

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

**Brief of *Amici Curiae* West Virginia, South
Carolina, and Twelve Other States in Support
of Petitioners**

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INTEREST OF AMICI CURIAE¹

Amici States aim to promote the best education for children in their States while preserving parents' constitutional freedom to direct that education. To those ends, West Virginia, South Carolina, and twelve other *amici* States have adopted various school-choice policies and educational-benefit programs. They all agree that when a State makes an educational benefit generally available, it may not use that benefit to force families to surrender their rights to choose the right schooling—private school included—for their children. See *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

Amici States are well-positioned to help the Court here because they implement school-benefit programs. West Virginia administers the Hope Scholarship Program, an education-savings account that lets parents direct state assistance to the setting best suited to their children. W. Va. Code § 18-31-2 et seq. In *State v. Beaver*, 887 S.E.2d 610, 627 (W. Va. 2022), the Supreme Court of Appeals of West Virginia upheld the Legislature's authority to enact educational initiatives beyond the public school system, like Hope. South Carolina likewise created the Education Scholarship Trust Fund Program to expand education options, including religious education. But the story played out differently there: in *Eidson v. South Carolina Department of Education*, 906 S.E.2d 345 (S.C. 2024), the South Carolina Supreme Court struck down the tuition and fees component under the State Constitution's anti-aid

¹ Under Supreme Court Rule 37.2, *amici* timely notified counsel of record of their intent to file this brief.

provision. South Carolina has since amended the program, but the issue remains important to how it can administer and expand educational choice.

Given these experiences, West Virginia, South Carolina, and the other *amici* States have an interest in a clear rule protecting parents' right to choose the best schooling for their children. Without such a rule, States that support school choice will continue to face litigation from entrenched interests seeking to eliminate school-choice programs. And bad results in those cases will in turn force families to choose between private education and benefits available to others. *Amici* ask the Court to grant review and hold that a State may not burden the right to choose private education by conditioning an educational benefit on its surrender.

INTRODUCTION

Education is a central state responsibility, but public schools are not the only way to discharge it. Children have vastly different needs. Some require specialized services, a different pedagogical approach, or an education that integrates the family's religious commitments. For those reasons, increasingly many States supplement traditional district schools with charter schools, scholarship and voucher programs, and education-savings accounts.

Alternatives to traditional public schools are widespread and gaining popularity. As of the 2022-2023 school year, 47 States, DC, Puerto Rico, and Guam had charter school laws, and 8,150 charter schools were serving 3.8 million students. See Cong. Rsch. Serv., IF10713, Overview of Public and Private

School Choice Options (2025).² At least one form of private school choice is available in 35 States and D.C. *Ibid.* These programs are successful because residence-based assignment cannot serve every student perfectly. Parents are best positioned to choose the school that fits their children.

That judgment is not only the most sensible, but it respects the constitutional rights of parents. As this Court held in *Pierce*, “[t]he 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.” 268 U.S. at 535.

These principles drive how a State should offer educational benefits. To be sure, a State does not need to create and fund an educational benefit in the first place. But, once it does, it may not condition access to that benefit on the surrender of the right recognized in *Pierce*. Such a condition creates a Hobson’s choice between a much-needed benefit—which the family helps pay for with their own tax dollars—and their constitutional rights.

For opponents of school choice, that is the point—to leverage taxpayer dollars to coerce families into public schools by making private education the only setting in which benefits are forfeited. That is what Massachusetts did here. Massachusetts guarantees each eligible child with special needs an entitlement to special-education services in the “least restrictive environment.” Mass. Gen. Laws ch. 71B, §§ 1–3; 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114. Yet its Place Restriction bars children whose parents

² <https://www.congress.gov/crs-product/IF10713>

enroll them in private schools from receiving those services at their school grounds. 603 CMR 28.03(1)(e)(3). Instead, they must travel to a public or “neutral” site, imposing great burdens on families. In that way, Massachusetts is not merely declining to extend services, it is actively weaponizing a child’s guaranteed entitlement—again, supported by their family’s own tax dollars—as leverage to coerce the family back into public school. The regulation creates a penalty for exercising a constitutional right, converting what should be a child-centered benefit into a tool of institutional control.

The First Circuit below acknowledged that Petitioners claimed a fundamental right to direct their children’s education, and it agreed that the Place Restriction conditions an educational benefit on giving that right up. Pet. App. 16a–22a. It nevertheless treated unconstitutional conditions as a distinct First Amendment doctrine, held it inapplicable to parental rights, and sustained the regulation under rational-basis review. *Ibid.* But there is no basis for courts to treat parents’ constitutional right as inferior to others, or to allow a state to “manipulate [it] out of existence.” *Harman v. Forssenius*, 380 U.S. 528, 540 (1965).

Decisions like the First Circuit’s might soon become more common. Despite the constitutional and historical pedigree of school choice, challenges to school choice programs are recurring around the country. They are often driven, not by concerned parents or students, but by teachers’ unions and their allies, who have a direct economic stake in eliminating alternatives to public schools.

Challengers have tried many strategies to attack school choice. They sometimes invoke so-called “anti-aid” provisions in state constitutions, arguing that those provisions block public benefits from reaching private school students. This Court has rejected the use of religiously discriminatory anti-aid amendments—called “Blaine Amendments,” *Espinoza v. Montana Department of Revenue*, 591 U.S. 464, 482 (2020)—to exclude religious schools from such benefits. But many anti-aid amendments are—or at least appear to be—religiously neutral on their face. Unions have invoked those provisions to challenge school choice legislation in South Carolina, Wyoming, and elsewhere. Yet another line of attack invokes so-called “uniformity” provisions to argue that a state’s duty to maintain public schools forbids support for any alternative. Challengers have invoked these and similar provisions in Arkansas, Florida, Ohio, Tennessee, West Virginia, and Wyoming.

Without a strong constitutional backstop recognizing broad parental rights to choose, these challenges will continue and create an uncertain landscape for school choice across the country.

The constitutional problems compound because free exercise is also often involved—and religious families often bear the greatest burden. Every religious school is private, so a rule that permits States to condition benefits on forfeiting the right to select private education necessarily excludes families who choose religious education. Massachusetts’s Place Restriction, for example, is facially neutral as to religion but rests on an anti-aid provision with documented anti-Catholic origins. And it operates in

practice against Petitioners, who chose Jewish day schools, and other religious families.

This weaponization of superficially neutral provisions against religious schooling is part of a recent effort to circumvent this Court’s rulings in *Espinoza*, 591 U.S. at 489, and *Carson v. Makin*, 596 U.S. 767 (2022). There, the Court held that States cannot disqualify religious schools from generally available public benefit programs. Yet state legislatures and agencies that are hostile to religion have imposed facially neutral conditions, like enrollment thresholds, nondiscrimination mandates, and geographic restrictions to exclude religious school students. States cannot achieve through neutral labels what the First Amendment prohibits.

Though the problems with the lower court’s decision are many, and the challenges to school choice are evolving, this case presents a straightforward question. That question is important, recurring, and cleanly presented here. The Court should grant the petition for a writ of certiorari and reverse.

ARGUMENT

I. The Decision Below Undermines Parental Choice In Schooling, Which Is Essential To Meeting Educational Needs

“Education ... means emancipation. It means light and liberty. It means the uplifting of the soul of man into the glorious light of truth, the light by which men can only be made free.” *Zelman v. Simmons-Harris*, 536 U.S. 639, 676 (2002) (Thomas, J., concurring) (quoting The Blessings of Liberty and Education: An Address Delivered in Manassas, Virginia, on 3 September 1894, in 5 *The Frederick*

Douglass Papers 623 (J. Blassingame & J. McKivigan eds. 1992)). Education shapes strong citizens, so States have long treated it as a central responsibility.

But that responsibility does not mean forcing a state-designed model on every child. A State can fund and maintain public schools while also recognizing that families possess information about a child’s needs that a centralized system cannot fulfill. And States can carry out their legislative responsibility by supporting families in finding the best options, even if those options aren’t state-run. School choice policies implement flexibility, allowing families to respond to learning needs, seek specialized services, avoid unsafe or unsuitable settings, and choose an education consistent with their family and religious values. It also gives public schools incentives to respond to families’ concerns rather than foist upon them the preferences of bureaucrats with a monopoly over education policy. See, e.g., *Nat’l Soc’y of Prof’l Eng’rs v. United States*, 435 U.S. 679, 695 (1978) (“[C]ompetition will produce not only lower prices, but also better goods and services.”).

Research confirms these competitive benefits to public schools. Of 30 empirical studies examining competitive effects on public schools, 27 found at least one statistically significant positive effect. EdChoice, *The 123s of School Choice* 22–24 (2025 ed.).³ Of the entire body of empirical research on school choice programs, 83 percent detected a positive effect while just 7 percent detected a negative effect. *Id.* at 10 (synthesizing 203 empirical studies on voucher

³ <https://www.edchoice.org/wp-content/uploads/2025/06/123s-of-School-Choice-2025.pdf>

programs, education savings accounts, and tax-credit scholarship programs).

School choice prompts improvement in public schools because the private school product works extraordinarily well for so many students. The gold-standard study of the D.C. Opportunity Scholarship Program,⁴ for example, found that vouchers “had a significant positive impact on parent-reported high school graduation rates,” and positive impacts in reading and achievement. Patrick J. Wolf et al., *School Vouchers and Student Outcomes: Experimental Evidence from Washington, DC*, 32 J. Pol’y Analysis & Mgmt. 246, 264 (2013). A study on the Milwaukee Parental Choice Program showed that voucher recipients graduated “at a rate about 12 percentage points higher than the system-wide graduation rate for Milwaukee’s public schools,” and were more likely than their peers to enroll at a 4-year postsecondary institution. Joshua Cowen et al., *School Vouchers and Student Attainment: Evidence from a State-Mandated Study of Milwaukee’s Parental Choice Program*, 41 Pol’y Studies J. 147, 149, 161 (2013). These are but a few of many successful choice policies around the country.

Given the benefits of school choice, demand for choice has grown rapidly. Charter enrollment nearly doubled from 2011 to 2021; after the COVID-19 pandemic, public-school enrollment fell by approximately 1.4 million students; and in 2023–24 charter schools gained 83,172 students while district schools lost 274,412. Nat’l Ctr. for Educ. Statistics,

⁴ See Title III of Division C of the Consolidated Appropriations Act, 2004, P.L. 108–199.

Public School Enrollment (2024)⁵; see also Nat'l Alliance for Public Charter Schools, *Annual Report* (2025).⁶ In West Virginia, Hope Scholarship participation more than doubled in FY2024, “generat[ing] significant fiscal benefits for local taxpayers while increasing per-pupil funding for students who remain in public schools.” EdChoice, *Fiscal Analysis of the West Virginia Hope Scholarship Program: Year 2 Results* (2025).⁷

Religious education is key to this demand. In the 2023-2024 school year, more than 1.69 million students enrolled in 5,905 Catholic schools across the country, with 38.7% of those schools in urban and inner-city locations. Nat'l Cath. Educ. Ass'n, *Data Brief: 2023–2024 Catholic School Enrollment* 1–2.⁸ Those students score higher in math and reading than public school students and graduate at a higher rate. Nat'l Cath. Educ. Ass'n, *U.S. Catholic School Data* (2025).⁹ Choice also reaches students underserved by

⁵ <https://nces.ed.gov/programs/coe/indicator/cga/public-school-enrollment>

⁶ <https://publiccharters.org/wp-content/uploads/2026/03/NAPCS-2025-Year-in-Review-March26.pdf>

⁷ https://www.edchoice.org/wp-content/uploads/2025/09/Fiscal-Analysis-of-the-WV-Hope-Scholarship-Program-Final_July25-2.pdf

⁸ <https://ncea.org/common/Uploaded%20files/Who%20We%20Are/Data/2023-2024-NCEA-Data-Brief.pdf>

⁹ https://ncea.org/NCEA/NCEA/Who_We_Are/About_Catholic_Schools/Catholic_School_Data/Catholic_School_Data.aspx?hkey=8e90e6aa-b9c4-456b-a488-6397f3640f05; 2021–2022 Highlights, NCEA,

traditional systems; approximately 60 percent of charter students are in poverty. See N. Camarena Lopez, *Who Attends Charter Schools?*, National Alliance for Public Charter Schools (2025).¹⁰

Benefits extend beyond academics. One study found that private-school voucher recipients were *half* as likely to commit felonies. Corey A. DeAngelis & Patrick J. Wolf, *The School Choice Voucher: A “Get Out of Jail” Card?*, EDRE Working Paper 2016-03 (2016).¹¹ A Milwaukee program was associated with reductions of 22 percent in felonies, 29 percent in drug offenses, and 41 percent in theft among students who remained through high school. *Ibid.*

These examples explain why States offer multiple options and why family choice deserves respect. But the First Circuit’s decision, upholding the Massachusetts Place Restriction, threatens to dilute those benefits. By conditioning special-education services on public-school attendance, that regulation—and others like it—will force families to forego school choice.

For opponents of school choice, that is the point. They wish to leverage taxpayer dollars to force families into public schools by making private education the only setting in which much-needed

https://ncea.org/NCEA/NCEA/Who_We_Are/About_Catholic_Schools/Catholic_School_Data/2021-2022%20Highlights.aspx; High School Graduation Rates, Inst. of Educ. Scis. (May 2024), <https://nces.ed.gov/programs/coe/indicator/coi/high-school-graduation-rates>.

¹⁰ <https://data.publiccharters.org/knowledge-base/2-who-attends-charter-schools/>

¹¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2743541

benefits are forfeited. But the unconstitutional conditions doctrine prevents such exploitation of benefits, as it stops the government from “deny[ing] a benefit to a person on a basis that infringes his constitutionally protected interests.” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972); see also *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). The Court has applied that principle consistently to speech, travel, voting, assembly, self-incrimination, and other rights across the spectrum. See, e.g., *Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc.*, 570 U.S. 205 (2013); *Saenz v. Roe*, 526 U.S. 489, 505 (1999); *Perry*, 408 U.S. at 597.

The First Circuit’s decision conflicts with this Court’s applications of the unconstitutional conditions doctrine to enumerated and unenumerated rights. It also breaks from decisions of the Fifth, Sixth, Ninth, and Eleventh Circuits and the Michigan Supreme Court. Pet. 18–24. The latter has it right, as the First Circuit’s approach is impossible to square with this Court’s affirmation that “[t]he liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000); see also *id.* at 80 (Thomas, J., concurring) (“I would apply strict scrutiny to infringements of [a *Pierce*] right”). Given its historical pedigree, there is no basis to treat the right recognized by *Pierce* as a “second-class right.” *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 780 (2010). It, too, can be deprived by an unconstitutional condition, and its deprivation should be subject to strict scrutiny.

II. States Need Guidance On The Unconstitutional Conditions Doctrine As They Develop School-Choice Programs

The decision below not only allows harmful laws and regulations like the Place Restriction, but it also makes school choice programs—like those in *amici* States—susceptible to litigation by unions and other opponents of school choice. Here, Massachusetts justified its restriction 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. But in *amici* States, litigants have been using the same playbook to challenge successful school-choice programs, invoking the same type of anti-aid provision that Massachusetts relied on here, and other state constitutional provisions. The common thread in these lawsuits is not concern for child welfare but institutional self-preservation. Nonetheless, opponents have had some success in state courts and have been able to use litigation to throw school choice programs into uncertainty and delay. The First Circuit’s ruling facilitates this lawfare strategy, as the ruling permits anti-school-choice interpretations of state constitutions to override not only state legislative choices but also parents’ federal constitutional rights.

For that reason, the First Circuit ruling endangers States’ legislative decisions to support school choice. A clear rule subjecting the right recognized by *Pierce* to the unconstitutional conditions doctrine would preclude such state-law challenges. It would mean that a state constitutional provision could not be interpreted to override a

parent’s fundamental right under the U.S. Constitution. See U.S. Const. art VI, cl. 2.

A. Opponents have weaponized anti-aid provisions to attack parents’ right to choose

Thirty-seven States have so-called “Blaine Amendments” in their constitutions, which restrict public funds from being used for the “aid” or “benefit” of religious schools. See *Mitchell v. Helms*, 530 U.S. 793, 828–29 (2000) (plurality opinion) (discussing prevalence of Blaine Amendments). Although this Court has struck down anti-religious discrimination in Blaine Amendments, see *Espinoza*, 591 U.S. at 487; cf. *Carson*, 596 U.S. at 781–85, fourteen States go further and ban public funds from being spent for the direct benefit of *any* private school, regardless of religion. Among those fourteen, five state high courts have disallowed aid to private schools based on facially neutral anti-aid provisions.¹² But, as the Petition demonstrates, if the theory of the state constitutional provision requires the state to deny a generally available benefit solely because a family selected private school, the interpretation of state law becomes a price on parents’ right to choose.

South Carolina’s experience illustrates the problem. Its Education Scholarship Trust Fund

¹² *Eidson*, 906 S.E.2d at 356 (“[O]ur constitution forbids ... tuition payments from public funds for the direct benefit of private educational institutions[.]”); see also *Sheldon Jackson Coll. v. State*, 599 P.2d 127 (Alaska 1979); *Opinion of the Justices to the Senate*, 514 N.E.2d 353 (Mass. 1987); *Spears v. Honda*, 449 P.2d 130 (Haw. 1969); *In re Advisory Opinion re Constitutionality of 1974 PA 242*, 228 N.W.2d 772, 778 (Mich. 1975).

Program gave families additional options, including religious schools, with parents deciding where the scholarship would be used. See S.C. Code Ann. § 59-8-110 et seq. (Supp. 2023). In *Eidson*, however, the South Carolina Education Association and the South Carolina State Conference of the NAACP challenged the law under South Carolina’s anti-aid provision. The South Carolina Supreme Court, by a 3–2 vote, held that the State Constitution barred tuition and fees payments from public funds for the direct benefit of private educational institutions, while permitting other enumerated or authorized expenses. *Eidson*, 906 S.E.2d at 355–56.

In other words, ESTF funds can be paid to private vendors that offer various educational products and services, but not to private *schools*, even when the scholarship funds are placed into a trust fund and parents are the ones directing where funds are to be paid. The court thus drew the line at the expenditure that makes private-school choice meaningful.

South Carolina has since amended the program, see 2025 S.C. Acts No. 11 (restoring tuition and fees expenditures with a revised funding structure), but the underlying question remains. That is especially true since *Eidson* did not specifically address the federal constitutional right at issue here.¹³ If this

¹³ After *Eidson*, a petition for original jurisdiction was filed with the South Carolina Supreme Court requesting declaratory and injunctive relief that would allow use of ESTF funds for private education pursuant to *Pierce*. See *Albertson v. Weaver*, No. 2024-002062 (Pet. For Orig. Jur. Dec. 5, 2024). That petition was summarily denied. *Ibid.* (Order Denying Pet. For Orig. Jur. May 13, 2025).

Court resolves the scope of the right recognized in *Pierce* under the federal constitution, that will enable South Carolina courts to appropriately constrain South Carolina’s no-aid provision using the constitutional avoidance canon.¹⁴ *Kennedy v. Braidwood Mgmt., Inc.*, 606 U.S. 748, 775 (2025) (“We should not read the statute in a way that makes [conduct] unconstitutional if we can reasonably read it otherwise.”); see also *Butts v. Mace*, 930 S.E.2d 698, 707 (S.C. 2026), *reh’g denied* (June 29, 2026) (“[W]hen a statute is susceptible to both constitutional and unconstitutional interpretations, courts must adopt the construction that preserves the statute’s validity.”).

Moreover, guidance from this Court will provide the South Carolina General Assembly with clarity on the operation and potential expansion of the program moving forward. In the current school year, “and for all subsequent school years,” the ESTF program is “made available to at least fifteen thousand scholarship students” but may be increased through an allocation in the general appropriations act at the direction of the General Assembly.” S.C. Code Ann. § 59-8-135(2). As the General Assembly weighs its options for future school years, a ruling from this Court could pave the way for future generations of students to explore educational opportunities in a

¹⁴ Of note, South Carolina’s anti-aid provision only bars direct aid to private educational institutions. Indirect aid is permissible. Accordingly, if the anti-aid provision were interpreted to allow tuition payments to be received by private educational institutions indirectly, the provision may avoid the constitutional question presented here.

manner that comports with constitutional guarantees.

In addition to South Carolina, several other States are experiencing similar challenges.

Montana. In Montana, the Montana Quality Education Coalition and allies filed a lawsuit in January 2024 challenging Montana’s ESA program for students with disabilities, arguing it illegally shortchanged public schools. The district court ruled in December 2025 that lawmakers used an improper appropriation mechanism. *Mont. Quality Educ. Coal. v. State*, No. ADV-2024-44 (Mont. 1st Jud. Dist. Ct. Dec. 8, 2025), appeal docketed, No. DA 26-0179 (Mont. Mar. 19, 2026). The State’s appeal is pending before the Montana Supreme Court.

Wyoming. In June 2025, the Wyoming Education Association sued to enjoin the Steamboat Legacy Scholarship Act (a universal voucher program), arguing it violates both the state’s constitutional requirement for a “uniform system of public instruction” and an anti-aid provision. A district court granted a preliminary injunction in July 2025. See *Wyo. Educ. Ass’n v. State*, No. 2025-CV-0203366 (Wyo. Dist. Ct. Laramie Cnty. July 15, 2025). The Wyoming Supreme Court has since reversed the preliminary injunction, see *Degenfelder v. Wyoming Education Association*, 589 P.3d 346 (Wyo. 2026), and the case is currently being litigated on remand.

Utah. In 2023, Utah enacted the Utah Fits All Scholarship Program, creating scholarship accounts for eligible students. Utah Code Ann. § 53F-6-401 et seq. The Utah Education Association filed suit challenging the law under various provisions of the

State Constitution. See *Labresh v. Cox*, No. 240904193, 2025 WL 4961149 (Utah Dist. Ct. Apr. 18, 2025). The Program was held unconstitutional, and the case is currently on appeal.

Missouri. In 2021, the Missouri Legislature enacted the Missouri Empowerment Scholarship Accounts Program, creating tax-credit-funded education savings accounts. Mo. Rev. Stat. § 135.712 et seq.; Mo. Rev. Stat. § 166.700 et seq. The Missouri National Education Association challenged the program as an improper appropriation under the State Constitution, and the Cole County Circuit Court dismissed. *Mo. Nat'l Educ. Ass'n v. State*, No. 25AC-CC05358 (Mo. Cir. Ct. Cole Cnty. Apr. 14, 2026).

Ohio. In Ohio, public school districts filed suit in 2022 challenging the expanded state voucher program under the State's no-aid provision and uniformity clause; a trial court granted partial summary judgment for plaintiffs in June 2025. See *Columbus City Sch. Dist. v. State*, No. 22-CV-67 (Ohio Ct. Com. Pl., Franklin Cnty. June 24, 2025). The ruling is stayed pending appeal.

To be sure, many of those States, as noted, are appealing trial court rulings, and some have already successfully defended against such challenges. See, e.g., *Gaddy v. Ga. Dep't of Revenue*, 802 S.E.2d 225 (Ga. 2017). Still, the coordinated campaign to exploit state anti-aid language to override democratic legislative choices, and the diverging results, shows the need for this Court's intervention and a clear constitutional backstop for the parental right to direct a child's education, as *Pierce* expects.

B. Opponents have tried to weaponize “uniformity” provisions to defeat parents’ right to choose

Uniformity clauses generally require a functioning public-school system. Florida, for example, requires a “uniform, efficient, safe, secure, and high quality system,” West Virginia a “thorough and efficient system of free schools,” and Wyoming a “complete and uniform system of public instruction.” Fla. Const. art. IX, § 1; W. Va. Const. art. XII, § 1; Wyo. Const. art. VII, § 1. The question is whether those duties also forbid the state from undertaking additional educational opportunities.

West Virginia has answered in favor of legislative flexibility. The Hope Scholarship Act preserves the duty to maintain a thorough and efficient system while allowing parents to direct funds to the setting that meets their children’s needs. W. Va. Code § 18-31-2 et seq. The Act’s constitutionality was immediately challenged. In *Beaver v. Moore*, a group of plaintiffs—backed by the West Virginia Education Association, the State’s primary teachers’ union—sued, arguing that the program competes with the Legislature’s duty to provide a thorough and efficient system of public schools. See *Beaver v. Moore*, No. 22-P-24, 22-P-25, 22-P-26 (W. Va. Cir. Ct. Kanawha Cnty. Apr. 2022). The circuit court accepted that theory and granted a permanent injunction enjoining implementation.

The West Virginia Supreme Court of Appeals reversed. Writing for the court, the late Justice Armstead held that the State Constitution is “a restriction of power rather than a grant thereof” and that the Education Clause functions as a floor, not a

ceiling. *State v. Beaver*, 887 S.E.2d 610, 627 (W. Va. 2022). The court held that Article XII, Section 1 “does not contain language prohibiting the Legislature from enacting the Hope Scholarship Act, in addition to its duty to provide for a thorough and efficient system of free schools.” *Id.* at 619. A duty to fund public schools did not eliminate legislative authority to pursue additional educational initiatives.

Florida. Florida’s Supreme Court took the opposite path in *Bush v. Holmes*, 919 So. 2d 392, 408 (Fla. 2006), invalidating the Opportunity Scholarship Program, including vouchers usable at religious schools. The court transformed the obligation to maintain a uniform public-school system into a bar on aid to parents exercising their constitutional rights recognized by *Pierce*, although a later Florida appellate decision limited *Bush* to its facts. See *McCall v. Scott*, 199 So. 3d 359, 367 (Fla. 1st Dist. Ct. App. 2016). But the theory remains active. A 2026 Florida suit invokes the same uniformity clause to challenge the Family Empowerment Scholarship program, which serves more than 524,000 students, including the component that provides scholarships to students with disabilities. See *Spar v. Kamoutsas*, No. 2026 CA 000929 (Fla. Cir. Ct., Leon Cnty. Filed May 5, 2026).

Arkansas. In Arkansas, plaintiffs filed suit in June 2024 challenging the Education Freedom Account program enacted through the LEARNS Act, Ark. Code Ann. § 6-18-2501 et seq. They allege that the program supplies private schools with funds reserved for public schools. The Arkansas Supreme Court allowed the litigation to proceed in December 2025. *Ark. Dep’t of Educ. v. Faulkenberry*, 725 S.W.3d

199 (Ark. 2025). Again, the false premise is that a constitutional commitment to public education disables the Legislature from adding a second path.

Wisconsin. In 2023, seven individual petitioners asked the State Supreme Court to hear a challenge to the statewide voucher program; the request was denied. See *Underwood v. Vos*, No. 2023AP1896-OA (Wis. Dec. 13, 2023).

The persistence of such challenges matters to States because programs must be planned, funded, and administered years before their constitutionality is finally settled, while families must decide whether to rely on them for their children's education.

This Court's intervention is needed to stem the attacks and preserve the right to choose the education that's best for each child. The Court should grant certiorari and confirm that the right recognized by *Pierce* receives the same protection as other fundamental rights. Families should not lose educational opportunities because they exercise that fundamental right. And States that choose to support school choice should not have to face a steady stream of litigation and state-law interpretations that conflict with the U.S. Constitution.

III. Facially Neutral Provisions Can Restrain Religious Liberty

The problem presented by the Petition is especially harmful toward the right of Free Exercise and of parents and children to choose private religious schooling. Because religious schools are often private in Massachusetts, the denial of the right to direct a child's education categorically harms religious

families. In that way, the parental-choice right and Free Exercise converge. See *Wisconsin v. Yoder*, 406 U.S. 205, 213–14 (1972). Accordingly, the issues here also concern the First Amendment prohibition of discrimination against religious practice and exclusion from generally available benefits.

This Court often distinguishes neutral, generally applicable laws from rules that single out religion for disfavored treatment. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 460 (2017). *Espinoza* and *Carson* apply those principles to private education. A State need not subsidize private schools, but once it does so it cannot disqualify schools because they are religious or define a tuition program to exclude religious instruction. *Espinoza*, 591 U.S. at 487; *Carson*, 596 U.S. at 781–85.

A. Although facially neutral, the Massachusetts framework burdens religious families primarily

The Place Restriction is facially neutral only because it refers to private rather than religious schools. History requires caution, however. Massachusetts’s 1853 anti-aid amendment specifically targeted Catholic schools, and delegates tightened it in 1917 after dissatisfaction that private religious schools still received public money. *Caplan v. Town of Acton*, 92 N.E.3d 691, 699–700 (Mass. 2018). Broad modern language can preserve an older exclusion’s practical effect.

As noted, the Place Restriction requires state- or locally funded services for parentally placed private-school students to be delivered at a public or neutral site. 603 CMR 28.03(1)(e)(3). In this case, Petitioners already chose to attend Jewish day schools but still

required services including academic support, reading assistance, occupational therapy, counseling, and self-regulation instruction. The Place Restriction forces them to travel to a public or neutral site, imposing substantial cost and disruption, especially for working parents who cannot leave their jobs to bring their children to after-school services. That forces a family to choose between its religious school and promised services.

In *Yoder*, the Court recognized that parents who choose religious education exercise both parental and free-exercise rights. 406 U.S. at 213–14. Accordingly, a State cannot recast that choice as an ordinary private-school preference and then withdraw benefits because of it. The First Circuit’s rule would make the ability to receive Massachusetts’s special-education services and a religious education formally available but practically dependent on a family’s ability to pay for substitute services or transportation.

It thus imposes a burden on the free exercise rights of families who cannot afford private religious school and the additional costs of obtaining benefits or special services off-site. They must either abandon religious education or forego services that may be essential to a child’s development. Families with sufficient resources can pay for private providers or absorb transportation costs; families without those resources often cannot. The Massachusetts framework therefore functions as a subsidy for public-school enrollment. Lower-income families bear the brunt of those additional costs. *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring) (“Most parents, realistically, have no choice but to send their children to a public school and little ability to

influence what occurs in the school.”). Massachusetts’s rule that appears to preserve formal choice while making religious options more costly or practically burdensome is precisely the kind of coercive pressure the unconstitutional conditions doctrine forbids.

B. Some States that are hostile to religious education exploit facially neutral laws to evade First Amendment protections

This trend is not merely an unwanted *effect* of the First Circuit’s ruling but is part of a larger trend explicitly hostile toward religious education. After this Court’s decisions in *Trinity Lutheran*, *Espinoza*, and *Carson*, anti-religious movements in States and localities have been trying to evade those decisions by using facially neutral requirements to “covert[ly] suppress[] ... particular religious beliefs.” *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (1993) (citation omitted).

In Vermont, for example, the legislature passed Act 73 (2025) to impose a 25-percent enrollment threshold, geographic limits, and class-size minimums that together excluded all fifteen religious schools newly eligible for benefits after *Carson*. Legislative statements included “No taxpayer money for religious schools” and said the threshold would avoid “sending people back to religious schools.” The resulting exclusion is challenged in *Mid Vermont Christian Academy v. Saunders*, No. 26-1416 (2d Cir.).

Maine took a different approach. While *Carson* was pending, it repealed religious exemptions and

required participating religious schools to comply with sexual-orientation and gender-identity rules, including admissions requirements contrary to some schools’ faith commitments. The First Circuit upheld those conditions in *Crosspoint Church v. Makin*, 180 F.4th 354 (1st Cir. 2026); see also *St. Dominic Academy v. Makin*, 181 F.4th 11, 22 (1st Cir. 2026).

Colorado has notoriously and repeatedly fought against religion using “nondiscrimination” laws. See, e.g., *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, 584 U.S. 617, 640 (2018); see also *303 Creative LLC v. Elenis*, 600 U.S. 570, 602-03 (2023). It has extended that hostility to religious education, conditioning Universal Pre-K participation on nondiscrimination rules concerning sexual orientation and gender identity while refusing religious accommodations, thereby excluding Catholic preschools. The Tenth Circuit upheld the regime in *St. Mary Catholic Parish v. Roy*, 154 F.4th 752 (10th Cir. 2025), cert. granted, No. 25-581 (Apr. 20, 2026).

C. The First Circuit’s ruling provides a roadmap to undermine religious liberty nationwide

Vermont, Maine, and Colorado differ in form, but each show how a State can use neutral labels to exclude religious schools, require them to abandon faith commitments, or make participation untenable. The First Circuit’s rule would permit Massachusetts and other States to achieve the same result—i.e., burdening religious education—through a condition on parents’ private-school choice.

In *Espinoza*, this Court held that a State cannot invoke a Blaine Amendment to disqualify religious

schools from a generally available benefit, describing that movement as “born of bigotry” and recognizing “sectarian” as code for Catholic. 591 U.S. at 482, 484. Massachusetts’s Place Restriction is defended by the same anti-aid tradition, even though its modern category is “private schools.” *Espinoza* did not decide whether a secular anti-aid provision may bar aid to every private school. As noted, fourteen States retain provisions of that nature. If those provisions allow (or are interpreted to require) the denial of benefits whenever parents select private school, religious families are excluded indirectly because every religious school is private.

The First Circuit has supplied a roadmap for that result. A State can call the rule nonreligious because it reaches secular schools, characterize it as program design rather than a penalty, invoke an anti-aid or uniformity provision, and obtain rational-basis review. That sequence achieves through facial neutrality what *Espinoza* forbids through express religious exclusions. The consequence is categorical because a State that bars benefits to private-school students necessarily excludes every religious-school family. A scholarship, transportation service, or special-education program may remain available to public-school families but not to families who choose religious education, making religious exercise more expensive and less practical.

States may enforce genuine health, safety, accreditation, and student-protection rules, so long as they are not pretexts for hostility or conditions requiring surrender of protected rights. The narrower rule sought here is that a generally available benefit may not be used to penalize parents for choosing

private education, whether the State invokes anti-aid, uniformity, or a neutral program definition.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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