No. 25A810

In the Supreme Court of the United States

ELIZABETH MIRABELLI, LORI ANN WEST, JANE ROE, JANE BOE, JOHN POE, JANE POE, JOHN DOE, and JANE DOE,

Applicants,

v.

ROB BONTA, in his official capacity as Attorney General of California; TONY THURMOND, in his official capacity as the California State Superintendent of Public Instruction; LINDA DARLING-HAMMOND, in her official capacity as President of the California State Board of Education, et al.,

Respondents.

BRIEF *AMICUS CURIAE* OF THE BECKET FUND FOR RELIGIOUS LIBERTY IN SUPPORT OF APPLICANTS AND VACATUR OF STAY

MARK L. RIENZI
Counsel of Record
MICHAEL J. O'BRIEN
AMANDA G. DIXON
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Penn. Ave. NW
Suite 400
Washington, D.C. 20006
mrienzi@becketfund.org

Counsel for Amicus Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF THE *AMICUS CURIAE*[1]

The Becket Fund for Religious Liberty is a non-profit, nonpartisan law firm dedicated to protecting the free expression of all religious traditions. Becket has represented agnostics, Buddhists, Christians, Hindus, Jews, Muslims, Santeros, Sikhs, and Zoroastrians, among others, in lawsuits across the country. Becket has also represented numerous prevailing religious parties in this Court. See, *e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171 (2012); *McCullen* v. *Coakley*, 573 U.S. 464 (2014); *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Holt* v. *Hobbs*, 574 U.S. 352 (2015); *Zubik* v. *Burwell*, 578 U.S. 403 (2016); *Little Sisters of the Poor* v. *Pennsylvania*, 591 U.S. 657 (2020); *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732 (2020); *Fulton* v. *City of Philadelphia*, 593 U.S. 522 (2021); *Catholic Charities Bureau, Inc.* v. *Wisconsin Lab. & Indus. Rev. Bd.*, 605 U.S. 238 (2025); *Mahmoud* v. *Taylor*, 606 U.S. 522 (2025).

Becket also frequently defends the rights of religious individuals and institutions with respect to education, including in many cases arising in California. See, *e.g.*, *Hosanna-Tabor*, 565 U.S. 171 (right of Lutheran parochial school to control employment of ministerial employee); *Our Lady*, 591 U.S. 732 (right of Catholic parochial schools to control employment of ministerial employees); *Fellowship of Christian Athletes* v. *San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664 (9th Cir. 2023) (en banc) (right of Christian student group to equal access to recognized student organization status at public high school); *Frankel* v. *Regents of the Univ. of Cal.*, 744

[1] No counsel for a party authored this brief in whole or in part, and no person other than *Amicus*, its members, or its counsel made a monetary contribution to fund the brief's preparation or submission.

F.Supp.3d 1015 (C.D. Cal. 2024), appeal pending, No. 25-5625 (9th Cir. filed Sep. 5, 2025) (right of Jewish students to access public university campus on equal terms); *Loffman* v. *California Dept. of Ed.*, 119 F.4th 1147 (9th Cir. 2024) (right of parents of Orthodox Jewish students with disabilities to equal access to federal disability funds); *Mahmoud*, 606 U.S. 522 (right of Muslim, Eastern Orthodox, and Catholic parents to notice and opt-out from instruction); *St. Dominic Acad.* v. *Makin*, 744 F. Supp.3d 43 (D. Me. 2024), appeal pending, No. 24-1739 (1st Cir. argued Jan. 7, 2025) (right of religious parents and schools to equal access to town tuitioning funds); *St. Mary Catholic Parish* v. *Roy*, 154 F.4th 752 (10th Cir. 2025), petition for cert. pending, No. 24-1267 (filed Nov. 13, 2025) (right of Catholic parents and preschools to equal access to state universal preschool funding).

Amicus offers this brief to highlight how the Free Exercise Clause argument in the application provides the Court with a simple way to vindicate the longstanding right of parents to direct the upbringing of their children without breaking new doctrinal ground. Secret transitions in government schools are a brazen and relatively new encroachment on parental rights. Navigating challenges to such policies may require courts to examine new facets of the scope and shape of parental rights. But one path is well trodden and clear: the free exercise right of religious parents to direct the upbringing of their children. Applying the Court's free exercise precedents in the context of secret transitions can both resolve the application and have benefits far beyond this case. Governments that protect the free exercise of religion often extend parallel protections to non-religious actors. And lower courts,

litigants, school districts, and parents would all benefit from this Court's guidance on the most straightforward aspect of this controversy—particularly given the urgent danger of irreparable harm for individual children while cases are being litigated.

SUMMARY OF ARGUMENT

There are few rights older or more fundamental than the right of parents to raise their children in accordance with their beliefs. This Court has often recognized that educating young people according to the faith lies at the core of many religions. And over the past hundred years—stretching from *Meyer* and *Pierce* to *Barnette* and *Yoder*, and reaffirmed in last Term's decision in *Mahmoud*—this Court has firmly established that there is special Free Exercise Clause protection for the right of religious parents to direct their children's upbringing, including when their children attend public schools.

Parental exclusion policies are a novel and egregious trespass on this right. Controversies over public schools that deceive parents and transition children to another gender without their parents' knowledge have now reached this Court on both the interim and certiorari dockets. More cases abound in the lower courts. Every secret transition policy threatens truly irreparable harm to real children being transitioned by government officials without the knowledge or involvement of their parents.

This application presents an opportunity for the Court to provide guidance to the lower courts, litigants, and school districts across the country, because the Free Exercise Clause can squarely resolve many such conflicts under decisions this Court

has already made. Indeed, this case presents an *a fortiori* application of *Mahmoud*: if secretly instructing children from "LGBTQ+-inclusive" storybooks interferes with the rights of parents, then surely facilitating a child's secret transition to another gender does too. That kind of modest, precedent-based holding would help reduce the scope and intensity of clashes between government and religious parents.

ARGUMENT

I. This Court's parental free exercise precedents chart a straightforward path to resolving this application.

California's mandate of concealed gender transitions in its public schools brazenly interferes with the right of parents to "direct the religious upbringing of their children." *Mahmoud* v. *Taylor*, 606 U.S. 522, 546 (2025) (internal quotation marks omitted). This case is easy under *Mahmoud* and free exercise decisions stretching back over 100 years. Straightforward application of those precedents demands that the Ninth Circuit's stay be vacated.

1. For more than a century, this Court has explicitly recognized and protected the right of religious parents to direct the upbringing and education of their children.

The first cases predated incorporation of the Free Exercise Clause. *Meyer* v. *Nebraska* concerned a teacher convicted of teaching children the Bible in German at a Lutheran parochial school. 262 U.S. 390, 397 (1923). The Court held that Nebraska had violated the teacher's "right thus to teach and the right of parents to engage him so to instruct their children." *Id.* at 400. The Court thereby upheld the right of parents to "establish a home and bring up children" and to "control [their] education." *Id.* at 399, 401. Two years later, the Court reinforced this right in *Pierce* v. *Society of the*

Sisters of the Holy Names of Jesus & Mary, deeming it "entirely plain" that an Oregon law that effectively outlawed private religious education "unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control." 268 U.S. 510, 534-535 (1925). Parents, charged with "nurtur[ing]" and "direct[ing] [the] destiny" of their children, "have the right, coupled with the high duty, to recognize and prepare" their children for "obligations" beyond duties owed the state, and this includes "the right of parents to choose" an "appropriate mental and religious training" for their children. *Id.* at 532, 535.

After incorporation, the Court extended these First Amendment protections into public schools. In *West Virginia State Board of Education* v. *Barnette*, the state required public school students to salute and pledge allegiance to the flag. 319 U.S. 624, 625-626 (1943). Jehovah's Witness parents objected to this requirement, which violated their religious beliefs, and sued under the Free Exercise Clause to opt out their children. *Id.* at 629. Notwithstanding that there was no evidence that the school board required children to "become unwilling converts" or "forgo any contrary convictions," this Court held that the requirement violated the First Amendment because compelling the Pledge required "affirmation of a belief and an attitude of mind." *Id.* at 633.

Wisconsin v. *Yoder* further rooted the right recognized by *Meyer*, *Pierce*, and *Barnette* in the Free Exercise Clause. 406 U.S. 205 (1972). *Yoder* affirmed the right of the Old Order Amish to educate their children in continuous contact with their "community, physically and emotionally, during the crucial and formative adolescent

period of life," *id.* at 211—even when that meant noncompliance with Wisconsin's compulsory education laws. In ruling for the parents, the Court relied on the "fundamental interest of parents" to guide their children's religious future and education, which was "established beyond debate as an enduring American tradition." *Id.* at 232. Given this enduring interest, the Court agreed that "the values and programs of the modern secondary school"—including "worldly influences in terms of attitudes, goals, and values" and "pressure to conform to the styles, manners, and ways of the peer group"—would burden the parents' free exercise rights "by substantially interfering with the religious development of the Amish child." *Id.* at 211, 217-218. The Court repeatedly emphasized that children entering high school are at a "crucial adolescent stage of development," including a "crucial * * * period of religious development" amidst a "social environment" that was "hostile to Amish beliefs." *Id.* at 211-212, 218, 223. Respecting free exercise meant respecting "parental direction of the religious upbringing and education of their children in their early and formative years." *Id.* at 213-214.

Last Term, *Mahmoud* reaffirmed that this Court has "long recognized the rights of parents to direct 'the religious upbringing' of their children,'" and that "those rights are violated by government policies that 'substantially interfer[e] with the religious development' of children." 606 U.S. at 546 (quoting *Espinoza* v. *Montana Dep't of Revenue*, 591 U.S. 464, 486 (2020), and *Yoder*, 406 U.S. at 218). While some lower courts had "breezily dismissed" this longstanding free exercise right and granted *carte blanche* to public schools, this Court made plain that the line of cases

culminating in *Yoder* and *Mahmoud* set forth "a principle of general applicability" that provides "robust protection for religious liberty." *Id.* at 558. This parental free exercise right, which "extends to the choices that parents wish to make for their children outside the home," "would be an empty promise if it did not follow those children into the public school classroom." *Id.* at 547.

2. These principles, as distilled by *Mahmoud*, make this case straightforward. *Mahmoud* held that a public school board burdened the First Amendment right of parents to direct the religious upbringing of their children when it required teachers to engage in "unmistakably normative" instruction that "present[ed] as a settled matter a hotly contested view of sex and gender that sharply conflicts with the religious beliefs that the parents wish to instill in their children." 606 U.S. at 550, 553. By "withhold[ing] notice to parents" when such instruction would occur and "forbid[ding] opt outs," the board's policy "substantially interfere[d] with the religious development of [the parents'] children and impose[d] the kind of burden on religious exercise that *Yoder* found unacceptable." *Id.* at 550. And because of "the special character of the burden," the Court proceeded directly to strict scrutiny, which the board's administrative and "social stigma" justifications failed. *Id.* at 565, 566.

This case is *a fortiori*. California requires its public schools to conceal from parents of children as young as two their children's expressed transgender status at school and to facilitate those children's transitions irrespective of their parents' religious beliefs. Appendix at 32a, 45a. But for parents who are "devoutly Catholic," Application at 11, and who "have a religious duty to guide their children," Appendix

at 56a n.11, the "objective danger" this concealment poses to their right to direct the religious development of their children is unmistakable. *Mahmoud*, 606 U.S. at 549. California not only "present[s] as * * * settled" a "moral message" on "gender" in the school "environment," the state takes it upon itself to resolve how children live out their gender untethered to parental notice and religious direction. *Id.* at 550, 552, 553. For California, *Yoder*'s "enduring American tradition" of parental involvement is a dead letter.

Secret transition regimes like California's strike at the heart of the free exercise right spelled out in *Yoder* and *Mahmoud* because they intentionally displace the family as a tutelary institution. "[E]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core" of "many faiths practiced in the United States." *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732, 753-754 (2020). And what is true of religious schools propagating faith applies doubly to the family: "there are few religious acts more important than the religious education of their children." *Mahmoud*, 606 U.S. at 547; *ibid.* ("not merely a preferred practice but rather a religious obligation"). The Shabbat dinner around the family table, the Sunday morning family trip to Mass, the prayers said together every night at bedtime—these are all part of how the child learns faith from her parents.

Excluding, undermining, and directly attacking the authority of religious parents on questions of sex and gender is thus "uniquely likely to interfere with children's religious development." *Mahmoud*, 606 U.S. at 591 n.7 (Thomas, J., concurring)

(cleaned up). "Many" parents of diverse faiths "believe that biological sex reflects divine creation, that sex and gender are inseparable, and that children should be encouraged to accept their sex and to live accordingly." *Id.* at 552 (majority opinion). Indeed, "[t]hese subjects relate to 'the very architecture' of many faiths.'" *Id.* at 591 n.7 (Thomas, J., concurring) (quoting Helen M. Alvaré, *Families, Schools, and Religious Freedom*, 54 Loy. U. Chi. L.J. 579, 629 (2022)). And so, for many parents, guiding their children's religious development consistent with this architecture requires having some say over whether their sons remain sons and daughters remain daughters during the majority of weekday waking hours.

Until recently, governments at least acknowledged parents' authority to direct the religious upbringing of their children according to such "decent and honorable" religious views about human sexuality and gender identity. *Obergefell* v. *Hodges*, 576 U.S. 644, 672 (2015). But California, aiming "to 'save' a child from * * * his [religious] parents," arrogates authority to covertly direct "the religious future of the child" on the sensitive question of the child's sexual identity. *Yoder*, 406 U.S. at 232. It has no business doing so. True, parents delegate some level of authority to schools such that they "at times stand *in loco parentis*." *Mahanoy Area Sch. Dist.* v. *B.L. ex rel. Levy*, 594 U.S. 180, 187 (2021). But California is not acting on a subject where "the children's actual parents cannot protect, guide, and discipline them." *Id.* at 189. Indeed, if parents' "primary role * * * in the upbringing of their children is now established beyond debate," *Yoder*, 406 U.S. at 232, then "[p]arents do not implicitly relinquish all that authority when they send their children to a public school,"

Mahanoy, 594 U.S. at 202 (Alito, J., concurring) (citing *Yoder* and *Pierce*); see also *Morse* v. *Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring) (referring to such a delegation as a "dangerous fiction"). And how could they here? California "will not notify parents" of their children's state-facilitated gender transitions, and "it is not realistic to expect parents to rely on after-the-fact reports by their young children to determine whether the parents' free exercise rights have been burdened." *Mahmoud*, 606 U.S. at 560. No understanding of *in loco parentis* delegation allows the agent to actively deceive the parent-as-principal.

The burden on parental free exercise here is unmistakable: California insists that religious parents "surrender" their religious direction to a black box of state-managed gender-identity formation. *Mahmoud*, 606 U.S. at 561. This poses "'a very real threat of undermining' the religious beliefs and practices" around sex and gender "that parents wish to instill in their children." *Id.* at 543 (quoting *Yoder*, 406 U.S. at 218). And it impermissibly "condition[s]" the "public benefit" of public education "on parents' willingness to accept a burden on their religious exercise." *Mahmoud*, 606 U.S. at 561 (quoting *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 462 (2017)). For government schools to reach into religious families in this way—alienating children from their own parents and their own faith—is substantial interference at least as egregious as that in *Mahmoud*.

California's interposition is also entirely foreign to "the fundamental values of the American people." *Mahmoud*, 606 U.S. at 559. As *Meyer* pointed out, America is not Sparta, and unlike Sparta we do not wrest children away from their parents so they

can be taught to live and believe what the State holds to be true. 262 U.S. at 401-402; accord *Pierce*, 268 U.S. at 535 ("The child is not the mere creature of the state."). That "chilling vision of the power of the state to strip away the critical right of parents to guide the religious development of their children" is precisely what California mandates, and it must be "reject[ed]." *Mahmoud*, 606 U.S. at 559. A straightforward application of this Court's parental free exercise precedent presents the cleanest rule of decision to do so.

3. The Ninth Circuit's contrary ruling—which perfunctorily dismissed the expert-and-evidence-heavy record and years-long proceedings before a trial judge who properly relied on *Mahmoud*—rests on a cramped view of parental free exercise rights that cannot be squared with this Court's precedent. According to the Ninth Circuit, "the district court improperly extended the reasoning of *Mahmoud*" because "*Mahmoud* has been described as a narrow decision focused on uniquely coercive 'curricular requirements.'" Appendix at 10a-11a (quoting *Doe No.1* v. *Bethel Loc. Sch. Dist. Bd. of Educ.*, No. 23-3740, 2025 WL 2453836, at *7 n.3 (6th Cir. Aug. 26, 2025)). That is wrong twice over.

First, it overlooks how this Court characterized the nature and scope of the right. *Mahmoud* stressed that parental religious control over their public-school children is "a principle of general applicability" that provides "robust" protection. 606 U.S. at 558. While the facts of *Mahmoud* no doubt "principally relate[d] to curricular requirements," Appendix at 11a, that case instructs that the First Amendment applies to a public school's "rules and standards of conduct on its students" as well as

the school's disciplinary power. *Mahmoud*, 606 U.S. at 557 (citing *Mahanoy*, 594 U.S. at 187-188). This is why the "government's operation of the public schools is not a matter of 'internal affairs.'" *Ibid.* Rather, any "direct, coercive interactions between the State and its young residents" via the public schools can implicate the parental free exercise right. *Ibid.*

Second, the Ninth Circuit's curricular limitation ignores the precedent *Mahmoud* applied. The burden on parental free exercise in *Yoder* was not curricular only. Rather, the Amish parents sought a total withdrawal of their children from the last two years of public high school because "the modern high school is not equipped, *in curriculum or social environment*, to impart the values promoted by Amish society." *Yoder*, 406 U.S. at 212 (emphasis added); see also *id.* at 218 ("exposing Amish children to worldly influences in terms of attitudes, goals, and values contrary to beliefs"). A burden of "the same character" as in *Yoder* can be found in any school "policies" that substantially interfere with a parent's religious direction of their child. See *Mahmoud*, 606 U.S. at 565. The Ninth Circuit took a sufficient condition from *Mahmoud* and turned it into a necessary one that would reverse *Yoder*. These errors alone are enough to resolve the application.

II. The free exercise claim in this case provides an excellent opportunity for the Court to address a pressing issue of national importance.

Intentional government deception of parents is an important and increasingly urgent issue plaguing schools and therefore courts around the country. Indeed, many challenges to secret transition policies have made their way to this Court already. See, *e.g.*, *Foote* v. *Ludlow Sch. Comm.*, No. 25-77 (petition pending); *Littlejohn* v.

School Bd. of Leon Cnty., No. 25-259 (petition pending); *Lavigne* v. *Great Salt Bay Cmty. Sch. Bd.*, No. 25-759 (petition pending); *Parents Protecting Our Children, UA* v. *Eau Claire Area Sch. Dist.*, 145 S. Ct. 14 (2024) (noting that Kavanaugh, J., would grant the petition); *id.* at 14-15 (Alito, J., joined by Thomas, J., dissenting from denial of certiorari); *Lee* v. *Poudre Sch. Dist.*, No. 25-89, 2025 WL 2906469, at *1 (Oct. 14, 2025) (statement of Alito, J., joined by Thomas, J., and Gorsuch, J., respecting denial of certiorari) (noting "'great and growing national importance' of the question"); *John & Jane Parents 1* v. *Montgomery Cnty. Bd. of Educ.*, 144 S. Ct. 2560 (2024) (denying certiorari). That is no surprise, given that "nearly 6,000 public schools have policies * * * that purposefully interfere with parents' access to critical information about their children's gender-identity choices and school personnel's involvement in and influence on those choices." *Lee*, 2025 WL 2906469, at *1 (statement of Alito, J.).

This case presents an opportunity for this Court to provide Free Exercise Clause guidance on the application of these policies. The district court and court of appeals addressed the Free Exercise questions on the merits. And the harm faced by the parents here is active, ongoing, and concrete. California's parental exclusion policies—and others like them—are clearly unconstitutional but difficult to challenge. See, *e.g.*, *Parents Protecting Our Children*, 145 S. Ct. at 14-15 (Alito, J., dissenting) (expressing "concern[] that some federal courts are succumbing to the temptation to use the doctrine of Article III standing as a way of avoiding" constitutional challenges to such policies). But there is no such obstacle here: California's policies have previously been applied to exclude religious parents from

information about their own children's gender transitions and are now being applied to prevent them from learning how the school is currently interacting with their children. See Application at 1. This Court can stem this severe threat by vacating the stay, ensuring that the Ninth Circuit's "[p]erfunctor[y] dismiss[al]" of Applicants' "First Amendment arguments" does not impose devastating potential harm while the appellate process "drag[s] on for many months." *Yeshiva Univ.* v. *YU Pride All.*, 143 S. Ct. 1, 2, 3 (2022) (Alito, J., joined by Thomas, Gorsuch, and Barrett, JJ., dissenting).

Most importantly, the case presents claims particularly amenable to resolution under this Court's existing precedent, both recent and long-established. Parental exclusion policies are a bold new trespass on parental rights. Navigating many challenges to such policies may require courts to examine new facets of the scope and shape of parental rights in this nation's history and tradition. But one path is well trodden and clear: the free exercise right of religious parents to direct the upbringing of their children. Prompt action by this Court can ensure that these families do not have their rights "breezily dismissed"—and their lives irreparably altered—but instead receive the full protection provided by this Court's existing free exercise decisions. And experience shows that when the free exercise of religious parties is protected, protections for others soon follow. See*, e.g., Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 199 (2012) (Alito, J., joined by Kagan, J., concurring) (religious rights often serve as a "shield against oppressive civil laws"); see also 42 U.S.C. 300a-7 (abortion); 18 U.S.C. 3597 (capital punishment).

CONCLUSION

This Court should vacate the stay issued by the Ninth Circuit.

Respectfully submitted.

MARK L. RIENZI
Counsel of Record
MICHAEL J. O'BRIEN
AMANDA G. DIXON
THE BECKET FUND FOR
RELIGIOUS LIBERTY
1919 Penn. Ave. NW
Suite 400
Washington, D.C. 20006
mrienzi@becketfund.org

Counsel for Amicus Curiae

JANUARY 2026