

No. 24-718

IN THE
Supreme Court of the United States

BLAKE ANDREW WARNER,

Petitioner,

v.

HILLSBOROUGH COUNTY SCHOOL BOARD,

Respondent.

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

**AMICUS CURIAE BRIEF OF THE
RELIGIOUS FREEDOM INSTITUTE
IN SUPPORT OF PETITIONER**

BRIAN T. GOLDMAN
Counsel of Record
HOLWELL SHUSTER
& GOLDBERG LLP
425 Lexington Avenue
New York, NY 10017
(646) 837-5151
bgoldman@hsgllp.com

Counsel for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*¹

The Religious Freedom Institute (RFI) is committed to achieving broad acceptance of religious liberty as a fundamental human right, a source of individual and social flourishing, the cornerstone of a successful society, and a driver of national and international security. Among its core activities, RFI equips students, parents, policymakers, professionals, faith-based organization members, scholars, and religious leaders through programs and resources that communicate the true meaning and value of religious freedom, and apply that understanding to contemporary challenges and opportunities.

RFI envisions a world that respects religion as an indispensable societal good and which promises religious believers the freedom to live out their beliefs fully and openly. RFI submits this brief because this Petition raises fundamental questions concerning the rights of parents to make child-rearing decisions in accordance with their religious beliefs—including the decision to litigate *pro se* on their children's behalf.

¹ Pursuant to Sup. Ct. R. 37.2, counsel of record for all parties received timely notice of this filing. *Amicus* certifies that no party or party's counsel authored this brief in whole or in part and that no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or their counsel made a monetary contribution to its preparation or submission.

SUMMARY OF THE ARGUMENT

For many parents, the desire to advocate for their child’s legal interests in a courtroom stems from genuinely-held religious convictions. Regrettably, courts have eschewed any considerations of parental autonomy and religious liberty in concocting the judge-made “counsel mandate”—a blanket prohibition on *pro se* representation by a parent of his child. This Court should grant certiorari and reaffirm that the Constitution safeguards parents’ fundamental right to guide a child’s upbringing, including how that child is represented in legal matters.

ARGUMENT

I. The Counsel Mandate Tramples Fundamental Rights

A. Parental Rights Are Fundamental

Across a series of cases from *Meyer v. Nebraska* onwards, this Court has emphasized that parental rights are among the fundamental rights protected by the federal Constitution, and that parental rights are particularly durable when they intersect with free-exercise claims.

1. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), this Court acknowledged that parents have a fundamental constitutional right to direct the education and upbringing of their children. *Meyer* noted that “the liberty guaranteed . . . by the Fourteenth Amendment . . . denotes not merely freedom from bodily restraint, but also the right of the individual . . . [to] bring up children, [and] to worship God according to the dictates of his own

conscience,” and emphasized that “this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect.” *Id.* at 399–400. Further, *Meyer* recognized it is parents who bear the right (and responsibility) of educating their children. See *id.* at 400 (maintaining that, “[c]orresponding to the right of control, it is the *natural duty of the parent* to give his children education suitable to their station in life,” and also that “the *right of parents* to engage [educators] so to instruct their children . . . [is] within the liberty of the [Fourteenth] Amendment” (emphasis added)).

2. Similarly, in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), this Court expressly held that the Due Process Clause of the Fourteenth Amendment protects “the liberty of parents and guardians to direct the upbringing and education of children under their control.” *Id.* at 534. In so holding that “the education of children” is “a part of the[] liberty” of “parents and guardians,” *ibid.*, the *Pierce* Court explained that, although the government has an interest in ensuring that children are educated, see *ibid.*, this interest does not empower the government to eliminate all alternatives to public education, see *id.* at 534–35.

Indeed, *Pierce* underscored the importance of parental decisional autonomy: “The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with

the high duty, to recognize and prepare him for additional obligations.” *Id.* at 535.

3. This Court continued to recognize these foundational principles in later cases.

For instance, in *Prince v. Massachusetts*, 321 U.S. 158 (1944), this Court announced the high standard that must be met for the government to restrict parental rights. *Id.* at 166 (“[W]hen state action impinges upon a claimed religious freedom, it must fall unless shown to be necessary for or conducive to the child’s protection against some clear and present danger.”).

Although *Prince* upheld limits on parental authority, it reaffirmed that it is parents who are the primary decisionmakers for their children. See *id.* at 166 (“It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”).

Further, in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), this Court solidified the principle that parental authority—particularly when tied to religious freedom—overrides countervailing government interests. In addition to reiterating that there exists a “fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children,” *Yoder* stressed the primacy of parental rights by establishing that parents, especially when guided by faith, enjoy the unfettered right to make decisions for their children, even in the face

of compelling government interests (such as compulsory education). See *id.* at 233 (“[W]hen the interests of parenthood are combined with a free exercise claim . . . , more than merely a reasonable relation to some purpose within the competency of the State is required to sustain the validity of the State’s requirement under the First Amendment.” (internal quotation marks omitted)).

Finally, in *Troxel v. Granville*, 530 U.S. 57 (2000), this Court held that “the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a . . . judge believes a ‘better’ decision could be made.” *Id.* at 72–73. This is especially true, *Troxel* remarked, because “[t]he liberty interest at issue . . . of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Id.* at 65.

Thus, “[i]n light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.” See *id.* at 66.

B. Proceeding *Pro Se* Is A Parenting Choice

A parent’s decision to represent his child in court is not merely a hiring decision. Rather, it is an extension of the constitutionally-protected parental role.

Representing one's child in legal proceedings is an exercise of a parent's right to ensure that his child's interests are properly protected; it directly involves safeguarding a child's rights and future opportunities. It is thus a critical decision similar in kind to dictating the contours of a child's education, choosing medical care for a child, and seeking custody of a child. Hence, *pro se* representation by a parent of a child is part and parcel of an "enduring American tradition," *Yoder*, 406 U.S. at 232, namely, parents directing "the care, custody, and control of their children," *Troxel*, 530 U.S. at 65.

This Court affirmed in *Troxel* its recognition of the principle—rooted in the common law—that parents presumptively act in their child's best interest when making critical decisions, including medical decisions. Similarly, a parent's decision to advocate personally on behalf of his child in court should receive the same deference.

Unfortunately, that basic syllogism has not been accepted by lower courts. See, e.g., *Cheung v. Youth Orchestra Foundation of Buffalo, Inc.*, 906 F.2d 59 (2d Cir. 1990) ("There is nothing in the guardian-minor relationship that suggests that the minor's interests would be furthered by representation by the non-attorney guardian."). This, despite the fact a child's parents often best understand his unique needs and

circumstances, and are therefore best positioned to advance his interests.²

Indeed, *pro se* representation by a parent of his child is an act of direct involvement in the child's welfare and therefore constitutes an exercise of the parent's "high duty . . . to recognize and prepare [his child] for additional obligations." See *Parham v. J.R.*, 442 U.S. 584, 602 (1972) (quoting *Pierce*, 268 U.S. at 535). Indeed, the fact this Court clarified, in *Yoder*, that its prior pronouncement of this "high duty" in *Pierce* "must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship," is key: A parent who guides a child through a legal dispute serves as an example for that child of what it means to advocate for another's interests and pursue justice, fairness, and equity on another's behalf.

² It bears noting that parents may feel they have no choice but to represent a child *pro se* because they do not trust an attorney faithfully to represent the child's best interests given attorneys' ethical obligation to keep confidential (*i.e.*, to exclude parents from) case information and related communications with minor clients. See Model Rules of Pro. Conduct 1.14(a) ("When a client's capacity to make adequately considered decisions in connection with a representation is diminished . . . because of minority, . . . the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."); Model Rules of Pro. Conduct 1.6 ("A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation.").

II. *Pro Se* Parent Representation Is A Matter Of Religious Liberty

As noted above, *Yoder* confirmed that parents have the right to make decisions regarding their children’s upbringing based on deeply-held beliefs—particularly religious convictions. Motivations for parents to represent their children in court may stem from beliefs about family, morality, and responsibility, beliefs that themselves emanate from deeply-held religious views. *Amicus* identifies below teachings from different faiths that touch on such common principles.

To begin, many faiths designate parents as their children’s divinely-appointed guardians.³ In other words, parents of faith are regarded as stewards responsible for protecting their children’s well-being—including their children’s legal welfare.

Additionally, a ubiquitous element within religious teachings is the pursuit of justice and

³ See, *e.g.*, Ephesians 6:4 (“Nurture them in the discipline and instruction of the Lord.”); Proverbs 22:6 (“Train up a child in the way he should go, and when he is old he will not depart from it.”); Surah Al-Ahqaf 46:15, *Sahih International*, <https://quran.com/46/15> (“And We have enjoined upon man, to his parents, good treatment. His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning [period] is thirty months. [He grows] until, when he reaches maturity and reaches [the age of] forty years, he says, ‘My Lord, enable me to be grateful for Your favor which You have bestowed upon me and upon my parents[.]’”).

fairness.⁴ Parents of faith may believe they are obligated to advocate for their children in court, especially if they believe their children were wronged.

Relatedly, protecting children's innocence is a core tenet in many religions.⁵ Parents of faith may seek to represent their children in court in order to shield their children from environments or decisions they view as harmful to their development. Indeed, here, Petitioner Blake Warner sought to represent his son because he sought to shield his son from an

⁴ See, *e.g.*, Isaiah 1:17 (“Learn to do good; seek justice, correct oppression; bring justice to the fatherless, plead the widow’s case.”); Jeremiah 22:3 (“Thus says the Lord: Do justice and righteousness, and deliver from the hand of the oppressor him who has been robbed. And do no wrong or violence to the resident alien, the fatherless, and the widow, nor shed innocent blood in this place.”); Micah 6:8 (“He has shown you, O mortal, what is good. And what does the Lord require of you? To act justly and to love mercy and to walk humbly with your God.”); Surah Al-Ma’idah 5:8, *Sahih International*, <https://quran.com/5/8> (“Do not let the hatred of a people lead you to injustice. Be just! That is closer to righteousness[.]”).

⁵ See, *e.g.*, Philippians 2:15–16 (“[S]o that you may become blameless and pure, ‘children of God without fault in a warped and crooked generation.’” (quoting Deuteronomy 32:5)); Matthew 18:1–5 (“At that time the disciples came to Jesus and asked, ‘Who, then, is the greatest in the kingdom of heaven?’ He called a little child to him, and placed the child among them. And he said: ‘Truly I tell you, unless you change and become like little children, you will never enter the kingdom of heaven.’”); Surah Al-Isra 17:24, *Sahih International*, <https://quran.com/17/24> (“And be humble with them out of mercy, and pray, ‘My Lord! Be merciful to them as they raised me when I was young.’”).

educational environment he regarded as detrimental to his son's development.

Finally, faiths frequently emphasize family unity and communal responsibility.⁶ Many faiths encourage parents to teach their children the distinction between right and wrong.⁷ And in many faiths, parents are regarded as the representatives of their family in the broader community.⁸

III. Even A Legitimate Governmental Interest Does Not Outweigh This Fundamental Right

Even if the government has a legitimate interest in ensuring competent representation, such an interest does not outweigh parents' fundamental right to decide how their children's interests are represented.

⁶ See, *e.g.*, Psalm 133:1 ("Behold, how good and pleasant it is when brothers dwell in unity!"); 1 Corinthians 1:10 ("I appeal to you, brothers and sisters, in the name of our Lord Jesus Christ, that all of you agree with one another in what you say and that there be no divisions among you, but that you be perfectly united in mind and thought."); Surah An-Nahl 16:72, *Sahih International*, <https://quran.com/16/72> ("And Allah has made for you spouses of your own kind, and given you through your spouses children and grandchildren[.]").

⁷ See, *e.g.*, Deuteronomy 6:6–7 ("These commandments that I give you today are to be on your hearts. Impress them on your children[.]"); Ephesians 6:4 ("Fathers, do not exasperate your children; instead, bring them up in the training and instruction of the Lord.").

⁸ See, *e.g.*, 1 Timothy 5:8 ("Anyone who does not provide for their relatives, and especially for their own household, has denied the faith and is worse than an unbeliever.").

As noted above, this Court in *Prince* explained that if the government seeks to interfere with a faith-based parental right consistent with the Constitution, the government must demonstrate that its actions are narrowly tailored to ensure “the child’s protection against some clear and present danger.” *Prince*, 321 U.S. at 167.

The government is unable to proffer any “clear and present danger” sufficient to justify a blanket prohibition on *pro se* parent representation. Indeed, a parent’s decision to represent his child in court poses no threat of “jeopardiz[ing] the health or safety of the child,” or of “materially detract[ing] from the welfare of society.” *Yoder*, 406 U.S. at 234. Moreover, to the extent a parent turns out to lack the faculty to represent competently his child in court, the court can mitigate such concerns when they arise. There is no need for a prophylactic bar.

Finally, because *Yoder* established that faith-based parental decision-making warrants additional insulation from governmental interference, parents seeking to represent their children in court for religious motivations enjoy enhanced protections. Any attempt to justify the judge-made ban on *pro se* parent representation deserves heightened scrutiny given *Troxel*’s skepticism toward judicial infringement upon child-rearing decisions. 530 U.S. at 72–73.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Brian T. Goldman
Counsel of Record
HOLWELL SHUSTER
& GOLDBERG LLP
425 Lexington Avenue
New York, NY 10017
(646) 837-5151
bgoldman@hsgllp.com

Counsel for Amicus Curiae