No. 25-77

In the
Supreme Court of the United States

STEPHEN FOOTE, INDIVIDUALLY AND AS GUARDIAN AND NEXT FRIEND OF B. F. AND G. F., MINORS, ET AL.,
Petitioners,

v.

LUDLOW SCHOOL COMMITTEE, ET AL.,
Respondents.

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

BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM; ALASKA FAMILY COUNCIL; AMERICAN ASSOCIATION OF SENIOR CITIZENS; AMERICAN ENCORE; AMERICAN VALUES; *et al.* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether a public school violates parents' constitutional rights when, without parental knowledge or consent, the school encourages a student to transition to a new "gender" or participates in that process.

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STATEMENT OF INTEREST OF AMICI CURIAE

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values including the freedom of parents to raise their children according to their own values.[1] AAF "will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,"[2] and believes American prosperity depends on ordered liberty and self-government.[3] AAF believes that the Constitution's protections of parental rights have been established beyond debate as an enduring American tradition. AAF files this brief on behalf of its 3,346 members in the First Circuit including 1,732 members in the state of Massachusetts.

Amici Alaska Family Council; American Association of Senior Citizens; American Encore; American Values; Americans For Fair Treatment; America's Women; Association of Mature American Citizens Action; Shawnna Bolick, Arizona State

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[1] All parties received timely notice of the filing of this brief. No counsel for a party authored this brief in whole or in part. No person other than *Amicus Curiae* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Edwin J. Feulner, Jr., *Conservatives Stalk the House: The Story of the Republican Study Committee*, 212 (Green Hill Publishers, Inc. 1983).

[3] Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at https://advancingamericanfreedom.com/aaff-independence-index/.

Senator, District 2; Centennial Institute at Colorado Christian University; Center for Urban Renewal and Education (CURE); Christian Law Association; Christian Medical & Dental Associations; Coalition for Jewish Values; Defense of Freedom Institute for Policy Studies, Inc.; Eagle Forum; Eagle Forum of Alabama; Family Council in Arkansas; Family Institute of Connecticut Action; Frontline Policy Council; Charlie Gerow; Colin Hanna, President, Let Freedom Ring; International Conference of Evangelical Chaplain Endorsers; JCCWatch.org; Tim Jones, Former Speaker, Missouri House, Chairman, Missouri Center-Right Coalition; Men and Women for a Representative Democracy in America, Inc.; Moms for Liberty; National Apostolic Christian Leadership Conference; National Association of Parents, Inc. dba ParentsUSA; National Center for Public Policy Research; National Religious Broadcasters; New Jersey Family Policy Center; New York State Conservative Party; North Carolina Values Coalition; Orthodox Jewish Chamber Of Commerce; Palmetto Promise Institute; Power2Parent Union; Religious Freedom Institute; Rio Grande Foundation; 60 Plus Association; Southeastern Legal Foundation; Paul Stam, Former Speaker Pro Tem, NC House of Representatives; Stand for Georgia Values Action; Students for Life of America; Delegate Kathy Szeliga, District 7A, Vice Chair of the Maryland Freedom Caucus; The Justice Foundation; Tradition, Family, Property, Inc.; WallBuilders; Women for Democracy in America, Inc.; Yankee Institute; and Young America's Foundation believe that the fundamental right of parents to direct the upbringing of their children is

essential to liberty and is deeply rooted in American tradition and practice.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Fourteenth Amendment protects certain rights that, although not enumerated in the Constitution, are "'deeply rooted in this Nation's history and tradition' . . . and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (citations omitted) (quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934); *Palko v. Connecticut*, 302 U.S. 319, 325-26 (1937)). Parental rights are both deeply rooted in American history and tradition and are essential to liberty.

No parent should have their children indoctrinated in school. The Supreme Court recently held that the religious rights of parents are violated when schools condition public education on a parents' "willingness to surrender" their religious views. *Mahmoud v. Taylor*, No. 24-297, slip op. at 32 (June 27, 2025). The fundamental right to raise one's children consistent with one's beliefs belongs to all parents, as the court should find in this case.

When schools seek to socially transition a child without affirmative consent from the child's parents, they violate those parents' rights. Compounding the injustice, in many instances, including here, the school actively seeks to conceal from parents that their rights are being violated. As this Court has explained, "The fundamental theory of liberty upon which all

governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). In practice, parents who cannot afford to send their children to private schools or to homeschool them are obliged to send them to public schools. The fundamental rights of such parents are not "shed . . . at the schoolhouse gate." *Mahmoud*, No. 24-297, slip op. at 16-17 (citing *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506-07 (1969)).

Here, in 2020, B.F., then an eleven-year-old in the sixth grade at Baird Middle School in Ludlow, Massachusetts, "began questioning whether [she][4] 'might be attracted to girls' and whether [she] 'had gender identity issues," after "receiving 'unsolicited LGBTQ-themed video suggestions' on [her] school-issued computer" via her "school Google account." *Foote v. Ludlow*, No. 23-1069, slip op. at 5-6 (1st Cir. Feb. 18, 2025). After a teacher told Stephen Foote and Marissa Silvestri, B.F.'s parents, that she was experiencing depression and anxiety, Ms. Silvestri emailed the school informing them that she and Mr. Foote would get B.F. professional help and asking that school officials refrain from further private discussion of psychological issues with B.F. *Id.* at 7. The school ignored that request and proceeded to use a different name and pronouns for B.F., all while proactively concealing these efforts from her parents. *Id.* at 7-8.

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[4] The First Circuit panel opinion uses the pronouns "they" and "them" to refer to Petitioners' daughter. This brief uses nonpoliticized pronouns consistent with B.F.'s sex.

The school's efforts included the school counselor "correspond[ing] with [B.F.] via text messages and online chat about [her] gender identity and encourage[ing] [B.F.] to meet with her weekly to discuss any gender-related concerns." *Id*. at 12.

For decades, this Court has recognized a fundamental parental right to raise one's children free from state coercion. That right "has its source, and its contours are ordinarily to be sought not in state law, but in intrinsic human rights, as they have been understood in 'this Nation's history and tradition." *Smith v. Organization of Foster Families*, 431 U.S. 816, 845 (1977) (footnote omitted) (quoting *Moore v. East Cleveland*, 451 U.S. 494, 503 (1977)). That right pre-exists government and has been recognized since before the adoption of the Constitution.

Mr. Foote and Ms. Silvestri's experience in this case is far from unique.[5] Schools around the

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[5] Such cases have arisen in the First Circuit in this case and in *Lavigne v. Great Salt Bay Comty. Sch.*, No. 2:23-cv-00158-JDL, 2024 U.S. LEXIS 80828 (D. Maine 2024); the Second Circuit, *Vitsaxaki v. Skaneateles Cent. Sch. Dist.*, case no. 5:24-CV-00155 (Jan. 31, 2024), the Third Circuit, *Doe v. Del. Valley Reg'l High Sch. Bd. of Educ.*, No. 24-00107, 2024 U.S. Dist. LEXIS 29292 (D.N.J. 2024); *Platkin v. Marlboro Twp. Bd. of Educ.*, case no. MON-C-000078-23 (Aug. 14, 2023); *Jane Doe v. Pine-Richland Sch. Dist.*, No. 2:24-cv-51, 2024 U.S. Dist. LEXIS 83241 (W.D. Pa. 2024), the Fourth Circuit, Complaint, *Figliola v. Harrisonburg City Pub. Sch. Bd.*, case no. CL22-1304 (June 1, 2022); Complaint, *Thomas v. Loudoun Cnty. Pub. Schs*, case no. 22003556-00 (June 29, 2022), the Sixth Circuit, *Mead v. Rockford Pub. Sch. Dist.*, 1:2023cv01313 (Dec. 18, 2023); *Kaltenbach v. Hilliard City Sch.*, case no. 2:23-CV-00187 (Jan. 16, 2023), the Seventh Circuit, *Vesely v. Illinois Sch. Dist. 45*, No. 22 CV 2035,

country in recent years have sought to replace parents' judgment about what is best for their children. This Court should grant certiorari in this case and affirm the right of all parents to raise their children according to their own values.

ARGUMENT

I. Parental Rights Are Deeply Rooted in Our Nation's History and Tradition.

This Court has explained that "[o]ur Nation's history, legal traditions, and practices . . . provide the crucial 'guideposts for responsible [judicial] decision-making.'" *Glucksberg*, 521 U.S. at 721. Parental rights have been recognized throughout American history and even earlier as among the most fundamental of rights.

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669 F. Supp. 3d 706 (No. D. Ill., E. Div. 2023); *McCord v. South Madison Cmty. Sch. Corp.*, case no. 1:23-cv-866 (May 18, 2023); *T.F. v. Kettle Moraine Sch. Dist.*, No. 2021CV1650, LEXIS (Wis. Cir. Ct. June 1, 2022); *Doe v. Madison Metro. Sch. Dist.*, case no. 20-CV-454 (Feb. 18, 2020), the Eighth Circuit, *GLBT Youth in Iowa Sch. Task Force v. Reynolds*, No. 4:23-cv-00474, 4:23-cv-00478, 2023 U.S. Dist. LEXIS 231840 ¶ 1, 3 (So. D. Iowa 2023); *Parents Defending Educ. v. Lin Mar Cmty. Sch. Dist.*, 83 F.4th 658 (8th Cir. 2023), the Ninth Circuit, *Regino v. Staley*, No. 2:23-cv-00032-JAM-DMC, 2023 U.S. Dist. LEXIS 118967 (E.D. Cal. 2023), the Tenth Circuit, *Wiley v. Sweetwater Cnty. Sch. Dist. No. 1. Bd. of Trs.*, No. 23-CV-0069-SWS, 2023 U.S. Dist. LEXIS 235296, 680 F. Supp. 3d 1250 (D. Wyoming 2023), and the Eleventh Circuit, *Littlejohn v. Sch. Bd. of Leon Cnty.*, No. 4:21cv415-MW/MJF, 647 F. Supp. 3d 1271 (No. D. Fla. 2022).

A. Parental rights in education are a part of the Western tradition.

Parental authority has long been recognized as the first form of government[6] because it is "the most Sacred and Ancient Kind of Authority."[7] This part of Western Tradition runs stretches back to antiquity, when Aristotle and Cicero recognized parental authority as the foundation for a free and flourishing state.[8] More recently, philosophers, politicians, and judges who were influential during the Founding era recognized the fundamentality of the parent-child relationship to freedom.

Parental rights are, according to Lord Kames, the leading British jurist on the eve of the American Revolution who was sympathetic to American

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[6] John Locke, *Two Treatises on Government*,252-53 (Hollis ed., 1764) (1689) ("The subjection of a minor places in the father a temporary government, which terminates with the minority of the child.").

[7] Samuel von Pufendorf, *The Whole Duty of Man According to the Law of Nature* at 179-180 (Ian Hunter & David Saunders eds., Liberty Fund 2003) (1673).

[8] Aristotle, Politics at 3-4, 16 (Benjamin Jowett ed., 1885) ("[W]hen several families are united, and the association aims at something more than the supply of daily needs, the first society to be formed is the village… the first community, indeed… is the family."). M. Tullius Cicero, *De Officiis* at 54 (Walter Miller ed., 1913) ("For since the reproductive instinct is by Nature's gift the common possession of all living creatures, the first bond of union is that between husband and wife; the next, that between parents and children; then we find one home, with everything in common. And this is the foundation of civil government, the nursery, as it were, of the state.").

concerns, the "corner-stone of society."[9] Scottish Enlightenment thinker David Fordyce, whose books were part of Harvard's curriculum during the colonial period,[10] wrote that the "weak and ignorant State of Children, seems plainly to invest their Parents with such Authority and Power as is necessary to their Support, Protection, and Education."[11] The natural law theorist Samuel von Pufendorf, whose works were bought for the use of the Continental Congress,[12] observed that "nature has implanted in parents a tender affection for their offspring, so that no one can be willing readily to neglect that office."[13] Lord Kames described the parent-child relationship as "one of the strongest that can exist among individuals."[14]

These writers understood providing an education to be both a chief parental right and duty. Sir William Blackstone described education as "the

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[9] Henry Kames, *Sketches of the History of Man Considerably enlarged by the last additions and corrections of the author* at 80 (James A. Harris ed., Liberty Fund 2007) (1788).

[10] Daniel N. Robinson, *The Scottish Enlightenment and the American Founding* 90 The Monist 170, 174 (2007).

[11] David Fordyce, *The Elements of Moral Philosophy* at 8 (Thomas Kennedy ed., Liberty Fund 2003) (1754).

[12] "Report on Books for Congress, [23 January] 1783," *Founders Online,* National Archives, https://founders.archives.gov/documents/Madison/01-06-02-0031.

[13] Samuel von Pufendorf, *Two Books of the Elements of Universal Jurisprudence* at 380 (Thomas Behme ed., The Liberty Fund 2009) (1660).

[14] Henry Kames, *Principles of Equity* at 15-16 (Michael Lobban ed., The Liberty Fund 2014) (1760).

last duty of parents toward their children."[15] However, education did not just mean teaching mere arithmetic or literacy. At the time of the founding, the end of education was virtue.[16] Christian Thomasius, whose books James Madison ordered for the Continental Congress,[17] wrote that parental authority entails "leading the child from first infancy to the maturity of body and mind," a responsibility that "contains two parts, namely, nourishment, which pertains to the infant's body, and learning, which pertains to his mind."[18]

According to the legal theorists of the time, the right of parents to directly oversee the education of their children could be delegated, but it could never be destroyed even by those with whom parents entrusted their children. Gershom Carmichael wrote that it is

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[15] William Blackstone, *Commentaries on the Laws of England* 451 (George Sharswood ed., Lippincott Company 1893) (1753).

[16] Benjamin Rush, *Essays, literary, moral & philosophical* at 8 (1798) in *Evans Early American Imprint Collection*, https://name.umdl.umich.edu/N25938.0001.001. University of Michigan Library Digital Collections. Accessed June 17, 2025. ("I beg leave to remark, that the only foundation for a useful education in a republic is to be laid in Religion. Without this there can be no virtue, and without virtue there can be no liberty, and liberty is the object and life of all republican governments.").

[17] "Report on Books for Congress, [23 January] 1783," *Founders Online,* National Archives, https://founders.archives.gov/documents/Madison/01-06-02-0031.

[18] Christian Thomasius, *Institutes of Divine Jurisprudence. With Selections from Foundations of the Law of Nature and Nations* 466-67 (Thomas Ahnert ed., Liberty Fund 2011) (1688).

"an indissolubly integral part of parental power."[19] Pufendorf wrote that, although parents may entrust their children's education to others, it is a duty that "the Parent reserve to himself the Oversight of the Person deputed."[20] This recognition of parental authority continued into the nation's infancy.

B. Parental rights in education were ubiquitous in the Early Republic.

Parental rights in education were also broadly recognized in America's founding era. James Wilson, a signer of both the Declaration of Independence and the Constitution and later a Justice of this Court appointed by President Washington,[21] contrasted, in his 1791 lectures on law, ancient and modern modes of education to illustrate the American view of parental rights. Spurning the example of the Spartans where "the care and education of children were taken entirely out of the hands of their parents," Wilson commended American law which recognized that "to parental affection the care of education may, in most instances, be safely intrusted."[22]

Benjamin Rush, also a signer of the Declaration of Independence, was one of the foremost advocates for public schooling. In 1786, Rush published a pamphlet setting out a plan for public schools in which teachers

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[19] Carmichael, *supra* 134-35 (emphasis added).
[20] Pufendorf, *supra*, at 183-84 (emphasis added).
[21] *James Wilson* in *Biographical Directory of the United States Congress*, https://bioguide.congress.gov/search/bio/W000591.
[22] James Wilson, *Collected Works of James Wilson* 908-910 (Kermit L. Hall & Mark David Hall ed., Liberty Fund 2007) (1791) (Emphasis added).

were to inculcate morality, but only in "a strict conformity to . . . the inclinations of their parents."[23]

Samuel Harrison Smith, a newspaper publisher and friend of Thomas Jefferson, was one of the few opponents of parental rights in the founding era. In a pamphlet he authored for the American Philosophical Society he argued that "[e]rror is never more dangerous than in the mouth of a parent."[24] The solution, according to Smith, was the complete removal of parental oversight: when "education [is] remote from parental influence, the errors of the father cease to be entailed upon the child."[25]

However, Jefferson rejected his friend's theory of education. In the margins of his 1817 draft plan for public schooling in Virginia, Jefferson wrestled with parental rights and influence in education.[26]

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[23] Benjamin Rush, *A plan for the establishment of public schools and the diffusion of knowledge in Pennsylvania; to which are added thoughts upon the mode of education, proper in a republic: Addressed to the legislature and citizens of the state* at 18 (1786) in *Evans Early American Imprint Collection.* https://name.umdl.umich.edu/N15652.0001.001. University of Michigan Library Digital Collections. Accessed June 18, 2025.

[24] Samuel Harrison Smith, *Remarks on education: illustrating the close connection between virtue and wisdom. To which is annexed, a system of liberal education* at 64 (1797).

[25] *Id.*

[26] "Thomas Jefferson's Bill for Establishing Elementary Schools, [ca. 9 September 1817]," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-12-02-0007. ("A question of some doubt might be raised on the latter part of this section, as to the rights & duties of society towards it's members infant & adult. is it a right or a duty in society to take care of their infant members, in opposition to the will of the parent? how far does this right & duty extend?").

Ultimately, he concluded that "it is better to tolerate the rare instance of a parent refusing to let his child be educated, than to *shock the common feelings* & ideas by the forcible asportation & education of the infant against the will of the father."[27]

This respect for parental rights, including in education, continued through the Reconstruction era and the ratification of the Fourteenth Amendment.

C. The Antebellum Period and Reconstruction reaffirmed parental rights in education.

Parental control over the inculcation of virtue in children who attended public schools was reaffirmed throughout the antebellum period, even as changes in American society over questions of race and religion put strains on the tradition. James Kent, first professor of law at Columbia University from 1826-1830, turned his series of lectures into the widely popular *Commentaries on American Law*.[28] Kent started with antiquity and remarked that some ancient states had refused to trust education to parents.[29] Such an idea in America was "totally inadmissible."[30] Because nature bound parents to "maintain and educate their children, the law has

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[27] *Id.*

[28] John M. Gould, Preface to James Kent, Commentaries on American Law, at v (Little, Brown & Co. 14th ed. 1896) (stating that "the masterpiece of Chancellor Kent has now become so interwoven with judicial decisions that these commentaries upon our frame of government and system of laws will doubtless continue to rank as the first of American legal classics so long as the present order shall prevail").

[29] James Kent, *Commentaries on American Law* 233 (Oliver Wendell Holmes ed., Twelfth Edition 1873).

[30] *Id.*

given them a right to such authority."[31] This was "the true foundation of parental power."[32]

Justice Joseph Story agreed. In his *Commentaries on Equity Jurisprudence*, Justice Story quoted the case of *Jenkins v. Peter:* "the presumption ought to be, in the absence of all proof tending to a contrary conclusion, that the advancement of the interest of the child was the object in view."[33] The "natural and reasonable presumption in all transactions of this kind is, that a benefit was intended the child, because in the discharge of a moral and parental duty."[34] Anything else would be "a principle at war with all filial as well as parental duty and affection."[35]

The horrors of American slavery became the catalyst for enshrining into the Constitution parental rights to oversee the moral upbringing of one's children. Slave narratives following the Civil War were replete with the tearing apart of children from their parents' oversight.[36] Freed former slaves organized "Colored Conventions" throughout the antebellum period and through the Civil War, in which they petitioned for laws and amendments to protect their rights as citizens. One of the petitioned

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[31] *Id.* at 252.

[32] *Id.*

[33] 1 Joseph Story, *Commentaries on Equity Jurisprudence* 328 (Charles C. Little & James Brown) (4th ed. 1846) (1836) (internal quotation marks omitted).

[34] *Id.*

[35] *Id.*

[36] Luray Buckner, *A Right Defined by a Duty: The Original Understanding of Parental Rights*, 37 Notre Dame J.L. Ethics & Pub. Pol'y 493, 501 (2023).

grievances was a lack of state protection for black parental rights. The 1851 Colored Convention of Ohio lamented that black Americans had "no parental or filial rights; but husband and wife, parent and child, may be torn from each other."[37] Other conventions recognized parental rights and education were intertwined, writing they, as former slaves, were "denied the control of their children" who were "debarred an education."[38] Abolitionist and anti-slavery Republicans regularly intertwined the denial to educate and oversee one's own children as one of the badges of slavery.[39]

The Congressional debates on the Thirteenth and Fourteenth Amendments make clear that one of the intents of the amendment was to protect the fundamental right of parents to oversee the upbringing of their children. Senator James Harlan said that a consequence of slavery was "the abolition practically of the parental relation, robbing the

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[37] Convention of the Colored Freemen of Ohio (1852 : Cincinnati, OH), 275, *285 Proceedings of the Convention, of the Colored Freemen of Ohio, Held in Cincinnati, January 14, 15, 16, 17 and 19, 1852,* (Colored Conventions Project Digital Records) https://omeka.coloredconventions.org/items/show/250 (last visited June 23, 2025).

[38] Convention of the Colored Men of Ohio (1858 : Cincinnati, OH), 333, *333 Proceedings of a Convention of the Colored Men of Ohio, Held in the City of Cincinnati, on the 23d, 24th, 25th and 26th days of November, 1858*, (Colored Conventions Project Digital Records) https://omeka.coloredconventions.org/items/show/254 (last visited June 23, 2025).

[39] Joseph K. Griffith II, *Is the Right of Parents to Direct Their Children's Education "Deeply Rooted" in Our "History and Tradition"?* 28 Tex. Rev. L. & Pols. 795. 803-04 (2024).

offspring of the care and attention of his parents."[40] Senator Charles Sumner, a political leader of the abolitionist movement (who was famously caned nearly to death on the Senate floor after attacking slavery), decried slavery's destruction "of all rights, even . . . the sacred right of family; so that the relation of husband and wife was impossible and no parent could claim his own child."[41]

When speaking in support of the Thirteenth Amendment, Senator Henry Wilson, author of the bills which outlawed slavery in Washington, D.C., said, "the sacred rights of human nature, the hallowed family relations of husband and wife, parent and child, will be protected by the guardian spirit of that law which makes sacred alike the proud homes and lowly cabins of freedom."[42]

During the drafting of the Fourteenth Amendment in the 39th Congress, the Joint Committee on Reconstruction inquired into whether certain fundamental rights were being respected in the occupied South. The Joint Committee asked whether Southern whites objected to "the legal establishment of the domestic relations among the blacks, such as the relation of husband and wife, of parent and child, and the securing by law to the

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[40] Cong. Globe, 38th Cong., 1st Sess., 1439 (1864) (Statement of Senator Harlan).
[41] Cong. Globe, 38th Cong., 1st Sess., 1479 (1864) (statement of Senate Sumner).
[42] Cong. Globe, 38th Cong., 1st Sess., 1324 (1864) (Statement of Senator Wilson).

negro the rights of those relations?"[43] Likewise, Representative Thomas Dawes Eliot spoke of the need to protect the right of "husband, wife, and parent."[44]

Few if any fundamental rights not enumerated in the Constitution are more deeply rooted in American history and tradition than parental rights.

II. Parental Rights are Essential to Liberty and Justice.

This Court's precedent demonstrates that parental rights are not only deeply rooted in American history and tradition but are also "'implicit in the concept of ordered liberty' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Glucksberg*, 521 U.S. at 702 (quoting *Palko*, 302 U.S. at 325).

In *Meyer v. Nebraska*, this Court explained that "Without doubt," the Fourteenth Amendment protects "the right of the individual to . . . marry, establish a home and bring up children." 262 U.S. 390, 399 (1923). The parental right to educate one's children is among those essential to liberty, and "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children . . . The child is not the mere creature of the State." *Pierce*, 268 U.S. at 535.

The Court has also been clear about the content of that right. Parents "have the right, coupled with the

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[43] Joint Comm. on Reconstruction, Report of the Joint Committee on Reconstruction, H.R. Rep. No. 30, 39th Cong., 1st Sess. (1866) at 171.

[44] Cong. Globe, 39th Cong., 1st Sess. 2773 (1866) (Statement of Representative Eliot).

high duty, to recognize and prepare him for additional obligations." *Id.* The state may not enter "the private realm of family life" because "the custody, care, and nurture of the child reside[s] first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 166 (1944).

The Court's parental rights doctrine has developed in cases many of which are brought by religious parents seeking to ensure that their children's education does not undermine their religious values. Recently, in *Mahmoud*, No. 24-297 slip op. at 18, the Court explained that the right of religious parents is "not merely a right to teach religion in the confines of one's own home," but "extends to the choices that parents wish to make for their children outside the home." The religious liberty right of parents exists, though, not in exclusion, but in addition, to the rights of all parents.[45]

For example, in *Wisconsin v. Yoder*, the Court recognized "the fundamental interest of parents, as contrasted with that of the State, to guide the religious future *and education* of their children," noting that the "history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children." 406 U.S. 205, 232

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[45] J. Marc Wheat, *Religious Liberty is Essential to American Freedom. So Are Parental Rights*, Real Clear Religion (May 6, 2025) https://www.realclearreligion.org/articles/2025/05/06/religious_liberty_is_essential_to_american_freedom_so_are_parental_rights_1108436.html.

(1972) (emphasis added). Thus, the rights of parents generally, and of religious parents specifically, exist together and do not detract from one another.

"The child is not the mere creature of the state," *Pierce,* 268 U.S. at 535, and parents, not school officials, have the right and responsibility "to direct the education and upbringing" of their children. *Glucksberg*, 521 U.S. at 720. School officials may not conceal from parents some of the most sensitive matters a family may face, except in the most extreme circumstances. The Court's consistent and clear recognition of parental rights demands on the part of public educators a high regard for the will of parents. The school district's active attempt at concealment and unqualified denial of parental rights to oversight compound the harm done in this case.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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