

No. 26-97

IN THE
Supreme Court of the United States

ARIELLA HELLMAN, ON THEIR OWN BEHALF AND AS NEXT
FRIEND OF THEIR CHILD, E. H., ET AL.,

Petitioners,

v.

KATHERINE CRAVEN, CHAIR, MASSACHUSETTS BOARD OF
ELEMENTARY AND SECONDARY EDUCATION, ET AL.,

Respondents.

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

BRIEF OF FOUNDATION FOR EXCELLENCE IN
EDUCATION, INC. AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

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?

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INTEREST OF *AMICUS CURIAE*

The Foundation for Excellence in Education, Inc. (“ExcelinEd”) is a 501(c)(3) nonprofit, nonpartisan organization founded and led by former Governor Jeb Bush to build on the groundbreaking education reforms that he implemented in Florida. ExcelinEd is now active in over 40 states, where it pursues policies that equip every child to achieve his or her potential. Its work includes designing and promoting student-centered systems and providing model legislation, rule-making expertise, implementation assistance, and public outreach.¹

ExcelinEd’s interest in this case stems from the recurring obstacles that state constitutional provisions—like Massachusetts’s anti-aid clause—pose to the efforts of parents to exercise their federal constitutional right to direct their children’s educations. *See Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925). Such obstacles also jeopardize ExcelinEd’s mission of promoting a student-centered education system. ExcelinEd thus supports this Court’s review.

¹ Pursuant to Rule 37.2, *amicus* provided timely notice of its intention to file this brief. In accord with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF THE ARGUMENT

Parents—not states—are the chief guardians of their children’s educations. This Court has held for over a century that the Fourteenth Amendment protects the fundamental right of parents to send their children to private school. *See Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925). Today, millions of parents exercise that right to choose the educational environments that best suit their children’s needs.

Anti-school-choice advocates and, at times, courts adopting their views have tried to stymie conscientious parents’ exercise of their constitutional rights by seizing on state constitutional provisions that purportedly restrict the use of public funding in private education. The education clause of Florida’s Constitution, for example, hampered the efforts of ExcelinEd’s founder and chairman, Governor Jeb Bush, to reform the state’s education system in the early 2000s. Despite early victories for Governor Bush’s efforts, *see Bush v. Holmes*, 767 So. 2d 668 (Fla. 1st DCA 2000) (litigated by now-Justice Kavanaugh as outside counsel for Governor Bush), the Florida Supreme Court ultimately rejected a program that allowed students to escape failing public schools by attending private schools, *see Bush v. Holmes*, 919 So. 2d 392, 412 (Fla. 2006). The court reasoned that the program diverted funds from Florida’s public schools, supposedly in violation of a constitutional provision requiring “a uniform, efficient, safe, secure, and high quality system of free public schools.” *Id.* at 398.

The decision below is cut from similar cloth (as are several other recent state-court decisions, *see infra* Section II.B). The First Circuit upheld a state regulation “promulgated ... because Massachusetts’s state constitution restricts the use of public funds to support private schools,” which here severely restricts Petitioners’ access to special-education services. *Hellman v. Mass. Dep’t of Elementary & Secondary Educ.*, 171 F.4th 69, 76 (1st Cir. 2026). The upshot is that parents face the unconstitutional dilemma of leaving their children in public schools that parents deem unsuitable for their children’s needs, or forgoing crucial resources that the state otherwise promises to students.

This case presents a clean and important opportunity to explain that the Fourteenth Amendment forbids states from penalizing parents who exercise their constitutional right to choose private school. A holding that Massachusetts violated Petitioners’ rights will have two key consequences for ongoing litigation involving the interplay of state constitutional provisions and state support for private education. *First*, it will restrict states from denying otherwise generally available resources to students simply because their parents choose to send them to a private school. *Second*, applying the unconstitutional conditions doctrine to the *Pierce* right will give state courts (and lower federal courts) important guidance for interpreting education clauses in state constitutions. Like Florida’s Constitution as interpreted by *Holmes*, many state constitutions have education clauses that state courts have construed to bar support for private education.

A decision by this Court that states cannot unreasonably disadvantage private-school students would provide valuable guidance on the proper construction of such clauses to avoid conflict with the Federal Constitution.

ARGUMENT

I. THE *PIERCE* RIGHT IS DEEPLY ROOTED IN LAW, TRADITION, AND FAMILIES' EXPECTATIONS.

For over one hundred years, this Court has recognized the fundamental right of parents to direct the education of their children. This Court first recognized that fundamental right through a trilogy of cases in the 1920s. *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce*, 268 U.S. 510; *Farrington v. Tokushige*, 273 U.S. 284 (1927). *Pierce* is the trilogy's crown jewel. That case involved a challenge to an Oregon statute requiring parents or guardians of all students aged eight to sixteen to send their children to public school. *Pierce*, 268 U.S. at 529-30. The Society of Sisters, a religious order operating private schools in Oregon, and Hill Military Academy challenged the statute. *Id.* at 531-33. The Society argued that the statute “conflict[ed] with the right of parents to choose schools where their children will receive appropriate mental and religious training.” *Id.* at 532.

This Court agreed that Oregon's compulsory-public-education statute violated the parents' rights. It found “entirely plain” that the statute “unreasonably

interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control.” *Id.* at 534-35. And it recognized that parents—not state governments—are ultimately responsible for children’s education:

The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Id. at 535. In other words, the state has no legitimate interest in producing a homogenous citizenry through compulsory public instruction. This Court accordingly held that Oregon could not force students to attend public school over their parents’ decision to privately educate them.

In the century since, this Court has reaffirmed the importance, vitality, and breadth of the *Pierce* right. *Pierce* not only protects “the rights of parents to direct the religious upbringing of their children,” *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972); *see also Mahmoud v. Taylor*, 606 U.S. 522, 547 (2025), but “to direct the education and upbringing of one’s children” generally, *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

The *Pierce* right “is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Just last term, this Court reaffirmed that “[u]nder long-established precedent, 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*, 268 U.S. at 534-35).

Millions of parents nationwide rely on this Court’s consistent reaffirmation of *Pierce*. Every school day, nearly eight million American schoolchildren receive their education outside the four walls of a public institution.² In 2026, as in 1925, parents cherish their fundamental right, “coupled with the[ir] high duty,” to see that their children learn in an environment that best fits their needs and circumstances. *Pierce*, 268 U.S. at 535.

² See National Center for Education Statistics, *Private School Universe Survey*, tbl. 14, <https://perma.cc/WBX7-M3LZ> (4.7 million private-school students for the 2021-22 school year); Angela R. Watson, *Homeschool Growth: 2024-2025*, Johns Hopkins School of Education (Nov. 2025), <https://tinyurl.com/2tbemdn6> (approximately three million home-schooled students for the 2024-25 school year).

II. DECISIONS EXPANSIVELY INTERPRETING EDUCATION CLAUSES IN STATE CONSTITUTIONS UNDERMINE THE *PIERCE* RIGHT.

Opponents of parental choice have not gone quietly. They frequently attacked state funding of private education on the theory that states should not provide resources to religious schools—often invoking the federal Establishment Clause or anti-Catholic Blaine Amendments in state constitutions from the late 19th century—but this Court has now foreclosed that gambit. *See Zelman v. Simmons-Harris*, 536 U.S. 639, 662-63 (2002) (rejecting Establishment-Clause challenge); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 466-67 (2017) (rejecting exclusion of religious institution from state-assistance program, as ostensibly justified by state constitution); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 486-87 (2020) (similar); *Carson v. Makin*, 596 U.S. 767, 789 (2022). In light of these decisions, “opponents have fewer weapons to wield against the expansion of parental choice in court.” Nicole Stelle Garnett & John A. Meiser, *Preserving the Exit Option: State Public Education Mandates and Parental Rights in Education*, 100 NOTRE DAME L. REV. 1709, 1712-13 (2025) (footnote omitted).

Public-school monopolists, however, have found greater success invoking ostensibly religion-neutral state constitutional provisions that have the same consequence of forcing parents to choose between the constitutional right to educate their children and the

resources that states promise to students. These constitutional provisions emphasize the importance—or even ostensible primacy—of public education. Some constitutional provisions, like Florida’s, require “a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.” Fla. Const. art. IX, § 1(a). Other constitutional provisions, like Massachusetts’s, forbid any “grant, appropriation, or use of public money ... for the purpose of founding, maintaining or aiding any ... [private] primary or secondary school.” Mass. Const. amend. art. XVIII, § 2. Public-school monopolists have seized on such language to penalize families who opt out of the public school system.

Wielding Florida’s provision, anti-choice advocates notched a significant victory in the early 2000s litigation over Florida’s Opportunity Scholarship Program, championed by ExcelinEd’s founder and chairman, former Florida Governor Jeb Bush. Since their success in Florida, advocates for state-run education have repeatedly used the same playbook to stop legislatures from implementing innovative, choice-maximizing education programs, including those providing opportunities to students from vulnerable or disadvantaged backgrounds. Those arguments have found some success—and the value of parents’ *Pierce* right has decreased as a result.

A. *Bush v. Holmes* Undermined Parents' Ability to Exercise Their *Pierce* Right.

In 1999, Florida enacted the Opportunity Scholarship Program (“OSP”), the first statewide voucher program in the United States. The OSP was part of Governor Bush’s A+ Plan for Education, which aimed to improve “transparency, accountability, and parental choice” in Florida’s education system. Clark Neily, *The Florida Supreme Court vs. School Choice: A “Uniformly” Horrid Decision*, 10 TEX. REV. L. & POL. 401, 406 (2006); *see also* Ch. 99–398, Laws of Fla.

The OSP provided educational alternatives for students in a public school “found by the state to be failing for 2 years in a 4-year period.” Fla. Stat. § 229.0537(1) (1999). Those students were eligible for “opportunity scholarships ... to attend a public school that is performing satisfactorily or to attend an eligible private school.” *Id.*

The A+ Plan for Education also included a similar scholarship program for students with disabilities, later called the John M. McKay Scholarship Program. *See* Fla. Stat. § 229.0537(1) (1999); *id.* § 1002.39 (2002). Once expanded beyond its pilot run, the McKay Scholarship Program provided certain disabled students a scholarship to “attend a public school other than the one to which assigned” or “a private school of choice.” Fla. Stat. § 1002.39(1). This program recognized that, like for the children with disabilities in this case, a traditional public school might

not be the best option, and it respected and supported parents' right to decide which option was best.

The day after Governor Bush signed the A+ Plan into law, a coalition of anti-education-choice plaintiffs, unions, and interest groups sued in Florida court, claiming the OSP violated various provisions of the Florida Constitution and the federal Establishment Clause. *See Bush v. Holmes*, 767 So. 2d 668, 671 (Fla. 1st DCA 2000) ("*Holmes I*"). The trial court entered judgment for the challengers, concluding that the OSP "insofar as it establishes a program through which the State pays tuition for certain students to attend private schools, is ... unconstitutional on its face under Article IX, § 1 of the Florida Constitution," Florida's education clause. *Id.* at 672.

But on appeal, the arguments advanced by Governor Bush carried the day. The First District Court of Appeal held that the OSP was consistent with the Florida Constitution's education clause. It rejected the trial court's reasoning that the *expressio unius* canon meant that, because the constitution required a uniform system of public schools, the constitution also prohibited the state legislature from funding any other type of K-12 education. *Holmes I*, 767 So. 2d at 674 (litigated by now-Justice Kavanaugh as outside counsel for Governor Bush). Instead, the appellate court emphasized that Florida's "Constitution is a limitation upon, rather than a grant of, power," and that courts should hesitate to read in implied limitations. *Id.* at 673. It thus concluded that the constitution's education clause "does not unalterably hitch the

requirement to make adequate provision for education to a single, specified engine, that being the public school system.” *Id.* at 675. In other words, although the Florida Constitution provided a *floor* that *required* that the legislature provide public schools, it did not create a *ceiling* that *prohibits* the legislature from providing benefits or support to parents who exercised their *Pierce* right to choose a different education for their children. Initially, the Florida Supreme Court denied review. *See Holmes v. Bush*, 790 So. 2d 1104 (Fla. 2001) (table).

After the decision in *Holmes I*, litigation continued over whether the OSP was unconstitutional under a different provision of Florida’s Constitution—the state’s Blaine Amendment. *See* Fla. Const. art. I, § 3. The First District Court of Appeal concluded that it was. *See Bush v. Holmes*, 886 So. 2d 340 (Fla. 1st DCA 2004) (en banc) (“*Holmes II*”).

Now willing to consider the case, a divided Florida Supreme Court affirmed under the education clause—the issue in *Holmes I*—rather than Florida’s Blaine Amendment. *Bush v. Holmes*, 919 So. 2d 392, 412 (Fla. 2006) (“*Holmes III*”). Relying on the *expressio unius* canon, the majority concluded that the education clause “mandates that the state’s obligation is to provide for the education of Florida’s children, specifies that the manner of fulfilling this obligation is by providing a uniform, high quality system of free public education, and does not authorize additional equivalent alternatives.” *Id.* at 408.

The *Holmes III* majority reasoned that the OSP violated the education clause in two ways: (1) “the OSP diverts funds that would otherwise be provided to the system of free public schools that is the exclusive means set out in the Constitution for the Legislature to make adequate provision for the education of children;” and (2) “[t]he OSP makes no provision to ensure that the private school alternative to the public school system meets the criterion of uniformity” required by the education clause. *Id.* at 408-09.

Holmes’ constitutional analysis thus impeded Florida’s efforts to improve education and support parents’ exercise of their *Pierce* right to choose the best education for their children. And, as explained below, its reasoning became a playbook for future litigation seeking to reduce the choices available to parents.

B. Other State Courts (And Litigants) Have Used *Holmes*-Type Reasoning to Limit Parents’ Educational Choices.

More recent efforts to obstruct private education have experienced similar successes. Other state courts have recently struck down programs providing benefits to privately educated students under state education clauses using reasoning like that in *Holmes*, and plaintiffs in ongoing litigation have advanced parallel arguments.

South Carolina. A divided South Carolina Supreme Court struck down part of that state’s

education-savings account (“ESA”) program,³ holding that the state constitution’s “no-aid” provision barred the legislature from permitting students to use state funds at non-public schools. *See Eidson v. S.C. Dep’t of Educ.*, 906 S.E.2d 345, 355-56 (S.C. 2024) (citing S.C. Const. art. XI, § 4). Taking a capacious view of constitutional language barring any “direct benefit” to private schools, the majority explained that although the benefit to private schools was contingent and mediated by student choice, that was not enough to save the provision. *Id.* at 354 (“Like the tide, the public funds released by the Act for tuition benefit all education service providers, public and private. But just because the benefit is diffuse does not mean it is not direct; the effect of the tide is the same on all the boats.”). *But see id.* at 364 (Kittredge, C.J., dissenting) (“[T]he majority opinion today defines the phrase ‘direct benefit’ so broadly that it swallows any possible meaning of ‘indirect benefit’ in the process.”).

Kentucky. The Kentucky Supreme Court has repeatedly relied on *Holmes*-like reasoning about the supposed diversion of state education funds. It held unconstitutional Kentucky’s ESA program, which allowed “[s]tudents attending public and nonpublic institutions” to use tax-credited funds on “online

³ ESAs are state education programs that “provide students with public resources that families can use for qualified education expenses to fit the educational needs of children (including private school tuition but also much more).” Nicole Stelle Garnett & Michael Q. Shane, *Implementing K-12 Education Savings Accounts* 2 (2023).

learning programs, tutoring, extracurricular activities, computer hardware and software, standardized testing, special education therapy programs, and transportation” and, in some cases, “nonpublic school tuition assistance.” *Commonwealth ex rel. Cameron v. Johnson*, 658 S.W.3d 25, 30 (Ky. 2022). In the court’s view, the law ran afoul of Section 184 of the Kentucky Constitution, which prohibits raising funds “for education other than in common schools” absent a referendum, because it provided funds to private-school students. *Id.* at 31; *see also Commonwealth ex rel. Coleman v. Council for Better Educ., Inc.*, 730 S.W.3d 787, 797 (Ky. 2026) (striking down Kentucky’s charter-school law on same grounds).

Washington. Relying on *Holmes*-type arguments, the Washington Supreme Court held Washington’s Charter School Act unconstitutional because (1) charter schools were not “common schools” within the meaning of the state constitution and (2) the act unlawfully diverted common-school funds from those schools to the state’s charter schools. *League of Women Voters of Wash. v. State*, 355 P.3d 1131, 1141 (Wash. 2015), *as amended on denial of recons.* (Nov. 19, 2015).

Utah. In an ongoing case, a Utah trial court granted summary judgment to challengers to Utah’s ESA program, which provided funds to home-educated and private-school students for various educational expenses, reasoning that Utah’s education clause “is a ceiling” and prohibits the state from appropriating any public funds for any education

program outside of public schools. *Labresh v. Cox*, 2025 WL 4961149, at *25-26, *42 (Utah 3d Jud. Dist. Ct. Apr. 18, 2025). The case is now pending before the Utah Supreme Court. *Labresh v. Brown*, No. 20250512 (Utah June 24, 2025) (granting appeal).

Ohio. An Ohio trial court entered summary judgment in favor of challengers to an Ohio voucher program on a diversion theory like the one in *Holmes*. See *Columbus City Sch. Dist. v. State*, No. 22 CV 67, slip op. at 20 (Ohio C.P. Franklin Cnty. June 24, 2025) (“[T]he State may not fund private schools at the expense of public schools or in a manner that undermines its obligation to public education.”). An appeal is pending. See *Columbus City Sch. Dist. v. State*, No. 25-AP-000603 (Ohio 10th Dist. Ct. App. 2025).

Montana. A suit in Montana challenges an ESA program for students with disabilities on the ground that disparate participation in the program across school districts might lead to those districts being funded in an inequitable manner, in violation of the Montana Constitution. See *Mont. Quality Educ. Coal. v. State*, No. ADV-2024-44, slip op. at 15-16 (Mont. 1st Jud. Dist. Ct. Lewis & Clark Cnty. Dec. 8, 2025) (granting plaintiffs’ motion for summary judgment in part on other grounds). An appeal is currently pending in the Montana Supreme Court. See *Mont. Quality Educ. Coal. v. State*, No. DA 26-0179 (Mont. 2026).

Arkansas. Plaintiffs are challenging Arkansas’s ESA program on the grounds that it violates the Arkansas Constitution’s requirement that the state

maintain free public schools and is unconstitutionally diverting public-school funds for non-public-school uses—advancing an *expressio unius* argument like the one used in *Holmes*. See Compl. ¶¶ 61-79, *Faulkenberry v. Ark. Dep’t Educ.*, No. 60CV-24-4630 (Ark. Cir. Ct. Pulaski Cnty. June 7, 2024) (citing Ark. Const. art. 14, §§ 1-3); see also *Ark. Dep’t of Educ. v. Faulkenberry*, 725 S.W.3d 199, 200 (Ark. 2025) (dismissing interlocutory appeal of denial of motion to dismiss).

Florida. New litigation in Florida relying on *Holmes* threatens the Florida legislature’s efforts to broaden the educational options available to children. A recent lawsuit challenges Florida’s universal ESA program and public charter-school program, including a program for students with disabilities: the Family Empower Scholarship for Unique Abilities (“FES-UA”). Compl. ¶¶ 25-26, 28, *Spar v. Kamoutsas*, No. 2026 CA 000929 (Fla. 2d Cir. Ct. May 5, 2026) (“*Spar* Compl.”). The FES-UA provides funds for students with disabilities, whether or not they are in public schools, that they can use for “[i]nstructional materials, including digital devices, digital periphery devices, and assistive technology devices,” “[s]pecialized services by approved providers or by a hospital in this state which are selected by the parent,” fees associated with home schooling or private school, tutoring, “summer education programs,” “after-school education programs,” and other educational purposes. Fla. Stat. § 1002.394(4)(b) (2025). Over 500,000 Florida students have opted to participate in Florida’s universal ESA programs, including FES-UA. See Press Release, *Governor Ron DeSantis Announces School*

Choice Success (Jan. 10, 2025), <https://perma.cc/P6FZ-2A2W>.

Relying on reasoning similar to *Holmes*, the plaintiffs argue that the FES-UA violates the Florida Constitution’s uniformity clause by directing public funds outside the public-school system to private schools or a home-education environment. *Spar* Compl. ¶¶ 71-75. Similarly, plaintiffs claim that the FES-UA violates the Florida Constitution by using state education funds “for a purpose other than ‘the support and maintenance of free public schools.’” *Id.* ¶¶ 76-80 (quoting Fla. Const. art. IX, § 6). Despite Florida’s leadership in providing parents exercising their *Pierce* right with the best educational options available, opponents continue to use the *Holmes* arguments to limit parents’ choices and access to the education and resources their children need to succeed.

* * *

Education clauses in state constitutions have long dogged efforts to support parents’ exercise of their *Pierce* right. The capacious interpretations afforded by *Holmes* and its progeny to such clauses make matters worse. And because these clauses are facially neutral as to religion, the Free Exercise Clause is of less help to children who are denied otherwise-available benefits when their parents opt for private education. If *Pierce*’s promise that the state may not “standardize its children by forcing them to accept instruction from public teachers only” is to be vindicated,

protection must flow from the *Pierce* right itself. 268 U.S. at 535.

III. THIS COURT SHOULD GRANT CERTIORARI TO EXPLAIN THE LIMITS THE *PIERCE* RIGHT PLACES ON STATE EDUCATION CLAUSES.

Given the ongoing litigation seeking to undermine state efforts to extend benefits to parents exercising the *Pierce* right, it is essential that this Court clarify that right's scope and effect. This case provides an excellent vehicle to decide whether states may constitutionally burden parents' exercise of the *Pierce* right by denying their children generally available public benefits as punishment for opting out of the public-school system.

As Petitioners explain, the dispute in this case flows from yet another facially religion-neutral constitutional provision that has the now-familiar effect of punishing parents who believe that private education best fits their children's needs. Massachusetts law guarantees students publicly funded special education services. *See Hellman*, 171 F.4th at 75. But because the state constitution prohibits the "use of public money ... for the purpose of founding, maintaining or aiding any ... [private] school," Mass. Const. amend. art. XVIII, § 2, the state has adopted a so-called "Place Regulation" that prevents students enrolled in private schools from availing themselves of this guarantee in their schools. *Hellman*, 171 F.4th at 76-77. Instead, students and parents who have

invoked their *Pierce* right must undergo the burdens of transporting students to-and-from private schools and supposedly “neutral” locations to have access to services that are provided directly to students in public schools. *Id.*

As Petitioners correctly explain, that regime imposes an unconstitutional condition. It also presents an ideal opportunity for this Court to provide two key points of guidance for ongoing disputes about education clauses in state constitutions.

First, a decision by this Court would clarify whether state constitutions’ no-aid clauses may exclude private-school students from generally available public benefits. As explained above, many state constitutions have clauses that certain courts have interpreted to deny otherwise-available educational benefits to students enrolled in private schools.

Second, deciding whether the unconstitutional-conditions doctrine applies to the *Pierce* right would give state courts (and lower federal courts) important guidance for interpreting ambiguous education clauses in state constitutions. Even when state constitutions do not *expressly* forbid the use of public funds in aid of private education (such as in *Holmes*), courts have used dubious interpretative tools to construe vague constitutional language to create an artificial ceiling on such support. For example, *Holmes III* misapplied the *expressio unius* canon to conclude that free public schools were the *only* means of educating children that Florida could support. 919 So. 2d

at 408. In doing so, the court never considered whether its decision might bring Florida’s Constitution into conflict with the Federal Constitution—no doubt because the plain text of Florida’s Constitution did not *directly* violate *Pierce*. Had the Florida Supreme Court understood that the Fourteenth Amendment prohibits states from unduly burdening parents’ choice to opt out of the public school system, it might have reconsidered its expansive interpretation of the Florida Constitution’s preference for public education under the doctrine of constitutional avoidance. *Cf. Fla. Dep’t of Child. & Fams. v. F.L.*, 880 So. 2d 602, 607 (Fla. 2004) (“Whenever possible ... a statute should be construed so as not to conflict with the constitution.”).⁴ Other state courts have made similar mistakes in similar circumstances, which they might have avoided had they considered whether the consequence of their interpretation would be to burden the *Pierce* right. *See, e.g., Johnson*, 658 S.W.3d at 35-36;

⁴ As Petitioners explain, granting them relief would not require state legislatures to enable the *Pierce* right’s exercise. Pet. at 34 n.13. In other words, it would not create a constitutional requirement for school vouchers nationwide. As this Court explained in *Espinoza*, “[a] State need not subsidize private education”—but “once a State decides to do so,” distribution of those resources must comply with the Federal Constitution. 591 U.S. at 487. Similarly, if Petitioners prevail here, a state need not provide special education services (or transportation or school supplies or a scholarship to escape a failing public school) to schoolchildren. But once it does, it may not exclude students, or offer benefits to them on disadvantageous terms, because their parents choose to exercise their *Pierce* right.

Labresh, 2025 WL 4961149, at *24 (citing *Holmes III*); *Columbus City Sch. Dist.*, slip op. at 20. Guidance from this Court about states’ duties to avoid placing unconstitutional conditions on the *Pierce* right could encourage states to avoid interpreting their education clauses to prevent them from aiding private school students—and thus limiting their ability to provide for the adequate education of *all* K-12 students.

* * *

For over a century, this Court has protected the right of parents to direct their children’s education. And there is increasing enthusiasm among state legislatures to support parental choice, including by expanding support for private education. But opponents of educational freedom continue to invoke state constitutional provisions to “forc[e] [children] to accept instruction from public teachers.” *Pierce*, 268 U.S. at 535. As Florida’s experience with *Bush v. Holmes* shows, state courts often fall for it. This Court’s intervention is necessary to protect the *Pierce* right.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

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