigant have a "significant relationship,"[208] although courts disagree as to whether this is a firm or flexible requirement,[209] and whether the requirement is distinct from or a manner of establishing true dedi-

represented defendants; today, that distinction has faded. In practice today, "next friend" is often used to refer to a person known to a child who represents the child voluntarily, whereas "guardian ad litem" is often used to refer to a person, often a professional, who is appointed by the court to serve in this role. *See* Morgan v. Potter, 157 U.S. 195, 198 (1895) ("The next friend, by whom the suit is brought on behalf of the infant, is neither technically nor substantially the party, but resembles an attorney, or a guardian ad litem, by whom a suit is brought or defended in behalf of another."); T.W. *ex rel.* Enk v. Brophy, 124 F.3d 893, 895 (7th Cir. 1997) ("The terms are essentially interchangeable, but 'next friend' is normally used when the child is the plaintiff, and 'guardian ad litem' when the child is the defendant."); Till v. Hartford Accident & Indem. Co., 124 F.2d 405, 408 (10th Cir. 1941) ("There is little distinction between a next friend and a guardian ad litem."); Martin, *supra* note 4, at 462 (tracking this distinction).

[206] *Compare* Jonathan R. v. Justice, 688 F. Supp. 3d 355, 359 (S.D. W. Va. 2023) (holding that next friends need not be court appointed), *with* Rawlings v. Littleton, No. 93-5223, 1994 U.S. App. LEXIS 9703, at *5 (6th Cir. Apr. 28, 1994) ("We note that a parent, if appointed next friend, could sue on her minor child's behalf . . . . However, there is no indication from the record that Rawlings was appointed next friend in this case."), *and* J.M. v. Liberty Union High Sch. Dist., No. 16-cv-05225, 2016 WL 4942999, at *2 (N.D. Cal. Sep. 16, 2016) (noting that when parents have no conflict of interests guardian ad litem "appointment is usually made on application only and involves little exercise of discretion" (quoting Williams v. Superior Ct., 54 Cal. Rptr. 3d 13, 20 (Ct. App. 2007)), *and* Mayall v. USA Water Polo, Inc., No. SACV 15-171 (RNBx), 2015 WL 12907832, at *3 (C.D. Cal. June 8, 2015) (dismissing case upon defendant's motion for failure of mother to seek appointment as guardian ad litem for child plaintiff and finding that guardian ad litem appointment is a prerequisite to a parent bringing a case on behalf of a child).

[207] Martin, *supra* note 4, at 463–66.

[208] *See* Whitmore v. Arkansas, 495 U.S. 149, 163–64 (1990) (holding that a next friend must have a significant relation with the real party in interest); Sam M. *ex rel.* Elliott v. Carcieri, 608 F.3d 77, 90 (1st Cir. 2010) (considering whether a "significant relationship" existed between a minor child and foster parent, school psychologist, and sociology professor, respectively); Coal. of Clergy, Laws., & Professors v. Bush, 310 F.3d 1153, 1162 (9th Cir. 2002) (noting that "significant relationship" is a key but relative concept); *Brophy*, 124 F.3d at 897 (noting the preference for a next friend to have a close relationship with the child); Gonzalez *ex rel.* Gonzalez v. Reno, 86 F. Supp. 2d 1167, 1184–85 (S.D. Fla. 2000) (considering whether a significant relationship is necessary to be a next friend), *aff'd sub nom.* Gonzalez v. Reno, 212 F.3d 1338 (11th Cir. 2000); *cf.* Muthana v. Pompeo, 985 F.3d 893, 902 (D.C. Cir. 2021) ("[O]rdinarily [there must] be a significant relationship between the proposed next friend and minor, though that requirement may not rigidly apply when a minor has no significant relationships." (citations omitted)). *See generally* Martin, *supra* note 4, at 463–66 (evaluating the varied standards employed by courts to qualify next friends).

[209] *Compare* Doe v. Hochul, 139 F.4th 165, 178 (2d Cir. 2025) ("Although a significant relationship with the real party in interest is *relevant* to the appointment of a next friend, it is neither required nor dispositive."), *with Brophy*, 124 F.3d at 897 (a next friend "must have some significant relationship with the real party in interest" (quoting *Whitmore*, 495 U.S. at 164)).

cation to best interests.[210] At a minimum, parents seeking to serve as their child's next friend must demonstrate that they have the custodial authority to do so and that their interests align with the child's. Parents may be precluded from bringing suit in any of these roles if court orders deprive them of legal decision-making or litigation authority or require them to make joint decisions with the child's other parent.[211]

Federal courts also differ as to whether parents have priority to serve as next friends and guardians ad litem over other adults—some circuits recognize that parents should have first priority to represent their children, whereas others do not.[212] Indeed, at least one court has suggested that a parent's poverty might be disqualifying.[213] Court decisions to appoint another representative in lieu of a parent not only prevent parents from making the decisions they think best, and deny children the opportunity to have those who know them best guide their cases, but also may impose a significant financial cost because courts have discretion to appoint a professional to serve in the role for a fee

---

[210] *Compare* Hamdi v. Rumsfeld, 294 F.3d 598, 604–05 (4th Cir. 2002) (drawing a distinction between true dedication and significant relationship as separate requirements), *with* Sanchez-Velasco v. Sec'y of Dep't of Corr., 287 F.3d 1015, 1026 (11th Cir. 2002) (holding that significant relationship is one way of showing true dedication).

[211] *See, e.g.*, Sakon v. Connecticut, No. 23-cv-602, 2024 WL 4041305, at *4 (D. Conn. Sep. 4, 2024) ("Among the numerous decisions inherent in a parent's legal custody of a child is 'the decision that a child be a plaintiff in a federal lawsuit.'" (quoting Mulready v. Mulready, No. 06-cv-934, 2007 WL 1791120, at *1 (D. Conn. June 16, 2007)); Sanders v. Sanders, No. 20-cv-5621, 2021 WL 4392053, at *1 n.4 (S.D.N.Y. Sep. 24, 2021) (holding that father could not bring action for child under Rule 17(c) where mother was awarded sole custody), *aff'd*, No. 22-99, 2022 WL 16984681 (2d Cir. Nov. 17, 2022); A.N. & D.N. *ex rel.* Norris v. Williams, No. 05-cv-1929, 2005 WL 3003730, at *3–4 (M.D. Fla. Nov. 9, 2005) (same); *see also* Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 15 (2004) (noting the parent's ineligibility to serve as the child's next friend under court custody order).

[212] *Compare* Kile v. United States, 915 F.3d 682, 687 (10th Cir. 2019) ("[A]bsent an apparent conflict of interest, the appointment of a guardian ad litem is not necessary where a parent is a party to the lawsuit and presses the child's claims before the court."), *and Brophy*, 124 F.3d at 897 ("[O]rdinarily the eligibles will be confined to the plaintiff's parents, older siblings (if there are no parents), or a conservator or other guardian, akin to a trustee . . . ."), *and* Gonzalez-Jimenez de Ruiz v. United States, 231 F. Supp. 2d 1187, 1196–97 (M.D. Fla. 2002) ("When a parent 'brings an action on behalf of a child, and it is evident that the interests of each are the same, no need exists for someone other than the parent to represent the child's interests . . . .'" (quoting *Gonzalez*, 86 F. Supp. 2d at 1180–81), *aff'd*, 378 F.3d 1229 (11th Cir. 2004), *with* Ingram *ex rel.* Ingram v. Ainsworth, 184 F.R.D. 90, 92 (S.D. Miss. 1999) ("There are no special requirements for serving as a next friend. At its discretion, the court may consider whether there is a significant relationship between the next friend and the incompetent party and whether there is a legitimate reason why the actual party cannot bring suit.").

[213] *See* Oliver v. Southcoast Med. Grp., No. 411-cv-115, 2011 WL 2600618, at *2 (S.D. Ga. June 13, 2011) (dismissing claim brought by father on behalf of his daughter for lack of counsel). The court noted there was no need to assess the father's ability to serve as the child's representative because of his failure to retain counsel and suggested that he may not be found competent to serve, in part, because "there is some case law indicating that financial wherewithal to competently litigate is a factor." *Id*. at *1 n.5

that parents may be obligated to pay.[214] A representative's eligibility is a procedural question, not a jurisdictional one; thus, when courts find that qualification to proceed as next friend is lacking, courts should not dismiss the case.[215] Instead, courts should act to protect the incapacitated party by identifying an appropriate next friend or appointing a guardian ad litem to step into the litigation and evaluate whether it should proceed.[216]

Still other courts restrict parents' service as litigation representatives, excluding them or requiring them to serve alongside appointed representatives based on mere projections of possible future conflicts of interest between parents and children, without finding actual existing conflicts.[217] Taken to their extremes, these conflict projections can produce results at odds with the realities of family life. At least two district courts have concluded, for example, that the financial obligation parents incur by retaining counsel for a child creates a conflict of interest that disqualifies parents from serving as children's litigation representatives.[218] This conclusion is curious, in part, because the counsel mandate requires parents to obtain counsel for their children, and these courts then hold that parents' compliance with the mandate disqualifies them from further involvement in their children's cases. Moreover, these courts' conception of "conflicts of interest" is at odds with the realities of family life. These courts reason that the parent, being obligated to pay the attorney's contractual fee, may only be willing to settle a child's claim for an amount high enough to

---

[214] *See* Gaddis v. United States, 381 F.3d 444, 455 (5th Cir. 2004) (holding that courts have discretion under 17(c) to determine whether to tax guardian ad litem fees as costs to the non-prevailing party or expenses payable out of any award made to the minor party); Hull *ex rel.* Hull v. United States, 53 F.3d 1125, 1129 (10th Cir. 1995) (holding that guardian ad litem fees may be taxed as costs against the non-prevailing party); United States v. Noble, 269 F. Supp. 814, 816 (E.D.N.Y. 1967) (holding that "[e]very effort should be made by the District Courts of the United States to reduce costs by avoiding the appointment of independent guardians" absent some need to protect the child and a likelihood of a conflict of interest); United States v. E.I. du Pont de Nemours & Co., 13 F.R.D. 98, 105 (N.D. Ill. 1952) (recognizing the customary practice to appoint attorneys to serve as guardians ad litem for minor litigants).

[215] *See* Davis v. Walker, 745 F.3d 1303, 1310 (9th Cir. 2014) ("[T]he court may not use the Rule as a vehicle for dismissing claims or for allowing the interests of an incompetent litigant to go completely unprotected."); Gardner *ex rel.* Gardner v. Parson, 874 F.2d 131, 140 (3d Cir. 1989) ("[I]f a court declines to appoint a guardian [ad litem], it must act in some other way to protect the child's *interests in the litigation*.").

[216] *See Davis*, 745 F.3d at 1310 ("Once the court determines that a pro se litigant is incompetent, the court generally should appoint a guardian ad litem under Rule 17(c)."); *Gardner*, 874 F.2d at 140 (noting that the district court should have appointed a next friend or at least held a hearing to determine whether appointment was warranted upon finding a voluntary next friend unsuitable, rather than dismissing a child's case); *see also* Martin, *supra* note 9, at 832–36 (evaluating the courts' responsibility to protect the interests of parties who lack capacity); Martin, *supra* note 15, at 877–80 (same).

[217] *See, e.g.*, Horacek v. Exon, 357 F. Supp. 71, 74 (D. Neb. 1973) (appointing a guardian ad litem to represent child litigant alongside parents in order to "recognize potential and actual differences in positions asserted by the parents and positions that need to be asserted on behalf of the plaintiffs").

[218] Scott v. District of Columbia, 197 F.R.D. 10, 11 (D.D.C. 2000); McSweeney v. Kahn, Civ. Action No. 05-cv-0132, 2008 WL 11335040, at *2 (N.D. Ga. Apr. 25, 2008).

recoup the fee.[219] This position potentially conflicts with that of a child represented by someone other than a parent because the child has no obligation to pay such fees and thus may be willing to settle for a lower amount.[220]

What the court overlooks in construing this possibility as a "conflict" is that the parents' financial obligations directly impact their children's well-being: the parents' ability to recoup attorneys' fees enables them to preserve family resources to meet children's needs outside of the litigation. From this perspective, the parents' and children's interests are not conflicting but united—both are served when a parent negotiates the settlement of a child's claims with the goal of maximizing family resources. Indeed, by removing the family's financial obligation from the mind of the litigation representative, these courts construct children's settlement negotiations to occur in a vacuum, stripped of the important context of what is actually needed to serve a child's interests.

In sum, federal law and practice regarding parents' eligibility to serve as children's representatives and their entitlement to do so as opposed to other parties remains woefully unsettled. Across the federal courts there is presently no standardized role for parents, no consensus that they should have priority to serve, no settled process governing their participation, and no guarantee what law will govern these questions. Thus, parents generally have no assurance that courts will permit them to represent their children's interests at all.

2. Nature of Decision-Making Authority

Like their eligibility to serve, the nature and scope of parents' decision-making authority as litigation representatives is also unclear. Courts broadly charge litigation representatives with significant, but vague authority.[221] Historically courts have categorically removed two types of decisions from representatives' discretion: the decision *not* to retain counsel and the decision to accept a settlement agreement.[222] Although a few courts exhibit a special deference to parents' choices as litigation representatives because of their protected parenting authority, most largely treat parents the same as others in the role.

The *Raskin* opinions stand apart from the bulk of federal doctrine in evaluating how parents' out-of-court authority shapes their authority as representatives for their children in courts. Both the majority and Judge Oldham under-

---

[219] *Scott*, 197 F.R.D. at 11; *McSweeney*, 2008 WL 11335040, at *2.

[220] *Scott*, 197 F.R.D. at 11; *McSweeney*, 2008 WL 11335040, at *2.

[221] Garrick v. Weaver, 888 F.2d 687, 693 (10th Cir. 1989) (holding that the guardian ad litem acts "for the minor in the cause, with authority to engage counsel, file suit, and to prosecute, control and direct the litigation" (quoting Noe v. True, 507 F.2d 9, 12 (6th Cir. 1974) (per curiam)).

[222] *See, e.g.*, Dacanay v. Mendoza, 573 F.2d 1075, 1079 (9th Cir. 1978) (noting "from the time of the early courts of chancery a guardian ad litem has been unable to bind a minor litigant to a settlement agreement" absent court review and agreement); *see also supra* notes 52–102 and accompanying text.

stand parents to act from dual sources of authority when bringing children's claims: power shared by all litigation representatives and additional power arising from parenthood. They differ on their understanding of the sources and scope of parents' authority in litigation.

Broadly, the majority finds that state law on parenting can bring litigation decisions within the sphere of parents' protected decision-making authority.[223] Specifically, the majority concludes that where state law grants parents the authority to bring children's claims pro se, a parent bringing a children's claim "acts within the parent-child relationship . . . as the child's *pro se* alter ego."[224] Under these circumstances, courts cannot override the authority states confer upon parents—the Judiciary Act does not permit courts to interfere with a parent's decision to forego counsel when a state authorizes parents to make that choice.[225] The majority's holding is both narrow and expansive. It narrowly cabins the circumstances in which it will find a legislature to have extended parents the authority to proceed pro se, requiring explicit articulation of that choice. But once a legislature extends that particular choice, the majority views parental authority expansively: parents' litigation decisions then fall within the protected sphere of the parent-child relationship and the parent becomes the "alter ego" of the child in court.[226] Because the majority limits its discussion to the counsel mandate, it does not explain how its reasoning applies to other circumstances. It neither clarifies, for example, whether parents act as a child's "alter ego" in litigation when they retain counsel, nor whether other litigation decisions fall within parents' protected authority.

Judge Oldham agrees that state law brings litigation decisions within the protected sphere of parental decision-making authority. Unlike the majority, he locates the source of this authority within a more generalized Texas law extending parents the "right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child."[227] Judge Oldham thus broadly conceives of parents' authority as litigation representatives to include making all decisions within the litigation that the child would need to make, including whether to proceed with counsel or pro se.[228] He further understands parents' constitutional liberty interests and distinct common law traditions to inform and fortify the authority that parents hold as litigation representatives. To this end, he concludes that the generalized presumption

---

[223] Raskin *ex rel.* J.D. v. Dall. Indep. Sch. Dist., 69 F.4th 280, 284–85 (5th Cir. 2023).

[224] *Id.* at 284.

[225] *Id.* at 284–86.

[226] *Id.* at 284–85.

[227] *Id.* at 292 (Oldham, J., dissenting in part and concurring in the judgment); *see* TEX. FAM. CODE ANN. § 151.001(a)(7) (West 2025) (providing the parent of a child the right to "represent the child in legal action and to make other decisions of substantial legal significance concerning the child").

[228] *See Raskin*, 69 F.4th at 293 (Oldham, J., dissenting in part and concurring in the judgment) (noting his belief that Texas law "plainly lodges" the capacity to represent a child pro se in the parent).

against non-lawyer representation, which would restrict Ms. Raskin from bringing claims for her neighbor, does not apply to parents and children because parents have a distinct tradition of representing their children in courts.[229] Likewise, parents' liberty interests constrain judicial intervention into their litigation choices, including whether to retain counsel.[230] Judge Oldham thus presents a capacious account of parental litigation authority—one that mirrors parents' authority outside of courts.

This Part set out to investigate the present scope and content of parents' litigation authority as shaped by counsel mandate, standing, and litigation representative doctrines. All told, each turns out to be unclear—containing critical gaps and ambiguities in general, and specifically as applied to parents. And notably, courts construing the doctrine often do so with no consideration of parents' general decision-making rights, focusing instead on the nuance of procedural rules. Some courts even seem disposed against parents, interpreting rules restrictively in ways that disqualify parents from advancing their children's claims. For all of these reasons, the present scope and content of parents' litigation authority is entirely unsettled.

II. Parental Litigation Authority as Protected Decision-Making

Procedural doctrine governing parents' litigation authority need neither be so discordant nor so disconnected from parents' and children's out-of-court realities. Federal courts should center parents' protected decision-making authority as the principle guiding the application of the counsel mandate, standing, and litigation representative doctrines to parents and children. Bringing a shared touchstone to these procedural analyses would unify the doctrine, increasing predictability and fairness. Using parents' general decision-making authority as that touchstone would promote parents' and children's interests, support democratic pluralism, and facilitate children's access to justice.

Section A of this Part establishes the baseline, surveying the constitutional and guardianship law that vests parents with protected authority over their children outside of the court and the deference that authority commands.[231] Section B proposes a familial framework for evaluating the argument that litigation decisions are parental decisions and illustrates its application to the doctrines discussed in Part I.[232] Finally, Section C addresses the limits of that

---

[229] *Id.* at 298–99.

[230] *See id.* at 295 ("[W]e cannot 'infringe on the fundamental right of parents to make child-rearing decisions simply because a . . . judge believes a 'better' decision could be made.'" (quoting Troxel v. Granville, 530 U.S. 57, 72–73 (2000)). Judicial interference is warranted "to prevent truly egregious harms," but not for "everyday parental decision-making," including the decision whether to retain counsel. *Id.* at 297.

[231] *See infra* notes 234–253 and accompanying text.

[232] *See infra* notes 254–288 and accompanying text.

framework, analyzing how courts can adopt it while continuing to respect children as independent rightsholders and protect them as litigants.[233]

A. Parents' Authority Outside of Federal Courts

Outside of courts, deference to parents' authority to make important decisions for their children is deeply ingrained in constitutional and guardianship law. Within the Constitution, parents' interests arise from the sphere of family privacy protected by the Due Process Clause of the Fifth and Fourteenth Amendments.[234] The Supreme Court has described parents' constitutionally protected liberty interests as "perhaps the oldest of the fundamental liberty interests recognized by this Court."[235] This privacy both restrains government interference in the parent-child relationship[236] and "protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."[237] Like other government institutions, courts cannot infringe on fit parents' fundamental right to make child-rearing decisions "simply because a . . . judge believes a 'better' decision could be made."[238] Courts reviewing parental caretaking decisions apply heightened scrutiny.[239] In doing so, courts must accord "special weight" to parents' choices and presume that fit parents' decisions serve their children's interests.[240] The state may override parental decisions when parents are unfit, when decisions pose a substantial risk of harm to a child,[241] and when they conflict with approved exercises of the state's police powers,[242] or with decisions that adolescents are authorized to make for

---

[233] *See infra* notes 289–304 and accompanying text.

[234] *See* Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977) (plurality opinion) (noting that the "Court has long recognized that freedom of personal choice in matters of marriage and family life" is an integral freedom under the Fourteenth Amendment (quoting Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639–40 (1974)); *see also* Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 231 (2022) ("[The Due Process Clause] has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997)).

[235] Troxel v. Granville, 530 U.S. 57, 65 (2000) (plurality opinion).

[236] *Moore*, 431 U.S. at 499.

[237] *Troxel*, 530 U.S. at 66.

[238] *See id.* at 72–73 (holding that parental fundamental rights cannot be infringed upon "simply because a . . . judge believes a 'better' decision could be made"); *see also id*. at 68–69 ("[S]o long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.").

[239] *Id.* at 68–70.

[240] *Id.*

[241] *See* RESTATEMENT OF CHILDREN AND THE LAW § 1.80 (A.L.I., Tentative Draft No. 2, 2019); RESTATEMENT OF CHILDREN AND THE LAW, pt. 1, ch. 1 Intro. Note, ch. 3 Intro. Note (A.L.I., Tentative Draft No. 1, 2018).

[242] Zucht v. King, 260 U.S. 174, 176–77 (1922) (holding that the government can impose vaccination requirement for school attendance under its police power over parental objection). *See gener-*

themselves.[243] Although the deference to parents' child-rearing decisions is firmly engrained, the specific topics that fall within parents' constitutionally protected decision-making authority remain under development. At a minimum, these include physical custody,[244] living arrangements,[245] children's religious upbringing,[246] medical care,[247] education,[248] and contact with non-parents.[249]

Likewise, parents have longstanding common law rights to make child-rearing decisions, currently codified in state guardianship law. States uniformly recognize parents as their children's legal guardians, who thereby have exclusive rights and responsibilities to care for and support their children.[250] Historically, parents' authority was limited to their child's "person" and did not extend to their property, but many states have eliminated this distinction. In addition, as discussed in Section I.B., several states expressly grant parents the right to bring legal claims for their children as part of their guardianship authority.[251]

Courts' facially neutral applications of procedural rules to parents contravene these historic *rights*. Litigation decisions made by parents for their children should be understood as protected exercises of parental authority that warrant deference by courts.[252] Absent a showing of unfitness, or that parents'

---

ally RESTATEMENT OF CHILDREN AND THE LAW, pt. 1, ch.1 Intro. Note (A.L.I., Tentative Draft No. 1, 2018).

[243] *See, e.g.*, Bellotti v. Baird, 443 U.S. 622, 643 (1979) (plurality opinion) (holding that pregnant minors have rights shielded from parental authority over the choice of an abortion); *see also* Martin, *supra* note 9, at 837–51 (cataloguing legal contexts in which minors are authorized to pursue claims and make important decisions without parental oversight); RESTATEMENT OF CHILD. & THE L. § 19.01, 19.02 (A.L.I., Tentative Draft No. 2, 2019) (outlining the circumstances in which minors' rights to make certain medical decisions under the "mature minor" doctrine can override parental authority); RESTATEMENT OF CHILD. & THE L. IV Intro. Note (A.L.I., Tentative Draft No. 6, 2024)) (same).

[244] Santosky v. Kramer, 455 U.S. 745, 766–68 (1982).

[245] Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977) (plurality opinion).

[246] Mahmoud v. Taylor, 145 S. Ct. 2332, 2342 (2025); Wisconsin v. Yoder, 406 U.S. 205, 230–31 (1972).

[247] Parham v. J.R., 442 U.S. 584, 588 & n.3, 604, 620–21 (1979); *see also* RESTATEMENT OF CHILDREN AND THE LAW § 2.30 (A.L.I., Tentative Draft No. 1, 2018) (evaluating parents' authority to make medical decisions for children).

[248] Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925); Meyer v. Nebraska, 262 U.S. 390, 401 (1923). *See generally* RESTATEMENT OF CHILD. & THE L. § 1.20 (A.L.I., Tentative Draft No. 4, 2022) (evaluating parental authority to make choices for their children's education).

[249] Troxel v. Granville, 530 U.S. 57, 65 (2000).

[250] *See* Peter Moysani II, Comment, *A Survey of State Guardianship Statutes: One Concept, Many Applications*, 18 J. AM. ACAD. MATRIM. LAW. 253, 254 (2002) (noting that guardianship affords parents "exclusive rights to care, custody, and control along with responsibility to support the child").

[251] *See supra* notes 104–188 and accompanying text.

[252] *See* Martin, *supra* note 4, at 475–96 (evaluating litigation decisions as components of constitutionally protected parental decision-making); *see also* Martin Guggenheim, *The (Not So) New Law of the Child*, 127 YALE L.J. F. 942, 944 (2018), https://yalelawjournal.org/pdf/Guggenheim_6ybfb818.pdf [perma.cc/WGA9-HCME] ("[W]e serve children best when we allow parents, above all other possible candidates, including state officials or judges, decision-making power for children when

decisions pose a risk of substantial harm to the child, courts must presume parents' choices serve children's interests in the litigation and respect them, even if courts believe a better decision could be made.[253]

B. Litigation Authority as Parenting Authority

Turning to parents' liberty interests as a shared touchstone would help unify procedural doctrine as it applies to children and parents and promote parents' and children's interests. In the ordinary parent-child case, where a parent enjoys the full extent of state-recognized decision-making authority and parents and children are aligned, courts would do better by children and parents to adopt an approach that assumes unity of family interests and defers to parents' general authority to make the decisions they believe best support their children. I call this approach adopting a familial framework.[254] A familial framework conceives of parental litigation authority as a unified familial right to vindicate a child's interest through the parent's actions, because the child cannot do so alone. It is both a parent's right to sue on the child's behalf and the right of the child for the parent to vindicate the child's interests.

Adopting a familial framework for the assessment of parental litigation authority will promote fairness, predictability, equity, and legitimacy. From a fairness perspective, this approach aligns parents' authority and duty in the courtroom with those we have imposed upon them outside it. We have made parents responsible for their children's welfare and offered little support from the state to promote their success.[255] Parents act as children's advocates and decision-makers in all aspects of life outside of courts. When exercised by fit parents, these roles serve children's interests because parents know their children best and are best situated to evaluate their needs and interests.[256] It is contrary to children's well-being to displace parents from these roles in courts. It is particularly egregious that courts presently do so while requiring parents to

---

children are denied the power to make decisions for themselves."); Martin, *supra* note 15 (coining the term counsel mandate and exploring its infringement upon parents' protected authority).

[253] *Troxel*, 530 U.S. at 68–73 (plurality opinion); Martin, *supra* note 4, at 487–96.

[254] Inspired by Martin Guggenheim's conception of familial rights, this framing conceives of parents and children as a cohesive family unit. *See* GUGGENHEIM, *supra* note 9, at 37 ("When parental rights are characterized as familial rights, children reciprocally share the rights of their parents."); *cf.* Parham v. J.R., 442 U.S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children.").

[255] *See generally* MAXINE EICHNER, THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA'S POLITICAL IDEALS (2010); MARTHA ALBERTSON FINEMAN, THE AUTONOMY MYTH: A THEORY OF DEPENDENCY (2004); CLARE HUNTINGTON, FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS (2014); Maxine Eichner, *The Privatized American Family*, 93 NOTRE DAME L. REV. 213, 247 (2017); Martin, *supra* note 15, at 644–45.

[256] *See* RESTATEMENT OF CHILDREN AND THE LAW, Intro. (A.L.I., Tentative Draft No. 6, 2024) ("[T]he goal of promoting child well-being is embraced by contemporary courts as a key rationale for upholding strong parental rights . . . .").

pay the steep financial costs incurred because of their displacement. Courts should, of course, be mindful that some parents may act against their children's interests sometimes, and where courts find evidence that parents are acting adversely to children's interests in litigation, courts should intervene. Yet, as cautioned by the Supreme Court itself:

> [t]hat some parents "may at times be acting against the interests of their children" . . . creates a basis for caution, but is hardly a reason to discard wholesale those pages of human experience that teach that parents generally do act in the child's best interests. The statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect children is repugnant to American tradition.[257]

Adopting a familial framework will also promote predictability and equity by ensuring that parents' litigation authority is evaluated under the same standards across the federal courts. Unifying this standard will also make litigation procedure more understandable for prospective litigants and make courts more equitably accessible.

Finally, adopting a familial framework will promote legitimacy, first, because applying a consistent standard avoids the impression that courts use procedural requirements as a mechanism to shortcut their desired result on the merits or to favor or disfavor certain litigants. Moreover, adopting a familial framework to assess child-related litigation better aligns with practical realities. The formalistic notion that parents acting as next friends are not the true drivers of the lawsuits they bring on behalf of their children but rather passive representatives is a legal fiction because, in practice, parents commence the action, advance their children's rights, and direct the litigation.[258] Litigation brought on behalf of young children exposes this formalist fallacy.[259] For example, in *Held*

---

[257] *Parham*, 442 U.S. at 602–03 (first quoting Bartley v. Kremens, 402 F. Supp. 1039, 1047–48 (E.D. Pa. 1975), *vacated and remanded*, 431 U.S. 119 (1977); and then citing Robert M. Rolfe & Anne U. MacClintock, *The Due Process Rights of Minors "Voluntarily Admitted" to Mental Institutions*, 4 J. PSYCHIATRY & L. 333, 348–49 (1976)).

[258] *See* Bradley & Young, *supra* note 150, at 63 (describing next friend representation as a legal fiction for these reasons in the context of habeas petitions); *see also* Martin, *supra* note 4, at 461–71 (discussing the roles that parents serving as next friends and guardians ad litem play in driving children's litigation); Moore, *supra* note 139, at 1846 ("[I]t is inconceivable that the lawyer would not look to the parent for guidance in most cases or that the parent would not reasonably expect the lawyer to do so.").

[259] This section discusses a prominent state case brought by youth plaintiffs, but children and youth routinely file federal actions as well. For example, some of the same plaintiffs from *Held v. State*, along with additional youth, recently filed a case in federal court challenging several of President Trump's Executive Orders as violating their substantive due process rights to life and liberty by expanding the pollution caused by fossil fuels. Complaint for Declaratory and Injunctive Relief at 1, Lighthiser v. Trump, No. CV-25-54-BU, 2025 WL 154968 (D. Mont. filed May 29, 2025) (No. CV-25-54-BU). These plaintiffs included children as young as seven, eleven, and twelve, as well as ado-

v. State, a class action celebrated as a vanguard of child-led advocacy,[260] sixteen young people challenged Montana's contributions to climate change as violative of their state constitutional rights to a clean and healthful environment.[261] The named plaintiffs in the cases included fifteen minor children, each of whose claims were brought on their behalf by a parent or guardian acting as next friend.[262] When the plaintiffs filed their complaint, they were between two and eighteen years of age; at the time of the court's merits ruling in the case, they were between five and twenty-two.[263] For the older children, the case provided an opportunity to take political action on an issue of deep importance to them and try to make the world a better place.[264] For the youngest among the children, the speech in the litigation was truly their parents', not their own.[265]

---

lescents aged between fifteen and seventeen. *Id.* at, 11, 17.; *see also, e.g.*, Juliana v. United States, 947 F.3d 1159, 1164–65 (9th Cir. 2020) (challenging federal government inaction on climate change through a class action lawsuit brought in the names of children and youth ages 8–19 (for the minors, by their parents or grandparent guardians)); Malik v. Arapahoe Cnty. Dep't of Soc. Servs., 191 F.3d 1306, 1316 n.6 (10th Cir. 1999) (involving constitutional claims asserted by a mother on behalf of her four-year-old child).

[260] *See, e.g.*, David Gelles, *In Montana, It's Youth vs. the State in a Landmark Climate Case*, N.Y. TIMES (Mar. 24, 2023), https://www.nytimes.com/2023/03/24/climate/montana-youth-climate-lawsuit.html [perma.cc/G89U-VWLM] (discussing the background of the case and the young activists); *see also 2025 Media Coverage*, OUR CHILDREN'S TRUST, https://www.ourchildrenstrust.org/media-coverage [perma.cc/34ST-37MV] (collecting articles on the case).

[261] Held v. State, No. CDV-2020-307, 2023 Mont. Dist. LEXIS 2, at *1 (Aug. 14, 2023), *aff'd*, 560 P.3d 1235 (Mont. 2024). Two plaintiffs (Lander Busse and Badge Busse) were plaintiffs in another case, filed by their father on their behalf, nine years prior to the filing of the current complaint, when they were approximately three and six years old. Complaint for Declaratory and Injunctive Relief, ¶ 21, *Held*, 2023 Mont. Dist. LEXIS 2 (No. CDV-2020-307); Barhaugh v. State, 264 P.3d 518 (Mont. 2011) (unpublished table decision).

[262] Complaint for Declaratory and Injunctive Relief, ¶ 1, *Held*, 2023 Mont. Dist. LEXIS 2 (No. CDV-2020-307). Media coverage of the trial provided additional information about the youth plaintiffs and their guardians. *See, e.g.*, Blair Miller, *'It's Affecting All of Them': Montana Climate Scientists Say Warming Will Worsen if Nothing Changes*, DAILY MONTANAN (June 13, 2023), https://dailymontanan.com/2023/06/13/its-affecting-all-of-them-montana-climate-scientists-say-warming-will-worsen-if-nothing-changes/ [perma.cc/62DH-KCGM] (discussing the arguments and the youth of many of the activists).

[263] *Supra*, note 262, ¶ 2, *Held*, 2023 Mont. Dist. LEXIS 2 (No. CDV-2020-307).

[264] *See* Micah Drew, *For the Busse Brothers, Climate Change Is a Reality—and a Violation of Their Constitutional Rights*, FLATHEAD BEACON (June 4, 2023), https://montanafreepress.org/2023/06/04/for-busse-brothers-climate-change-violation-of-constitutional-rights/ [perma.cc/2FH6-GMMN] (discussing the Busse brothers decision to join the *Held* case as theirs).

[265] Indeed, two of the child plaintiffs testified through their father at trial. Micah Drew, *Indigenous Experiences Headline Third Day of* Held v. Montana *Trial*, MONTANA FREE PRESS (June 15, 2023), https://montanafreepress.org/2023/06/15/indigenous-experiences-headline-third-day-of-held-v-montana-trial/ [perma.cc/Y8AQ-2VQH] (describing Shane Doyle's testimony on behalf of his daughters Lillian and Ruby Doyle).

For some judges, state actors, and commentators, this reality is cause for suspicion.[266] Yet, in light of the constitutional authority and legal responsibility we vest in parents to raise and care for their children, this is as it should be. Litigation not only provides a means for parents to secure children monetary and equitable remedies, but also to educate children about democratic participation, model standing up for one's values, and communicate parents' values to both children and the courts.[267] Even young children learn from these experiences.[268] These latter ends cannot be advanced in ways that promote pluralism and enable parents to share their own values with children and courts if state-appointed representatives advance children's claims in lieu of parents.[269] Conceiving of litigation as an exercise of parenting authority supports parents in pursuing the remedies and communicating the values that parents understand to serve children's interests.

Several extant court opinions offer models for how courts can apply a familial framework to clarify the procedural doctrines examined in this Article and facilitate parents' and children's access to justice. First, when a parent files a case relating to a child, courts must discern whether the parent, the child, or both has standing. Courts should carefully parse whether statutes permitting parents to litigate particular causes of action grant parents separate standing to do so (in addition to that vested in the child) or simply authorize parents to pursue children's claims as representatives.[270] Where ambiguous, a familial framework supports reading such provisions to extend parents separate stand-

---

[266] In the context of the *Held* case, the state cast the organization behind the case (and presumably, the children's parents) as "exploiting well-intentioned kids." Drew, *supra* note 264. But child plaintiffs in the case reject that framing. *Id.*

[267] *See* Martin, *supra* note 4, at 483–84 (analyzing the importance of involving children in litigation when their own interests are at stake, and the role it plays in forming their voice); Martin, *supra* note 21, at 626–29.

[268] Drew, *supra* note 264 (describing a father's then six-year-old son's involvement in earlier litigation, and the boys' support for their parents having acted in their names while young given the impact environmental degradation had on their lives).

[269] *See* Pierce v. Soc'y of Sisters, 268 U.S. 510, 535 (1925) ("The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."); GUGGENHEIM, *supra* note 9, at 27 ("The legal system's insistence on private ordering of familial life ultimately guards against state control of its citizens. Accordingly, government must allow parents wide latitude to raise children as the parents wish to raise them."); Martin, *supra* note 4, at 483–84 (analyzing the importance of involving children in litigation when their own interests are at stake, and the role it plays in forming their voice).

[270] *See, e.g.*, Winkelman *ex rel.* Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 535 (2007) (holding that IDEA grants parental rights to prosecute claims on their own behalf); Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 22–25 (2004) (Rehnquist, J., concurring) (discussing the relationship between a father and daughter as the source of the father's standing); Fleischfresser v. Dirs. of Sch. Dist. 200, 15 F.3d 680, 683 (7th Cir. 1994) (holding that parents may assert claims if their rights to direct the religion of their children is infringed upon); Raskin *ex rel.* J.D. v. Dall. Indep. Sch. Dist., 69 F.4th 280, 290–92 (5th Cir. 2023) (Oldham, J., dissenting in part and concurring in the judgment) (critiquing district court finding that parent lacked standing).

ing to bring the relevant claim. By conferring parental authority, legislatures can be understood to recognize that the claim addresses harms that not only impact children but also parents' protected interests.[271] This reading is especially apt when parents have a general right to litigate their children's claims under state law, as the general right obviates the need to reiterate their authority to bring specific causes of action. Moreover, where it is unclear whether a claim is asserted on a parent's own behalf or for a child, courts can examine the remedies sought in the complaint to determine whom they would benefit.[272]

Next, when parents have standing to assert a claim and the full scope of decision-making authority for a child, a familial framework supports a presumption that parents may exercise third-party standing to raise children's interests in support of parents' own claims.[273] In these circumstances, absent evidence of conflict, parents and children will typically easily meet the requirements for third-party standing: they share particularly close relationships, parents are likely to be fully as effective (if not more effective) in advancing the right at issue as the child would be, and the child is hindered by minority in asserting their own interests.[274] Parent service as a child's litigation representative merits a similar approach. When a child has standing and children and parents are aligned, a familial framework would permit parents with full decision-making authority to serve as children's litigation representatives by default, without the need for appointment or further scrutiny of their fitness to serve.[275] Likewise, a familial framework would prioritize parents over others seeking to serve as next friends

---

[271] *See, e.g.*, *Winkelman*, 550 U.S. at 535 (holding that the state explicitly bestowed rights to parents to protect their own interests under IDEA); Lujan *ex rel.* Lujan v. Casados-Lujan, 87 P.3d 1067, 1070 (N.M. Ct. App. 2004) (holding that a domestic violence statute created a personal cause of action for parents, individually to bring claims to protect their children, as well as to bring claims on behalf of their children).

[272] *See, e.g.*, J.T. v. Antioch Unified Sch. Dist., No. 18-cv-02992, 2018 WL 4334603, at *2 (N.D. Cal. Sep. 11, 2018) (parsing the remedies sought for the child and the parent as a result of a school's alleged failure to meet a child's educational needs).

[273] *See, e.g.*, Marin-Garcia v. Holder, 647 F.3d 666, 670 (7th Cir. 2011) (granting father third-party standing to raise minor daughters' interests, in part, because "he is by definition closely related to his daughters").

[274] *See supra* notes 104–188 and accompanying text.

[275] *See, e.g.*, Burke v. Smith, 252 F.3d 1260, 1264 (11th Cir. 2001) (where a parent brings a minor's claim and has no conflict of interests "a district court need not even consider the question whether a guardian ad litem should be appointed"); Gonzalez *ex rel.* Gonzalez v. Reno, 86 F. Supp. 2d 1167, 1180–81 (S.D. Fla.)("[W]hen a parent brings an action on behalf of a child, and it is evident that the interests of each are the same, no need exists for someone other than the parent to represent the child's interests under Rule 17(c)."), *aff'd sub nom.* Gonzalez v. Reno, 212 F.3d 1338 (11th Cir. 2000); Santos Reynaga v. United States, No. 24-cv-01334, 2024 WL 4682452, at *1 (E.D. Cal. Nov. 5, 2024) (approving a parental petition to self-appoint as guardian ad litem in the absence of finding an adverse interest).

or guardians ad litem for their children.[276] Indeed, it would encourage close judicial scrutiny of other parties' efforts to raise a child's interests via third-party standing or bring a claim on a child's behalf when a parent has not done so.[277]

Presuming that fit parents act in children's interests does not mean that courts would abdicate their responsibility to protect child litigants.[278] Courts adopting this approach would more closely evaluate both parents' assertions of third-party standing to raise children's rights and parents' service as children's litigation representatives when circumstances suggest that scrutiny is warranted. These would include when law or court order limits parents' decision-making authority;[279] when a parent and child disagree about pursuing the litigation;[280] when a parent fails to participate in the litigation;[281] or when a parent has an actual conflict of interest with the child.[282] Where parents or children

---

[276] T.W. *ex rel.* Enk v. Brophy, 124 F.3d 893, 897 (7th Cir. 1997); *see* Developmental Disabilities Advoc. Ctr., Inc. v. Melton, 689 F.2d 281, 285–86 (1st Cir. 1982) (holding that a nonparent next friend could not sue for a child whose mother objected to the lawsuit and would be a proper representative); Jeffery v. O'Donnell, 702 F. Supp. 513, 515–16 (M.D. Pa. 1987) (finding that parents were entitled to represent their children in a homeschooling case because of their "substantial right" to choose their children's education).

[277] Bank of the U.S. v. Ritchie, 33 U.S. (8 Pet.) 128, 144 (1834) ("It is not error, but it is calculated to awaken attention that, in this case, though the infants, as the record shows, had parents living; a person not appearing from his name, or shown on the record to be connected with them, was appointed their guardian ad litem."); Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs, 641 F.3d 197, 208–09 (6th Cir. 2011) (holding that teachers were prohibited from asserting third-party standing to raise harm to students because no hindrance prevented parents and students from asserting their own interests); Chrissy F. *ex rel.* Medley v. Miss. Dep't of Pub. Welfare, 883 F.2d 25, 27 (5th Cir. 1989) (remanding for evaluation of whether non-parent who initiated child's case qualifies to serve as next friend or guardian ad litem where parent had conflict of interest). Children's interests also are served where non-parents have been qualified as next friends and served without parent objection. *See, e.g.*, Jonathan R. v. Justice, 688 F. Supp. 3d 355, 362–63 (S.D. W. Va. 2023) (collecting cases); S.M. *ex rel.* King v. City of New York, No. 20-cv-5164, 2023 WL 2691454, at *5 (S.D.N.Y. Mar. 29, 2023) (same).

[278] *See* Adelman *ex rel.* Adelman v. Graves, 747 F.2d 986, 989 (5th Cir. 1984) (holding that a court should appoint next friend or guardian ad litem where legal guardian's interests conflict with litigant's).

[279] *See, e.g.*, Mulready v. Mulready, Civ. No. 06CV00934, 2007 WL 1791120, at *1 (D. Conn. June 16, 2007) (finding that a parent with joint legal custody lacked authority to unilaterally initiate federal litigation on children's behalf).

[280] Scrutiny in this circumstance enables courts to assess whether a child has an independent right at stake that warrants overriding parental decision-making. *See, e.g.*, Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11 (2004) (declining to hear parents' challenge to school pledge of allegiance policy where custodial parent represented that she and child opposed the litigation); Polovchak v. Meese, 774 F.2d 731, 732–33 (7th Cir. 1985) (holding that where a minor filed an application for asylum through an attorney but without consultation with his parents, the district court must provide the parents the opportunity to participate and assert their own interests).

[281] *Adelman*, 747 F.2d at 989 ("[A]ccess to the courts by aggrieved persons should not be unduly limited, particularly . . . where an incompetent person . . . alleges a failure to act on the part of his legal guardian.").

[282] *See Chrissy F.*, 883 F.2d at 27 ("[W]hen the complaint shows a conflict of interest between a general guardian and an infant, the court should, *on its own motion*, determine whether the infant's

assert differing views about the outcome that best serves a child's interests, or about whether litigation serves those interests at all, the court should hear from all persons with relevant decision-making authority and, where children seek to be heard, from the children themselves.[283] Conflicts warranting disqualification might include, for example, opposing legal interests between parents and children—such as a parent's liberty interests and a child's privacy interests[284]—or competing claims for substantial damage awards.[285] Importantly, a familial framework would not disqualify parents merely because a conflict of interest might arise, because they assert their own claims in the litigation, or because they finance their children's legal representation.[286] Absent an actual conflict with a child's legal or financial interests or evidence that a parent has failed to act in the child's interests in the case, courts would give parents the benefit of the doubt and presume that parents best serve children's interests.[287]

Parents serving as children's litigation representatives (whether as guardians, parties permitted by statute, next friends, or guardians ad litem) should have full authority to make all required litigation-related decisions for their

---

interests are adequately protected by the general guardian's representation . . . . [C]onsider[ing] that access to the courts by aggrieved persons should not be unduly limited . . . ." (citations omitted)); Hoffert v. Gen. Motors Corp., 656 F.2d 161, 164 (5th Cir. 1981) ("[C]ourts have consistently recognized that they have inherent power to appoint a guardian ad litem when it appears that the minor's general representative has interests which may conflict with those of the person he is supposed to represent.").

[283] *See* Smith v. Org. of Foster Fams. for Equal. & Reform, 431 U.S. 816, 841 n.44 (1977) (concluding that children's counsel as well as biological parents, foster parents, and the state should all be heard on what they believe would serve children's interests in case challenging a state child welfare policy where all adult/institutional parties had "sufficient attributes of guardianship"); *see also* Martin, *supra* note 9, at 875–76 (providing examples of cases where courts heard from parents and children on the need for litigation).

[284] *See* M.S. v. Wermers, 557 F.2d 170, 176 (8th Cir. 1977) ("Parents should not be appointed to act as guardians ad litem in litigation challenging a grant of parental veto power."); United States v. E.I. du Pont de Nemours & Co., 13 F.R.D. 98, 105–06 (N.D. Ill. 1952) (disqualifying unspecified "general guardian" defendant relatives from guardian ad litem service for minor co-defendants because of their individual need to vigorously defend against charged conspiracy to violate antitrust laws); *see also, e.g.*, *Polovchak*, 774 F.2d at 732 (challenging a government grant of asylum to noncitizen parents' minor son without notice and an opportunity for parents to be heard).

[285] *See* J.H. v. Williamson County, No. 14-2356, 2016 WL 6071892, at *2–3 (M.D. Tenn. Oct. 17, 2016) (replacing mother as child's GAL because mother's interests in her own damages claims may impede the resolution or settlement of the child's); Burns v. United States, No. 12-cv-2957, 2015 WL 12564299, at *6 (S.D. Cal. May 13, 2015) (directing parties to justify parents' continued service as guardians ad litem where they and child seek damage awards in settlement agreement).

[286] *See, e.g.*, Burke v. Smith, 252 F.3d 1260, 1264 (11th Cir. 2001) ("Generally, when a minor is represented by a parent who is a party to the lawsuit and who has the same interests as the child there is no inherent conflict of interest."); J.T. v. Antioch Unified Sch. Dist., No. 18-cv-02992, 2018 WL 4334603, at *2–3 (N.D. Cal. Sep. 11, 2018) (holding that a parent's pursuit of own claims along with child's does not alone create a conflict of interests).

[287] *But see* Horacek v. Exon, 357 F. Supp. 71, 74 (D. Neb. 1973) (appointing a guardian ad litem to represent children's interests alongside parent next friends because of court's concern that parents' desires regarding children's treatment "would not necessarily be in the best interests of the children").

children that children would make for themselves, including whether to retain counsel or proceed pro se. Courts should not need to hunt for signs that children's and parents' interests are especially intertwined or find that parents "own" certain of their children's claims to grant parents this authority. Instead, this authority should stem from the recognition that parents' and children's interests blend generally, not just in the context of certain claims. That relationship makes parents well-suited to make all litigation decisions for their children and counsels against categorically removing particular litigation decisions from parental discretion simply because a court believes it could make a better choice. It also preserves parents' and children's ability to seek redress when children suffer legal harm.[288]

Together, the framework underlying these opinions demonstrates a respect for the parent-child family unit, a recognition of the overlapping, collective familial interests that parents and children share, and a deference to parental decision-making in pursuit of those ends. Courts should start from the presumption that parents are acting as they think best for their children and defer to fit parents' decisions absent evidence of a true conflict of interests.

C. Protecting Child Litigants' Interests

Adopting a familial framework does not mean disregarding children's independent rights, viewpoints, and values, or deprioritizing their interests. Rather, a familial framework starts from the presumption that parents, rather than courts, are generally best situated to decide what is best for their children in litigation.[289] Importantly, this presumption should give way in several circumstances, and even when it applies, courts should consider the views of children themselves when they seek to convey them.[290]

First, where parents have been deprived of legal decision-making authority or where parents and children have an actual substantive conflict of interests (for example where a child asserts a protected right that a parent opposes) par-

---

[288] *See* Raskin *ex rel.* J.D. v. Dall. Indep. Sch. Dist., 69 F.4th 280, 296–97 (5th Cir. 2023) (Oldham, J., dissenting in part and concurring in the judgment) (discussing that States may not overrule parental decisions simply because of a lack of trust in that parent, and that judicial restraint is necessary before intervening in parental decision-making authority); Seibels, Bruce & Co. v. Nicke, 168 F.R.D. 542, 544 (M.D.N.C. 1996) (reasoning that "[t]here may well be solid reasons why the parent does not file an answer on the minor's behalf," and "a federal court should, as a matter of sound policy, be cautious in attempting to step between the parent and [the] child"); Hunt v. Yeatman, 264 F. Supp. 490, 492 (E.D. Pa. 1967) ("We are not persuaded that a Federal Court has the power to enter upon an exploration of the domestic-relations aspects of this matter, the parental policy decisions as to whether, and where, the child should sue.").

[289] *See See* RESTATEMENT OF CHILDREN AND THE LAW, pt. 1, ch.1 Intro. Note (A.L.I., Tentative Draft No. 1, 2018) (tracking the historical deference granted to parental rights and its modern policy rationale arising from respect for families and restriction of state intervention into personal matters).

[290] *See* Martin, *supra* note 9, at 873–81 (arguing that courts should permit adolescents 15 and older to lead their own cases if they wish to do so with appropriate support and input from parents).

ents should neither be permitted to assert third-party standing to raise children's rights in support of parents' claims nor serve as children's litigation representatives.[291] Nonetheless, even where a parent-child conflict is present, courts should elicit and consider parents' views of what serves children's interests,[292] except where doing so would harm the child or defeat the child's exercise of the relevant right.[293] Eliciting parents' views along with those of other adults appointed to represent children's interests under such circumstances helps courts counterbalance children's inability to speak for themselves and the self-interests motivating those who speak for them.[294]

Second, courts should elicit and consider the perspectives of children who wish to participate in their cases, giving particular deference and weight to the views of older adolescents. Extending children opportunities to provide input and even lead their cases is consistent with developmental research, procedural doctrine, constitutional rights, and the decision-making rights they enjoy under many state laws and legal ethics codes.[295] Developmental research suggests that minors aged fifteen and older have the cognitive ability to make sound decisions in their cases.[296] Procedurally, Federal Rule of Civil Procedure 17(c) permits courts to be flexible and creative in executing their responsibility to protect child litigants' interests, including by permitting older minors to represent their own interests in appropriate cases.[297] Similarly, at least one local federal district court rule and a number of states grant minors fourteen and older the right to select their litigation representatives.[298] Federal courts likewise

---

[291] *See, e.g.*, *supra* note 284 (analyzing instances in which substantive conflicts of interest have disqualified parents from asserting claims on their children's behalf).

[292] *See* Smith v. Org. of Foster Fams. for Equal. & Reform, 431 U.S. 816, 841 n.44 (1977) (noting the importance of foster parents, birth parents, children's counsel, and the children themselves in evaluating litigation interests).

[293] *See* Aid for Women v. Foulston, 441 F.3d 1101, 1109–14 (10th Cir. 2006) (holding that a doctor can raise minor patient rights in challenging state law mandating physician reporting of minor patient sexual activity).

[294] *Smith*, 431 U.S. at 841 n.44 (recognizing counsel appointed to represent children as presenting their own view of what served the child's interests rather than as authoritatively conveying the child's own view).

[295] *See* Martin, *supra* note 9, at 873–81 (analyzing the benefits of children's participation in litigation brought to advance their interests).

[296] *See id.* at 852–56 (evaluating child developmental research and the importance of encouraging further childhood development by granting decision-making rights if "that child is prepared to self-initiate the exercise of the right").

[297] M.S. v. Wermers, 557 F.2d 170, 176 (8th Cir. 1977) (holding that where child was challenging parental decision-making authority in regard to her ability to receive a contraceptive prescription, the court may appoint a guardian ad litem, or "to appoint no guardian at all if it should choose to reconsider its finding that a guardian ad litem is necessary"); Roberts v. Ohio Cas. Ins. Co., 256 F.2d 35, 39 (5th Cir. 1958) (noting that Rule 17(c) does not mandate an appointment if the minors' interests are otherwise protected in lieu of an appointment).

[298] *See* Buckholz v. Leveille, 194 N.W.2d 427, 429 (Mich. Ct. App. 1971) (permitting minors over fourteen to sue over parental objection); *see also* CAL. CIV. PROC. CODE § 373(a) (West 2025);

can seek input from adolescent litigants in appointing alternative next friends where courts have concerns about parent conflicts of interests or lack of legal authority to serve. Courts' discretion to permit older adolescents to lead litigation that their parents oppose (or about which they decline to inform their parents to protect the interests at stake) effectuates children's independent rights to access the courts.[299] Eliciting the views of adolescent litigants also aligns with state policies giving children opportunities to make important decisions for themselves as they approach adulthood,[300] and ethical rules and best practices, which dictate that as children's cognitive abilities mature, attorneys must inform their representation according to children's expressed interests and convey children's perspectives to courts.[301]

Finally, while presuming that parents will act in their children's interests, courts should remain vigilant. Courts do this already by mandating judicial review of settlement agreements proposed by next friends.[302] Additionally, courts should work to resolve procedural issues rather than simply dismissing children's cases.[303] They can do so, for example, by appointing counsel to represent indigent parents asserting children's claims or for children who approach the courts on their own.[304]

MO. REV. STAT. § 507.130 (2025); MONT. CODE ANN. § 25-5-301(2) (2025); NEV. REV. STAT. § 12.050 (2025); N.D. CENT. CODE § 28-03-01 (2025); WASH. REV. CODE § 4.08.050(2) (2025); ALA. R. CIV. P. 17(d); C.D. CAL. R. 17-1.1; MICH. CT. R. 2.201(E)(2)(i); MINN. R. CIV. P. 17.02(b); OR. R. CIV. P. 27B(2)(a); UTAH R. CIV. P. 17(c)(1); S.C. R. CIV. P. 17(d)(3); Sara Jeruss, *Empty Promises? How State Procedural Rules Block LGBT Minors from Vindicating Their Substantive Rights*, 43 U.S.F. L. REV. 853, 905 tbl.1, 910 tbl.2 (2009) (tracking state procedural rules relating to appointment of a guardian ad litem on behalf of minor children including if minors over fourteen are distinguished).

[299] *See Wermers*, 557 F.2d at 174–76 (noting the "chilling effect" that required parental involvement had on the plaintiff's decision to assert her own rights and the discretionary ability for the court to refuse to appoint a guardian ad litem if it finds one not necessary); Martin, *supra* note 9, at 860–65 ("[C]apacity rules should be constructed to promote children's participation in ways that protect their interests, cultivate their political maturity, and mitigate any risks of harm created by extensions of political power to children.").

[300] Decision-making authority granted to minors under state law includes certain medical treatments, entering certain contracts, marriage, decision-making for their own children, and pursuing civil court protections from intimate partner and sexual violence and stalking. Martin, *supra* note 9, at 847–49. *See generally* TAHIRIH JUST. CTR., STATUTORY TEXT COMPILATION: MINIMUM MARRIAGE AGE AND EXCEPTIONS ACROSS THE UNITED STATES (2025); AM. BAR ASS'N COMM'N ON DOMESTIC AND SEXUAL VIOLENCE, DOMESTIC VIOLENCE CIVIL PROTECTIVE ORDER STATUTES IN 2024, https://www.americanbar.org/groups/family_law/resources/family-law-50-states/domestic-violence-civil-protective-order-statuses/ [perma.cc/2KPV-XQH4].

[301] MODEL RULES OF PRO. CONDUCT r. 1.14 (A.B.A. 2024); *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1301, 1301 (1996).

[302] *See, e.g.*, S.D. GA. L.R. 17.1; D. IDAHO CIV. R. 17.1; D.N.H. L.R. 17.1.

[303] *See* Gardner *ex rel.* Gardner v. Parson, 874 F.2d 131, 139–40 (3d Cir. 1989) (holding that Rule 17(c) was "not intended to be a vehicle for dismissing claims").

[304] *See, e.g.*, Crozier for A.C. v. Westside Cmty. Sch. Dist., 973 F.3d 882, 891 (8th Cir. 2020) (appointing counsel for minor in case brought by parent pro se); Martin v. Piserchia, No. 23-cv-21669, 2024 WL 3812071, at *2 (D.N.J. Aug. 14, 2024) (same); Sechrist *ex rel.* V.S. v. Soc. Sec. Admin.,

CONCLUSION

Parental authority over children's litigation is a foundational yet underdeveloped area of law that profoundly shapes children's access to justice. Current legal frameworks for evaluating this parental authority are dominated by the judicially developed counsel mandate, overlooked constitutional rights, and fragmented procedural doctrine. Together, these features often obstruct rather than facilitate parents' ability to advocate for their children in court. The result is a system that not only excludes children from legal remedies but also undermines the constitutionally protected role of parents in making decisions for their children.

The Fifth Circuit's decision in *Raskin* marks a pivotal moment in this discourse, offering a framework that begins to recognize the unique legal and constitutional status of parents in litigation to enforce their children's rights. Yet, the promise of *Raskin* remains largely unrealized in practice, in part because of the ambiguity and inconsistency that pervade federal and state law.

As a remedy, courts should adopt the familial framework proposed here that centers parents' constitutionally protected decision-making authority and presumes alignment between parents' and children's interests. Such an approach would both bring coherence and fairness to procedural doctrine and affirm the vital role that parents play in safeguarding their children's rights. By respecting parents as legal actors and decision-makers, courts can better serve children's interests and ensure their access to justice.

No. 20-cv-175, 2020 WL 8085099, at *1 (E.D.N.C. Nov. 10, 2020) (holding that parent must demonstrate that they meet the competency standard for pro se representation of minor in SSI case or the court will appoint counsel), *report and recommendation adopted*, No. 4:20-cv-175, 2021 WL 92967 (E.D.N.C. Jan. 11, 2021).