

WHAT CAN STATES TEACH?: THE RIGHT TO EDUCATION AFTER MAHMOUD

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*In the summer of 2025, the U.S. Supreme Court set new limits on what public schools could require students to learn. *Mahmoud v. Taylor* pitted a school district interested in promoting pluralism against religious parents who wished to withdraw their children from classroom instruction that promoted celebration and acceptance of LGBTQ+ people. The Court found a violation of those parents’ constitutional right to freely exercise their religion, which both expanded the control parents can exert over their child’s public school education and increased the likelihood of similar claims going forward. As federal courts hear this newly expanded set of First Amendment claims, they must decide: what is a public school’s “compelling interest” in its curricular decisions?*

*This Note finds an answer in the states. Nearly all fifty states guarantee their citizens an education—but they each do it in their own way. This Note argues that when parents sue a school district under *Mahmoud*, the “compelling interest” at stake is the particular right to education held by a child in that state. This Note presents two types of rights: a “structural right,” meaning one designed around resource allocation, and a “right to results,” meaning a state obligation to provide an education that achieves state-defined ends. The “compelling interest” analysis presented in this Note would provide ambitious states with more discretion to design their curricula to achieve specific ends.*

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INTRODUCTION

When children go to school, what do they learn? Assuming all goes well, they learn the basics: reading and writing, addition and subtraction, the history of the American Civil War, and the scientific method. But, of course, school teaches them more. School teaches children when to listen quietly and when to speak up, how to work with a team, and how to manage their own time. It teaches children what makes them laugh, what they like to read, and with whom they want to spend their time. At their best, public schools prepare children to be citizens, colleagues, and neighbors.

Montgomery County, Maryland, the most religiously diverse county in the nation,¹ wanted to prepare its students for life in a pluralistic democracy.² The school board examined its reading curriculum in 2022 and found it lacking representation of LGBTQ+ couples.³ Accordingly, the board added to this curriculum several books that depicted and celebrated LGBTQ+ couples and transgender characters.⁴

“Hundreds of parents . . . expressed concern” over these books.⁵ In some parents’ view, the school board was violating their First Amendment right to freely exercise their religion and raise their child in their religious tradition.⁶ When the county rejected their requests to remove their children from classes, the parents sued.⁷

In the summer of 2025, the U.S. Supreme Court sided with the parents.⁸ In *Mahmoud v. Taylor*,⁹ the 6-3 majority held that a school burdens a parent’s constitutional rights whenever the school’s policy “‘substantially interfer[es] with the religious development’ of the parents’ children” and when “those policies pose ‘a very real threat of undermining’ the religious beliefs and practices that the parents wish to instill in their children.”¹⁰

Mahmoud opens the courthouse doors to religious parents who seek more influence over their child’s public education. School districts will now need to find a new path to require curricula that exposes students to ideas that might contradict their parents’ religious beliefs. The old paths are now

1. PUB. RELIGION RSCH. INST., 2023 PRRI CENSUS OF AMERICAN RELIGION: COUNTY-LEVEL DATA ON RELIGIOUS IDENTITY AND DIVERSITY 19 (2024), https://prri.org/wp-content/uploads/2025/05/PRRI_Dec_2024_Religion_final-1.pdf [https://perma.cc/5TUK-MRR5].

2. See Petitioners’ Appendix at 600a–05a, *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025) (No. 24-297) (declaration of Niki T. Hazel, Associate Superintendent for Curriculum at Montgomery County Public Schools (MCPS)).

3. See *id.* at 603a.

4. See *id.* at 604a.

5. See *id.* at 183a.

6. See *id.* at 161a–62a.

7. See *Mahmoud v. McKnight*, 688 F. Supp. 3d 265 (D. Md. 2023), *aff’d*, 102 F.4th 191 (4th Cir. 2024), *rev’d and remanded sub nom.*, *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025).

8. See *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2342 (2025).

9. 145 S. Ct. 2332 (2025).

10. *Id.* at 2361 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)).

closed: opt-outs are not feasible,¹¹ and arguments that the curricula do not burden parents' free exercise rights are not reliable.¹²

As school districts attempt to find new paths, courts will confront hard questions: Who holds the right to an education? Who holds the power to define that right? Does the obligation to educate children empower a state to strike down parents' objections whenever it deems necessary?

School districts that compel particular curricula will confront a daunting obstacle: federal courts and the lawyers arguing before them have failed to develop a robust theory of the compelling government interest in education, let alone the interest in pluralistic curricula.¹³ To develop this area of law, those lawyers and the school boards they represent must look to the states.

Understanding how school boards can win these cases requires an understanding of public schools in the United States. Part I of this Note explains that education is governed by the individual states,¹⁴ forty-eight of which grant citizens a constitutional right to education.¹⁵ The rightsholder, however, is disputed: Does the child hold the right to their own education?¹⁶ Or do their parents?¹⁷

Despite the Court's landmark ruling in *Mahmoud* and lower courts' treatment of the decision,¹⁸ there is still an opening for school districts to defend their curricular requirements. The government still wins if it can prove that its required public school curriculum was narrowly tailored toward a "compelling state interest."¹⁹ The Supreme Court and federal appellate courts recognize a number of interests in education,²⁰ but the core questions of education have fallen primarily to the states.²¹

States have generally created two types of education rights; Part II explores both. The first is a "structural right."²² States that guarantee their citizens a structural right to education must allocate sufficient or equal resources to each child in their state. Part II discusses Wyoming as an example. There, the state's highest court determined that "deficient physical facilities deprive students of an equal educational opportunity" under the state's constitution.²³

11. See Petitioners' Appendix, *supra* note 2, at 607a–08a; *infra* notes 98–102 and accompanying text.

12. See *Mahmoud*, 145 S. Ct. at 2361.

13. See *infra* notes 182–92.

14. See *infra* Part I.A.

15. See *infra* App. A. This table, assembled by the author, surveys holdings from the highest court in each state to identify the state's specific right to education. The two states that do not provide a right to education are Iowa and Maine.

16. See *infra* Part I.B.1.

17. See *infra* Part I.B.2.

18. See *infra* Part I.C.

19. See *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2361 (2025) (quoting *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 (2022)).

20. See *infra* Parts I.D–E.

21. See *infra* notes 202–08 and accompanying text.

22. See *infra* Part II.A.

23. See *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1275 (Wyo. 1995).

The Wyoming court described a right to equal and adequate resources in education²⁴—a right to adequate structure.

The second type is a “right to results.”²⁵ States that guarantee this right must provide students with a minimum quality of education. This Note discusses the three criteria against which states typically measure their public schools when determining if they have met this minimum standard: competence, such as the ability to read and write; labor, meaning the development of skills that qualify a graduate for employment; and civics, generally defined as fostering a person’s ability to understand, participate in, and affect their community. This Note uses Kentucky as an example of this model.²⁶

Part III presents a new argument for school boards to wield in defense of pluralistic curricula. Departing from the consensus view that *Mahmoud* is a hard boundary on what states can require of their students,²⁷ this Note identifies a solution. By identifying a compelling interest in providing children with a constitutionally prescribed education, states can justify pluralistic curricula over a parent’s objection.²⁸ This argument comports with the structure of U.S. education, the states’ primacy over education, and the concern for the child who holds the right to education.²⁹ Further, tying a state’s compelling interest to the strength of its constitutional right to education is good policy. “Right-to-result” states owe their children a robust education; with that responsibility comes the power to design a curriculum that satisfies that goal.³⁰

For children in every state, a public education is an opportunity. By granting constitutional rights to education, states have bound themselves to providing public school curricula that serve the individual child, classroom, and society. After *Mahmoud*, states must emphasize this obligation or risk ceding control of education to the caprices of individual parents.

I. DEFINING THE EDUCATION RIGHT

While the Supreme Court has long recognized that public education is a critical function of government,³¹ the federal government has no specific power over the public education system.³² Instead, education is a

24. *Id.* at 1279.

25. *See infra* Part II.B.

26. *See* *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989) (setting out substantive criteria for the state’s educational requirement).

27. *See infra* Part III.A.

28. *See infra* Part III.C.

29. *See infra* Part III.C.I.

30. *See infra* Part III.C.2.

31. *See, e.g.,* *Ambach v. Norwick*, 441 U.S. 68, 76 (1979) (“Public education, like the police function, ‘fulfills a most fundamental obligation of government to its constituency.’” (quoting *Foley v. Connelie*, 435 U.S. 291, 297 (1978))).

32. *See* *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 18 (1973) (holding that there is no “fundamental right to education” under the U.S. Constitution). *But see, e.g.,* Derek W. Black, *The Constitutional Compromise to Guarantee Education*, 70 STAN. L. REV. 735, 735 (2018) (arguing that “education became an implicit right of the Fourteenth Amendment’s

long-recognized police power of the states, meaning it is a domain that the state is empowered and expected to regulate.³³

Because the power to educate is distributed among the many states, rather than concentrated within the federal government, each individual's legal relationship to education, and in particular to what schools decide to teach, varies significantly. This part sets out the bureaucratic structures, legal disputes, and policy questions that mold the right to education.

A. *Who, If Anyone, Provides the Right to Education?*

Former Secretary of Education Richard W. Riley neatly described educational bureaucracy in the United States: "a local function, a state responsibility, and a national priority."³⁴ Supreme Court justices have adhered to this framework by keeping school policy at an arm's length, explaining that "[i]t is not the business of this Court to gainsay the judgments of experts on matters of pedagogy. Such decisions must be left to the discretion of those administrators charged with the supervision of the Nation's public schools."³⁵

The states have taken up the mantle. All fifty state constitutions mention the role of education in state government.³⁶ Generally left to their own devices in designing the right, the states have guaranteed their citizens a range of education rights.³⁷ To twist Justice Louis D. Brandeis's famous phrase, states act as laboratories of education.³⁸

Citizenship Clause" when the post-Civil War Congress "indicated that it would not readmit [Confederate] states to the Union" without guaranteeing education to their citizens); Susan H. Bitensky, *Theoretical Foundations for a Right to Education Under the U.S. Constitution: A Beginning to the End of the National Education Crisis*, 86 NW. U. L. REV. 550, 574 (1992) ("The Constitution contains a number of provisions any one of which arguably forms the analytical basis for an implied positive right to education.").

33. See *Barbier v. Connolly*, 113 U.S. 27, 31 (1884) (listing education among "the power of the State, sometimes termed its police power"); *United States v. Lopez*, 514 U.S. 549, 580–81 (1995) (Kennedy, J., concurring) (framing education within the "historic police powers of the States" (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947))).

34. Richard W. Riley, *The Role of the Federal Government in Education—Supporting a National Desire for Support for State and Local Education*, 17 ST. LOUIS U. PUB. L. REV. 29, 30 (1997).

35. *Sch. Dist. v. Schempp*, 374 U.S. 203, 279 (1963) (Brennan, J., concurring); see also *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) ("Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.").

36. See generally EMILY PARKER, EDUC. COMM'N OF THE STATES, CONSTITUTIONAL OBLIGATIONS FOR PUBLIC EDUCATION (2016), <https://www.ecs.org/wp-content/uploads/2016-Constitutional-obligations-for-public-education-1.pdf> [https://perma.cc/G9QG-4R54] (identifying such language in all fifty state constitutions).

37. See *infra* Part II.

38. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.").

The states are particularly well-positioned experimenters in the field of education because schooling, like many other state functions, calls for positive government intervention rather than requiring government restraint. Where the federal constitution recognizes citizens' negative rights, meaning their freedom *from* government action, early state constitutions were designed around citizens' positive rights, meaning the guarantees the government must provide to them.³⁹

Beginning in 1780, states' most common and most established "explicit positive right"⁴⁰ was education.⁴¹ Today, forty-eight states provide a positive right to education.⁴² Then and now, state constitutional law broadly recognizes that public schools are "not only . . . a means of elevating the individual and preparing [them] for the responsibilities of citizenship, but also of protecting the republic itself."⁴³

In all cases, state constitutions put this responsibility on the state government itself.⁴⁴ States vary, however, in the language they use to

39. See Mila Versteeg & Emily Zackin, *American Constitutional Exceptionalism Revisited*, 81 U. CHI. L. REV. 1641, 1681–83 (2014) (comparing the federal constitution's "requirement that the government take affirmative action to protect recognized *negative* rights" with state constitutions, which "enshrine[] many explicit positive rights"); see also JOHN J. DINAN, *THE AMERICAN STATE CONSTITUTIONAL TRADITION* 168–69 (2006) (observing that while the federal government has been reticent to "commit[] to encouraging the moral development of the citizenry . . . state constitution makers have been intimately concerned with the formation of citizen character"); EMILY ZACKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA'S POSITIVE RIGHTS* 67–105 (2013) (arguing that state constitutions provide "positive rights" to education).

40. Versteeg & Zackin, *supra* note 39, at 1688.

41. *Id.* at 1689 ("Massachusetts was the first state to create a constitutional mandate related to education, and it did so in 1780."); see also ZACKIN, *supra* note 39, at 67 ("States . . . have always played a far larger role than the federal government in the provision of public education, and it is state constitutions that contain explicit education rights.").

42. See *infra* App. A. The table notes whether the state provides a "structural right" to education, see *infra* Part II.A, a "right to results," see *infra* Part II.B, or neither.

43. ZACKIN, *supra* note 39, at 73–74; see also *A.C. v. Raimondo*, 494 F. Supp. 3d 170, 184 (D.R.I. 2020) ("Education, and particularly civics education, has been a fundamentally important value throughout our nation's history because it is the foundation of an informed citizenry that can effectively participate in a republican form of government.").

44. See Versteeg & Zackin, *supra* note 39, at 1696 (noting that courts have "interpreted governmental failures to comply with explicit constitutional directions as violative of state constitutions . . . most frequently in the arena of public education"); Scott R. Bauries, *The Education Duty*, 47 WAKE FOREST L. REV. 705, 706 (2012) (describing "specific affirmative duties placed upon legislatures by state constitutions"); see also *Leandro v. State*, 488 S.E.2d 249, 265 (N.C. 1997) (Orr, J., concurring in part) ("The state's ultimate responsibility for education under the Constitution cannot be delegated."); *New Haven v. State Bd. of Educ.*, 638 A.2d 589, 591–92 (Conn. 1994) (noting that the Connecticut constitution "places the ultimate responsibility for the education of the children of Connecticut on the state"). Some state constitutions are more specific, placing the responsibility with the legislative branch. See, e.g., *McDaniel v. Thomas*, 285 S.E.2d 156, 165 (Ga. 1981) ("[I]t is primarily the legislative branch of government which must give content to the term 'adequate.'"); *Lewis E. v. Spagnolo*, 710 N.E.2d 798, 803 (Ill. 1999) (finding that courts have meager authority to limit "the legislature's power to enact public school laws").

announce the education right.⁴⁵ Phrases like “general and uniform,”⁴⁶ “thorough and efficient,”⁴⁷ and “common schools”⁴⁸ recur. The driving forces of the education clauses range widely as well. Some “mandate that the legislature establish free common schools,” others “require[] legislatures to preserve and actively manage their school funds,” and still others “obligate[] state governments to finance schools through particular forms of taxation and appropriation.”⁴⁹ In all cases, however, the state-given right to education is a positive one.⁵⁰

B. Who Holds the Education Right?

Understanding the nature and application of the education right requires a clear vision of who, exactly, holds the positive right to education. This section addresses the two answers that predominate: Part I.B.1 examines the child as rightsholder and Part I.B.2 discusses the parent’s rights.⁵¹

1. The Child as Rightsholder

Under one view, the state makes its guarantee of education to the individual child. Commentators associated with this view describe a “children’s rights model,”⁵² which distinguishes rights from interests: rights are rigidly defined “claims and entitlements against the state,” while interests include the broader set of policies “that could further the child’s well-being.”⁵³ In this framing, each person—including each child—is entitled to their liberties.⁵⁴

As applied to the child’s relationship to public education, this model argues that parents’ wishes cannot override the child’s particular rights.⁵⁵

45. See *infra* App. A (comparing the education clause in each state’s constitution); see Robert M. Jensen, *Advancing Education Through Education Clauses of State Constitutions*, 1997 BYU EDUC. & L.J. 1, 3–8 (providing “a survey of the education clauses and their various provisions”).

46. See, e.g., ARIZ. CONST. art. XI, § 1; MINN. CONST. art. XIII, § 1.

47. See, e.g., N.J. CONST. of 1947 art. VIII, § 4, para. 1; MD. CONST. art. VIII, § 1.

48. See, e.g., CAL. CONST. art. IX, § 5; NEB. CONST. art. VII, § 1.

49. ZACKIN, *supra* note 39, at 68.

50. See *supra* note 39 and accompanying text; see also DINAN, *supra* note 39, at 223 (observing that while the federal government has been reticent to “commit[] to encouraging the moral development of the citizenry . . . state constitution makers have been intimately concerned with the formation of citizen character”).

51. See Susan Gluck Mezey, *Constitutional Adjudication of Children’s Rights Claims in the United States Supreme Court, 1953–92*, 27 FAM. L.Q. 307, 309 (1993) (“When the interests of the parent and child diverged, . . . the Court was forced to reconcile the principle of parental authority with the child’s constitutional right.”).

52. See Clare Ryan, *Are Children’s Rights Enough?*, 72 AM. U. L. REV. 2075, 2082 (2023); see also Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 DUKE L.J. 75, 88–96 (2021) (“Proponents of expansive parental rights . . . justify broad parental control on the grounds that children are dependent creatures and that parents, or in some cases teachers or other state actors, can and will represent children’s interests.”).

53. Ryan, *supra* note 52, at 2092.

54. Gary A. Debele, *A Children’s Rights Approach to Relocation: A Meaningful Best Interests Standard*, 15 J. AM. ACAD. MATRIM. L. 75, 89–90 (1998).

55. See Ryan, *supra* note 52, at 2086, 2091.

Generally, as one scholar concedes, “a fit parent is presumed to act in the best interest of the child.”⁵⁶ However, two sets of circumstances compel the state to fulfill its duty to the child rather than limit itself by the parents’ ability or viewpoints.

First, parents may lack the resources or power to best serve the child’s interest.⁵⁷ Government, on the other hand, has the vast resources and field-specific knowledge necessary to shoulder responsibility for the child’s education. This gap in resources gives advocates one reason to “dispute the idea that parents are always in a position to defend their child’s interests.”⁵⁸

Second, the child’s rights would trigger government action “[w]hen the interests of the parent and child diverge[.]”⁵⁹ For example, interests may diverge when the child’s right to education includes a state duty to provide “schooling that gives the children the tools they will need to think for themselves.”⁶⁰ In these circumstances, “the child must not be denied the type of education that will allow [them], as an adult, to choose whether (and in what way and to what degree) to honor [moral] commitments.”⁶¹ Under the children’s rights model, state governments owe the child more than just the education a parent wants their child to receive. Instead, the government owes the child “a program of education that encourages—perhaps, requires—children to question authority, including the authority to choose skepticism.”⁶²

These arguments have persuaded some federal and state courts to explicitly recognize the child as rightsholder.⁶³ Advocates also point to suggestions by the Supreme Court that the state has to play a parent-like role.⁶⁴

56. *Id.* at 2090.

57. *See id.* at 2085–86.

58. *Id.*

59. Mezey, *supra* note 51, at 309.

60. Jeffrey Shulman, *The Parent as (Mere) Educational Trustee: Whose Education Is It?*, 89 NEB. L. REV. 290, 294 (2010).

61. *Id.* at 295, 296 (“[P]ublic education can bring its students a much needed respite from the ideological solipsism of the enclosed family.”).

62. *Id.* at 297; *see also* Samantha Godwin, *Against Parental Rights*, 47 COLUM. HUM. RTS. L. REV. 1, 4–5 (2015) (arguing that “parental legal rights are best understood as property interests” which “must therefore be regarded as incompatible with liberal and egalitarian commitments to the equality of persons”).

63. *See, e.g.*, H.A. v. Teaneck Bd. of Educ., No. 09–CV–3301, 2010 WL 891830, at *7 (D.N.J. Mar. 10, 2010) (referencing “a child’s right to education”); *Hernandez v. Grisham*, 508 F. Supp. 3d 893, 987 (D.N.M. 2020) (same); *Bellevue Sch. Dist. v. E.S.*, 257 P.3d 570, 580 (Wash. 2011) (en banc) (same).

64. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Supreme Court sided with parents who opposed a state law prohibiting the teaching of the German language. *Id.* at 403; *see infra* notes 161–63 and accompanying text. Describing *Meyer*, Professor Stacey Barell Steinberg argues that even the “seminal case exploring” parental rights “also paid deference to the state’s *parens patriae* interest in a child’s education. While it empowered parents [in the private education context,] it also recognized the autonomy of the public school system.” Stacey Barell Steinberg, *Children Seen but Not Heard*, 66 ARIZ. L. REV. 147, 153 (2024). By holding that the Nebraska statute was unlawful because it was “arbitrary and without reasonable relation to any end within the competency of the State,” *Meyer*, 262 U.S. at 403, the Court implicitly recognized the state’s right “to establish its public-school curriculum and to compel

2. The Parent as Rightsholder

The opposite view, made prominent in recent years by the New Parents' Rights Movement, frames state-provided rights as guarantees made to the child and parent together.⁶⁵ The movement “explicitly aims to increase parents’ decision-making authority in educational matters, especially as compared to the authority of the state.”⁶⁶

Courts and theorists argue that because parents best understand their children’s interests, they are best suited to interpret and mediate any guarantees a government makes for their child’s benefit.⁶⁷ This theory provides that “state intrusions into the family sphere (or the constant threat of such intrusion) undermine the family intimacy and parent-child bonding” in general.⁶⁸

The argument has two fundamental premises: first, that parents and governments have different interests in a child’s wellbeing; and second, that the difference in these interests yields fundamentally distinct understandings of rights that purport to benefit the child.⁶⁹ While parents focus on “the child’s well-being” in specific, the state’s obligation is to “the *common good* of the political community as a whole.”⁷⁰ Where “there is broad societal consensus about what children need,” this divergence poses no harm.⁷¹ But when “the choice that promotes child wellbeing will be contested or uncertain,” courts should presume that parents know best.⁷² The split-interest theory requires that the “parents’ educational authority is

students to attend school” so long as it remained with its competency. Todd A. DeMitchell, Richard Fosey & Terri A. DeMitchell, *A Moral Panic, Banning Books, and the Constitution: The Right to Direct the Upbringing and the Right to Receive Information in a Time of Inflection*, 397 EDUC. L. REP. 905, 916 (2022).

65. See Kristine L. Bowman, *The New Parents’ Rights Movement, Education, and Equality*, 91 U. CHI. L. REV. 399, 416–36 (2024) (describing the movement’s theory and policy advocacy).

66. *Id.* at 428.

67. See Clare Huntington & Elizabeth Scott, *The Enduring Importance of Parental Rights*, 90 FORDHAM L. REV. 2529, 2529 (2022) (“State deference to parents is warranted not because parents are infallible, nor because parents own their children, but rather because parental rights, properly understood and limited, promote child wellbeing.”); Melissa Moschella, *Defending the Fundamental Rights of Parents: A Response to Recent Attacks*, 37 NOTRE DAME J.L. ETHICS & PUB. POL’Y 397, 400 (2023) (“[P]arents’ special knowledge of and affection for their children give them unique insight into what is truly best for them, and also provide strong motivation to promote their well-being.”); *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (“[H]istorically [the law] has recognized that natural bonds of affection lead parents to act in the best interests of their children.”); Mary Ziegler, Maxine Eichner & Naomi Cahn, *Retrenchment by Division: The New Politics of Parental Rights*, 123 MICH. L. REV. 669, 700 (2025) (“[T]he Court has affirmed the broad authority of parents based on recognition of their role in protecting their children’s wellbeing and preparing them for future obligations.”).

68. Moschella, *supra* note 67, at 400–01.

69. See *id.* at 414.

70. *Id.*

71. Huntington & Scott, *supra* note 67, at 2530.

72. *Id.* at 2534.

primary” when the state makes any controversial choice regarding a child’s education.⁷³

Commentators focus on the type of controversial choices at issue in *Mahmoud*: “sensitive moral and religious issues.”⁷⁴ To avoid undue “state intrusions into the family sphere,” commentators argue that “public schools in general ought to avoid promoting controversial viewpoints” on these issues at all.⁷⁵ Under this view, the states’ power to override a parent’s decision is narrowly limited to “reasonable compulsory education laws seeking to facilitate the ordered reproduction of society over time.”⁷⁶

The New Parents’ Rights Movement won a series of victories in the wake of the COVID-19 pandemic, including parents’ bill of rights laws in Florida and Georgia.⁷⁷ These laws and others rode a wave of anti-critical race theory politics; by the pandemic’s fourth year, “eighteen states had enacted laws or other regulations aimed at restricting teaching about race and racism.”⁷⁸ As mistrust of local government’s curricular decision-making grew, “[p]arents’ rights rhetoric infused discussion of all these measures.”⁷⁹

* * *

The Supreme Court recently expressed sympathy for the pro-parent perspective.⁸⁰ In finding a burden on the parents’ free exercise rights—notably, not the children’s—the Court established the primacy of parents within “the balance of power between parents, students, and public schools.”⁸¹ The decision places parents squarely between their children and any government policy that interferes with a student’s religious upbringing, holding that “the right of parents ‘to direct the religious upbringing of their’

73. Moschella, *supra* note 67, at 413–14.

74. *Id.* at 400, 419; *see also* Bowman, *supra* note 65, at 421 (“[V]arious proposals seek to enable a parent to opt their child out of particular curriculum, to change the generally applicable curriculum by objecting to it being taught to an individual child, and to grant parents access to curriculum and lesson plans on demand.”); *cf.* *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2353 (2025) (opposing required instruction in LGBTQ+-inclusive storybooks because they are “liable to be processed as having moral connotations”).

75. Moschella, *supra* note 67, at 400–01, 419; *see also* Bowman, *supra* note 65, at 421.

76. Moschella, *supra* note 67, at 419.

77. *See* Bowman, *supra* note 65, at 418–19; FLA. STAT. § 104.01 (2023) (establishing the “fundamental right[] of a parent to direct the upbringing . . . of his or her minor child”); GA. CODE ANN. § 20-2-786 (2022) (establishing “[t]he right to review all instructional materials intended for use in the classroom of his or her minor child”).

78. Bowman, *supra* note 65, at 423–24.

79. *Id.* at 426.

80. *See* Kalyn Belsha, *Maryland District Must Let Parents Opt Kids Out of Lessons on Religious Grounds*, *Supreme Court Rules*, CHALKBEAT (June 27, 2025), <https://www.chalkbeat.org/2025/06/27/supreme-court-rules-in-favor-of-opt-out-rights-for-maryland-parents/> [<https://perma.cc/EC5Q-YPRS>] (“The 6-3 decision in *Mahmoud v. Taylor* represents a win for the burgeoning parental rights movement, religious liberty advocates, and the Trump administration.”).

81. Emily Gold Waldman, *Parents at the Schoolhouse Gate*, 104 N.C. L. REV. 773, 775 (2026); *see also* Jeremiah Chin, *Self-Determination Through Children’s Rights: Resisting the Paradoxical Pretext of Parents’ Rights Legislation*, 100 WASH. L. REV. 867, 896–900 (2025) (arguing that “the Supreme Court gave profound deference to parental rights in *Mahmoud v. Taylor*”).

children would be an empty promise if it did not follow those children into the public school classroom.”⁸²

C. Mahmoud *Redefines the Question*

As the movement for parental rights in education grew in early 2022, a school board and three pairs of parents clashed over the school’s reading curriculum.⁸³ The resulting Supreme Court decision gave new texture to the right to education as limited by parents’ free exercise rights.⁸⁴

This section describes the facts of *Mahmoud* not only to better explain the Court’s decision, but also to illustrate the various interests at issue: the parents’ interest in exercising their religion, the state’s interest in educating children toward some particular ends, and the child’s interest in both exercising their parents’ religion and receiving an education.

1. MCPS Had a Vision of Education

In spring 2022, Montgomery County—the most populous in Maryland and most religiously diverse in the country⁸⁵—decided to promote representation of LGBTQ+ people in the county’s public school curricula.⁸⁶ This type of goal was not new to Montgomery County Public Schools (MCPS), which selects materials for classroom instruction based on, among other factors, “relevance to and reflection of a multicultural society.”⁸⁷ The district also instructs its English Language arts (ELA) teachers to “ensure students are meeting” state standards by “[t]hinking critically about diverse points of view,” developing their thinking, and reading “a range of diverse texts to understand and appreciate multiple perspectives.”⁸⁸

A six-person committee of reading and instructional specialists⁸⁹ recommended thirteen books that it believed would satisfy MCPS’s twin

82. *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2351 (2025) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)).

83. See Petitioners’ Appendix, *supra* note 2, at 529a–45a.

84. For more discussion of *Mahmoud* in the context of parental rights, see Waldman, *supra* note 81.

85. America Counts Staff, *Maryland: 2020 Census—Maryland’s Population Grew 7% to 6,177,224 Last Decade*, U.S. CENSUS BUREAU, (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/maryland.html> [<https://perma.cc/MQM8-CA42>]; PUB. RELIGION RSCH. INST., *supra* note 1, at 19.

86. See Petitioners’ Appendix, *supra* note 2, at 603a. One prominent scholar favorably described MCPS’s “effort, consistent with liberal political preferences, to promote tolerance and affirmation of LGBTQ+ persons.” Richard M. Re, *The Supreme Court, 2024 Term—Foreword: To a Conservative Warren Court*, 139 HARV. L. REV. 1, 22 (2025).

87. See Petitioners’ Appendix, *supra* note 2, at 600a; see also Defendant’s Brief in Opposition, Exhibit 5 at 2, *Mahmoud v. McKnight*, 688 F. Supp. 3d 265 (D. Md. 2023) (No. 23-cv-01380), Dkt. No. 42-6 (requiring, on a “Record of Evaluation for Instructional Materials,” information about “cultural relevance (culture, religion, ethnicity, region, country, author, characters, gender)”).

88. Defendants’ Brief in Opposition, Exhibit 3 at 2, *McKnight*, 688 F. Supp. 3d 265 (No. 23-cv-01380), Dkt. No. 42-4. (stating MCPS’s “Core Learning Practices” under its ELA curriculum).

89. Petitioners’ Appendix, *supra* note 2, at 603a–04a.

goals of fostering students' performance and better representing the district's LGBTQ+ students and families.⁹⁰ The district introduced the books to its ELA program for the 2022–23 school year, recommending different books for different grade levels.⁹¹ The books included depictions of same-sex couples and crushes,⁹² characters who celebrate those couples' weddings,⁹³ affirmations that people can wear the clothes and use the bathrooms of their choice,⁹⁴ and children who question their gender or transition to a gender not assigned to them at birth.⁹⁵

MCPS teachers were expected to use the approved books for instruction; to prepare them, the district offered an optional professional development session⁹⁶ that provided teachers with guidelines.⁹⁷ MCPS encouraged teachers to use the books as jumping-off points for discussion focused on “tolerance, empathy, and respect for different views.”⁹⁸

The district's attempt to represent its diverse families was cut short by the hard, practical edge of parents' rights. “Hundreds of parents in Montgomery County” quickly rebelled against the district's plan, exercising the district's opt-out and removing their child from the classroom during the reading and discussion of the LGBTQ+-inclusive books.⁹⁹ In at least one MCPS elementary school, “dozens of students” were removed during instruction.¹⁰⁰

Principals and teachers told the district that the pervasive absenteeism would inevitably “caus[e] significant disruptions to the classroom environment and undermin[e] MCPS's educational mission.”¹⁰¹ The district, recognizing that the opt-out system for the books was unsustainable in

90. *Id.* Adopting the Supreme Court's nomenclature for the books approved for use in MCPS schools, this Note refers to the books at issue as “the LGBTQ+-inclusive books,” or simply “the books.” See, e.g., *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2343 n.5 (2025).

91. See Petitioners' Appendix, *supra* note 2, at 604a.

92. See, e.g., *id.* at 286a, 419a, 445a.

93. See *id.* at 304a (depicting a niece celebrating her uncle's wedding as “the best wedding ever”); *id.* at 424a (depicting a kingdom celebrating a prince's wedding). But see *id.* at 400a–01a (depicting the prince's parents' gloomy expressions after he announces he is looking for “something different in a partner” than the women he has met during his courtship).

94. *Id.* at 323a, 326a.

95. *Id.* at 370a, 454a, 462a.

96. *Id.* at 604a–05a.

97. *Id.* at 628a–35a (providing “Sample Student Call-Ins,” possible responses to hypothetical student comments). According to the parents, MCPS distributed the “Call-Ins” resource to educators who attended an “optional professional development” training in the summer of 2022. *Id.* at 604a.

98. *Mahmoud v. McKnight*, 688 F. Supp. 3d 265, 280 (D. Md. 2023), *aff'd*, 102 F.4th 191 (4th Cir. 2024), *rev'd and remanded sub nom.*, *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025). The original named defendant in the case was Monifa B. McKnight, then-superintendent of MCPS. See *id.* at 284. Judge Deborah L. Boardman heard the case. When Thomas W. Taylor took over as superintendent on July 1, 2024, his name was substituted for hers. See *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025); Montgomery County Public Schools, *Superintendent*, MONTGOMERY CNTY. PUB. SCHS., <https://www.montgomeryschoolsmd.org/superintendent/> [<https://perma.cc/CZJ8-GSCZ>] (last visited May 11, 2026).

99. Petitioners' Appendix, *supra* note 2, at 183a (first amended complaint submitted by the parents).

100. *Id.* at 607a.

101. *Id.*

practice, was left with two options to keep children in class: cut the books from the curriculum or forbid opt-outs.

MCPS chose the latter, prioritizing its commitment to a curriculum that instructs students on acceptance and celebration of LGBTQ+ people over parents' interest in directing their child's religious exercise.¹⁰² The parents of Montgomery County turned to the courts for relief.

2. MCPS Won in the Lower Courts

Three sets of parents sued MCPS in federal court on May 24, 2023.¹⁰³ The parents represented several different religions but were bound by two key beliefs.¹⁰⁴ First, they believed that "matters regarding family life and human sexuality should be taught in a way that is consistent with their respective religious beliefs."¹⁰⁵ Second, they believed they had a religious duty to educate their children according to their own beliefs about family life, gender, and sexuality.¹⁰⁶

The parents moved for a preliminary injunction that would require MCPS to provide parents with both advance notice of the books at issue and an opportunity to opt their children out of the challenged instruction.¹⁰⁷ They alleged, among other things, a violation of their First Amendment right to freely exercise their religion.¹⁰⁸

Courts analyze free exercise claims in two steps. First, the plaintiff must "show[] that a government entity has burdened [their] sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.'"¹⁰⁹ Second, if the plaintiff meets their burden, the government must clear a tall hurdle: strict scrutiny.¹¹⁰ The government action survives only if "its course

102. *Id.* at 608a (MCPS's announcement that "schools could no longer entertain requests for students to opt out of the LGBTQ-Inclusive Books, for any reason").

103. *See generally* Mahmoud v. McKnight, 688 F. Supp. 3d 265 (D. Md. 2023), *aff'd*, 102 F.4th 191 (4th Cir. 2024), *rev'd and remanded sub nom.*, Mahmoud v. Taylor, 145 S. Ct. 2332 (2025).

104. The various parents, all of whom had at least one child enrolled in MCPS elementary schools at the time of the complaint, were Muslim, Catholic, and Ukrainian Orthodox. *See* Petitioners' Appendix, *supra* note 2, at 162a. By the time the case reached the Supreme Court, two of the three families had sent their children to private religious schools, citing a duty to protect their children from the type of material being taught in the public schools. *See* Petitioners' Brief at 16, 18, Mahmoud v. Taylor, 145 S. Ct. 2332 (2025) (No. 24-297).

105. Petitioners' Appendix, *supra* note 2, at 169a.

106. *See id.* at 166a (stating Tamer Mahmoud and Enas Barakat's belief that "[t]hey have a sacred obligation to teach these principles to their children"); *id.* at 167a (same, for Jeff and Svitlana Roman); *id.* at 544a (same, for Chris and Melissa Persak).

107. *Id.* at 156a–209a (complaint).

108. *See McKnight*, 688 F. Supp. 3d at 285; *see also* U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." (emphasis added)).

109. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 (2022) (quoting *Emp. Div. v. Smith*, 494 U.S. 872, 879–81 (1990)).

110. *See id.*

was justified by a compelling state interest and was narrowly tailored in pursuit of that interest.”¹¹¹

Given this structure, MCPS’s policy of teaching LGBTQ+-inclusive books and prohibiting opt-outs could survive for either of two reasons: first, that the district’s policy did not actually burden the parents’ free exercise rights, or second, that the policy narrowly pursued a compelling state interest. MCPS focused primarily on the first possibility,¹¹² likely because other school districts had routinely won similar cases by arguing that their policies placed a “minimal” burden, if any, on parents’ rights.¹¹³

MCPS prevailed in the district and appellate courts, which both found that MCPS’s required instruction of LGBTQ+-inclusive books did not burden parents’ free exercise rights.¹¹⁴ The parents appealed their case to the Supreme Court, which agreed to hear it.¹¹⁵

3. The Parents Won in the Supreme Court

The parents won their first victory where the stakes were highest. On June 27, 2025, a 6-3 majority of the Supreme Court ruled that by forbidding parents from removing their children from classrooms during instruction on LGBTQ+-inclusive books, MCPS unconstitutionally infringed on the parents’ constitutional right to free exercise.¹¹⁶

111. *Id.*

112. While page counts are not a precise indicator of argumentative power, the attorneys’ allocation of limited resources is striking in this case: MCPS’s brief spends seventeen pages arguing that its policy did not infringe the parents’ free exercise rights. *See* Defendants’ Brief in Opposition at 9–25, *McKnight*, 688 F. Supp. 3d 265 (No. 23-cv-01380). The brief dedicates only three paragraphs to a strict scrutiny analysis. *See id.* at 25–27.

113. *See, e.g., Fleischfresser v. Dirs. of Sch. Dist. 200*, 15 F.3d 680, 690, 683 (7th Cir. 1994) (rejecting the parents’ claim that their right was burdened by a reading program alleged to “focus[] on supernatural beings” and “indoctrinate[] children in values directly opposed to [the parents’] Christian beliefs”). The clearest model for MCPS was a Massachusetts school district that faced similar claims. In *Parker v. Hurley*, 514 F.3d 87 (1st Cir. 2008), classroom teachers in Lexington read books that “presented” same-sex couples and “celebrate[d] a gay marriage.” *Id.* at 90. The court denied the parents’ motion for an injunction, finding that they “have not described a constitutional burden on their rights, or on those of their children.” *Id.* at 99; *see also, e.g., Mozert v. Hawkins Cnty. Bd. of Educ.*, 827 F.2d 1058, 1062 (6th Cir. 1987) (finding no burden where public school classes involved textbooks with “occult theme[s]” and other heretical concepts), *cert. denied*, 484 U.S. 1066 (1988). For further discussion of “[t]he pre-*Mahmoud* judicial consensus” balancing parental rights to direct their children and compulsory education, *see* Waldman, *supra* note 81, at 780–86.

114. For the district court decision, *see McKnight*, 688 F. Supp. 3d at 301–02 (“The plaintiffs’ free exercise claims are not likely to succeed on the merits.”); *id.* at 287–302 (discussing the parties’ contentions about the proper standard of review, then putting the question aside because it was not necessary to resolving the case). For the appellate decision, *see Mahmoud v. McKnight*, 102 F.4th 191, 209 (4th Cir. 2024), *rev’d and remanded sub nom.*, *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025). There, too, the parties spent relatively little space arguing over a “compelling interest” in education. *See* Appellants’ Opening Brief at 45–48, *McKnight*, 102 F.4th 191 (No. 23-cv-1380); Appellees’ Brief at 50–53, *McKnight*, 102 F.4th 191 (No. 23-cv-1380).

115. *Mahmoud v. Taylor*, 145 S. Ct. 1123 (2025) (mem.) (granting petition for writ of certiorari).

116. *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2364 (2025).

The parties' arguments before the Supreme Court followed a similar course to their arguments below. MCPS focused on the question of constitutional burden, providing only a sparse defense of the policy under strict scrutiny.¹¹⁷ When it did defend against strict scrutiny, MCPS offered two "compelling interests": first, an interest in "maintaining a school environment that is 'safe and conducive to learning for all students,'"¹¹⁸ and second, a "compelling interest in having an undisrupted school session conducive to the students' learning."¹¹⁹

The State of Maryland made a more robust case for its own "compelling interest[]" in an amicus brief submitted to the Court.¹²⁰ Maryland rested its argument on two longstanding propositions of the Court: first, that "public education benefits both individuals and the fabric of society,"¹²¹ and second, that state and local governments have "broad discretion to shape their curricula."¹²² These two principles, in Maryland's framing, require that the state and its school boards retain "broad latitude to shape the public school environment according to the priorities and values of the communities students are being prepared to join as fully fledged citizens."¹²³

Writing for the Court, Justice Alito made no reference to Maryland's asserted "compelling interest" and rejected the MCPS's two options.¹²⁴ Instead, the six-justice majority granted the parents' motion for an injunction.¹²⁵ Reversing the U.S. Court of Appeals for the Fourth Circuit and straying from the reasoning of past lower courts,¹²⁶ the *Mahmoud* majority provided a new test to measure the burden on a parent's free exercise right.¹²⁷ Rather than first asking whether the curriculum was coercive¹²⁸ or

117. See Brief for Respondents at 49, *Mahmoud*, 145 S. Ct. 2332 (No. 24-297) (spending one paragraph of a fifty-page brief on the issue).

118. *Id.* (quoting Petitioners' Appendix, *supra* note 2, at 607a (declaration of Niki T. Hazel, Associate Superintendent for Curriculum at MCPS)).

119. *Id.* (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 119 (1972)). MCPS argued that if the Court did find an unconstitutional burden on the parents, it should remand the case to the lower courts to consider the novel issue of "whether that burden is justified." *Id.* at 48. The school district reiterated this position at oral argument. See Transcript of Oral Argument at 157–58, *Mahmoud*, 145 S. Ct. 2332 (No. 24-297) (emphasizing that "the question presented to the Court is obviously limited to burden").

120. Brief for Maryland, Massachusetts, Sixteen Other States, and the District of Columbia as Amici Curiae Supporting Respondents at 1, *Mahmoud*, 145 S. Ct. 2332 (No. 24-297) [hereinafter State Amici Brief]. Maryland, alongside seventeen other states and the District of Columbia, asserted "sovereign and compelling interests in upholding the traditional primary role of state and local authorities in setting school curricula and in making schools safe and supportive places for all students." *Id.* at 1.

121. *Id.* at 4 (citing *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986)).

122. *Id.* at 1, 4 (citing cases including *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954)).

123. *Id.* at 5 (citing *Bd. of Educ. v. Pico*, 457 U.S. 853, 863–64 (1982) (noting that "local school boards have broad discretion in the management of school affairs" and that "local school boards must be permitted to establish and apply their curriculum in such a way as to transmit community values")).

124. *Mahmoud*, 145 S. Ct. at 2350.

125. *Id.*

126. See *supra* Part I.D.2.

127. See *Mahmoud*, 145 S. Ct. at 2360–61.

128. See *Parker v. Hurley*, 514 F.3d 87, 105 (1st Cir. 2008).

whether the parents' burden was "substantial" or "minimal,"¹²⁹ the Court held that in free exercise claims within public schools, the primary route is through *Wisconsin v. Yoder*.¹³⁰

In *Yoder*, the Court held that a Wisconsin statute compelling children to attend school after eighth grade violated the rights of Amish parents to freely exercise their religion and direct the religious upbringing of their children.¹³¹ Based on a thorough review of Amish history, lifestyle, and culture, the Court found that requiring an Amish child to attend a public high school would "gravely endanger if not destroy the free exercise of [the parent's] religious beliefs."¹³²

When an alleged free exercise burden matches the "special character of the burden in" *Yoder*, the plaintiff has shown a sufficient burden on their constitutional rights.¹³³ The Court analogized the MCPS policy to the compulsion in *Yoder*, explaining that both government actions impose the "special character" because they "'substantially interfer[ed] with religious development' of the parents' children" and "posed 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill in their children."¹³⁴ Courts hearing these claims "must also consider the specific context in which the instruction or materials at issue are presented," specifically whether their presentation is "neutral" or "'hostile' to religious viewpoints and designed to impose upon students a 'pressure to conform.'"¹³⁵

Eight months after deciding *Mahmoud*, the Court further clarified in *Mirabelli v. Bonta*¹³⁶ that the test applied to any government policy that "substantially interfere[s] with the 'right of parents to guide the religious development of their children.'"¹³⁷ The six justices in the *Mahmoud* majority

129. *Fleischfresser v. Dirs. of Sch. Dist. 200*, 15 F.3d 680, 689–90 (7th Cir. 1994) (quoting *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989)).

130. 406 U.S. 205 (1972); see *Mahmoud*, 145 S. Ct. at 2361 ("When the burden imposed is of the same character as that imposed in *Yoder*, we need not ask whether the law at issue is neutral or generally applicable before proceeding to strict scrutiny.").

131. See *Yoder*, 406 U.S. at 219.

132. *Id.*

133. *Mahmoud*, 145 S. Ct. at 2361.

134. *Id.* (quoting *Yoder*, 406 U.S. at 218). For an argument that *Mahmoud* is a broad departure from the long-held belief that *Yoder* is essentially limited to its facts, see generally Micah Schwartzman, Richard Schragger & Nelson Tebbe, *The Structure of Religious Preference*, 139 HARV. L. REV. 211 (2026).

135. *Mahmoud*, 145 S. Ct. at 2353 (quoting *Yoder*, 406 U.S. at 211).

136. 146 S. Ct. 797 (2026) (per curiam).

137. *Id.* at 802 (quoting *Mahmoud*, 145 S. Ct. at 2361). In *Mirabelli*, two public school teachers in California sought an exemption from district policies that forbade them from disclosing a student's gender transition to their parents without the student's permission. See *id.* at 800. The Court described the "unconsented facilitation of a child's gender transition" as a greater "intrusion on parents' free exercise rights" than the introduction of storybooks in *Mahmoud*. *Id.*

castigated two lower courts, which had limited *Mahmoud* to “curricular requirements,”¹³⁸ for reading the decision too narrowly.¹³⁹

Having found that MCPS had burdened the parents’ rights, the *Mahmoud* Court next tested the policy against strict scrutiny, ignoring the school district’s request to remand the issue to lower courts.¹⁴⁰ MCPS failed this test.¹⁴¹

The majority agreed that “as a general matter, schools have a ‘compelling interest in having an undisrupted school session conducive to the students’ learning.’”¹⁴² MCPS’s rejection of opt-outs, however, was not “necessary to serve that interest.”¹⁴³

In a concurring opinion, Justice Thomas characterized MCPS’s goal in teaching LGBTQ+-inclusive books as “[t]eaching young children about sexual and gender identity.”¹⁴⁴ He then declared that “the [school] Board’s interests in its curriculum and policy” were insufficient.¹⁴⁵ Justice Thomas’s description of MCPS’s policy hints at the majority’s suspicion that MCPS is promoting its controversial social preferences in the classroom, then laundering those preferences as some other “interest” in the courtroom.¹⁴⁶

138. *Doe No. 1 v. Bethel Loc. Sch. Dist. Bd. of Educ.*, No. 23-3740, 2025 WL 2453836, at *7 n.3 (6th Cir. Aug. 26, 2025); see *Mirabelli v. Bonta*, No. 25-8056, 2026 WL 44874, at *3 (9th Cir. Jan. 5, 2026) (per curiam) (citing *Doe No. 1* for the same proposition), *stay granted in part*, 146 S. Ct. 797 (2026) (per curiam).

139. See *Mirabelli*, 146 S. Ct. at 802. In a concurrence, three members of the *Mahmoud* majority wrote that this narrow characterization suggested that lower courts had “significantly misunderstood *Mahmoud*.” *Id.* at 805 (Barrett, J., concurring). Neither the per curiam majority nor the concurrence addressed *Arizona Mining Reform Coalition v. U.S. Forest Service*, 170 F.4th 879 (9th Cir. 2026). That court read *Mahmoud* to distinguish between policies that impose values on children that are hostile to their parents’ religious beliefs, which burdens the constitutional right, and policies that merely interfere incidentally with a person’s spiritual activities, which does not. *Id.* at 903.

140. *Mahmoud*, 145 S. Ct. at 2360–61.

141. *Id.* at 2362.

142. *Id.* (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 199 (1972)). In *Grayned v. City of Rockford*, 408 U.S. 104 (1972), the Court permitted restrictions on conduct “that disrupt[s] or [is] incompatible with normal school activities” as applied to a Black student who was arrested during a civil rights protest outside of his high school. *Id.* at 115, 120.

143. *Mahmoud*, 145 S. Ct. at 2362.

144. *Id.* at 2380 (Thomas, J., concurring). Justice Thomas’s concurrence resonates with a pair of concurrences from 2021 that perceive a shift in the balance of power in public schools from parents to the schools themselves. See *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2048–59 (2021) (Alito, J., concurring) (“When it comes to children, courts in this country have analyzed the issue of consent by adapting the common-law doctrine of *in loco parentis* Today, of course, the educational picture is quite different.”); *Oliver v. Arnold*, 19 F.4th 843, 843–54 (5th Cir. 2021) (Ho, J., concurring) (“It’s a sad fact of modern life in America that the culture wars are no longer limited to skirmishes between elected officials on Capitol Hill or in our state capitals. They are increasingly fought by students and parents in classrooms and before school boards across America.”). In *Mahmoud*’s wake, one federal judge has framed the decision as a declaration that “school administrators cannot recast their educational mission in order to suppress parental and student views on matters of public concern.” *Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 158 F.4th 732, 791 (6th Cir. 2025) (Bush, J., concurring).

145. *Mahmoud*, 145 S. Ct. at 2380 (Thomas, J., concurring).

146. See *id.* at 2353 (majority opinion) (“[T]he books are unmistakably normative. They are clearly designed to present certain values and beliefs as things to be celebrated and certain

MCPS's stated interest in "protecting students from 'social stigma and isolation'" failed, in part, because of this suspicion.¹⁴⁷ The majority found that MCPS had merely shifted the stigma from one group—LGBTQ+ students—to another group—students whose parents hold anti-LGBTQ+ religious views.¹⁴⁸ Therefore, *Mahmoud* does not straightforwardly reject an interest in curricula that develop values like tolerance, civility, and acceptance. Instead, the Court held that MCPS's policies were not narrowly tailored toward developing those values.

The majority did not identify any state interest in setting certain curricula. In fact, the Court "emphasize[d] that what the parents seek here is not the right to micromanage the public school curriculum."¹⁴⁹ Public schools remain free to set their own curricula,¹⁵⁰ but lack a compelling state interest in "plac[ing] an unconstitutional burden on the parents' religious exercise" by forbidding opt-outs from curricula.¹⁵¹

Commentators—and the dissenting justices—expect *Mahmoud* to give plaintiffs who claim a free exercise burden a rubber stamp.¹⁵² Anticipating such criticism, Justice Alito's majority opinion insisted that requiring schools to provide opt-outs from certain curricula "would give the parents no substantive control over the curriculum itself."¹⁵³

The next two sections illustrate the federal judiciary's limited efforts to develop a jurisprudence of public schooling. Part I.D discusses the Supreme Court's substantive vision for education, then Part I.E describes the Court's decision to foreclose a constitutional right to education.

D. The Outline of a "State Interest"

School districts retain their authority over curricula and can win free exercise cases in federal court, even after *Mahmoud*. That path to victory runs through strict scrutiny—specifically, through basing the school district's

contrary values and beliefs as things to be rejected."); *id.* at 2355 ("[T]he books exert upon children a psychological 'pressure to conform' to their specific viewpoints." (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 211 (1972))).

147. *Id.* at 2363 (quoting Petitioner's Appendix, *supra* note 2, at 608a); *see Re, supra* note 86, at 59 (describing *Mahmoud* as a significant "judicial intrusion on the fruits of democratic politics").

148. *See Mahmoud*, 145 S. Ct. at 2363.

149. *See id.*

150. *See id.* ("We acknowledge that 'courts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education.'" (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 235 (1972))).

151. *Id.*

152. *See id.* at 2392 (Sotomayor, J., dissenting) ("[T]he majority leaves its test without any discernible limits. How are courts objectively to evaluate what amounts to a 'very real threat' to a parent's religious development of their child?"); *id.* at 2387 n.5 (referring to "the majority's . . . unbounded test").

153. *Id.* at 2363 (majority opinion) ("These facts belie any suggestion that the provision of parental opt outs in circumstances like these 'will impose impossible administrative burdens on schools.'" (quoting *id.* at 2394 (Sotomayor, J., dissenting))).

“compelling interest” in setting particular education policy.¹⁵⁴ This section explores the federal courts’ development of a government interest in education.

The Supreme Court delivered its most famous—and loftiest—description of the national interest in public education in *Brown v. Board of Education*.¹⁵⁵ In announcing that “education is perhaps the most important function of state and local governments,” Chief Justice Earl Warren reasoned that education “is the very foundation of good citizenship.”¹⁵⁶ The Court held that to segregate public schools was to diminish their potential for improving civic society.¹⁵⁷

In a unanimous opinion, the Court described three criteria to judge “good citizenship”: “cultural values,” “professional training,” and “adjust[ing] normally to [the child’s] environment.”¹⁵⁸ This section demonstrates the application of those principles.

The Supreme Court has long described schools as instruments of developing “good citizenship” in children.¹⁵⁹ The Court has most frequently applied this overarching interest to children’s ability to serve the country adequately, whether in a military or civil sense.¹⁶⁰

The Court first hinted at this interest in *Meyer v. Nebraska*.¹⁶¹ There, the Court noted the government’s power to “improve the quality of its citizens, physically, mentally, and morally.”¹⁶² The *Meyer* Court identified a limit to this broad interest, striking down a state law that prohibited teaching German to children.¹⁶³

More than half a century later, the school’s interest in shaping good citizens prevailed in *Bethel School District No. 403 v. Fraser*.¹⁶⁴ There, a school district was within its rights to discipline a high school student for his

154. This framing necessarily diverges from MCPS’s unsuccessful argument that its policy furthered an interest in student safety. See *supra* notes 117–19 and accompanying text. Shortly after *Mahmoud*, the Court made clear that that a “compelling interest in student safety and privacy” is insufficient where a policy “cut[s] out the primary protectors of children’s best interests: their parents.” *Mirabelli v. Bonta*, 146 S. Ct. 797, 802 (2026) (per curiam).

155. 347 U.S. 483 (1954).

156. *Id.* at 493.

157. See *id.*

158. *Id.*

159. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972) (“The duty to prepare the child for ‘additional obligations,’ referred to by the Court, must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship.”); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 507 (1969) (“That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual.” (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943))).

160. See *Ambach v. Norwick*, 441 U.S. 68, 79 (1979) (“[T]hrough both the presentation of course materials and the example he sets, a teacher has an opportunity to influence the attitudes of students toward government, the political process, and a citizen’s social responsibilities. This influence is crucial to the continued good health of a democracy.”).

161. 262 U.S. 390 (1923).

162. *Id.* at 400–01 (“The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted.”).

163. *Id.* at 403.

164. 478 U.S. 675 (1986).

lewd speech at a schoolwide assembly.¹⁶⁵ The Court described “[t]he role and purpose of the American public school system”¹⁶⁶ in terms of the kinds of citizens it wished to produce: “[p]ublic education . . . must inculcate the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation.”¹⁶⁷

The first attribute of “good citizenship” in *Brown* is “awakening the child to cultural values.”¹⁶⁸ This idea reflects the longstanding government interest in using public schools to promote American ideals.¹⁶⁹

“National unity as an end which officials may foster by persuasion and example is not in question.”¹⁷⁰ So announced the Court in *West Virginia State Board of Education v. Barnette*,¹⁷¹ a World War II-era case that weighed a student’s right to free expression against a school district’s interest in “the promotion of good citizenship.”¹⁷² The Court ruled for the student but enshrined the strength of the district’s interest¹⁷³ in teaching history “to inspire patriotism and love of country.”¹⁷⁴

The second attribute of “good citizenship” recognized in *Brown* is using education to help the child “adjust normally to [their] environment.”¹⁷⁵ This interest, perhaps better understood as the interest in helping children learn to live well with others, is powerfully stated by *Brown* itself. There, the Court recognized that “good citizenship” and “educational and mental development” both flow from cooperation with one’s fellow citizen.¹⁷⁶

Over the second half of the 20th century, the Court further illustrated the government’s interest in using education to teach students how to live well

165. See *id.* at 685–86. The student, Matthew Fraser, spoke before the school to nominate a friend for student government. *Id.* at 677. “During the entire speech, Fraser referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor.” *Id.* at 677–78. The district suspended Fraser for three days. *Id.* at 678.

166. *Id.* at 681.

167. *Id.* (quoting CHARLES A. BEARD & MARY R. BEARD, *A BASIC HISTORY OF THE UNITED STATES* 237 (1944)).

168. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

169. See Vivian E. Hamilton, *Home, Schooling, and State: Education in, and for, a Diverse Democracy*, 98 N.C. L. REV. 1347, 1350 (2020) (arguing that early public schools “aimed to . . . inculcate shared cultural and civic values”); Brent T. White, *Ritual, Emotion, and Political Belief: The Search for the Constitutional Limit to Patriotic Education in Public Schools*, 43 GA. L. REV. 447, 468–75 (2009) (discussing the Supreme Court’s treatment of patriotism in public schools).

170. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 640 (1943).

171. 319 U.S. 624 (1943).

172. *Id.* at 648 (Frankfurter, J., dissenting). In *Barnette*, Jehovah’s Witnesses sought an injunction prohibiting enforcement of a West Virginia statute requiring students to salute the United States flag at the start of each school day. See *id.* at 627–28 (majority opinion).

173. *Id.* at 642.

174. *Id.* at 631 (quoting *Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586, 604 (1940) (Stone, J., dissenting)); see also *Ambach v. Norwick*, 441 U.S. 68, 76 (1979) (“The importance of public schools in . . . the preservation of the values on which our society rests[] long has been recognized by our decisions.”).

175. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

176. *Id.* at 494.

with people who are not like themselves.¹⁷⁷ In *Bob Jones University v. United States*,¹⁷⁸ the Court upheld an Internal Revenue Service decision to deny tax-exempt status to a university that forbade interracial dating.¹⁷⁹ The Court acknowledged that the university's free exercise right was burdened, but that the burden was outweighed by a compelling "governmental interest"—specifically, the "fundamental, overriding interest in eradicating racial discrimination in education."¹⁸⁰ Educational institutions lose certain public privileges when they discriminate based on race: "there can no longer be any doubt that racial discrimination in education violates deeply and widely accepted views of elementary justice."¹⁸¹

* * *

These broad interests in specific education policies are rarely presented in a strict scrutiny analysis for two reasons. First, the limited federal role in education curricula results in more cases rising through state courts.¹⁸² Second, federal courts were deferential to school districts in setting curricula before *Mahmoud*.¹⁸³ Because courts generally found that school districts had broad latitude to make policy choices without infringing on parents' constitutional interests, they had no occasion to name a specific "compelling interest" in the state's power to set curricula.

Federal courts of appeals have done little to develop the "compelling government interest" in education, let alone a particular interest in specific curricular choices. Since *Mahmoud*, however, courts have begun wading into these uncertain waters.

Before *Mahmoud*, the rare circuit court case to discuss a "compelling government interest" in curricular decisions echoed the limited bounds of Supreme Court precedent.¹⁸⁴ In dicta in *Fleischfresser v. Directors of School District 200*,¹⁸⁵ the U.S. Court of Appeals for the Seventh Circuit recognized "the government's interest in providing a well-rounded education."¹⁸⁶ This

177. See, e.g., *Ambach*, 441 U.S. at 77 (observing that public schools bring together "diverse and conflicting elements in our society . . . on a broad but common ground"); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986) (noting "the society's countervailing interest in teaching students the boundaries of socially appropriate behavior," including "in the case of a school, the sensibilities of fellow students").

178. 461 U.S. 574 (1983).

179. See *id.* at 605.

180. *Id.* at 604.

181. *Id.* at 592.

182. See *supra* Part I.A.

183. See *supra* note 113 and accompanying text; see, e.g., *Mozert v. Hawkins Cnty. Bd. of Educ.*, 827 F.2d 1058, 1070 (6th Cir. 1987) ("Having determined that no burden was shown, we do not reach the issue of the defendants' compelling interest."); *Brown v. Hot, Sexy & Safer Prods., Inc.*, 68 F.3d 525, 539, 533 n.5 (1st Cir. 1995) (same); *Swanson v. Guthrie Indep. Sch. Dist.*, 135 F.3d 694, 698 (10th Cir. 1998) (finding that the school district's policy was neutral and generally applicable and therefore did not merit strict scrutiny); *Leebaert v. Harrington*, 332 F.3d 134, 135 (2d Cir. 2003) (holding that a school district's policy need only withstand rational basis scrutiny, not strict scrutiny).

184. For those bounds, see *supra* Part I.B.1.

185. 15 F.3d 680 (7th Cir. 1994).

186. *Id.* at 690.

interest includes two “fundamental” skills: “build[ing] and enhanc[ing] students’ reading skills and develop[ing] their senses of imagination and creativity.”¹⁸⁷

After *Mahmoud*’s shift toward a finding of constitutional burden in cases that pit religion against curriculum,¹⁸⁸ federal courts have necessarily reckoned with the particulars of a “compelling interest.” Still, the focus has been on the school’s interest in students’ safety and privacy, not an interest in pedagogy or the substance of education. In *Alan L. v. Lexington Public Schools*,¹⁸⁹ the facts mirrored *Mahmoud* almost exactly.¹⁹⁰ After finding that the school district’s imposition of materials related to sexual orientation and gender identity burdened a parent’s right to free exercise, the court moved to a strict scrutiny analysis.¹⁹¹ The school district presented the same compelling interest as MCPS: “having an undisrupted school session conducive to the students’ learning.”¹⁹² Inevitably, the interest failed for the same reasons.¹⁹³

E. No Federal Right: Rodriguez and the Path Forward

Two decades after finding that the federal Constitution required the desegregation of public schools,¹⁹⁴ the Supreme Court announced that the Constitution did not entitle students to a public education.¹⁹⁵

In *San Antonio Independent School District v. Rodriguez*,¹⁹⁶ a group of Mexican American parents in the Edgewood Independent School District

187. *Id.* While the *Fleischfresser* court chose to identify interests in those skills, the skills themselves do not fit within the Supreme Court’s more limited recognition of pragmatic interests in education. See *Doe v. Plyler*, 628 F.2d 448, 457 (5th Cir. 1980) (“However much we are impressed with the importance of basic education to a child’s development, we find no solid constitutional precedent for determining that some kind of access to basic education is a fundamental interest sufficient to invoke strict scrutiny.” (footnote omitted)).

188. *But see* Nathan v. Alamo Heights Indep. Sch. Dist., 173 F.4th 576, 584 (5th Cir. 2026) (en banc) (finding no burden on parents’ free exercise rights where state law required public school districts to display a copy of the Ten Commandments in every classroom); *Miller v. McDonald*, 180 F.4th 420, 433 (2d Cir. 2026) (finding no constitutional burden because “*Mahmoud* asks whether a burden is ‘of the same character’ as the burden in *Yoder*, not whether it is more or less serious” (quoting *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2361 (2025))).

189. 814 F. Supp. 3d 61 (D. Mass. 2025).

190. *See id.* at 65.

191. *See id.* at 74.

192. *Id.* at 75 (quoting *Mahmoud*, 145 S. Ct. at 2362).

193. *See id.* Similarly, the school district in *Mirabelli v. Olson*, 820 F. Supp. 3d 1123 (S.D. Cal. 2025), *stay granted sub nom.*, *Mirabelli v. Bonta*, No. 25-8056, 2026 WL 44874, at *3 (9th Cir. Jan. 5, 2026) (per curiam), *stay granted in part*, 146 S. Ct. 797 (2026) (per curiam), argued it held a “general interest in providing a ‘safe’ learning environment,” as well as an interest in “fostering a safe and supportive school environment.” *Id.* at 1151–52. That argument failed, in part because the district did not present proof that the policy actually furthered the stated interest. *See id.*

194. *See* *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

195. *See* *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 37 (1973).

196. 411 U.S. 1 (1973).

claimed their children's schools were systemically underfunded.¹⁹⁷ Texas's system for financing public schools, the parents argued, violated the U.S. Constitution's Equal Protection Clause by depriving students of a "fundamental right": the right to an education.¹⁹⁸ The Court rejected that argument, holding that the Constitution provided no such right.¹⁹⁹

Instead, the Court found that Texas's system was sufficient because, in part, it "was designed to provide an adequate minimum educational offering in every school in the State."²⁰⁰ In his dissent, Justice Thurgood Marshall summarized the decision more clearly: "The Court today decides, in effect, that a State may constitutionally vary the quality of education which it offers its children in accordance with the amount of taxable wealth located in the school districts within which they reside."²⁰¹ Justice Marshall turned his attention to the majority's choice of words, arguing that "adequate" benefits are still unconstitutional if the government discriminates in providing them.²⁰²

Justice Marshall's dissent ends with a call to action: "[N]othing in the Court's decision today should inhibit further review of state educational funding schemes under state constitutional provisions."²⁰³ This footnote was the starting gun for a half-century of cases in state courts.²⁰⁴

Most cases in state courts, similar to *Rodriguez*, considered school funding schemes that allocated money to students unequally.²⁰⁵ State courts, however, are better positioned than the Supreme Court to act in the field of education. Where federal judges are "concerned with academic 'theories of constitutional interpretation,'" state judges focus on "pragmatically effective ways of confronting what are deemed to be important state problems such as those raised by public education."²⁰⁶ These state judges are also armed with more robust state constitutional language.²⁰⁷

State courts have been clearing the path toward a robust education right for decades. Since the Supreme Court rejected education as a federal right,²⁰⁸

197. See *id.* at 4–5.

198. *Id.* at 35.

199. See *id.* at 37 ("We have carefully considered each of the arguments supportive of the District Court's finding that education is a fundamental right or liberty and have found those arguments unpersuasive.").

200. *Id.* at 45.

201. *Id.* at 70 (Marshall, J., dissenting).

202. *Id.* at 89.

203. *Id.* at 133 n.100.

204. See Sanford Levinson, *Courts as Participants in "Dialogue": A View from American States*, 59 U. KAN. L. REV. 791, 811 (2011) ("Few, if any, lawyers felt inhibited."); DOUGLAS S. REED, ON EQUAL TERMS: THE CONSTITUTIONAL POLITICS OF EDUCATIONAL OPPORTUNITY, at xx (2001) (noting that *Rodriguez* "created a decentralized, state-by-state litigation effort").

205. See REED, *supra* note 204, at xiv.

206. Levinson, *supra* note 204, at 812. This Note does not address the policy outcomes of particular state decisions, except to amplify other scholarship that has found more equitable and more robust funding in states that have struck down prior funding schemes. See REED, *supra* note 204, at 29 ("[T]he lesson we should learn from court-initiated school finance equalization is that it generally achieves results.").

207. See Versteeg & Zackin, *supra* note 39, at 1683–84.

208. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 18 (1973).

state courts have been hard at work defining the contours of the education their states must provide.²⁰⁹ States have developed two primary types of interests in education. Those two types—their exemplars, their boundaries, their strengths, and their weaknesses—are discussed in Part II.

II. CLASSIFYING STATES' INTERESTS: THE STRUCTURAL RIGHT VERSUS THE RIGHT TO RESULTS

The vast majority of state constitutions provide a right to education. The nature of that right, however, varies dramatically. This part sifts through the controlling decisions of each state's highest court to identify that state's particular right to education.²¹⁰

The split does not easily map onto political lines.²¹¹ The “right-to-result” states include California and New York alongside Mississippi, North Dakota, and Arkansas.²¹² Nor does the split align directly with constitutional language; for example, three state courts have found a right to results in the provision of a “thorough and efficient” school system,²¹³ while two state courts found only a structural right based on the same phrase.²¹⁴

Instead, the distinction between the rights to education arise from more complicated factors, such as the founding history of a state and that state's understanding of its own values. This part explains the contours of these two types of rights and the policy arguments that support them.

209. See Yeju Hwang, Note, *Silent Today, Conversant Tomorrow: Education Adequacy as a Political Question*, 118 NW. U. L. REV. 1663, 1670 (2024) (chronicling the efforts of state courts to “determine the future of education” after *Rodriguez*).

210. Federal law “ordinarily accept[s] the construction by a state supreme court of its Constitution and laws as conclusive.” *First Nat’l Bank v. Converse*, 200 U.S. 425, 445 (1906); see also *Coombes v. Getz*, 285 U.S. 434, 441 (1932) (“The decision of the Supreme Court of a state construing and applying its own Constitution and laws generally is binding upon [the Supreme C]ourt.”).

211. If political lines were drawn around this question, the “substantive” states would win the presidency with 278 electors. This calculation is based on the rights to education in each state identified in Appendix A and the number of electoral votes allocated to each state. See *Distribution of Electoral Votes*, NAT’L ARCHIVES (Nov. 4, 2024), <https://www.archives.gov/electoral-college/allocation> [<https://perma.cc/2YQD-Y353>].

212. See *infra* App. A.

213. See *Abbott v. Burke*, 575 A.2d 359, 368 (N.J. 1990) (“[T]he clear import is not of a constitutional mandate governing expenditures per pupil, equal or otherwise, but a requirement of a specific substantive level of education.”); *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 170 A.3d 414, 457 (Pa. 2017) (recognizing a “constitutional mandate to furnish education of a specified quality”); *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979) (holding that the right requires a system of schools that “develop[] . . . the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically”).

214. See *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758, 776 (Md. 1983) (“[A]t most, the legislature is commanded by § 1 to establish such a system, effective in all school districts, as will provide the State’s youth with a basic public school education.”); *DeRolph v. State*, 677 N.E.2d 733, 744, 747 (Ohio 1997) (holding that the right only entitles students to proper amounts of funding).

A. "Structural" States

Nearly every state court has identified language in its constitution that requires sufficient or equal provision of resources across the state's school system.²¹⁵ This right is concerned with the infrastructure of a school system—the plentiful allocation and fair distribution of supplies. This baseline principle protects, for example, the urban student whose school cannot afford structural repairs while the rural school across the state can fund new buildings.

1. Typical Attributes

States that provide a structural right to education emphasize two areas. First, remedying funding gaps—most often between Black students and White students or between urban students and rural students. Second, protecting the state legislature's flexibility to design and adapt the public school system.

The structural right to education is tied to the state's strong interest in preventing discrimination in resource allocation.²¹⁶ While some states provide a structural interest without guaranteeing "absolute equality in educational services or expenditures,"²¹⁷ the prevailing view is that the guarantee of a quality education requires equal funding.²¹⁸

215. See *infra* App. A. Iowa and Maine are the lone states that fit in neither category. The Iowa Constitution provides only that the legislature "shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement." IOWA CONST. art. IX, div. 2, § 3. The state's high court has held that on its own, the constitution neither guarantees a free public education nor "constrain[s] legislative policies in the field of education." *King v. State*, 818 N.W.2d 1, 16 (Iowa 2012). The Maine Constitution authorizes the legislature to "require[] the several towns to make suitable provision at their own expense, for the support and maintenance of public schools." ME. CONST. art. VIII, pt. 1, § 1. "There is no provision in the Maine Constitution guaranteeing a certain level of state funding of education or equitable funding. To the contrary, the Maine Constitution requires only that the State enforce the municipal obligation to support public education." *Sch. Admin. Dist. No. 1 v. Comm'r, Dep't. of Educ.*, 659 A.2d 854, 857 (Me. 1995).

216. See, e.g., *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 398 (Tex. 1989) (holding that an "efficient system . . . requires only that the funds available for education be distributed equitably and evenly"); *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 801 (Alaska 1975) (holding that the state's key constitutional provision "was intended to ensure that the legislature establish a system of education designed to serve children of all racial backgrounds"); *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806, 815 (Ariz. 1994) ("In short, the system the legislature chooses to fund the public schools must not itself be the cause of substantial disparities.").

217. *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1018 (Colo. 1982) (en banc); see also *City of Pawtucket v. Sundlun*, 662 A.2d 40, 55 (R.I. 1995) (holding first, that the state constitution is not particular about the education the state must provide, and second, that "the proper forum for this deliberation is the General Assembly, not the courtroom"); *Citizens of Decatur for Equal Educ. v. Lyons-Decatur Sch. Dist.*, 739 N.W.2d 742, 757 (Neb. 2007) (holding that Nebraska provides no "fundamental right to equal and adequate funding of schools").

218. *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1263 (Wyo. 1995) ("[F]unds derived from *ad valorem* tax levies must be equally divided amongst the school districts of the entire state.").

Michigan's constitution, for example, instructs its legislature to "maintain and support a system of free public elementary and secondary schools."²¹⁹ Further, it requires that every school district "provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin."²²⁰ Per the state's high court, this "policy of encouraging education" requires that "[w]hensoever the state has undertaken to provide education to its people, this right must be made available to all on equal terms."²²¹

States also broadly recognize their legislatures' preeminent power over education policy, regardless of whether the provided right is structural or a right to results.²²² Structural right states, which are more concerned with logistics and practicality, claim legislative flexibility as a fundamental benefit.²²³ In some states, courts have emphasized the legislature's right to act as it pleases; in other states, the legislature is not required to do anything at all.²²⁴ The flexibility is the point; in structural right states, the legislature has power over education.

2. The Wyoming Example

Wyoming provides a representative case study in how the structural right can fiercely defend public education. The state's constitution requires "a complete and uniform system of public instruction."²²⁵ The Wyoming Supreme Court has explained that this clause provides a "right to equal opportunity to a proper public education" and that "school funding must depend upon state wealth and not local wealth."²²⁶

In 1995, the court ruled that the legislature had violated citizens' right to education.²²⁷ In the court's determination, the legislative branch had failed to "redistribute revenue" to "devise a state formula which will weigh the calculation to compensate for special needs and educational cost

219. MICH. CONST. art. VIII, § 2.

220. *Id.*

221. *Snyder v. Charlotte Pub. Sch. Dist.*, 365 N.W.2d 151, 154–55 (Mich. 1984).

222. *See, e.g., McDaniel v. Thomas*, 285 S.E.2d 156, 165 (Ga. 1981) ("[W]hile an 'adequate' education must be designed to produce individuals who can function in society, it is primarily the legislative branch of government which must give content to the term 'adequate.'"); *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 109 P.3d 257, 261 (Mont. 2005) (holding that the legislature is empowered to define the "quality education" provided by the state's constitution). *But see ZACKIN, supra* note 39, at 97 (arguing that "some attempts to change the education provisions of America's state constitutions have been intended to invite the judiciary into educational policymaking").

223. *See, e.g., Lewis E. v. Spagnolo*, 710 N.E.2d 798, 800 (Ill. 1999) ("[Q]uestions relating to the quality of a public school education are for the legislature, not the courts, to decide.").

224. *Compare Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 488–89 (Mo. 2009) (recognizing that the legislature must spend a constitutional minimum of funds, but noting that there is no constitutional requirement that the amount be "adequate"), *with Aguillard v. Treen*, 440 So.2d 704, 706–07 (La. 1983) (recognizing "the Legislature's plenary authority to establish and maintain education within the state").

225. WYO. CONST. art. 7, § 1.

226. *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1266, 1247 (Wyo. 1995).

227. *See id.* at 1244.

differentials,”²²⁸ allowed wide gaps to persist between school districts based on local revenue that “b[ore] no relationship to the expense of educating students in any particular community,”²²⁹ and, at bottom, allotted more money for a student in a small district than the same student in a large district.²³⁰

Six years later, following legislative implementation of a funding system that sought to allocate dollars to school districts based on their costs, the court remained unimpressed.²³¹ Although “some improvement ha[d] been achieved, the constitutional mandate for a fair, complete, and equal education ‘appropriate for the times’ in Wyoming ha[d] not been fully met” in the court’s eyes.²³² This decision prompted more thorough legislative change, and in 2008, the Wyoming court ended its constitutional inquiry: “[s]ome deficiencies exist, some changes are required and new issues will arise; however, this Court is satisfied that the legislature has in place a thorough and efficient educational structure funded from state wealth as required by our state constitution. This Court’s jurisdiction, retained since 2001, is ended.”²³³

3. Support for the Structural Right

States use the structural right to focus their efforts on improving the structural conditions of public schools. These states leave the details to legislatures and school boards. A structural right in education can be just as robust as a right to results, indicating a profound interest in educating children.²³⁴

Brown v. Board of Education itself provides the strongest argument for the power of structural rights. There, the segregation of public schools was not only “a denial of the equal protection of the laws,” but also bad education policy.²³⁵ Segregation stripped White and Black children of a critical resource in their education: each other.²³⁶ The structural right to education guards against this failure to provide satisfactory conditions for a child’s education.²³⁷

228. *Id.* at 1268–69.

229. *Id.* at 1269.

230. *Id.* at 1276.

231. *See* *State v. Campbell Cnty. Sch. Dist.*, 19 P.3d 518, 526 (Wyo. 2001).

232. *Id.* at 526.

233. *Campbell Cnty. Sch. Dist. v. State*, 181 P.3d 43, 48 (Wyo. 2008).

234. *See, e.g., Sheridan Rd. Baptist Church v. Dep’t of Educ.*, 396 N.W.2d 373, 380 (Mich. 1986) (“It is clear that Michigan’s interest in education is long-standing and of the highest importance.”); *id.* at 381 (recognizing “certification of teachers” as a “compelling state interest” to the extent that certification furthers education).

235. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

236. *See id.* at 493–94 (noting other cases and a study that emphasize the negative effects of segregation on Black students); Robert A. Garda, Jr., *The White Interest in School Integration*, 63 FLA. L. REV. 599, 616–29 (2011) (discussing the “benefits that inure to white students in racially integrated schools”).

237. *See* Scott R. Bauries, *State Constitutions and Individual Rights: Conceptual Convergence in School Finance Litigation*, 18 GEO. MASON L. REV. 301, 326 (2011) (“In many ways, *Brown v. Board of Education* was a school finance case.”).

The structural right to education is enforceable in practice.²³⁸ The Wyoming high court in *Campbell County School District v. State*²³⁹ demonstrated the administrability of its constitutional duty. Rather than develop its own rubric for an adequate education, the court compared the varying resources provided to different school districts.²⁴⁰ Finding that the legislature's system of funding schools systematically privileged rural students over those in urban schools²⁴¹ the court directed the legislature toward a practical remedy: develop a "constitutional body of legislation."²⁴² In time, the legislature succeeded.²⁴³ Because the criteria of a structural right to education are clear, violations of that right are practically justiciable.

While the structural right to education can provide citizens with robust protections of education funding and resources, it does little to define a state's power to prescribe particular curricula. A state that claims, for example, an obligation to educate its children in pluralistic tolerance will not find that obligation in a state constitution oriented toward the structure of education. The duty to provide certain *types* of education—rather than a certain *amount* of education—is better located within the subject of the next subsection: the right to an education that yields certain results.

B. "Right to Result" States

Many state constitutions guarantee their citizens more than procedure.²⁴⁴ In twenty-six states, courts have found that the right includes an education that helps students achieve particular outcomes.²⁴⁵ This Note describes this right as a "right to results."²⁴⁶ This additional right protects students from, for example, graduating high school without the tools to read, write, work, and live among others.

238. See REED, *supra* note 204, at 16 (describing the author's finding that when courts strike down school funding systems as inequitable, the systems in fact become more equitable over time).

239. 907 P.2d 1238 (Wyo. 1995).

240. See *id.* at 1267–79.

241. *Id.* at 1279–80 (finding that the funding structure failed to "provide an equal opportunity for a quality education").

242. *Id.* at 1280.

243. See *Campbell Cnty. Sch. Dist. v. State*, 181 P.3d 43, 48 (Wyo. 2008) ("[T]his Court is satisfied that the legislature has in place a thorough and efficient educational structure.").

244. While this Note develops and draws on an original survey of state law to provide new analysis, its finding of procedural and substantive rights is not wholly novel. See, e.g., *Pauley v. Kelly*, 255 S.E.2d 859, 865 (W. Va. 1979) (noting that states "can be classified according to whether they reasonably may be considered to require legislatures to provide for public school systems of specified quality, or simply say that public school or uniform public school systems may or shall be established").

245. See *infra* App. A. Hawai'i provides a more specific version of the right to results. There, the state has a duty to educate children in the language, history, and culture of Hawai'i. See *Clarabal v. Dep't of Educ.*, 446 P.3d 986, 988 (Haw. 2019).

246. See *infra* Part II.B.

1. Typical Attributes

Courts define the right to results along three criteria: a student's basic cognitive abilities, the skills needed to compete in the job market, and the capacity for civic participation.²⁴⁷ Those three criteria—competence, labor, and civics—are further explored in this section.

States have a basic interest in providing their citizens with the cognitive functions that adults generally need to “function in a complex and rapidly changing civilization.”²⁴⁸ The Tennessee Supreme Court provides a representative example.²⁴⁹ The state's constitution announces its support of public education: “The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools.”²⁵⁰ The state's highest court held that this language requires the legislature to ensure schools provide “the opportunity to acquire general knowledge, develop the powers of reasoning and judgment, and generally prepare students intellectually for a mature life.”²⁵¹ In essence, Tennessee owes its students an education that empowers them to lead an independent life.

Courts sometimes expand this idea to find that states have a long-term interest in producing citizens who can make “informed choices”²⁵² or compete in the “market place of ideas.”²⁵³ More often, however, the right to competence-through-education is fulfilled by providing the basic components of a primary education.²⁵⁴

247. For an example that includes all three, see *Washington*. The “State's constitutional duty” includes (1) “reading, writing and arithmetic”; (2) the education “needed in the contemporary setting to equip our children for their role as citizens”; and (3) the skills required of “potential competitors in today's market.” *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 94 (Wash. 1978) (en banc) (quoting WASH. CONST. art. IX, § 1).

248. *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989).

249. *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 150–51 (Tenn. 1993).

250. TENN. CONST. art. II, § 12.

251. *McWherter*, 851 S.W.2d at 150–51.

252. *Rose*, 790 S.W.2d at 212. The Kentucky court also held that public education must have, among its “minimum goals,” “sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization.” *Id.* at 212 & n.22.

253. *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 94 (Wash. 1978) (en banc).

254. See, e.g., *Abbeville Cnty. Sch. Dist. v. State*, 515 S.E.2d 535, 540 (S.C. 1999) (holding that South Carolina's legislature must provide facilities where students can acquire “the ability to read, write, and speak the English language, and knowledge of mathematics and physical science; a fundamental knowledge of economic, social, and political systems, and of history and governmental processes”) (enumeration omitted); *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979) (holding that the West Virginia constitution provides citizens with a right to “literacy; ability to add, subtract, multiply and divide numbers”) (enumeration omitted); *Seattle Sch. Dist. No. 1*, 585 P.2d at 94 (holding that children are entitled to an education that teaches them “reading, writing and arithmetic”).

The second state interest in providing citizens with an education lies in labor. State courts often discuss the citizen's right to education as a right to qualify oneself for rewarding employment.²⁵⁵

Kentuckians, for example, are entitled to a public education that prepares them for both economic competition and a fulfilling career.²⁵⁶ That state's high court held that the "*minimum* goals in providing an adequate education"²⁵⁷ include "sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market."²⁵⁸ The citizen not only holds the right to an education that prepares them for basic workplace functionality, but also an education that provides them with the skills to pursue and succeed in a competitive job market.²⁵⁹

Further, several states recognize the child's right to an education that prepares them for something more ambitious than the minimally sufficient job. More than a century ago, for example, the Arkansas Supreme Court held that the right to education includes the preparation of students to have "a useful vocation in life."²⁶⁰ In a landmark opinion sixty years later, the Supreme Court of Appeals of West Virginia found that the state owes its children "work-training and advanced academic training as the child may intelligently choose."²⁶¹

Finally, states have an interest in developing the child's capability as a citizen. Courts have frequently recognized a state interest in citizens who understand how their society works, effectively participates in the society, and makes choices that affect future society.

The New York Court of Appeals grounded this interest in the child's future roles in civic society.²⁶² The court held that a "sound basic education" includes the skills children need "to eventually function productively as civic participants capable of voting and serving on a jury."²⁶³

At least one court has declared the urgency of this interest, arguing that education "must prepare our children to participate intelligently and

255. Some states also describe the right to education in terms of the individual's ability to contribute to the state's economy. See, e.g., Conn. Coal. for Just. in Educ. Funding, Inc. v. Rell, 990 A.2d 206, 227 (Conn. 2010) (holding that the right to education includes a requirement that "public schools provide their students with an education suitable . . . to attain productive employment and otherwise to contribute to the state's economy").

256. *Rose*, 790 S.W.2d at 212.

257. *Id.* at 212 n.22.

258. *Id.* at 212.

259. See also *Abbeville Cnty. Sch. Dist.*, 515 S.E.2d at 540 (holding that students in South Carolina are entitled to facilities where they can acquire "academic and vocational skills"); *Seattle Sch. Dist. No. 1*, 585 P.2d at 94 (holding that Washington has a "constitutional duty" to prepare children "as potential competitors in today's market").

260. *Dickinson v. Edmondson*, 178 S.W. 930, 932 (Ark. 1915).

261. *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979). West Virginians are similarly entitled to an education that includes "self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work to know his or her options." *Id.* at 877.

262. See *Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661, 666 (N.Y. 1995).

263. *Id.*

effectively in our open political system to ensure that system's survival. It must prepare them to exercise their First Amendment freedoms both as sources and receivers of information."²⁶⁴ Under this view, a state—and a country—that fails to prepare its children for engaged and informed citizenship has failed not only the child, but itself.²⁶⁵ “The purpose of providing a public education is to benefit not just the individual receiving it, but also the public at large.”²⁶⁶

2. The Kentucky Example

The landmark opinion for the right to results in education, *Rose v. Council for Better Education, Inc.*,²⁶⁷ begins modestly: “This opinion dutifully applies the constitutional test of Section 183 to the existing system of common schools. We do no more, nor may we do any less.”²⁶⁸

The Kentucky court's whimper of an introduction gives way to a robust declaration of what the state owes to its students. Since then, many states have invoked and adopted *Rose*'s findings.²⁶⁹ The analysis begins with the education provision of Kentucky's constitution, which provides that “the General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.”²⁷⁰ Then, drawing on the history of its state constitutional conventions, its own precedent, fellow state courts, and expert opinion,²⁷¹ the Kentucky court defines an efficient system as one that “will guarantee to all children the opportunity for an adequate education, through a *state* system,” because “[a] child's right to an adequate education is a fundamental one under our Constitution.”²⁷²

Rose is notable not for its mere requirement that the state provide an adequate education, but rather for its expansive definition of what “adequacy” entails. The court defines seven “capacities” that the state's

264. *Seattle Sch. Dist. No. 1*, 585 P.2d at 94 (citing *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972)).

265. See also *Leandro v. State*, 488 S.E.2d 249, 254 (N.C. 1997) (“An education that does not serve the purpose of preparing students to participate and compete in the society in which they live and work is devoid of substance and is constitutionally inadequate.”).

266. *Abbeville Cnty. Sch. Dist. v. State*, 515 S.E.2d 535, 539 (S.C. 1999).

267. 790 S.W.2d 186 (Ky. 1989).

268. *Id.* at 190.

269. See, e.g., *Gannon v. State*, 319 P.3d 1196, 1236 (Kan. 2014) (“[W]e have never expressly adopted the *Rose* court's articulated standards like other supreme courts. We do so now.”); *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472, 485 (Ark. 2002) (“The language of that court summarizes our position on the matter, both eloquently and forcefully, and, we adopt it.”); *McDuffy v. Sec'y of Exec. Off. of Educ.*, 615 N.E.2d 516, 554 (Mass. 1993) (holding that the *Rose* guidelines “fairly reflect our view of the matter”); *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1359 (N.H. 1997) (looking to *Rose*'s “guidelines . . . of a constitutionally adequate public education”); *Leandro*, 488 S.E.2d at 255 (citing *Rose* for its description of an efficient school system); *Abbeville Cnty. Sch. Dist.*, 515 S.E.2d at 540 (citing *Rose* and its progeny for the definition of a “minimally adequate education required by our Constitution”); *Conn. Coal. for Just. in Educ. Funding, Inc. v. Rell*, 990 A.2d 206, 247–48 (Conn. 2010) (quoting from *Rose* approvingly and at great length).

270. KY. CONST. § 183.

271. See *Rose*, 790 S.W.2d at 205–11.

272. *Id.* at 212.

system of education must pursue.²⁷³ With one exception, these capacities fit neatly into the typical attributes of a substantive education described above.²⁷⁴

The first and fourth attributes of an adequate education speak to competence, as defined by this Note.²⁷⁵ First, the state court requires “sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization.”²⁷⁶ Next, the system must provide students “sufficient self-knowledge and knowledge of [their] mental and physical wellness.”²⁷⁷

The sixth and seventh attributes relate to labor. The legislature must ensure students receive “sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently,” as well as “sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.”²⁷⁸

Civics, finally, provides the foundation for the second and third attributes. Kentucky owes its students “sufficient knowledge of economic, social, and political systems to enable the student to make informed choices,” as well as “sufficient understanding of governmental processes to enable the student to understand the issues that affect [their] community, state, and nation.”²⁷⁹

The sole attribute remaining from *Rose* is the fifth, “sufficient grounding in the arts to enable each student to appreciate [their] cultural and historical heritage.”²⁸⁰ This idea more closely matches the federal interest in education as a means of developing “cultural values.”²⁸¹

In *Rose*, the Supreme Court of Kentucky charted a course toward a robust right to results in education. By grounding that right in the mutual benefit of a well-educated child and a state that provides the child an education, the court also developed the state’s interest in substantive goals.

3. Support for the Right to Results

This section presents the arguments in favor of a right to results, which generally contend that the right is valuable where it promotes the interests of

273. *Id.* These attributes are: “(i) sufficient oral and written communication skills”; “(ii) sufficient knowledge of economic, social, and political systems”; “(iii) sufficient understanding of governmental processes”; “(iv) sufficient self-knowledge”; “(v) sufficient grounding in the arts”; “(vi) sufficient training . . . in either academic or vocational fields”; and “(vii) sufficient levels of academic or vocational skills to enable public school students to compete . . . in academics or in the job market.” *Id.*

274. *See supra* Part II.B.1.

275. *See supra* Part II.B.1.

276. *Rose*, 790 S.W.2d at 212.

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954); *see supra* notes 168–74 and accompanying text.

both the citizen and the state. The education theorist John Dewey argued that education only yields benefits when children engage with a curriculum that both matches their experience and provides new avenues for exploration.²⁸² Students do not develop through the passive act of listening in a classroom, but rather by “the gaining of new experience” through active engagement with the material.²⁸³ Dewey’s conception of the educational benefit demands a right to results: the difference in education’s utility is not just the result of more resources, but rather the result of an intentionally designed, goal-oriented curriculum.

More recently, Professor Amy Gutmann argued that the process by which a student is educated carries deep democratic implications.²⁸⁴ First, for the child: a child who is not given the freedom to deliberate as a student will later fail as a citizen in a political system that prizes deliberation.²⁸⁵ Alternatively, a child who is permitted to deliberate among—and ultimately choose—a way of life that is incompatible with democracy may later inflict harm on those values.²⁸⁶ Second, the process by which a democracy educates its children serves as an investment in the society itself. If that nation fails to apply democratic values in teaching its youth, then the nation will not hold those values for long.²⁸⁷ Professor Gutmann frames public schools as a test of a democracy’s strength and virility. The right to a substantive education guarantees students the tools to flourish in a democracy. States providing such a right require instruction that develops competency, capacity for labor participation, and civic acumen.²⁸⁸

III. FRAMING STATES’ INTERESTS AS COMPELLING AFTER *MAHMOUD*

The *Mahmoud* problem is bound to recur.²⁸⁹ By finding that school districts impose a constitutional burden on religious parents by denying opt-outs from the teaching of certain books,²⁹⁰ the decision makes conflicts over curricular decisions more likely. This Note argues that by defending their compelling interest in providing children with a right to education,

282. See JOHN DEWEY, *THE CHILD AND THE CURRICULUM* 17–18 (1902) (arguing that a good education has a “dynamic quality, [a] developing force inherent in the child’s present experience”).

283. *Id.* at 18–19.

284. See generally AMY GUTMANN, *DEMOCRATIC EDUCATION* (2d ed. 1999).

285. *Id.* at xii (“Deliberative democracy underscores the importance of publicly supported education that develops the capacity to deliberate among all children as future free and equal citizens.”).

286. See *id.* at 61 (arguing that schools better serve democratic education when they “help develop the cooperative moral sentiments—empathy, trust, benevolence, and fairness”).

287. See *id.* at 75 (“[C]itizens have a legitimate interest in teaching children a civic culture; democratic politics is the proper means for shaping that culture; and primary schools are the proper institutions for teaching it.”).

288. *Id.*; see, e.g., *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989).

289. In fact, it already has. See, e.g., *Alan L. v. Lexington Pub. Schs.*, 814 F. Supp. 3d 61, 64 (D. Mass. 2025); *Reading v. North Hanover Twp.*, No. 23-cv-1469, 2026 WL 102849, at *29–30 (D.N.J. Jan. 13, 2026).

290. See *supra* Part I.C.3.

states and their school boards can overcome *Mahmoud*'s hurdles to require curricula in pursuit of civic goals.

Parents with sincerely held religious beliefs have legal justification to challenge their child's exposure to books about gay couples, about transgender people, and about nearly anything that contradicts their religious vision for their child. The expansion of *Mahmoud* is easy to imagine. Parents might object to Greek mythology on the grounds that stories include multiple gods. Or, a father might "want[] his child's curriculum stripped of any mention of women working outside the home."²⁹¹ If the school fights back, the parents will sue under the Free Exercise Clause, arguing that the school—by translation, the government—is improperly taking the parents' place by inculcating values that conflict with the parents' own values.

At a glance, *Mahmoud v. Taylor* resolves these cases in the parents' favor: parents have the right to rear their children in the particular religious tradition they please and the government is constitutionally forbidden from "substantially interfer[ing]" with that right.²⁹² Controversial curricula amount to substantial interference,²⁹³ so the work of lawyers and judges is done. Schools must provide an opt-out.

A closer look at the structure of U.S. education,²⁹⁴ the reasoning in *Mahmoud*,²⁹⁵ and the states' robust education rights²⁹⁶ yields a more complicated picture. By arguing a state has a "compelling interest" in fulfilling their obligation to educate children, school boards can forge a path toward protecting pluralistic curricula against parental opt-outs.

Mahmoud's critics have rushed too quickly toward accepting defeat. In dissent, Justice Sotomayor read the majority's ruling as the end of multiculturalism in public education.²⁹⁷ Scholars writing since the decision have sounded the same pessimistic tone.²⁹⁸ Before presenting an alternative argument, this Note warns against overreading *Mahmoud*.²⁹⁹

The standard position on *Mahmoud* stems from the Court's analysis of the constitutional burden.³⁰⁰ Part III.B concedes that requiring certain curricula burdens parents' constitutional rights. But federal courts and advocates of pluralistic curricula need not be so limited in their imagination. After

291. *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2401 (2025) (Sotomayor, J., dissenting).

292. *Id.* at 2361 (majority opinion).

293. *See id.* at 2350.

294. *See supra* Part I.A.

295. *See supra* Part I.C.

296. *See supra* Part II.

297. *See Mahmoud*, 145 S. Ct. at 2381–402 (Sotomayor, J., dissenting).

298. *See, e.g.*, Frederick Mark Gedicks, *Fun with Dick and Jane: Religious Conservative Privilege in Mahmoud v. Taylor*, 24 FIRST AMEND. L. REV. 195, 228 (2026); Richard B. Katskee & Ira C. Lupu, *Mahmoud v. Taylor: Cause or Effect of Disruptions in Public Schools?*, 24 FIRST AMEND. L. REV. 253, 254–55 (2026) (arguing that "the Court's decision is likely to demand radical changes in both planning and administration of curricula for the nation's public schools"); Schwartzman et al., *supra* note 134, at 238 (agreeing with Justice Sotomayor's concern for the future of public schools).

299. *See infra* Part III.A.

300. *See Mahmoud*, 145 S. Ct. at 2350–61 (majority opinion).

identifying agreement with the standard position, Part III.C diverges by arguing that the strong government interest in providing and administering education provides a path to victory for school boards.³⁰¹ The bulk of the argument lies with the “compelling interest,” which this Note identifies as the state’s responsibility to fulfill its constitutional obligation to children.³⁰² This Note argues that where a state provides a “right to results,”³⁰³ the state has a supremely compelling interest in providing students with an education crafted toward its particular goals.

A. *Caution Against Overstating
Mahmoud’s Harms*

Justice Sotomayor’s mournful dissent marks *Mahmoud* as something akin to a fire alarm through the halls of public schools. Her theory of the case amounts to a death knell for public education itself. While the majority’s dramatic departure from circuit precedent gives rise to significant concern, this section argues that the maximalist reading of *Mahmoud*—sparked by Justice Sotomayor’s dissent and stoked by reactions in its wake—is not only overblown, but counterproductive.

Writing for herself and fellow liberals on the Court, Justices Kagan and Jackson, Justice Sotomayor argues that the “ruling ushers in that new reality” where public schools’ presentation of a “multicultural society” becomes “a mere memory.”³⁰⁴ Reasoning that school districts will face “impossible administrative burdens” and “costly litigation,”³⁰⁵ the dissent laments that “[i]n effect, then, the majority’s new rule will hand a subset of parents a veto power over countless curricular and administrative decisions.”³⁰⁶

The majority opinion gives the dissenting justices plenty of reason for deep concern.³⁰⁷ However, school board advocates—and courts inclined toward approving curricula—can rely on the limiting language in Justice Alito’s majority opinion, if they so choose.

In word, if not in reason, the *Mahmoud* Court wards off the “slippery slope” policy argument. Acknowledging that “courts are not school boards or legislatures, and are ill-equipped to determine the ‘necessity’ of discrete

301. See *infra* Part III.C.

302. Because this Note focuses on legal arguments, empirical questions of educational policy are outside its domain.

303. See *supra* Part II.B.

304. *Mahmoud*, 145 S. Ct. at 2381 (Sotomayor, J., dissenting).

305. *Id.*

306. *Id.* at 2395.

307. So, too, do the subsequent efforts of President Donald J. Trump’s administration to stamp out—but not define—“sexual orientation and gender ideology” in public school curricula. See Press Release, U.S. Department of Justice, Justice Department Launches Investigations Concerning Gender Ideology in Pre-K-12 Schools in 36 Illinois School Districts (Apr. 30, 2026), <https://www.justice.gov/opa/pr/justice-department-launches-investigations-concerning-gender-ideology-pre-k-12-schools-36> [https://perma.cc/86K9-BSGP] (announcing a probe).

aspects of a State's program of compulsory education,"³⁰⁸ the majority "express[es] no view on the educational value of the Board's proposed curriculum."³⁰⁹ Further, the Court "emphasized that what the parents seek here is not the right to micromanage the public school curriculum."³¹⁰

Perhaps the Court's defense against the "slippery slope" argument is merely cover for its policy preferences.³¹¹ This view, however, fails to identify a path forward for school districts that seek to establish pluralistic curricula and defend them in federal court.

The remainder of this part fills that gap by describing the narrow path forward. The next section stipulates that *Mahmoud* holds pluralistic curricula can burden the free exercise right. The following section identifies and explains the compelling state interest that justifies the burden.

B. Pluralistic Curricula Burdens Free Exercise

Mahmoud v. Taylor shifts the balance of power between public schools and parents. After *Mahmoud*, parents with genuine religious objections to materials presented to their young children will have no trouble proving a burden on their First Amendment free exercise right. Books depicting Greek gods and working women—just as much as books depicting celebrations of gay weddings—might "substantially interfer[e] with the religious development' of the parents' children."³¹² School board policies against opt-outs might "pose 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill in their children."³¹³

If there was any doubt, the post-*Mahmoud* cases have resolved it. In *Mirabelli v. Bonta*,³¹⁴ the Court not only found a *Mahmoud*- and *Yoder*-like burden where school policies forbade teachers from revealing students' gender transition to their parents, but also described that policy as a more

308. *Mahmoud*, 145 S. Ct. at 2363 (majority opinion) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 235 (1972)).

309. *Id.*

310. *Id.* at 2363; see also Asma Uddin, *When Inclusion Becomes Compulsion: Mahmoud v. Taylor, Pluralism, and Public Education*, SCOTUSBLOG (July 1, 2025), <https://www.scotusblog.com/2025/07/when-inclusion-becomes-compulsion-mahmoud-v-taylor-pluralism-and-public-education/> [<https://perma.cc/VV9F-3HK6>] (defending the decision by arguing that "the court signaled that *Mahmoud* is a narrow holding—not a green light for widespread curricular objection").

311. See, e.g., Kate Shaw, William Baude & Stephen I. Vladeck, *'There's Just Too Much Lawlessness': Three Legal Experts on an Embattled Supreme Court*, N.Y. TIMES (July 3, 2025), <https://www.nytimes.com/2025/07/03/opinion/supreme-court-trump.html> (on file with the *Fordham Law Review*) ("[F]orgive me if I'm not holding my breath for the court's remarkably generous approach to religious freedom claims in *Mahmoud* . . . to be applied in a way that benefits all religions equally." (quoting Stephen I. Vladeck)). That interpretation is every bit as well-supported as the position this Note takes. In its pessimism, however, it fails to show advocates and educators the viable path toward pluralistic curricula.

312. *Mahmoud*, 145 S. Ct. at 2361 (alteration in original) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)).

313. *Id.* (quoting *Yoder*, 406 U.S. at 218).

314. See *supra* notes 136–39 and accompanying text.

significant intrusion on the right than MCPS's storybooks.³¹⁵ At the first opportunity to clarify the threshold for a finding of burden, the Court noted that any obstacle was meager.³¹⁶

Of course, finding a constitutional burden does not end a court's inquiry into whether a certain government action was proper.³¹⁷ In the next section, this Note argues that even when pluralistic curricula burden a parent's right to rear their child in a particular religious tradition, the state's compelling interest in educating the child justifies the action.

C. *Fighting over Strict Scrutiny*

The vast majority of state constitutions obligate the government to provide an education.³¹⁸ The state government—typically the state legislature³¹⁹—has flexibility to make choices within that required boundary, but this body is undisputably required to fulfill its constitutional duty. Given the language enshrined in state constitutions and the affirmation of their meaning by state courts, states clearly have a compelling interest in adhering to their constitutional obligations.

The state's duty to educate—and the child's right to an education—justifies the imposition of pluralistic curricula over parental objections. This argument adheres to the legal structure of U.S. education,³²⁰ creates positive incentives for states and for children,³²¹ and fits practically within *Mahmoud's* legal framework.³²²

1. Pluralistic Curricula Fulfill States' Obligations

Lawyers for states and school boards should argue the “compelling state interest” prong of strict scrutiny by invoking the state's specific duty to its citizens. This argument fits with the structure of U.S. education as well as the state's typical role in providing positive, enforceable rights. Further, the argument promotes good policy by incentivizing states to provide citizens with a more robust right to education. Finally, this argument recognizes the child as the holder of the education right, which aligns with the federal courts' traditional understanding of the nature of education.

315. See *Mirabelli v. Bonta*, 146 S. Ct. 797, 800–02 (2026) (per curiam).

316. *Id.* Some courts have interpreted the *Mahmoud* burden as easily met when curriculum is at issue. See, e.g., *Bates v. Pakseresht*, 146 F.4th 772, 791 (9th Cir. 2025). Other courts read the burden more narrowly and were quickly castigated by the Supreme Court. See *supra* notes 138–39 and accompanying text.

317. See *supra* notes 110–11 (explaining the “strict scrutiny” analysis that applies in these cases).

318. See *infra* App. A.

319. See *supra* notes 44–49 and accompanying text.

320. See *infra* Part III.C.1.

321. See *infra* Part III.C.2.

322. See *infra* Parts III.C.3–4.

*a. The Compelling Interest Fits
the Structure of U.S. Education*

By arguing that states have a compelling interest in designing curricula that fulfill an obligation to their citizens, lawyers would draw on the history of education in the United States. The federal courts have long recognized that education is within the states' domain.³²³ The federal government not only leaves each state to decide its constitutional treatment of education but also trusts the states to execute on that mission.³²⁴ States are free to experiment with pedagogy and curricula, free from the national government's interference.³²⁵ This distance does not flow from some federal belittling of the role of education, but rather from a positive recognition that states are better positioned to fine-tune the methods of teaching their citizens.³²⁶

States have developed those policies along two major tracks: structural rights³²⁷ and rights to results.³²⁸ A state's selection of either track reflects a fundamental policy commitment, whether that commitment is to equality in resource allocation or to adequacy in certain types of preparation. That commitment is precisely the type of policy question best understood by state governments as representatives of their citizens—not federal courts, which lack expertise on the subject.³²⁹ State constitutions reflect the state's priorities, its ability to serve its citizens, and, indeed, its interest in education.

While states have used their flexibility for different purposes, those purposes—and the constitutions that codify them—have never been questioned or restricted by federal authorities. Instead, each state constitution stands as a set of instructions and obligations of the government to its people. State courts treat the education provisions of these constitutions as statements of values.³³⁰ What education does Maryland owe its children? What about Kentucky, or Massachusetts, or Wyoming? Constitutions answer those questions and hold governments accountable to their enforcement.³³¹

The federal government leaves the states to determine their own educational ends. By treating those educational ends as a “compelling interest,” courts can understand specific curricular choices as means to meeting constitutionally mandated ends.

323. *See supra* Part I.A.

324. *See supra* Part I.A.

325. *See supra* Part I.A.

326. *See supra* notes 36–43 and accompanying text.

327. *See supra* Part II.A.

328. *See supra* Part II.B.

329. *See supra* notes 34–35 and accompanying text.

330. *See, e.g.,* Lake View Sch. Dist. No. 25 v. Huckabee, 91 S.W.3d 472, 485 (Ark. 2002); McDuffy v. Sec'y of Exec. Off. of Educ., 615 N.E.2d 516, 554 (Mass. 1993).

331. *See supra* Parts II.A.3, II.B.3.

*b. The Compelling Interest Aligns
with States' Role as Providers
of Positive Rights*

Recognizing a school board's compelling interest in designing and executing a particular curriculum also squares with the tradition of states providing positive rights to their citizens. Federal courts and the U.S. Constitution treat an individual's rights as negative—a defense *from* some government action.³³² State governments and constitutions take the opposite tack by recognizing the citizen's right to certain government actions.³³³ In almost every state, the citizen has a positive right to receive an education, meaning the state government has made a promise on which it must deliver.³³⁴

The obligation to educate citizens is the sum of many other obligations: to hire competent teachers, to construct sturdy school buildings, to tell everyone what time the school day starts, and to make some decisions about what students learn in school. While no state constitution designates a positive right to a certain written curriculum, the obligation to educate must include an obligation to give educators something to say.

By promising their citizens an education, then, the states take responsibility for designing that education.³³⁵ The books challenged in *Mahmoud*—and the potentially challenged materials in future litigation—are an element within the state's positive obligation to its people. While the specific contours of any state's curriculum are subject to democratic feedback and amendment, the state has a compelling interest in selecting certain instruments of education to fulfill its obligation to educate its citizens.

*c. The Child Holds the Right
to an Education*

Parents who mount *Mahmoud* challenges might not object to the arguments above. They might concede that states have a compelling interest in executing on their obligation to educate children; they might concede that federal courts owe states deference in designing curricula. But they would argue that their proposed intervention is limited, because they seek not to quash the curriculum, but to withdraw their child from a narrow piece of it. The person who holds a state-given right is, of course, welcome to waive or abridge it. That argument raises a question: who holds the right? In the context of public education, the better answer in most cases is that the child is the rightsholder.³³⁶ The child's primacy stems from the policy principles enunciated by both federal and state courts.

332. See Versteeg & Zackin, *supra* note 39, at 1682–83.

333. See *id.*

334. See *infra* App. A.

335. As discussed later in this part, right-to-result states take on some further responsibility.

336. For opposing positions, see *supra* Part I.B.2. Consideration of rightsholders in other contexts is beyond the scope of this Note.

First, the child is the appropriate rightsholder because the education right is established as a contribution toward their future success. If a central purpose of public education is to help children live well,³³⁷ constitutions must treat those children as the beneficiary of the right. While parents are typically best positioned to protect the child's best interests, the parent cedes the primary claim by entrusting the child to the state's expertise. The parent can homeschool the child, thereby choosing to substitute parental educational inclinations for the public system's.³³⁸ By instead electing to use the public school system, the parent relies on the child's "entitlement[] against the state."³³⁹ Once the child is in public school, the government's resources and power to educate that child far exceed the parent's capabilities.

Of course, the parent remains free to teach the child outside of school. But here, too, lies an argument for the child as rightsholder. States owe an education to all their children, including those whose parents wish to restrict their view of the world.³⁴⁰ At its core, public education is the system states deploy to pass certain skills and information to their youth.³⁴¹ To enroll a child in this system is to concede that the society—particularly, the child's fellow future citizens—have something to say that is worth hearing.³⁴² Children must have the opportunity to think for themselves; public school is among the strongest instruments that serve this goal.³⁴³

Government intervention is especially relevant in cases like *Mahmoud* and those sure to follow, where parents intend to limit the ideas their children encounter. The public school system cannot be a place of second indoctrination for these children, but it must nudge their scope of vision wider to include more of their fellow citizens. The states owe their children an education—in math and reading, and in the world around them.

2. Treating the Educational Right as a "Compelling Interest" Is Good Policy

An approach that matches a state's "compelling interest" in education with its obligation to citizens is good policy. This approach incentivizes states to reach their highest and best education policies.

Although the "compelling interest" in education is underdeveloped, federal courts thus far have defined the scope of a state's interest without specific regard to any particular state.³⁴⁴ This rule incentivizes a race to the

337. See *supra* notes 175–81 and accompanying text.

338. There too, the state has a positive obligation to ensure parents meet certain minimum standards.

339. Ryan, *supra* note 52, at 2092.

340. See *supra* notes 59–61 and accompanying text.

341. See *supra* Part I.D.1.

342. See *supra* notes 62–64 and accompanying text.

343. This argument requires an obvious concession. If the child individually objects on free exercise grounds—rather than the parent bringing the objection—the child is within their power to waive the state-granted right to education.

344. See *supra* notes 117–25, 142–43, and accompanying text.

bottom in which any given state is rewarded for guaranteeing its citizens the narrowest and weakest right possible. When a miseducated citizen sues their school district for failing to meet its constitutional obligation, public schools in states that provide a weak right benefit: They have a low bar to meet, as the court would compare the provided education against the meager constitutional requirement. But when the same district is sued for violating a parent's First Amendment right to the free exercise of their religion, the district is entitled to claim the same "compelling interest" as a state that has made greater commitments to its students.

The mode of analysis this Note suggests would incentivize a broader, deeper commitment to education. A state that binds itself to provide a more robust education would open itself up to new claims in state court, but it would also buy flexibility in crafting education policy, regardless of the particular right to education it provides its citizens.

3. Both Forms of the Educational Right Survive Strict Scrutiny

If states follow this Note's proposal and argue a "compelling interest" in executing their particular right to education, those states will necessarily make different arguments from each other. This section presents two versions of the argument: one for "structural right" states, the other for "right-to-result" states. Each subsection first traces the argument in general, then applies it to a particular state in its category—Maryland, for its present-day relevance after *Mahmoud*; Kentucky, because its standard in *Rose* has been so widely adopted.³⁴⁵

On the precise facts of *Mahmoud*, this argument necessarily results in losses for structural states like Maryland. This Note cannot, and does not, presume that the Court simply overlooked an available winning argument. However, this concession takes little away from this Note's core argument. Not only is *Mahmoud*'s outcome expressly tied to its specific facts,³⁴⁶ allowing structural right states to make productive arguments, but the Court has not yet ruled on this argument in a case involving states that provide a more robust right to education. Even on facts very similar to *Mahmoud*, then, federal courts can find that the state's right-to-results is a material distinction under Supreme Court precedent.

345. See *supra* note 269.

346. See *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2353 (2025) (noting that the question raised "will always be fact-intensive" based on factors including the plaintiffs' religious beliefs, the "nature of the educational requirement," and the context in which the school presents the materials). For the facts of *Mahmoud*, see *supra* notes 85–102.

*a. Allowing Pluralistic Curricula
Fulfills Structural Rights*

Lawyers in structural right states should treat *Brown v. Board of Education*³⁴⁷ and *Rodriguez v. San Antonio Independent School District*³⁴⁸ as the twin pillars supporting a state's right to determine and provide the resources a child needs without the undemocratic intervention of individual parents. The "adequate" education standard in *Rodriguez* empowers states to structure their financing systems as they see fit, subject to little federal intervention.³⁴⁹ By codifying this premise in their constitutions and expounding on it in their courts, states have developed a right that meets *Rodriguez's* opportunity.³⁵⁰

Brown illustrates a proper goal of a state's internal mechanisms for educating children: students must be given what they need to succeed.³⁵¹ While *Brown* is confined to a racial lens, the concept is broader—all students benefit from integration because students derive educational benefit from each other.³⁵² Lurking underneath the surface of that claim is the idea that students are entitled to some measure of school resources because certain resources promote the child's best interest.

States are the primary government actor in schools not only because of their legal powers under federalism, but also because of their expertise in education. When states provide students with certain books, as MCPS did in *Mahmoud*, they are acting under their promise to structure systems in the best interest of the child, the school, and the society that will reap the rewards of a well-resourced system.

In Maryland's case, the legislature must "establish throughout the State a thorough and efficient System of Free Public Schools."³⁵³ Its highest court has held that the language does not require "uniformity in per pupil funding and expenditures among the State's school districts," but does call for "legislative determination" of "a system, effective in all school districts, as will provide the State's youth with a basic public school education."³⁵⁴ The ways in which the system serves "the State's youth" and the bounds of a "basic public school education" are both subject to the legislature's determination.³⁵⁵

In its brief to the Supreme Court, Maryland joined other states in arguing for their "broad discretion to shape their curricula."³⁵⁶ Future advocates should emphasize not only the discretion provided to states by the federal

347. See *supra* notes 155–57 and accompanying text.

348. See *supra* notes 194–205 and accompanying text.

349. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 45 (1973).

350. See *supra* Part II.A.

351. See *supra* notes 175–76 and accompanying text.

352. See *supra* notes 175–77 and accompanying text.

353. MD. CONST. art. VIII, § 1.

354. *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758, 776 (Md. 1983).

355. *Id.*

356. State Amici Brief, *supra* note 120, at 1.

government, but also the requirements placed on states by their enforceable commitments to citizens. The brief emphasizes the benefit that public education provides to individuals and society, but misses the *particular* benefit to which Maryland's children are entitled. Maryland and other structural states can make a stronger case for their specific "compelling interest" by invoking the particular promises that bind them to their citizens.

In *Mahmoud*, MCPS—acting with authority granted by Maryland's legislature—made a series of decisions about the curricula and the underlying fundamental principles of a Montgomery County education.³⁵⁷ The school district's decisions extend beyond a student's reading of a book or the didactic act of hearing their teacher read it aloud. The school district's choice is for these books to be discussed, for them to be thrust into classrooms as the foundation of a new conversation. If a parent can unilaterally intervene and withdraw their child from that conversation, they have abridged the legislature's duty to determine and provide a basic education. Here, the parent undermines the state's constitutional obligation by stepping between their child and the society's provision of adequate resources.

*b. Pluralistic Curricula Allow
States to Fulfill the Right-to-Results*

Lawyers in "right-to-result" states have an easier argument to make. There, the state has bound itself to provide each child not only the resources they need to gain a robust education, but also the robust education itself.

In many states, the school system's duty includes preparation for citizenship.³⁵⁸ That requirement does not necessitate generating particular views about property taxes or housing policy—more likely, it forbids that result. A democracy, however, requires citizens to be prepared to both govern themselves and live well with one another.³⁵⁹ If public schools claim a responsibility to prepare citizens for democratic participation, that promise must be substantive. The child receives little benefit from a well-funded but misguided education, just as they receive little benefit from well-intended schools that cannot afford teachers and desks. Similarly, if public schools fulfill any duty of the state, that duty must be substantive with respect to the citizen's gain from education. Otherwise, the obligation to provide resources is disconnected from the governed population's wellbeing.

Lawyers for these school boards have a clear case to make: if the courts let parents abrogate the school's power to develop certain skills in the child, the court puts the school at risk of failing its constitutional obligations to both the individual child and the broader public.

For example, if curricular decisions in Kentucky are challenged on *Mahmoud* grounds, the state should argue for its robust commitment to citizens—specifically, the obligation that flows from its constitutional

357. See *supra* notes 85–95 and accompanying text.

358. See *supra* notes 159–67 and accompanying text.

359. See *supra* notes 177–83 and accompanying text.

promise. Kentucky's constitution requires the legislature to "provide for an efficient system of common schools throughout the State."³⁶⁰ Drawing on a deep well of history and precedent, the state's highest court described a duty reaching beyond math and reading, into the development of a civic skillset that serves the state's common interest.³⁶¹ Kentucky's lawyers should argue that the type of pluralistic curricula in *Mahmoud* and future cases further five of the *Rose* factors.³⁶²

The first factor calls on the state to develop "sufficient . . . communication skills to enable students to function in a complex and rapidly changing civilization."³⁶³ Assigning books that spark conversation is a clear effort to further this goal, particularly when the books start conversations that are not occurring in the child's life outside of school. Taken with the idea of "communication," the terms "complex" and "rapidly changing" reveal Kentucky's deeper interest in helping students work well with other people. Certainly, children can develop this skill outside of school. In the classroom, however, students are more likely to interact with people who are not like them or their families. This factor alone represents a right-to-results state's compelling interest in assigning books that expand a child's understanding of the world.

The second *Rose* goal, "sufficient knowledge of economic, social, and political systems to enable the student to make informed choices," and the fourth *Rose* goal, "sufficient self-knowledge," square with the pluralistic curricula as well.³⁶⁴ Students' knowledge of these systems, particularly social systems, is limited when parents can claim dominion over all the information their children receive. The books in *Mahmoud*, and other materials in a pluralistic curriculum, elevate the child's knowledge beyond what their parents otherwise offer, empowering the student to make life decisions from a broader menu than they would otherwise have.

Finally, the sixth *Rose* goal requires the state to provide "sufficient training . . . in either academic or vocational fields as to enable each child to choose and pursue life work intelligently."³⁶⁵ This goal suggests a deeper purpose within the child's right to education. The phrase "choose and pursue life work intelligently"³⁶⁶ describes more than the child's knowledge of themselves and the world around them, it describes the complicated process

360. KY. CONST. § 183.

361. See *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 206 (Ky. 1989) ("If public schools . . . are in the future to be the dependence of the people of Kentucky for the instruction of their youth, what is the logic of the situation? . . . [I]n so far as we love our children, to try to make their training-places fit nurseries of immortal spirits that have divine purposes to fulfill on earth." (quoting 3 OFFICIAL REPORT OF THE PROCEEDINGS AND DEBATES IN THE CONVENTION ASSEMBLED AT FRANKFORT, ON THE EIGHTH DAY OF SEPTEMBER, 1890, TO ADOPT, AMEND OR CHANGE THE CONSTITUTION OF THE STATE OF KENTUCKY 4463 (1890) (statement of Del. Beckner))).

362. See *id.* at 212; *supra* notes 267–81 and accompanying text.

363. *Rose*, 790 S.W.2d at 212.

364. *Id.*

365. *Id.*

366. *Id.*

of finding one's place in the world—one's "life work." The *Rose* court frames public school as a tool for children to use in defining their own lives.

At its best, an education is how any child can learn about, discover, and shape the world around them. *Rose* and the states that follow its framework recognize this potential; the advocates who represent those states should draw on this opportunity in framing the state's interest.

4. Pluralistic Curricula Can Be Narrowly Tailored

A compelling state interest does not, on its own, justify a constitutional burden. The government must also prove that its policy was "narrowly tailored" to further that interest.³⁶⁷ In *Mahmoud*, for example, the Court found that MCPS's blanket denial of opt-outs was not "necessary to serve" its stated interest in uninterrupted education.³⁶⁸

The question of narrow tailoring will be, in all cases, specific to the distinct facts of each case and each state's interest in education. For that reason, a more fulsome analysis of the question is better left to subsequent scholarship and jurisprudence. One general comment, however, frames the distinction between the current understanding of narrow tailoring and the better analysis under this Note's proposal.

Courts are less likely to second-guess school boards' pursuit of a "compelling interest" in substantive education than those same boards' pursuit of more generic goals.³⁶⁹ States have drawn judicial skepticism when school boards rely on arguments about safety and the wellbeing of children—areas in which the federal government and courts have similar interests to state governments.³⁷⁰ In education policy, however, states reign supreme.³⁷¹ By emphasizing the compelling interest in education policy rather than in safety or child-rearing, states can reasonably claim more discretion in how they tailor their policy.

CONCLUSION

Mahmoud has removed one instrument from the arsenal of school districts trying to write curricula geared toward pluralistic—or otherwise controversial—goals. However, the case need not spell the end of these efforts. By arguing that the state-provided right to education presents a "compelling interest" that justifies a constitutional burden, school boards can defend their powerful role in U.S. education against constitutional challenges.

367. See *supra* notes 109–11.

368. *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2361–62 (2025).

369. See *supra* notes 33–34 and accompanying text.

370. See *supra* notes 188–93 and accompanying text.

371. See *supra* Part I.A.

APPENDIX A: STATE-PROVIDED
RIGHTS TO EDUCATION

State	Type of Right
Alabama	Structural right ³⁷²
Alaska	Structural right ³⁷³
Arizona	Structural right ³⁷⁴
Arkansas	Right to results ³⁷⁵
California	Right to results ³⁷⁶
Colorado	Structural right ³⁷⁷
Connecticut	Right to results ³⁷⁸
Delaware	Right to results ³⁷⁹
Florida	Structural right ³⁸⁰
Georgia	Right to results ³⁸¹

372. *Ex parte James*, 836 So. 2d 813, 818–19 (Ala. 2002) (per curiam) (interpreting ALA. CONST. art. XIV, § 256 (“The legislature may by law provide for or authorize the establishment and operation of schools.”)).

373. *Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793, 804–05 (Alaska 1975) (interpreting ALASKA CONST. art. VII, § 1 (providing that “public schools [are] open to all children of the State”)).

374. *Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 877 P.2d 806, 814–15 n.7 (Ariz. 1994) (interpreting ARIZ. CONST. art. XI, § 1 (requiring the “establishment and maintenance of a general and uniform public school system”)).

375. *Lake View Sch. Dist. No. 25 v. Huckabee*, 91 S.W.3d 472, 488, 495 (Ark. 2002) (interpreting ARK. CONST. art. 14, § 1 (“[T]he State shall ever maintain a general, suitable and efficient system of free public.”)).

376. *Serrano v. Priest*, 487 P.2d 1241, 1258–59 (Cal. 1971) (en banc) (interpreting CAL. CONST. art. IX, § 5 (requiring a “system of common schools by which a free school shall be kept up and supported in each district”)).

377. *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1025 (Colo. 1982) (en banc) (interpreting COLO. CONST. art. IX, § 2 (“The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state.”)).

378. *Conn. Coal. for Just. in Educ. Funding, Inc. v. Rell*, 990 A.2d 206, 253–54 (Conn. 2010) (interpreting CONN. CONST. art. VIII, § 1 (“There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.”)).

379. *Delawareans for Educ. Opportunity v. Carney*, 199 A.3d 109, 116, 118 (Del. Ch. 2018) (interpreting DEL. CONST. art. X, § 1 (“The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools.”)).

380. *Citizens for Strong Schs., Inc. v. Fla. State Bd. of Educ.*, 262 So. 3d 127, 129–30, 154 (Fla. 2019) (interpreting FLA. CONST. art. IX, § 1(a) (“The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education.”)).

381. *McDaniel v. Thomas*, 285 S.E.2d 156, 165 (Ga. 1981) (interpreting GA. CONST. art. VIII, § 1, para. 1 (“The provision of an adequate education for the citizens shall be a primary obligation of the State of Georgia . . . and shall be provided for by taxation.”)).

State	Type of Right
Hawai'i	Right to results ³⁸²
Idaho	Structural right ³⁸³
Illinois	Structural right ³⁸⁴
Indiana	Structural right ³⁸⁵
Iowa	Neither right ³⁸⁶
Kansas	Right to results ³⁸⁷
Kentucky	Right to results ³⁸⁸
Louisiana	Structural right ³⁸⁹
Maine	Neither right ³⁹⁰
Maryland	Structural right ³⁹¹

382. *Clarabal v. Dep't of Educ.*, 446 P.3d 986, 1008 (Haw. 2019) (interpreting HAW. CONST. art. X, § 4 ("The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools.")).

383. *Thompson v. Engelking*, 537 P.2d 635, 648–49 (Idaho 1975) (interpreting IDAHO CONST. art. IX, § 1 ("The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.")).

384. *Lewis E. v. Spagnolo*, 710 N.E.2d 798, 804 (Ill. 1999) (interpreting ILL. CONST. art. X, § 1 ("The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.")).

385. *Bonner ex rel. Bonner v. Daniels*, 907 N.E.2d 516, 521 (Ind. 2009) (interpreting IND. CONST. art. VIII, § 1 ("[I]t shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.")).

386. *King v. State*, 818 N.W.2d 1, 14 (Iowa 2012) (interpreting IOWA CONST. art. IX, div. 2, § 3 ("The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.")).

387. *Gannon v. State*, 319 P.3d 1196, 1233–34 (Kan. 2014) (interpreting KAN. CONST. art. VI, §§ 1, 6(b) ("The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools The legislature shall make suitable provision for finance of the educational interests of the state.")).

388. *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 212 (Ky. 1989) (interpreting KY. CONST. § 183 ("The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.")).

389. *Aguillard v. Treen*, 440 So. 2d 704, 709–10 (La. 1983) (interpreting LA. CONST. art. VIII, § 1 ("The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.")).

390. *Sch. Admin. Dist. No. 1 v. Comm'r, Dep't of Educ.*, 659 A.2d 854, 857 (Me. 1995) (interpreting ME. CONST. art. VIII ("[T]he Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision at their own expense, for the support and maintenance of public schools.")).

391. *Hornbeck v. Somerset Cnty. Bd. of Educ.*, 458 A.2d 758, 776–77 (Md. 1983) (interpreting MD. CONST. art. VIII, § 1 ("The General Assembly . . . shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.")). Despite gestures toward "an adequate education measured by contemporary educational standards," *id.* at 780, the Maryland court ultimately refrained from finding a substantive constitutional obligation: "[A]t most, the legislature is commanded" to establish a school system capable of providing a "basic public school education. To the extent that § 1 encompasses any equality component, it is so limited." *Id.* at 776–77.

State	Type of Right
Massachusetts	Right to results ³⁹²
Michigan	Structural right ³⁹³
Minnesota	Right to results ³⁹⁴
Mississippi	Right to results ³⁹⁵
Missouri	Structural right ³⁹⁶
Montana	Right to results ³⁹⁷
Nebraska	Structural right ³⁹⁸
Nevada	Structural right ³⁹⁹
New Hampshire	Right to results ⁴⁰⁰

392. *McDuffy v. Sec’y of Exec. Off. of Educ.*, 615 N.E.2d 516, 523–28 (Mass. 1993) (interpreting MASS. CONST. pt. II, ch. 5, § 2 (“Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns.”))).

393. *Snyder v. Charlotte Pub. Sch. Dist.*, 365 N.W.2d 151, 154–55 (Mich. 1984) (interpreting MICH. CONST. art. VIII, § 2 (“The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.”))).

394. *Skeen v. State*, 505 N.W.2d 299, 315 (Minn. 1993) (interpreting MINN. CONST. art. XIII, § 1 (“The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools.”))).

395. *Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So. 2d 237, 240 (Miss. 1985) (interpreting MISS. CONST. art. VIII, § 201 (“The Legislature shall . . . provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.”))).

396. *Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 488–89 (Mo. 2009) (interpreting MO. CONST. art. IX, §§ 1(a), 3(b) (“A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law [I]n no case shall there be set apart less than twenty-five percent of the state revenue, exclusive of interest and sinking fund, to be applied annually to the support of the free public schools.”))).

397. *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 109 P.3d 257, 261–63 (Mont. 2005) (interpreting MONT. CONST. art. X, § 1 (“It is the goal of the people to establish a system of education which will develop the full educational potential of each person.”))).

398. *Citizens of Decatur for Equal Educ. v. Lyons-Decatur Sch. Dist.*, 739 N.W.2d 742, 761–62 (Neb. 2007) (interpreting NEB. CONST. art. VII, § 1 (“The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years.”))).

399. *Shea v. State*, 510 P.3d 148, 153–54 (Nev. 2022) (interpreting NEV. CONST. art. XI, § 2 (“The legislature shall provide for a uniform system of common schools.”))).

400. *Claremont Sch. Dist. v. Governor*, 635 A.2d 1375, 1381 (N.H. 1993) (interpreting N.H. CONST. pt. II, art. 83 (“[I]t shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools.”))).

State	Type of Right
New Jersey	Right to results ⁴⁰¹
New Mexico	Structural right ⁴⁰²
New York	Right to results ⁴⁰³
North Carolina	Right to results ⁴⁰⁴
North Dakota	Right to results ⁴⁰⁵
Ohio	Structural right ⁴⁰⁶
Oklahoma	Right to results ⁴⁰⁷
Oregon	Structural right ⁴⁰⁸
Pennsylvania	Right to results ⁴⁰⁹
Rhode Island	Structural right ⁴¹⁰
South Carolina	Right to results ⁴¹¹

401. *Abbott v. Burke*, 575 A.2d 359, 369–70 (N.J. 1990) (interpreting N.J. CONST. of 1947 art. VIII, § 4, para. 1 (“The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.”)).

402. *Forest Guardians v. Powell*, 24 P.3d 803, 814 (N.M. Ct. App. 2001) (interpreting N.M. CONST. art. XII, § 1 (“A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.”)).

403. *Campaign for Fiscal Equity, Inc. v. State*, 655 N.E.2d 661, 665–66 (N.Y. 1995) (interpreting N.Y. CONST. art. XI, § 1 (“The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.”)).

404. *Leandro v. State*, 488 S.E.2d 249, 254 (N.C. 1997) (interpreting N.C. CONST. art. I, § 15 (“The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.”)).

405. *State v. Rivinius*, 328 N.W.2d 220, 228–29 (N.D. 1982) (interpreting N.D. CONST. art. VIII, § 2 (“The legislative assembly shall provide for a uniform system of free public schools throughout the state.”), and N.D. CONST. art. VIII, § 4 (“The legislative assembly shall take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific, and agricultural improvements.”)).

406. *DeRolph v. State*, 677 N.E.2d 733, 744 (Ohio 1997) (interpreting OHIO CONST. art. VI, § 2 (“[T]he general assembly shall . . . secure a thorough and efficient system of common schools throughout the State.”)).

407. *Fair Sch. Fin. Council of Okla., Inc. v. State*, 746 P.2d 1135, 1149 (Okla. 1987) (interpreting OKLA. CONST. art. XIII, § 1 (“The Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated.”)).

408. *Pendleton Sch. Dist. 16R v. State*, 200 P.3d 133, 144–45 (Or. 2009) (en banc) (interpreting OR. CONST. art. VIII, § 3 (“The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools.”)).

409. *William Penn Sch. Dist. v. Pa. Dep’t of Educ.*, 170 A.3d 414, 449–51, 457 (Pa. 2017) (interpreting PA. CONST. art. III, § 14 (“The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.”)).

410. *City of Pawtucket v. Sundlun*, 662 A.2d 40, 55 (R.I. 1995) (interpreting R.I. Const. art. XII, § 1 (“[I]t shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services.”)).

411. *Abbeville Cnty. Sch. Dist. v. State*, 515 S.E.2d 535, 539–41 (S.C. 1999) (interpreting S.C. CONST. art. XI, § 3 (“The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State.”)).

State	Type of Right
South Dakota	Right to results ⁴¹²
Tennessee	Right to results ⁴¹³
Texas	Structural right ⁴¹⁴
Utah	Structural right ⁴¹⁵
Vermont	Right to results ⁴¹⁶
Virginia	Structural right ⁴¹⁷
Washington	Right to results ⁴¹⁸
West Virginia	Right to results ⁴¹⁹
Wisconsin	Right to results ⁴²⁰
Wyoming	Structural right ⁴²¹

412. *Davis v. State*, 804 N.W.2d 618, 627 (S.D. 2011) (interpreting S.D. CONST. art. VIII, § 1 (“The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all.”)).

413. *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 150–51 (Tenn. 1993) (interpreting TENN. CONST. art. XI, § 12 (“The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools.”)).

414. *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 397 (Tex. 1989) (interpreting TEX. CONST. art. VII, § 1 (“A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”)).

415. *Utah Sch. Bds. Ass’n v. Utah State Bd. of Educ.*, 17 P.3d 1125, 1129–31 (Utah 2001) (interpreting UTAH CONST. art. X, § 1 (“The Legislature shall provide for the establishment and maintenance of the state’s education systems including: (a) a public education system, which shall be open to all children of the state; and (b) a higher education system.”)).

416. *Brigham v. State*, 692 A.2d 384, 395 (Vt. 1997) (interpreting VT. CONST. ch. II, § 68 (“[A] competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth.”)).

417. *Scott v. Commonwealth*, 443 S.E.2d 138, 141–42 (Va. 1994) (interpreting VA. CONST. art. VIII, § 1 (“The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.”)).

418. *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 95 (Wash. 1978) (en banc) (interpreting WASH. CONST. art. IX, § 1 (“It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.”)).

419. *Pauley v. Kelly*, 255 S.E.2d 859, 877–78 (W. Va. 1979) (interpreting W. VA. CONST. art. XII, § 1 (“The Legislature shall provide . . . for a thorough and efficient system of free schools.”)).

420. *Vincent v. Voight*, 614 N.W.2d 388, 426 (Wis. 2000) (interpreting WIS. CONST. art. X, § 3 (“The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable.”)).

421. *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1263, 1278–80 (Wyo. 1995) (interpreting WYO. CONST. art. VII, § 1 (“The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade.”)).