

No. 26-180

In the Supreme Court of the United States

EDWARD ALLYN HUDACKO,

Petitioner,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF OF AMICUS CURIAE
INTERNATIONAL PARTNERS FOR ETHICAL CARE
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

Partners for Ethical Care is a secular, non-partisan, all-volunteer, grassroots nonprofit organization comprised of individuals from across the globe. Its mission is to raise awareness and support efforts to stop the unethical treatment of children and vulnerable adults by schools, hospitals, and mental and medical healthcare providers under the banner of gender identity affirmation. Because this case involves gender affirming medical procedures against parental consent, the perspective of Partners for Ethical Care will aid the Court's consideration of this petition.

SUMMARY OF ARGUMENT

Parental rights are not just the oldest and most fundamental right of citizens. They are clearly established in law, putting state actors on notice when dealing with parents and minor children. Parents are the primary decision-makers for their children and recognized stewards of their well-being. It is the parent's right and choice to direct a child's upbringing, and the violation of this right by any state actor is prohibited.

The refusal by various states to recognize the rights of parents represents a perennial problem recognized by this Court. Federal courts have long

¹ No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or any person other than amicus curiae or its counsel contributed money intended to fund preparation or submission of this brief. Counsel for all parties received timely notice of the intent to file this brief.

been called upon to vindicate the fundamental rights of parents. Yet despite this Court's consistent regard for these rights, lower courts continue to allow state actors to trample upon these rights.

Intervention by this Court is necessary not only to reinforce the authoritative meaning of its decisions, but to state more clearly the course that courts must take in adjudicating parental rights claims. Courts must offer a bulwark against intrusions of these rights by the state. This Court has the duty as court of last resort and the highest judicial authority in the nation "to say what the law is," *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), and to ensure that parental rights are respected by the states and the lower courts.

ARGUMENT

I. Parental Rights Are The Oldest and Most Clearly Established Fundamental Rights.

For over a century, this Court has recognized the fundamental right of parents to direct the upbringing and education of their children. Beginning with *Meyer v. Nebraska*, 262 U.S. 390 (1923), this Court has explained that the "liberty" guaranteed in the Fourteenth Amendment

denotes not merely the freedom from bodily restraint but also * * * to marry, establish a home, and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

Id. at 399. Although *Meyer* primarily discussed the teacher’s claims to an occupation, the Court nevertheless articulated a broad concept of liberty—much like a tree with many branches—and expressly referred to “the right of control” as “the natural duty of the parent to give his children education suitable to their station in life.” *Id.* at 400.

This Court revisited the “doctrine” of *Meyer* two years later in *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925). *Pierce* reflects this Court’s most profound and enduring expressions regarding the “liberty of parents * * * to direct the upbringing and education of children under their control.” *Id.* at 534–35. This liberty lay at the heart of “[t]he fundamental theory of liberty upon which all governments in this Union repose,” namely that “[t]he child is not the mere creature of the State.” *Id.* at 535. Instead, it is the liberty of “those who nurture him and direct his destiny [who] have the right, coupled with the high duty, to recognize and prepare him for additional obligations” and who must decide what is best for their child. *Ibid.*

The scope of parental authority—the sphere in which this liberty is recognized and protected—includes medical decision-making. See *Parham v. J.R.*, 442 U.S. 584, 602–03 (1979) (parental authority “includes a ‘high duty’ to recognize symptoms of illness and to seek and follow medical advice.”). Citing William Blackstone and James Kent, this Court articulated the background presumptions of the “Western civilization concept[]” at work in American law:

The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children.

Id. at 602. These “near-absolutist pronouncements” *Gruenke v. Seip*, 225 F.3d 290, 304 (3d Cir. 2000), demonstrate a “settled principle” of parental rights.² *Troxel v. Granville*, 530 U.S. 57, 77 (2000) (Souter, J., concurring).

Over a century of precedent enshrines the doctrine of parental rights as “the oldest of the fundamental liberty interests recognized by this Court.” *Troxel*, 530 U.S. at 65. This liberty has long preceded any doctrine of substantive due process, yet

² This principle exists harmoniously alongside the recognition that situations “of such magnitude and the likelihood of parental abuse is so great” that the state must step in. *Parham*, 442 U.S. at 584. But absent a clear risk or adjudication of abuse, parents retain the supreme right to direct their child’s upbringing and care. See *id.* at 603 (“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.”); accord *Troxel v. Granville*, 530 U.S. 57, 66 (“so 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.”).

it has always been construed as a fundamental right.³ More recently, this Court has construed any “substantial interference” with parental rights as unconstitutional and prompting strict scrutiny. See *Mahmoud v. Taylor*, 606 U.S. 522, 547 (2025).

A. Parental Rights Jurisprudence Is More Robust Than Ever after *Mahmoud*.

Despite this Court’s consistent defense of parental rights as fundamental, litigants have often found the vindication of their rights difficult in practice. Arguably, the framework of substantive due process is the most significant hurdle to establishing the rights at issue, which must be deeply rooted in the nation’s history yet also clearly defined in scope. See, e.g., *Washington v. Glucksberg*, 521 U.S. 702, 720–721 (1997) (noting that this analysis “restrain[s] our exposition of the Due Process Clause”). Courts have been reluctant to recognize claims of parental rights not clearly established in precedent, which in turn led to few new precedents being established.

This reluctance has become increasingly problematic as state actions interfering with parental decision-making proliferate. This Court in *Mahmoud* sought to correct this imbalance by breathing new life into the “substantial interference” standard announced in *Wisconsin v. Yoder*, 406 U.S. 205 (1972). This Court recognized that *Yoder* applies in any

³ See Michael Farris, *Rethinking Parental Rights: It’s Time to Move to Procedural Due Process*, 18.4 LIBERTY U. L. REV. 909, 928 (2024) (describing the Court’s treatment of parental rights under due process, noting “that nomenclature [of substantive due process] did not yet exist in most of these cases”).

situation where an objective danger of substantial interference with parental rights exists—whether those rights relate to the First Amendment or the fundamental rights of parents to direct the upbringing of their children. *Mahmoud*, 606 U.S. at 558.

Just as this Court recognized that *Yoder* is not “confined * * * to its facts,” it also intended that *Mahmoud* be treated similarly, just “like any other precedent” and as “a statement of general principles.” *Mahmoud*, 606 U.S. at 558. This Court recognized that substantial interference would be difficult to show, but provides a much clearer avenue for parents to establish their claims than under substantive due process. *Ibid.*

This Court’s willingness to apply this standard reflected its concern that courts were ignoring important constitutional issues, such as “whether a school district violates parents’ fundamental rights when, without parental knowledge or consent, it encourages a student to transition to a new gender or assists in that process.” See *Lee v. Poudre Sch. Dist. R-1*, 146 S. Ct. 26 (2025) (statement by Alito, J., joined by Thomas & Gorsuch, JJ.) (internal citations and quotations omitted), *cert. denied*. Yet application of *Mahmoud* has yielded mixed results in lower courts, with some limiting the decision to opt-outs of curricular instruction only.

This Court recently vacated the Ninth Circuit’s stay in *Mirabelli v. Bonta*, 607 U.S. 492, 495 (2026), which “brushed aside” *Mahmoud* in its analysis of a parental rights claim. In its order, this Court

concluded that the plaintiffs were likely to succeed on the merits of their claim in light of *Mahmoud* and *Yoder*. See *id.* at 496 (finding that “the intrusion on parents’ free exercise rights here—unconsented facilitation of a child’s gender transition—is greater than the introduction of LGBTQ storybooks we considered sufficient to trigger strict scrutiny in *Mahmoud*.”). Although not precedential, *Mirabelli* confirmed that *Mahmoud* applies broadly to prevent harms of the same or higher degree—not simply harms from curricular instruction or in public schools. *Ibid.*

This Court also noted that despite a “compelling interest in student safety and privacy,” California’s policies could not survive strict scrutiny because “those policies cut out the primary protectors of children’s best interests: their parents.” *Mirabelli*, 607 U.S. at 496–97. Holding that “[u]nder long-established precedent, parents—not the State—have primary authority with respect to the upbringing and education of children,” this Court found the asserted claim supported by existing law. *Id.* at 497 (internal citations omitted). These decisions clearly showed that “[t]he right protected by these precedents includes the right not to be shut out of participation in decisions regarding their children’s mental health.” *Ibid.* (citing *Parham*, 442 U.S. at 602).

This Court did not reach the merits of *Mirabelli*, but made clear how *Mahmoud* should apply—not just to this case, but to any similar case in which objective danger of substantial interference with parental rights is present. Hudacko’s claim is such a case.

II. Adjudication of Parental Rights Under *Mahmoud* Requires Recognition of Petitioner's Claim.

Western civilization and American law has always recognized parental rights as a liberty interest and has opposed any attempt to turn children into “mere creatures of the state.” Professor Steven Smith makes this point admirably in distinguishing between “formative” and “expressive” liberties. See Steven D. Smith, Meyer, Pierce, *and the Formation of Persons*, 26 J. Contemp. Legal Issues 55, 59–60 (2025). In this analysis, a harm to one’s liberty to be formed in a certain way is greater than a harm to one’s expression of a certain view:

[I]f government restrictions on manifestations of personhood such as speech or religion are potentially a threat to personhood—or to personal freedom—then it would seem that government regulation of the formation of personhood would be an even more serious threat to personhood or freedom. Regulations of expression limit what a person can do or say; but regulations of formation regulate or determine who a person is. * * * [I]f government controls how I am formed, I am no longer my own man. Rather I am the government’s creature.

When the state takes over formation of its citizens, the people are no longer free of the state, but rather made by its hand. And any harm to parental rights entails a corresponding harm to children. Where a parent’s rights are undermined and their authority severed, that child’s formation is not merely

put at risk, but irreparably harmed. The parent-child relationship cannot withstand the intrusion of the state into matters regarding a child's upbringing. Ordered liberty cannot exist at all when children are "mere creatures of the state," and government is free to override the rights and wishes of parents. *Pierce*, 268 U.S. at 534.

The violation of parental rights also has devastating practical consequences. Edward Hudacko was deeply concerned about his child undergoing gender transition procedures and surgery, and knew that his ex-wife wanted to take such steps against his consent. In the context of a divorce proceeding, a state court expressly required his consent to "any gender-identity related surgery" or a court order to approve any procedure. The lone parental rights he held were to approve any measures taken to invade his child's body to affirm a different gender identity.

The state hospital and its doctors violated that right by neither informing him nor seeking his permission—not even inquiring about his existence or involvement. Hudacko opposed any surgical intervention aimed at altering his child's body to appear more like the opposite sex—the sole parental right he insisted upon. The defendants in his complaint not only violated a court order declaring Hudacko's parental rights, but violated clearly established law from this Court establishing his right to direct the upbringing of his minor child in the matter of his gender identity.

There is no question that the procedure performed by doctors employed by the University of

California San Francisco on Hudacko's minor child constituted both surgery⁴ and state action. By operating on Hudacko's child to insert a hormone treatment into the body, the doctors violated Hudacko's rights to consent to any such surgery before the child reached the age of 18. The hospital never sought to honor Hudacko's rights and deliberately avoided informing him, both of which constitute harm to his parental rights.

CONCLUSION

This case demonstrates the extreme harms suffered by parents across the nation when state actors interfere with their rights to direct their children in matters of gender identity. There is perhaps no greater example of turning a child into a "mere creature of the state" than in co-opting medical decision-making against the parent's express wishes. These actions represent substantial interference with Hudacko's rights to direct his child's upbringing. California should not be permitted to escape liability for its invasion of these rights, nor should courts be permitted to disregard this Court's precedent and clear instructions in *Mahmoud* and *Mirabelli*.

⁴ See "Surgery," Farlex Partner Medical Dictionary (2012), ("1. The branch of medicine concerned with the treatment of disease, injury, and deformity by physical operation or manipulation. 2. The performance or procedures of an operation."), <https://perma.cc/C43K-RNZA>.

Respectfully submitted,

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