

No. _____

In The
Supreme Court of the United States

ARIELLA HELLMAN, ET AL.,

Petitioners,

v.

KATHERINE CRAVEN, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The unconstitutional conditions doctrine forbids the government from conditioning an otherwise available benefit on the surrender of a constitutional right. Over a century's worth of cases, this Court has invalidated numerous conditions that exert the kind of indirect "coercive pressure" that results when the government denies a benefit to a person "because he exercises a constitutional right." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604, 607–08 (2013) (citation omitted). In the decision below, the First Circuit recognized that this prohibition on "indirect coercion" exists but held it to be a "distinct" First Amendment principle that does not extend to the fundamental right, recognized in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), to send one's children to private school. On that basis, it upheld an agency's denial of *statutorily guaranteed* special education services to children whose parents send them to a private school. Applying rational basis review, it held the denial was justified by a state constitutional provision barring public money from "aiding" any "primary or secondary" private school. Mass. Const. amend. art. XVIII, § 2.

The question presented is:

Does the unconstitutional conditions doctrine apply to the right, recognized in *Pierce v. Society of Sisters*, to send one's child to a private school?

PARTIES TO THE PROCEEDING

Petitioners are Ariella and David Hellman, on their own behalf and as next friends of their child, E.H.; and Josh Harrison and Miriam Segura-Harrison, on their own behalf and as next friends of their child, H.H. Petitioners were plaintiffs in the District of Massachusetts and appellants in the First Circuit, and all of them join in this Petition. Respondents are Katherine Craven, in her official capacity as Chair of the Massachusetts Board of Elementary and Secondary Education (“Board”); Matthew B. Hills, in his official capacity as Vice-Chair of the Board; Dr. Ericka Fisher, in her official capacity as a member of the Board; Isabella Chamberlain, in her official capacity as a member of the Board; Farzana Mohamed, in her official capacity as a member of the Board; Dr. Christina Grant, in her official capacity as a member of the Board; Dálida Rocha, in her official capacity as a member of the Board; Kristen Smidy, in her official capacity as a member of the Board; Mary Ann Stewart, in her official capacity as a member of the Board; Stephen Zrike, in his official capacity as a member of the Board; Dr. Martin West, in his official capacity as a member of the Board; Pedro Martinez, in his official capacity as Acting Secretary of the Board and Commissioner of the Massachusetts Department of Elementary and Secondary Education (“DESE”). Respondents were defendants in the District of Massachusetts and appellees in the First Circuit.¹

¹ DESE and the Board were also named defendants in the complaint but were dismissed by the district court on Eleventh Amendment immunity grounds. Dr. Amy Kershaw was a named

RELATED PROCEEDINGS

U.S. District for Massachusetts:

Hellman, et al. v. Massachusetts Department of Elementary and Secondary Education (DESE), et al.
No. 1:24-cv-11200 (Mar. 31, 2025)

U.S. Court of Appeals for the First Circuit:

Hellman, et al. v. Massachusetts DESE, et al.
No. 25-1417 (Mar. 20, 2026)

appellee but is no longer a member of the Board. Stephen Zrike has been substituted in her place.

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PETITION FOR A WRIT OF CERTIORARI

For over a century, this Court has applied the fundamental, constitutional principle that “the government may not deny a benefit to a person because he exercises a constitutional right.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) (citation omitted). This principle—the “unconstitutional conditions doctrine”—prohibits the type of “coercive pressure” that results when government “deni[es] . . . a governmental benefit” because “someone refuses to cede a constitutional right.” *Id.* at 607–08. The Court has applied the doctrine to a wide variety of rights, both enumerated and unenumerated. See *infra* pp. 30–31.

For nearly as long, this Court has affirmed its “long-established precedent [that] parents—not the State—have primary authority with respect to ‘the upbringing and education of children.’” *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam) (quoting *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925)). The right protected by this precedent includes the fundamental constitutional right of parents, recognized in *Pierce*, to enroll their children in private schools. 268 U.S. at 535 (the “*Pierce* right”). To date, however, the Court has left unaddressed whether the unconstitutional conditions doctrine applies to the *Pierce* right—a right that is among “the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion).²

² This petition does not address other exercises of the broader parental right to direct “the upbringing and education of chil-

In the decision below, the First Circuit held that it does not—and, on that basis, upheld a Massachusetts regulation that denies statutorily guaranteed special education benefits to children whose parents send them to private schools. Although the court recognized that these students are “denied [an] otherwise ‘equally available benefit’” App. 24a, it held that the principle that government may not deny a benefit because of the exercise of a constitutional right is “distinct” to the First Amendment and “does not apply to the parental right” recognized in *Pierce*. *Id.* at 24a–25a. Accordingly, it applied only rational basis review and held that the denial of the benefit had a rational basis because it purportedly implements the state constitution’s bar on “aiding” private schools. *Id.* at 27a–28a.

“There are rights of constitutional stature whose exercise a State may not condition by the exaction of a price.” *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967). In holding that the *Pierce* right is not one of those “rights of constitutional stature,” the First Circuit denied the protection of one of this Court’s most important principles to a right it has deemed akin to “the specific freedoms protected by the Bill of Rights.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). In doing so, it joined one court and split with five other courts that have applied the unconstitutional conditions doctrine to the *Pierce* right, including one that addressed a materially identical situation and

dren,” such as “the right not to be shut out of participation in decisions regarding their children’s mental health.” *Mirabelli*, 607 U.S. at 497. It only addresses the right of parents to enroll their children in private school.

reached the opposite result. And it disregarded this Court’s own repeated application of that “general principle,” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972), to a wide range of rights—not just to First Amendment rights. See *infra* pp. 30–31.

This split of authority is of profound national importance. This Court has never allowed a constitutional guarantee to be “indirectly denied” or “manipulated out of existence.” *Harman v. Forssenius*, 380 U.S. 528, 540 (1965) (citation omitted). Yet when it comes to one of the oldest fundamental rights, the lower courts are sharply divided about whether states may do indirectly what they could never do directly. Certiorari is warranted to “clarify the law.” *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 610 (2015).

This petition is well-suited for this Court to do so. The trial and appellate courts squarely addressed the question presented, the case comes to this Court on a clean motion-to-dismiss record, and there are no procedural obstacles. This Court should grant certiorari to resolve the division among the lower courts and answer an “important question of federal law that has not been, but should be, settled by this Court.” Sup. Ct. R. 10(c).

OPINIONS BELOW

The First Circuit’s opinion (App. 1a) is reported at 171 F.4th 69. The district court’s opinion (App. 35a) is reported at 775 F. Supp. 3d 536.

JURISDICTION

The First Circuit entered judgment on March 20, 2026. On April 29, 2026, Justice Jackson extended the time within which to file a petition for a writ of certiorari to July 20, 2026. This Court’s jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

Under the Fourteenth Amendment, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Massachusetts constitutional provision, Mass. Const. amend. art. XVIII, § 2, special education statutes, Mass. Gen. Laws ch. 71B, §§ 1, 3, 5, and regulation, 603 CMR 28.03(1)(e)(3), are reproduced at App. 100a–138a.

STATEMENT OF THE CASE

A. Massachusetts makes a guarantee to all children with special needs.

In 1972, the Massachusetts legislature enacted “a flexible and uniform system of special education program opportunities for all children requiring special education.” 1972 Mass. Acts 692. Under the law, all children with special needs are guaranteed an individual entitlement to special education services.

Mass. Gen. Laws ch. 71B, § 3. Once a child has been identified as having special needs, the local school committee must “diagnose and evaluate” the child’s special needs, “propose a special education program to meet those needs,” and “provide or arrange for the provision of such special education program,” including “special education personnel, materials, and equipment.” *Id.* at §§ 3, 5. In practice, a child’s special education program may include services as varied as sign-language interpretation, paraprofessional support, occupational therapy, or assistance from a reading specialist—all provided during the school day.

Under the statute, where a child receives services is integral to the entitlement. The statute mandates a child receive services in the “[l]east restrictive environment.” *Id.* § 1. What that means is a disabled child (1) must be “educated with children who do not have disabilities”³ “to the maximum extent appropriate,” and (2) may “only” be removed from the “regular educational environment” and placed in “special classes” or “separate schooling” “when the nature or severity” of the child’s disability “is such that education in regular classes” “cannot be achieved satisfactorily.” *Id.* In other words, the statute sets out one rule: that a child must be educated alongside nondisabled children “to the maximum extent appropriate.” The rule has only one exception: that “only” when “the nature or severity” of the disability demands it, the child may be re-

³ At the time of the First Circuit’s decision, this language read “educated with children who are not disabled.” The amended language, which makes no substantive change to the definition of “least restrictive environment,” took effect on June 12, 2026. 2026 Mass. Legis. Serv. Ch. 102 (S.B. 2563).

moved from the “regular educational environment” and placed in “special classes” or “separate schooling,” either in isolation or with other disabled children.

In providing an individual entitlement to all students, public and private, the Massachusetts special education law is more generous than its federal counterpart, the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400 *et seq.* Unlike the IDEA, Massachusetts provides *all* children with disabilities—including children whose parents enroll them in private schools—with an individual, statutory right to special education services. Mass. Gen. Laws ch. 71B, § 3. By contrast, the IDEA provides no such individual right for children with disabilities whose parents enroll them in private schools. 20 U.S.C. § 1412(a)(10)(A). Although at one time there was uncertainty over whether the IDEA provided an individual entitlement to such children, Congress clarified in 1997 that it did not. App. 7a–8a, 37a–38a. Massachusetts later re-affirmed that, under state law, *all* disabled children have an entitlement. *Id.*

B. The Place Restriction undermines that statutory guarantee.

After the passage of the special education law, the Massachusetts Department of Elementary and Secondary Education created a new regulatory scheme, announcing that “[n]othing” in it “shall be construed to limit the rights of parents to have their children educated at private schools.” 603 CMR 28.03(1)(e). A few sentences later, however, it singles out these same children and bars them from receiving “special education services funded with state or local funds” in

their classes, in their schools, and even on their school's premises (the "Place Restriction"). *Id.* The only reason these children are singled out is because their parents have exercised the right recognized in *Pierce v. Society of Sisters* to send their children to private schools. Because "their children [are] educated at private schools," the Place Restriction requires them to travel off-site—at great time, disruption, and personal expense—to a public location or site the state deems "neutral," where services are provided in isolation or alongside other disabled students, not with nondisabled peers as the legislature directed. *Id.* By contrast, if the "services are provided using only federal funds, services may be provided on private school grounds." *Id.*

The Place Restriction applies *solely* to children enrolled in private school by their parents. It does not apply to public-school children; it does not apply when the government itself places a child in a private school, which Massachusetts commonly does when a public school cannot provide the services a child needs. In other words, the *same* private school is "neutral" when the government enrolls a child there, but not when parents do so. Thus, the only way parentally placed private school children can receive services at their school, alongside children without disabilities, is if their parents cease exercising the *Pierce* right—that is, if they instead enroll in a public school. So long as their parents continue exercising the *Pierce* right, they are denied services to which they are statutorily entitled. These children will always be spirited out of their schools and taken to "special classes" or "separate schools," where they will be educated alone or alongside other disabled children—not because their

disability demands it, but because their parents exercised a constitutional right.

Massachusetts justifies this restriction of the *Pierce* right based on its purported need to comply with a state constitutional provision barring public money from “aiding any” private school. Mass. Const. amend. art. XVIII, § 2. That constitutional provision arose from the Massachusetts Constitutional Convention of 1917. A major goal of the convention was to strengthen the state constitution’s existing “anti-aid” amendment. Adopted in 1853, the amendment (also known as a Blaine Amendment) specifically targeted Catholic schools—a hallmark of the anti-Catholic bigotry of the era. *Caplan v. Town of Acton*, 92 N.E.3d 691, 699 (Mass. 2018). Yet despite the amendment’s plain language barring public money from going to schools of “any religious sect,” some “private religious schools” still received money, which was a cause of “dissatisfaction” that prompted delegates to “tighten the prohibition” to include *all* private schools. *Id.* at 699–700 (citation omitted). To do this, they modified the amendment to bar public funds from “aiding any . . . primary or secondary school . . . not publicly owned and under the exclusive control” of the Commonwealth. Mass. Const. amend. art. XVIII, § 2. The Place Restriction is an attempt to comply with that mandate. See 603 CMR 28.03(1)(e)(1) (“The school district shall provide to such students genuine opportunities to participate in the public school special ed-

ucation program consistent with state constitutional limitations.”)⁴

C. The impact of the Place Restriction on families.

Petitioners and their children are some of the families affected by the Place Restriction. Petitioners—Ariella Hellman and David Hellman, and Josh Harrison and Miriam Segura-Harrison—want to provide their children—E.H. and H.H., respectively—with a Jewish education and so have exercised their constitutional right to enroll them in private schools, which in their case are Jewish day schools. App. 155a, ¶ 51; App. 159a, ¶ 68. But because of the Place Restriction, they must choose between exercising the *Pierce* right and their children’s obtaining their statutorily guaranteed services.

Under the special education statute, E.H. and H.H. are entitled to a number of services to address their needs. App. 143a, ¶ 4; App. 154a, ¶ 50; App. 159a, ¶¶ 66–67. For example, H.H. has ADHD, dyslexia, and developmental coordination disorder. App. 158a–159a, ¶ 66. His Individualized Education Program (“IEP”) requires him to receive over nine hours of services each week for reading assistance, occupa-

⁴ Although the people of Massachusetts may generally amend their constitution by initiative, they are specifically barred from using that power to repeal the anti-aid amendment. See Mass. Const. amend. art. XLVIII, pt. II, § 2 (“Neither the [anti-aid] amendment of the constitution . . . nor this provision for its protection, shall be the subject of an initiative amendment.”) In fact, the anti-aid amendment is the *sole* constitutional provision that Article 48 singles out for this protection.

tional therapy, psychological services, and self-regulation instruction. App. 159a, ¶ 67. These services help him read, develop fine motor skills, and respond appropriately in everyday situations so he can do ordinary things like get dressed and play games with friends. *Id.* E.H., for his part, was diagnosed with ADHD when he was four years old. App. 153a, ¶ 47. To address the “anxiety and frustration” he feels in school, his IEP requires him to receive two hours of academic support each week, along with thirty minutes of counseling and learning-center time. App. 153a–154a, ¶¶ 47–49, App. 155a, ¶ 54. Like H.H., his special needs make life harder for him in real, tangible ways, like making it more challenging to complete his tasks and work independently. *Id.* Both E.H. and H.H. are acutely aware of their special needs, which makes it even more “stigmatizing and stressful” for them to be repeatedly removed from their schools to receive services, particularly given the time they would lose learning and interacting with classmates. App. 155a ¶¶ 54–55; App. 160, ¶¶ 72–73.

As part of their entitlement, E.H. and H.H. must receive services in the “least restrictive environment.” That means they must receive services “to the maximum extent appropriate,” alongside “children who do not have disabilities,” and in their “regular education environment” except when the “nature or severity” of the child’s disability precludes it. Mass. Gen. Laws ch. 71B, § 1. Yet because they are “educated at private schools,” they are excluded from receiving “special education services funded with state or local funds” at their schools. 603 CMR 28.03(1)(e)(3). Instead, they must travel off-site to a public location or site the state deems “neutral,” where they receive services in

isolation or alongside other disabled students—not with nondisabled peers as the legislature directed. See Mass. Gen. Laws ch. 71B, § 1. And the sole reason they cannot get their statutorily guaranteed services is because their parents have exercised their fundamental, constitutional right “to have their children educated at private schools.” See 603 CMR 28.03(1)(e)(3).

The Place Restriction thus compels Petitioners’ children to be pulled out of class during the school day—multiple times per week—to travel to and from a public or “neutral” location. App. 154a–156a, ¶¶ 50, 52–55; App. 159a–160a, ¶¶ 69–73, 76. But the only way H.H. and E.H. can travel to a “neutral” location is if Petitioners leave their own busy jobs to drive them to those sites or pay someone else to transport them. *Id.* Even if Petitioners could leave their jobs multiple times per day and week, or afford the cost of transporting their children, it would be “stigmatizing and stressful” to their children, who are already “anxi[ous]” and withdrawn, to be repeatedly removed from their classrooms in front of their classmates. App. 155a, ¶ 54; App. 160a, ¶ 72. And for Petitioners, it would defeat the purpose of enrolling their children in Jewish day schools if their children are constantly being shuttled in and out of their schools and not receiving the full benefits of the education that Petitioners have a constitutional right to provide their children. App. 158a, ¶ 63; App. 161a, ¶ 78.

The Place Restriction has thereby forced a dilemma upon Petitioners and the thousands of families like them. Petitioners “must choose between a school where [their children] can receive all the services to

which [they are] entitled but not get the education that is best for [them], or a school that provides the best education for [them] without all the services to which [they are] entitled.” App. 157a, ¶ 62; App. 161a, ¶ 77. Each of the Petitioners has made their choice: “Because traveling to and from a public or ‘neutral’ location would have been impracticable, unduly burdensome, disruptive, stigmatizing, stressful, inefficient, and counterproductive; and would have thwarted [Petitioners’] conviction to educate [their children] at a Jewish, rather than public, school, [Petitioners] decided to forgo the services financed with state and local funds.” App. 158a, ¶ 63; App. 161a, ¶ 78.

D. Petitioners challenge the Place Restriction.

On May 6, 2024, Petitioners challenged the Place Restriction, alleging that it abridged their right to direct the education of their children in violation of the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment. App. 163a–169a, ¶¶ 83–112. The Respondents moved to dismiss and, on March 31, 2025, the district court dismissed Petitioners’ claims.⁵ The district court held that Petitioners (1) failed to demonstrate under the Due Process Clause that the Place Restriction burdened a fundamental right, (2) did not prove, under the Equal Protection Clause, that the restriction was

⁵ The district court also dismissed the Board of Elementary and Secondary Education and the Department of Elementary and Secondary Education on Eleventh Amendment immunity grounds.

intended to inhibit the *Pierce* right, and (3) could not establish their Privileges or Immunities claim.

Nearly a year later, on March 20, 2026, the First Circuit affirmed.

The court began with Petitioners’ due process claim. It acknowledged that Petitioners adequately alleged a fundamental right: the *Pierce* right to send their children to a private school. App. 16a. The court also accurately described Petitioners’ argument: that the Place Restriction “infringes on their *Pierce* right to send their children to private school because it conditions a state benefit on the non-exercise of that right.” *Id.* at 15a.

The court then turned to the benefit itself. Despite the statute’s requirement that services be provided in a child’s “regular educational environment” (unless the “nature or severity” of the child’s disability necessitates “separate schooling or other removal”), Mass. Gen. Laws ch. 71B, § 1, the First Circuit held that the statute “does *not* guarantee on-site delivery of services” at the “physical location” where the child attends school. App. 24a (emphasis added). According to the First Circuit, a child’s “regular educational environment” means only a “program that normally leads to college, technical education, or a career”—not the child’s own school. *Id.* at 23a. Invoking *Maher v. Roe*, 432 U.S. 464 (1977), *Harris v. McRae*, 448 U.S. 297 (1980), and *Norwood v. Harrison*, 413 U.S. 455 (1973), the court determined that this narrow definition reflects a permissible governmental decision to “finance, facilitate, or administer” the program on the state’s own terms. App. 17a–18a.

That said, the First Circuit held that the Massachusetts statute *does* require parentally placed private school students to be educated, “to the maximum extent appropriate,” “alongside nondisabled peers.” *Id.* at 23a. It recognized, moreover, that “under [the court’s] reading of state law,” Petitioners had alleged that E.H. and H.H. are “denied the otherwise ‘equally available benefit’ of being educated with other children who are not disabled.” *Id.* at 24a. As the court explained, Petitioners had asserted that the Place Restriction “requires their children, and only their children, to receive services in isolation or alongside other students with disabilities,” for no reason other than their parents’ exercise of the *Pierce* right. *Id.* The First Circuit also correctly characterized Petitioners’ constitutional argument: that under the unconstitutional conditions doctrine, “once the state establishes an otherwise generally available benefit, it may not deny that benefit to a student simply because his or her parents exercise their fundamental right to enroll their child in private school.” *Id.*

Nevertheless, the First Circuit held that, because of the precise constitutional right at issue, the denial of the otherwise generally available benefit created by the state statute was of no constitutional significance. It held that the “principle that prohibits the state from imposing even indirect coercion or penalties” on the exercise of a constitutional right “*does not apply* to the parental right” recognized in *Pierce*. *Id.* at 24a–25a (emphasis added).⁶ Rather, the First Circuit held,

⁶ In so holding, the court incorrectly asserted that “every case [Petitioners] cite arises under the Free Exercise Clause, not the parental rights doctrine involved here.” App. 24a. In fact, Petitioners *repeatedly* cited cases applying this general principle to

it is “a distinct, First Amendment principle,” specific to free exercise. *Id.* at 24a.

In this light, the court applied only rational basis review. According to the court, Petitioners failed to state a claim because (1) the state’s provision of special education services to *children* is a form of financial assistance to *schools*, (2) banning services from being provided in school served the state’s interest in complying with the constitutional ban on “aiding” private schools, and (3) nothing in the statute, in the court’s view, “requires that the services be provided on-site at the student’s school.” *Id.* at 26a–29a.

Next, the court affirmed dismissal of Petitioners’ claim that the Place Restriction violates the Equal Protection Clause because it singles out a class of people—parents who exercise their fundamental *Pierce* right—and denies their disabled children a benefit available to children who are otherwise like them in every relevant respect. It rejected Petitioners’ argument that this Court’s decision in *Romer v. Evans*, 517 U.S. 620, 633 (1996), applies here—specifically, *Romer*’s holding that “[a] law declaring that in general it shall be more difficult for one group of citizens than all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense.” Instead, it held that the Place Restriction was a “permissible” way of “administering public resources in compliance with the Massachusetts Constitution.” App. 31a.

a number of rights, enumerated and unenumerated. See Appellants’ C.A. Br. 19–20; Appellants’ Dist. Ct. Br. in Opp. 9–11.

Finally, the court rejected Petitioners’ Privilege or Immunities claim, which Petitioners had acknowledged was foreclosed but which they preserved for this Court’s review. Specifically, the First Circuit held that “the Due Process Clause is the constitutional source of fundamental rights.” *Id.* at 33a.⁷

REASONS FOR GRANTING THE PETITION

This Court has long held that the government may not withhold a public benefit so as to coerce against or penalize the exercise of a constitutional right. As this Court put it in *Perry*, its quintessential unconstitutional conditions case, it is a “general principle” that “even though a person has no ‘right’ to a valuable governmental benefit,” the government “may not deny a benefit to a person on a basis that infringes his constitutional[]” rights. 408 U.S. at 597. This Court has applied that principle in a variety of contexts, to a variety of rights. See *infra* pp. 30–31. But it has not yet resolved whether it applies to the right of parents to choose private schooling for their children.

In the absence of a settled answer from this Court, the First Circuit held that the *Pierce* right is not protected by that principle. According to the First Circuit, the rule prohibiting “indirect coercion or penalties” on a constitutional right by the withholding of a public benefit is a “distinct, First Amendment princi-

⁷ In their complaint, Petitioners alleged that to the extent that substantive protection for parental rights lies in the Privileges or Immunities Clause, rather than the Due Process Clause, their right to direct the education of their children is fundamental and has been infringed by the Place Restriction.

ple” specific to free exercise and “does not apply to the parental right” in *Pierce*. App. 24a–25a.

In so holding, the First Circuit denied the protection of one of this Court’s most important principles to “perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel*, 530 U.S. at 65. In doing so, it joined one court and split with five other courts, including one that applied the principle in a practically identical situation: a prohibition on statutorily guaranteed special education services to parentally placed private school children, pursuant to a state constitutional provision barring aid to private schools. Finally, in confining the unconstitutional conditions doctrine to, at most, the First Amendment, the First Circuit disregarded a long line of this Court’s precedents applying that “general principle,” *Perry*, 408 U.S. at 597, to a wide array of rights. See *infra* pp. 30–31.

I. The First Circuit’s ruling deepened a longstanding split on whether the unconstitutional conditions doctrine applies to the *Pierce* right.

This petition asks this Court to resolve a question that has long divided the lower courts: whether the unconstitutional conditions doctrine applies to the *Pierce* right. The Fifth, Sixth, Ninth, and Eleventh Circuits, as well as the Michigan Supreme Court in circumstances virtually identical to those in this case, have held that the doctrine applies to the *Pierce* right. One court, the Eighth Circuit, identified the same important question without providing its own answer. On the other side of the divide, the First Circuit and

Alaska Supreme Court hold that the doctrine does not apply.

The result is a deeply entrenched split over whether the *Pierce* right is subject to what Chief Justice John Marshall deemed the “general rule, that what cannot be done directly from defect of power, cannot be done indirectly.” *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 50 (1825). This decades-long divide has persisted because this Court has not yet resolved whether the unconstitutional conditions doctrine applies to a right akin to “the specific freedoms protected by the Bill of Rights,” *Glucksberg*, 521 U.S. at 720, even as it has repeatedly relied on the doctrine to protect other rights. This Court should grant certiorari to settle that “important question of federal law.” Sup. Ct. R. 10(c).

A. Five courts have applied the unconstitutional conditions doctrine to the *Pierce* right.

1. In a materially identical case, the Michigan Supreme Court had no trouble concluding that the unconstitutional conditions doctrine applies to the *Pierce* right. There, as here, a state law guaranteed special education services to all students, both public and private. But the state board of education announced that the state constitution required the termination of those services for private school students, and a lawsuit followed. The Michigan Supreme Court ruled against the board. It held that denying private school students those services because of their parents’ exercise of the *Pierce* right “is unconstitutional under the United States Constitution”—even if the

denial is rooted in a state constitutional provision barring aid to private schools. *Traverse City Sch. Dist. v. Att’y Gen.*, 185 N.W.2d 9, 30 (Mich. 1971).⁸

The court’s decision arose from a constitutional amendment banning aid to private schools that is substantively identical to Massachusetts’s. Compare Mich. Const. art. VIII, § 4 (“No public monies or property shall be appropriated . . . directly or indirectly to aid or maintain any private . . . school.”), with Mass. Const. amend. art. XVIII, § 2 (“No . . . public money . . . shall be [appropriated] . . . for the purpose of . . . aiding . . . any . . . primary or secondary school . . . which is not publicly owned.”)

On the day the amendment was adopted, the attorney general issued an opinion construing it as forbidding private school students from obtaining their statutorily authorized “auxiliary services”—*i.e.*, “special educational services designed to remedy physical and mental deficiencies of school children and provide for their physical health and safety.” *Traverse City*, 185 N.W.2d at 15 n.2, 21. Under existing state law, as in Massachusetts, all disabled children were entitled to receive “the same auxiliary services on an equal basis,” meaning that for private school students, “the services shall be made available at the nonpublic school.” *Id.* at 21 & n.4. But according to the attorney general’s opinion, the newly ratified amendment required the cancellation of all “auxiliary services for

⁸ In 2020, the Michigan Supreme Court reaffirmed the holding in *Traverse City* and described it as “entitled to particular deference.” *Council of Orgs. & Others for Educ. About Parochial Aid v. State*, 958 N.W.2d 68, 80 (Mich. 2020).

private school students.” *Id.* at 15 n.2, 27. Because that opinion “command[ed] the allegiance of state agencies,” the State Board of Education “announced its intention to follow” it. *Id.* at 15 n.2. A declaratory judgment action followed, and the case was certified to the Michigan Supreme Court. *Id.* at 13.

The Michigan Supreme Court rejected the denial of special education services to private school students, holding that the attorney general’s opinion would set the state on a collision course with the U.S. Constitution. Each parent, the court noted, possesses “the fundamental right, protected by the Fourteenth Amendment . . . to send his child to the school of his choice,” including a private school. *Id.* at 27–28. But under the attorney general’s reading of the state constitution, private school students would no longer be able to receive special education services simply because their parents exercised the *Pierce* right. The state would be required to “discriminate[] against the class of nonpublic school children in violation of the equal protection provisions of the Fourteenth Amendment of the United States Constitution.” *Id.* at 27.⁹

For that reason, the court held that Michigan could not invoke its constitution to deny private

⁹ The court explained that for private school students who attended “parochial or other church-related school[s],” the attorney general’s opinion would also “violate the free exercise clause of the First Amendment.” *Id.* at 27. “When a private school student is denied . . . auxiliary services offered at the public school because of his status as a nonpublic school student *and* he attends a private school out of religious conviction, he *also* has a burden imposed upon his right to freely exercise his religion.” *Id.* at 28 (emphases added).

schoolchildren the ability to receive the statutorily created benefit to which they were entitled. The federal Constitution demanded that services be provided on a “non-discriminatory basis to all children.” *Id.* at 29. The attorney general’s contrary interpretation—that the Michigan Constitution required the denial of statutorily mandated services to those who exercised the *Pierce* right—violated the “constitutional doctrine governing indirect burdens.” *Id.* at 28.

As in other unconstitutional conditions cases, the court explained that nothing in its decision meant that the state was *required* to provide services to all children in the first place. *Id.* But since the state offered to provide special education services to all children “on an equal basis,” *as Massachusetts did here*, it could not single out children whose parents exercise the *Pierce* right and “prohibit [special education] services on the premises” of their schools. *Id.* at 21 & n.4, 29 n.22. The attorney general’s argument otherwise “intru[ded] upon the exercise of a fundamental constitutional right” of “school selection.” *Id.* at 28.

In short, the Michigan Supreme Court held that the unconstitutional conditions doctrine applies to the *Pierce* right: denying children a benefit because their parents exercised the *Pierce* right “is unconstitutional under the United States Constitution.” *Id.* at 30.

2. The Michigan Supreme Court is not alone. Four federal circuit courts—the Fifth, Sixth, Ninth, and Eleventh—have also applied the unconstitutional conditions doctrine to the *Pierce* right.

The Sixth Circuit’s decision in *Barrett v. Steubenville City Schools*, 388 F.3d 967 (6th Cir. 2004), is representative of those courts. In that case, a school official fired a public-school teacher because he enrolled his child in a private school. *Id.* at 969–70. In holding that the official acted unconstitutionally, the court explained that both this Court and the Sixth Circuit have (1) “repeatedly recognized” the fundamental right of parents to direct their children’s education and (2) “ma[d]e clear” that the government may not “deny a benefit,” including public employment, based on that “fundamental parental right.” *Id.* at 972–73 (citation omitted). That precedent, the Sixth Circuit explained, includes *Perry*, this Court’s classic unconstitutional conditions case. *Id.* In *Perry*, this Court held, with respect to the denial of public employment based on the exercise of free speech rights, that “even though a person has no ‘right’ to a . . . government benefit,” the government may not “deny a benefit to a person on a basis that infringes his constitutionally protected interests.” 408 U.S. at 597. If the government could do so, this Court noted, it could “produce a result which (it) could not command directly,” and “[s]uch interference with constitutional rights is impermissible.” *Id.*¹⁰

Unlike the First Circuit, the Sixth Circuit had no hesitation in applying the “general principle” this

¹⁰ This Court explained that the specific benefit in *Perry*—public employment—was representative of a “broad range of [property] interests” and a person who has an “entitlement to [a] benefit” has “a ‘property’ interest.” *Id.* at 601. This Court also specifically noted that it applied the same “general principle” in *Perry* to numerous benefits and constitutional rights. *Id.* at 597. See also *infra* pp. 30–31.

Court identified in *Perry* to the *Pierce* right. *Id.*; *Barrett*, 388 F.3d at 973. Nor did it read that principle to be “distinct” to the First Amendment, as the First Circuit did here. App. 24a–25a. Instead, it held that this Court’s “direct authority” made it “unmistakabl[e]” that denying a benefit because of the exercise of a constitutional right, specifically “a parent’s constitutional right to direct his child’s education”—including a parent’s “decision to send his son to private school”—“is a violation of the law.” 388 F.3d at 973–74.

In so holding, the Sixth Circuit joined the Michigan Supreme Court and every other federal circuit court to consider the issue (except, now, the First Circuit). See *Barrow v. Greenville Indep. Sch. Dist.*, 332 F.3d 844, 848–49 (5th Cir. 2003) (holding that a “state cannot take an adverse employment action against a public-school employee for exercising . . . [their] protected right to educate their children in private school.”); *Stough v. Crenshaw Cnty. Bd. of Educ.*, 744 F.2d 1479, 1481 (11th Cir. 1984) (holding that a school board policy prohibiting board employees from sending their children to private schools violated parents’ “right to choose and direct their children’s education”); *Peterson v. Minidoka Cnty. Sch. Dist. No. 331*, 118 F.3d 1351, 1355 (9th Cir. 1997) (affirming the lower court’s ruling that a man’s *Pierce* right was infringed when his employer demoted him as school principal after learning about his plan to homeschool his children).

B. The Eighth Circuit has flagged—without resolving—the same question that has divided other courts.

Although the Eighth Circuit has not decided whether the unconstitutional conditions doctrine applies to the *Pierce* right, it has recognized that it is an unresolved question.

In *Peter v. Wedl*, the Eighth Circuit considered the constitutionality of a school district’s denial of on-site special education services to a child named Aaron, who attended a private religious school. 155 F.3d 992 (8th Cir. 1998). The Eighth Circuit explained that the IDEA, as it then existed, provided private school students with “comparable” services to those given to public school students.¹¹ Any student with Aaron’s particular disability, the court noted, would require “one-on-one assistance from a paraprofessional throughout his school day.” *Id.* at 1001. Nevertheless, the district had refused to provide Aaron on-site services, purportedly pursuant to a district policy prohibiting on-site services at any private school, religious or not.

Aaron’s parents challenged the denial of services as a violation of, among other things, the Free Exercise Clause and the unconstitutional conditions doctrine. Specifically, they argued that the school district “violate[d] the constitution by conditioning the receipt

¹¹ According to the Eighth Circuit, under the then-existing version of the IDEA, children who were enrolled in private schools by their parents “had a right to publicly-funded special education services.” *Id.* at 1000.

of generally available government services on the [parents' forgoing] of" their "constitutional right," under *Pierce*, "to choose the education that Aaron shall receive." *Id.* at 1001; see also *id.* at 994.

Regarding the free exercise claim, the Eighth Circuit concluded that the summary judgment evidence "strongly suggest[ed] that" the district's policy denying services to private school students was "a mere pretext for religious discrimination." *Id.* at 997. It "remand[ed] th[e] matter to the district court for a factual determination" on that point. *Id.* at 997–98.

The Eighth Circuit then turned to the unconstitutional conditions argument. The court held that it was "clear" that Aaron's parents had a "constitutional right to choose the education that [he] shall receive." *Id.* at 1001. It also explained that if Aaron's parents "exercis[ed] their right to send [him] to the school of their choice," the school district would "not provide special education services" to him. *Id.* Although Aaron's parents had argued that this "unconstitutionally conditioned their receipt of a generally available right upon their forbearance of a constitutional right," the court determined that, given its "remand on other bases," it "need not reach this issue." *Id.* at 1001–02.

The Eighth Circuit's decision to "leave this matter for another day" is significant. *Id.* The court expressly identified the constitutional issue, recognized that Aaron could obtain services only when his parents declined to exercise the *Pierce* right, and left the question unanswered as a matter of constitutional avoidance, given its remand on other grounds. By doing so, the Eighth Circuit confirmed that whether the gov-

ernment may condition a public benefit on the surrender of the *Pierce* right—*i.e.*, whether the unconstitutional conditions doctrine applies to the *Pierce* right—is a longstanding and unresolved question of great public importance.

C. The First Circuit—along with the Alaska Supreme Court—does not apply the unconstitutional conditions doctrine to the *Pierce* right.

1. In the decision below, the First Circuit considered a challenge to a regulation governing the Massachusetts special education regime. Under a state statute, *all* disabled children in Massachusetts are guaranteed special education services, including those like reading assistance, paraprofessional support, sign-language interpretation, and occupational therapy, alongside nondisabled students, rather than in isolation or only with other disabled children. Mass. Gen. Laws ch. 71B, §§ 1, 3. But due to a regulation—the Place Restriction—children whose parents exercise the *Pierce* right are denied that statutory guarantee. 603 CMR 28.03(1)(e)(3). Instead, these children are always, and as a rule, forced to leave their schools and find their way to a “neutral” location where their services are provided in isolation or alongside other disabled children. *Id.*

In its decision sustaining the Place Restriction, the First Circuit agreed with Petitioners on two critical points. It did not dispute that (1) Petitioners adequately alleged a right recognized as fundamental (the *Pierce* right) and (2) the Place Restriction conditions a benefit to which Petitioners are entitled on

their non-exercise of that right. App. 15a, 24a. But the First Circuit then held that the conditioning was of no constitutional significance. In its view, this Court’s decisions “prohibit[ing] the state from imposing” that sort of “indirect coercion or penalt[y] on” a fundamental right are, at most, applicable to the First Amendment (perhaps, only to free exercise)—not to the *Pierce* right. *Id.* at 24a–25a. Based on this understanding, the First Circuit applied mere rational basis review—again, despite recognizing the burden on a fundamental right—and held that compliance with a state constitutional provision prohibiting aid to private schools justified sustaining the Place Restriction. *Id.* at 29a.

2. The First Circuit’s lone company on this question is the Alaska Supreme Court.

In *Matthews v. Quinton*, the Alaska Supreme Court considered a law that provided a benefit—free transportation services—to private school students who traveled “comparable distances and the same routes over which children attending public schools are transported.” 362 P.2d 932, 940 (Alaska 1961). The challenge arose after a Fairbanks School District employee issued a directive forbidding private school children from being discharged at their schools. *Id.* at 933–34. Under the directive, they could only be dropped off at a public school. A private school student successfully challenged the directive in trial court.

In a 2-1 decision, the Alaska Supreme Court reversed. Like the First Circuit, the court held that a state could invoke its state constitution to deny a ben-

efit to the children of parents who exercised the *Pierce* right. *Id.* at 937–38. Under Alaska’s Organic Act—the forerunner to the state constitution—the state was forbidden from providing “any public money . . . for the support or benefit of any . . . private school.”¹² The appellees made lengthy arguments that applying either charter to deny them the benefit would violate their *Pierce* right. See, e.g., Appellees’ Brief, *Matthews v. Quinton*, No. 48, 1960 WL 164113 (Alaska Sept. 10, 1960), at *20 (arguing that “attendance at a qualified nonpublic school” is “a constitutional right inherent in our American system of government” and “[t]he State cannot impose unwarranted restrictions on this liberty of the individual to pursue a nonpublic education”); *id.* at *27 (contending that “a child has a constitutional right to attend a nonpublic school, and [the government’s] interpretation [of state law to deny transportation services] effectively drains the right of meaning”); *id.* at *34 (“Nonpublic school children, under the [government’s] interpretation, would be denied equal protection of the law.”) But the court implicitly rejected those arguments. It acknowledged that parents have a “constitutional right to send the[ir] child to a nonpublic school,” but it nonetheless held that the legislature had violated the governing charter when it “pass[ed] a statute which required the use of public funds to pay for the transportation of

¹² During the pendency of the litigation, Alaska adopted a constitutional provision that was nearly identical to the one in the Organic Act. See Alaska Const. art. VIII, § 1 (“No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.”). The Alaska Supreme Court agreed with the government that the denial was justified under both the Organic Act and the newly adopted constitution. *Matthews*, 362 P.2d at 937–38, 943.

children to a nonpublic school.” 362 P.2d at 937–38. It accordingly upheld the denial of transportation services.

In dissent, Justice Dimond criticized the decision for circumventing this Court’s ruling in *Pierce*. He recounted the history behind the right to send one’s children to a private school, including that this Court recognized the right after some public-school advocates had outlawed private schooling in Oregon. After their loss in *Pierce*, he contended that “the next logical step” for such advocates was initiatives like the directive. *Id.* at 958–59. Accordingly, these advocates—including those involved in drafting the Alaska Constitution—turned to “restrict[ing] as far as possible the enjoyment of the right” by “bar[ring] the extension of general welfare benefits to children who did not attend a public school.” *Id.* In doing so, they hoped to empty the *Pierce* right of “practical meaning or value” and thereby “coerc[e]” parents into not exercising it. *Id.* at 945, 959. By sanctioning this coercion, the court not only inflicted “a grave injustice” on parents but also ensured that the “defeat” of private-school opponents in *Pierce* “has now been turned into victory.” *Id.* at 959. The result, he concluded, is that parents “who exercise their inherent right to direct the destiny of their children must now pay the price of being denied the equal rights to which the constitution says they are entitled.” *Id.*

In the six decades since *Matthews*, no court adopted its rationale until the First Circuit did in this case. Every other court to consider whether the unconstitutional conditions doctrine applies to the

Pierce right—including the Michigan Supreme Court a decade later—sided with Justice Dimond’s dissent.

D. This Court has repeatedly applied the unconstitutional conditions doctrine to a variety of constitutional rights.

The decisions above illustrate that the lower courts are divided about whether the unconstitutional conditions doctrine applies to the *Pierce* right at all. Absent guidance from this Court, the lower courts have reached their own conflicting conclusions about how a longstanding constitutional principle applies to the oldest of the fundamental liberty interests recognized by this Court.

To be sure, this Court’s precedents point toward an answer. From the start, it has described the unconstitutional conditions doctrine in broad terms: “If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all.” *Frost v. R.R. Comm’n*, 271 U.S. 583, 594 (1926). It has applied the doctrine to a full range of constitutional rights, both enumerated and unenumerated. See, e.g., *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024) (right to just compensation); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464 (2020) (right to free exercise); *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205 (2013) (right to speech); *Saenz v. Roe*, 526 U.S. 489, 505 (1999) (right to travel), *Mem’l Hosp. v. Maricopa County*, 415 U.S. 250 (1974) (same); *Dunn v. Blumstein*, 405 U.S. 330, 338–43, 360 (1972) (right to vote); *Slochower v. Bd. of Higher Educ.*, 350 U.S. 551, 557

(1956) (right against self-incrimination); *Thomas v. Collins*, 323 U.S. 516, 540 (1945) (right to free assembly); *Frost*, 271 U.S. at 592–93 (right to use public highways); *W. Union Tel. Co. v. Kansas ex rel. Coleman*, 216 U.S. 1 (1910) (right to engage in interstate commerce); *Terral v. Burke Constr. Co.*, 257 U.S. 529 (1922) (right to federal courts). Moreover, the lower courts—the First Circuit and Alaska Supreme Court excepted—understand that “while the unconstitutional conditions doctrine has been most consistently applied to protect First Amendment rights,” it “should equally apply to prohibit the government from conditioning benefits on a citizen’s agreement to surrender due process rights.” *R.S.W.W., Inc. v. City of Keego Harbor*, 397 F.3d 427, 434 (6th Cir. 2005). And this Court has never suggested otherwise.

At the same time, this Court has not yet applied the doctrine to the *Pierce* right. Without clear guidance from this Court, the lower courts have provided their own conflicting answers to whether the *Pierce* right is protected as fully as any other. The First Circuit’s decision should prompt this Court to break its silence. This Court should resolve the division among the lower courts, confirm that one of the oldest rights enjoys the same protection as the rest, and answer a question that “has not been, but should be, settled by this Court.” Sup. Ct. R. 10(c).

II. The question presented is a recurring one of great importance.

The question presented in this case—whether the unconstitutional conditions doctrine applies to the *Pierce* right—is a recurring one of great importance.

That recurrence is due, in large part, to the numerous state constitutions that contain provisions barring aid to private—not merely religious—schools.

There are 37 states that have anti-aid amendments, often known as “Blaine Amendments.” Twenty-three of those states bar public money from going to *religious* private schools specifically; the remaining fourteen bar public money from going to *any* private school, religious or not. In *Espinoza*, this Court invalidated the application of the religious variant to deny aid to students attending religious schools. 591 U.S. at 484. But it did not have the opportunity to address whether the federal Constitution permits a state to apply a secular Blaine Amendment in a manner that forbids aid to students attending *any* private school, regardless of religion.

Among the states with those amendments, state courts are divided in how they interpret and apply them. The division turns on whether the court in question embraces the “child benefit theory”—the notion that the direct beneficiaries of education benefits such as scholarships, special education services, and textbook loans are the children who receive them, even if third parties derive “incidental” benefits as a consequence of “the direct benefit enjoyed by the pupils themselves.” *Members of Jamestown Sch. Comm. v. Schmidt*, 405 A.2d 16, 21 (R.I. 1979). The state courts that embrace this theory allow legislatures, in their discretion, to provide aid to private school students. See, e.g., *Moses v. Ruszkowski*, 458 P.3d 406, 420 (N.M. 2018). The state courts that reject the theory hold that state legislatures do not have the discretion to provide aid to those who exercise the *Pierce*

right. See, e.g., *Adams v. McMaster*, 851 S.E.2d 703, 711 (S.C. 2020).

When state courts reject the child benefit theory and uphold denials of otherwise available education benefits to private school students, they prompt the secular variation of the question that this Court addressed in *Espinoza*: whether a state court is obligated to “disregard[]” an application of a state no-aid amendment that discriminates against a fundamental federal constitutional right (the *Pierce* right, rather than the right to free exercise) and instead decide the case “conformably to the [C]onstitution” of the United States. 591 U.S. at 488 (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178 (1803)). The question is hardly academic. In recent years, no-aid amendments have been weaponized to attack educational aid programs across the country and to deny aid in the same way that the religious variants of those provisions were weaponized before *Espinoza*. See, e.g., *Dep’t of Educ. & Early Dev. v. Alexander*, 566 P.3d 268 (Alaska 2025); *Eidson v. S.C. Dep’t of Educ.*, 906 S.E.2d 345 (S.C. 2024). Other challenges invoke different state constitutional provisions but effectively advance the same argument—for example, that a state constitutional obligation to establish a public school system forbids the state’s support of additional, private educational opportunities, including, specifically, scholarships for disabled children to attend private schools. See Complaint ¶¶ 28, 73, *Spar v. Kamoutsas*, No. 2026 CA 00929 (Fla. Cir. Ct. May 5, 2026); see also *Bush v. Holmes*, 919 So. 2d 392, 408 (Fla. 2006) (holding that Florida’s constitutional obligation to establish a public school system bars the legislature from providing aid to parents who exercise

the *Pierce* right). In each of these disputes, challengers seek to take away benefits that legislatures choose to provide families based on the claim that those states' constitutions forbid aiding children who attend private schools—that is, children whose parents exercise the *Pierce* right.

All Americans suffer when courts interpret state constitutions in a way that discourages the exercise of a fundamental right. That includes the *Pierce* right, which is practically the only federal constitutional right still subject to multiple state constitutional restrictions. Barred by *Pierce* from outlawing private education directly, states like Massachusetts use those state constitutional provisions to indirectly pressure parents into not choosing private schooling—by denying their children public benefits, or even the *possibility* of public benefits, when they exercise the *Pierce* right. The First Circuit's ruling circumvents one of this Court's canonical decisions. Whether this Court agrees or disagrees with the First Circuit that states may ask parents to waive their constitutional right to send their children to private school as a condition of receiving statutorily guaranteed benefits, it should grant certiorari to resolve the split and give guidance to all the lower courts going forward.¹³

¹³ To be clear, granting certiorari and ruling in favor of Petitioners would not mean that states would be *required* to create a program that facilitates the exercise of the *Pierce* right. They would not. But it would prevent the further weaponizing of state no-aid provisions to deprive educational opportunities that state legislatures, in their discretion, have *chosen* to provide to children. See *Espinoza*, 591 U.S. at 487 (“A State need not subsidize

This case gives the Court the opportunity to resolve the division among the lower courts and determine whether one of this Court's most venerable principles applies to the oldest of the fundamental liberty interests recognized by this Court. It is an "important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c). Certiorari is warranted.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted on July 20, 2026,

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private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious.”).