

No. 26-97

IN THE
Supreme Court of the United States

ARIELLA HELLMAN, ET AL.,

Petitioners,

v.

KATHERINE CRAVEN, ET AL.,

Respondents.

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

**BRIEF OF ALLIANCE DEFENDING FREEDOM
AS AMICUS CURIAE IN SUPPORT OF
PETITIONERS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT	5
I. This Court’s recent cases protect educational decisions of both religious and nonreligious parents.....	5
A. The <i>Trinity Lutheran</i> trilogy establishes that conditioning a benefit on forfeiting a right penalizes that right.	5
B. <i>Mahmoud</i> applies the trilogy’s reasoning and rejects burdens on parents’ right to direct their child’s religious upbringing.....	8
C. <i>Mirabelli</i> extends <i>Mahmoud</i> , applying its reasoning in the fundamental parental-rights context.	9
II. Those parent-protective precedents flow from long-standing jurisprudence.....	10
A. Cases outside the free-exercise context demonstrate that putting a price on the exercise of a right penalizes that right.....	10
B. Time-honored parental-rights precedents undergird <i>Mahmoud</i> and <i>Mirabelli</i>	13

III. This case illustrates why all parents—not just religious ones—have the right to direct their children’s education and upbringing.	16
A. Massachusetts’ special-education limits pressure religious and nonreligious parents alike into public school.	16
B. The First Circuit’s reasoning provides only religious parents relief.	18
C. This Court protects parents’ right to direct their children’s upbringing whether or not religious.	20
CONCLUSION	24

TABLE OF AUTHORITIES

Cases

<i>A.H. ex rel. Hester v. French</i> , 985 F.3d 165 (2d Cir. 2021)	2
<i>Agency for International Development v. Alliance for Open Society International, Inc.</i> , 570 U.S. 205 (2013).....	13
<i>Bethel Ministries, Inc. v. Salmon</i> , No. 1:19-cv-1853, 2022 WL 111164 (D. Md. Jan. 12, 2022).....	2
<i>Cantwell v. Connecticut</i> , 310 U.S. 296 (1940).....	21
<i>Carson v. Makin</i> , 596 U.S. 767 (2022).....	2–4, 7, 10, 12–13, 19
<i>Church of Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , 508 U.S. 520 (1993).....	6
<i>Dobbs v. Jackson Women’s Health Organization</i> , 597 U.S. 215 (2022).....	22
<i>Dunn v. Blumstein</i> , 405 U.S. 330 (1972).....	11, 13
<i>Employment Division, Department of Human Resources of Oregon v. Smith</i> , 494 U.S. 872 (1990).....	20
<i>Espinoza v. Montana Department of Revenue</i> , 591 U.S. 464 (2020).....	2–3, 6–7, 19
<i>Frost & Frost Trucking Co. v. Railroad Commission of California</i> , 271 U.S. 583 (1926).....	10

<i>Harman v. Forssenius</i> , 380 U.S. 528 (1965).....	10–11
<i>Hellman v. Massachusetts Department of Elementary & Secondary Education</i> , 171 F.4th 69 (1st Cir. 2026)	12–13, 18–20
<i>Koontz v. St. Johns River Water Management District</i> , 570 U.S. 595 (2013).....	11–12
<i>Loffman v. California Department of Education</i> , 119 F.4th 1147 (9th Cir. 2024)	17, 19
<i>Lyng v. Northwest Indian Cemetery Protective Association</i> , 485 U.S. 439 (1988).....	6, 19
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025).....	3–4, 8–9, 13–15, 17–20
<i>McDaniel v. Paty</i> , 435 U.S. 618 (1978).....	6
<i>Memorial Hospital v. Maricopa County</i> , 415 U.S. 250 (1974).....	11
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923).....	4, 10, 21, 23
<i>Mirabelli v. Bonta</i> , 607 U.S. 492 (2026).....	3–4, 9–10, 15, 23
<i>Moore v. City of East Cleveland</i> , 431 U.S. 494 (1977).....	22
<i>Parham v. J.R.</i> , 442 U.S. 584 (1979).....	4, 23
<i>Peter v. Wedl</i> , 155 F.3d 992 (8th Cir. 1998)	17–18

<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925).....	4, 7, 10, 14, 21, 23
<i>Shapiro v. Thompson</i> , 394 U.S. 618 (1969).....	11
<i>Sherbert v. Varner</i> , 374 U.S. 398 (1963).....	2, 6, 11
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 582 U.S. 449 (2017).....	2–3, 6, 8, 11, 19
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000).....	2, 15, 22, 23
<i>United States v. American Library Association, Inc.</i> , 539 U.S. 194 (2003).....	12
<i>Walz v. Tax Commission of New York</i> , 397 U.S. 664 (1970).....	13
<i>Washington v. Glucksberg</i> , 521 U.S. 702 (1997).....	22
<i>Wieman v. Updegraff</i> , 344 U.S. 183 (1952).....	12
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972).....	4, 7–8, 14–15, 19, 21, 23

Other Authorities

Philip A. Hamburger, <i>Education Is Speech: Parental Free Speech in Education</i> , 101 Tex. L. Rev. 415 (2022)	17
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INTEREST OF AMICUS CURIAE¹

This case is about whether parents can receive state-guaranteed special-education benefits without forfeiting their fundamental right to direct their children's education. Massachusetts guarantees special-education services for all children—not just public-school students. But it then forbids those services on private-school premises when parents choose to send their children to private schools (though curiously not when the *state* places a child in private school).

Many parents thus must choose between exercising their fundamental parental right and receiving the otherwise available special-education services. For the First Circuit, that choice raised no constitutional concerns, largely because the parents invoked Fourteenth Amendment parental rights rather than First Amendment free-exercise rights.

Amicus Alliance Defending Freedom (ADF) is a nonprofit, public-interest legal organization that provides strategic planning, training, funding, and litigation services to protect Americans' constitutional rights, including free exercise and parents' fundamental right to direct the education and upbringing of their children. ADF has represented clients and continues to litigate many cases in the parental-right and educational-funding contexts. As a result, it has a keen interest in the outcome here.

¹ No counsel for a party authored this brief in whole or in part, and no person other than amicus and its counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel were timely notified of this brief as required by Supreme Court Rule 37.2.

For example, ADF argued *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), where this Court held that “a condition upon even a gratuitous benefit” that requires participants to “disavow [their] religious character” violates the Free Exercise Clause. *Id.* at 463 (quoting *Sherbert v. Varner*, 374 U.S. 398, 405 (1963)). That case was the first in the trilogy of free-exercise cases that the court focused on below. See *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464 (2020); *Carson v. Makin*, 596 U.S. 767 (2022).

ADF has litigated other cases applying the *Trinity Lutheran* trilogy’s principles. For instance, ADF fended off a state effort to exclude religious schools and students from the state’s town-tuitioning program. See *A.H. ex rel. Hester v. French*, 985 F.3d 165, 184 (2d Cir. 2021). It also successfully protected a church-run school’s eligibility for a state voucher program. *Bethel Ministries, Inc. v. Salmon*, No. 1:19-cv-1853, 2022 WL 111164, at *13 (D. Md. Jan. 12, 2022). There, ADF litigated both the free-exercise and the parental-rights violations.

ADF has an interest in ensuring that lower courts do not subvert the *Trinity Lutheran* trilogy. Those cases apply beyond free exercise. They do not ask the state to assist recipients in exercising their rights. They only mandate that the state stop penalizing the exercise of a right.

ADF also advocates to ensure that parental rights are duly protected as “perhaps the oldest of the fundamental liberty interests recognized by” the Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality). The First Circuit was wrong to

treat the fundamental parental right as second-class. The petition should be granted.

SUMMARY OF THE ARGUMENT

This Court should grant review and stop lower courts from interpreting this Court’s parental-rights precedents as applying only to religious families. Here, the First Circuit “significantly misunderstood” the *Trinity Lutheran* trilogy, holding that it has no purchase outside the free-exercise context. See *Mirabelli v. Bonta*, 607 U.S. 492, 501 (2026) (Barrett, J., concurring). New and historic precedents refute that misinterpretation. “[G]eneral course correction” is needed. *Ibid.*

Recent opinions illuminate how the *Trinity Lutheran* trilogy applies beyond free exercise and extends to the fundamental parental right. That trilogy established that the government cannot condition an otherwise available benefit on the recipients surrendering their religion. *Trinity Lutheran*, 582 U.S. at 467; *Espinoza*, 591 U.S. at 486–87; *Carson*, 596 U.S. at 789.

Mahmoud v. Taylor, 606 U.S. 522 (2025), followed, clarifying that the condition could not hinge on parents forfeiting their right to direct the religious upbringing of their children. *Id.* at 530, 546. And *Mirabelli* extended that holding to *any* parent’s right to direct the education and upbringing of their children. 607 U.S. at 497. All parents—not just religious ones—have rights, especially in education.

Longstanding precedent makes those decisions “unremarkable.” E.g., *Carson*, 596 U.S. at 780. For instance, the *Trinity Lutheran* trilogy invoked a long history of cases that illustrate how conditions re-

quiring recipients to sacrifice a constitutional right “effectively penalize[]” the exercise of that right. *Ibid.* (citations omitted).

Mahmoud incorporated that principle and applied it to parents’ right to direct their children’s religious upbringing. In doing so, *Mahmoud* relied on cases grounded in the fundamental parental right. 606 U.S. at 547–50 (citing *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 532–35 (1925); *Wisconsin v. Yoder*, 406 U.S. 205, 211–12, 218 (1972)). In *Mirabelli*, all three opinions cited centuries-old parental-rights precedents. 607 U.S. at 497 (citing *Pierce*, 268 U.S. at 534–35; *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923); *Parham v. J.R.*, 442 U.S. 584, 602 (1979)); *id.* at 499 (Barrett, J., concurring) (citing same); *id.* at 507 (Kagan, J., dissenting) (citing *Pierce* and *Parham*).

The situation here demonstrates why all parents—secular and religious—must have the right to direct their child’s education. Massachusetts forbids the provision of its promised special-education services in private schools. The First Circuit upheld that discrimination but only as to secular families, putting parents to a choice: (1) enroll their child in public school to receive vital services, or (2) place their child in private school and forgo those services or pay for them out-of-pocket. The more severe the child’s disability, the less feasible option two becomes. In fact, private school is not financially feasible for many families—even before the added cost of private special-education services. *Mahmoud*, 606 U.S. at 560–62.

Thus, many parents may be forced to place their children in public school to receive the special-education services that Massachusetts guarantees all children. And under the First Circuit’s logic, only

religious parents could escape that coercion. But the Constitution is not so feeble. Centuries of cases protect *all* parents' right to direct their children's education.

This Court should grant review and reaffirm that the Constitution protects both religious and nonreligious parents' right to direct the upbringing and education of their children.

ARGUMENT

This case warrants review. This Court's recent decisions, historical precedents, and practical implications all support robust parental-rights protections, especially in education.

I. This Court's recent cases protect educational decisions of both religious and non-religious parents.

This Court's recent decisions on educational choice are clear: if the government offers an educational benefit, it cannot constrain parents' choices about how to use that benefit. To begin, a trilogy of free-exercise cases forbid states from excluding religious institutions from educational benefits. This Court then quickly clarified that reasoning to confirm that it protected a parent's right to direct their children's religious upbringing. And finally, the Court extended that right to nonreligious parents as well.

A. The *Trinity Lutheran* trilogy establishes that conditioning a benefit on forfeiting a right penalizes that right.

In *Trinity Lutheran*, a state agency offered reimbursement grants to nonprofit organizations that

resurfaced their playgrounds with recycled tires. 582 U.S. at 454. But it disqualified all religious nonprofits from the program. *Id.* at 455. This Court held that the “basic principle[s]” of free exercise confirmed that such a disqualification from “a generally available benefit” “impose[d] a penalty on the free exercise of religion.” *Id.* at 458 (citing *McDaniel v. Paty*, 435 U.S. 618, 628 (1978) (plurality)).

This Court distinguished free-exercise cases in which the government did not “deny[] any person an equal share of the rights, benefits, and privileges enjoyed by other citizens” and thus “did not ‘penalize religious activity.’” *Id.* at 460 (quoting *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 449 (1988)). In contrast, “a condition upon even a gratuitous benefit” imposed a penalty. *Id.* at 463 (quoting *Sherbert*, 374 U.S. at 405). And such penalties “inevitably deter[] or discourage[] the exercise of” a person’s constitutional rights. *Ibid.* (quoting *Sherbert*, 374 U.S. at 405).

In short, past precedent “ma[de] one thing clear”: disqualification from a public benefit “imposes a penalty.” *Id.* at 462 (citing *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993)). Penalizing the exercise of a constitutional right is “odious to our Constitution.” *Id.* at 467.

A few years later, this Court considered a state’s tax-credit program for those contributing to scholarships for private-school tuition. *Espinoza*, 591 U.S. at 468–69. But families could not use the scholarships at religious schools. *Id.* at 470. Applying *Trinity Lutheran*, the Court reached the “‘unremarkable’ conclusion that disqualifying otherwise eligible recipients from a public benefit ‘solely because of their religious charac-

ter’ imposes ‘a penalty on the free exercise of religion.” *Id.* at 475 (citation omitted). “Placing such a condition on benefits or privileges ‘inevitably deters or discourages’” people from exercising their constitutional rights. *Id.* at 478 (citations omitted).

This Court then explained that limiting the benefit to use in nonreligious schools “burden[ed] not only religious schools but also the families whose children attend or hope to attend them.” *Id.* at 486. It “put[] families to a choice between sending their children to a religious school or receiving [otherwise available] benefits.” *Id.* at 480.

This Court noted that it “ha[d] long recognized the rights of parents to direct ‘the religious upbringing’ of their children.” *Id.* at 486 (quoting *Yoder*, 406 U.S. at 213–14). And “[m]any parents exercise that right by sending their children to religious schools.” *Ibid.* (citing *Pierce*, 268 U.S. at 534–35). The state’s condition “penalize[d] that decision by cutting families off from otherwise available benefits if they choose a religious private school”; it “punishe[d] the free exercise of religion’ by disqualifying the religious from government aid.” *Id.* at 478, 486 (citation omitted).

Finally, in *Carson*, this Court again faced a government tuition-assistance program that prohibited families from using the benefit at religious institutions. 596 U.S. at 773–75. And again, this Court held that “[b]y ‘condition[ing] the availability of benefits’ in that manner, Maine’s tuition assistance program ... ‘effectively penalize[d] the free exercise’ of religion.” *Id.* at 780 (citations omitted). These cases make clear that conditioning a generally available public benefit on forfeiting a constitutional right “penalizes” the exercise of that right.

B. *Mahmoud* applies the trilogy’s reasoning and rejects burdens on parents’ right to direct their child’s religious upbringing.

This Court also considered the interaction between free-exercise rights and publicly funded education in *Mahmoud*. There, the public school was promoting values antithetical to certain parents’ religious views. *Mahmoud*, 606 U.S. at 537–39. This Court addressed two questions. Did that instruction interfere with parents’ right to direct the religious upbringing of their children? And if so, was that interference constitutionally permissible? In answering the first question, the Court held that the instruction did burden parents’ rights because it “pose[d] ‘a very real threat of undermining’ the religious beliefs and practices that the parents wish[ed] to instill.” *Id.* at 530, 565 (quoting *Yoder*, 406 U.S. at 218).

This Court then held that refusing parental opt-outs was constitutionally impermissible: “a government cannot condition the benefit of free public education on parents’ acceptance of such instruction.” *Id.* at 530. This Court emphasized that parents cannot be forced to accept “a burden on their religious exercise” in exchange for a “public benefit.” *Id.* at 561 (quoting *Trinity Lutheran*, 582 U.S. at 462). Nor could the government require parents to “either risk their child’s exposure to burdensome instruction, or pay substantial sums for alternative educational services.” *Id.* at 569.

In other words, the “availability of” private school or homeschooling was “no answer” to the constitutional burdens. *Id.* at 561. “[E]ducation is an expensive endeavor.” *Ibid.* One that governments “levy property taxes and income taxes on all

residents, regardless of whether they send their children to a public school” to finance. *Id.* at 562. Private school or homeschooling places an additional “hefty price” on families. *Ibid.* Governments tell parents—who “already contribute to financing the public schools”—that they must forfeit either a constitutional right or a publicly funded education, but not to worry, “prohibitively expensive,” theoretical “alternatives” exist. *Ibid.* That is “both insulting and legally unsound.” *Ibid.*

In *Mahmoud* (as here), the state’s compulsory attendance laws made the condition even more burdensome. In effect, the parents were “not being asked simply to forgo a public benefit.” *Id.* at 561. Absent finding an “adequate substitute” for public education, which “many parents cannot afford,” parents were being forced to accept the burden or face “fine or imprisonment.” *Ibid.*

C. *Mirabelli* extends *Mahmoud*, applying its reasoning in the fundamental parental-rights context.

Then, in *Mirabelli*, this Court took the next logical step and applied *Mahmoud*’s principles to the Fourteenth Amendment’s fundamental parental right. It extended the decision’s protections to non-religious parents and ensured that both religious and nonreligious parents could raise their children consistent with their beliefs. *Mirabelli* opened by explaining that the challenged policy interfered with the “right of parents to guide the religious development of their children” and thus likely violated the rights of religious parents. *Mirabelli*, 607 U.S. at 496 (quoting *Mahmoud*, 606 U.S. at 559).

The Court then held that “[t]he same is true” for nonreligious parents. *Id.* at 497. Indeed, regardless of parents’ religious position, “[u]nder long-established precedent, parents—not the State—have primary authority with respect to ‘the upbringing and education of children.’” *Ibid.* (quoting *Pierce*, 268 U.S. at 534–35) (citing *Meyer*, 262 U.S. at 399–400). Thus, policies that interfere with the parents’ ability to “direct the upbringing and education of their children” “likely violate parents’ rights” and are constitutionally impermissible. *Ibid.*

II. Those parent-protective precedents flow from long-standing jurisprudence.

Those recent cases rest on a historic pedigree. The *Trinity Lutheran* trilogy follows cases that “long ... established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution.” *Harman v. Forssenius*, 380 U.S. 528, 540 (1965) (citing *Frost & Frost Trucking Co. v. R.R. Comm’n of Cal.*, 271 U.S. 583 (1926)). *Mahmoud* incorporates that reasoning. And both *Mahmoud* and *Mirabelli* rely on established precedent emphasizing the importance of parents and their rights.

A. Cases outside the free-exercise context demonstrate that putting a price on the exercise of a right penalizes that right.

As this Court noted, the *Trinity Lutheran* trilogy did not rest on novel legal principles. Instead, those cases applied “unremarkable” principles illustrating that “condition[ing] the availability of benefits” on the sacrifice of a constitutional right “effectively penalizes” the exercise of that right. *Carson*, 596 U.S. at 780 (citation omitted).

And other precedents outside the free-exercise context—including those considering unenumerated rights—support that common-sense conclusion.

For instance, in *Dunn v. Blumstein*, 405 U.S. 330 (1972), this Court discussed the constitutionality of conditions implicating the unenumerated right to travel. *Id.* at 338. There, the government imposed a durational residency requirement for voting. *Id.* at 331. This Court explained that the requirement “single[d] out” residents who had “recently exercised th[eir] constitutionally protected right” to travel and thus “penalize[d] [them] directly.” *Id.* at 338. It then held that conditioning voting eligibility on not traveling “penalize[d] the exercise of that right.” *Id.* at 339 (quoting *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969)).

The condition was a penalty because “[t]ravel [was] permitted, but only at a price.” *Id.* at 341. That the right to travel was “merely penalized” instead of “absolutely denied” did not matter for constitutional purposes. *Ibid.* Even an unenumerated right could not be “indirectly denied.” *Ibid.* (quoting *Harman*, 380 U.S. at 540); see also *Mem’l Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 269 (1974) (unconstitutional to condition generally available medical care benefit on burden to right to travel).

The nature of the benefit withheld also does not matter for whether the condition imposes a penalty. This Court has long held that it does not matter if the condition is on a “gratuitous [governmental] benefit.” *Trinity Lutheran*, 582 U.S. at 463 (quoting *Sherbert*, 374 U.S. at 405); see also *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 608 (2013) (collecting cases). Indeed, the Court has “repeatedly

rejected the argument that if the government need not confer a benefit at all, it can withhold the benefit because someone refuses to give up constitutional rights.” *Koontz*, 570 U.S. at 608 (citing *United States v. Am. Libr. Ass’n, Inc.*, 539 U.S. 194 (2003); *Wieman v. Updegraff*, 344 U.S. 183, 191 (1952)).

In short, this Court has long made clear that whether a condition creates a penalty does not depend on what right must be forfeited. If a benefit requires the recipient to forgo a right, it penalizes that right. Full stop. The *Trinity Lutheran* trilogy is just three cases in a long line confirming that principle.

Of course, whether a benefit program imposes a penalty is not the end of the constitutional inquiry. The right penalized and the nature of the penalty both affect whether the penalty is constitutional. But the First Circuit evaded that thornier question. Instead, it held that even if Massachusetts denies parents “an otherwise generally available benefit” because parents “exercise their fundamental right to enroll their child in private school,” Massachusetts did not “penalize that choice.” *Hellman v. Mass. Dep’t of Elementary & Secondary Educ.*, 171 F.4th 69, 80, 83 (1st Cir. 2026). That holding conflicts with many of this Court’s precedents, as just discussed.

The First Circuit also attempted to circumvent this Court’s precedent by proclaiming that Massachusetts’ condition “merely defines the terms on which the state will provide publicly funded services to students whose parents choose to send their children to private school.” *Id.* at 80. But this Court has already rebuffed that move because “the definition of a particular program can always be manipulated to subsume the challenged condition.” *Carson*, 596 U.S.

at 784 (quoting *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 215 (2013)) (citing *Walz v. Tax Comm’n of N.Y.*, 397 U.S. 664, 696 (1970)). This Court rejects attempts to “reduce[]” the protection of fundamental rights “to a simple semantic exercise.” *Ibid.* (citation omitted).

Finally, the First Circuit excused the state because it did not “structure[] the special education regime to penalize those exercising their right to enroll their children in private school.” *Hellman*, 171 F.4th at 82. But the state’s intent is irrelevant. *Dunn*, 405 U.S. at 339–40. This Court’s cases have long confirmed that a benefit conditioned on forfeiting a right penalizes that right. The First Circuit erred.

B. Time-honored parental-rights precedents undergird *Mahmoud* and *Mirabelli*.

Mahmoud applies the *Trinity Lutheran* trilogy’s reasoning, holding that a state cannot condition a benefit on recipients accepting a burden to their right to direct the religious upbringing of their children. So the precedent undergirding the *Trinity Lutheran* trilogy also supports *Mahmoud*. Longstanding precedent likewise supports *Mahmoud*’s holding regarding what constitutes that burden. That precedent reveals why *Mahmoud*’s principles apply more broadly than only to a “religious” upbringing.

Mahmoud’s heavy reliance on *Yoder* reveals its parental-rights underpinnings. As Justice Thomas noted in concurrence, *Yoder* “relied heavily on [this Court’s] earlier decision in *Pierce*.” *Mahmoud*, 606 U.S. at 585 (Thomas, J., concurring). *Pierce* “articulated ‘perhaps the most significant statements of the

Court in [the parental rights] area,” holding that Oregon’s Compulsory Education Act “unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control.” *Id.* at 585–86 (quoting *Yoder*, 406 U.S. at 232; *Pierce*, 268 U.S. at 534–35).

As *Yoder* recognized, *Pierce*—relying on yet another century-old parental-rights precedent—held that a “child is not the mere creature of the State.” 406 U.S. at 233 (quoting *Pierce*, 268 U.S. at 534–35). Instead, *parents* “have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Ibid.* According to *Yoder*, those “additional obligations” are not confined to religious ones; they also include “inculcation of moral standards” and “elements of good citizenship.” *Ibid.* Parents’ right to direct their children’s upbringing was even then “beyond debate as an enduring American tradition.” *Id.* at 232.

Mahmoud also relies on *Pierce* directly—not just via *Yoder*. When discussing the “generous measure of protection” the Constitution provides for parents’ decisions about how to educate their children, this Court noted that *Pierce* protects “a parent’s decision to send his or her child to a private religious school.” *Mahmoud*, 606 U.S. at 547 (citing *Pierce*, 268 U.S. at 532–35). But, of course, *Pierce* protects the right to send one’s child to *any* private school, not just a religious one. 268 U.S. at 532–35. That’s why *Yoder* acknowledged that *Pierce* relied on “nothing more than the general interest of the parent in the nurture and education of his children,” 406 U.S. at 233, not a parent’s specific interest in nurturing a child’s religious education.

By relying on parental-rights precedents and their progeny, *Mahmoud* underscores that parents' constitutional right to direct the upbringing and education of their children remains fundamental regardless of whether parents have a religious, moral, scientific, or other reason for that direction.

If *Mahmoud* left any doubt, enter *Mirabelli*, which solidified *Mahmoud*'s parental-right-protective principles and, in doing so, relied on additional longstanding precedent. For example, even before turning to the parental-right analysis, this Court relied on *Troxel* to hold that, under *Mahmoud*, California's policy would likely fail strict scrutiny. *Mirabelli*, 607 U.S. at 496–97 (citing *Troxel*, 530 U.S. at 68–69 (plurality)). It then made the implicit explicit, relying on many centuries-old precedents to protect both religious and nonreligious parents alike. *Id.* at 497.

This Court should take this case and clarify that longstanding precedent demands that conditioning a government benefit on accepting limits on a constitutional right penalizes that right. And that penalty violates the Constitution when it interferes with parents' right to “direct the upbringing and education of their children” just as much as when it interferes with parents' right to “direct the *religious* upbringing of their children.” Compare *Mirabelli*, 607 U.S. at 497, with *Mahmoud*, 606 U.S. at 543 (emphasis added) (quoting *Yoder*, 406 U.S. at 233).

III. This case illustrates why all parents—not just religious ones—have the right to direct their children’s education and upbringing.

Logic and common sense dictate that parents’ right to direct their children’s upbringing and education belongs to all parents, not just religious ones. This case is illustrative.

A. Massachusetts’ special-education limits pressure religious and nonreligious parents alike into public school.

Here, Massachusetts guarantees all children special-education services but then refuses to provide them at private schools if the parents (but not the state) voluntarily placed their children in private school. That makes the services difficult for any private-school student to access. It also requires parents to forfeit constitutionally protected private-school instruction that occurs while they transport their children to the services. If it is a service that could be provided in a child’s general-instruction classroom, parents surrender more instruction while their children participate in the off-campus services. The more severe the disability, the more difficult it is to access the services, and the more private-school instruction parents must surrender.

For a child who needs services throughout the school day, such as a deaf student who needs an ASL interpreter or a child with dysgraphia who needs a notetaker, public school becomes the only option. Parents are then put to a choice. One, they can send their child to public school where they can receive the necessary special-education services. Two, they can exercise their right to private school and pay for

private special-education services on top of private-school tuition and taxes financing the public schools.

Of course, private education is “prohibitively expensive” for “many parents” even before the additional cost of special-education services. *Mahmoud*, 606 U.S. at 561–62; accord Philip A. Hamburger, *Education Is Speech: Parental Free Speech in Education*, 101 Tex. L. Rev. 415, 429 (2022) (“[T]he combination of mandatory education and subsidized state education gives any but the most affluent parents little choice but to place their children in government educational institutions.”).

Especially for children with severe disabilities, only the wealthiest families could afford both private special-education services and private-school tuition. For many parents, the Massachusetts structure leaves just one choice: forgo special-education services or send their children to public school. And again, depending on the severity of the disability, forgoing special-education services may not be an option.

This is not a hypothetical fear. In *Loffman v. California Department of Education*, 119 F.4th 1147 (9th Cir. 2024), two families had to enroll their children in public schools because they could not afford private-school tuition and private special-education services. *Id.* at 1153. In that same case, another family kept its child in private school but had to discontinue the child’s speech therapy due to financial constraints. *Ibid.*

Similarly, in *Peter v. Wedl*, 155 F.3d 992 (8th Cir. 1998), the parents could afford their son’s private school tuition. But “they could not afford the cost of a paraprofessional,” which was an additional \$20,500 a year (adjusted for inflation). *Peter*, 155 F.3d at 994.

They were “forced to transfer” him to a public school when the school district refused to pay for a para-professional at his private school. *Ibid.*

Though the legal issues in those cases vary, they illustrate that parents face real pressure to enroll their children in public school when it is the only place where their children can receive essential special-education services. That pressure crushes religious and nonreligious parents alike. Those parents’ right to direct their children’s upbringing and education “would be an empty promise” if those unattainable alternatives could foreclose its exercise. See *Mahmoud*, 606 U.S. at 547.

B. The First Circuit’s reasoning provides only religious parents relief.

Under the First Circuit’s view, only religious parents can escape the pressure and send their children in need of special-education services to private school. The First Circuit accepted that private-school students were being “denied the otherwise ‘equally available benefit’ of being educated with other children who are not disabled.” *Hellman*, 171 F.4th at 83. The First Circuit then dismissed Petitioners’ argument that they could not be denied that benefit based on the exercise of their fundamental parental right. In its view, the *Trinity Lutheran* trilogy “ar[ose] under the Free Exercise Clause” and had “no bearing on their parental rights claim.” *Ibid.*

The First Circuit also rejected petitioners’ reliance on *Loffman* because that case, too, involved a free-exercise claim. *Id.* at 84 n.12. There, the Ninth Circuit held that forcing parents to “choose between” otherwise available “special education benefits” and

“education in” a private religious school “alleged a cognizable burden on the[] free exercise of religion.” *Loffman*, 119 F.4th at 1168 (citing *Espinoza*, 591 U.S. at 486; *Lyng*, 485 U.S. at 450). In short, Massachusetts could not condition special-education benefits on forfeiting free exercise, but the First Circuit refused to “apply free exercise reasoning to the parental right[s] context.” *Hellman*, 171 F.4th at 84.

The First Circuit thus implies that *religious* parents could bring a free-exercise claim alleging that the Massachusetts regulation conditioned a benefit on their forfeiting the right to direct their child's religious upbringing. See *Mahmoud*, 606 U.S. at 543, 547–48. The First Amendment would “prohibit[] the state from imposing” that “penalt[y] on *religious* exercise.” *Hellman*, 171 F.4th at 83–84 (emphasis added) (citing *Carson*, 596 U.S. at 778; *Trinity Lutheran*, 582 U.S. at 463; *Espinoza*, 591 U.S. at 478, 484). But nonreligious parents like Petitioners, who seeks to vindicate their right to direct the upbringing and education of their child, would receive no relief. That cannot be right.

The regulation's application to “all private schools, secular and religious alike,” *id.* at 83 (emphasis omitted), does not change the free-exercise analysis here. Even if Massachusetts' regulation does not target religion,² it burdens parents' “right ‘to direct the religious upbringing of their children.’” *Mahmoud*, 606 U.S. at 543 (quoting *Yoder*, 406 U.S.

² That is an open question. See *Espinoza*, 591 U.S. at 482 (discussing “checkered tradition” of no-aid amendments—like the one here—that were “born of bigotry” and “hostility ... to Catholics”) (citation omitted); *id.* at 497–507 (Alito, J., concurring) (same).

at 233). That is “a burden of the same character as that in *Yoder*.” *Id.* at 565. It thus does not matter “whether the law is neutral or generally applicable.” *Ibid.* *Mahmoud*’s analysis would apply.

In fact, Justice Sotomayor—who rejected the “same character” as *Yoder* test—seems to agree that *Smith*’s neutral-and-generally-applicable inquiry should be “set aside” if religious parents brought a free-exercise claim here. *Id.* at 626 (Sotomayor, J., dissenting) (citing *Emp. Div., Dep’t of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 878–79, 882 (1990)). In dissent, she explained that *Smith*’s inquiry did not apply when “parents relied on both their substantive due process rights to ‘direct the education of their children’ *and* the Free Exercise Clause.” *Ibid.* (emphasis added). Religious parents here could do exactly that.

Religious parents, then, could receive judicial relief from the pressure to forfeit guaranteed special education services or send their children to public school. But nonreligious parents would still be put to that choice. This Court forbids such differential treatment based on whether parents are religious.

C. This Court protects parents’ right to direct their children’s upbringing whether or not religious.

The First Circuit’s refused to “apply free exercise reasoning to the parental right context.” *Hellman*, 171 F.4th at 84. It would thus treat nonreligious parents as inferior rights-holders. That result contradicts this Court’s dictates. As explained, the right to direct the religious upbringing of one’s children evolved from cases protecting the “general

interest of the parent in the nurture and education of his children.” *Yoder*, 406 U.S. at 233; see Section II.B. Parents’ right to direct the “upbringing of their children” is now “beyond debate as an enduring American tradition.” *Yoder*, 406 U.S. at 232.

Even before this Court held that the Free Exercise Clause applied to the states (*Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940)), the Court vindicated parents’ fundamental liberty to direct their children’s upbringing and education against oppressive state laws. For instance, in *Meyer*, this Court held that the Fourteenth Amendment “[w]ithout doubt” protected parents’ right to “establish a home and bring up children.” 262 U.S. at 399 (collecting cases). The state thus could not prohibit parents from hiring a tutor to teach their children German. Doing so would violate a parent’s “fundamental rights” by “interfer[ing] with” “the power of parents to control the education of their own.” *Id.* at 401.

Just two years later, this Court again relied on the Fourteenth Amendment’s fundamental liberty guarantees to hold Oregon’s Compulsory Education Act unconstitutional because it “interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control.” *Pierce*, 268 U.S. at 530–36. The Court recognized that parents “nurture” and “direct [their child’s] destiny” and so “have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Id.* at 535.

Importantly, *Pierce* involved both the right of parents to send their children to a religious private school *and* a secular military school. *Id.* at 531–33. But this Court did not differentiate between those two

schools when assessing the parents’ right to send their children to them. In other words, this Court recognized the absurdity of protecting religious parents’ educational choices but ignoring nonreligious parents’ educational choices. The First Circuit did not.

Later cases repeatedly upheld the fundamental nature and historical pedigree of the parental right. For instance, *Washington v. Glucksberg*, 521 U.S. 702 (1997), defined a fundamental right as one “deeply rooted in this Nation’s history and tradition.” *Id.* at 721 (quoting *Moore v. City of E. Cleveland*, 431 U.S. 494, 503 (1977)). It then listed the right to “direct the education and upbringing of one’s children” as one of the “fundamental rights and liberty interests” our Constitution protects. *Id.* at 720.

Three years later, this Court reaffirmed that parents have a “fundamental liberty interest[]” in the “care, custody, and control of their children,” calling it “the oldest of the fundamental liberty interests recognized.” *Troxel*, 530 U.S. at 65 (plurality); see *id.* at 80 (Thomas, J., concurring in the judgment) (agreeing with “plurality that [the] Court’s recognition of a fundamental right of parents to direct the upbringing of their children resolves this case”). Four years ago, this Court included “the right to make decisions about the education of one’s children” among unenumerated rights that were “deeply rooted in history.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 256–57 (2022) (citing *Pierce* and *Meyer*, among other cases).

And this past Term, in three separate opinions, every Justice agreed that parents have a fundamental right—“[u]nder long-established precedent”—“with

respect to ‘the upbringing and education of children.’” *Mirabelli*, 607 U.S. at 497 (quoting *Pierce*, 268 U.S. at 534–35); see also *id.* at 499 (Barrett, J., concurring) (“[T]he doctrine of substantive due process has long embraced a parent’s right to raise her child.” (citations omitted)); *id.* at 507 (Kagan, J., dissenting) (“I have no doubt that parents have rights, even though unenumerated, concerning their children and the life choices they make.” (citations omitted)).

That deeply rooted parental right protects more than just decisions about a child’s *religious* upbringing. Instead, it “must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship.” *Yoder*, 406 U.S. at 233. Beyond religion, it has been applied to protect parents’ right to make decisions about their children’s medical care, *Parham*, 442 U.S. at 602; *Mirabelli*, 607 U.S. at 497; their children’s education, *Meyer*, 262 U.S. at 400; *Pierce*, 268 U.S. at 534–35; and their children’s interactions with relatives, *Troxel*, 530 U.S. at 65–66 (plurality). In short, the fundamental parental right is well established and applies to all parents, not just religious ones.

To now say that the Constitution protects parents’ right to direct only the *religious* upbringing and education of their children defies history, logic, and common sense—both in the special-education context and elsewhere. The First Circuit’s contrary conclusion is wrong and should be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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