TESTIMONY OF:

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BEFORE THE:

House Subcommittee on Early Childhood, Elementary, and Secondary Education of the House Committee on Education and Workforce

HEARING ON:

"Defending Faith and Families Against Government Overreach: *Mahmoud v. Taylor*"

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2175 Rayburn House Office Building
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Chairman Kiley, Ranking Member Bonamici, and Members of the Committee:

Thank you for the opportunity to testify on the Supreme Court's recent decision in *Mahmoud v. Taylor*,[1] and its implications for parental rights and religious liberty.

This hearing concerns an issue that has generated intense public attention. In *Mahmoud*, the Supreme Court held that religious parents have a constitutional right to remove their children from public-school instruction that conflicts with the religious values they seek to instill. The decision has been celebrated by many religious liberty advocates and by broader parental-rights movements.

That celebration is misplaced.

To understand why, it is necessary to situate *Mahmoud* within a longer constitutional tradition, one that governed for nearly a century. That tradition did not deny the importance of parental authority or religious liberty. But it recognized the need for limiting principles. *Mahmoud* departs from that tradition, even as it presents itself as continuing it.

The starting point is *Pierce v. Society of Sisters* (1925), in which the Supreme Court held that private schools have a right to operate, giving parents a choice between public and private education.[2] But this was hardly a grand statement about parental sovereignty. "The child is not the mere creature of the State," the Court stated.[3] But neither, the Court was equally clear, is the child the mere creature of her parents. The state retained authority to require that all children receive education and to define what that education must include.[4] Parents could choose where their children were educated, but not whether to educate them or what qualified as adequate education.

The next major decisions were *West Virginia Board of Education v. Barnette* (1943) and *Wisconsin v. Yoder* (1972).[5] Both are often invoked today—as they were in *Mahmoud*—as victories for parental or religious rights in education. Both were far more limited.

Barnette is perhaps the First Amendment's most celebrated decision. It held that public schools could not compel Jehovah's Witness children—or any children—to salute the flag and recite the Pledge of Allegiance. But Justice Jackson's opinion made two crucial distinctions that controlled First Amendment jurisprudence for over eight decades.

First, *Barnette* drew a line between compelled affirmation and mere instruction. The state *could* "require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty, which tend to inspire

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[1] Mahmoud v. Taylor, 606 U.S. 522 (2025).
[2] Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary, 268 U.S. 510 (1925).
[3] *Id.* at 535.
[4] *Id.* at 534 ("No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.").
[5] W. Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943); Wisconsin v. Yoder, 406 U.S. 205 (1972).

patriotism and love of country."[6] What it could not do was compel students "to declare a belief."[7] Schools could teach contested ideas; they just could not require students to profess them.

Second, Justice Jackson resolved the case under the Free Speech Clause, not the Free Exercise Clause. That was deliberate. The Court went out of its way to clarify that "the issue as we see it [does not] turn on one's possession of particular religious views or the sincerity with which they are held."[8] Religion supplied the plaintiffs' motive, but the constitutional violation was compelled speech, not religious burden. This distinction mattered immensely. Because the injury was compelled speech, the remedy was to invalidate the policy across the board.[9] *Barnette* did not create a system of individualized opt-outs. Indeed, Justice Jackson took pains not to frame the case around free exercise exemptions precisely because that would invite opt-out claims.[10]

Yoder was also narrow. It exempted Amish parents from compulsory high school attendance, but only because enforcement threatened a cohesive religious community's survival. The Court emphasized that what was at stake was "a highly successful social unit within our society,"[11] with a long history "as an identifiable religious sect"[12] and "not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living."[13] The Court stressed the collective nature of the risk: Compulsory schooling carried "a very real threat of undermining the Amish community and religious practice as they exist today."[14] The decision protected an insular community's distinctive mechanism of transmitting its way of life when enforcement of the law threatened the community's very survival.

The best reading of *Yoder* is that it reflected a pluralist compromise. It protected a community's mechanism of cultural and religious transmission, while still expressing concern

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[6] *Barnette*, 319 U.S. 624, 631 (1943).
[7] *Id.*
[8] *Id*. at 634. As John Hart Ely explained, "the presence or absence of religious objections on the part of the complainants was entirely beside the point." *Legislative and Administrative Motivation in Constitutional Law*, 79 YALE L. J. 1205, 1322 n.363 (1970).
[9] *Barnette*, 319 U.S. at 635–36 (presenting the relevant question as whether the "power exists in the State to impose the flag salute discipline upon school children in general[,]" and answering that it does not). *See also* Jay S. Bybee, *Common Ground: Robert Jackson, Antonin Scalia, and a Power Theory of the First Amendment*, 75 TUL. L. REV. 251, 280–81 (2000) (according to Justice Jackson, "the state was powerless to impose the requirement on anyone, whether that person objected to the flag salute or not").
[10] *Barnette*, 319 U.S. at 635–36 (distinguishing *Gobitis* by reframing the issue as compelled expression rather than religious exercise).
[11] *Id.* at 222.
[12] *Id.* at 235.
[13] *Id.* at 216.
[14] *Id.*

about children's later ability to exit that community.[15] It was not a general endorsement of parental opt-outs from public-school instruction.[16]

For eighty years, courts uniformly applied these distinctions. Parents could choose either public or private education. Students could not be compelled to affirm beliefs. And religious communities could, in rare circumstances involving threats to their survival, obtain narrow exemptions from high school compulsory education laws. But parents had no general right to opt-out of public-school curriculum simply because it conflicted with their values.[17] This consensus, it should be noted, was not invented by progressive courts. It emerged from decisions often associated with constitutional conservatism.[18]

My point is that this longstanding American constitutional settlement existed for a reason. The Supreme Court and lower courts were right to worry about the boundlessness of a parental right—religious or otherwise—that would constitutionalize parental preferences. Once a constitutional opt-out right exists, it is difficult to contain. If parents can remove children from instruction because it conflicts with their religious formation, why can't they refuse vaccination mandates for the same reason? And why not medical treatment requirements, child labor laws, and compulsory education itself?

That concern is not merely hypothetical.

Just months after deciding *Mahmoud*, the Supreme Court signaled how far its logic extends. In *Miller v. McDonald* (2025), the Court vacated a Second Circuit decision upholding New York's school vaccination requirements—and remanded for reconsideration "in light of *Mahmoud v. Taylor*."[19]

New York eliminated its religious exemption for school vaccinations following the worst measles outbreak in the United States in nearly three decades.[20] Close to a thousand cases were

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[15] *See* Zalman Rothschild, *The Right to Exit Religion*, 113 GEO. L.J. 1459, 1478 ("[W]hile Chief Justice Burger [in *Yoder*] underscored the value of preserving the distinctiveness of insular communities and stressed the inherently contextual nature of education, his opinion—and still more clearly those of Justices White and Douglas—also emphasized the importance of ensuring that the children of such communities are not rendered incapable of exiting them.").

[16] Critically, *Yoder* distinguished itself from *Prince v. Massachusetts*, decided just months after *Barnette*. 321 U.S. 158 (1944). In *Prince*, the Court upheld a child-labor law against a Jehovah's Witness guardian, observing that the state's authority over children's welfare "reaches beyond the scope of its authority over adults." *Id*. at 170. The Court emphasized that a parent "cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease." *Id.* at 166–67. *Yoder* itself noted that its holding did not extend to cases where "harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated." *Yoder*, 406 U.S. at 230.

[17] *See, e.g*., Mozert v. Hawkins Cnty. Bd. of Educ., 827 F.2d 1058, 1063, 1067 (6th Cir. 1987); Brown v. Hot, Sexy & Safer Prods., Inc., 68 F.3d 525, 534 (1st Cir. 1995); Parker v. Hurley, 514 F.3d 87, 102–03 (1st Cir. 2008).

[18] For example, *Pierce v. Society of Sisters* was decided by Justice McReynolds, 268 U.S. 510 (1925); *Board of Education v. Barnette* by Justice Jackson, 319 U.S. 624 (1943); *Wisconsin v. Yoder* by Justice Burger, 406 U.S. 205 (1972); and *Employment Division v. Smith* by Justice Scalia, 494 U.S. 872 (1990).

[19] Miller v. McDonald, No. 25-133, 2025 WL 3506969 (U.S. Dec. 8, 2025).

[20] Madeleine Patel et al., *National Update on Measles Cases and Outbreaks—United States, January 1–October 1, 2019*, 68 MORBIDITY & MORTALITY WKLY. REP. 893 (2019) ("During January 1–October 1, 2019, a total of 1,249

confirmed in New York alone, concentrated in communities where vaccination rates had fallen dangerously low.[21] Dozens were hospitalized.[22] Twenty were admitted to intensive care.[23] The outbreak threatened the nation's measles elimination status.[24] The state legislature responded by repealing its religious exemption—the primary driver of declining vaccination rates.

Beginning with *Jacobson v. Massachusetts* in 1905, vaccination mandates were treated as a paradigmatic exercise of state power over which religious objections had no constitutional purchase.[25] For over a century, every court to consider a free exercise challenge to a vaccine mandate rejected it.[26] Does *Mahmoud* now mean the Constitution is in fact a "suicide pact"[27] and states cannot enforce laws designed to keep children—and society around them—safe?

And what about compulsory education itself?

Consider my own community. I grew up in a Hasidic community in Brooklyn where schools provide virtually no secular education—no math, no science, no English literacy beyond the most rudimentary level.[28] The results are measurable: recent data show that poverty rates in Hasidic communities in New York are 70%.[29] While many factors contribute to poverty, educational deprivation plays a significant role, leaving community members unable to access the broader economy.[30]

If *Mahmoud*'s logic extends to compulsory education itself—and the remand in *Miller* suggests it might—what happens when Hasidic parents claim a constitutional right to refuse

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measles cases and 22 measles outbreaks were reported in the United States. This represents the most U.S. cases reported in a single year since 1992[.]").

[21] Sharon Otterman, *New York Confronts Its Worst Measles Outbreak in Decades*, N.Y. TIMES (Jan. 17, 2019), https://www.nytimes.com/2019/01/17/nyregion/measles-outbreak-jews-nyc.html ("[H]ealth officials discovered that some religious schools, or yeshivas, in ultra-Orthodox communities in Rockland County had vaccination rates as low as 60 percent, far below the state average of 92.5 percent.").

[22] *See* Jane R Zucker *et al*., *Consequences of Undervaccination — Measles Outbreak, New York City, 2018–2019*, 382 NEW ENG. J. MED. 1009, 1012 (2020) (of the 649 confirmed cases, "49 patients (7.6%) . . . were hospitalized").

[23] *Id.* at 1009 (among the hospitalized, "20 (40.8%) were admitted to an intensive care unit").

[24] *Id.* ("Measles was declared eliminated in the United States in 2000.").

[25] 197 U.S. 11 (1905).

[26] *See* Zalman Rothschild, *Individualized Exemptions, Vaccine Mandates, and the New Free Exercise Clause*, 131 YALE L.J.F. 1098, 1108–09 (2022).

[27] Terminiello v. City of Chicago, 337 U.S. 1, 37 (1949) (Jackson, J., dissenting).

[28] *See* Rothschild, *The Right to Exit Religion*, *supra* note 15, at 1483–84.

[29] *See* UJA-FEDERATION OF N.Y., 2023 COMMUNITY STUDY, POPULATION HIGHLIGHTS: NONDENOMINATIONAL JEWS (2023) ("70% of Hasidic households . . . [are] poor or near poor"; 50% are poor and the remainder are near poor). This marks an increase in the poverty rate for Hasidic households since 2011. *See* UJA-FEDERATION OF N.Y., JEWISH COMMUNITY STUDY OF NEW YORK: 2011 COMPREHENSIVE REPORT 220 (2012) ("Hasidim have high rates of poverty: 43% are poor and another 16% are near poor, with poverty defined as having a household income below 150% of the federal poverty guideline, and near poverty defined as having a household income below 250% of the guideline."); *id*. at 83 (". . . for a three-person household, such as a married couple with a child, $27,465 or less qualifies as poor"); *id*. at 86 ("Examples of near-poor households: a (non-senior) single-person household earning between $16,742 and $27,903; a family of three, such as a single mother with two children, earning between $27,465 and $45,775[.]").

[30] *See* U.S. BUREAU OF LAB. STAT., EDUCATION PAYS, 2024 (2025), https://www.bls.gov/careeroutlook/2025/data-on-display/education-pays.htm ("As workers' educational attainment rises, their unemployment rates decrease and earnings increase.").

basic mathematics or English for their children? If the principle is that the state may not "substantially interfere" with parents' religious child-rearing, it is hard to see where it stops.

Finally, it is worth mentioning that religious claims are not the exclusive province of social conservatives. If the principle is that the state may not substantially interfere with parents' efforts to raise children in their faith, that principle must be available across ideological lines.

What happens when progressive religious parents claim, on religious grounds, that their child must be addressed with preferred pronouns? That their teenager's reproductive choices, including access to abortion in states where it is otherwise prohibited, must be respected as a matter of religious freedom? Would the same principle apply when religious parents challenge Ten Commandments displays now being mandated in some state classrooms?[31]

If the doctrine is truly about parental authority over children's religious formation, it cannot be confined to objections from the right. The Court's decision in *Mahmoud* suggests it has not thought through these implications—or perhaps does not care to.

Parental rights and religious liberty are part of America's constitutional history, and for good reason. But that tradition also embodies hard-earned judgments about how those values must coexist with others, including child welfare, public education, and public health. *Pierce*, *Barnette*, and *Yoder* represent the best of our constitutional tradition: a careful balance among parental liberty, state authority, and children's welfare. They reflect wisdom about how to sustain religious pluralism without eviscerating public institutions.

Mahmoud upends that settlement while pretending to preserve it. The celebration of *Mahmoud* by religious liberty and parental rights advocates may prove short-lived once the decision's logic is deployed by parents across the ideological spectrum, and once states lose the ability to ensure that all children receive basic education, healthcare, and protection.

There is a reason the constitutional consensus held for nearly a century. The Court seems to now be dismantling it without fully grappling with the wisdom it embodied or the problems its destruction may create. This deserves more careful consideration than it has received.

Thank you. I look forward to your questions.

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[31] *See* Stinson v. Fayetteville Sch. Dist. No. 1, 798 F. Supp. 3d 931, 939 (W.D. Ark. 2025) ("Plaintiffs seek a permanent injunction of the enforcement of Act 573 and a judicial declaration that mandating the display of the Ten Commandments in every public elementary- and secondary-school classroom and library in Arkansas violates the Establishment Clause and Free Exercise Clause of the First Amendment to the United States Constitution."). *See also* Roake v. Brumley, 756 F.Supp.3d 93 (M.D. La. 2024), *aff'd* 141 F.4th 614 (5th Cir. 2025); Nathan v. Alamo Heights Indep. Sch. Dist., No. SA-25-CV-00756-FB, 795 F.Supp.3d 910 (W.D. Tex. 2025); Ringer v. Comal Ind. Sch. Dist., No. SA-25-CV-1181-OLG, 2025 WL 3227708 (W.D. Tex. Nov. 18, 2025); Ashby v. Schertz-Cibolo-Universal City Ind. Sch. Dist., No. 25-CV-01613 (W.D. Tex. filed Dec. 2, 2025) (class action).