NO. 24-718

IN THE

Supreme Court of the United States

BLAKE ANDREW WARNER,

Petitioner,

v.

HILLSBOROUGH COUNTY SCHOOL BOARD,

Respondent.

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

BRIEF OF LIBERTY, LIFE AND LAW FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

DEBORAH J. DEWART
Counsel of Record
ATTORNEY AT LAW
111 Magnolia Lane
Hubert, NC 28539
(910) 326-4554
lawyerdeborah@outlook.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

Liberty, Life and Law Foundation ("LLLF"), as *amicus curiae*, respectfully urges this Court to reverse the decision of the Eleventh Circuit.

LLLF is a North Carolina nonprofit corporation established to defend fundamental constitutional liberties, including religion, speech, and parental rights. LLLF's founder is the author of a book, *Death of a Christian Nation* (2010) and many *amicus curiae* briefs in this Court and the federal circuits.

INTRODUCTION AND SUMMARY

There is no need to look far to find cases where the rights of children are at stake. Cases abound. But unless a child's parents are themselves lawyers, or able to afford legal counsel, that child may be without legal recourse. In rare instances, a case may be litigated pro bono by a nonprofit legal defense organization or association. But the key word here is "rare." Access to the judicial system is not guaranteed.

Parental rights and the constitutional rights of their children are inescapably intertwined. A child cannot independently retain legal counsel. Parents

---

[1] Counsel of record for all parties received notice at least 10 days prior to the due date of *amicus curiae*'s intention to file this brief. *Amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

have the right and responsibility to direct the upbringing of their children and make important decisions for them. But even where a parent has the means to retain counsel, who will sign the retainer agreement? *The parent*. Who will write the checks to pay legal fees? *The parent*. Who will consult with legal counsel to make important decisions about strategy or settlement? *The parent*. Under the Eleventh Circuit's reasoning, justice may be inaccessible to many children and parents whose constitutional liberties have been infringed.

ARGUMENT

The dilemma presented here is relevant to a multitude of other children's rights, including free speech and religious liberty. The judicial landscape is currently riddled with such cases presenting such issues:

- Children do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969); *see L.M. v. Town of Middleborough*, 103 F.4th 854 (1st Cir. 2024), petition for certiorari pending, No. 24-410 (public school student disciplined for wearing t-shirt stating "there are only two genders").

- Children have rights against a public school's compulsion to speak what they believe is false. "The First Amendment forbids the District from compelling students to use speech that

conveys a message with which they disagree, namely that biology does not determine gender." *Parents Defending Educ. v. Olentangy Loc. Sch. Dist. Bd. of Educ.*, 109 F.4th 453, 495 (11th Cir. 2024) (Batchelder, J., dissenting), en banc review granted, No. 23-3630, oral argument set for March 19, 2025. *See also W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in . . . matters of opinion or force citizens to confess by word or act their faith therein.").

- Children—and parents—have the right to retain a professional counselor who shares their religious perspective. The lawsuit filed by the Colorado Christian counselor in *Chiles v. Salazar* implicates these rights. 116 F.4th 1178 (10th Cir. 2024), petition for certiorari pending, No. 24-539.

- Children and their parents have the right to truthful information and protection from medical interventions that may cause irreparable harm to their bodies. *United States v. Skrmetti*, 2023 U.S. App. LEXIS 17345, petition for certiorari granted, No. 23-477, oral argument held on December 4, 2024.

- Children, especially those of tender years, have the right to protection from explicit sexual content they are too young to understand, and their parents have corresponding rights to ensure their ability to provide that protection. *Mahmoud*

> *v. Taylor,* 102 F.4th 191 (4th Cir. 2024), petition for certiorari pending, No. 24-297. These rights can only be vindicated through the actions of parents. In *Mahmoud*, the school board denied parents a right to notice and/or an opportunity to opt out of "classroom instruction on such sensitive religious and ideological issues." *Id.* at 201-202. Indeed, the parents claimed not only a *right* but a religious *duty* "to train their children in accord with their faiths on what it means to be male and female; the institution of marriage; human sexuality; and related themes." *Id.* at 201.

The "crux" of the parental claims in these cases, as in *Warner*, is their fundamental right to direct the upbringing of their children. Decisions about education are a crucial component of that right. The Eleventh Circuit's rationale threatens to shut the court door in their faces.

I. PARENTAL RIGHTS ARE INALIENABLE AND FUNDAMENTAL, AS RECOGNIZED BY DECADES OF JURISPRUDENCE.

Parental rights to the care, custody, and control of their children are not created by statute or by any federal or state constitution but are natural, inalienable rights uniformly recognized by federal and state courts throughout American history. There is such "extensive precedent" on point that it cannot possibly be doubted that "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v.*

Granville, 530 U.S. 57, 66 (2000). Due process rights to life, liberty, and property encompass "not merely freedom from bodily restraint but also the right of the individual to . . . marry, establish a home and bring up children, to worship God . . . ." *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923). These rights to establish a family are "essential." *Ibid.*; *see Troxel*, 530 U.S. at 65. A parent's "right to the care, custody, management and companionship" of his or her children is a "right[] more precious . . . than property rights"—even more important than financial support from a former spouse. *May v. Anderson*, 345 U.S. 528, 533 (1953). Choices about raising children "are among associational rights . . . sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996). These rights are ranked as "of basic importance in our society." *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971).

Parental rights fit comfortably within judicial definitions of "fundamental" rights. "Marriage and procreation are fundamental to the *very existence and survival* of the race." *Skinner v. Oklahoma,* 316 U.S. 535, 541 (1942) (emphasis added). In *Skinner*, this Court struck down a sterilization requirement, stressing the potentially "far-reaching and devastating effects" of depriving the individual of "a basic liberty." *Ibid.* The often repeated language used to recognize fundamental rights is easily applied to the rights of parents—"deeply rooted in this Nation's history and tradition," *Moore v. East Cleveland,* 431 U.S. 494, 503 (1977) (plurality opinion); "so rooted in the traditions and conscience of our people as to be

ranked as fundamental," and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937). *See Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1977) (discussing the criteria to recognize fundamental rights beyond those enumerated in the Bill of Rights).

Even in upholding a child labor law, explaining that "the family itself is not beyond regulation in the public interest," this Court affirmed the paramount importance of parental rights: "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." *Prince v. Massachusetts,* 321 U.S. 158, 166 (1944).

II. THE ELEVENTH CIRCUIT RATIONALE THREATENS A BROAD RANGE OF PARENTAL RIGHTS.

Parental rights extend to a wide spectrum of public and private life—custody, education, religion, associations, medical care. Judicial precedent touches all of these topics. "The law's concept of the family rests on the presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." *Parham v. J. R.,* 442 U.S. 584, 602 (1979). Historically, American jurisprudence "reflects Western civilization concepts of the family as a unit with broad parental authority over minor children"

and "cases have consistently followed that course." *Ibid*. It is difficult to imagine a more critical application of parental rights than basic decisions about the quality of a child's basic education.

This case has implications far beyond the contours of the facts presented to the Eleventh Circuit. The litigation of children's educational rights often implicates religion and/or free speech. This Court's review is needed to ensure access to the judicial system to protect these rights, which fall within the sphere of parental responsibility. The "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." *Pierce v. Society of Sisters,* 268 U.S. 510, 534-535 (1925). Reasoning that a child is "not the mere creature of the state," this Court explained that "those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id*. at 534-535. Accordingly, *Pierce* upheld the right of parents to place their children in private school rather than "forcing them to accept instruction from public teachers only," a practice designed to "standardize" them. *Id*. at 535. The state may not "standardize its children . . . by completely foreclosing the opportunity" for parents to choose a different path of education. *Parents for Priv. v. Barr*, 949 F.3d 1210, 1229 (9th Cir. 2020), citing *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1206 (9th Cir. 2005) (internal quotation marks omitted).

In a recent case, parent plaintiffs "claim[ed] their faiths—Islam, Roman Catholicism and Ukrainian

Orthodox—dictate that they" – not the public school – teach their children about sensitive issues of human sexuality. *Mahmoud*, 102 F.4th at 219 (Quattlebaum, J., dissenting). Parental rights to control the upbringing of their children, including education generally and religious training specifically, were addressed at length in the landmark *Wisconsin v. Yoder* ruling. "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." 406 U.S. 205, 232 (1972). The government's "interest in universal education," important as it may be, "is not totally free from a balancing process when it impinges on fundamental rights" such as the "traditional interest of parents with respect to the religious upbringing of their children." *Id.* at 214. *Yoder*'s rationale applies in contexts that implicate fundamental moral and religious values. The Fourth Circuit blithely cast *Yoder* aside as a "limited holding" restricted to the "unique record established concerning the Amish faith's rejection of formal secondary education as a whole." *Id.* at 211. But this Court has consistently characterized parental rights as "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel*, 530 U.S. at 65. Even in dissenting from the analysis of the other justices in *Troxel*, Justice Scalia vigorously affirmed that the "right of parents to direct the upbringing of their children is among the unalienable Rights' with which the Declaration of Independence proclaims all Men . . . are endowed by their Creator."

Id., at 91 (Scalia, J., dissenting) (internal quotation marks omitted).

A. The Eleventh Circuit rationale threatens parental rights to challenge public school policies related to sexuality.

The ability to vindicate the rights of children is nowhere more urgent than in connection with the growing trend to exalt LGBT rights at the expense of those who reject the underlying ideology. The evidence can be seen in public school policies demanding the use of a minor child's preferred name and pronouns—often without parental consent or even knowledge, and sometimes requiring that school personnel actively lie to parents. With the increase in these alarming policies, including secret sex transitions that deliberately deceive parents and irreparably harm children, it is more critical than ever to guard parental rights to control their children's educational environment and to access the judicial system to redress grievances. The Eleventh Circuit decision thwarts the ability of parents to exercise their basic rights unless they are able to afford a private attorney or obtain pro bono assistance from a nonprofit legal defense team or an association of like-minded parents.

The legal challenges are legion, including several recent circuit court decisions and petitions filed in this Court. Indeed, this case is not the first time a circuit court has stonewalled parental rights. Parents in Montgomery County, Maryland sued the Board of

Education over the emerging issue of public schools secretly socially transitioning minor children to alternate gender identities and deliberately withholding that information from parents. The School Board had adopted "Gender Identity" guidelines specifically providing that parents were *not to be informed* when their children announced that they identified as transgender. Furthermore, school personnel were required to take affirmative steps to hide from parents that their child was exhibiting as transgender at school by reverting to given names when communicating with them. This official deception is eerily comparable to the policy at stake in *Mahmoud*—and as in that case, the Fourth Circuit held that the parents did not establish sufficient injuries. *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622 (4th Cir. 2023), *cert. denied* WL 2262333 (May 20, 2024). In *John & Jane Parents*, the Fourth Circuit held that the parents lacked standing. *Id*. at 626. In *Mahmoud*, the court found the record insufficient to warrant a preliminary injunction. Either way, the court is requiring that *a child be harmed* before a dangerous policy can be corrected. Yet even where a child *is* harmed, the Eleventh Circuit shuts the courtroom door unless the parents hire legal counsel.

In a case particularly relevant here, the Olentangy School District in Ohio adopted a policy demanding that *students* affirm the idea that gender is fluid and refrain from "misgendering" other *students*, even contrary to their own (or their parents') religious convictions. The Sixth Circuit recently affirmed the district court's denial of a request for

preliminary injunction, over a long dissent by Judge Batchelor that acknowledged the presence of both compelled speech and viewpoint discrimination. *Olentangy*, 109 F.4th 453.[2]

One sex transition policy emerged in Iowa's Linn-Marr School District. Like many of these policies, it combined the worst of two worlds in constitutional law—compelled speech and viewpoint discrimination. A challenge to the policy reached the Eighth Circuit, which found that intervening legislation (Iowa Code § 279.78 (2023)) had provided the relief sought on one claim, but the court allowed a second claim (based on the First Amendment) to proceed. *Parents Defending Educ.*[3] *v. Linn-Marr Sch. Dist.*, 83 F.4th 658, 665 (8th Cir. 2023).

In Florida, the Leon County Schools LGBTQ+ Critical Support Guide jeopardizes First Amendment rights by demanding the use of a minor child's preferred name and pronouns, not only without parental consent or knowledge—but under an official policy that authorizes and directs school personnel to deceive a child's parents if they do not affirm the *child*'s life-altering decision to transition to the opposite sex. *Littlejohn v. Sch. Bd. of Leon Cnty.*, 647

---

[2] Petition for En Banc Rehearing, filed August 26, 2024 (Case No. 23-3630), was granted and is pending.

[3] https://defendinged.org. There are numerous indoctrination policies around the country and many ongoing legal challenges in process.

F. Supp. 3d 1271 (N.D. Fla. 2022), pending in Eleventh Circuit, Case No. 23-10385.

B. The Eleventh Circuit rationale threatens to impose a substantial burden on the religious liberty rights of both parents and children, particularly in the educational context.

The Free Exercise Clause protects not only "the right to harbor religious beliefs inwardly and secretly," but also "to live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'" *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022) (quoting *Emp't Div. v. Smith*, 494 U.S. 872, 877 (1990)). These rights are included in the broad panoply of parental rights to direct a child's upbringing.

The recent *Mahmoud* case is a prime example of the litigation often required to protect religious rights in the context of public education. In *Mahmoud*, the Montgomery County Board of Education implicitly made a declaration of religious orthodoxy that defies the Constitution, "view[ing] the parents' religious objections to the texts as less important than the board's goals to improve inclusivity for the LGBTQ+ community." *Mahmoud*, 102 F.4th at 224 (Quattlebaum, J., dissenting). And that is "*precisely* the sort of value judgment about parents' religious claims" that neither a school board nor a court may make. *Ibid*. The Board defied both the First Amendment and this Court's precedent. But if

parents cannot represent their own children in court or afford legal counsel, their children's religious liberty quickly evaporates.

Warner involves a different but vitally important aspect of education—a parent's choice "between 'a failing racially segregated school in his community' or 'driving approximately two hours per day to distant schools.'" *Warner v. Sch. Bd. of Hillsborough Cnty.*, 2024 U.S. App. LEXIS 11239, *3. *Mahmoud* involved the school's choice of curriculum. There is "probably no deeper division" than a conflict provoked by the choice of "what doctrine and whose program public educational officials shall compel youth to unite in embracing." *Barnette*, 319 U.S. at 641. *Mahmoud* demonstrates the particularly contentious divisions over what public schools should teach about sexuality. This Court has acknowledged the broad discretion of local school boards in managing curriculum. *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 863 (1982). But "that deference is not absolute" and must comply with the "transcendent imperatives of the First Amendment." *Mahmoud*, 102 F.4th at 217-218 (Quattlebaum, J., dissenting), citing *Pico,* 457 U.S. at 863-864. The Board's mandatory use of the disputed Storybooks, over strong parental objections, darkens the "fixed star in our constitutional constellation" that no government official may "prescribe what shall be orthodox in . . . religion." *Barnette*, 319 U.S. at 642.

The Board skated on thin ice with its suggested responses to objections, e.g., advising personnel to "[d]isrupt the either/or thinking" of a student who

questions same-sex attractions. *Mahmoud*, 102 F.4th at 199. Questions about transgenderism were to be answered by "explaining" that "people make a guess about our gender" at birth, but "[o]ur body parts do not decide our gender . . . gender comes from the inside." *Ibid*. Such responses attack the moral convictions of many religious traditions and reveal that "schools will advocate for the themes and values in the texts and against any opposition to them. . .forc[ing] parents to make a choice—either adhere to their faith or receive a free public education for their children." *Id*. at 222 (Quattlebaum, J., dissenting). They cannot do both.

"Religious liberty is indelibly embedded in American history and the U.S. Constitution." *Mahmoud*, 102 F.4th at 203-304, citing *School Dist. v. Schempp*, 374 U.S. 203, 212-14 (1963). The Board's "religious orthodoxy" interfered with the ability of parents to control the religious upbringing of their children. Protection for religious liberty "requires government respect for, and *noninterference* with, the religious beliefs and practices of our Nation's people." *Mahmoud*, 102 F.4th at 204, quoting *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). The Storybooks in *Mahmoud* interfered with the ability of parents to teach their children religious values, because their content conflicted with the religious convictions of many families involved in the case.

The "exalted" place of religion in our nation has been "achieved through a long tradition of reliance on the home, the church, and the inviolable citadel of the individual heart and mind." *Schempp*, 374 U.S. at

226. The government may not "invade that citadel" by imposing religious *requirements* in public education, as this Court has held in *Schempp* and other cases. But it is equally improper to "invade th[e] citadel . . . to oppose" (*ibid.*) a family's religious convictions, as the Board did when it mandated the Storybooks and explicitly denied parents the opportunity to opt out. The Constitution "does not require"—or even allow—the state to be the "adversary" of religion. "State power is no more to be used so as to handicap religions than it is to favor them." *Everson v. Bd. of Educ.*, 330 U.S. 1, 18 (1947).

Mahmoud involved young impressionable preschool children. The Storybook curriculum was designed for pre-Kindergarten children, 3 and 4-year-olds, with the addition of suggested answers to objections and questions from parents or students. *Mahmoud*, 102 F.4th at 218 (Quattlebaum, J., dissenting). Initially the County adopted "Guidelines for Respecting Religious Diversity" (*id.* at 199) to encourage "reasonable and feasible" accommodations when parents asked that a child "be excused from specific classroom discussions or activities that [parents or students] believe would impose a *substantial burden* on their religious beliefs" (*id.* at 219, emphasis added). The Board evaded the Guidelines, "without explanation," by repealing and flatly prohibiting opportunities for notice and opt-outs. *Id.* at 200. In the Establishment Clause context, this Court has found elementary schoolchildren "more likely to be impressionable than teenagers and adults." *Id.* at 212, citing *Lee v. Weisman*, 505 U.S. 577, 592 (1992). In *Lee*, this Court found indirect

coercion at a high school graduation—where the students were much older than the preschoolers exposed to the Storybooks—based on mere exposure to a short prayer. "[Y]oung graduates who object [were] induced to conform." *Id.* at 99. If *high school* students experience indirect coercion by quietly listening to a one-time prayer, then surely *preschool* children, repeatedly exposed to content that collides with the values of their family, experience pressure to adopt the viewpoint of these texts. The court did not need any further "[p]roof that discussions are pressuring students to recast their own religious views." *Mahmoud*, 102 F.4th at 213.

C. The Eleventh Circuit rationale interferes with parental rights to make medical decisions for their children.

Litigation is sometimes necessary to address medical malpractice. The "detransitioner" lawsuits emerging among young adults demonstrate the need to preserve parental rights to consent to or refuse sex reassignment medical procedures for their minor children. This Court recently conducted oral argument in *United v. States v. Skrmetti*, examining a Tennessee state law that prohibits sex reassignment treatments for minors. Evidence of the need for Tennessee's law is shown by the growing number of lawsuits filed by persons who were led (or misled) to believe that "transitioning" treatments would be beneficial but later regretted taking them. Detransitioner lawsuits are becoming a cottage

industry.[4] Tennessee's law extended the statute of limitations for these lawsuits to 30 years *after* the minor reaches age 18. Meanwhile, the Eleventh Circuit's rationale places a roadblock in the path of parents who seek to litigate *before* their child reaches 18 and suffers further irreparable harm.

Medical treatment falls well within the rights and duties of a fit parent. Common law has long recognized that "the only party capable of authorizing medical treatment for a minor in normal circumstances is usually his parent or guardian." *Newmark v. Williams*, 588 A.2d 1108, 1115-1116 (Del. 1990) (child's parents declined chemotherapy); *see* W. Posser & W. Keeton, The Law of Torts § 118 at 114-115 (5th ed. 1984). Minors are not legally competent to give informed consent. And even if they could consent, "despite being made aware of the many risks, their age and immaturity renders informed consent pointless and highlights the necessity of parental consent and guidance in such situations." Claudia Bihar, *Let Them Be Children: How the Law Should Support Parents in Protecting Their Children From the Harmful Effects of Gender Affirming Treatment*, 21 Ave Maria L. Rev. 108, 119 (Spring 2023).

---

[4] See, e.g., https://www.cmppllc.com/our-cases/ (Campbell, Miller, Payne is a law firm specializing in these lawsuits) (last visited 07/30/24); https://www.saveservices.org/2024/04/lawsuits-by-detransitioners-skyrocket-as-transgender-movement-retreats/ (last visited 07/30/24).

III. THE ELEVENTH CIRCUIT'S REASONING IMPOSES A BURDENSOME HOBSON'S CHOICE ON PARENTS.

Warner faces two costly obstacles. One is the cost to retain legal counsel to pursue his child's challenge to the racially discriminatory school district boundaries. The second is the option to place his child in private education in lieu of free public schooling.

A. The financial burden to retain legal counsel may be insurmountable for many parents.

"[T]he mandate that parents retain counsel to advance their children's claims cannot be met by a substantial portion of families." Lisa V. Martin, *No Right to Counsel, No Access Without: The Poor Child's Unconstitutional Catch-22*, 71 Fla. L. Rev. 831, 858 (2019). The absolute bar imposed by the Eleventh Circuit ruling "undermine[s] a child's interest in having claims pursued for him or her," and "may force minors out of court altogether." *Raskin on behalf of JD v. Dallas Indep. Sch. Dist.*, 69 F.4th 280, 286 (5th Cir. 2023), quoting *Tindall v. Poultney High Sch. Dist.*, 414 F.3d 281, 286 (2d Cir. 2005).

The right to self-representation, even for minors, "has deep roots in the American Founding." *Raskin*, 414 F.3d at 291 (Oldham, J., dissenting). It can be traced back to the First Judiciary Act in 1789. *Id*. at 287. Indeed, the "Founders believed that self-representation was a basic right of a free people." *Faretta v. California*, 422 U.S. 806, 830 n.39

(1975). As Warner correctly argued, the Eleventh Circuit's decision is inconsistent with his own "parental right to make critical decisions for [his] child; and the child's own constitutional right to access the courts without a lawyer." *Warner*, 2024 U.S. App. LEXIS 11239, at *8.

B. Alternatives to public education are financially out of reach for many families.

The Eleventh Circuit's denial of a parent's right to represent his own child pro se means that parents must relinquish or significantly compromise their fundamental right to control the education of their young children. Compulsory education laws compel parents to send their children to school. Theoretically, the parent in *Warner* could educate his child through private education or homeschooling. In states that have a universal voucher program with accessible, affordable educational alternatives, parents could easily exercise their rights.

But the reality is anything but easy, as seen in *Mahmoud* and other cases where parents challenge objectionable public school policies. The cost of private schools may be insurmountable. Homeschooling may be impossible for single parents or families where both parents must work to make ends meet. As Justice Alito described it, "[m]ost parents, realistically, have no choice but to send their children to a public school and little ability to influence what occurs in the school." *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring). The cost to exercise

a constitutional right does not always create a burden. *Braunfeld v. Brown*, 366 U.S. 599, 605-06 (1961). But the cost of private education would effectively bar many families from selecting an alternative to public school. The cost of hiring legal counsel, and/or the cost of private education as an alternate to the assigned school, may be prohibitive.

The availability of feasible alternatives is used to analyze liberties in other contexts. "[A]n alternative is adequate if it allows people to pursue the interests served by that liberty to the same degree and at *no greater cost*." Sherif Girgis, *Defining "Substantial Burdens" on Religion and Other Liberties*, 108 Va. L. Rev. 1759, 1762 (2022) (emphasis added). Content-neutral time-place-manner restrictions on free speech must leave open "ample alternatives channels for communication." *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). Religious land use cases often consider whether reasonable alternatives are available to accomplish an organization's religious mission. *See, e.g.*, *Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 453 (6th Cir. 2023) ("[n]o other feasible alternative location ha[d] been identified" for the religious mission at issue). Similarly, many families lack feasible, reasonably affordable educational alternatives to public education.

CONCLUSION

This Court should grant the Petition and reverse the Eleventh Circuit ruling.

Respectfully submitted,

DEBORAH J. DEWART
Counsel of Record
ATTORNEY AT LAW
111 Magnolia Lane
Hubert, NC 28539
lawyerdeborah@outlook.com
(910) 326-4554

Counsel for Amicus Curiae
Liberty, Life, and Law Foundation