

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 Writ of Certiorari to the United
States Court of Appeals for the Fourth Circuit**

**BRIEF OF NEBRASKA & FIFTEEN STATES AS
AMICI CURIAE IN SUPPORT OF PETITIONERS**

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INTEREST OF THE *AMICI* STATES¹

Amici States of Nebraska, Alabama, Alaska, Arkansas, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, South Carolina, South Dakota, Utah, and West Virginia support the fundamental right of parents to raise their children according to their own religious convictions. *See, e.g., Mahmoud v. Taylor*, 606 U.S. 522, 550–55 (2025); *Pierce v. Soc’y of the Sisters*, 268 U.S. 510, 534–35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). This right is ancient, *see Parham v. J. R.*, 442 U.S. 584, 602 (1979), and *Amici* States have an interest “in the lawfully exercised authority of [] parents.” *Calabretta v. Floyd*, 189 F.3d 808, 820 (9th Cir. 1999).

The Upshur County School District no doubt has a compelling interest in protecting children from harmful disease. But *Amici* States have been able to protect their children *and* respect families’ religious objections to vaccines. Vaccines are not the only tool states can wield to protect children from disease. And the School District has no good reason to require the Perrys to violate their deeply held religious convictions as a condition of enrolling their daughter in *online* public school.

¹ Counsel of record for all parties received notice of amici curiae’s intent to file this brief. Counsel of record for all parties affirmatively stated that they did not object to late notice.

SUMMARY OF ARGUMENT

The right of parents to raise their children according to their own religious faith goes back as far as religion itself. The American legal tradition, and the Western legal tradition from which it comes, has always respected the parental right. Even during the European religious wars, or amid the Church of England's religious dominance, rulers often left inviolate how a parent chose to direct his children within the four walls of his home. And certainly this Court has time and again affirmed that the right of parents to raise their children according to their religious convictions ought to remain inviolate from government except under the most compelling circumstances.

Those compelling circumstances do not exist here. To be sure, West Virginia's school vaccine mandate advances its important interest in preventing the spread of disease. But *Amici* States also require students to be vaccinated while leaving room for the religious objector. *Amici* States employ several alternatives—such as masks, disease testing, and temporary exclusion—to keep children safe while not requiring parents to violate their religious beliefs as a condition of sending their children to public schools. The Fourth Circuit did not consider these alternatives but upheld the School District's exclusion of K.P. based on its generalized conclusion that the mandate protects students, even though K.P. attends an online school. This Court should grant certiorari to clarify that parents' religious rights do not so easily give way.

ARGUMENT

I. Parents Have a Historical Right to Direct the Religious Upbringing of Their Children.

By the time the Constitution was adopted, “the right to religious liberty already had a long, rich, and complex history in this country.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 572 (2021) (Alito, J., concurring in the judgment). And in no sphere was this right more fiercely protected than in the home. The Founding era well understood that parents had a God-given right to direct the religious upbringing of their children. And this right was at its pinnacle within the four walls of a parent’s own home.

A. The home is the womb of religious formation. God commanded parents, “[T]each [the Law’s commandments] diligently to your children,” “talk of them when you sit in your house,” and “write them on the doorposts of your house and on your gates.” *Deuteronomy* 6:6–9. Proverbs directs parents to “[t]rain up a child in the way he should go [and] even when he is old he will not depart from it.” *Proverbs* 22:6.

Respect for parents’ right to religiously educate their own households permeated the Christian West. Thomas Aquinas—perhaps Christendom’s preeminent theologian—rejected the view that children of unbelievers “ought to be baptized against their parents’ will.” Thomas Aquinas, *Summa Theologica* II-II, q. 10, art. 12. He reasoned that because a child “is enfolded in the care of its parents, which is like a spiritual womb,”

“it would be contrary to natural justice” if the child had “anything done to it against its parents’ wish.” *Ibid.*

These sentiments carried over into the Reformation era. While the Catholic–Protestant divide incited much bloodshed and oppression, both sides respected parents’ religious rights over their own children. Henry IV’s Edict of Nantes—which ended the French Wars of Religion—forbade Catholics from “bearing away” and baptizing or confirming Protestant children against the will of their parents, and *vice versa*. Edict of Nantes art. XVIII (Jotham Parsons trans.) (1598). The Peace of Westphalia—which marked an end to the Thirty Years’ War—guaranteed the right of both Catholics under Lutheran rule, and Lutherans under Catholic rule, “to attend Devotions in their Houses and in private,” and to “send their Children to foreign Schools of their Religion, or have them instructed in their Families by private Masters.” Osnabrück Peace Instrument art. V, § 28 (1648), *reprinted in* 1 A Global Sourcebook in Protestant Political Thought 626, 627 (Matthew Rowley & Marietta van der Tol eds., 2024).

Indeed, Protestants and Catholics alike understood the importance of religious education in the home. Luther’s catechism taught that “it is the duty of every father of a family to question and examine his children and servants at least once a week” in the faith. Martin Luther, Large Catechism 40 (John N. Lenker trans., Minneapolis, Minn., The Luther Press 1908) (1529). Scottish Presbyterian theology taught that it was “not only pastors” who were to lead the people in prayer and meditation, but it was “incumbent to the head of every

family” to lead his own family therein. Westminster Assembly, *The Directories for Worship and Form of Church Government in the Church of Scotland* 81 (N.Y.C., Reprinted for Robert Lenox Kennedy 1880) (1647). The Catholic Catechism likewise taught that parents have a duty “to bring up their children in the knowledge and the practice of religion.” *The Catechism of the Council of Trent* 278 (J. Donovan trans., N.Y.C., Cath. Publ’n Soc’y 1800) (1566).

B. Shaped by Christian Europe, the American colonial era was also marked by an understanding that the home was the womb of religious formation, under the authority of *parents*. The famous revivalist preacher and president of Princeton College Jonathan Edwards taught that every family should be “a little church,” and that education in the home is among “the chief of the means of grace.” Jonathan Edwards, *The Farewell Sermon of Jonathan Edwards* 27 (Chapel Library 2013) (1750), <https://perma.cc/2HSC-XNF8>. This was seen as not only a right, but a duty. Connecticut law required “that all masters of families do, once a week, at least, catechize their children and servants in the grounds and principles of religion.” 1650 Conn. Code 41 (Andrus 1822) (spelling modernized). As did Massachusetts law. *The Colonial L. of Mass.* Reprinted from the Ed. of 1660 at 136 (1889).

Even where British and colonial governments sought to impose the state religion on their subjects, they often recognized that their authority to direct religious belief stopped at a man’s front door. Parliament’s Conventicle Act of 1664, which forbade

religious assemblies not sanctioned by the Church of England, did not apply to small gatherings composed of “*those of the same Household*.” Conventicle Act 1664, 16 Car. 2, c. 4, § 1 (Eng.) (emphasis added). Maryland in the early eighteenth century banned Catholic priests from baptizing children, but they were permitted to baptize children “who have Popish Parents.” An Act to Prevent the Growth of Popery Within This Province (1704), *reprinted in* 26 Archives of Maryland 340 (William Hand Browne ed., 1906).

Respect for household worship continued after the Declaration of Independence. In 1780, Samuel Adams, remarking that “industry,” “economy,” and “even government” are all “essential to the Well being of a family,” noted that “[r]eligion in a Family is at once its brightest Ornament & its best Security.” *Letter from Samuel Adams to Thomas Wells* (Nov. 22, 1780), in 4 The Writings of Samuel Adams 223, 225 (Harry Alonzo Cushing ed., 1908). Benjamin Rush, in his work on education, found it essential that children be taught “that mode of worship which is most agreeable to their consciences or the inclinations of their parent.” Benjamin Rush, *Thoughts Upon the Mode of Education Proper in a Republic* (1786), *reprinted at* ExplorePAhistory.com, found at <https://perma.cc/Y3A2-PLU8>. Connecticut continued to require parents to see that children learn “some short orthodox Catechism.” An Act for the Educating and Governing Children, in 1796 Conn. Acts & L. 60 (Hartford, Hudson & Goodwin 1796). As a leading nineteenth-century legal treatise explained, because parents “are bound to maintain and educate their children,” “the law has given them

a right to such authority.” 2 James Kent, *Commentaries on American Law* 203 (Phila., Blackstone Publ’g Co. 1889) (1826–30).

C. This Court’s jurisprudence “reflect[s] Western civilization concepts of the family as a unit with broad parental authority over minor children.” *Parham v. J. R.*, 442 U.S. 584, 602 (1979). Indeed, “the interest of parents in the care, custody, and control of their children[] is perhaps the oldest of the fundamental liberty interests recognized.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion).

Accordingly, this Court has consistently defended parental rights. In *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923), this Court held that the Constitution protected the right of parents to educate children in their native tongue. The Court reasoned that “it is the natural duty of the parent to give his children education suitable to their station in life.” *Ibid.* Thus, “the right of parents” to engage a teacher to instruct their children in their native tongue “[is] within the liberty of [the Fourteenth Amendment].” *Ibid.*; see also *Farrington v. Tokushige*, 273 U.S. 284, 298 (1927). Two years later, the Court struck down Oregon’s compulsory public education laws. *Pierce v. Soc’y of the Sisters*, 268 U.S. 510, 534–35 (1925). Applying *Meyer*, the Court reasoned that “forcing [children] to accept instruction from public teachers only” “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.” *Ibid.*

During World War II, this Court held that West Virginia could not make a child salute the flag against his parents' religious instruction. *W. Va. St. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Nearly thirty years later, the Court declared unconstitutional a Wisconsin statute insofar as it compelled Amish parents to send their children to high school against their religious beliefs. *Wisconsin v. Yoder*, 406 U.S. 205, 234 (1972). The Court explained that “when the interests of parenthood are combined with a free exercise claim,” the State must show its requirement has more than a “reasonable relation to some purpose within the competency of the State.” *Id.* at 233.

Even *Prince v. Massachusetts*—which rejected a Jehovah's Witness's First Amendment challenge to Massachusetts's child labor laws—appreciated “[t]he rights ... of parents to give [children] religious training and to encourage them in the practice of religious belief” and that there is a “private realm of family life which the state cannot enter.” 321 U.S. 158, 165–66 (1944).

More recently, in *Mahmoud v. Taylor*, this Court held that a school district's instruction about LGBTQ+ storybooks espousing values that conflicted with parents' religious beliefs and teachers' reprimand of contrary views while forbidding opt-outs violated the First Amendment. 606 U.S. 522, 550–55 (2025). Notably, this Court rejected the school district's argument that if the parents did not like the instruction, they could homeschool their

children. *Id.* at 560–61. This Court responded that “[p]ublic education is a public benefit, and the government cannot ‘condition’ its ‘availability’ on parents’ willingness to accept [such] a burden on their religious exercise.” *Id.* at 561 (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017)).

This Court again vindicated parental rights just this year, holding that school policies preventing teachers from telling parents about their child’s gender transition, and requiring children to use preferred pronouns against parental wishes, likely violated the First Amendment. *Mirabelli v. Bonta*, 607 U.S. 492, 496 (2026). This Court held the policies “likely trigger strict scrutiny ... because they substantially interfere with the ‘right of parents to guide the religious development of their children.’” *Ibid.* (quoting *Mahmoud*, 606 U.S. at 559). The policies likely did not survive strict scrutiny because, while the State has a compelling interest in student safety and privacy, California’s policies “cut out the primary protectors of children’s best interests: their parents.” *Id.* at 496–97.

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From Moses to *Mirabelli*, our storied cultural and legal tradition has protected the sacred right of parents to direct the religious upbringing of their children. And in no place has our tradition more fiercely guarded this right than within the confines of a parent’s own home.

II. The School District Can Prevent Disease While Leaving Room for the Perrys' Religious Convictions.

Krystle and Anthony Perry wish to raise K.P. according to the tenets of their Christian faith. Those tenets include their belief that abortion is the taking of an innocent human life and a sin. Pet.App.124a. The Perrys thus do not desire to give K.P. vaccines developed using aborted fetal cells. *Ibid.* The School District, however, requires them to either vaccinate K.P. against their consciences or forfeit the benefit of public education. That requirement applies even though K.P. attends her online public school in the *confines of the Perrys' home*, where the Perrys' religious rights are at their pinnacle and the State's interest in preventing the spread of disease is at its weakest.

Because the School District is conditioning K.P.'s public schooling on the Perrys' willingness to accept a burden on their religious exercise, West Virginia's vaccine mandate should be subject to strict scrutiny. *See Mahmoud*, 606 U.S. at 561. The Petition adroitly argues this point. Pet.19–22.

Amici States know from experience that West Virginia can serve its compelling interest in protecting children from disease while still accommodating sincere religious objectors. Nearly every state—and all *Amici* States—allows religious accommodations to their school vaccination requirements.² And several states, including West

² See Ala. Code § 16-30-3(1); Alaska Admin. Code tit. 4,

Virginia, provide an exception for homeschoolers or remote learners, recognizing that a student poses a lesser threat of spreading a contagion in the confines of her own home.³

Amici States offer exemptions not only to respect religious viewpoints but also because vaccines are not the only method States can use to prevent the spread of infectious disease. To illustrate, during the

§ 06.055(b)(3); Ariz. Rev. Stat. Ann. § 15-873(A)(1); Ark. Code Ann. § 6-18-702(d)(4)(A); Colo. Rev. Stat. § 25-4-903(2)(b)(I); Del. Code Ann. tit. 14, § 131(a)(6); D.C. Code § 38-506(1); Fla. Stat. § 1003.22(5)(a); Ga. Code Ann. § 20-2-771(e); Haw. Rev. Stat. § 302A-1156(2); Idaho Code § 39-4802(2); 105 Ill. Comp. Stat. 5/22-105(8); Ind. Code § 20-34-3-2(a); Iowa Code § 139A.8(4)(a)(2); Kan. Stat. Ann. § 72-6262(b)(2); Ky. Rev. Stat. Ann. § 214.036(1)(b); La. Stat. Ann. § 17:170(E)(1) (exception for general parental dissent); Md. Code Ann., Educ. § 7-403(b)(1); Mass. Gen. Laws ch. 76, § 15; Mich. Comp. Laws § 333.9215(2); Minn. Stat. § 121A.15, subd. 3(d); Mo. Rev. Stat. § 167.181.3; Mont. Code Ann. § 20-5-405(1)(a); Neb. Rev. Stat. § 79-221(2); Nev. Rev. Stat. §§ 392.437, 394.194; N.H. Rev. Stat. Ann. § 141-C:20-c(II); N.J. Stat. Ann. § 26:1A-9.1; N.M. Stat. Ann. § 24-5-3(A)(2)–(3); N.C. Gen. Stat. § 130A-157; N.D. Cent. Code § 23-07-17.1(3); Ohio Rev. Code Ann. § 3313.671(B)(4); Okla. Stat. tit. 70, § 1210.192(2) (exception for general parental objection); Or. Rev. Stat. § 433.267(1)(c); 24 Pa. Stat. Ann. § 13-1303a(d); 28 Pa. Code § 23.84(b); R.I. Gen. Laws § 16-38-2(a); S.C. Code Ann. § 44-29-180(C); S.C. Code Ann. Regs. 61-8, § II(A)(2); S.D. Codified Laws § 13-28-7.1(2); Tenn. Code Ann. § 49-6-5001(i); Tex. Educ. Code Ann. § 38.001(c)(1)(B); Utah Code Ann. § 53G-9-303(3); Vt. Stat. Ann. tit. 18, § 1122(a)(3)(A); Va. Code Ann. § 22.1-271.2(C)(i); Wash. Rev. Code § 28A.210.090(1)(b); Wis. Stat. § 252.04(3); Wyo. Stat. Ann. § 21-4-309(a).

³ See Cal. Health & Safety Code § 120335(f); Colo. Rev. Stat. § 25-4-902(1.5); La. Stat. Ann. § 17:170(E)(1); Minn. Stat. § 121A.15, subd. 3(g); Miss. Code Ann. § 41-23-37; Tenn. Code Ann. § 49-6-3050(b); W. Va. Code § 18-8-1(c), (n)(8).

COVID-19 pandemic, the University of Nebraska Medical Center (UNMC) required its students, staff, and faculty to obtain the COVID-19 vaccine. UNMC Press Release, *COVID-19 vaccine to be required for all UNMC faculty, students and staff* (Aug. 13, 2021), <https://perma.cc/L4BK-TGVM>. UNMC considered the vaccine requirement “imperative” to keeping its “campuses and the communities ... functional and safe.” *Ibid.* But UNMC still granted exemptions “on the grounds of religious beliefs.” *Ibid.*

As an alternative to vaccination, UNMC required its unvaccinated healthcare workers to wear masks and other personal protective devices while in certain areas of a healthcare facility. *See* UNMC Vaccination Waiver Request Form, <https://perma.cc/9B4H-PRDS> (archived Aug. 12, 2021). It also required the unvaccinated to “remove [themselves] from classrooms and clinical rotations at the first sign of infection/disease.” *Ibid.*

UNMC—Nebraska’s largest *hospital*—was able to accommodate its employees’ religious objections to vaccinations without compromising its healthcare mission. Nebraska later provided the same exemptions for all workers within its borders. *See* Neb. Rev. Stat. § 48-239. Nebraska’s statute protects against disease by allowing employers to require the unvaccinated to take other safety precautions—e.g., personal protective gear and testing. *Id.* § 48-239(4).

Religious accommodations did not tank Nebraska’s health outcomes. Nine months after Nebraska’s statute took effect, Johns Hopkins

University reported that Nebraska had the 17th-lowest per capita COVID case rate in the country. Johns Hopkins Univ., *U.S. Surpasses 100 Million Reported COVID-19 Cases* (Dec. 21, 2022), <https://perma.cc/LZ8X-7JAU>. The same year, Nebraska's COVID mortality rate was among the lowest in the country. See CDC Nat'l Ctr. for Health Stats., *COVID-19 Mortality*, <https://perma.cc/Q34U-GP2F>. The following year, with COVID mortality falling in all states, Nebraska's mortality rate was middle-of-the-pack. *Ibid.*

To be sure, every disease is different, and vaccines may be more essential to staving off other diseases. But States that offer exemptions also have a tool for the rare case of a serious but vaccine-preventable outbreak: *temporary* exclusion of an unvaccinated student.

Nebraska has seen this work in real time. During a 1992 community-wide measles outbreak, Lincoln Public Schools excluded two (legally) unvaccinated students. See *Maack v. Sch. Dist. of Lincoln*, 491 N.W.2d 341, 344 (Neb. 1992). The Nebraska Supreme Court upheld the exclusions, holding that Nebraska's statute allowing a school to exclude a student posing a severe threat to himself or others permitted Lincoln Public Schools to exclude the unvaccinated students until the outbreak subsided. *Id.* at 349.

New York has used the same tool. Prior to 2019, state regulation allowed officials, "in the event of an outbreak ... of a vaccine-preventable disease in a

school,” to “exclude from attendance” students with exemptions. See *Phillips v. City of New York*, 775 F.3d 538, 541 (2d Cir. 2015) (quoting N.Y. Comp. Codes R. & Regs. tit. 10, § 66-1.10 (2014)). The Second Circuit upheld that targeted exclusion. *Id.* at 543.

Moreover, not every vaccine can be justified as preventing the *spread* of disease. In fact, West Virginia’s law requires vaccination against diseases such as tetanus and hepatitis B that do not easily spread in classroom or social settings. W. Va. Code § 16-3-4(c). According to the CDC, “[p]eople don’t spread tetanus bacteria to other people”; the bacteria live in soil and infect people through wounds. CDC, *Tetanus: Causes and How It Spreads*, <https://perma.cc/N3EA-4ZG7>. Hepatitis B is a blood-borne infection spread through blood and other bodily fluids, not “through sneezing, coughing, hugging, ... or food or water.” CDC, *Hepatitis B Prevention and Control*, <https://perma.cc/R3QG-TTWR>. Schools can more easily keep an unvaccinated student from spreading disease through blood or bodily fluids than through droplets or airborne transmission.

The Fourth Circuit ultimately upheld West Virginia’s law on the ground that it requires children to be vaccinated “in the interest of protecting others.” Pet.App.21a. But *Amici* States have learned from experience that vaccination is not the only method of protecting our children from the spread of disease. And this is especially true where, as here, a student is attending school at home.

The Perrys have a fundamental right to raise their daughter according to their own religious convictions. The School District owes this ancient right more than casting it aside for ostensible health interests that *Amici* States serve just fine without requiring families to violate their consciences.

CONCLUSION

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted,

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