No. 25A810

In the Supreme Court of the United States

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

Applicants,

v.

ROB BONTA, ATTORNEY GENERAL OF CALIFORNIA, ET AL.,

Respondents.

On Emergency Application to Vacate Stay Order Issued by the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM; EDWIN MEESE III, UNITED STATES ATTORNEY GENERAL, 1985-1988; ALABAMA POLICY INSTITUTE; ALASKA FAMILY COUNCIL; AMERICAN ASSOCIATION OF SENIOR CITIZENS; AMERICAN ENCORE; AMERICANS FOR FAIR TREATMENT; AMERICA'S WOMEN; DELEGATE LAUREN ARIKAN, MARYLAND DISTRICT 7B; ASSOCIATION OF MATURE AMERICAN CITIZENS ACTION; GARY L. BAUER, PRESIDENT, AMERICAN VALUES; SHAWNNA BOLICK, ARIZONA STATE SENATOR, DISTRICT 2; DR. BART BROCK, JAMES DOBSON FAMILY INSTITUTE; CENTENNIAL INSTITUTE AT COLORADO CHRISTIAN UNIVERSITY; CENTER FOR URBAN RENEWAL AND EDUCATION (CURE); DELEGATE BRIAN CHISHOLM, DISTRICT 31; CHRISTIAN MEDICAL & DENTAL ASSOCIATIONS; COALITION FOR JEWISH VALUES; CONCERNED WOMEN FOR AMERICA; DEFENDING EDUCATION; DELAWARE FAMILY POLICY COUNCIL; EAGLE FORUM; FAMILY COUNCIL IN ARKANSAS; FAMILY INSTITUTE OF CONNECTICUT ACTION; ROBERT K. FISCHER, CONSERVATIVES OF FAITH; CHARLIE GEROW; JAY D. HOMNICK, SENIOR FELLOW, PROJECT SENTINEL; ET AL.
IN SUPPORT OF APPLICANTS
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STATEMENT OF INTEREST OF AMICI CURIAE

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including freedom from arbitrary power.[1] AAF "will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,"[2] and believes American prosperity depends on ordered liberty and self-government.[3] AAF files this brief on behalf of its 26,055 members in the Ninth Circuit including 12,373 in the state of California.

Amici Edwin Meese III, United States Attorney General, 1985-1988; Alabama Policy Institute; Alaska Family Council; American Association of Senior Citizens; American Encore; Americans For Fair Treatment; America's Women; Delegate Lauren Arikan, Maryland District 7B; Association of Mature American Citizens Action; Gary L. Bauer, President, American Values; Shawnna Bolick, Arizona State Senator, District 2; Dr. Bart Brock, James Dobson Family Institute; Centennial Institute at Colorado Christian University; Center for Urban Renewal and Education (CURE); Delegate Brian Chisholm, District 31; Christian Medical & Dental Associations; Coalition for Jewish Values; Concerned Women for America; Defending Education; Delaware Family Policy Council; Eagle Forum; Family Council in Arkansas; Family Institute of Connecticut Action; Robert K. Fischer, Conservatives of Faith; Charlie Gerow; Jay D. Homnick, Senior Fellow, Project Sentinel; Tim Jones, Former Speaker, Missouri House, Founder, Leadership Institute for America; Independent Women's Law Center; Kansas Family Voice; Louisiana Family Forum; Lutheran Center for Religious Liberty; Jenny Beth Martin, Honorary Chairman, Tea Party Patriots Action; Maryland Family Institute; Moms for Liberty; National Apostolic Christian Leadership Conference; National Association of Parents, Inc. dba ParentsUSA; National Center for Public Policy Research; National Religious Broadcasters; New Mexico Family Action Movement; New York State Conservative Party; North Carolina Values Coalition; Melissa Ortiz, Principal & Founder, Capability Consulting; Palmetto Promise Institute; Protect the First Foundation; Rio Grande Foundation; Rick Santorum, Former Senator 1995-2007; Dr. Gregory P. Seltz, Executive Director, LCRL, Speaker Emeritus, The Lutheran Hour; 60 Plus Association; Southeastern Legal Foundation; Paul Stam, Former Speaker Pro Tem, NC House of Representatives;

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[1] No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Edwin J. Feulner, Jr., Conservatives Stalk the House: The Story of the Republican Study Committee, 212 (Green Hill Publishers, Inc. 1983).

[3] Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at https://advancingamericanfreedom.com/aaff-independence-index/.

Stand for Georgia Values Action; Students for Life of America; Delegate Kathy Szeliga, District 7A, Vice Chair of the Maryland Freedom Caucus; The Conscience Project; The Family Foundation of Virginia; The Institute for Faith & Family; The Justice Foundation; The Parental Rights Foundation; The Wagner Center; Tradition, Family, Property, Inc.; Suzi Voyles, President, Eagle Forum of Georgia; Wisconsin Family Action, Inc.; Frank R Wolf, U.S. Congress (VA) 1981-2015; and Young America's Foundation believe that the fundamental right of parents to direct the upbringing of their children is essential to liberty and is deeply rooted in American tradition and practice.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

No parents should have to fear that their children might attempt suicide after being secretly indoctrinated in school; this very situation, all too familiar to the Poe family, warrants this Court's immediate reinstatement of the district court's injunction of the school district policy at issue in this case. This Court recently held that the religious rights of parents are violated when schools condition public education on parents' "willingness to surrender" their religious views. *Mahmoud v. Taylor*, No. 24-297, slip op. at 32 (June 27, 2025). The fundamental right to raise one's children consistent with one's beliefs belongs to all parents, as the court should find in this case.

At issue in this case are California policies adopted by the Escondido Union School District ("EUSD"), referred to by the district court as the "parental exclusion policies." *Mirabelli v. Olson*, No. 23-768, slip op. at 7 (S.D. Cal. Dec. 22, 2025). These "policies are designed to create a zone of secrecy around a school student who expresses gender incongruity." *Id.* Specifically, the policies apply to children as young as two and prohibit teachers and school staff "from informing parents about a child's unusual gender expression, unless the child consents." *Id.*

Challenging the parental exclusion policies is a certified class including parents and teachers. The teachers, who are not only prohibited from informing parents but may even be required to deceive parents, raise a First Amendment Free Exercise challenge to the policies. *Id.* at 42-43. The school "communicated a 'no exceptions' stance" with regard to teachers and the parental exclusion policies. *Id.* at 43.

The families challenging the parental exclusion policies include the "Poes" and the "Does." When the Poes attended a back-to-school night in August 2023, teachers used their daughter's legal name and biological pronouns. *Id.* at 33.

"The Poe parents did not learn of their child's deteriorated mental health until after she attempted suicide." *Mirabelli v. Olson*, No. 23-768, slip op. at 19.

After the Poes learned that their daughter was presenting as a boy at school with the school's support, they spent months trying to get answer from the school. *Id.* Finally, in January, they received an email from a school administrator which concluded, "We cannot share the gender identity of the student with the parent even

if that gender identity is expressed openly in class." *Id.* at 33-34 (internal quotation marks omitted).

The Does too sought answers about their daughter's gender presentation at school and were met with lies and gaslighting. *Id.* at 34-35.

Although the district court granted plaintiffs' motion for summary judgment and entered a permanent injunction against the parental exclusion policies, *id.* at 52, the Ninth Circuit stayed that injunction pending appeal. *Mirabelli v. Bonta*, No. 25-8056 at 13 (9th Cir. Jan. 5, 2026).

This Court has explained that "[t]he 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 . . . The child is not the mere creature of the State." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). The Court's longstanding and oft-reiterated parental rights precedent make indisputably clear that "the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 500 U.S. 57, 66 (2000).

Despite the school's clear violation of parental rights in this case, the Ninth Circuit permits an ongoing, irreparable harm to America's future generation. As a class action unifying parents and teachers, this case itself demonstrates the numerous objections to California's and similar schools' gender policies. Many nearly identical school policies to those at issue here are currently being challenged in Courts across at least ten Federal Circuits.

Further, this is not the first case in which a student attempted suicide after being exposed to transgender ideology at school. In *Lee v. Poudre*, a sixth grader who attempted suicide identified her attendance at a "Gender and Sexualities Alliance" club meeting as the beginning of her suicidal ideation.[4] The Court should address these critical issues without further delay.

The Court should vacate the Ninth Circuit's stay of the district court's permanent injunction.

ARGUMENT

I. The Prevalence of Similar Cases Across the Federal Circuits Warrants the Supreme Court's Attention

The harm inflicted by school-led secret social transitions is real and widespread. As of April, one database suggested that over 1,200 school districts responsible for more than 12,300,000 children had adopted secret social transition

[4] Brief of Advancing American Freedom et al. as amici curiae at 5, *Lee v. Poudre*, No. 25-89 (Aug. 22, 2025) available at https://advancingamericanfreedom.com/aaf-fights-back-against-radical-gender-ideologists/.

policies.[5] With at least ten of the thirteen Federal Circuits hearing challenges to similar gender policies, the Supreme Court ought to clarify the law regarding parental rights.

In the First Circuit, a Massachusetts middle-school facilitated the social transition of an eleven-year-old girl, ignoring her mother's requests that school officials not discuss gender identity with her daughter.[6] Instead, the school counselor texted and messaged the eleven-year-old via online chat to encourage weekly meetings "to discuss any gender-related concerns."[7]

In the Second Circuit, school officials assured a mother that no unusual circumstances were to blame for her daughter's falling grades and distraction from her schoolwork.[8] Even after the mother learned of the school's social transition campaign and moved her daughter to at-home instruction, school officials continued to speak with the girl about gender issues.[9]

In the Third Circuit, a freshman girl diagnosed with Attention-Deficit Hyperactivity Disorder and "high functioning autism" struggled with anxiety stemming from the "the childhood trauma of the death of her mother."[10] Yet, after the girl asked the school counselor to help her socially transition at school, the school took steps to ensure that her father would not be informed, including using the girl's legal name for announcements over the school intercom lest her siblings should find out about her social transition and inform their father.[11]

In the Sixth Circuit, a school district "equate[d] harassment with the 'intentional use of pronouns inconsistent with a student's gender identity.'"[12]

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[5] List of School District-Gender Nonconforming Student Policies, Defending Education (updated April 21, 2025) https://defendinged.org/investigations/list-of-school-district-transgender-gender-nonconforming-student-policies/.

[6] Brief of Advancing American Freedom et al. as amici curiae, *Foote v. Ludlow School committee*, No. 24-77 (August 21, 2025) available at https://advancingamericanfreedom.com/aaf-urges-supreme-court-to-hear-parental-rights-case/.

[7] *Id.* at 5.

[8] Brief of Advancing American Freedom et al. as amici curiae at 4-5, *Vitsaxaki v. Skaneateles Central Sch. Dist.*, No. 25-0952 (2nd Cir. June 17, 2025) available at https://advancingamericanfreedom.com/aaf-leads-amicus-coalition-defending-the-rights-of-parents-and-children-against-gender-indoctrination/.

[9] *Id.* at 5.

[10] Brief of Advancing American Freedom et al. as amici curiae at 3-4, *Heaps v. Delaware Valley Regional High Sch. Bd. of Ed.*, No. 24-3278 (3d Cir. July 8, 2025) available at https://advancingamericanfreedom.com/aaf-fights-for-parental-rights-in-new-jersey/.

[11] *Id.* at 4.

[12] Brief of Advancing American Freedom et al. as amici curiae at 3-4, *Parents*

In the Seventh Circuit, a school district that requires written parental authorization to administer over-the-counter medication such as aspirin instituted a policy directing staff to facilitate social transitions without notifying parents or seeking their consent.[13]

In the Tenth Circuit, without seeking consent from parents, two sixth graders were invited to after-school meetings that discussed gender identity.[14] One tragically attempted suicide and identified her attendance at the meeting as the source of her suicidal ideation.[15]

In the Eleventh Circuit, a Florida School District's policy for gender transitions of students in the seventh grade and above "openly encourage[d] children to deceive their parents" about their social gender transition "by hiding the name and pronouns that they [were] using at school."[16] The policy prohibited teachers and school staff from informing parents about their children's social gender transition unless they were required to do so by law or the child consented.[17]

Parents around the country will continue to face threats to their fundamental rights so long as this Court has not reiterated what it has already made clear: that parents have a fundamental right protected by the Fourteenth Amendment to direct the upbringing of their children.

II. Parental Rights Are Deeply Rooted in Our Nation's History and Tradition.

This Court has explained that "[o]ur Nation's history, legal traditions, and practices . . . provide the crucial 'guideposts for responsible [judicial] decision-making.'" *Glucksberg*, 521 U.S. 702, 721 (1997). Parental rights have been recognized throughout American history and even earlier as among the most fundamental of rights.

Defending Ed. v. Olentangy Local Sch. Dist. Bd. of Ed., No. 23-3630 (6th Cir. Dec. 19, 2024) available at https://advancingamericanfreedom.com/parents-v-olentangy/.

[13] Brief of Advancing American Freedom et al. as amici curiae at 5, *Parents Protecting Our Children v. Eau Claire Area Sch. Dist.*, No. 23-1280 (July 8, 2024) available at https://advancingamericanfreedom.com/parents-protecting-our-children-v-eau-claire-area-school-district/.

[14] Brief of Advancing American Freedom et al. as amici curiae, *supra* note 4 at 4-5.

[15] *Id.* at 5.

[16] Brief of Advancing American Freedom et al. as amici curiae at 8-9, *Parents Defending Ed. v. Linn-Mar Comm. Sch. Dist.*, No. 22-2927 (8th Cir. Nov. 10, 2022) available at https://advancingamericanfreedom.com/aaf-amicus-brief-in-parents-defending-education-v-linn-mar-community-school-district/.

[17] *Id.* at 8.

A. Parental rights in education are a part of the Western tradition.

Parental authority has long been recognized as the first form of government[18] because it is "the most Sacred and Ancient Kind of Authority."[19] This part of Western Tradition runs stretches back to antiquity, when Aristotle and Cicero recognized parental authority as the foundation for a free and flourishing state.[20] More recently, philosophers, politicians, and judges who were influential during the Founding era recognized the fundamentality of the parent-child relationship to freedom.

Parental rights are, according to Lord Kames, the leading British jurist on the eve of the American Revolution who was sympathetic to American concerns, the "corner-stone of society."[21] Scottish Enlightenment thinker David Fordyce, whose books were part of Harvard's curriculum during the colonial period,[22] wrote that the "weak and ignorant State of Children, seems plainly to invest their Parents with such Authority and Power as is necessary to their Support, Protection, and Education."[23] The natural law theorist Samuel von Pufendorf, whose works were bought for the use of the Continental Congress,[24] observed that "nature has implanted in parents a tender affection for their offspring, so that no one can be

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[18] John Locke, *Two Treatises on Government*,252-53 (Hollis ed., 1764) (1689) ("The subjection of a minor places in the father a temporary government, which terminates with the minority of the child.").

[19] Samuel von Pufendorf, *The Whole Duty of Man According to the Law of Nature* at 179-180 (Ian Hunter & David Saunders eds., Liberty Fund 2003) (1673).

[20] Aristotle, Politics at 3-4, 16 (Benjamin Jowett ed., 1885) ("[W]hen several families are united, and the association aims at something more than the supply of daily needs, the first society to be formed is the village… the first community, indeed… is the family."). M. Tullius Cicero, *De Officiis* at 54 (Walter Miller ed., 1913) ("For since the reproductive instinct is by Nature's gift the common possession of all living creatures, the first bond of union is that between husband and wife; the next, that between parents and children; then we find one home, with everything in common. And this is the foundation of civil government, the nursery, as it were, of the state.").

[21] Henry Kames, *Sketches of the History of Man Considerably enlarged by the last additions and corrections of the author* at 80 (James A. Harris ed., Liberty Fund 2007) (1788).

[22] Daniel N. Robinson, *The Scottish Enlightenment and the American Founding* 90 The Monist 170, 174 (2007).

[23] David Fordyce, *The Elements of Moral Philosophy* at 8 (Thomas Kennedy ed., Liberty Fund 2003) (1754).

[24] "Report on Books for Congress, [23 January] 1783," *Founders Online,* National Archives, https://founders.archives.gov/documents/Madison/01-06-02-0031.

willing readily to neglect that office."[25] Lord Kames described the parent-child relationship as "one of the strongest that can exist among individuals."[26]

These writers understood providing an education to be both a chief parental right and duty. Sir William Blackstone described education as "the last duty of parents toward their children."[27] Education, however, did not just mean teaching arithmetic or literacy. At the time of the founding, the end of education was private and civic virtue.[28] Christian Thomasius, whose books James Madison ordered for the Continental Congress,[29] wrote that parental authority entails "leading the child from first infancy to the maturity of body and mind," a responsibility that "contains two parts, namely, nourishment, which pertains to the infant's body, and learning, which pertains to his mind."[30]

According to the legal theorists of the time, the right of parents to directly oversee the education of their children could be delegated, but it could never be destroyed even by those with whom parents entrusted their children. Gershom Carmichael wrote that it is "an indissolubly integral part of parental power."[31] Pufendorf wrote that, although parents may entrust their children's education to others, it is a duty that "the Parent reserve to himself the Oversight of the Person deputed."[32] This recognition of parental authority continued into the nation's infancy.

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[25] Samuel von Pufendorf, *Two Books of the Elements of Universal Jurisprudence* at 380 (Thomas Behme ed., The Liberty Fund 2009) (1660).

[26] Henry Kames, *Principles of Equity* at 15-16 (Michael Lobban ed., The Liberty Fund 2014) (1760).

[27] William Blackstone, Vol. 1 *Commentaries on the Laws of England* 283 (George Sharswood ed., Lippincott Company 1893) (1753) (available online through the Liberty Fund at https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/2140/Blackstone_1387-01_EBk_v6.0.pdf).

[28] Benjamin Rush, *Essays, literary, moral & philosophical* at 8 (1798) in *Evans Early American Imprint Collection*, https://name.umdl.umich.edu/N25938.0001.001. University of Michigan Library Digital Collections. Accessed June 17, 2025. ("I beg leave to remark, that the only foundation for a useful education in a republic is to be laid in Religion. Without this there can be no virtue, and without virtue there can be no liberty, and liberty is the object and life of all republican governments.").

[29] "Report on Books for Congress, [23 January] 1783," *Founders Online,* National Archives, https://founders.archives.gov/documents/Madison/01-06-02-0031.

[30] Christian Thomasius, *Institutes of Divine Jurisprudence. With Selections from Foundations of the Law of Nature and Nations* 466-67 (Thomas Ahnert ed., Liberty Fund 2011) (1688).

[31] Gershom Carmichael, *The Writings of Gershom Carmichael* at 134-35 (emphasis added) (James Moore ed., Liberty Fund 2002) (1724).

[32] Pufendorf, *supra*, at 183-84 (emphasis added).

B. Parental rights in education were ubiquitous in the early Republic.

Parental rights in education were also broadly recognized in America's founding era. James Wilson, a signer of both the Declaration of Independence and the Constitution and later a Justice of this Court appointed by President Washington,[33] contrasted, in his 1791 lectures on law, ancient and modern modes of education to illustrate the American view of parental rights. Spurning the example of the Spartans where "the care and education of children were taken entirely out of the hands of their parents," Wilson commended American law which recognized that "to parental affection the care of education may, in most instances, be safely intrusted."[34]

Benjamin Rush, also a signer of the Declaration of Independence, was one of the foremost advocates for public schooling. In 1786, Rush published a pamphlet setting out a plan for public schools in which teachers were to inculcate morality, but only in "a strict conformity to . . . the inclinations of their parents."[35]

Samuel Harrison Smith, a newspaper publisher and friend of Thomas Jefferson, was one of the few opponents of parental rights in the founding era. In a pamphlet he authored for the American Philosophical Society he argued that "[e]rror is never more dangerous than in the mouth of a parent."[36] The solution, according to Smith, was the complete removal of parental oversight: when "education [is] remote from parental influence, the errors of the father cease to be entailed upon the child."[37]

However, Jefferson rejected his friend's theory of education. In the margins of his 1817 draft plan for public schooling in Virginia, Jefferson wrestled with parental rights and influence in education.[38] Ultimately, he concluded that "it is better to

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[33] *James Wilson* in *Biographical Directory of the United States Congress*, https://bioguide.congress.gov/search/bio/W000591.

[34] James Wilson, *Collected Works of James Wilson* 908-910 (Kermit L. Hall & Mark David Hall ed., Liberty Fund 2007) (1791) (Emphasis added).

[35] Benjamin Rush, *A plan for the establishment of public schools and the diffusion of knowledge in Pennsylvania; to which are added thoughts upon the mode of education, proper in a republic: Addressed to the legislature and citizens of the state* at 18 (1786) in *Evans Early American Imprint Collection.* https://name.umdl.umich.edu/N15652.0001.001. University of Michigan Library Digital Collections. Accessed June 18, 2025.

[36] Samuel Harrison Smith, *Remarks on education: illustrating the close connection between virtue and wisdom. To which is annexed, a system of liberal education* at 64 (1797).

[37] *Id.*

[38] "Thomas Jefferson's Bill for Establishing Elementary Schools, [ca. 9 September

tolerate the rare instance of a parent refusing to let his child be educated, than to *shock the common feelings* & ideas by the forcible asportation & education of the infant against the will of the father."[39]

This respect for parental rights, including in education, continued through the Reconstruction era and the ratification of the Fourteenth Amendment.

C. The Antebellum Period and Reconstruction reaffirmed parental rights in education.

Parental control over the inculcation of virtue in children who attended public schools was reaffirmed throughout the antebellum period, even as changes in American society over questions of race and religion put strains on the tradition. James Kent, first professor of law at Columbia University from 1826-1830, turned his series of lectures into the widely popular *Commentaries on American Law*.[40] Kent started with antiquity and remarked that some ancient states had refused to trust education to parents.[41] Such an idea in America was "totally inadmissible."[42] Because nature bound parents to "maintain and educate their children, the law has given them a right to such authority."[43] This was "the true foundation of parental power."[44]

Justice Joseph Story agreed. In his *Commentaries on Equity Jurisprudence*, Justice Story quoted the case of *Jenkins v. Peter:* "the presumption ought to be, in the absence of all proof tending to a contrary conclusion, that the advancement of

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1817]," *Founders Online,* National Archives, https://founders.archives.gov/documents/Jefferson/03-12-02-0007. ("A question of some doubt might be raised on the latter part of this section, as to the rights & duties of society towards it's members infant & adult. is it a right or a duty in society to take care of their infant members, in opposition to the will of the parent? how far does this right & duty extend?").

[39] *Id.*

[40] John M. Gould, Preface to James Kent, Commentaries on American Law, at v (Little, Brown & Co. 14th ed. 1896) (stating that "the masterpiece of Chancellor Kent has now become so interwoven with judicial decisions that these commentaries upon our frame of government and system of laws will doubtless continue to rank as the first of American legal classics so long as the present order shall prevail").

[41] James Kent, *Commentaries on American Law* 233 (Oliver Wendell Holmes ed., Twelfth Edition 1873).

[42] *Id.*

[43] *Id.* at 252.

[44] *Id.*

the interest of the child was the object in view."[45] The "natural and reasonable presumption in all transactions of this kind is, that a benefit was intended the child, because in the discharge of a moral and parental duty."[46] Anything else would be "a principle at war with all filial as well as parental duty and affection."[47]

The horrors of American slavery became the catalyst for enshrining into the Constitution parental rights to oversee the moral upbringing of one's children. Slave narratives following the Civil War were replete with the tearing apart of children from their parents' oversight.[48] Freed former slaves organized "Colored Conventions" throughout the antebellum period and through the Civil War, in which they petitioned for laws and amendments to protect their rights as citizens. One of the petitioned grievances was a lack of state protection for black parental rights. The 1851 Colored Convention of Ohio lamented that black Americans had "no parental or filial rights; but husband and wife, parent and child, may be torn from each other."[49] Other conventions recognized parental rights and education were intertwined, writing they, as former slaves, were "denied the control of their children" who were "debarred an education."[50] Abolitionist and anti-slavery Republicans regularly intertwined the denial to educate and oversee one's own children as one of the badges of slavery.[51]

The Congressional debates on the Thirteenth and Fourteenth Amendments make clear that one purpose of the amendments was to protect the fundamental right of parents to oversee the upbringing of their children. Senator James Harlan said that a consequence of slavery was "the abolition practically of the parental

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[45] 1 Joseph Story, *Commentaries on Equity Jurisprudence* 328 (Charles C. Little & James Brown) (4th ed. 1846) (1836) (internal quotation marks omitted).
[46] *Id.*
[47] *Id.*
[48] Luray Buckner, *A Right Defined by a Duty: The Original Understanding of Parental Rights*, 37 NOTRE DAME J.L. ETHICS & PUB. POL'Y 493, 501 (2023).
[49] Convention of the Colored Freemen of Ohio (1852 : Cincinnati, OH), 275, *285 Proceedings of the Convention, of the Colored Freemen of Ohio, Held in Cincinnati, January 14, 15, 16, 17 and 19, 1852,* (Colored Conventions Project Digital Records) https://omeka.coloredconventions.org/items/show/250 (last visited Jan. 20, 2026).
[50] Convention of the Colored Men of Ohio (1858: Cincinnati, OH), 333, *333 Proceedings of a Convention of the Colored Men of Ohio, Held in the City of Cincinnati, on the 23d, 24th, 25th and 26th days of November, 1858*, (Colored Conventions Project Digital Records) https://omeka.coloredconventions.org/items/show/254 (last visited Jan. 20, 2026).
[51] Joseph K. Griffith II, *Is the Right of Parents to Direct Their Children's Education "Deeply Rooted" in Our "History and Tradition"?* 28 TEX. REV. L. & POLS. 795. 803-04 (2024).

relation, robbing the offspring of the care and attention of his parents."[52] Senator Charles Sumner, a political leader of the abolitionist movement (who was famously caned nearly to death on the Senate floor after attacking slavery), decried slavery's destruction "of all rights, even . . . the sacred right of family; so that the relation of husband and wife was impossible and no parent could claim his own child."[53]

When speaking in support of the Thirteenth Amendment, Senator Henry Wilson, author of the bills which outlawed slavery in Washington, D.C., said, "the sacred rights of human nature, the hallowed family relations of husband and wife, parent and child, will be protected by the guardian spirit of that law which makes sacred alike the proud homes and lowly cabins of freedom."[54]

During the drafting of the Fourteenth Amendment in the 39th Congress, the Joint Committee on Reconstruction inquired into whether certain fundamental rights were being respected in the occupied South. The Joint Committee asked whether Southern whites objected to "the legal establishment of the domestic relations among the blacks, such as the relation of husband and wife, of parent and child, and the securing by law to the negro the rights of those relations?"[55] Likewise, Representative Thomas Dawes Eliot spoke of the need to protect the right of "husband, wife, and parent."[56]

Few if any fundamental rights not enumerated in the Constitution are more deeply rooted in American history and tradition than parental rights.

III. Parental Rights are Essential to Liberty and Justice.

This Court's precedent demonstrates that parental rights are not only deeply rooted in American history and tradition but are also "'implicit in the concept of ordered liberty' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Glucksberg*, 521 U.S. at 702 (quoting *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)).

In *Meyer v. Nebraska*, this Court explained that "Without doubt," the Fourteenth Amendment protects "the right of the individual to . . . marry, establish a home and bring up children." 262 U.S. 390, 399 (1923). The parental right to educate one's children is among those essential to liberty, and "[t]he fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children." *Pierce*, 268 U.S. at 535. Considering its long-established parental rights precedent, this Court in 2000

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[52] Cong. Globe, 38th Cong., 1st Sess., 1439 (1864) (Statement of Senator Harlan).
[53] Cong. Globe, 38th Cong., 1st Sess., 1479 (1864) (statement of Senate Sumner).
[54] Cong. Globe, 38th Cong., 1st Sess., 1324 (1864) (Statement of Senator Wilson).
[55] Joint Comm. on Reconstruction, Report of the Joint Committee on Reconstruction, H.R. Rep. No. 30, 39th Cong., 1st Sess. (1866) at 171.
[56] Cong. Globe, 39th Cong., 1st Sess. 2773 (1866) (Statement of Representative Eliot).

reiterated that "it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel*, 500 U.S. at 66.

The Court has also been clear about the content of that right. Parents "have the right, coupled with the high duty, to recognize and prepare [the child] for additional obligations." *Id.* The state may not enter "the private realm of family life" because "the custody, care, and nurture of the child reside[s] first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 166 (1944).

The Court's parental rights doctrine has developed in cases many of which are brought by religious parents seeking to ensure that their children's education does not undermine their religious values. Recently, in *Mahmoud*, No. 24-297 slip op. at 18, the Court explained that the right of religious parents is "not merely a right to teach religion in the confines of one's own home," but "extends to the choices that parents wish to make for their children outside the home." The religious liberty right of parents exists, though, not in exclusion, but in addition, to the rights of all parents.[57]

For example, in *Wisconsin v. Yoder*, the Court recognized "the fundamental interest of parents, as contrasted with that of the State, to guide the religious future *and education* of their children," noting that the "history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children." 406 U.S. 205, 232 (1972) (emphasis added). Thus, the rights of parents generally, and of religious parents specifically, exist together and do not detract from one another.

"The child is not the mere creature of the state," *Pierce,* 268 U.S. at 535, and parents, not school officials, have the right and responsibility "to direct the education and upbringing" of their children. *Glucksberg*, 521 U.S. at 720. School officials may not conceal from parents some of the most sensitive matters a family may face, except in the most extreme circumstances. The Court's consistent and clear recognition of parental rights demands on the part of public educators a high regard for the will of parents. The school district's parental exclusion policies cannot be squared with parents' fundamental rights.

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[57] J. Marc Wheat, *Religious Liberty is Essential to American Freedom. So Are Parental Rights*, Real Clear Religion (May 6, 2025) https://www.realclearreligion.org/articles/2025/05/06/religious_liberty_is_essential_to_american_freedom_so_are_parental_rights_1108436.html.

Parental rights are not only for religious Americans. Americans do not lose their parental rights simply because they are not willing to claim a religious exemption or because they cannot afford to send their children to private schools. In this case, the Court has the opportunity to clarify that the parental right to direct the upbringing of one's children extends to all parents.

CONCLUSION

The emergency application to vacate the Ninth Circuit's stay should be granted.

Respectfully submitted,

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