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## **SUTHERLAND INSTITUTE STATEMENT FOR THE RECORD**

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### **“Defending Faith and Families Against Government Overreach”**

House Education and Workforce Committee  
Early Childhood, Elementary, and Secondary Education Subcommittee  
February 10, 2026

Chairman Kiley and members of the Committee, thank you for the opportunity to submit these written comments. I am William C. Duncan, the Constitutional Law & Religious Freedom Fellow for the Sutherland Institute in Salt Lake City, Utah. My written testimony will emphasize the critical importance of protecting parental rights in the context of public education. Our involvement as *amicus curiae* in *Mahmoud v. Taylor* highlights a growing national concern: the erosion of the fundamental right of parents to direct the religious and moral upbringing of their children. As this Committee reviews federal protections for parental rights, we urge a focus on ensuring that school districts cannot unilaterally strip parents of notice and opt-out rights regarding sensitive curricular materials.

The Sutherland Institute is a Utah nonprofit, nonpartisan public policy organization with a mission to promote the constitutional values of faith, family, and freedom. We promote the constitutional right of free exercise of religion and work to explain the individual and societal benefits that come from the involvement of people of faith and religious organizations in our communities.

The issue addressed in this statement—whether parents may direct how their children are taught sensitive subjects in public schools—implicates foundational principles of religious liberty and parental rights. Clarification and protection of these principles benefits *all* Americans, whether or not they participate in or adhere to any particular faith.

#### **INTRODUCTION**

The laws of nearly every State require public schools to accommodate parents’ right to determine how their children are taught about sensitive topics. These laws typically require advance notice of instruction, an opportunity for parents to review



instructional materials, and a mechanism allowing parents to excuse their children from such instruction. Many States go even further in protecting parental authority.

This widespread legal recognition demonstrates both the significance of parental rights and the practical feasibility of accommodating them. When parents are denied these accommodations, their religious exercise is substantially burdened. The near-universal adoption of these protections across the States confirms that such accommodations are neither onerous nor disruptive to public education.

Legal accommodations of religious exercise should be encouraged and preserved. They reduce conflict, prevent litigation, and provide assurance to people of faith that their constitutional rights will be respected.

## BACKGROUND AND CONSTITUTIONAL FRAMEWORK

The First Amendment’s protection of religious freedom reflects a longstanding understanding that certain essential qualities of ordered liberty cannot be transmitted directly by the government. Structural limits on government power, and protections for mediating institutions such as the family and religious communities, safeguard that transmission process.

Parents, like the Amish families recognized by the Supreme Court in *Wisconsin v. Yoder*, are engaged in what has been described as a “soul-making competition with government,” where parental beliefs and state educational objectives both seek the loyalty and formation of children.<sup>1</sup> When parents are denied the ability to direct their children’s exposure to sensitive matters—particularly those implicating deeply held religious convictions—the burden on religious exercise is profound.

## STATE LAW CONSENSUS ON PARENTAL RIGHTS

State law provides a stark illustration of the enduring American tradition recognizing the primary role of parents in the upbringing of their children. All but three States and the District of Columbia provide some legal mechanism allowing parents to exempt their children from instruction related to sexual subjects.

The typical elements of these laws include:

1. A requirement that parents receive notice of the instruction;
2. A requirement that parents be allowed to review instructional materials; and



3. A requirement that parents be allowed to exempt their children from the instruction, either through an opt-out or opt-in mechanism.

Twenty-seven States and the District of Columbia include all three elements, most using an opt-out framework.<sup>2</sup> Other States provide partial protections, and several require affirmative parental consent before instruction may occur.<sup>3</sup> A number of States explicitly recognize that these accommodations exist to protect parents' religious beliefs.<sup>4</sup>

Taken together, this legislative landscape demonstrates an extraordinarily broad consensus: parents' rights to direct their children's education on sensitive and controversial topics—particularly those involving sexuality—should be accommodated.

## IMPLICATIONS FOR RELIGIOUS EXERCISE

When public school systems abandon policies that allow parents to direct how their children are taught about sensitive subjects, they deny accommodations that are available to nearly all other American parents. This denial represents a substantial burden on religious exercise.

Administrative concerns such as absenteeism or logistical complexity cannot justify this burden. States across the nation have determined that such accommodations are workable and appropriate. If these accommodations were truly unmanageable, it is difficult to explain why nearly every State has voluntarily imposed them through legislation or regulation.

Moreover, accommodating parental rights does not undermine educational goals. To the contrary, it models tolerance and respect by demonstrating how differing viewpoints can coexist within a pluralistic society.

## THE IMPORTANCE OF PRESERVING RELIGIOUS ACCOMMODATIONS

Statutory accommodations of religious exercise should be promoted rather than diluted. They help prevent litigation, reduce costs to public institutions, and provide assurance to people of faith that their rights are secure.

When accommodations are initially recognized and then withdrawn without any change in governing law, that security is eroded. Such reversals risk signaling that protections achieved through the democratic process cannot be relied upon, with consequences extending far beyond any single dispute.



## CONCLUSION

The near-universal recognition of parental rights in state law underscores the importance and feasibility of accommodating parents' religious exercise in public education. Denying these accommodations imposes a heavy and unnecessary burden on families of faith.

For these reasons, the Sutherland Institute urges the Committee to recognize, protect, and encourage legal accommodations that respect parental authority and religious liberty in public schools, and to defend faith and families against government overreach.

Thank you for the opportunity to submit this written statement.

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<sup>1</sup> Richard W. Garnett, *The Story of Henry Adams' Soul: Education and the Expression of Associations* 85 Minn. L. Rev. 1841, 1847 (2001).

<sup>2</sup> Ala. Code §§ 16-40A-5, 16-41-6; Alaska Stat. §§ 14.30.355(b)(7), 14.30.356(b)(6); Ark. Code § 6-16-1006(c); Colo. Rev. Stat. §§ 22-25-104(6)(d), 22-1-128(3)(a), (4) and (5); Fla. Stat. §§ 1001.42(8)(c)(3), 1002.20(3)(d), 1003.42(5); Haw. Dep't of Educ., Bd. of Educ. Policy 103-5; Haw. Dep't of Educ., Bd. of Educ. Policy 101-13; Keith T. Hayashi, Superintendent, Haw. Dep't of Educ., Annual Memorandum: Notice on Board of Education Policy 101-13 Controversial Issues (June 23, 2023), in Opening of the School Year Packet for School Year 2023- 2024, Haw. Dep't of Educ. 61 (June 2023), <https://perma.cc/T6DSXSXP>; Ind. Code § 2030-5-17(c), (d); Idaho Code § 33-1611; 105 Ill. Comp. Stat. 5/27-9.1a(d); Mass. Gen. Laws ch. 71, § 32A; Md. Code Regs. §§ 13A.04.18.01(D)(2)(e)(i) and (iii); Mich. Comp. Laws § 380.1507(4); Minn. Stat. § 120B.20; Mo. Stat. § 170.015(5)(2); Mont. Code § 20-7-120; N.C. Gen. Stat. § 115C-81.30(b); Neb. Rev. Stat. § 79-532(3); N.H. Rev. Stat. § 186:11(IX-c); Okla. Stat. tit. 70, § 11-103.3(C); Or. Rev. Stat. § 336.465(1)(b); Or. Dep't of Educ. Admin. R. 581-022-2050(5); Or. Dep't of Educ. Admin. R. 581-021-0009; 22 Pa. Code §§ 4.29(c), 4.4(d)(3); S.C. Code. § 59-32-50; Tenn. Code §§ 49-6-1305, 49-6-1307, 49-6-1308; Tex. Educ. Code § 28.004(i) and (i-2); Utah Code §§ 53E-9-203(3), 53G-10-205, 53G-10-403; Wash. Rev. Code. § 28A.230.070(4); Wis. Stat. §§ 118.019(3) and (4); D.C. Mun. Regs. subtit. 5, § E2305.5.

<sup>3</sup> Cal. Educ. Code § 51937; R.I. Gen. Laws §§ 16-22-17(c), 16-2218(c), 16-22-24(b); Va. Code. § 22.1-207.2; W. Va. Code § 18-2-9(c); Conn. Gen. Stat. § 10-16e; Ga. Code § 20-2143(d); Iowa Code § 256.11(6)(a); Kan. Admin. Regs. § 91-31-35; La. Stat. §§ 17:281(D), 17:412; Me. Rev. Stat. tit. 22, § 1911; N.J. Stat. § 18A:35-4.7; N.M. Code R. § 6.29.6.11; N.Y. Comp. Codes R. & Regs. tit. 8, § 135.3; Ohio Rev. Code § 3313.60(A)(5)(c), (d) and (f); Vt. Stat. tit. 16, § 134.

<sup>4</sup> Ala. Code § 16-41-6; Kan. Admin Regs. § 91-31-35(a)(6); N.H. Rev. Stat. § 186.11(IX-b); N.J. Stat. § 18A:35-4.7; Or. Dep't of Educ. Admin. R. 581-021-0009; Pa. Code § 4.29(c); Tex. Educ. Code § 26.010(a); Utah Code § 53G-10-205(2)(a); Vt. Stat. art. 16, § 134.