

No. 26-237

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN WOOLARD, ET AL.,

Petitioners,

v.

TONY THURMOND, 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
FOUNDATION FOR MORAL LAW
IN SUPPORT OF PETITIONERS

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INTEREST OF THE AMICUS CURIAE¹

Amicus Curiae Foundation for Moral Law (“the Foundation”) (www.morallaw.org) is a national public interest, nonprofit organization based in Alabama, dedicated to the strict interpretation of the Constitution as written and intended by its Framers and to the right to acknowledge God in the public arena.

The Foundation believes the Constitution protects the rights of parents to the custody, nurture, and control of their children, which includes educating them in their beliefs and moral values. The Foundation further believes that when a State provides independent-study programs where parents teach their children in their homes using curricula and materials they select, the State cannot discriminate against parents who choose to use religious materials and promote religious values.

¹ Pursuant to Supreme Court Rule 37.6, the Foundation states that no counsel for a party authored this brief in whole or in part, and that no person other than the Foundation, its members, or its counsel made a monetary contribution intended to fund its preparation or submission. Pursuant to Rule 37.2, counsel of record for all parties received timely notice of the Foundation’s intention to file this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Excluding the possible exception of a closed forum, the First Amendment protects individual expression regardless of where that expression takes place. Various groups and individuals have continually tried to use the judicial system to regulate expression in the open public arena by over-emphasizing the Establishment Clause of the First Amendment. However, the First Amendment is one sentence with one purpose to protect individuals from a government that would regulate religion and suppress dissent.

The First Amendment was never meant to prevent government actors from expressing their sincerely held beliefs. In fact, the founding fathers expressed their sincerely held beliefs when they wrote The Declaration of Independence. Even the Constitution recognizes sincerely held beliefs when it proclaims the protections for freedom of speech and religion and due process.

The Establishment Clause is not violated when a coach prays for his team after a game, or even when a teacher shares her sincerely held belief while explaining the wonders of nature. These are not acts of Congress. They are not acts of a government entity making a law or prohibiting the free exercise of religion. These are private citizens expressing their sincerely held beliefs in a public forum that is specifically designed for the free expression and flow of information. Likewise, parents who choose curriculum in an independent study program with the intent to nurture and educate their children are

exercising a fundamental duty and right that does not violate the Establishment Clause.

Over time, the public education system has slowly usurped control from parents. The government has drawn the conclusion that it controls children's education, and in that capacity, some states have determined that religion cannot interfere with or be a part of public education. In the case at hand, California Charter-school officials rejected students' work and denied academic credits because the work contained religious content and the parent-choice curricula was religious in nature. They ignored the fact that the curricula and students' work met state standards. The district court upheld the school officials, holding that the charter schools' independent study programs are part of California's public school system and that a public school's curriculum is government speech. The Ninth Circuit affirmed but amended its opinion to describe the programs as "public school programs," which somehow permits the exclusion of religious material.

Five judges of the Ninth Circuit would have reheard this case. Judge Bumatay, joined by Judges R. Nelson, Collins, VanDyke, and Tung, explained that the panel invented a new "sufficiently public" test, and then realizing the new test unworkable, amended its opinion to slap a public-school label on the homeschool programs. *Woolard v. Thurmond*, 152 F.4th 1050 (9th Cir. 2025), as amended by Order and Amended Opinion, No. 24-4291 (9th Cir. Mar. 23, 2026) (Bumatay, J., joined by R. Nelson, Collins, VanDyke, and Tung, JJ., dissenting from the denial of rehearing en banc), Pet. App. 21a-22a. Judge

VanDyke, joined by Judges Bumatay and Tung, added, “[n]o one disputes that California blatantly discriminated against religion in this case.” *Woolard*, Pet. App. at 31a. The dissenting opinions confirm what the petition presents: a conflict with *Carson v. Makin*, 596 U.S. 767 (2022) and with *Mahmoud v. Taylor*, 606 U.S. 522, 547 (2025) over whether a State may condition a public benefit on parents giving up religious instruction in their own home.

The decisions of the district court and the Ninth Circuit completely contradict Supreme Court precedent which has repeatedly confirmed that the First Amendment protects religious exercise in the education arena for all actors, whether coaches, teachers, parents, or students. Moreover, the ruling ignores the fact that whether parents decide to place a child in public school, private school, or homeschool, they, and not the government, have the ultimate control over their children’s education. The government’s role is merely one of support.

ARGUMENT

1. *Actors in the public education system do not lose their First Amendment rights simply because they are subject to some government regulation.*

The Free Speech Clause and the Free Exercise clause work in tandem, the latter protecting religious exercises and the former providing overlapping protection for expressive religious activity. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022) (referencing *Widmar v. Vincent*, 454 U.S. 263, 269, n. 6 (1981) and *Rosenberger v. Rector and Visitors of*

Univ. of Va., 515 U.S. 819, 841 (1995)). The opinion in *Kennedy* suggested that the double protection is no accident, but that it was a natural outgrowth of the framers' distrust of government attempts to regulate religion and suppress dissent. *Kennedy*, 597 U.S. at 524. The Supreme Court has continually affirmed that the Free Exercise Clause protects the right to harbor religious beliefs inwardly and secretly, as well as to live out faith in the daily life. *Kennedy*, 597 U.S. at 524 (referencing *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 877).

California charter school officials have decided that religious expression is not acceptable simply because the state decided to provide strictly secular education. Affirming the judgment of the district court, the Ninth Circuit opined that “not all government decisions that engender religious objections impose burdens on religion that fall afoul of the Free Exercise Clause.” *Woolard v. Thurmond*, 152 F.4th 1050 (9th Cir. 2025), as amended by Order and Amended Opinion, No. 24-4291 (9th Cir. Mar. 23, 2026); Pet. App. 59a. Yet, when it comes to infringing fundamental parental rights, the Supreme Court has consistently found burdens on religion run afoul.

The Ninth Circuit relied heavily on *Carson v. Makin* to defend its position that a “strictly secular” public education does not impose a religious burden because it does not “coerce parents into violating their religious beliefs, nor denies religious parents an equal share of the rights, benefits, and privileges enjoyed by other citizens” (citations omitted). *Woolard*, 152 F.4th 1050; Pet. App. 59a (quoting *Lyng*

v. Nw. Indian Cemetery Protective Ass'n, 485 U.S. 439, 449 (1988)). The court used *Carson* to determine whether the independent study programs have the critical features characteristic of public schools. The Ninth Circuit opined that since parents in the independent study program can teach only under the supervision of state employees, the “extensive legal requirements” applicable to those programs “make them public school programs” that defeat Petitioners’ free exercise claim. *Woolard*, 152 F.4th 1050; Pet. App. 62a.

Labeling parent-taught, home-based instruction a “public school program” cannot be squared with how these programs actually operate. Furthermore, the parent-choice curricula and students’ assignments do not qualify as public employee speech. First, the court’s government speech rationale cannot bear the weight placed on it. Government speech is speech the government itself adopts and controls, and the doctrine is “susceptible to dangerous misuse.” *Matal v. Tam*, 582 U.S. 218, 235 (2017). This Court asks whether the government has long used the medium to speak, whether the public reasonably attributes the message to the State, and whether the State controls the message. *Shurtleff v. City of Boston*, 596 U.S. 289, 301-02 (2022). A mother teaching her own child at her own kitchen table fails each measure. No one attributes her lesson to California, and the State neither writes it nor delivers it. Nor does public funding convert private expression into the State’s own. *Rosenberger*, 515 U.S. at 834.

However, if the Court decided to follow the government speech argument, the next step in the

process would be to determine if the so-called speech was “pursuant to government duties” or instead, speech consistent with “a citizen addressing a matter of public concern.” *Kennedy*, 597 U.S. at 528. In addition to determining whether the government commissioned the speech and whether the speaker was expected to deliver the speech in the course of duty, the Court would also need to determine whether the so-called speech interests outweigh the interest of the State. *Id.*

In the case at hand, the so-called speech being curricula and student work were not pursuant to a government duty. Rather, they were pursuant to a parental duty. Furthermore, the curriculum and student work fall in the category of matters of public concern, especially seeing as a myriad of education issues are up for debate in this country. The interests of the parents and students outweigh the interest of the State because parents have a fundamental right to educate their own children as they see fit and students have a right to express their personal religious beliefs. The government neither commissioned nor created the curricula or the students’ work, they merely provided the supportive program to allow independent study for a student who is taught and controlled by parents.

California and the Ninth Circuit seem to believe that a state provision gives the government authority to exclude religious-based material. In the context of this case, provision denotes supplying or making

available.² While provision may come with stipulations, the requisites cannot abridge Constitutional protections. A state may provide strictly secular education, and it may provide public benefit for the furtherance of education, but in doing so, it cannot suppress freedom of religion or override parental control.

While the Court in *Carson* observed that a state may provide strictly secular education, the opinion was not opening the door for a state to prohibit religious expression within the secular system. Rather, the Court explained that a secular system could not create provisional policies that excluded parents or private schools from public benefits simply because of their religious status. *Carson*, 596 U.S. at 787 (referencing *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017) and *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464 (2020)). If a parent desires a religious component to the secular provision, the parent has the ultimate control to make that decision. The state may make available or provide a secular curriculum or model of teaching, but it cannot deny a teacher, a parent, or a student’s right to express sincerely held beliefs within the secular public setting.

The First Amendment protections extend to all participants in the education arena. Just as *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969), so aptly explained, students and teachers do not “shed their constitutional rights

² *Provide*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/provide> (last visited Sept. 17, 2026).

to freedom of speech or expression at the schoolhouse gate.” The Court in *Shelton v. Tucker*, 364 U.S. 479, 487 (1960), similarly stated, “The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”

In *James v. Board of Education*, 461 F.2d 566 (2d Cir. 1972), the court held that the board could not dismiss a teacher for expressing a political opinion in the classroom. Calling schools the “cradle of our democracy”, the court stated that “schools bear the awesome responsibility of instilling and fostering early in our nation’s youth the basic values which will guide them throughout their lives.” *James*, 461 F.2d at 568. This responsibility requires a balancing act between the teacher, as a citizen, commenting on public concerns and the State promoting the efficiency of public services. *James*, 461 F.2d at 572 (citing *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968)). The Second Circuit concluded that teachers “cannot be allowed to patrol the precincts of radical thought with the unrelenting goal of indoctrination”, but “those charged with overseeing the day-to-day interchange between teacher and student must exercise that degree of restraint necessary to protect First Amendment rights.” *James*, 461 F.2d at 573. Just as the board in *James* could not prevent a teacher from expressing a political opinion in the classroom, and just as the school district in *Kennedy* could not prevent a coach from engaging in religious conduct while on duty, so charter school officials cannot prevent a parent or student from engaging in religious conduct, especially when that conduct is in the privacy of their own education in their own home.

Kennedy v. Bremerton clearly settled the extent of First Amendment protections in the education arena. The Court held that Coach Kennedy's speech was private and not ordinarily within the scope of his duties as a coach. The Court also held that the school district failed to show that its disciplinary actions were essential to avoid a violation of the Establishment Clause. Furthermore, the district failed to act pursuant to a neutral and generally applicable rule. *Kennedy*, 597 U.S. 507. The Court has plainly established that a policy will fail if it discriminates on its face, or if a religious exercise is otherwise its object, or it provides a mechanism for individualized exemptions. *Kennedy v. Bremerton*, 597 U.S. at 526 (quoting *Smith*, 494 U.S. 872, 878 (1990), *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993), *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021)). *Kennedy* affirmed that failing either the neutrality or general applicability test is sufficient to trigger strict scrutiny. *Kennedy*, 597 U.S. at 526.

In the case at hand, charter school officials failed both neutrality and general applicability because only religious parents and students were excluded and punished for using religious materials that in every other way met the state standards. Acting upon an improper understanding of the Establishment Clause, the charter school officials singled out private religious expression for special disfavor, claiming that the secular public school policy properly prevented the families from using religious materials and speech. They effectively shed parents and students of their First Amendment protections via misguided government regulation. In the end,

California's strictly secular system coerces parents to violate their beliefs and denies them equal share of the rights, benefits, and privileges enjoyed by other citizens. More importantly, the secular system denies parents their fundamental right to the nurture, care and control of their children.

2. The Constitution wholly protects parents' fundamental duty and right to nurture and educate their children.

The U.S. Constitution presupposes a Creator who endows unalienable rights. As Justice Douglas stated, "We are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952) (holding that a "released time" program did not violate the First Amendment, and it did not involve coerced religious instruction simply because it accommodated the religious needs of the people). The Declaration of Independence declares, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." These rights carry a solemn duty. For parents, that duty is to raise children according to the Creator's standard. Nature's God, to whom the founders so often refer, ordained the family unit when He created male and female and gave them the privilege to pro-create. With the privilege of pro-creation, He gave the duty to raise and train children.

The U.S. Constitution neither creates rights nor denies rights, it merely provides securities for unalienable rights. According to the Tenth

Amendment, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” The Ninth Amendment confirms, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” Therefore, since the Constitution has not enumerated parental duty or privilege, and since it has not delegated such a duty and privilege to the State, then the duty and privilege to parent and train a child is retained by the people.

The Fourteenth Amendment further supports the privilege retained by the people when it declares that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” The Due Process clause “provides heightened protection against government interference with certain fundamental rights and liberty interests.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)). The *Troxel* plurality recognized that parents’ right to the care, custody, and control of their children “is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel*, 530 U.S. at 65. Seventy-seven years earlier, *Meyer v. Nebraska*, 262 U.S. 390 (1923) held that the liberty “protected by the Due Process Clause includes the right of parents to ‘establish a home and bring up children’ and ‘to control the *education* of their own’” (emphasis added).

Just one year ago, *Mahmoud v. Taylor*, 606 U.S. 522, 547 (2025) stated that parents’ right to direct the religious upbringing of their children “would be an

empty promise if it did not follow those children into the public school classroom.” *Mahmoud* stated that the First Amendment extends not just to policies that compel children to depart from their parents’ religious practices, but also policies that impose “more subtle forms of interference.” *Mahmoud*, 606 U.S. at 548. *Mahmoud* determined that the introduction of LGBTQ+ storybooks combined with the decision to withhold notice from parents and forbid opt outs substantially interfered with parents’ fundamental rights. *Id.* at 550. If a public school cannot introduce curricula that interfere with parents’ fundamental right, then it certainly cannot refuse parent-choice curricula.

A presumption exists that parents act in their children’s best interests. *Troxel*, 530 U.S. at 68. *Troxel* stated, “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 parents to make the best decisions regarding their children. *Troxel*, 530 U.S. at 68-69 (citing *Parham v. J.R.*, 442 U.S. 584, 602 (1979)). Yet, in the case at hand, the state has done just that. Charter-school officials have injected themselves into the private realm of the family by denying their choice of curricula and refusing academic credit. More egregious is that they have interfered with the family’s First Amendment right to freely exercise their religious beliefs. It is not the state’s duty to determine educational decisions for children. That duty belongs to the parents as a fundamental right, and it is wholly protected by the First Amendment because that duty is a religious duty.

3. *History and tradition firmly establish that the free exercise of religion, education, and parental control are intertwined.*

According to *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), one of the primary features of the substantive due process analysis is that it protects those fundamental liberties which 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.”

In *The Commentaries on the Laws of England*, Sir William Blackstone embodied the principles and beliefs upon which this nation’s rights and liberties are founded. Regarding Parent and Child in the 16th Chapter of Book 1, the duties of parents to legitimate children consisted principally of three particulars, “... their maintenance, their protection, and *their education*” (emphasis added).³ While the Law of England recognized the power of a parent to give part of his authority to a tutor or schoolmaster “*in loco parentis*” for “restraint and correction,” as necessary for instruction, the parent still retained control of the child.⁴

Even before the United States gained independence, colonists understood the necessity of

³ Sir William Blackstone. *Commentaries on the Laws of England* (London 1765) 1 *Commentaries* *434 (Book I, ch. 16 § 1), Internet Archive, https://archive.org/details/bim_eighteenth-century_commentaries-on-the-laws_blackstone-william-sir_1765_1/mode/1up (last visited Sept. 18, 2026)

⁴ *Id.* at *441.

educating and nurturing their children in accordance with Biblical foundations. Christian groups, such as the Puritans, Anglicans, Catholics, and Dutch Reformed established a majority of America's earliest schools and colleges. Colonial America focused education on the religious needs of the communities. They concentrated on ministerial training along with civics and history for future spiritual, political and business leaders. Colonial settlers encouraged literacy so that all people could read the Bible. In 1647, Massachusetts even enacted the Old Deluder Satan Act, which required towns to appoint one of their own to teach children to read and write because it was "one chief project of that old deluder, Satan, to keep men from the knowledge of the Scriptures."⁵

Historically and traditionally, parents have controlled their children's education, ensuring that they receive not just academic training, but biblical foundations. Neither the state nor the federal government have any basis to control this fundamental right of parents.

4. The government's role in education is one of support and encouragement, not control.

Good moral conduct and religion are the pillars of this nation's early government. In 1789, President George Washington signed into law the Northwest Ordinance which set forth the requirements of statehood for prospective territories. The enabling act required a new state to form its government in a

⁵ John Eidsmoe. *Christianity and the Constitution* 28 (Baker Book House 1987).

manner “not repugnant to the Ordinance.”⁶ Consequently, many state constitutions also made provisions similar to Article III of the Ordinance which declared: “Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be *encouraged*” (emphasis added).⁷ Rather than take authority away from parents, the early government, both federal and local, established schools to enhance the morality, knowledge, and religion that parents were already providing for their children.

Even as states established more schools and asserted more control over education, the fundamental right of parents to control the nurture and education of their children remained firmly intact. *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925), specifically stated that a 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.” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944), also affirmed the higher rights of parents when it stated, “It is cardinal with us that the custody, care and nurture of the child reside *first* in the parents, whose primary function and freedom

⁶*An Ordinance for the Government of the Territory of the United States, North-West of the River Ohio*, Sec. 11, July 13, 1787 [hereinafter *Northwest Ordinance (1787)*]; Milestone Documents, National Archives, Archives.gov, <https://www.archives.gov/milestone-documents/northwest-ordinance> (last visited Sept. 22, 2026).

⁷ *Northwest Ordinance (1787)*, Art. III.

include preparation for obligations the state *can neither supply nor hinder*" (emphasis added). When the Court struck down an Oregon law that required parents to send their children to public school, it held:

rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. 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, 534 (1925).

States may not secularize children by forcing them to accept instruction from only secular curricula or models of teaching. Furthermore, states cannot assert strict control without adequate reason. *Farrington v. Tokushige*, 273 U.S. 284 (1927) established this fact when it held unconstitutional a Hawaiian law which delegated police power to the Board of Education. The law regulated foreign language schools for the purpose of Americanism of the students, specifically Japanese students. It required foreign language schools to obtain a permit and pay a fee. Teachers were required to obtain a permit, sign a pledge, and prove they possessed ideals of democracy, knowledge of American history and institutions, and how to read, write, and speak English. The law further regulated every aspect of the school from student qualifications for enrollment

to method of study to approved curriculum. The Court held that the Act went “far beyond mere regulation of privately-supported schools.” *Farrington*, 273 U.S. at 298. Rather than undertake the consideration of each separate provision of the Act, the Court determined that all parts of the provision were a deliberate plan to bring foreign language schools under strict governmental control without adequate reason. The Court determined that the Act:

would deprive parents of fair opportunity to procure for their children instruction which they think important and we cannot say is harmful. The Japanese parent has the right to direct the education of his own child without unreasonable restrictions; the Constitution protects him as well as those who speak another tongue.

Farrington, 273 U.S. at 298.

Over forty years later, the Court ruled in favor of Amish parents who asserted their right to determine the upbringing and education of their children coupled with their First Amendment right to free exercise of religion. Citing *Meyer* and *Pierce*, the Court concluded in *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972):

A State’s interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and

interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children, so long as they, in the words of *Pierce*, ‘prepare [them] for additional obligations.’

The Court further stated in *Yoder*, 406 U.S. at 232,

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. *This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition* (emphasis added).

The debate is settled. Absent a compelling interest, parents’ fundamental right to raise their children according to the precepts of their God ranks higher than state interest and is wholly protected by the Constitution. History, tradition, and the U.S. Supreme Court have consistently concluded that parents maintain control in the realm of education. The state does not have a legitimate right to control children’s education against the parent’s will. The state cannot unreasonably restrict or deprive parents of the opportunity to procure the education they think important. “Being necessary to good government and the happiness of mankind,” the public education systems of this nation would do well to relinquish

their excessive control and return to encouraging “religion, morality, and knowledge.”⁸

CONCLUSION

The Foundation urges the Court to grant the petition for a writ of certiorari and reaffirm the fundamental right of parents to educate their children according to their religious values and beliefs.

September 23, 2026

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⁸ *Northwest Ordinance (1787)*, Art. III.