No. 24-297

In the Supreme Court of the United States

TAHMER MAHMOUD, ET AL.,
Petitioners,

v.

THOMAS W. TAYLOR, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR PARENTS DEFENDING EDUCATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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March 10, 2025 *Attorneys for Amicus Curiae*

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INTEREST OF AMICUS CURIAE*

Parents Defending Education is a national, nonprofit, grassroots association. Its members include many parents with school-aged children. Launched in 2021, it uses advocacy, disclosure, and litigation to combat the increasing politicization and indoctrination of K-12 education.

The bond between parent and child is "the most universal relationship in nature." 1 Blackstone 446. Accordingly, the common law "recognized that natural bonds of affection lead parents to act in the best interests of their children." *Parham v. J.R.*, 442 U.S. 584, 603 (1979). The law also recognized that from this same "impulse of nature" flowed a "natural duty" for parents to provide for their children. Of those parental responsibilities, the "duty of giving [their children] an education" was "of far the greatest importance of any." 1 Blackstone 448-49. Moreover, "[a]s [parents] are bound to maintain and educate their children, the law has given them a right to such authority." 2 J. Kent, *Commentaries on American Law* 203 (1827). PDE exists to defend that right.

PDE has a significant interest in eliminating policies that strip parents of their right to remove their children from lessons about sexuality and gender identity that conflict with their deeply held religious

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* Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

beliefs. Montgomery County's policy is not an aberration. Other school districts across the country have adopted similar parental exclusion policies in recent years, threatening to splinter the "national consensus respecting parental control over instruction on gender and sexuality." Pet.Br.6. Like this Court, PDE believes that children are best served when their parents control their upbringing. *E.g.*, *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (collecting cases). Affirming the Fourth Circuit's decision would render that principle a hollow promise where education is concerned and strip parents of their right to direct their children's development on the most sensitive, sacred—and increasingly fraught—aspects of the parent-child relationship.

SUMMARY OF ARGUMENT

Respondents here—the Montgomery County Board of Education and its officials (the "Board")—frame this case as a garden-variety disagreement about classroom content and maintain that the questions it presents have been asked and answered already. *See* Pet.App.117a. The Board claims that Petitioners' parental rights are not burdened—or even implicated—by its decision to teach gender identity theory to their young children over their objections. The Board offers a variety of reasons for this assertion, but none are convincing.

Parental rights are strongest in matters involving the religious education of children. *See infra* I. And despite the Board's best efforts, the record plainly

demonstrates that the school district's new instruction about sexuality and gender identity not only conflicts with the religious instruction Petitioners provide to their children but actively contradicts that instruction as well.

Its vigorous defense of its new curriculum notwithstanding, the Board's primary argument appears to be that Petitioners' concerns about the sex and gender identity-themed storybooks are overblown. It suggests that Petitioners' young children cannot be harmed by mere "expos[ure] to different ideas" and that such exposure does not interfere with parents' religious instruction of their children. As explained below, *see infra* II.A, the Board's new lessons on "gender identity diversity and sexual identity diversity" are not unique: similar or identical storybooks—in some cases, accompanied by lesson plans that match the Board's lessons almost verbatim—have popped up in school districts across the country in recent years. The impact of the Board's policy has been field-tested in classrooms around the nation, with observable results. And the evidence reveals a clear pattern of confusion, anxiety, and fear expressed by the students involved, and religious students in particular.

The Board's fallback positions fare little better. The school district asserts that parents categorically have no right to object to materials that "professional educators" choose "to include … in the curriculum," Pet.App.643a, and that parents surrender all rights by enrolling their children in school regardless. But no decision of this Court has ever said that, and the

Court's parental-rights decisions conclusively point in the opposite direction. Moreover, the Board cannot implicitly or explicitly condition waivers of fundamental rights on actions, like sending one's kids to public school, that are "a virtual necessity" of life in society. *Wooley v. Maynard*, 430 U.S. 705, 715 (1977); *see infra* II.B.

Affirming the Fourth Circuit's decision will strip millions of parents of the right to control their children's education on sensitive issues that involve their religious beliefs and implicate the core of the parent-child relationship. This Court should reverse.

ARGUMENT

I. Parental rights are at their apex in matters of conscience and religious belief.

A century ago, this Court recognized 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." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). "The Court's holding in *Pierce* stands as a charter of the rights of parents to direct the religious upbringing of their children." *Wisconsin v. Yode*r, 406 U.S. 205, 233 (1972). "And, when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a 'reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement." *Id.* It is unsurprising, then, that many of this Court's strongest declarations of parental rights have come in

cases involving parents' religious instruction of their children.

Here, Petitioners have taught their children that God created everyone male and female with a specific purpose in mind, and that God does not make mistakes. *E.g.*, Pet.App.530a ("We believe that mankind has been divinely created as male and female."); Pet.App.537a ("Based on these teachings, we believe that a person's biological sex is both unchanging and integral to that person's being, and that gender and biological sex are intertwined and inseparable."); Pet.App.625a ("[O]ur sacred obligation as parents compels us to form our daughter's understanding of what it means to be a woman, to love another person, the nature and purpose of marriage, and how to embrace the vocation she is called to by God."). The Board, however, is teaching Petitioners' children that male and female are arbitrary classifications at birth, the people who "assign" those classifications—*i.e.*, parents, and implicitly, God himself—sometimes "make mistakes," and that children "know … best" and can determine their sex for themselves. Pet.Br.9-13. If the facts here do not implicate "the rights of parents to direct the religious upbringing of their children," it is difficult to envision any curricular policy that would. *Yode*r, 406 U.S. at 233.

The Board's only response is that "[o]nce professional educators make a decision to include [material] in the curriculum," parents no longer have a say in the matter. Pet.App.643a. But "[t]his argument can be easily manipulated in dangerous ways." *Morse v.*

Frederick, 551 U.S. 393, 423 (2007) (Alito, J., concurring). Because the "'educational mission' of the public schools is defined by the elected and appointed public officials with authority over the schools and by the school administrators and faculty," "some public schools have defined their educational missions as including the inculcation of whatever political and social views are held by the members of these groups." *Id.* That is exactly the case here. *See infra* 9-11 (noting policy's conformity with model policies recommended by outside groups). For this reason, "[i]t is a dangerous fiction to pretend that parents simply delegate their authority—including their authority to determine what their children may say and hear—to public school authorities" simply by enrolling them in school. *Morse*, 551 U.S. at 424 (Alito, J., concurring).

The Board invokes an astonishingly broad view of *in loco parentis* that neither this Court nor the common law has ever recognized. *In loco parentis* means "in the place of a parent." *Black's Law Dictionary* (11th ed. 2019). It has never meant "displace parents." *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000). The doctrine rested on a theory of delegation: parents delegate parental authority to the school while their children are not in their custody. But as Blackstone recognized, this delegation was "part[ial]" and only granted a teacher the authority "of restraint and correction" to the extent "*necessary to answer for the purposes for which he is employed*." 1 Blackstone 441 (emphasis added).

In other words, teachers had incidental authority to ensure order and discipline to the extent necessary to educate the child. Implicit in this arrangement was the understanding that the parent, not the teacher, retained overall authority over the child's education. The common law never envisioned that teachers could override parents and teach whatever they pleased. Indeed, when schools took unnecessary actions that exceeded the bounds of their partial delegation, courts held them liable. *See Hailey v. Brooks*, 191 S.W. 781, 783 (Tex. Civ. App. 1916) (delegation is "limited" and school has only "reasonably necessary" powers); *Vanvactor v. State*, 15 N.E. 341, 342 (Ind. 1888) (teacher's delegation is "restricted to the limits of his jurisdiction and responsibility as a teacher"); *Guerrieri v. Tyson*, 24 A.2d 468, 469 (Pa. Super. 1942) (school could not dictate how to treat student's injury); *State ex rel. Bowe v. Bd. of Educ. of City of Fond du Lac*, 23 N.W. 102, 104 (Wis. 1885) (school could not punish student for failing to collect firewood); *Hardy v. James*, 5 Ky. Op. 36, 1872 WL 10621, at *1 (1872) (school could not punish child for "trivial" playground disagreement); *State v. Ferguson*, 144 N.W. 1039, 1044 (Neb. 1914) (school could not force student to take a cooking class). This Court should reject the Board's radical expansion of *in loco parentis*.

II. Parental exclusion policies substantially burden parental rights.

The Board tries its hardest to downplay the burden on parents in this case. It characterizes the school district's lessons on sex and gender identity as garden-variety children's books that contain "everyday tales"

and "touch on the same themes introduced to children in such classic books as Snow White, Cinderella, and Peter Pan." BIO.5. It likewise casts the school district's decision to embed these lessons in the general curriculum—instead of sexual education programs subject to state opt-out laws—as an isolated pedagogical decision with no ulterior motive. *See id.* at 5-7. Finally, the Board asserts—and the courts below held—that classroom instruction is the sole prerogative of teachers and administrators and that parents burdened by such instruction can simply homeschool or enroll their children in private school. *See* Pet.App.46a.

None of the above is accurate. The Board's lessons on sex and gender identity for children as young as four years old strike at the heart of parental decision making. The classroom instruction at issue in this case implicates the most fundamental topics parents can address with their children, including the nature of the human person, what it means to be created male or female, and God's unique plan for them. *Compare* Pet.Br.9-13, *with* Pet.App.530a, 537a, 625a. There is nothing unique about the materials the Board selected or its choice to shield them from opt-out laws by placing them in general curriculum—schools across the country are taking similar steps. Moreover, there is ample evidence that children who receive this instruction are confused and understand it to contradict the religious instruction their parents have given them. *See infra* II.A. And in states that lack school-choice programs, like Maryland, enrolling children in public schools is a "virtual necessity" for

many low-income and working-class families. *Wooley*, 430 U.S. at 715; *see infra* II.B.

A. Parental exclusion policies harm parents and children alike.

1. Contra the Board, grade schoolers who receive the school district's instruction are not merely "exposed" to views their parents find objectionable. *Cf.* Pet.App.643a. Rather, the record shows that the school district "provided materials for teachers and administrators to use in responding to" students who doubted or disagreed with the themes in the storybook lessons. Pet. App.54a. For example, if a student voices a belief that a character "can only like boys, because she's a girl," the materials prompt teachers to "[d]isrupt the either/or thinking" expressed by the third or fourth grader. Pet.App.629a. One of the Petitioners who was denied an opt-out from this lesson was the mother of a ten-year-old girl with an Individualized Education Program under the Individuals with Disabilities Education Act. *See* Pet.App.627-28a; *see also* Pet. App.48 (counsel for the Board conceding that "instructing children that gender is anyone's guess at birth" "may well be part of the discussion").

Nearly identical scenarios have unfolded in other school districts across the country in recent years, with predictable results. According to CBS News, Sacramento-area "kindergartners came home very confused, about whether or not you can pick your gender [and] whether or not they really were a boy or a girl" after their teacher used the storybook *I Am Jazz* to

teach them gender identity concepts. *Transgender Reveal in Kindergarten Class Leaves Parents Feeling 'Betrayed,'* CBS News, (Aug. 22, 2017), perma.cc/TLN8-VU4J. Like the storybooks read to kindergartners in Montgomery, *I Am Jazz* purports to "expand" four- and five-year-olds' "perceptions and understandings of gender." *Compare* Human Rights Campaign Foundation, *I Am Jazz: Transgender Topics in Elementary School*, perma.cc/Q9DF-LC2D, *with* Human Rights Campaign Foundation, *Born Ready: The True Story of a Boy Named Penelope*, perma.cc/34SL-3KUZ; *see* Pet.App.240a (listing *Born Ready* as one of the school district's instructional storybooks). A parent of one of the kindergartners told CBS that her "daughter came home crying and shaking, so afraid she could turn into a boy." CBS News, *supra*. For its part, the school district said that "the books were age-appropriate and fell within their literature selection policy" and therefore did not "require prior parental notice." *Id.*

In Mount Lebanon, Pennsylvania, parents only discovered that their first graders were learning about gender identity—by way of a storybook titled *When Aidan Became a Brother*—after one of the children asked her mother: "How do you know that I am a girl?" *Tatel v. Mt. Lebanon Sch. Dist.*, 637 F. Supp. 3d 295, 321 (W.D. Pa. 2022). A typical "teacher's guide" for *When Aidan Became a Brother* provides the following synopsis of its contents:

> When Aidan was born, everyone thought he was a girl. His parents gave him a pretty name, his room looked like a girl's

> room, and he wore clothes that other girls liked wearing. After he realized he was a trans boy, Aidan and his parents fixed the parts of his life that didn't fit anymore, and he settled happily into his new everyday.

Lee & Low Books, *Teacher's Guide: When Aidan Became a Brother*, bit.ly/4brodZi. Further investigation revealed that, as part of the lessons, the children's teacher "explained to her students that sometimes 'parents are wrong' and parents and doctors 'make mistakes' when they bring a child home from the hospital." *Tatel*, 637 F. Supp. 3d at 305. Those teaching points are much like the "sample" instructions the school district tells teachers to provide to students here: "When we're born, people make a guess about our gender and label us 'boy' or 'girl' based on our body parts. Sometimes they're right and sometimes they're wrong. When someone's transgender, they guessed wrong." Pet.App.630a; *see also* Pet.App.631a ("We know ourselves best.").

Indeed, all available evidence shows that teachers view picture books as important teaching tools for elementary school children, not irrelevant and interchangeable storylines, as the Board now suggests. *See* BIO.28. During a mandatory equity and inclusion training session for teachers in Encinitas School District in California in 2023, the instructor recommended the use of picture books to help children absorb gender identity concepts in a familiar manner. *See S.E. v. Grey*, 3:24-cv-01611, ECF 1, ¶75 (S.D. Cal.

2024). The instructor suggested that elementary school teachers "read[] a picture book" to their students "and just once in a while, take out the 'he' or 'she,' and say 'they,'" so the students could "get used to practicing reading" stories that employ non-binary pronouns. *Id.*

Later that year, an elementary school in the same district required fifth graders—some of whom were as young as nine—to read a transgender-themed storybook titled *My Shadow is Pink* and conduct a related in-class assignment. *See id.* ¶2. The rhyming storybook follows the life of a young boy who "loves wearing dresses and dancing around" and playing with "pink toys, princesses, fairies and things not for boys." *Id.* ¶116. The story concludes when the boy's father, initially cast as cold and disapproving, admits that he was wrong and accepts his son's identity as a girl. *Id.* ¶117. Multiple parents had already exercised their statutory rights to opt their children out of the formal instruction block on gender identity in the school's health class, but their children were subjected to the same material in general education programming without parental notice or opportunity for opt-out. *Id.* ¶¶99-102. The incidents described above are just a few of countless similar examples PDE has learned about while interacting with parents throughout the country over the past few years.

2. The Board emphasizes that the "storybooks are part of [Montgomery's] language-arts instruction, not sex education," and it rejects the so-called "false pretense that parents have been denied a right to opt

their children out of sex education." BIO.28; *see also id.* ("But as explained above, the record contains no evidence that petitioners, or any other parents, have been denied the opportunity to opt their children out of sex education, a separate unit of instruction with specialized procedures for selecting and using instructional materials."). Indeed, the Board elsewhere concedes that it placed these lessons about gender identity and sexual behavior in the general curriculum "precisely … to fight against" the idea that lessons on gender identity and sexual identity belong in "a special curriculum from which people may have the opt-out right in Maryland." J.A.49-50.

Like the lessons themselves, nothing about the Board's decision to place them in the general education curriculum is original or organic. Outside groups have openly encouraged school districts to "extend their efforts beyond sex education, which is subject to close scrutiny and protected by parental opt-out policies." A. Jones & E. Kao, *The Equality Act's Impact on School Curriculum and Parental Rights*, Heritage Foundation, (May 15, 2019), perma.cc/A2KL-VD2H; *e.g.*, M. C. Lytle & R.A. Sprott, *Supporting Gender Identity and Sexual Orientation Diversity in K–12 Schools* (Am. Psych. Assoc. 2021) (noting "[w]hen [Gender and Sexual Diversity] issues are included in the school curriculum, they are often taught within the realm of sex education" and criticizing "[t]his lack of infusion into the regular curriculum"); A. Sanders, et al., *LGBTQ+ Literature in the Elementary and Secondary Classroom as Windows and Mirrors for Young Readers*, (IGI Global 2020) (similar). Multiple school

districts in Oregon, for example, "bypass the requirement to notify parents of gender identity and sexual-content teaching by only requiring parental communication and opt-out allowances for health classes while giving schools free rein to promote the ideas in other classes." K. Ingraham, *How Replacing Biological Sex with Gender Identity Harms Children*, Discovery Institute (Mar. 23, 2022), perma.cc/8MJW-HM9L.

Thus, far from making a discrete pedagogical decision about the placement of the lessons at issue here, *cf.* BIO.5-6, the Board simply followed the trend by attempting to exclude parents from issues that go to the core of parental decisionmaking: molding their children's identities and religious beliefs. (In the process, the Board overruled even their own elementary school principals, who also "objected to the storybook instruction." Pet.Br.13.) In any event, the Board's admissions make clear that its inclusion of the storybooks in the general curriculum was an intentional strategy to facilitate the exact arguments the Board now raises. The Court should give it no credence—parental rights are implicated by the contents of the lessons teachers impart to impressionable children, not the labels administrators affix to those lessons. *See Yoder*, 406 U.S. at 232-33.

3. The Board's and the Fourth Circuit's assertion that children are unaffected by the school district's lessons on "gender identity diversity and sexual identity diversity" is inconsistent with everything society knows about young children and authority figures.

Pet.App.636a; Pet.App.35a-36a. As this Court has recognized, "[t]he State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987).

As even opponents of parental opt-out rights acknowledge, "[d]uring a single school year, full-time students spend more waking hours in the classroom and with their peer group than they do with their family members." Lytle & Sprott, *supra* at 49. "When one accounts for work schedules and other commitments, a student may well see more of their teacher and other adults in the school building than they do of their own parents." *Id.* "The proportion of time spent in this environment serves to partially explain the tremendous power that schools hold regarding the identity and self-esteem of any student." *Id.*

Here, the Board and the Fourth Circuit minimized the burden on Petitioners as their children "simply hearing about other views." BIO.9; Pet.App.35a. That characterization is mistaken several times over. First, describing the effect on Petitioners' children—who are no older than second grade and include at least one child with learning difficulties—as "hearing about other views" ignores the imbalance of power between the parties that this Court has recognized in *Aguillard* and elsewhere. *See* 482 U.S. at 584. Statements that are presented as facts in class materials and ratified as true by the adults in the room do not

meaningfully compare to statements from other second graders in the hallways or at recess. Second, the authority figures in question are not only stating their views but affirmatively telling Petitioners' children that their differing beliefs are "hurtful to a lot of people." Pet.App.94. And despite the Board's statements to the contrary, the school district *does* instruct teachers to contradict the children's beliefs. *See* Pet.App.94a-95a ("Sometimes when we learn information that is different from what we always thought, it can be confusing and hard to process."). Third, the Board's claim that parents' rights are not burdened because they can always provide counter narratives to course content at home does not explain how parents can respond to lessons when the school district refuses to notify them that the lessons occurred. *See* Pet.App.63a, 643a.

Finally, the notion that elementary school students are sophisticated and independent-minded enough to process the material presented by the storybooks without parental involvement is inconsistent with how public schools treat children in every other context. In PDE's experience, many schools that reserve the right to override parents' objections and teach children that their sex is determined only by their perception are the same schools that require students to show "signed and dated authorization from [a] parent/legal guardian" before students can receive a "standard dose acetaminophen or ibuprofen." Brief of Appellant, *Parents Defending Educ. v. Linn-Mar Comm. Sch. Dist.*, No. 22-2927 (8th Cir. Nov. 4, 2022). In a world in which schools "routinely send notes

home to parents about lesser matters," such as "playground tussles, missing homework, and social events," there is no justification for withholding such fundamentally important information from parents. D. St. George, *Gender Transitions at School Spur Debate Over When, or if, Parents Are Told*, Washington Post, (July 18, 2022), perma.cc/EZ2K-D4NS.

B. Enrolling children in public education is a "virtual necessity" for many parents.

The Board criticizes Petitioners for allegedly "telling public school teachers what to teach and not to teach," and it blithely suggests that "the way to ensure that parents can 'avoid exposing their children to any religiously objectionable materials' in a public-school curriculum" is to "'choose alternatives such as a private school.'" BIO.26-28; *see* Pet.App.46a. Both assertions lack merit. First, Petitioners have no interest in dictating other students' educations and do not object to teachers continuing to present the lessons to the rest of the student body. Instead, they seek to protect their own children from one-sided, undisclosed instruction that imparts a worldview fundamentally at odds with their most deeply held beliefs. *See* Pet.Br.19-20.

Second, as Justice Alito recognized in *Morse*, "[m]ost parents, realistically, have no choice but to send their children to a public school." 551 U.S. at 424 (Alito, J., concurring). This observation is especially true in states like Maryland and for parents like Petitioners. Maryland law requires parents to keep their elementary-age children in public school, unless they

can provide an equivalent education through homeschooling or private schools, *See* Md. Code Educ. §§ 7-301(a)(3), (a-1)(1). Any parent or legal guardian "who fails to see that [their] child attends school" is "guilty of a misdemeanor" and may be sentenced to fines, imprisonment, or both. *Id.* § 7-301(e)(2).

Although Maryland law makes homeschooling or enrolling in private school a requirement for disenrolling a child from public school without risking criminal penalties, it provides virtually no resources to parents who wish to avail themselves of those options. Homeschooling is infeasible for single parents who must work to support their children or for dual-income families that require both parents to work to make ends meet. Maryland has no school choice program and no meaningful voucher program aside from roughly 3,000 partial scholarships statewide each year—a figure that includes returning students and cuts across all K-12 grades. *See* M. Frost, *Boost Scholarship Program Sees. 'Extreme Demand'; Funds Uncertain for New Applicants*, (Aug. 21, 2023), perma.cc/P84E-EH5W. Demand for those scholarships vastly exceeds supply each year. *See id.* Students cannot even transfer to a different *public* school district within the State unless they obtain a waiver from their home school district, and the school district here offers such waivers under vanishingly narrow conditions. *See* Md. Code Educ. § 7-101(a); Bd. of Educ. of Montgomery Cnty, Policy JEE-RA, *Student Transfers*, perma.cc/4FA8-JMGV.

Judge Quattlebaum's observation that the Board's policy "forces the parents to make a choice—either adhere to their faith or receive a free public education for their children" was correct but incomplete. Pet.App.62a. For *some parents*, remaining enrolled in the school district under the current policy restricts their ability to "adhere to their faith" and thus "forc[es]" a "choice" between paying private tuition and violating their beliefs. *Id.* But many families have no choice at all because they lack the means to move their children to a different school or their children's circumstances make such a move impossible.

For Petitioners, the "choice" described by the dissent is illusory. Petitioners include parents of children with specialized learning requirements not available in private school, as well as low-income families who lack the means to pay for private school and cannot homeschool because they are dual-income households. *E.g.*, Pet.App.626a ("[B]ecause of her needs we do not have a clear alternative for her education except to remain in the public schools. Even if we could afford private education, none of the private school options we are aware of would be able to keep her instruction at her developmental level.").

Taken together, truancy laws subjecting parents to criminal punishment if their children do not attend school, the absence of school choice programs, and the lack of financially or logistically feasible homeschool alternatives all mean that Petitioners are functionally required to turn their children over to the State every day to receive instruction that expressly contradicts

the beliefs they hold most dear. Put differently, because enrolling their children in Montgomery public schools is a "virtual necessity" of life for Petitioners, the school district cannot condition such enrollment on Petitioners' forfeiture of their constitutional rights. *See Wooley*, 430 U.S. at 715.

CONCLUSION

This Court should reverse.

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