25-1955

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MILFORD CHRISTIAN CHURCH, JAMES LOOMER, JANET PARADY, JESSICA CAVARRETTA

Plaintiffs-Appellants,

v.

BETH BYE, in her official capacity only; CHARLENE RUSSELL-TUCKER, in her official capacity only, MANISHA JUTHANI, in her official capacity only

Defendants-Appellees.

On Appeal from the United States District Court for the District of Connecticut, No. 3:23-cv-00304-VAB

REPLY BRIEF OF THE PLAINTIFFS-APPELLANTS

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FRAP 26.1 DISCLOSURE STATEMENT

Plaintiff-Appellant – Milford Christian Church – is a non-governmental corporation incorporated under the laws of Connecticut, and it has no parent corporation. No publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

This appeal does not ask the Court to decide whether a statewide daycare and school vaccination requirement is a wise public policy choice. Instead, it asks the Court to decide whether such a requirement may sweep so broadly as to require a church daycare ministry to violate the moral teachings that its pastor preaches from the pulpit every Sunday.

In our system of self-government, the Court lacks the power to decide what is a wise public policy choice, but it has an unflagging obligation to determine whether the First Amendment's protections for religious liberty, free speech, and religious neutrality bar a state from leaving parents who object to vaccination on religious grounds no options to educate their children – all while granting religious accommodations to identically situated parents and children just because they are older.

The Appellee, Beth Bye, subtly nudges the Court toward review of the wisdom of Connecticut's school and daycare vaccination requirement – an analysis that would command the utmost deference to Connecticut's policy choices. This case, again, is not about whether Connecticut's sweeping vaccination requirements are wise though. This case will decide whether the Appellants – a church, its pastor, its congregants, and those whom its ministry serves – may live what they believe without crippling, state-imposed consequences.

What Bye fails to overcome though – and where the district court fundamentally erred – is that Connecticut's daycare and school vaccination requirement violates the First Amendment right of parents to control their children's religious upbringing in the educational context. The requirement wholly undermines the Appellants' strenuous efforts to practice what they preach in their rearing of their children. It leaves them no options to obtain public or private daycare for their children – even within the sanctity of their church and faith. The district court declined to recognize this reality based on a misapprehension of the Court's precedents.

No other state-imposed burden in American history on the First Amendment right for parents to rear their children has gone so far as to deny parents and their children the right to practice what they preach in their church. The time has come for the Court to rectify the situation by properly applying the First Amendment's protections to keep Appellee Bye from forcibly closing Milford Christian Church's daycare ministry.

ARGUMENT

I. Appellee Bye Does Not Defend The District Court's Indefensible Conclusion That *Mahmoud v. Taylor* Does Not Apply To Private Education.

Bye does not defend the district court's first rationale for declining to apply *Mahmoud v. Taylor*, 145 S.Ct. 2332 (2025) in this case: *Mahmoud* only applies to

conditions set on "free public education." App.17, n.2. Instead, Bye does not discuss it at all, and for good reason. The district court's rationale is indefensible in the face of long-standing Supreme Court precedent and *Mahmoud* itself.

Start with *Mahmoud* itself.

The district court concluded that *Mahmoud* had used deliberate language to narrow its holding to the public school context. App.17, n.2. It attached overwhelming weight to a single sentence in *Mahmoud*'s second introductory paragraph: "And a government cannot condition the benefit of free public education on parents' acceptance of…" instruction that "that poses a very real threat of undermining the religious beliefs and practices that the parents wish to instill." App.17, n.2 (cleaned up); *see also Mahmoud*, 145 S.Ct. at 2341. The district court also focused on a sentence summarily introducing the conclusion that the Supreme Court was about to explain from its precedents: "The Supreme Court recognized limits on the government's ability to interfere with a student's religious upbringing in a public school setting." App.17, n.2 (quoting *Mahmoud*, 145 S.Ct. at 2341). These sentences, per the district court, demonstrate that *Mahmoud* confined its rationale to state-imposed conditions on a free public education. App.17, n.2.

This reading excludes two critical principles from *Mahmoud*. First, *Mahmoud* explicitly recognized that the First Amendment has long protected a parent's right to "direct the religious upbringing of their children," including by making a First

Amendment protected decision "to send his or her child to a private religious school instead of a public school." *Mahmoud*, 145 S.Ct. at 2351 (citing *Pierce v. Society of Sisters*, 268 U.S. 510, 532-535 (1925)) (cleaned up). Second, *Mahmoud* also recognized that, "[d]ue to financial and other constraints, however, many parents have no choice but to send their children to a public school." *Id*. at 2351.

Mahmoud's reasoning follows a line familiar to all judges and lawyers. The first principle broadly describes the First Amendment right for parents to direct the upbringing of their children. The second principle describes a specific choice – a parental choice to send a child to private religious school in lieu of public school – that receives First Amendment protection. From these two principles, the Supreme Court articulated a third principle:

> the right of parents to direct the religious upbringing of their children would be an empty promise if it did not follow those children into the public school classroom. We have thus recognized limits on the government's ability to interfere with a student's religious upbringing in a public school setting.

Mahmoud, 145 S.Ct. at 2351 (cleaned up).

In other words, *Mahmoud* reasoned from broad principles to derive case-specific rules and conclusions, including in the case before it. That is lawyering and judging 101, and the Supreme Court's choice to engage in basic judging does not reflect a deliberate choice to confine *Mahmoud* to the public school context as the district court concluded.

Next, consider where *Mahmoud* fits within the Supreme Court's parental rights precedents.

First, *Meyer v. Nebraska*, 262 U.S. 390 (1923) recognized the "natural duty of the parent to give his children education suitable to their station in life…." It then held that Nebraska had "attempted materially to interfere… with the power of parents to control the education of their own…" by prohibiting the teaching of German and other foreign languages to any child who had not passed the eighth grade. *Id*. at 401. Thus, it reversed the criminal conviction of a parochial school teacher for teaching German to a 10-year-old as a violation of the right of parents to educate their children as they saw fit. *See id*. *generally*.

Second, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) affirmed preliminary injunctions granted to a Catholic school and a private military academy that enjoined the enforcement of Oregon's compulsory education law that required all children to be sent to public school until the eighth grade. *Pierce* held that the law "interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control." *Id*. at 534-35. Thus, *Pierce* established that the Constitution protects the parental right to educate their children in a school forum other than a public school. *See id*. *generally*.

Third, *Wisconsin v. Yoder*, 406 U.S. 205 (1972) built on these two cases and shifted the source of the parental right from the Fourteenth Amendment to the First

Amendment. It then held that Amish parents had the right to stop educating their children after the eighth grade based on their religious beliefs. *See Yoder*, 406 U.S. 205 *generally*.

Fourth, *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943) stands as an often-overlooked parental rights precedent that finally received its just due in *Mahmoud*. *Barnette* considered claims by Jehovah's Witnesses who religiously objected to their children being compelled to salute the American flag during class. *Barnette*, 319 U.S. at 629-330. The Supreme Court rejected the notion that the government could "condition access to public education on making a prescribed sign and profession and at the same time to coerce attendance by punishing both parent and child." *Id*. at 630-31. Thus, *Mahmoud* described *Barnette* as rejecting "an especially egregious kind of direct coercion: a requirement that students make an affirmation contrary to their parents' religious beliefs." *Mahmoud*, 145 S.Ct. at 548.

Three of these four decisions – *Meyer*, *Pierce*, and *Yoder*[1] – prevent the government from compelling and restricting conduct outside of the public school context. In other words, the Supreme Court's parental rights precedents have always applied to conduct that occurred outside of the public school context.

[1] Nothing in the law at issue in *Yoder* required the Amish to send their children to a public school for education past the eighth grade.

Just five years prior to the recent *Mahmoud* decision, the Supreme Court invoked its parental rights precedents in a case challenging whether the Montana's state constitution's no-aid-to-churches provision violated the Free Exercise Clause with respect to Montana's school tuition assistance program. *See Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464 (2020). In reversing the Montana Supreme Court's application of the provision, the Supreme Court recognized that the prohibition on state tuition assistance for students attending private religious schools burdened not only the schools, "but also the families whose children attend or hope to attend them." *Espinoza*, 591 U.S. at 486. It then cited *Yoder* and *Pierce* for the proposition that parents have the right to direct the religious upbringing of their children by sending them to private religious schools. *Id*. at 486. From these principles, it held that "the no-aid provision penalizes that decision by cutting families off from otherwise available benefits if they choose a religious private school rather than a secular one, and for no other reason." *Id*. at 486.

Mahmoud then cited *Espinoza* and reaffirmed its summation of its precedents, including the parental right to send children to private religious schools. *Mahmoud*, 145 S.Ct. at 2351.

If *Mahmoud* actually did what the district court thought it did – deliberately limit its rule to the public school context – it would have needed to distinguish or otherwise overrule *Meyer*, *Pierce*, *Yoder*, and *Espinoza*. It did not.

What remains is a clear rule that the First Amendment prohibits state interference with the parental right to direct children's religious upbringing in both the public school and private school setting.

Any other rule would create a confusing and logically undecipherable rule where the First Amendment would operate to impose a greater restraint on the state exercising *in loco parentis* authority in public schools than it would on the state acting as sovereign with respect to private schools. Nothing in Supreme Court precedent justifies such an outcome. Neither does any federal circuit precedent.

Thus, the Court should reject the district court's reasoning that *Mahmoud* and the Supreme Court's parental rights precedents only apply to public schools.

II. Appellee Bye's Arguments Against Applying *Mahmoud v. Taylor* In This Case Contradict *Mahmoud* And Lack Support In Other Precedent.

Appellee Bye does not expressly defend the district court's second rationale for declining to apply *Mahmoud* in this case.[2] Instead, she makes three arguments: (1) *Mahmoud* only established a narrow exception to *Employment Div. v. Smith*, 494 U.S. 872 (1990), (2) *Mahmoud* is limited by the state's interest in protecting public health, and (3) and *Mahmoud*'s exception will swallow *Smith* as a general rule. Bye Br., pp. 16-22. Each argument fails.

[2] The district court concluded that *Mahmoud* does not apply outside of the curriculum context. App.17, n.2. As the Appellants will explain in dealing with Bye's arguments, the district court's conclusion construes *Mahmoud* too narrowly.

A. *Mahmoud* creates a specific right exception to *Smith* that may not be artificially constrained to achieve case-specific outcomes.

Mahmoud explained that, "[u]nder our precedents, the government is generally free to place incidental burdens on religious exercise so long as it does so pursuant to a neutral policy that is generally applicable." 145 S.Ct. at 2360. Courts, however, must proceed differently "[w]hen the burden imposed is of the same character as that imposed in *Yoder*…." In such a case, "we need not ask whether the law at issue is neutral or generally applicable before proceeding to strict scrutiny." *Id*. at 2361.

A burden is "of the exact same character as the burden in *Yoder*" when it "substantially interfere[s] with the religious development of the parents' children." *Id*. at 2361 (cleaned up). Substantial interference occurs when a law or policies poses "a very real threat of undermining the religious beliefs and practices that the parents wish to instill in their children." *Id*. at 2361 (cleaned up). It is always a "fact-intensive" inquiry. *Id*. at 2353.

Mahmoud's articulation of this standard did not limit it to curriculum requirements or public schools as the district court did in this case. It did not exclude public health laws from the inquiry. Instead, it articulated a straightforward rule (or exception to *Smith*): Any law that "substantially interfere[s] with the religious development of the parents' children" is subject to strict scrutiny – regardless of whether it is neutral and generally applicable under *Smith*. *Id*. at 2361 (cleaned up)

Bye seeks to circumvent this straightforward rule by heightening its requirements: "But the Court explained that the *Yoder* 'exception' only applies when the burden on religion is of the 'same' and 'special character' as the burden in *Yoder*." Bye Br., pp. 17-18. She argues that the Court should stand by its conclusion that the burden on religious exercise caused by school vaccination laws "are not equivalent to the existential threat the Amish faced in *Yoder*." *Id*. at p. 18 (quoting *Miller v. McDonald*, 130 F.4th 258, 271 (2d Cir. 2025)) (cleaned up).

Mahmoud, however, rejects this line of argument in three ways.

First, *Mahmoud* clarified that *Yoder* does not require an "existential threat" to be applicable. In its discussion of *Yoder*, *Mahmoud* declared: "the threat to religious exercise was premised on the fact that high school education would expose Amish children to worldly influences in terms of attitudes, goals, and values contrary to their beliefs and would substantially interfere with the religious development of the of the Amish child." 145 S.Ct. at 2352 (cleaned up). Thus, the compulsory-education law at issue in *Yoder* violated the First Amendment "because it placed Amish children into an environment hostile to Amish beliefs, where they would face pressure to conform to contrary viewpoints and lifestyles." *Id*. at 2352 (cleaned up). In other words, mere pressure to conform is sufficient to trigger the parental rights exception to *Smith* if it is strong enough.

Second, *Mahmoud* explained that *Yoder* is not the worst violation of parental rights that triggers the exception to *Smith* by including *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943) in its parental rights precedents.

> *Barnette* dealt with an especially egregious kind of direct coercion: a requirement that students make an affirmation contrary to their parents' religious beliefs. But that does not mean that the protections of the First Amendment extend only to policies that compel children to depart from the religious practices of their parents. To the contrary, in *Yoder*, we held that the Free Exercise Clause protects against policies that impose more subtle forms of interference with the religious upbringing of children.

Mahmoud, 145 S.Ct. at 2352.

Barnette's inclusion is critical to understanding why *Mahmoud* does not require an "existential threat" for the parental rights exception to be applicable. *Mahmoud* explained that, while *Barnette*'s flag-salutation policy did not require students to abandon their religious beliefs, the performance of an affirmative act ("affirmation"), "in contravention of their beliefs and those of their parents, was to go further than the First Amendment would allow. *Id*. at 2352. In other words, *Barnette* permits the application of the parental rights exception when the state seeks to compel a single affirmative act that violates the parents and the students' religious beliefs even if the performance of that act does not require a change in their beliefs.

Third, courts fashioned various descriptions to limit *Yoder* to its facts, and this Court was no exception.[3] *See Miller*, 130 F.4th at 270-71 & n.16 (citing, among other decisions, *Mahmoud v. Knight*, 102 F.4th 191 (4th Cir. 2024), which *Mahmoud* directly reversed). These descriptions coalesced around a common theme: the specific factual record in *Yoder* justified the relief and did not extend to anyone else. *Id*. Bye now asks the Court to return to the same rationale that it previously used by simply swapping labels for the analysis.

Whether the Court uses "existential threat" or some other label, it may not return to the old approach of limiting *Yoder*, and now *Mahmoud*, to their facts because *Mahmoud* prohibits such an approach. "Although [*Yoder*] turned on a close analysis of the facts in the record, there is no reason to conclude that the decision is *sui generis* or uniquely tailored to [its] specific evidence, as the courts below reasoned." *Mahmoud*, 145 S.Ct. at 2357. Instead, the Court must treat *Yoder* and *Mahmoud* "like any other precedent" and apply the rule that it articulates. *Id*.

In sum, *Mahmoud*'s parental rights exception is not a narrow, case-specific exception that applies only in certain contexts. It applies any time that a law or policy

[3] *Miller v. McDonald*, 130 F.4th 258 (2d Cir. 2025) rejected a First Amendment challenge to New York's school vaccination requirement, which also does not contain a religious exemption. The Court, however, did not have the benefit of *Mahmoud* when it decided *Miller*. The Supreme Court granted certiorari and vacated the *Miller* decision for further consideration in light of *Mahmoud*. *Miller v. McDonald*, 2025 WL 3506969 (U.S. S.Ct., Dec. 8, 2025).

substantially interferes with parents' control over their children's religious upbringing.

B. *Mahmoud* applies even to laws or policies that implicate a state public health interest, and those laws must survive strict scrutiny.

Bye realizes that *Mahmoud* jeopardizes Connecticut's daycare vaccination requirement, particularly as applied to the Appellants. Thus, she argues that it does not apply to public health regulations. Bye Br., pp. 18-19. Bye's argument is incorrect.

First, Bye's argument flows directly from the Court's now-vacated decision in *Miller*. *See* 130 F.th at 271 ("*Yoder*'s holding is limited by the state's interest in protecting public health."). *Miller*, in turn, relied on dicta from *Yoder* and *Prince v. Massachusetts*, 321 U.S. 158 (1944) to argue that the parental right to direct a child's religious upbringing does not apply when the state enacts a compulsory vaccination law to protect public health. *Prince* and *Yoder*'s dicta, however, do not control this case.

Prince upheld a Massachusetts child labor law that prohibited boys under the age of 12 and girls under the age of eighteen from selling literature in public. 321 U.S. at 160. The *Prince* defendant asserted free exercise and parental rights claims. *Id*. at 163-64. In rejecting these claims, *Prince* cited various examples as a "catalogue" for the principle "that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this

includes, to some extent, matters of conscience and religious conviction." *Id*. at 167. Among the examples *Prince* cited was that a claim of religious liberty was insufficient to escape vaccination under a compulsory vaccination law. It relied on *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) for this example.

Jacobson, however, did not consider a free exercise claim, only a general claim of liberty under the Fourteenth Amendment, and it applied rational basis review to reject it. *We The Patriots USA, Inc. v. Connecticut Office of Early Childhood Development*, 76 F.4th 130, 146 (2d Cir. 2023) (discussing how *Jacobson* was decided before the development of the modern tiers of scrutiny) (hereinafter, "*WTP II*"). As such, it does not prohibit the application of *Mahmoud*'s parental rights exception to Connecticut's daycare vaccination law.

Likewise, *WTP II* also concluded that *Prince*'s discussion of vaccination laws was "dictum." *Id*. at 146.

Lastly, *Prince* never articulated the test that it applied. It acknowledged that it was engaged in a "delicate" task, and it hinted that it was carefully balancing the state's interests with the "obviously earnest claim for freedom of conscience and religious practice." *Prince*, 321 U.S. at 165. It then acknowledged that the *Prince* defendant asked it to apply the "clear and present danger" test from *Schenck v. United States*, 249 U.S. 47 (1919). *Id*. at 167. It then briefly mentioned a test akin to *Smith*'s general applicability test, but ultimately declined to apply it. *Id*. at 167-68

("Concededly a statute or ordinance identical in terms with Section 69, except that it is applicable to adults or all persons generally, would be invalid.").

Ultimately, *Prince* utilized a balancing test. It assessed the right at issue, the state's interest in regulating children's conduct, the means by which it chose to protect its interest, and whether those means were suitably tailored to the ends that it sought to achieve. *Id*. at 168-70. At no point did *Prince* suggest that the analysis ended with a get-out-of-scrutiny-free card simply because Massachusetts invoked a public health interest.

Yoder's treatment of *Jacobson* is equally unavailing to Bye. *Yoder* rejected Wisconsin's invocation of *Prince* because the case before it did not demonstrate "any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare…." 406 U.S. at 230. It mentioned *Jacobson* during a quote from *Sherbert v. Verner*, 374 U.S. 398 (1963) without any independent discussion of it. *Id*. at 230. *Sherbert* cited *Jacobson* as an example of a case where "the conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order." *Sherbert*, 374 U.S. at 403. In other words, courts had to assess the substantiality of the threat to public safety, peace or order under some method of analysis to reach the conclusion that the First Amendment did not protect the conduct at issue. Nothing frees courts from analysis.

These principles came full circle in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63 (2020). *Cuomo* considered a free exercise challenge to New York's emergency measures to contain the spread of what was then an unknown and potentially deadly disease. *Cuomo*, 141 S.Ct. at 65-66. Instead of simply stating that the danger of the proposed conduct – large religious gatherings – was a substantial threat to public safety that New York could properly regulate, the Supreme Court worked through its normal free exercise analysis under *Smith*. *Id*. at 66-67. It concluded that measures were not neutral or generally applicable, and it applied strict scrutiny to strike them down. *Id*.

This Court has taken the same approach in every free exercise challenge to a vaccination requirement that it has considered since *Cuomo*. *See Miller*, 130 F.4th 258; *WTP II*, 76 F.4th 130; *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266 (2d Cir. 2021); *M.A. v. Rockland County Dept. of Health*, 53 F.4th 29 (2d Cir. 2022). Appellee Bye fails to identify a single case where a federal court has foregone a free exercise analysis of any sort because it concluded that an ancient Supreme Court precedent having nothing to do with the First Amendment required it to forego careful analysis. This Court should not be the first to commit such a grave error.

At the end of the day, Appellee Bye's arguments from *Jacobson*, *Prince*, and other cases are properly considered in a strict scrutiny analysis. Nothing in *Mahmoud* or *Yoder* gives them the overwhelming weight that Appellee Bye asks the Court to

give them in the analysis as to which tier of scrutiny to select. The Court should faithfully apply *Mahmoud*.

C. *Mahmoud* does not swallow *Smith*'s general rule.

In a last-ditch argument, Bye argues that *Mahmoud*'s exception to *Smith* will swallow its general rule and that the Court should limit its application. Bye Br., pp. 21-22. She also claims that "[s]cores of school policies would be subject to strict scrutiny and hollow out the *Smith* test." *Id*. at p. 21. Bye, however, does not identify a single school policy that would be subject to strict scrutiny in a fashion that would hollow out *Smith*. Her arguments also encounter an insurmountable obstacle.

The *Mahmoud* Court did not operate unaware of what it was doing. In a concurrence in *Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 599 (2021) (Alito, J. concurring), Justice Alito – *Mahmoud*'s author – criticized *Smith*'s hybrid-rights exception as an exception that "would largely swallow up *Smith*'s general rule." He even illustrated how *Smith* itself could have been decided differently under *Smith*'s hybrid-rights approach. *Id*.

In other words, the *Mahmoud* Court knew exactly what the implications of its rule were. Those implications did not give the Court pause in adopting the rule, and, as discussed above, it did not limit the rule it announced to specific contexts. In fact, it rebuked lower courts for "dismiss[ing] our holding in *Yoder* out of hand" and construing it too narrowly. *Mahmoud*, 145 S.Ct. at 2357.

Instead of resolving the circuit split on whether *Smith* recognizes hybrid-rights claims, *Mahmoud* clarified an existing precedent that *Smith* already recognized existed as a co-equal with its "neutrality" and "general applicability" framework. *Id*. at 2361 n.14 (declining to reach the hybrid-rights question because *Yoder*'s general principles applied). In other words, *Mahmoud* restores a rule that *Smith* acknowledged could co-exist with its framework.

Despite Bye's reliance on it, *Doe No. 1 v. Bethel Local School District Board of Education*, 2025 WL 2453836 (6th Cir. 2025) is distinguishable. *Doe* considered a free exercise/parental rights challenge to a local school board's bathroom policy that permitted transgender students to use the communal bathroom (male or female) that aligned with their professed gender identity. *Doe*, 2025 WL 2453836 at *1. *Doe* held that *Mahmoud* was inapplicable because "the bathroom policy was not an educational requirement or curricular feature, and the policy did not require students to use the communal restrooms." *Id*. at *7.

Doe did not consider a situation where students were being compelled to engage in affirmative acts that violated their religious beliefs (*Barnette*) or were subject to instruction or other influences that would coerce them into abandoning their parents' religious beliefs. It simply considered a Title IX accommodation policy that permitted a single transgender student to use that student's preferred bathroom.

That is fundamentally different from this case where Bye is conditioning access to daycare on students' performance of an affirmative act that contradicts their parents' religious beliefs. Conditioning access to a private religious daycare ministry on the performance of an immoral act that violates the religious convictions of everyone involved is precisely the type of burden that *Mahmoud* analogized to *Barnette* for and held that the First Amendment prohibits. Thus, *Doe* is drastically inapposite.

III. *Mahmoud* Requires Strict Scrutiny In This Case For Two Reasons.

Mahmoud requires the Court to apply strict scrutiny in this case for two separate reasons. First, Conn. Gen. Stat. § 19a-79 directly coerces the Appellants' children to take an affirmative action that is contrary to their parents' religious beliefs. Second, in the alternative, Conn. Gen. Stat. § 19a-79 substantially burdens the Appellants' right to direct the religious upbringing of their children.

A. Conn. Gen. Stat. § 19a-79 directly coerces the Appellants' children to take an affirmative action (voluntary receipt of a vaccination) that is contrary to their parents' religious beliefs.

Mahmoud described *Barnette* as dealing with "an especially egregious kind of direct coercion: a requirement that students make an affirmation contrary to their parents' religious beliefs." *Mahmoud*, 145 S.Ct. at 2352. This rule is not limited to affirmations and expressions as Supreme Court precedent makes clear. It also applies to government attempts to compel the performance of "acts undeniably at odds with

the fundamental tenets of [a person's] religious beliefs." *Yoder*, 406 U.S. at 218. In other words, the Free Exercise Clause "does perhaps it most important work by protecting the ability of those who hold religious beliefs *of all kinds* to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy v. Bremerton School District*, 597 U.S. 507, 524 (2022) (emphasis added, cleaned up).

This principle has largely been undisputed throughout the Supreme Court's free exercise precedents. Instead, Supreme Court justices have almost uniformly disputed whether the Free Exercise Clause's protections apply only to laws that compel affirmative acts or also to laws that inhibit religious exercise indirectly. *Compare Mahmoud*, 145 S.Ct. at 2357-58 (holding that "the Free Exercise Clause protects against policies that impose more subtle forms of interference with the religious upbringing of children" than direct coercion such as pressure to conform to "contrary viewpoints and lifestyles.") *with id*. at 2385-87 (Sotomayor, J., dissenting) (arguing that mere exposure to offensive ideas is insufficient to create a Free Exercise violation and that some sort of compulsion, "whether directly or indirectly," to give up or violate religious beliefs is required.). Justice Sotomayor's *Mahmoud* dissent compiled cases supporting the principle that the Free Exercise Clause prohibits the government from compelling acts that violate a person's religious beliefs. *See id*. at 2386 (Sotomayor, J., dissenting) (compiling cases).

Mahmoud's majority did not dispute the principle, but rather what it perceived as her desire to limit the Free Exercise Clause's protections to compulsion cases. *Id*. at 2357-58 (The dissent sees the Free Exercise Clause's guarantee as nothing more than protection against compulsion or coercion to renounce or abandon one's religion.").

The Appellants invoked this well-established principle in their arguments for *Mahmoud*'s applicability to this case. App. Br., pp. 18-19. The facts support their argument. Appellants Milford Christian Church, James Loomer, and Janet Parady operate a daycare ministry (Little Eagles) that seeks to instill core religious concepts, including the sanctity of life, in all attendees. App.46-47, ¶¶ 65-74; *see also* App.48-49, ¶¶ 77-82. Appellant Jessica Cavaretta sends her son to Little Eagles because its teachings align with her religious beliefs that she is attempting to instill in her son. App.51-52, ¶¶ 101-106; *see also* App.48, ¶ 77. Instead of permitting the Appellants to bring their children up in their religious beliefs in peace, Appellee Bye has leveraged Connecticut's daycare licensing process to demand that they vaccinate their children despite that affirmative action violating their religious beliefs. App.49, ¶¶ 85-87. If the Appellants refuse, Appellee Bye will close Little Eagles. App.49, ¶ 87.

This type of direct coercion goes well beyond the direct coercion that *Mahmoud* described *Barnette* as finding "especially egregious." Unlike *Barnette*, where the students were in public school, Appellee Bye has reached into a *church-*

run, private daycare to compel its attendees to commit affirmative actions – the receipt of vaccinations – that violate their religious beliefs and the religious beliefs that their parents are trying to instill in them. If surrender to this coercion is not forthcoming, Appellee Bye will not simply punish individual parents. She will close a church ministry entirely for its refusal to violate its doctrine and its parents' deeply held religious beliefs.

Appellee Bye scrupulously avoids discussing these facts in her brief. They are more shocking and go well beyond what *Barnette* found to be "especially egregious." They violate every long-established, First Amendment rule against direct coercion that the Supreme Court's precedents prohibit. For purposes of this case, they place it well beyond the shadow of being a close case on whether *Mahmoud*'s parental rights exception applies. It plainly does, and the Court should require Appellee Bye to justify Conn. Gen. Stat. § 19a-79 under strict scrutiny, which she cannot do.

B. In the alternative, Conn. Gen. Stat. § 19a-79 substantially interferes with the Appellants' right to direct the religious upbringing of their children.

In the alternative, *Mahmoud* requires strict scrutiny because Appellee Bye's enforcement of Conn. Gen. Stat. § 19a-79's vaccination requirement against the Appellants substantially interferes with their right to direct the religious upbringing of their children.

Mahmoud emphasized that *Yoder* found substantial interference in a situation where Amish children would be placed in "an environment hostile to Amish beliefs, where they would face pressure to conform to contrary viewpoints and lifestyles." *Mahmoud*, 145 S.Ct. at 2352 (cleaned up). If substantial interference exists in a situation when pressure to conform is the threat, substantial interference absolutely does exist when the government attempts to condition attendance of a church's daycare ministry on the performance of an act that both the parents of the attendees and the church are teaching their children is religiously wrong.

Put differently, if the Court does not find that Appellee Bye has substantially interfered with the Appellees' parental rights by conditioning children's access to a private church ministry on the performance of a religiously immoral act, *Mahmoud* and *Yoder* are untenable because compelled violations of one's religious beliefs far exceed the burden imposed by pressure to conform to a different lifestyle in a public school.

The burden on the Appellants also cannot be explained away by callously suggesting that they homeschool or care for their children full-time at home:

> homeschooling comes with a hefty price as well; it requires at least one parent to stay at home during the normal workday to educate children, thereby forgoing additional income opportunities. It is both insulting and legally unsound to tell parents that they must abstain from public education in order to raise their children in their religious faiths, when alternatives can be prohibitively expensive and they already contribute to financing the public schools.

Id. at 2360.

Tellingly, Appellee Bye makes no effort to argue that, if *Mahmoud* applies outside of the public school curriculum context, she is not substantially interfering with the Appellants' parental rights through her enforcement of Conn. Gen. Stat. § 19a-79. The Appellants cannot imagine how such an argument would read, and, apparently, neither can Appellee Bye.

The lack of such an argument from Appellee Bye confirms the obvious. Her enforcement of Conn. Gen. Stat. § 19a-79 against the Appellants violates their parental rights to direct the religious upbringing of their children. The Court should easily conclude that it does and apply strict scrutiny – under which the Appellants prevail. *See* App. Br., pp. 41-43.

CONCLUSION

For the foregoing reasons and those contained in the Appellants' opening brief, the Appellants respectfully request that the Court reverse the judgment of the district court dismissing their claims and remand this case with instructions to permit it to proceed.

Respectfully Submitted,

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CERTFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

I hereby certify that:

1. This reply brief complies with the type-volume limitation of Local Rule 32.1 because it contains 5,624 words, excluding the parts of the brief exempted by Fed. R. App. P. 32, as determined by the word counting feature of Microsoft Word 2016.
2. This brief complies with the typeface requirements of Fed. R. App. P. 32 and the typestyle requirements of Fed. R. App. P. 32 because it has been prepared in a proportionally spaced typeface using Microsoft Word 2015 in 14-pt font.

Dated: December 29, 2025

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CERTIFICATE OF SERVICE

I hereby certify that, on December 29, 2025, an electronic copy of the foregoing Reply Brief of the Plaintiffs-Appellants was filed with the Clerk of Court using the ECF system and thereby served upon all counsel appearing in this case.

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