

No. 26-319

IN THE
Supreme Court of the United States

KRYSTLE PERRY, INDIVIDUALLY AND ON BEHALF
OF THEIR MINOR CHILD, K. P., *et vir*,

Petitioners,

v.

STACY MARTENEY, AS THE VIRTUAL LEARNING
COORDINATOR OF THE UPSHUR COUNTY VIRTUAL
SCHOOL, *et al.*,

Respondents.

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

**BRIEF OF *AMICUS CURIAE*
CHILDREN'S HEALTH DEFENSE
IN SUPPORT OF PETITIONERS**

SUJATA S. GIBSON
Managing Attorney
GIBSON LAW FIRM, PLLC
416 North Tioga Street
Ithaca, NY 14850

MARY S. HOLLAND
CEO
Counsel of Record
KIM MACK ROSENBERG
General Counsel
EILEEN HANSEN
Legal Fellow
CHILDREN'S HEALTH DEFENSE
852 Franklin Avenue, Suite 511
Franklin Lakes, NJ 07417
(202) 417-6971
mary.holland@
childrenshealthdefense.org

Counsel for Amicus Curiae

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	ii
IDENTITY AND INTEREST OF THE AMICUS, PRIOR NOTICE TO COUNSEL OF RECORD OF INTENT TO FILE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	5
THE FOURTH CIRCUIT’S DECISION CONFLICTS WITH THIS COURT’S PRECEDENTS CONCERNING PARENTAL RIGHTS AND RELIGIOUS LIBERTY, WHICH REQUIRE APPLICATION OF STRICT SCRUTINY	5
A. Cases Establishing Parental Rights.....	6
B. Religion, Education, and Parental Rights: <i>Yoder</i> and Beyond	8
C. The Recent Decisions Addressing Parental Rights and Free Exercise	11
CONCLUSION	14

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES:	
<i>Employment Division v. Smith</i> , 494 U.S. 872 (1990).....	9
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025)	2-4, 8, 9, 11-15
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923).....	3, 6, 7, 10, 14
<i>Mirabelli v. Bonta</i> , 607 U.S. 492 (2026).....	2-4, 8, 10, 12-15
<i>Parham v. J.R.</i> , 442 U.S. 584 (1979).....	3, 6, 9, 10, 14
<i>Perry v. Marteney</i> , 172 F.4th 315 (4th Cir. 2026)	2-5
<i>Perry v. Sindermann</i> , 408 U.S. 593 (1972).....	12
<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925).....	3, 6, 7, 10, 14
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000).....	3, 6, 10, 13
<i>West Virginia State Bd. of Educ. v. Barnette</i> , 319 U.S. 624 (1943).....	12

Cited Authorities

	<i>Page</i>
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972).....	3, 4, 8, 9, 12, 13

STATUTES AND OTHER AUTHORITIES:

U.S. Const. amend. I.....	2, 4, 5, 14
U.S. Const. amend. XIV.....	2, 4-6, 13, 14

**IDENTITY AND INTEREST OF THE AMICUS,
PRIOR NOTICE TO COUNSEL OF RECORD
OF INTENT TO FILE¹**

Children’s Health Defense (“CHD”) is a nonprofit organization whose mission is to end the childhood chronic disease epidemic by reducing the toxic environmental exposures that underlie it, especially where those exposures are involuntary. CHD seeks to hold responsible parties accountable and to establish safeguards to prevent future harm to children’s health and wellbeing, including, but not limited to, the prohibition of vaccine mandates that threaten the ability of parents to exercise fundamental religious liberties on behalf of their children.

CHD has a substantial interest in the standards governing religious exemptions from vaccination requirements. CHD has supported extensive litigation protecting the religious rights of students and their families subject to vaccination requirements, including the pending litigation in *Children’s Health Defense, et al. v. McDonald*, Case No. 25-cv-06877 (EDNY), among others. This experience gives CHD a particular interest in the protection and restoration of religious accommodations consistent with constitutional principles, including protection of fundamental parental rights to control the

1. Pursuant to Rule 37.6, CHD states that no counsel for a party authored this brief in whole or in part. No party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief, and no person or entity other than CHD, its members, or its counsel made such a contribution.

Pursuant to Rule 37.2, notice was given to all parties on September 30, 2026.

religious, educational, and medical upbringing of their children.

On September 30, 2026, undersigned counsel notified counsel of record for Petitioner and Respondents by email of CHD's intention to file this brief in support of the petition for a writ of certiorari.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has protected parental rights since at least the 1920s, and more recently has strengthened those protections in *Mahmoud* (2025) and in *Mirabelli* (2026). Protection for parental rights are grounded in two areas of the Constitution. The first is a “liberty” interest protected by the Fourteenth Amendment’s Due Process Clause (substantive due process), which protects the fundamental right of parents to direct the upbringing of their children. The second is the First Amendment’s Free Exercise Clause, when, as here, parents raise their children according to religious belief. The Fourth Circuit eviscerated these rights in the decision below.

Petitioners, parents of a daughter attending a virtual West Virginia public school, bring their petition for writ of certiorari asking this Court to affirm their fundamental, constitutionally protected right to exercise religious decision making authority with respect to their child. The Fourth Circuit’s decision in *Perry v. Marteney*, 172 F.4th 315 (4th Cir. 2026), has grave implications for parental rights and religious liberty, analyzing the central issues here in a manner contrary to this Court’s precedent, from cases decided in 2025 and 2026, all the way back to cases decided in the 1920s. The Fourth Circuit’s majority opinion

held that “[t]he district court erred when it concluded that the Perrys were likely to succeed on the merits of their free exercise claim. West Virginia has significant discretion to pass legislation it believes best serves the collective good, and it did not abuse that discretion here. The state’s compulsory vaccination law serves a compelling interest and evinces no hostility to religion.” *Id.* at 329.

The doctrine protecting fundamental rights foundationally was established in cases such as *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) in the 1920s. Later, cases such as *Wisconsin v. Yoder*, 406 U.S. 205 (1972), *Parham v. J.R.*, 442 U.S. 584 (1979), and *Troxel v. Granville*, 530 U.S. 57 (2000), elaborated and further elucidated the protections afforded to parental rights, which were reaffirmed as “fundamental.” Finally, the most recent cases, *Mahmoud v. Taylor*, 606 U.S. 522 (2025), and *Mirabelli v. Bonta*, 607 U.S. 492 (2026) (per curiam), address critical issues relating to, in particular, the intersection of education and parental religious rights, both with respect to curricular and non-curricular issues.

By excluding KP from every school in the State, even online public schools, West Virginia has extinguished the Perrys’ parental choice in where to educate their daughter and has impermissibly impinged on their Free Exercise rights, accomplishing indirectly what this Court’s long standing precedent directly forbids. The Fourth Circuit callously pointed to the availability of homeschooling, pod learning, and microschools as options that do not require compliance with West Virginia’s compulsory vaccination law. This argument must fail. As *Mahmoud* made clear, “[i]t is both insulting and legally unsound to

tell parents that they must abstain from public education in order to raise their children in their religious faiths, when alternatives can be prohibitively expensive and they already contribute to financing the public schools.” *Mahmoud v. Taylor*, 606 U.S. 522, 562 (2025).

The *Perry* majority essentially asked whether the court must defer to the state law with respect to vaccination requirements in various educational settings. However, the actual question should be whether, in enacting that law, the State “has deferred to the Constitution and the fundamental individual rights of the Perrys as protected by the First and Fourteenth Amendments.” *Perry*, 172 F.4th at 333 (Niemeyer, J., dissenting). The *Perry* majority misapplied a rational basis standard of review in its convoluted attempt to characterize the law at issue in this case as different from that in precedents such as *Wisconsin v. Yoder*, 406 U.S. 205 (1972), *Mahmoud v. Taylor*, 606 U.S. 522 (2025), and *Mirabelli v. Bonta*, 607 U.S. 492 (2026).

Judge Niemeyer’s dissent in the Fourth Circuit pointed out the myriad flaws in the Fourth Circuit majority opinion, including the appropriate level of scrutiny to be applied in these circumstances. Judge Niemeyer, acknowledging this Court’s long history of protecting parents’ fundamental free exercise rights, stated: “[I]n both *Yoder* and *Mahmoud*, as well as in *Mirabelli*, the plaintiffs objected to public education regulations and practices on the basis of the burden they imposed on religious exercise, and in all, the Court applied strict scrutiny to protect the plaintiffs’ free exercise rights.” *Perry*, 172 F.4th at 333. That same standard should apply here.

In that context, CHD hopes that it will be helpful for this Court to review precedents, both long-standing and recent, concerning fundamental parental rights, particularly, as here, in the context of religion and education, areas at which the *Perry* case squarely intersects. From cases decided a century ago to others decided in the past two years, parental rights have been recognized as fundamental and constitutionally protected. Recent decisions have made clear that courts must apply strict scrutiny in analyzing government interference with parental rights in situations like that faced by the Perrys but a circuit split and decisions like the Fourth Circuit's below militate in favor of this Court revisiting these questions.

ARGUMENT

THE FOURTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S PRECEDENTS CONCERNING PARENTAL RIGHTS AND RELIGIOUS LIBERTY, WHICH REQUIRE APPLICATION OF STRICT SCRUTINY

At issue here are due process rights under the Fourteenth Amendment and Free Exercise rights under the First Amendment. As alluded to above and as shown below, it well-established that courts must apply the strict scrutiny standard of review to due process claims under the Fourteenth Amendment and further that recent Supreme Court authority makes clear that that same level of scrutiny should apply to Free Exercise claims under the First Amendment.

As discussed below, is well-settled law 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*, 530 U.S. 57, 66 (2000). This interest may be “perhaps the oldest of the fundamental liberty interests recognized by the Supreme Court,” and it unequivocally embodies the authority of parents – absent a finding of parental unfitness (of which there is no such finding here) – to direct their children’s religious upbringing, education, medical care. *Id.*; *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925); *Parham v. J.R.*, 442 U.S. 584, 602-03 (1979).

A. Cases Establishing Parental Rights

As noted above, this Court has a long history of protecting parental rights. The first cases upon which people generally look to as establishing those rights are *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

In *Meyer*, following World War I, the state of Nebraska passed a law forbidding school instruction in any language other than English until after a child had passed eighth grade. 262 U.S. at 397. A teacher at a Lutheran parochial school was convicted under this law for teaching German to a ten-year-old child who had not yet passed eighth grade. The U.S. Supreme Court reversed the Nebraska state court decision affirming the teacher’s conviction. The Court found that the liberty interests protected by the Fourteenth Amendment “[w]ithout doubt, [] denote[] not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful

knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.” *Id.* at 399. The Court found that the Nebraska law at issue was unconstitutional and deprived parents and teachers of protected liberty interests without due process. *Id.* at 400, 403.

Meyer is generally considered as the case that opened the door to explicit acknowledgement of parental due process rights, rights that were further articulated only two years later in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

Pierce brought before the Court for review the state of Oregon’s Compulsory Education Act, a law requiring nearly all children ages eight to sixteen to attend public school. The law effectively outlawed private and parochial/religious schools. Reviewing suits brought by a Catholic order and a military academy, the Court unanimously struck down Oregon’s law. The Court famously admonished that “[t]he child is not the mere creature of the State.” *Id.* at 535. The Court went on to say “those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” Relying on *Meyer*, the Court held that the law at issue “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.” *Id.* at 534-35.

While *Pierce* was, for some time, generally read narrowly to allow parents the right to choose where a child was educated, the reach of *Pierce* inside the schoolhouse

doors, with respect to curricular and non-curricular activities was clearly and undoubtedly recognized in *Mahmoud* and *Mirabelli*, as discussed below.

B. Religion, Education, and Parental Rights: *Yoder* and Beyond

Wisconsin v. Yoder, 406 U.S. 205 (1972), expanded the doctrine of parental rights well beyond the Meyer-Pierce doctrine and created a bridge between parental rights and free exercise concerns. Amish parents were convicted under Wisconsin's compulsory education laws for refusing to send their children to school past eighth grade but the decision was overturned by the Wisconsin Supreme Court. The parents believed in the fundamentals of education provided through the eighth grade but that forcing their children to attend high school would expose them to "worldly" influences contrary to the Amish faith. *Id.* at 211. The Court, affirming the Wisconsin Supreme Court, found in favor of the Amish parents, holding that a facially neutral school attendance requirement can unconstitutionally burden and encroach upon parents' religious beliefs and the religious formation of their children. The Court recognized that "a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of Pierce, 'prepare (them) for additional obligations.'" *Id.* at 214 (citation omitted).

Yoder applied strict scrutiny in reviewing the constitutionality of the law. *Id.* at 215 (“The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.”). In the years that followed, *Yoder*’s application of strict scrutiny under the Free Exercise clause remained somewhat unclear. See *Employment Division v. Smith*, 494 U.S. 872, 881 (1990) (characterizing *Yoder* as a hybrid case, *i.e.*, free exercise and parental rights, rather than a strictly Free Exercise case). However, *Mahmoud* resolved this question: “[w]hen the burden imposed is of the same character as that imposed in *Yoder*, we need not ask whether the law at issue is neutral or generally applicable before proceeding to strict scrutiny.” 606 U.S. at 564.

Several years later, in *Parham v. J.R.*, 442 U.S. 584 (1979), the Court reaffirmed the supremacy of parental authority. In *Parham*, the Court addressed a Georgia law allowing parents to voluntarily admit their minor children to state psychiatric hospitals, subject to review by the admitting physician. A class of children challenged this procedure, arguing that they were entitled to a formal hearing first. In upholding the law, the Court made clear that parents retain “a substantial, if not the dominant, role” in the decision, and the law historically “presume[s] that parents possess what a child lacks in maturity, experience, and capacity for judgment....” Review by a neutral physician satisfied due process. 442 U.S. at 602. *Parham* represents a clear statement by the Court that parental rights extend to a child’s medical and mental health care and also repeatedly reiterates the presumption

that parents act in the best interests of their children. The Court's reasoning in is central to the Court's decision *Mirabelli*, which treats a school's social transition of a child as a mental health decision in which parents have a right to participate.

The next major parental rights case decided by the Court was decades later in *Troxel v. Granville*, 530 U.S. 57 (2000), which reaffirmed the fundamental nature of parental rights. At issue in *Troxel* was a Washington law allowing "any person" to petition for visitation with a child "at any time" if such visitation was in the child's best interests. Paternal grandparents used the statute to obtain more visitation than the mother (who was a fit parent) wanted to permit. In a 6-3 decision without a majority opinion, the Court ruled in the mother's favor. The four-Justice plurality acknowledged that "[t]he liberty interest at issue ... – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court" and called the statute "breathtakingly broad." *Id.* at 65, 67 (citing, *inter alia*, *Meyer* and *Pierce*). The plurality found that the trial court had erred by giving no special weight to a fit parent's decision (and may have done exactly the opposite) and recognized that "[t]he decisional framework employed by the [trial] Court directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child." *Id.* at 69 (citing *Parham*).

C. The Recent Decisions Addressing Parental Rights and Free Exercise

Mahmoud v. Taylor, 606 U.S. 522 (2025) arose from a Maryland district adding in 2022 LGBTQ-inclusive storybooks to its pre-K through fifth-grade English curriculum. Initially, the district allowed parents to opt out of the curriculum for their children but in 2023 withdrew the opt-outs and stopped giving notice. Parents who followed a number of different religions sued the school district. The Court found that the district unconstitutionally burdened parents' free exercise rights.

In *Mahmoud*, the Court unequivocally took parental rights through the schoolhouse doors. The Court recognized that “the right of parents ‘to direct the religious upbringing of their’ children would be an empty promise if it did not follow those children into the public school classroom. We have thus recognized limits on the government’s ability to interfere with a student’s religious upbringing in a public school setting.” *Id.* at 547 (citation omitted). The Court went further, recognizing that many parents have no choice but to educate their children in public schools and that it is “insulting and legally unsound” to suggest that parents can avoid constitutional injury by removing their children from public schools. 606 U.S. at 562. Thus *Mahmoud* soundly foreclosed the “homeschooling defense” that previously insulated school vaccination mandates from substantive due process scrutiny. The Fourth Circuit tried to circumvent *Mahmoud* but *Mahmoud*’s holding also rested on a broader constitutional principle embodied in what is known as the unconstitutional conditions doctrine. Under that doctrine, a state cannot

condition access to a public benefit, such as education, on surrender of constitutional rights and then deny that such burden exists because of the purported availability of an alternative. *See West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972). The *Mahmoud* Court definitively rejected use of unconstitutional conditions to deny the existence of a burden on parental rights. Accordingly, in cases like this, where access to school burdens parental rights, strict scrutiny applies to substantive due process claims.

Moreover, *Mahmoud* made clear that *Yoder* was not meant to be read narrowly, as some Courts have done, to the exact facts underlying the *Yoder* decision, *i.e.*, the objection of the Amish community to compulsory education beyond eighth grade. *Mahmoud* rejected this, holding that “[t]he Court has never confined *Yoder* to its facts, and there is no reason to conclude that the decision is ‘sui generis’ or ‘tailored to [its] specific evidence,’ as the courts below reasoned.... Contrary to the suggestions of the courts below, *Yoder* embodies a robust principle of general applicability.” 606 U.S. at 525. Thus, these principles apply to compulsory vaccination policies. As *Mahmoud* explains, a case “is of the exact same character as the burden in *Yoder* where it “‘substantially interfer[es] with the religious development’ of the parents’ children. . . . [a]nd those policies pose ‘a very real threat of undermining’ the religious beliefs and practices that the parents wish to instill in their children.” 606 U.S. at 565 (quoting *Yoder*).

Following closely on the heels of *Mahmoud*, the Court decided *Mirabelli v. Bonta*, 607 U.S. 492 (2026) (per curiam). *Mirabelli* further expanded the parental

rights doctrine. In *Mirabelli*, California public school teachers and parents challenged policies requiring staff to use students' chosen names and pronouns in school and barred staff, absent a student's consent, from advising parents about a student's gender transition. The district court certified classes of parents and teachers, granted summary judgment, and entered a statewide permanent injunction. The Ninth Circuit stayed the injunction pending appeal, and read *Mahmoud* as limited to coercive curriculum and thus not applicable.

Mirabelli demonstrated that *Mahmoud*'s reasoning is not confined to either curricular issues or religious claims. In *Mirabelli*, the Court held that parents – including parents asserting no religious objection – were likely to succeed on an independent Fourteenth Amendment claim against school policies that displaced their role in consequential decisions about their children's health. 607 U.S. at 497.

The per curiam opinion held that the parents in *Mirabelli* were likely to succeed on two independent grounds. First, free exercise. The opinion found that, under *Mahmoud*, California's gender transition "policies likely trigger strict scrutiny under [the Free Exercise Clause] because they substantially interfere with the 'right of parents to guide the religious development of their children.'" *Id.* at 496 (citing *Mahmoud*, 606 U.S. at 559 (citing *Yoder*)). Per the Court, the policies fail despite the state's asserted interest in student safety and privacy, because they "cut out the primary protectors of children's best interests: their parents." *Id.* at 496-97 (citing *Troxel*). Second, due process. The per curiam opinion recognized that "[u]nder long-established precedent, parents – not

the State – have primary authority with respect to ‘the upbringing and education of children.’” *Id.* at 497 (quoting *Pierce* and citing *Meyer*). The Opinion further harkened back to *Parham*, noting that “[t]he right protected by these precedents includes the right not to be shut out of participation in decisions regarding their children’s mental health.” *Id.* Likewise, strict scrutiny applies to the due process claims. *Id.* at 496-97.

The consequence of the Fourth Circuit’s decision is the one *Mahmoud*, *Mirabelli* and a long line of Supreme Court decisions condemn: the state is attempting to control KP’s upbringing and unconstitutionally burden the parents’ fundamental rights here, whether under the First or Fourteenth Amendment. Whether KP’s ability to attend an online public school can be conditioned on her parents agreeing to a medical intervention that their religious beliefs forbid – compelling them to act in direct contradiction to their beliefs – should be subject to strict scrutiny. When that standard is applied, we believe the Fourth Circuit’s decision must be reversed.

CONCLUSION

The government cannot, as the Fourth Circuit permitted here, eviscerate the fundamental, constitutionally protected rights of parents, recognized by this Court for more than a century, to act as decision makers in their children’s religious, medical, and educational upbringing. The Constitution requires that states seeking to enforce purported public health objectives that severely infringe on parental rights narrowly tailor those burdens to serve the state’s allegedly compelling interest and minimize infringement on parental rights.

This Court should grant the Perrys' petition for a writ of certiorari and resolve the issues raised therein, consistent with *Mahmoud* and *Mirabelli* and this Court's long history of protecting the fundamental rights of parents to control the religious, educational, and medical upbringing of their children.

Respectfully submitted,

SUJATA S. GIBSON
Managing Attorney
GIBSON LAW FIRM, PLLC
416 North Tioga Street
Ithaca, NY 14850

MARY S. HOLLAND
CEO
Counsel of Record
KIM MACK ROSENBERG
General Counsel
EILEEN HANSEN
Legal Fellow
CHILDREN'S HEALTH DEFENSE
852 Franklin Avenue, Suite 511
Franklin Lakes, NJ 07417
(202) 417-6971
mary.holland@
childrenshealthdefense.org

Counsel for Amicus Curiae