United States Court of Appeals
For the First Circuit

No. 26-2035

WE THE PATRIOTS USA, INC. and JAMES CHILDS,

Plaintiffs, Appellants,

v.

PENDER MAKIN, in the official capacity as Commissioner of the Maine Department of Education and CARI MEDD, in the official capacity as Superintendent of Maine School Administrative District #52,

Defendants, Appellees.

Before

Gelpí, Aframe, and Dunlap,
Circuit Judges.

ORDER OF COURT
Entered: November 3, 2026

In this case, plaintiffs We The Patriots USA, Inc. and its member James Childs move for an injunction pending appeal of a district court's order denying them a temporary restraining order and a preliminary injunction. If we granted the requested injunction, it would bar the defendants from enforcing, against Childs' son G.C. and the children of an unspecified number of We The Patriots members who oppose vaccination on free exercise grounds, Maine's vaccination requirements for children enrolling in elementary and secondary schools. As briefly discussed below, the motion is denied.

Plaintiffs primarily argue that they are likely to prevail on appeal because the vaccination requirement imposes the kind of substantial burden on parental and religious exercise rights that triggers strict scrutiny, even assuming that the vaccination requirement is generally applicable. They cite Wisconsin v. Yoder, 406 U.S. 205 (1972) (holding that Wisconsin's law requiring public or private school enrollment until the age of 16 violated Amish parents' Free Exercise rights), and two recent Supreme Court decisions applying Yoder. See Mahmoud v. Taylor, 606 U.S. 522, 530**,** 550 (2025) (in a preliminary injunction appeal, "hold[ing] that the [Montgomery County School] Board's introduction of the 'LGBTQ+-inclusive' storybooks — combined with its decision to withhold notice to parents and to forbid opt outs — substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise

that Yoder found unacceptable"; "[a] government burdens the religious exercise of parents when it requires them to submit their children to instruction that poses 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill") (quoting Yoder, 406 U.S. at 218; emphasis added); Mirabelli v. Bonta, 607 U.S. 492, 493, 496 (2026) (per curiam, emergency docket) (vacating Ninth Circuit stay of permanent injunction; California's policies limiting parental notice about their children's in-school, staff-"facilitat[ed]" gender transitioning "likely trigger strict scrutiny under [the free exercise] provision because they substantially interfere with the 'right of parents to guide the religious development of their children' and 'impos[e] the kind of burden on religious exercise that Yoder found unacceptable'") (quoting Mahmoud, 606 U.S. at 550, 559).

On the district court record and the papers before us, plaintiffs have not made the necessary heightened showing of a likelihood of success on the merits. See Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos., 996 F.3d 37, 44 (1st Cir. 2021) (noting that in the posture of seeking an injunction pending appeal, "the bar is harder to clear" because "an injunction does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by [a] lower court[ ]") (citations and internal quotation marks omitted; alterations in original). It is not obvious that Yoder, Mahmoud, and Mirabelli govern the situation we face given that Maine's vaccination law does not appear to require a student's submission to school-facilitated instruction.

Relatedly, Yoder itself recognized that prior Supreme Court authority allows States to impose the kind of broad public health initiative that underlies this appeal. See Jacobson v. Massachusetts, 197 U.S. 11, 38 (1905) (holding that law requiring adults to be vaccinated did not "invad[e] any right secured by the Federal Constitution"); Zucht v. King, 260 U.S. 174, 176 (1922) (holding that law requiring school children to be vaccinated did not violate the Due Process and Equal Protection Clauses); Prince v. Massachusetts, 321 U.S. 158, 166-67 & n.12 (1944) (applying the balancing analysis ultimately adopted in Yoder and upholding application of child labor laws over parent's free exercise challenge; citing Jacobson, stating in dictum that a parent "cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death"). See Perry v. Marteney, 172 F.4th 315, 327 (4th Cir. 2026) (cert. petition filed Sep. 4, 2026) (relying on Prince and Jacobson to reverse preliminary injunction in parental free exercise challenge to West Virginia's school vaccination law). Plaintiffs do not adequately demonstrate that the more recent authority on which they rely clearly shows that the Yoder line of cases applies to a vaccination requirement, especially where the ability of States to impose such a requirement is entrenched in other Supreme Court authority. At this stage of the appeal, plaintiffs have shown only that there is emerging law in this area. But showing the existence of emerging law that may be distinguishable is not enough to warrant the extraordinary relief of an injunction pending appeal.

The motion for an injunction pending appeal is denied. The motion for leave to file an amicus brief by Brandon Michael Hayes is denied.

Dunlap, Circuit Judge, dissenting. I would grant the injunction pending appeal. Although each of the parties makes strong arguments, in my view, Appellants We The Patriots

USA, Inc. ("WTP") and James Childs have demonstrated entitlement to an injunction pending appeal. See Together Emps. v. Mass General Brigham, Inc., 19 F.4th 1, 7 (1st Cir. 2021) (stating standard for injunctions pending appeal).

I turn first to the merits. When a law substantially interferes with parents' religious upbringing of their children and "pose[s] 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill in their children," then the law must survive strict scrutiny. Mahmoud v. Taylor, 606 U.S. 522, 565 (2025) (quoting Wisconsin v. Yoder, 406 U.S. 205, 218 (1972)). See Mirabelli v. Bonta, 607 U.S. 492, 493–94, 496–97 (2026) (noting that strict scrutiny applies when a school burdens parents' religious upbringing of their children by instituting a policy of not informing parents of students' gender transitions); Mahmoud, 606 U.S. at 562 (stating that a parent's religious upbringing of their children is substantially burdened when a state policy effectively "tell[s] parents that they must abstain from public education in order to raise their children in their religious faiths"); Yoder, 406 U.S. at 214–15. The Supreme Court has rejected narrow readings of its free exercise precedents on parental rights, Mirabelli, 607 U.S. at 495, which the district court here did by limiting strict scrutiny to instances in which a school directly inculcates values contrary to the parents' beliefs. Applying Yoder and its progeny, strict scrutiny applies because Childs' religious beliefs regarding vaccination and the upbringing of his children are sincere and substantially burdened by the vaccination requirement. See Perry v. Marteney, 172 F.4th 315, 332–33, 335 (4th Cir. 2026) (Niemeyer, J., dissenting). Although the State may be able to demonstrate that a compelling interest supports its vaccination requirement, see Prince v. Massachusetts, 321 U.S. 158, 165–167 (1944); Does 1-6 v. Mills, 16 F.4th 20, 32 (1st Cir. 2021), Appellees have not made any argument that the requirement survives strict scrutiny. Thus, although I do not predict the ultimate outcome of the strict scrutiny analysis, Appellants have demonstrated a substantial likelihood of success at this stage justifying temporary injunctive relief.

I consider next the harms to the parties, as well as the public interest. There is no dispute that, because of the vaccination requirement, Childs' son has been deprived of the opportunity to attend public school. Absent a showing that the vaccine requirement survives strict scrutiny, this is a substantial and irreparable harm. Mirabelli, 607 U.S. at 497; Sindicato Puertoriqueño de Trabajadores v. Fortuño, 699 F.3d 1, 15 (1st Cir. 2012). Further, although the State has a legitimate interest in safeguarding the health of its residents, Does 1-6, 16 F.4th at 37, that interest would not be substantially undermined by an injunction pending appeal. Because the State already permits certain students a grace period to vaccinate and because the vaccination requirement does not apply to certain students who previously invoked a religious objection, it does not appear that allowing Childs' son and the children of other WTP members (if any) in Maine to attend school for the short period of this appeal would cause significant harm.

I therefore respectfully dissent.

By the Court:
Anastasia Dubrovsky, Clerk

cc: Hon. Stacey D. Neumann, Jennifer Lyons, Clerk, United States District Court for the District of Maine, Stephen C. Whiting, Cameron Lee Atkinson, Kimberly Leehaug Patwardhan, Kendall Schutzer, Melissa A. Hewey, Allan Bradley, Brandon Michael Hayes