

No.25-256

In the
Supreme Court of the United States

LIBBY HILSEN RATH, ON BEHALF OF HER MINOR CHILD,
C. H.,

Petitioner,

v.

CHATHAMS SCHOOL DISTRICT BOARD OF EDUCATION,
Respondents.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit*

**REPLY TO BRIEF IN OPPOSITION OF
RESPONDENT BOARD OF EDUCATION OF
THE SCHOOL DISTRICT OF THE CHATHAMS**

Richard Thompson
Counsel of Record
Thomas More Law Center
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
Tel: (734) 827-2001
rthompson@thomasmore.org

Michael P. Hrycak
129 Beech Street
Cranford, NJ 07016

Counsel for Petitioner

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ARGUMENT

The petition squarely presents an important question that affects public schools and their students across the Nation—whether, in the wake of *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022), lessons that proselytize or promote a specific religion violate the Establishment Clause under *Lee v. Weisman*, 505 U.S. 577 (1992) and *Edwards v. Aguillard*, 482 U.S. 578 (1987) by advancing religious viewpoints that contravene the religious beliefs of children and their parents. Pet. at i-ii. Yet the Respondents never address this critical issue, relying on cases that do not involve public school students and minimizing the implications of *Mahmoud v. Taylor*, 606 U.S. 522 (2025) on the government’s “duty to guard and respect that sphere of inviolable conscience and belief” that the Religion Clauses protect in the school setting. *Lee*, 505 U.S. at 592.

I. Specifying the proper test for Establishment Clause claims relating to school lessons that proselytize or advance a specific religion over others is critically important to ensure that schools do not coerce children in ways that undermine their religious beliefs.

This Court has repeatedly recognized that “[r]eligious education is vital to many faiths practiced in the United States.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 754 (2020). For many believers, “the religious education of children is not merely a preferred practice but rather a religious obligation.” *Mahmoud*, 606 U.S. at 547. While some parents “direct ‘the religious upbringing’ of their

children” by “sending [them] to religious schools,” *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464, 486 (2020) (citation omitted), financial concerns make it so that many parents “have no choice but to send their children to a public school.” *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring). For these parents, it is all the more important that this “Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.” *Edwards*, 482 U.S. at 583.

Not surprisingly, given the “complementary purposes” of the Religion Clauses, *Kennedy*, 597 U.S. at 533, this broad protection of the religious beliefs of parents and children flows from both the Establishment and Free Exercises Clauses. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 217 (1963) (describing “[t]he interrelationship of the Establishment and the Free Exercise Clauses”). The Free Exercise Clause safeguards “the rights of parents to direct ‘the religious upbringing’ of their children.” *Espinoza*, 591 U.S. at 486 (citation omitted). Under *Edwards*, the Establishment Clause protects the same right of religious belief for parents and their children. 482 U.S. at 584 (“Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.”). And *Lee* confirms that under the Establishment Clause the State has a “duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people.” 505 U.S. at 592.

According to the District, there is no Establishment Clause problem here because “[t]his Court has long held that public schools may use religious texts and teachings as part of an objective secular program of education without violating [the Establishment Clause].” Brief in Opposition of Respondent Board of Education of the School District of the Chathams (“Response”) at 13.¹ Contrary to the District’s claim, this case raises a different and unsettled issue: whether lessons that proselytize or promote a religion that conflicts with a parent’s or child’s religious beliefs violate the Establishment Clause. Neither the Third Circuit nor the District addressed this critical issue.²

¹ The District’s suggestion that students were not required to watch the “Intro to Islam” video, Response at 7-8, is irreconcilable with the sworn testimony of their own officials. Students were assigned the PowerPoints discussing Islam, and the “Intro To Islam” slide directed students to “Watch this video.” JA 416. In fact, part of the assignment directed students: “[a]s you watch this video clip, write down words that describe Islam as presented by this video.” *Id.* The Superintendent acknowledged C.H. watched the videos because they were assigned, JA 343-44, and that the content of the proselytizing video JA 435 was not a factual presentation. JA 335-39, 368-69. Google Classroom material was treated the same as in-class work. JA 441 (WCG Class Materials/Resources); JA 424 (MENA test guide); JA 322 (LaSusa Dep. 30:14-24); JA 381 (LaSusa/30b6 Dep 32:12-15); JA 171-172 (Maher Dep. 30:12-22, 34:5-18).

² This Court granted review in *Mahmoud* even though the LGBTQ+ curricular material was part of an objective, secular literature program. Here, as in *Mahmoud*, the effect of lessons that “advance religious views” and “conflict with the private beliefs of the student and his or her family” is a critical national issue. *Edwards*, 482 U.S. at 584.

Having identified the wrong issue, the panel compounded the problem by applying the wrong Establishment Clause precedents, ignoring the cases decided in the special context of public schools. In that setting, Establishment Clause claims are governed by *Lee* and *Edwards*, not *Kennedy* and *Shurtleff v. City of Boston*, 596 U.S. 243 (2022). Yet neither the panel nor the District mention, let alone discuss, *Lee*’s and *Edwards*’s recognition that the Establishment Clause prevents schools from “advanc[ing] religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards*, 482 U.S. at 584.

Instead of relying on these school precedents, the *Hilsenrath* majority treated *Kennedy*’s rejection of *Lemon* and the endorsement test as license to fashion a new “hallmarks” test, establishing its own unified Establishment Clause standard. But *Kennedy* did not overturn the numerous precedents that relied upon *Lemon*. In fact, *Kennedy* cited *Lee* and *Edwards* favorably, confirming their continued viability in the school setting. Yet instead of following *Lee* and *Edwards*, which emphasize the *broad protection* that the Establishment Clause provides parents and children who are concerned about the impact lessons promoting a particular religion might have on their “religious beliefs and worship,” *Lee*, 505 U.S. at 589, the majority relied on *Kennedy* and *Shurtleff*, which *narrowed* the government’s ability to invoke the Establishment Clause to justify muzzling private religious speech.

That was error. By indiscriminately applying its hallmarks test to public schools, the Third Circuit disregarded *Agostini v. Felton*’s directive to lower

courts that “if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.” 521 U.S. 203, 237 (1997).

Disregarding *Agostini*, the District contends that “the benchmarks regarding establishment of religion [discussed in *Town of Greece, American Legion*, and *Shurtleff*] ... apply identically in the public-school context.” Response at 11. *Lee* and *Edwards* demonstrate that this claim is wrong. Given the age of students coupled with compulsory attendance, “there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.” *Lee*, 505 U.S. at 592; *Edwards*, 482 U.S. at 583 (“The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools ... [given that s]tudents in such institutions are impressionable and their attendance is involuntary.”). Contrary to the Third Circuit’s and the District’s suggestions, in the school context neither “direct evidence of coercion” nor coerced participation in a formal religious exercise is required for an Establishment Clause violation. *Hilsenrath v. Sch. Dist. of Chathams*, 136 F.4th 484, 492 (3d Cir. 2025); Response at 11, 15.

As *Epperson v. Arkansas* explained, while a secular study of religion is permissible, “[t]he State may not adopt programs or practices in its public schools ... which ‘aid or oppose’ any religion.” 393 U.S. 97, 106 (1968). The video lessons on Islam do just that, “aiding” Islam by proselytizing and expounding

the virtues of the faith and its rich religious traditions. Response at 7-8. The videos are also like the Ten Commandments in *Stone v. Graham* in that, if the videos (created by third parties, like UKIslam, *see id.* at 8, that sought to promote and spread their Islamic faith) “are to have any effect at all, it will be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey,” the teachings of Islam. 449 U.S. 39, 42 (1980). This is Hilsenrath’s concern, which confirms that “families trust ... that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family,” *Edwards*, 482 U.S. at 584, even though no “formal religious exercise was taking place in C.H.’s WCG class.” Response at 15.

Review is warranted, therefore, because whether *Kennedy* and *Shurtleff* narrow the scope of Establishment Clause protection under *Lee* and *Edwards* is of great consequence to public schools across the country as well as to the millions of parents and children attending those schools.

II. Supreme Court guidance is necessary because post-*Kennedy* there is broad-based confusion among the lower courts as to the proper Establishment Clause test (or tests) to apply.

To address *Lemon*’s demise, *Kennedy* “instructed that the Establishment Clause must be interpreted by ‘reference to historical practices and understandings.’” 597 U.S. at 535 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)) (cleaned up). Any Establishment Clause line that separates the constitutional from the unconstitutional must

“‘accord[] with history and faithfully reflect[] the understanding of the Founding Fathers.’” *Town of Greece*, 572 U.S. at 577 (quoting *Schempp*, 374 U.S. at 294 (Brennan, J., concurring)). At the same time, *Agostini* requires lower courts to apply precedents that have “direct application in a case” (*Lee* and *Edwards*) even if those cases “appear[] to rest on reasons rejected in some other line of decisions” (*Kennedy* and *Shurtleff*). 521 U.S. at 237. Given the large number of cases decided during the *Lemon*/endorsement test era, lower courts have special need for direction as to the proper Establishment Clause test to apply in the public school setting.

Hilsenrath illustrates that need. The majority adopted a “hallmarks” test, drawing on the “telling traits” of established churches that Justice Gorsuch identified in his *Shurtleff* concurrence. *Hilsenrath*, 136 F.4th at 491. But the panel majority’s historical test is in direct tension with *Edwards*, which recognized that “[s]uch a historical approach is not useful in determining the proper roles of church and state in public schools, since free public education was virtually nonexistent at the time the Constitution was adopted.” 482 U.S. at 583 n.4.

Unconvinced, the concurrence ignored *Edwards*, rejected the majority’s “hallmarks” test, and questioned whether “history and tradition” can ever serve “as freestanding constitutional norms.” *Id.* at 494 (Phipps, J., concurring in the judgment). In place of the hallmarks test, Judge Phipps concluded that “all that is needed is a recognition that teaching on matters of religion or even encouraging religious belief or practice in public school does not constitute a ‘law

respecting an establishment of religion.’” *Id.* at 495. The concurrence provided no citation for its “recognition” standard and never explained why “encouraging religious belief or practice in public school” would not violate the Establishment Clause principles set out in *Lee* and *Edwards*. *Id.*

For its part, the District admits that “no one size fits all test for evaluating Establishment Clause cases was established in the wake of *Lemon*,” yet the *Hilsenrath* majority suggests *Kennedy* did just that. Response at 11. Other courts, and even the concurrence, have disagreed with the majority’s approach.³ And none of these courts has addressed *Agostini*. What the actual test or tests are, the District never says. Instead, the District adds to the confusion by proposing its own amalgamation of Establishment Clause principles to conclude that the proselytizing lessons on Islam are constitutional: “In fact, no reasonable person, aware of the context of the world history curriculum being taught, would ever view the challenged materials as communicating a message of coercion in a religious activity or established church.” Response at 18-19. On this view, the endorsement test (whether a reasonable person would view the curriculum as communicating a government message in the given context) combines with some sort of coercion analysis to limit

³ Although the Fifth Circuit had denied that *Kennedy* established a single hallmarks test, the District embraced that analysis as rooted in “‘a broader tradition’ at the time of the Founding or incorporation.” *Roake v. Brumley*, 141 F.4th 614, 646 (5th Cir. 2025); Response at 21. The Fifth Circuit recently vacated *Roake*, see *Roake v. Brumley*, 154 F.4th 329 (5th Cir. 2025), suggesting Circuit-wide uncertainty about the governing law.

Establishment Clause violations to cases involving direct coercion in a religious activity or an established church. The Establishment Clause right of students and parents to be free from lessons that promote religious views in conflict with their own is never mentioned.

All of this shows that guidance is necessary. If, as the District contends, the majority's test "is merely representative of the foremost historical practices and understandings of establishing a religion," Response at 20, courts need to know, among other things, (i) what test or tests should be used to replace *Lemon*, (ii) *Kennedy*'s impact on precedents that applied *Lemon*, and (iii) how "historical practices and understandings" affect the coercion analysis in the public school context. If the hallmarks test is *the* test, many questions remain unanswered as the concurrence and Fourth Circuit have noted. *Hilsenrath*, 136 F.4th at 494-95 (Phipps, J., concurring); *Firewalker-Fields v. Lee*, 58 F.4th 104, 121 (4th Cir. 2023). Only this Court can resolve this widespread confusion by directing lower courts to follow *Agostini* and by reaffirming that *Lee* and *Edwards* still apply in the school context.

III. Given the overlap between the Religion Clauses, *Mahmoud* clarifies the types of coercive pressures that impermissibly advance religious views that conflict with the private beliefs of students and their parents.

This Court has recognized that the Free Exercise and Establishment Clauses have "complementary purposes" and frequently provide overlapping

protections for religious groups and individuals. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 181 (2012) (describing how “[b]oth Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers”). This Court’s precedents involving public school instruction illustrate the point. *Edwards* and *Lee* provide generous Establishment Clause protection to parents and their children from state-mandated religious instruction or exercise, “guard[ing] and respect[ing] that sphere of inviolable conscience and belief which is the mark of a free people.” *Lee*, 505 U.S. at 592. *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and *Mahmoud* are to the same effect in the Free Exercise arena, providing parents and their children with broad protection from mandated materials or instruction that contradicts their religious convictions.

Despite this dual security, the District insists that *Mahmoud* has no bearing on this case. The District is wrong. Both Religion Clauses safeguard parents and children from even subtle forms of governmental coercion that arise from lessons that proselytize or promote a specific religion. *Mahmoud*’s coercion analysis, therefore, directly relates to the central issue here—whether proselytizing videos included in a larger history unit “advance religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards*, 482 U.S. at 584.

The Third Circuit looked only for evidence of direct coercion that “‘force[s] students] to engage in a formal religious exercise.’” *Hilsenrath*, 136 F.4th at 492 (citation omitted). For its part, the District would saddle parents with the burden of showing that

“Respondent’s MENA curriculum” taken as a whole does not “resemble[] the hallmarks of a religious establishment, as interpreted through historical practices and understandings.” Response at 26. *Mahmoud* confirms that both requirements are mistaken. Neither direct coercion nor participation in a religious exercise/establishment are necessary under the Religion Clauses.

Furthermore, *Mahmoud* instructs that the coercion test, whether invoked in relation to Free Exercise or Establishment, protects children and parents (through notice and a chance to opt-out) from specific lessons that conflict with their faith tradition. When a secular lesson on a controversial topic (such as the storybooks in *Mahmoud*) contradicts a parent’s or child’s religious beliefs, the Free Exercise Clause is implicated; when the challenged lesson involves videos that proselytize and promote a particular faith, Establishment Clause safeguards are triggered to protect the “sphere of inviolable conscience and belief which is the mark of a free people.” *Lee*, 505 U.S. at 592. In both situations, the lessons “undermine[]” parents’ “ability to present” their desired religious views “when the exact opposite message is positively reinforced in the public school classroom at a very young age.” 606 U.S. at 552. Thus, given the overlap between the Religion Clauses, *Mahmoud* “is an important precedent of this Court, and it cannot be breezily dismissed as a special exception” that applies only to Free Exercise claims. *Id.* at 558.

Finally, Hilsenrath does not invoke *Mahmoud* to surreptitiously assert a Free Exercise claim; rather, she asks this Court to consider—or at least permit the Third Circuit to consider—*Mahmoud*’s impact on the

coercion analysis in the public school setting. *Mahmoud* revitalized *Yoder*, confirming that the Free Exercise Clause “protects against policies that impose more subtle forms of interference with the religious upbringing of children.” 606 U.S. at 548. Because *Lee* and *Edwards* protect the same right to be free from even subtly coercive lessons that contradict a family’s religious beliefs, *Mahmoud*’s reasoning should apply to Establishment Clause claims as well. The decision below erred by manufacturing a tension between the Establishment and Free Exercise Clauses that does not exist in the public school setting.

CONCLUSION

For the reasons given above, this Court should grant the petition for certiorari or, in the alternative, remand the case for reconsideration in light of *Mahmoud*.

Respectfully submitted,

Richard Thompson
Counsel of Record
Thomas More Law Center
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
Tel: (734) 827-2001
rthompson@thomasmore.org

Michael P. Hrycak
129 Beech Street
Cranford, NJ 07016

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