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Parents v. the State: Taking on Public Education Results in Back-to-Back Showdowns at the Supreme Court

By Daniel Schmid

The ideological war over parental rights in education and the battle for the minds of future generations is facing off at the United States Supreme Court with two cases to be decided this summer. In [Mahmoud v. Taylor](#) and [Oklahoma Statewide Charter School Board v. Drummond](#), Liberty Counsel filed amicus briefs with the Supreme Court to reinforce the fundamental right of parents over their children's education.

This shouldn't even be a conversation since the U.S. Supreme Court has recognized this obvious reality and upheld parental authority in multiple cases throughout U.S. history.

In 2000, the Court wrote in [Troxel v. Granville](#), "The interest of parents in the care, custody, and control of

their children is the oldest of the fundamental liberty interests recognized by this Court."

That decision echoed the High Court's opinion exactly a century ago when it affirmed that parents and guardians have the right "to direct the upbringing and education of children" ([Pierce v. Society of Sisters of the Holy Names of Jesus and Mary](#) (1925)).

In other words, "The child is not a 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."

This fundamental right of the parents to guide their child's education and upbringing has been both respected and implied for generations. But as of late, this

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Protecting the Pulpit by Repealing the Freedom-Crushing Johnson Amendment

By Mat Staver

While some pastors shy away from addressing political or cultural issues for fear of offending people, others are crippled by fear of the so-called "Johnson Amendment" that was added to the Internal Revenue Code in 1954. As will be addressed below, the Johnson Amendment is overblown and unconstitutional in my view.

It's time to end the chilling effect this amendment to the tax code has wielded over pastors, pulpits, and other nonprofit organizations. And it's time to stop the Internal Revenue Service (IRS) from muzzling pastors and churches.

Rep. Mark Harris (R-NC) and Sen. James Lankford (R-OK) introduced the "[Free Speech Fairness Act](#)" in the U.S. House and Senate to amend the Internal Revenue Code to protect free speech. Though similar bills have been introduced in years past, the stage is set for this Congress to make repealing the Johnson Amendment a reality.



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right is floundering as the state seeks to usurp the parents' rightful authority in this area.

That Time Catholics and Muslims Agreed

Mahmoud v. Taylor is a case study that shines a spotlight on how the constitutional issue of parental rights transcends political, cultural, and religious differences. At its core, the case is about the constitutional obligation to protect the right to direct and protect one's offspring from destructive and harmful influences and ideologies, even if those decisions conflict with a state's chosen messages.

At the center of the case is a group of Maryland parents from diverse religious backgrounds (including Islamic, Roman Catholic, and Ukrainian Orthodox) that challenged the policy of Montgomery County Public Schools prohibiting parents from opting their children out of obscene and sexual content for kids aged pre-K (as young as three!) through middle school. And, if barring parents from opting their three-year-olds out of sexually explicit materials were not shocking enough, the school district poured salt in the parents' constitutional wounds by adopting a policy that muzzled teachers from even notifying the parents that sexually explicit material would be taught to their pre-K to middle school-aged students.

The parents argued this instruction interferes with their religious beliefs on gender and sexuality as well as their constitutional right to direct the upbringing and education of their children. *It does.*

The content in question included more than "22 LGBTQ+-inclusive" storybooks infused with radical gender ideology, such as the false idea of "gender transitions," "pride" parades, and same-sex romances between minors. Montgomery County has replaced the heroic tales of Odysseus and Achilles with "[Pride Puppy](#)" who valiantly went around the pride parade looking for leather bondage materials. Classical education, it is not.

And it was the tale of this bondage-seeking dog that Montgomery County prohibited parents from rejecting. Yet the same school district permits opt-outs for a whole host

of school activities but enacted a policy that prohibits opt-outs and parental notice for this one curriculum on LGBTQ garbage. Homer's out and homosexual bondage in for Montgomery County's school children.

Neither students nor parents surrender their constitutional rights at the schoolhouse gate. The Free Exercise Clause prohibits the government from subjecting minor children to grossly inappropriate sexual material about which their parents have sincere religious objections. This means that the government cannot prohibit parents from opting their children out of material hostile to their religious beliefs and then conceal their efforts with a policy that keeps teachers from even notifying them.

The fact that public schools are willing to go to the Supreme Court to assert their "dominance" over the parents' relationship with their children says a lot. For Montgomery County Public Schools, it is no longer instruction but indoctrination. The First Amendment prohibits that, which is why the Supreme Court must reject this radical reversal of the oldest fundamental right in the Republic.



Catholic-Run Public Charter School Left Out of the School Choice Playground

It's no secret that the American public school system is failing. By nearly every metric, public schools nationwide are underperforming, unaccountable, and increasingly out of touch with the families they purport to serve. Indeed, as Montgomery County proved above, public schools are attempting to force sexual and "transgender" ideologies into the minds of young children, over the objections of parents. In response, families are fleeing public schools in droves and turning to alternatives that better serve their children's needs. *They are wise to do so.*

Here's where the significance of Oklahoma Statewide Charter School Board v. Drummond

comes in. School choice is non-negotiable, but the state of Oklahoma excluded a Catholic public charter school from receiving public funding due to its religious affiliation. On May 22, the Supreme Court deadlocked in a [4-4 vote](#) (with Justice Barrett recusing herself) that allows the Oklahoma Supreme Court ruling to stand, prohibiting the Catholic public charter school from public funding.

As our [amicus brief](#) argued in this case, parents, not the government, bear the primary responsibility for directing their children's education as has been affirmed by the High Court in multiple cases. Put simply: Once a state provides a benefit for private education, it cannot exclude religious institutions, according to [Trinity Lutheran Church of Columbia Inc. v. Comer](#) (2017) — or public institutions run by religious organizations. The Supreme Court will inevitably be asked to revisit the charter school funding issue in the near future, as that is not going away, and it should reaffirm the long line of precedent it neglected in *Drummond*.

In fact, the Supreme Court just recently rejected Maine's similar prohibition on providing funding for parents who seek to send their children to private religious institutions when the state made that funding available for secular private schools. To do so would plainly run afoul of the Establishment Clause and substantially burden the parent's religious beliefs in violation of the Free Exercise Clause.

Parents, not the government, are the primary stakeholders in their children's education. The Court must uphold this fundamental right. Nothing less than the Republic's future hangs in the balance.

The Future of Parental Rights in Education Hangs in the Balance

The Court will be forced to decide on both of these pivotal cases when it pertains to parental rights and religious liberty by the end of June.

Parents, not the government, are the primary stakeholders in their children's education. The Court must uphold this fundamental right. Nothing less than the Republic's future hangs in the balance. **LC**

Daniel Schmid is a constitutional attorney and the Associate Vice President of Legal Affairs at Liberty Counsel.

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I have been a longtime advocate for repealing the Johnson Amendment, and in 2011, I served on a congressional task force at the request of Sen. Chuck Grassley (R-IA) to evaluate this amendment that has been used to chill free speech. Our legal panel recommended repealing the Johnson Amendment, and it's time to finally follow through by ending this freedom-suppressing provision in the tax code.

“Free exercise of religion and freedom of speech are paramount to our constitutional republic.”

A Brief History

To understand why the Johnson Amendment has silenced pastors unchecked for so long, it's important to understand its history.

In 1954, then-Senator Lyndon Baines Johnson amended the Internal Revenue Code through the [Johnson Amendment](#) to prohibit nonprofit organizations, including churches, from endorsing or opposing political candidates. This move that wreaked havoc on our first freedoms was largely in retaliation to a nonprofit group that campaigned against Johnson in his race for U.S. Senate.

Seventy-one years later, the Johnson Amendment still has a grip on pastors and nonprofit leaders who fear losing their tax-exempt status. Though this is certainly not an excuse to stay silent, it has been effective in silencing people who bought into this myth that they can lose their church's tax-exempt status by wading into political waters from the pulpit.

In reality, not one church has ever lost its tax-exempt status for endorsing or opposing a political candidate. But the fear remains as long as the Johnson Amendment remains.

A Detrimental Muzzle for Pastors

Whether they are using the Johnson Amendment as an excuse to stay silent on political matters or they truly feel like the IRS has robbed them of their First Amendment freedoms, the Johnson Amendment has chilled freedom of speech for more than seven decades.

Culture is downstream from the church. Is there any wonder why an anti-God ideology and the evils of abortion, transgenderism, and the LGBTQ agenda have permeated every corner of our country after generations of silence from the pulpit? This is the tragic result of pastors who refused to address these biblical issues to equip and educate their congregations.

Pastors should have the autonomy to speak truth from their pulpits and share their convictions without the looming presence of federal oversight. Throughout our nation's history, parishioners gathered to hear the Word of God and were sent into the public square to make a positive impact on the culture through political engagement.

At its core, this attempt to silence pastors is unconstitutional and antithetical to our founding values. In a sense, it tells pastors to stay silent as Rome burns.

Returning Freedom to Its Rightful Place

In 2017, President Trump pressured Congress to repeal the Johnson Amendment, but the language in the tax reform bill to do this was [blocked](#) by the Senate parliamentarian. The president also pledged to “totally destroy” the Johnson Amendment and “allow our representatives of faith to speak freely and without fear of retribution.”

He even signed an [executive order](#) in May 2017 that protected religious leaders to speak out politically. Though this didn't dismantle the Johnson Amendment (only an act of Congress or a decision from the Supreme Court could do that), it did take necessary steps to enshrine freedom of speech for faith leaders.

Should the president sign a similar executive order in his second term? Absolutely. But what will secure protections for generations to come is Congress repealing the Johnson Amendment.

As my friend, the late Dr. Jerry Falwell, used to say: “The idea that religion and politics don't mix was invented by the devil to keep Christians from running their own country.”

Rev. Charles G. Finney, revivalist in the Second and Third Great Awakenings, hit the nail on the head: “The time has come that Christians must vote for honest men and take consistent ground in politics, or the Lord will curse them. Christians have been exceedingly guilty in this matter. But the time has come when they must act differently...[God] will bless or curse this nation, according to the course they take.”

If more Christians, and especially pastors, had this understanding of a Christian's role in civic engagement, we would live in an entirely different country. As I often encourage pastors, now is the time to turn your muzzle into a megaphone.

Free exercise of religion and freedom of speech are paramount to our constitutional republic. The Johnson Amendment infringes on both of these rights, and it should be repealed entirely.

It's past time we restore freedom in the pulpit, and the Free Speech Fairness Act will help return these first freedoms to their rightful place. [LC](#)

Mat Staver serves *Founder and Chairman of Liberty Counsel and Chairman of Liberty Counsel Action.*

Celebrating a New Birth of Freedom at Liberty Counsel's 2025 Gala

U.S. Representative and Florida governor-hopeful Byron Donalds gave a heartfelt, stirring keynote address to a sold-out crowd at Liberty Counsel's 2025 gala celebrating "A New Birth of Freedom." Held at the beautiful Waldorf Astoria in Orlando, Florida, Liberty Counsel also honored Retired Lt. Colonel Pete Chambers and former January 6 political prisoner John Strand with awards for their courage and commitment to defend freedom in the face of adversity. Watch the full version of the 2025 Gala at [lc.org/gala2025](#).



Liberty Counsel at Work

Total Victory Over SPLC in Frivolous Lawsuit

After nearly a decade of fighting, a federal district judge awarded a total victory for Liberty Counsel in March and exonerated it in a nine-year civil lawsuit (*Jenkins v. Miller*) that falsely alleged that Liberty Counsel advised a former client to flee the country with her then-two-year-old daughter to avoid a court-ordered custody transfer to a former spouse.

The Southern Poverty Law Center (SPLC) used this case as lawfare against Liberty Counsel and sought an astronomical \$200 billion in damages, but the judge granted summary judgment in favor of Liberty Counsel finding it did not “engage in, aid, or abet any conspiracy” for the international kidnapping of a child.

This frivolous lawsuit by the SPLC was pure lawfare designed to destroy Liberty Counsel, but the truth prevailed!



Working to Defund Big Abortion on Capitol Hill



Atlantic in a case deciding whether South Carolina can defund the abortion giant by cutting off Medicaid funds. The U.S. Supreme Court will decide this case by the end of June, and the decision could allow pro-life states like South Carolina to defund Planned Parenthood, weaken the abortion industry, and save lives.

On March 27, Liberty Counsel and Liberty Counsel Action joined a coalition of more than 150 pro-life groups from all 50 states in a letter urging Congress to defund the abortion industry, including Planned Parenthood, in the federal budget reconciliation bill. Planned Parenthood reported receiving a staggering \$792.2 million in American taxpayer dollars in its latest annual report. In the same year, Planned Parenthood killed 402,230 babies, the highest recorded number.

As part of this effort, Liberty Counsel Action's Jonathan Alexandre and Abigail Forman participated in a press conference with pro-life leaders and members of Congress to push Congress to cut off taxpayer funds for the Big Abortion industry.

Liberty Counsel also filed an amicus brief in *Medina v. Planned Parenthood South*

Arkansas Enacts Two Laws Honoring Nation's Religious Foundation

In April, Arkansas Governor Sarah Huckabee Sanders signed two public education bills into law that involve teaching children about the religious and moral beliefs of the Founders and require displaying the Ten Commandments in public school classrooms. Liberty Counsel played a pivotal role in drafting these bills that will continue to reshape the state's educational landscape that has already expanded educational choices for families, reinforced parental rights, and aims to prepare students to be informed citizens ready to contribute to American society.

