

No. 26-97

In the Supreme Court of the United States

ARIELLA HELLMAN, ET AL.,
Petitioners,

v.

KATHERINE CRAVEN, ET AL.,
Respondent.

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

**BRIEF OF AMICUS CURIAE CENTER FOR
THE RIGHTS OF ABUSED CHILDREN IN
SUPPORT OF PETITIONERS**

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*Amicus Curiae*¹ respectfully submits this brief in support of Petitioners and asks that Petitioners' Petition for a Writ of Certiorari be granted.

INTEREST OF AMICUS CURIAE

The Center for the Rights of Abused Children (the "Center") works in legislatures and courtrooms nationwide to protect the constitutional rights of abused, neglected, and vulnerable children, each of whom deserves a safe and loving home and a meaningful education. The Center protects children, changes laws, and inspires others. It has shepherded dozens of reforms through state legislatures, in a bipartisan manner, to improve child welfare and educational outcomes. The Center's pro bono Children's Law Clinic provides free legal assistance—including direct representation and legal trainings—to thousands of children, families, attorneys, judges, and child welfare professionals each year.

This case implicates a core part of the Center's mission: ensuring that vulnerable children, including children with disabilities and children in foster care, receive the individualized educational services the state has promised them. These children depend on the state, often more than their peers do, for consistent access to the special education services, therapies, and instruction that allow them to learn and to thrive. When a state structures access to those services in a way that disregards a child's needs and

¹ No counsel for any party authored this brief in whole or in part. No person or entity other than *amicus curiae* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Further, *amicus* provided notice to all counsel of this filing at least ten days in advance of the deadline.

instead turns on a circumstance outside the child’s control—such as a parent’s choice of school—it is the child, not merely the parent, who bears the cost. The Center accordingly has a strong interest in ensuring that the First Circuit’s rule, if left undisturbed, does not become a template for stripping vulnerable children of services to which they are otherwise entitled.

SUMMARY OF ARGUMENT

This case is not only about the constitutional rights of parents. It is also about the rights of children whose services, education, and daily lives are shaped by the First Circuit’s rule.

First, the First Circuit’s decision permits Massachusetts to penalize children—not just their parents—for the exercise of the right recognized by *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). The special education services that the Place Restriction denies belong to children, not to the schools they attend. When the Place Restriction forces those children out of their classrooms and into isolation, the child (not merely the parent) suffers the injury: lost instructional time, disrupted peer relationships, and stigma. Even under the First Circuit’s own reading of Massachusetts law, these children are denied an “equally available benefit” for a reason that has nothing to do with their disabilities.

Second, the question presented recurs nationwide and disproportionately threatens the very children the Center exists to protect. Dozens of states have anti-aid provisions like Massachusetts’s, and courts and agencies have repeatedly invoked them to dismantle educational opportunities that legislatures

created for vulnerable populations—from special education services here, to vouchers for children in foster care and children with disabilities, to postsecondary tuition assistance. Children with disabilities and foster children are especially exposed to this recurring problem because they depend on individualized, flexible services more than their peers do.

Third, the First Circuit’s equal-protection analysis rests entirely on its due process holding. Because the court concluded that the Place Restriction does not burden the *Pierce* right, it applied rational basis review rather than the heightened scrutiny that generally applies to classifications burdening a fundamental right. If this Court holds that the unconstitutional-conditions doctrine applies to the *Pierce* right, the premise for the First Circuit’s equal-protection holding disappears, and the Place Restriction must be evaluated under heightened scrutiny instead.

The Petition should be granted.

ARGUMENT

I. The First Circuit’s Rule Permits States to Penalize Children for Their Parents’ Exercise of the *Pierce* Right

Pierce is conventionally understood as a case about parents. But its central premise—that “the child is not the mere creature of the State,” 268 U.S. at 535—necessarily implicates the child as well. If the State cannot force a child to accept only the instruction the State provides, a child whose parents choose otherwise cannot be treated as though she has

no stake in the outcome. *Cf. Espinoza v. Montana Dept. of Rev.*, 591 U.S. 464, 486 (2020) (reasoning that Montana’s no-aid provision “burdens not only religious schools but also the families whose children attend or hope to attend them” and that “the no-aid provision penalizes” a parent’s exercise of the *Pierce* right “by cutting families off from otherwise available benefits”).

The First Circuit’s rule loses sight of that reality. By holding that the unconstitutional-conditions doctrine does not protect the *Pierce* right, the court permitted Massachusetts to impose the practical costs of the Place Restriction on children solely because their parents exercised the constitutionally protected right to direct their education. As Petitioners emphasize (Pet. at 30-31), this Court has long recognized that the government may not condition the receipt of a public benefit on the surrender of a constitutional right.

A. The services at issue are individualized benefits belonging to children, not aid conferred upon schools.

Here, Massachusetts provides all children with disabilities—including children whose parents enroll them in private schools—an individual right to special education services alongside their nondisabled peers. Mass. Gen. Laws ch. 71B, § 3. The Individuals with Disabilities Education Act (“IDEA”) provides no comparable right for families who enroll in private schools. *See* Pet. at 6. These individualized services include diagnosis and evaluation of the child’s special needs, proposal of a comprehensive Individualized Educational Program (“IEP”) to meet those needs,

and providing or arranging personnel, materials, and equipment for the IEP. The IEP must include “a statement of the child’s present levels of academic achievement and functional performance,” describe “how the child’s disability affects the child’s involvement and progress in the general education curriculum,” and set out “measurable annual goals, including academic and functional goals,” along with a “description of how the child’s progress toward meeting” those goals will be gauged. 20 U.S.C. § 1414(d)(1)(A)(i)(I)-(III). The IEP “is the means by which special education and related services are tailored to the unique needs of a particular child.” See *Endrew F. ex rel. Joseph F. v. Douglas Cnty.*, 580 U.S. 386, 391 (2017) (citation omitted).

Consider, for example, 12-year-old Aaron whose case Petitioners cite. *Peter v. Wedl*, 155 F.3d 992, 994 (8th Cir. 1998); Pet. at 24-26. Aaron had normal cognitive abilities but, because of severe physical disabilities, could not speak and communicated through finger signing. *Id.* at 994. He required a full-time paraprofessional at school to assist with communication and classroom tasks. *Id.* The paraprofessional cost roughly \$10,000 per year—regardless of whether Aaron attended a public or private school. *Peter*, 155 F.3d at 994.

The Eighth Circuit held that the school district’s denial of services at Aaron’s private religious school violated his rights under the IDEA and declined to address his parents’ unconstitutional conditions claim. *Id.* at 1001-1002. In so holding, the Eighth Circuit emphasized that “there is nothing in this record to suggest that [the school district] ever considered how ‘best’ to serve Aaron.” *Id.* at 1001.

Here, Petitioners’ parents obtained IEPs so that their children with disabilities could receive individualized services. Pet. App. at 10a-11a. Those services “aid students, not schools,” *id.* at 27a, and so Petitioners therefore argued “it would not contravene the Massachusetts Constitution to provide special education services on site in private schools,” *id.* The First Circuit brushed this argument aside with little analysis, stating it was “not convinced[.]” Pet. App. 28a.

This Court’s intervention is imperative to clarify that a State may not make a child’s access to an individualized benefit turn on whether her parents forgo their constitutionally protected choice of private education.

B. The Place Restriction enforces the condition by disrupting children’s education and separating them from their classmates for reasons unrelated to their needs.

The Place Restriction does not merely burden a parental choice in the abstract; it directly impacts the quality of a child’s education.

Once a Massachusetts child is identified as having special needs, she is entitled to receive services in the “[l]east restrictive environment”—that is, alongside her nondisabled peers, in her own school, unless the “nature or severity” of her disability requires otherwise. Mass. Gen. Laws ch. 71B, § 1. The Place Restriction severs that entitlement for children whose parents exercise the *Pierce* right, without regard to whether removal serves any of those children’s needs. 603 CMR 28.03(1)(e)(3).

As a result, children like Petitioners' children—who receive services for conditions including ADHD, dyslexia, and developmental coordination disorder—are pulled out of class multiple times each week and transported to a “neutral” site, where they receive services alone or alongside only other disabled children, never with the nondisabled classmates the statute otherwise guarantees. Pet. App. 154a–156a, 159a–160a.

The consequences are borne by the children, not just their parents: lost instructional time, disrupted peer relationships, and, for children who are already anxious or self-conscious about their disabilities, the stigma of repeated, visible removal from the classroom. Pet. App. 155a, 160a. None of this has anything to do with whether removal would serve any individual child's educational needs. It follows solely from the fact that the child's parents exercised a constitutional right.

C. Even under the First Circuit's interpretation of state law, the children are denied an otherwise equally available benefit.

The First Circuit did not dispute that children whose parents exercise the *Pierce* right are denied an otherwise equally available benefit. Pet. App. 24a. In fact, it acknowledged that the Place Restriction requires those children, and only those children, to receive services in isolation or alongside other students with disabilities, for no reason other than their parents' exercise of the *Pierce* right. *Id.* And it accepted Petitioners' characterization of the unconstitutional-conditions doctrine: that once the

state establishes an otherwise generally available benefit, it may not deny that benefit to a student simply because his or her parents exercise their fundamental right to enroll their child in private school. *Id.*

Despite these concessions, the First Circuit nevertheless held that the denial of special education services carried no constitutional significance because the right at issue was the *Pierce* right rather than a Free Exercise right. *Id.* at 24a–25a. That holding is wrong. A rule that permits the government to deny children a benefit for the sole reason that their parents exercised a fundamental right is precisely what the unconstitutional-conditions doctrine forbids. Here, the condition operates on the parents through their child: their child may receive the generally available benefit on equal terms only if the parents abandon their constitutionally protected choice of private education. See *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) (“We have said in a variety of contexts that ‘the government may not deny a benefit to a person because he exercises a constitutional right.’”) (quoting *Regan v. Tax’n With Representation of Wash.*, 461 U.S. 540, 545 (1983), and collecting cases).

That error is not confined to Massachusetts. As explained next, the same constitutional problem recurs nationwide, with particularly serious consequences for children whose life circumstances and disabilities make access to these services especially important.

II. Anti-Aid Provisions Threaten State-Created Educational Benefits for Vulnerable Children Nationwide

The Place Restriction is not an isolated problem confined to Massachusetts special education law. It is one instance of a broader pattern in which states invoke anti-aid provisions to dismantle or restrict educational opportunities that legislatures have chosen to create—often at the direct expense of the vulnerable children whose rights and interests the Center works to protect.

A. Anti-aid provisions repeatedly place state-created educational opportunities at risk.

The question presented in the Petition is critically important and is not isolated to Massachusetts or the particular facts of this case. Because anti-aid provisions like the Massachusetts Blaine Amendment exist in dozens of states, they have repeatedly been used to dismantle or restrict educational programs that state legislatures created to expand children's access to education.

Petitioners explain that the Michigan Supreme Court has already confronted a situation materially identical to this one: a state law guaranteed special education services to all children, public and private alike, until the state invoked its own anti-aid amendment to deny those services for private school students. *Traverse City Sch. Dist. v. Att'y Gen.*, 185 N.W.2d 9, 21, 27 (Mich. 1971); Pet. at 18-21. The Michigan Supreme Court correctly rejected the notion that the denial of special education services to children attending private schools could be justified by the state's interest in precluding public

expenditures for private schools. *Traverse City Sch. Dist.*, 185 N.W.2d at 27-29.

Even outside of the context of special education and related services, state anti-aid provisions have been invoked across the K-12 landscape to invalidate educational benefits that legislatures chose to provide. In *Cain v. Horne*, for example, the Arizona Supreme Court struck down two voucher programs—including programs created for children in foster care and children with disabilities—because participating parents could use the funds only to enroll their children in private schools. The court reasoned that because parents had “no choice” but to use the vouchers at private schools, the programs violated the state’s anti-aid clause. 202 P.3d 1178, 1182-1185 (Ariz. 2009).

Several years later, the Arizona Court of Appeals rejected an anti-aid challenge to Arizona’s Empowerment Scholarship Accounts (“ESA”) program, which provided funds to families of students with disabilities. *Niehaus v. Huppenthal*, 310 P.3d 983, 987-988 (Ariz. Ct. App. 2013). Unlike the voucher in *Cain*, ESA funds were not conditioned on enrollment in private school; parents could use them to customize an education suited to their children’s unique needs. *Id.* at 987. The court therefore emphasized that “[t]he specified object of the ESA is the beneficiary families, not private or sectarian schools,” and rejected the “notion that if any state funds end up at private schools the program is automatically unconstitutional.” *Id.* at 988.

At the postsecondary level, Alaska illustrates just how far anti-aid provisions can reach. In *Sheldon*

Jackson Coll. v. State, the Alaska Supreme Court struck down a tuition-grant program designed to help Alaska residents afford private colleges. 599 P.2d 127, 131-32 (Alaska 1979). Although the grants were paid directly to students, the court deemed each student “merely a conduit” for public funds ultimately received by the college and therefore held that the program conferred an impermissible direct benefit on private institutions. *Id.* at 132 (footnotes and citations omitted). And because Alaska’s anti-aid clause applies to all private educational institutions—not merely religious ones—the court held that the prohibition extended even to nonsectarian colleges. *Id.* Thus, a benefit the legislature created for individual students was lost because those students chose to pursue their education at private institutions.

Thus, anti-aid provisions are capable of restricting access at every stage of a child’s educational development. Foster children in particular depend on the state not only for safety, but for access to education at every stage—from special education services, to stable school placements, to pathways to higher education. When state constitutional provisions are applied to restrict funding mechanisms without regard to their impact on children, the result is not neutrality. It is the systematic narrowing of opportunities for vulnerable children who have no alternative means of access.

B. Children with disabilities and foster children are especially harmed because they depend upon individualized services and flexible educational placements.

Special education is structured around individual evaluation, individualized services, and each child's ability to benefit from them. *See* 20 U.S.C. §§ 1400 *et seq.*; Mass. Gen. Laws ch. 71B, §§ 3, 5. Yet the Place Restriction determines the location and conditions of a child's services through a categorical rule that has nothing to do with the child's disability, the services the child needs, or the child's ability to benefit from receiving those services alongside nondisabled peers. It applies with equal force to a child whose disability is mild and to a child whose disability is severe, and it applies only because of a circumstance—the parents' choice of school—that has nothing to do with the child at all. This result is especially troubling given the broader context: “[i]n many school systems across the country, children with disabilities are not receiving the education that they are entitled to by law and need in order to reach their full potential.” E. Usman, *Reality Over Ideology: A Practical View of Special Needs Voucher Programs*, 42 Cap. U. L. Rev. 53, 91-92 (2014).

Children with disabilities are especially harmed by this kind of categorical rule because they depend on individualized services more than their peers do. Massachusetts itself has recognized that those services must ordinarily be delivered in the child's regular educational environment to be effective. Mass. Gen. Laws ch. 71B, § 1. Children in foster care depend heavily on state child-welfare and education systems for continuity in their education

and services, and they are disproportionality likely to have disabilities requiring individualized services. *See* U.S. Dep’t of Educ. & U.S. Dep’t of Health & Human Servs., Non-Regulatory Guidance: Ensuring Educational Stability and Success for Students in Foster Care 5, 40 (2024) (describing the high rates of residential and school instability experienced by students in foster care and explaining that students in foster care are more likely than their peers to receive special-education services). When a state’s anti-aid provision is read to override the individualized, needs-based structure that special education law otherwise requires, it is these children—already among the most dependent on the state for access to education—who bear the resulting loss of services.

III. The First Circuit’s Answer to the Question Presented Dictated Its Equal-Protection Analysis.

The First Circuit correctly stated that discrimination involving the exercise of a fundamental right receives heightened scrutiny. Pet. App. 29a-30a (citing *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978)). But it applied rational-basis review because it concluded that the Place Restriction did not burden the *Pierce* right. *Id.* Thus, if this Court grants certiorari and rejects the First Circuit’s categorical refusal to apply the unconstitutional-condition doctrine to *Pierce*, the foundation of the First Circuit’s equal-protection analysis changes as well, and the Place Restriction would be subject to heightened scrutiny, not rational basis review. *See Traverse City Sch. Dist.*, 185 N.W.2d at 28-29 (reasoning that “excluding private school children from receiving

shared time instruction or auxiliary services at the public school is a denial of equal protection”).

Even under deferential review, a categorical rule that disadvantages children—who, unlike their parents, have no voice in the political process—for a reason unrelated to their own needs is difficult to sustain. *See Romer v. Evans*, 517 U.S. 620, 633 (1996) (“A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense.”). The children whose rights the Center works to protect—including children with disabilities and children in foster care—are among the least equipped, politically or practically, to challenge rules that curtail their access to services.

If left undisturbed, the First Circuit’s equal protection analysis will invite states to condition educational benefits on families’ surrender of the *Pierce* right, effectively allowing anti-aid provisions to override protections legislatures have chosen to extend to individual children. The consequences will reach beyond programs already enacted. Blaine Amendments exert a powerful “shadow enforcement” effect, discouraging legislatures from creating programs for children with disabilities and other vulnerable students in the first place. *See* M. Katz, *The State of Blaine: A Closer Look at the Blaine Amendments and Their Modern Application*, 12 Engage: J. Federalist Soc’y Prac. Groups at 114-115 (2011). The First Circuit’s decision threatens to deepen that effect—leaving some of the children most dependent on educational assistance with fewer opportunities simply because their parents exercise a

constitutional right. This Court should not permit that result.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted, this 20th day of August 2026.

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