Case No. 25-1341

In the United States Court of Appeals
for the Tenth Circuit

Joseph and Serena Wailes, et al.,
Plaintiffs-Appellants,

v.

Jefferson County Public Schools and Jefferson County Public Schools Board of Education,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Colorado
Case No. 1:24-cv-02439-RMR-NRN
The Honorable Regina M. Rodriguez

BRIEF OF AMICUS CURIAE MOMS FOR LIBERTY IN SUPPORT OF APPELLANTS AND REVERSAL

Julian R. Ellis, Jr.
Robert J. Bucknam
FIRST & FOURTEENTH, PLLC
2 North Cascade Avenue, Suite 1430
Colorado Springs, Colorado 80903
(719) 286-2475
julian@first-fourteenth.com
rob@first-fourteenth.com

Attorneys for Amicus Curiae Moms for Liberty

DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1(a), counsel for *amicus curiae* certifies that Moms for Liberty has no parent corporations and that no publicly held corporation owns 10% or more of its stock.

s/ Robert J. Bucknam
Robert J. Bucknam
Attorney for Amicus Curiae
Moms for Liberty

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES (cont'd)

Page(s)

Statutes

Federal Rules

Other Authorities

TABLE OF AUTHORITIES (cont'd)

Page(s)

IDENTITY AND INTEREST OF AMICUS CURIAE[1]

Jefferson County Public Schools ("Jeffco") violates parents' constitutionally protected fundamental right to direct the upbringing, education, and care of their children to advance a social agenda. This case centers on a Jeffco policy (the "Policy") that permits transgender students to room on overnight trips with students and counselors of the opposite biological sex. Non-transgender students may not opt out of the Policy, and Jeffco refuses to accommodate the plaintiff-parents' reasonable, faith-based requests to avoid these arrangements.

Amicus curiae, Moms for Liberty, is a nationwide organization dedicated to empowering parents to defend their right to direct the upbringing, education, and care of their children.[2] The organization advocates for parental rights at all levels of government (from local school boards to Washington, D.C.), appears in the media to raise awareness about social controversies in public schools, and distributes resources to equip parents to respond to state incursions on their fundamental liberties. Moms for Liberty's membership includes 130,000 moms, dads, grandparents, and friends across forty-eight states. In the Tenth Circuit, Moms for Liberty

---

[1] All parties have consented to this filing. In accordance with Fed. R. App. P. 29(a), counsel for amicus curiae states that no counsel for a party authored this brief in whole or in part, and no party or person other than amicus curiae and its counsel contributed money intended to fund the preparation or submission of this brief.

[2] *See Who We Are*, Moms for Liberty, https://www.momsforliberty.org/about/ (last visited Nov. 18, 2025).

has 4,570 members with local chapters in Colorado, Kansas, New Mexico, Oklahoma, and Wyoming, with a new local chapter launching in Utah by the end of the year.

Moms for Liberty is concerned that Jeffco's Policy and refusal to grant the parents' reasonable accommodation requests deprives parents of their fundamental right to direct their children's upbringing, education, and care. The organization files this brief to explain the deeply rooted tradition of the parents' substantive due process right and to emphasize the impact on parents throughout the Tenth Circuit if this Court affirms the district court's flawed ruling.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The right of parents to the care, custody, and control of their children "is perhaps the oldest of the fundamental liberty interests recognized" by the U.S. Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Jeffco violated this right. The district court dismissed the parents' substantive due process claim by assuming that the parents' fundamental right only extends to selecting their child's school. *See Wailes v. Jefferson Cnty. Pub. Schs.*, 2025 WL 2530790, at *3 (D. Colo. August 7, 2025). The district court erred.

I. Parents enjoy a fundamental right to direct the care, custody, and control of their children. That right is deeply rooted in the Nation's history and traditions, and it broadly grants parents primary authority over the upbringing, education, and care of their children. School officials'

ability to control non-academic issues, on the other hand, is limited to authority that the parents delegate to them under the *in loco parentis* doctrine. Public school officials are state actors, subject to the limitations of the Fourteenth Amendment, and they violate parents' substantive due process rights when they inhibit the parents' ability to exercise their authority over their children's upbringing, education, and care.

II. Throughout the Tenth Circuit, more than 90% of schoolchildren attend public schools. That means that, if this Court affirms the district court's flawed ruling, it will risk sanctioning state officials' infringement on the fundamental rights of most parents in the Circuit.

Accordingly, this Court should reverse the district court's dismissal of the parents' substantive due process claim.

ARGUMENT

I. Jeffco Exceeds Its *In Loco Parentis* Authority by Enforcing Its Policy and Refusing to Accommodate Objecting Parents

In its dismissal order, the district court acknowledged that parents have a fundamental right to make decisions concerning the care, custody, and control of their children. *See Wailes*, 2025 WL 2530790, at *3. Then, the court relied on recent caselaw to narrowly describe that right as only allowing parents to decide which school their child will attend. *See id.* Such a limited view of this constitutional right is wrong. Since the 17th century, legal scholars, statesmen, and jurists have recognized the broad

scope of the parents' fundamental right to educate their children, and courts have repeatedly invalidated state infringements on that right.

A. Parents have a fundamental right to direct the upbringing, education, and care of their children that is deeply rooted in the Nation's history and tradition

The Fourteenth Amendment's due process clause protects "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). The plaintiff-parents assert that Jeffco violated that right. In all due process cases, courts begin their analysis "by examining our Nation's history, legal traditions, and practices." *Washington v. Glucksberg*, 521 U.S. 702, 710 (1997).

While some Western civilizations, such as Sparta, experimented with education systems that completely entrusted children to the state, that has never been this Country's model. *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923). Instead, America imported its principles for education from the common law, which recognized that parents were the primary educators of their children. In 1673, Samuel Pufendorf, the natural law theorist, explained that "[t]he duty of parents consists chiefly in this, that they maintain their children handsomely, and that they so form their bodies and minds by a skillful and wise education, as that they may become fit and useful members of human and civil society."[3] John Locke

[3] Samuel Pufendorf, *The Whole Duty of Man, According to the Law of Nature* 184 (Ian Hunter & David Saunders eds., Andrew Tooke trans.,

similarly noted that parents are "under an obligation to preserve, nourish, and educate the children they have begotten."[4] Finally, in his Commentaries on the Laws of England,[5] the common law jurist William Blackstone explained that parents must give their children "an education suitable to their station in life."[6] Blackstone also recognized that a parent could "delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis* … ."[7]

After the Revolution, American jurisprudence assumed the common law's *in loco parentis* doctrine. *See Morse v. Frederick*, 551 U.S. 393, 413 (2007) (Thomas, J., concurring) (citing Chancellor James Kent's Commentaries on American Law). In his Lectures on Law, dating from the time period of the Constitution's ratification, James Wilson[8]

Liberty Fund, Inc. 2003) (1691) (altered for modern spelling and capitalization).

[4] John Locke, *Two Treatises of Government*, Second Treatise at § 56 (Ian Shapiro, ed., Yale University Press 2003) (1690).

[5] The U.S. Supreme Court noted that William Blackstone's Commentaries "not only provided a definitive summary of the common law but was also a primary legal authority for 18th- and 19th-century American lawyers … ." *Glucksberg*, 521 U.S. at 712.

[6] 1 William Blackstone, *Commentaries of the Laws of England* 438 (photo. reprt. 1983) (1765).

[7] *Id.* at 441.

[8] James Wilson signed both the Declaration of Independence and the Constitution, and he later served as an associate justice on the U.S. Supreme Court. *See Wilson, James 1742-1798*, Biographical Directory of

described the parents' fundamental right when he wrote that a child's education should be entrusted to his parents,[9] who had the duty to educate their children.[10] Wilson referred to the *in loco parentis* doctrine when he noted that a parent may delegate his authority to educate his child to a third party.[11]

In the 19th and early 20th centuries, several state courts addressed the parents' fundamental right. For example, in 1874, a teacher in Wisconsin taught geography to a student against a parent's express request. The Wisconsin Supreme Court noted that, generally, the law "gives the parent the exclusive right to govern and control the conduct of his minor

---

the U.S. Congress, https://bioguide.congress.gov/search/bio/W000591 (last visited Nov. 17, 2025).

[9] James Wilson, *Lectures on Law (1789 to 1791)*, ContextUS, Part 2, Chapter III Of the Judicial Department, ¶ 93, https://contextus.org/James_Wilson's_Lectures_on_Law_(1789_to_1791)%2C_Part_2%2C_Chapter_XII_Of_The_Natural_Rights_Of_Individuals.109?lang=en (last visited Nov. 23, 2025) (stating "[t]o parental affection the care of education may, in most instances, be safely entrusted.") (revised for modern spelling).

[10] *See id.* at Part 2, Chapter XII Of the Natural Rights of Individuals, ¶ 109 (stating "[i]t is the duty of parents to maintain their children decently … and to educate them according to the suggestions of a judicious and zealous regard for their usefulness, their respectability, and their happiness."); *see also id.* at ¶ 114.

[11] *See id.* at ¶ 110 (stating "[p]art of [the father's] authority he may delegate to the person entrusted with his child's education … .") (alteration added) (revised for modern spelling).

children … .” *Morrow v. Wood*, 35 Wis. 59, 64 (1874). The Court added that teachers may not contradict a parent’s express direction if his request was reasonable, no other students’ rights were being prejudiced, and the school could accommodate his request while performing its other duties. *See id.* at 65–66. Other state courts similarly held that school authorities could not ignore parents’ reasonable education requests. *See State v. Ferguson*, 144 N.W. 1039, 1043–44 (Neb. 1914); *Sch. Bd. Dist. No. 18, Garvin Cnty. v. Thompson*, 103 P. 578, 582 (Okla. 1909).

The U.S. Supreme Court directly addressed parental rights for the first time in *Meyer v. Nebraska*, 262 U.S. 390 (1923). The Supreme Court recognized that, up to that point, the Fourteenth Amendment’s reference to “liberty” lacked exact definition. *See id.* at 399. However, “[w]ithout doubt, it denotes not merely freedom from bodily restraint but also the right … to marry, establish a home and bring up children … .” *Id.* Further, the Court considered it “established doctrine” that “this liberty may not be interfered with, under the guise of protecting the public interest, by legislating action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.” *Id.* at 399–400. Finally, the Court acknowledged the common law principle that “it is the natural duty of the parent to give his children education suitable to their station in life.” *Id.* at 400.

Two years later, the Supreme Court affirmed that the “liberty of parents and guardians to direct the upbringing and education of children

under their control" was "guaranteed by the Constitution." *See Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534–35 (1925). It further added that "[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.* at 535.

Later, in *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court explained that the due process clause "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.* at 720. These liberties specifically include the right "to direct the education and upbringing of one's children." *See id.* According to the Court, these fundamental rights are "implicit in the concept of ordered liberty[] such that neither liberty nor justice would exist if they were sacrificed." *Id.* at 721 (citations omitted).

And, in *Troxel v. Granville*, 530 U.S. 57 (2000), the Court again confirmed that "the liberty protected by the Due Process Clause includes the right of parents to establish a home and bring up children and to control the education of their own." *Id.* at 65 (citations omitted). The Court listed numerous additional cases recognizing the broad, fundamental right of parents to "make decisions concerning the care, custody, and control of their children." *Id.* at 66.[12]

[12] These cases include: *Stanley v. Illinois*, 405 U.S. 645 (1972); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Quilloin v. Walcott*, 434 U.S. 246

The Supreme Court has specifically applied this fundamental right to instances in which parents raised religious-based objections to education requirements, much like the parents in this case. In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Court ruled in favor or Amish parents seeking relief from compulsory school attendance laws because the requirement burdened the parents' free-exercise right under the First Amendment and their traditional right to direct the religious upbringing of their children under the Fourteenth Amendment. *See id.* at 234. Recently, in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), the Supreme Court ruled that a school board's decision to add "LGBTQ+ inclusive" storybooks into an elementary curriculum, coupled with its refusal to accommodate parents' requests to opt their children out of reading the books, violated the parents' right to the free exercise of their religion. *See id.* at 569. In both cases, the Court found that the actions of state officials burdened the parents' right to direct their children's religious upbringing.

B. Schools' limited authority under the *in loco parentis* doctrine

While parents have traditionally enjoyed broad authority to direct their children's education, school officials' authority is limited. At common law, school officials derived their authority from parents under the *in loco parentis* doctrine. However, public education today is completely

(1978); *Parham v. J.R.*, 442 U.S. 584 (1979); and *Santosky v. Kramer*, 455 U.S. 745 (1982).

different than anything that was contemplated by the common law or the early United States, and the contours of *in loco parentis* have shifted.

"If *in loco parentis* is transplanted from Blackstone's England to the 21st century United States, what it amounts to is simply a doctrine of inferred parental consent to a public school's exercise of authority that is commensurate with the task that the parents ask the school to perform … parents are treated as having relinquished the measure of authority that the schools must be able to exercise in order to carry out their state-mandated educational mission, as well as the authority to perform any other functions to which parents expressly or implicitly agree … ." *See Mahanoy Area Sch. Dist. v. B. L. by and through Levy*, 594 U.S. 180, 200 (2021) (Alito, J., concurring).

Where school officials act outside of the educational mission or do not have parental agreement, they are not exercising authority under the *in loco parentis* doctrine; they are acting as "organs of the State." *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring). As state actors, "public school officials are subject to the limits … of the Fourteenth Amendment," *New Jersey v. T.L.O.*, 469 U.S. 325, 334 (1985), which protects citizens from state incursions on fundamental rights, *see Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 507 (1969).

C. Jeffco exceeded its authority and violated the parents' fundamental rights

Jeffco's enforcement of the Policy, and its failure to accommodate parents, exceed the scope of its *in loco parentis* authority. While the school's educational mission may allow it to organize academic aspects of a school trip, forcing students to room with members of the opposite biological sex is beyond that mission. That issue falls outside of state-mandated education, and parents cannot be treated as having relinquished authority over it. Further, the parents had no knowledge of the Policy or its impact on overnight room arrangements. Therefore, they could not expressly or implicitly have delegated authority to Jeffco over their child's rooming arrangements with transgender individuals. Finally, now that some parents are aware of the Policy, they seek accommodation to opt out of it, indicating further lack of delegation to school officials. Yet, Jeffco refuses to grant the parents' reasonable request. Therefore, this issue falls beyond the scope of Jeffco's *in loco parentis* authority and squarely within the parent's deeply rooted fundamental right to direct their children's education.

Because the parents have not yielded *in loco parentis* authority to Jeffco to enforce the Policy, Jeffco's regulation of the Policy is a state action. The Policy contradicts the religious beliefs and principles of the parents, who have the fundamental right to direct the upbringing and education of their children in accordance with their moral values. As a state

authority, Jeffco is barred from infringing on the parents' Fourteenth Amendment due process rights. Accordingly, Jeffco's enforcement of the Policy and refusal to accommodate the parents' requests to opt out of it exceed its state authority and violate the parents' fundamental right to direct the upbringing, education, and care of their children.

II. Public School Policies Like Jeffco's Could Infringe on the Rights of More than 90% of Parents in the Tenth Circuit

State law generally requires that children between the ages of six- and seventeen-years old attend school. *See, e.g.*, Colo. Rev. Stat. § 22-33-104. Parents have the option of sending their children to public schools or enrolling them in independent, parochial, or non-public home-based educational programs. *See id.* While public schools are generally provided at little or no financial expense, the alternative options impose significant financial and time-based burdens on parents and families. Quite simply, private and independent schools are too expensive for most Colorado families,[13] and many parents are unable to homeschool their children because of responsibilities outside the home. In practice, public schools are the only real option available to most Colorado parents.

[13] In Colorado, the average private school tuition for one PK-12 student will be $14,827 for the 2025-2026 school year. *See Colorado Private Schools By Tuition Cost*, Private School Review https://www.privateschoolreview.com/tuition-stats/colorado, last visited Nov. 18, 2025.

As of June 2024, 91% of all school-aged children in Jefferson County, Colorado, attended Jeffco Public Schools.[14] Statewide, 91.4% of Colorado PK-12th grade students were enrolled in public schools last year.[15] As of 2022, each of the other states in the Tenth Circuit had higher public school enrollment rates ranging from 94.7% in Kansas to 99.1% in Utah.[16] In fact, "by choice or necessity, nearly 90% of the students in the country attend public schools … ." *Mahanoy Area Sch. Dist.*, 594 U.S. at 199–200 (Alito, J., concurring).

Jeffco provides tremendous educational opportunities to its students, including trips to Washington, D.C., several days in the Rocky Mountains, and robust athletic competitions. These are experiences that students should be able to participate in, learn from, and talk about for several years afterward—but students and their parents should not be forced to sacrifice their faith-based and moral values to do so. Moms for Liberty is concerned that if this Court upholds the district court's

---

[14] *See Comprehensive Boundary Study Findings and Reports*, Jeffco Public Schools (June, 2024), https://www.jeffcopublicschools.org/services/facilities/boundary-study (follow Read the Full Report hyperlink; *see* p. 1, A Message from Jeffco Public Schools).

[15] In total, 881,065 PK-12th grade students enrolled in public schools during the 2024-2025 academic year. *See Colorado State Education Snapshot*, Colorado Department of Education (updated Jan., 2025), https://www.cde.state.co.us/schoolview/explore/statesnapshot.

[16] *See Digest State Dashboard*, National Center for Education Statistics, https://nces.ed.gov/programs/digest-dashboard (select state and use figures from "Overall trends in public school enrollment" chart) (last visited Nov. 18, 2025).

dismissal, more than 90% of parents in this Circuit could be coerced into a choice similar to the parents in this case: accept state-provided educational benefits at the risk of exposure to moral instruction contradicting the parents or forgo key educational experiences that shape their child's development. In *Mahmoud v. Taylor*, 606 U.S. 522 (2025), the Supreme Court held that such a choice unconstitutionally burdens parents' religious exercise. *See id.* at 569. Upholding the district court's order would do the same here.

CONCLUSION

Moms for Liberty respectfully asks the Court to REVERSE the district court's dismissal of the parents' substantive due process claim. The court's decision failed to acknowledge the full scope of the parental fundamental right to direct the upbringing, education, and care of their children, and upholding it may result in a disastrous negative impact on the freedoms of most of the parents in the Tenth Circuit's jurisdiction.

Dated: November 26, 2025

Respectfully submitted,

s/ Robert J. Bucknam

Julian R. Ellis, Jr.
Robert J. Bucknam
FIRST & FOURTEENTH, PLLC
2 North Cascade Avenue, Suite 1430
Colorado Springs, Colorado 80903
(719) 286-2475
julian@first-fourteenth.com
rob@first-fourteenth.com

Attorneys for Amicus Curiae Moms for Liberty

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This document complies with the type-volume limitation set forth in Fed. R. App. P. 29(a)(5) because, excluding the portions of the document specified by Fed. R. App. P. 32(f) and 10th Cir. R. 32(B), this document contains **3,778** words, which is less than one-half of the length permitted for Appellant's principal brief.

2. This document complies with the typeface requirements of Fed R. App. P. 32(a)(5)(A) and 10th Cir. R. 32(A) because it was prepared in 14-point Century Schoolbook, which is a proportionately spaced type-face that includes serifs. It complies with the type style requirements of Fed. R. App. P 32(a)(6) because it is set in a plain, roman style, excepting italics or boldface for emphasis and case names.

Dated: November 26, 2025.

s/ Robert J. Bucknam

Julian R. Ellis, Jr.
Robert J. Bucknam
FIRST & FOURTEENTH, PLLC
2 North Cascade Avenue, Suite 1430
Colorado Springs, Colorado 80903
(719) 286-2475
julian@first-fourteenth.com
rob@first-fourteenth.com

Attorneys for Amicus Curiae
Moms for Liberty

CERTIFICATE OF SERVICE

I certify that on November 26, 2025, I electronically filed the Brief of Amicus Curiae Moms for Liberty in Support of Appellants and Reversal with the Clerk of the Court for the U.S. Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Dated: November 26, 2025.

s/ Robert J. Bucknam
Julian R. Ellis, Jr.
Robert J. Bucknam
FIRST & FOURTEENTH, PLLC
2 North Cascade Avenue, Suite 1430
Colorado Springs, Colorado 80903
(719) 286-2475
julian@first-fourteenth.com
rob@first-fourteenth.com

Attorneys for Amicus Curiae Moms for Liberty