No. 24-297

In the

Supreme Court of the United States

MAHMOUD, ET AL.,

Petitioners,

v.

THOMAS W. TAYLOR, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM; AFA ACTION; ALASKA FAMILY COUNCIL; AMAC ACTION; AMERICAN HINDU COALITION; AMERICAN PRINCIPLES PROJECT; AMERICAN VALUES; ANGLICANS FOR LIFE; ASSOCIATION OF MATURE AMERICAN CITIZENS; SHAWNNA BOLICK, ARIZONA STATE SENATOR, DISTRICT 2; CATHOLIC VOTE; CATHOLICS COUNT; CENTER FOR POLITICAL RENEWAL;

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QUESTIONS PRESENTED

1. Do public schools burden parents' religious exercise when they compel elementary school children to participate in instruction on gender and sexuality against their parents' religious convictions and without notice or opportunity to opt out?

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STATEMENT OF INTEREST OF AMICI CURIAE

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including equal treatment before the law.[1] AAF "will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,"[2] and believes that a person's freedom of speech and the free exercise of a person's faith are among the most fundamental of individual rights and must be secured, and that parental rights have been established beyond debate as an enduring American tradition. AAF files this brief on behalf of its 1,794 members in Maryland and its 12,013 members in the Fourth Circuit.

Amici AFA Action; Alaska Family Council; AMAC Action; American Hindu Coalition; American Principles Project; American Values; Anglicans for Life; Association of Mature American Citizens; Shawnna Bolick, Arizona State Senator, District 2; Catholic Vote; Catholics Count; Center for Political Renewal; Christian Law Association; Christian Medical & Dental Associations; Christians Engaged; Delaware Family Policy Council; Eagle Forum; Family

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[1] This brief was filed more than 10 days prior to the due date and thus notice to the parties is not required under Supreme Court Rule 37(2). No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Edwin J. Feulner, Jr., *Conservatives Stalk the House: The Story of the Republican Study Committee*, 212 (Green Hill Publishers, Inc. 1983).

Institute of Connecticut Action; Frontline Policy Council ; Global Liberty Alliance; Jay D. Homnick, Senior Fellow, Project Sentinel; Idaho Family Policy Center; Idaho Freedom Action; Idaho Freedom Foundation; International Conference of Evangelical Chaplain Endorsers; JCCWatch.org; Tim Jones, Former Speaker, Missouri House of Representatives, Chairman, Missouri Center-Right Coalition; Land Center for Cultural Engagement; Joan Holt Lindsey, President, Lindsey Communications; Louisiana Family Forum; Maryland Family Institute; Melissa Ortiz, Principal & Founder, Capability Consulting; Men and Women for a Representative Democracy in America, Inc.; Minnesota Family Council; Moms for Liberty; National Apostolic Christian Leadership Conference; National Association of Parents (d/b/a "ParentsUSA"); National Organization for Marriage; New Jersey Family Foundation; New Mexico Family Action Movement; North Carolina Values Coalition; Orthodox Jewish Chamber of Commerce; Project 21 Black Leadership Network; Roughrider Institute; Setting Things Right; Stand for Georgia Values Action; Students for Life of America; Tea Party Patriots Action, Inc.; The Family Foundation (Virginia); The Justice Foundation; Tradition, Family, Property, Inc. ; Women for Democracy in America, Inc.; Wisconsin Family Action, Inc.; Young America's Foundation; and Young Conservatives of Texas believe that parents have a fundamental right to raise their children according to their own values and the primary responsibility for educating their children and that schools should adopt policies and procedures to respect those principles.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

When parents send their children to school, they expect them to learn to read and write, to do math and science, to learn about history and art. They do not expect school administrators and teachers with an agenda to undermine their children's basic understanding of reality. In this case, parents of diverse religious backgrounds sued to protect their elementary school-aged children from indoctrination into a hyper-sexualized worldview.

In 1983, the National Commission of Excellence in Education released a report called *A Nation at Risk: The Imperative of Educational Reform*.[3] As Russell Kirk observed a decade later, "a great deal of talk about education, and scribbling about it, have occurred. As for any evidences of general improvement, however – why, one does not discover them easily." Russell Kirk, *The Politics of Prudence* 240 (1993). Indeed, even as early as 1983, it seemed that "Our society and its educational institutions" had "lost sight of the basic purposes of schooling." *A Nation At Risk* 5 (1983).

In October 2022, the Montgomery County School Board (the "Board") announced the approval of more than 22 LGBTQ texts as instructional materials Pet. App. at 78a. MCPS is required by law to provide "comprehensive health education" which includes sex education. *Id*. at 80a. State law also requires school systems to provide parents and guardians with the

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[3] National Commission on Excellence in Education, *A Nation at Risk*, (1983), https://www.reaganfoundation.org/media/130020/a-nation-at-risk-report.pdf.

opportunity "to view instructional materials to be used in the teaching of family life and human sexuality objectives," and to opt their children out of that instruction. *Id.* at 81a. However, the Board contends that the books in question are part of the English curriculum and thus are not subject to this opt-out provision. *Id*. at 80a.

Although the Board says there is no planned curriculum on gender identity, after reading these books, teachers will facilitate "think aloud" moments where students can think of ways to implement the stories they are reading into their personal lives. *Id.* at 92a. Teachers were given canned responses to use when fielding students' questions. For example, if a student is confused about the concept of transgenderism after a reading, the teacher is prompted to tell students the following series of lies: "When we're born, people make a guess about our gender . . . When someone's [*sic*] transgender, they guessed wrong . . . Our body parts do not decide our gender . . . When someone tells us what our gender is, we believe them." *Id.* at 95a. Further, the Board notes that no one is required to agree with the ideas taught and parents may keep their children home from school while these texts are used in the classroom—but that choice will result in an unexcused absence. *Id*. at 92a.

After initially saying that parents would be able to opt their children out of reading these books, the policy was revised to remove both parental notice and parental ability to opt children out of engaging with any instructional materials other than "Family Life and Human Sexuality Unit of Instruction." *Id*. at 97a. Throughout this process, parents raised concerns at several public meetings with the School Board. *Id*. at

100a. When it was clear that parents would not be allowed to protect their children, the parents in this case sued.

The Board's and schools' denial of parents' efforts to protect their children from fashionable sexual brainwashing of children is inconsistent with the fundamental, constitutionally recognized right of parents to direct the upbringing of their children and the right of parents to freely exercise their religious beliefs.

Argument

The question in this case is whether school administrators' preference to impose curricular materials intended to promote sexual diversity can outweigh the fundamental rights of parents to direct the upbringing of their children and their Free Exercise right to inculcate in their children their religious values. *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972) (quoting *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925)) ("[A] State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of *Pierce*, "prepare [them] for additional obligations.") (alteration in original). This balancing depends on whether "there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause." *Id*. at 214. In balancing the concerns and interests in this case, there are three considerations: the parental rights at

stake, the interest of the state in promoting sexual diversity to kids between five and twelve years old, and the significance of the request and its impact on the state's ability to affect its claimed interest.

Thus, while not dispositive, *Yoder* sheds significant light on the fundamental inquiry in this case. In light of these considerations, this Court should grant certiorari and rule for Petitioners.

I. The Rights of Parents to Direct the Upbringing of their Children and to the Free Exercise of Their Religion in the Raising of Their Children are Fundamental.

A. The actions of the Board and MCPS in this case flout the fundamental right of parents to direct the upbringing, education, and care of their children.

In a long line of cases, this Court has found a parental rights doctrine rooted in the First and Fourteenth Amendments of the U.S. Constitution. *See, e.g.*, *Meyers v. Nebraska*, 262 U.S. 390, 399 (1923) ("While this court has not attempted to define with exactness the [due process] liberty . . . Without doubt, it denotes . . . the right of the individual to . . . marry, establish a home and bring up children."); *Pierce*, 268 U.S. at 534-35 (finding that the act challenged in that case, "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.").

Similarly, for nearly a century, this Court has repeatedly affirmed the rights and responsibilities inherent in parenthood. *See Pierce*, 268 U.S. at 535 ("The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction . . . The child is

not the mere creature of the State."); *Meyer*, 262 U.S. at 400 ("It is the natural duty of the parent to give his children education suitable to their station in life."); *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.") *Yoder*, 406 US at 232 (declaring that parental rights have been "established beyond debate as an enduring American tradition."); *Smith v. Organization of Foster Families*, 431 U.S. 816, 845 (1977) ("The liberty interest in family privacy has its source, and its contours are ordinarily to be sought, not in state law, but in intrinsic human rights, as they have been understood in 'this Nation's history and tradition.'"). These parental rights, more fundamental than government power, have been long-recognized and demand on the part of public educators a high regard for the will of parents.

B. The Board's and MCPS's removal of the parental opt-out in this case violates the Free Exercise Clause of the First Amendment.

The Free Exercise Clause of the First Amendment, applicable to the States under the Fourteenth Amendment, provides that "Congress shall make no law . . . prohibiting the free exercise" of religion. U.S. Const. amend. I. The courts have a duty to safeguard religious freedom because "[a]ny political constitution develops out of a moral order; and every moral order has been derived from religious beliefs." Russell Kirk, *The Conservative Constitution* 174 (1990). And it is the family, the most basic societal institution, where religious beliefs are most often

passed on to the next generation. Indeed, "Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977). The parental right to raise children includes the right to teach them to live according to a particular religion's teachings. *See Yoder*, 406 U.S. at 233 ("[T]he Court's holding in *Pierce* stands as a charter of the rights of parents to direct the religious upbringing of their children."). As this Court observed in *Obergefell v. Hodges*, 576 U.S. 644, 679 (2015), "[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." Given the significant harm the Board's policy causes to their constitutional interests and to their children, the parents here deserve to have their claims heard. For that reason, the Court should grant certiorari and rule for Petitioners.

II. The School's Claimed Interest in Promoting Sexual Diversity to Elementary School-Aged Children Does Not Come Close to Outweighing the Parental Rights at Stake in this Case.

The Board's and MCPS's goal in this case is to inculcate an appreciation of gender and sexual diversity among students between the ages of five and twelve. *See* Pet. App. at 129a. Even assuming that goal

is legitimate, the question is whether that interest outweighs the rights of parents. It does not.

As described above, both the general right of directing the upbringing of one's children and the Free Exercise rights of parents are fundamental, with the former enjoying at least a century of Court recognition. On the other hand, the interest of public schools in the inculcation of values related to sexuality and gender identity is recent, and the forms of that indoctrination at issue in this case are entirely novel.

The Board's interest here is significantly less compelling than that of the state in *Yoder*. There, Wisconsin's interest was in universal high school education, an interest the significance of which few would deny. *See Yoder*, 406 U.S. at 214. Here, the novel interest of the Board is of at most debatable benefit to students and to society. Students, especially elementary-aged students, are impressionable and may well be harmed by the unprecedented pedagogical approach represented by the philosophy behind the books adopted by the Board. In such uncertain areas, it is particularly important that parents be able to opt their children out of being the guineapigs for fashionable but unproven ideas.

Further, in *Yoder*, the request of the Amish parents was to remove their children entirely from the education system before high school. *Yoder*, 406 U.S. at 207-08. That intervention against the state's interest was significant, and yet it was granted. *Id.* at 236. Here, the request is miniscule in comparison. The parents in this case only request the ability to opt their children out of a narrow range of materials explicitly designed to push a worldview contrary to the religious beliefs of many Montgomery County parents.

In *Yoder*, the Court recognized that a high school education was "contrary to Amish beliefs." *Id.* at 211. The parents here make a related assertion regarding the addition of LGBTQ books to the elementary curriculum, but with a much more modest request for relief than that granted by the Court in *Yoder*. When school officials decide to propagandize from the lectern, parents have a right to object and to exempt their children from that instruction. Such a modest request to protect such fundamental rights should be granted.

Conclusion

For the forgoing reasons, the Court should grant certiorari and rule for Petitioners.

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