# STATE OF FLORIDA

## JAMES UTHMEIER
## ATTORNEY GENERAL

June 9, 2026

The Honorable Clay Yarborough
Florida Senate
308 Senate Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Senator Yarborough:

I received your letter dated March 26, 2026, requesting a legal opinion on a question of Florida law.[1] You ask whether section 1003.21(2)(b)1., Florida Statutes, as well as the Supreme Court decisions in *Zorach v. Clauson*, 343 U.S. 306 (1952), and *Mahmoud v. Taylor*, 606 U.S. 522 (2025), require public schools to accommodate parental requests for their children to participate in release time for religious instruction ("RTRI").

In short, my answer to your question is yes. Florida law, consistent with the Supreme Court's decisions in *Zorach* and *Mahmoud*, prohibits public schools from restricting parents' efforts to direct the religious upbringing of their children, including participation in RTRI.

**BACKGROUND**[2]

RTRI permits public school students—at the direction of their parents—to be excused for a portion of the school day to attend religious instruction or devotional exercises off school property. A parent must first make a request to the school to allow his child to have access to and participate in RTRI. Once the school approves, a child will then be permitted to leave the school grounds to participate in religious instruction offered by a religious entity.

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[1] *See* Letter from Clay Yarborough, Fla. Senate, to James Uthmeier, Att'y Gen. of Fla. (Mar. 26, 2026) (on file with the Office of the Florida Attorney General).

[2] For purposes of this opinion, the facts disclosed in the opinion request are assumed to be true.

As explained below, county school boards ("school boards") must grant RTRI requests. But certain school boards within Florida have either provided blanket denials for RTRI programs or placed various restrictions on the offerings of RTRI. Some school boards, for example, have prohibited the release of students during school hours, and others have enacted policies restricting students of certain grade-levels from participating in RTRI. Both practices violate Florida law.

**ANALYSIS**

Parental rights and corresponding duties are fundamental and prepolitical. They do not arise from or require written law to exist or be effective. Luckily, however, Florida's constitution and laws fully recognize and protect them.[3] And Florida statutes further affirm these rights and duties by granting broad authority to parents to direct both the education and the "moral and religious training" of their children.[4]

Most relevant here is section 1003.21(2)(b)1., Florida Statutes, which provides that every school board in the State of Florida, "in accordance with the rules of the State Board of Education, *shall* adopt policies authorizing a parent to request and be granted permission for absence of a student from school" to attend "[r]eligious instruction or religious holidays." This parallels section 1002.20(2)(c), Florida Statutes, which ensures that "[a] parent of a public school student may request *and be granted* permission for absence of the student from school for religious instruction or religious holidays" consistent with section 1003.21. As the Florida Supreme Court has confirmed: "The word 'shall' is mandatory in nature."[5] Clearly, then, Florida law requires school districts to grant parental requests for their children to participate in RTRI.

Crucially, RTRI enables parents to honor their sacred duties to raise their children in the faith. The LORD—author of our natural rights and duties—requires nothing less: "And these words that I command you today shall be on your heart. You shall teach them diligently to your children, and shall talk of them when you sit in your house, and when you walk by the way, and when you lie down, and when you rise."[6]

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[3] The Florida Supreme Court has reasoned that, in Florida, an individual's "fundamental liberty interest in parenting . . . is specifically protected by our [State constitutional] privacy provision." *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996) (citing Fla. Const. art. I, § 23). We think the better view is that the fundamental liberty interest in parenting is protected by Article I, § 2 of the Florida Constitution, which guarantees the right of all natural persons to enjoy and defend liberty and pursue happiness.

[4] § 1014.04(1), Fla. Stat.

[5] *Sanders v. City Of Orlando*, 997 So. 2d 1089, 1095 (Fla. 2008), *as revised on denial of reh'g* (Dec. 18, 2008).

[6] Deuteronomy 6:6–7; *see also* Psalm 78:5–6 (God "commanded our fathers to teach to their children, that the next generation might know them, the children yet unborn, and arise and tell them to their children, so that they should set their hope in God and not forget the

Parents' exercise of these rights and duties redound to the State's benefit. First, it relieves the State of the primary cost and responsibility of shaping the civic and moral character of succeeding generations. Second, it ensures that succeeding generations of citizens are properly shaped in terms of civic, moral, and religious character—an ingredient essential to the maintenance and longevity of our republican system of government. After all, "[o]ur Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."[7] The Framers of the Florida Constitution acknowledged the same.[8]

It is natural and proper, therefore, for civil authorities to recognize and protect these rights. In fact, the Supreme Court has acknowledged that such rights are "perhaps the oldest of the fundamental liberty interests recognized."[9] And many giants of the western legal tradition have recognized that parental rights inhere in the very nature of the family unit. Children do not understand "how to govern themselves."[10] Their "wants and weaknesses" thus "render it necessary that some person maintains them" until adulthood.[11] Parents have traditionally been entrusted as "the most fit and proper person[s]" for that task.[12] Parental duties being firmly established, there must be adequate space to perform them. So the common law equipped parents with equally robust parental rights. "[H]ousehold heads" were empowered to "speak for their dependents in dealings with the larger world,"[13] and parents enjoyed the "right . . . to govern their children's growth."[14]

This natural, prepolitical right over one's child includes the right to direct the child's education,[15] and their religious upbringing.[16] RTRI fits comfortably within these two domains.

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works of God, but keep his commandments[.]"); Ephesians 6:4 ("Fathers, do not provoke your children to anger, but bring them up in the discipline and instruction of the Lord.").

[7] John Adams, Letter to Massachusetts Militia (Oct. 11, 1798).

[8] Preamble, Fla. Const. ("We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution.").

[9] *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion).

[10] 2 Samuel Pufendorf, *The Whole Duty of Man According to the Law of Nature* 202 (1735).

[11] 2 James Kent, *Commentaries on American Law* 190 (1873); 1 William Blackstone, *Commentaries on the Laws of England* 447 (1753); Pufendorf, *Whole Duty of Man* at 202.

[12] Kent, *American Law* at 190.

[13] Toby L. Ditz, *Ownership and Obligation: Inheritance and Patriarchal Households in Connecticut, 1750-1820*, 47 Wm. & Mary Q. 235, 236 (1990).

[14] *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 828 (2011) (Thomas, J., dissenting).

[15] *See Meyer v. Nebraska*, 262 U.S. 390, 400 (1923); *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925).

[16] *See Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972).

These basic ideas were recently confirmed in *Mahmoud v. Taylor*, where the United States Supreme Court reaffirmed parents' right to direct the religious upbringing of their children. Key to *Mahmoud* was the conclusion that public schools cannot refuse to provide advance notice and opt-outs when those schools present material that "substantially interferes" with parents' religious beliefs or the religious development of their children.[17] The Court confirmed that the "practice of educating one's children in one's religious beliefs . . . receives a generous measure of protection from our Constitution."[18] To hold otherwise would be to embrace a "chilling vision of the power of the state to strip away the critical right of parents to guide the religious development of their children."[19]

Case law further supports the requirement of school districts to implement RTRI programs. In 1952, the United States Supreme Court in *Zorach v. Clauson* upheld a New York statute authorizing release time for "religious observance and education."[20] The Court declared that "[w]e are a religious people whose institutions presuppose a Supreme Being" and "[w]hen the state encourages religious instruction or cooperates with religious authorities . . . it follows the best of our traditions."[21] Several other states have enacted similar RTRI statutes, and those programs have repeatedly been upheld as constitutional.[22]

To deny a parent's right to direct the religious upbringing and education of their children triggers the highest burden on the government. Section 1014.03, Florida Statutes, prohibits governmental entities or institutions—including public schools—from infringing such a right without demonstrating that such infringement is "reasonably necessary to achieve a compelling state interest and…is narrowly tailored and is not otherwise served by a less restrictive means."[23] School boards that

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[17] 606 U.S. 522, 550 (2025).

[18] *Id.* at 547; *see also Yoder*, 406 U.S. at 215-16 (restating that the increased protections of the First Amendment apply to religions as opposed to purely secular belief systems).

[19] *Mahmoud*, 606 U.S. at 559. Even more recently, the Court noted that "[u]nder long-established precedent, parents—not the State—have primary authority with respect to the 'upbringing and education of children.'" *Mirabelli v. Bonta*, 146 S. Ct. 797, 803 (2026) (quoting *Pierce*, 268 U.S. at 534-35).

[20] 343 U.S. 306, 308 n.1 (1952).

[21] *Id.* at 313–14.

[22] *See, e.g.*, *Pierce v. Sullivan W. Cent. Sch. Dist.*, 379 F.3d 56, 60 (2nd Cir. 2004) (upholding a RTRI program that did not use public funds, did not involve on-site religious instruction, and was voluntary for entry); *Lanner v. Wimmer*, 662 F.2d 1349, 1357 (10th Cir. 1981) (upholding Utah's RTRI program provided school personnel stop traveling to release time location); *Smith v. Smith*, 523 F.2d 121, 125 (4th Cir. 1975) (upholding a RTRI program where the public school participation was "largely passive" and consistent with a parent's right to direct the upbringing of his children).

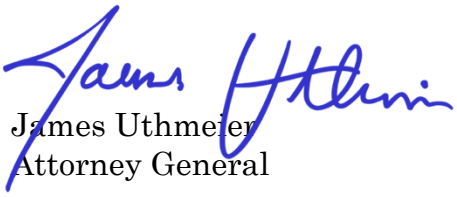
[23] *See also Mahmoud*, 606 U.S. at 565 (determining that any law that "substantially interfere[s] with the religious development" of a parents' child is subject to strict scrutiny and,

offer blanket denials for RTRI participation fail that test. So too do other arbitrary conditions on participation—including, for example, restricting involvement to outside of school hours or limiting participation to students in certain grades. These efforts to deny RTRI requests or restrict student participation therein violate Florida law, the Florida Constitution, and the U.S. Constitution.

**CONCLUSION**

Florida's Constitution, statutes, and the relevant case law support the fundamental rights of parents to direct the religious upbringing of their children. And the express language in section 1003.21(2)(b)1.[24] requires school boards to adopt policies that grant parental requests to release their children for religious instruction. Any public school[25] that denies the right of a parent to have their child participate in RTRI not only violates Florida law but also substantially interferes with the constitutionally protected parental right reaffirmed by *Mahmoud* and *Mirabelli*.[26]

Sincerely,



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to survive, must demonstrate that its action "advances interests of the highest order and is narrowly tailored to achieve those interests").

[24] The State Board of Education approved an amendment to Florida's Administrative Code on May 14, 2026, to be consistent with section 1003.21(2)(b)1., requiring school districts to adopt policies that authorize parents to request and be granted permission for their children to be released for religious instruction. *See* Fla. Admin. Code Ann. R. 6A 1.09514(1).

[25] "Public school" would also include charter schools, consistent with § 1002.33, Fla. Stat., providing that "[a]ll charter schools in Florida are public schools."

[26] This opinion is consistent with my office's recent opinion on religious discrimination, clarifying that the First Amendment does not bar States from the "encouragement" of religion, in particular Christianity, and Florida laws that prohibit religious schools, including charter schools, from accessing public funds violate the First Amendment of the U.S. Constitution. Op. Att'y Gen. Fla. 26-06 (2026).