No. 24-297

IN THE

Supreme Court of the United States

TAMER 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 THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; THE ETHICS AND RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION; THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS; AND COALITION FOR JEWISH VALUES AS *AMICI CURIAE* SUPPORTING PETITIONERS

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INTERESTS OF *AMICI CURIAE*[1]

Amici are religious organizations with a surpassing interest in the vigorous application of the Constitution's guarantee of religious freedom. That freedom includes the right of parents to decide how to educate their children in the religiously significant matters of marriage, sexuality, and gender. Montgomery County Public Schools (MCPS) has violated that right by denying petitioners notice or an opportunity to remove their children from a novel program teaching young students LGBT-related topics from a viewpoint hostile to traditional religion. We urge the Court to grant review to protect petitioners' exercise of religion—and to prevent other public school systems from following Montgomery County's deleterious example.

INTRODUCTION

Montgomery County Public Schools has adopted a reading program that uses storybooks to introduce LGBT-related concepts and concerns to children in kindergarten through fifth grade (Pride Storybooks). Petitioners objected to their children's participation because these Storybooks interfere with parents' ability to transmit their faith to their children by contradicting traditional religious teachings on marriage, sexuality, and gender. MCPS has denied the basic accommodations of notice and opt-outs to objecting parents. That refusal imposes a burden on petitioners'

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[1] Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Rule 37.2, *amici* further certify that counsel of record for all parties received notice of the intent to file this brief at least 10 days before it was due.

religious exercise by putting them to an intolerable choice: Accept the schools' determination to undermine parents' religious teachings, or else educate their children at their own expense. Cf. *Fulton* v. *City of Philadelphia*, 593 U.S. 522, 532 (2021). Yet the Fourth Circuit held that petitioners have suffered no burden on their religious exercise. Pet.App.48a. That decision is incorrect under the Free Exercise Clause and merits this Court's review.

In October 2022, MCPS launched a mandatory reading program using the Storybooks in language arts classes. Here is what a few of the Storybooks say:

- *Pride Puppy* tells "the story of two women taking their children to a pride parade, where their puppy gets lost." Pet.App.175a. Children are asked "to search for images of * * * the 'intersex [flag],' a '[drag] king,' 'leather,' a 'lip ring,' a [drag] queen,' 'underwear,' and a celebrated sex worker." *Ibid.*; see *id.* at 270a. The school board approved this book for three- and four-year-olds. See *id.* at 175a.

- *Intersection Allies* tells first graders that by "standing together, *we'll rewrite the norms*." *Id.* at 345a (emphasis added). Official notes explain what it means to be "transgender" and "non-binary." *Id.* at 350a. And the notes invite children to consider, "**What pronouns fit you best**?" *Ibid.* (emphasis in original).

- *Love, Violet*, a book written for fourth graders, portrays a romance between two young girls, Violet and Mira. *Id.* at 429a. For Violet, "[o]nly one made [her] heart skip." *Id.* at 431a. She asks herself, "What if Mira didn't *want* her valentine? What if * * * they never adventured?"

> *Id.* at 437a. But Violet gives Mira a valentine and Mira gives Violet a locket. *Id.* at 445a. The story ends with the girls holding hands and going on "an adventure." *Id.* at 446a.

MCPS guidelines for teachers encourage "disrupt[ing]" heteronormative assumptions about romantic attachment by saying that "people of any gender can like whoever they like." *Id.* at 629a. An endorsement of gender nonconformity is the suggested response to questions about a transgender person's anatomy. "Our body parts do not decide our gender. Our gender comes from our inside—we might feel different than what people tell us we are." *Id.* at 630a.

Petitioners and many other parents objected to the Storybook program and requested prior notice of when the Storybooks would be discussed in their children's classes along with an opportunity for their children to be excused from those discussions. During the program's first year, MCPS schools provided these accommodations. *Id.* at 97a–98a. But beginning in August 2023, MCPS has refused to provide either notice or opt-out. *Ibid*. This lawsuit followed.

SUMMARY OF ARGUMENT

Petitioners' objections to Montgomery County's reading program are founded on their sincerely held religious belief that parents have a sacred duty to guide their children in matters concerning marriage, sexuality, and gender. They are not alone. Traditional Christians, Jews, and Muslims, along with those of many other religions, agree. Like petitioners, these faith communities also believe that gender is solely a function of birth sex, that one's identity as male or female based on birth sex should be embraced, and

that sexual desire and expression belong only between a man and a woman who are married.

The County has imposed a severe burden on petitioners' religious exercise by refusing to notify them when the new reading program will appear in their children's classrooms or allow objecting parents an opportunity for their children to be excused from participating. Without these modest accommodations, petitioners and other parents cannot effectively transmit their faith to their children in matters concerning marriage, sexuality, and gender.

Because petitioners have suffered a substantial burden on their religious exercise, and because the County has responded to religious concerns with official hostility, strict scrutiny applies. Yet the County's professed interests in denying religious accommodations are not compelling. Pursuing an educational environment with minimum disruptions that serves the County's educational mission is standardless. An interest in complying with nondiscrimination laws fares no better. MCPS identifies no provision of State or federal law requiring it to educate young children about same-sex attraction, gender identity, or other topics addressed in the Storybooks. Without a compelling interest, the County's policy fails strict scrutiny.

The petition offers an ideal vehicle to resolve the question presented. A clean factual record invites full review of the issues. This case presents an historic opportunity to articulate parental rights under the Free Exercise Clause. And petitioners' sought-after relief is modest and easily administered.

Unless the Court intervenes, Montgomery County will trample petitioners' constitutional rights and set

a deleterious precedent for other public schools. We urge the Court to grant the petition.

ARGUMENT

I. THE QUESTION PRESENTED HOLDS NATIONAL IMPORTANCE.

A. Petitioners' Objections Are Rooted in Shared Beliefs About Marriage, Sexuality, and Gender.

Petitioners represent diverse religions. Yet despite theological differences, petitioners' religious beliefs about marriage, sexuality, and gender, and about parents' religious duty to guide their children, closely resemble each other. These mutually overlapping beliefs are at the root of petitioners' objections to Montgomery County's reading program.

1. Petitioners have a religious duty to be their children's primary guardians in matters concerning marriage, sexuality, and gender.

Tamer Mahmoud and Enas Barakat[2] are Muslims who consider themselves under a "sacred obligation" to teach their children how religion informs their understanding of marriage, sex, and gender. Pet.App.531a. The Mahmouds say the Pride Storybooks "directly undermine our efforts to raise our elementary-aged children in accordance with our faith." *Id.* at 532a.

Other petitioner parents hold similar convictions.

Jeff and Svitlana Roman are Christian: Jeff is Catholic and Svitlana is Ukrainian Orthodox. They affirm, with respect to their beliefs about marriage,

[2] For ease of reference, we refer to the couple as "the Mahmouds."

sexuality, and gender, that they "have a sacred obligation to teach these principles to our son." *Id.* at 538a. Chris and Melissa Persak are Catholic and echo the same sense of "a God-given responsibility" to teach their children how Catholic beliefs shape their understanding of sexuality and gender. *Id.* at 543a. Kids First is a religiously diverse association of parents and teachers who "advocate for the return of parental notice and opt-out rights with respect to any instruction related to family life and human sexuality in [MCPS]." *Id.* at 163a. All "agree that parents have the primary responsibility to decide how and when to introduce instruction on family life and human sexuality to their own children." *Id.* at 168a.

2. Petitioners believe that sexual desire and expression belong only within a marriage between a man and a woman.

The Mahmouds believe that "sex and sexuality are sacred gifts from God to be expressed through the forming of a spiritual, marital bond between spouses—one male and one female—for the shared promise of security, tranquility, compassion, contentment, and joy. *Surah al-A'raf* 7:189; *Surah ar-Rum* 30:21." *Id.* at 530a.

Other petitioner parents share that understanding.

The Romans believe that "human sexuality is precious with its power to create life" and "is properly expressed only in marriage between a man and a woman for creating life and strengthening the marital union. [Catechism of the Catholic Church] § 2360–63; Genesis 2:24; Mark 10:6–9." *Id.* at 536a–537a. The Persaks espouse similar Catholic beliefs. To them, "following God's commandments for marriage and family is not only necessary for raising the next generation of children, *see* Genesis 1:28, but also leads

to human flourishing. *See* John 8:51, 14:21, 15:10." *Id.* at 543a. And Kids First parents maintain that "matters regarding family life and human sexuality" should be "taught to children in age-appropriate ways." *Id.* at 169a.

3. Petitioners believe that gender is solely a function of birth sex.

The Mahmouds also believe that "as taught by the Qu'ran * * * mankind has been divinely created as male and female, *Surah al-Hujurat* 49:13." *Id.* at 165a. And "as a general rule, Islam strictly prohibits medical procedures that attempt to alter the sex of a healthy person" unless it is "medical care" for "biological ambiguities." *Id.* at 531a.

Closely parallel religious doctrines unite the other petitioner parents.

The Romans believe that "a person's biological sex is not arbitrary, but rather a gift bestowed by God that entails differences in men's and women's bodies and how they relate to each other and to the world. *See* Genesis 5:2; Catechism of the Catholic Church, § 2393." *Id.* at 536a. The Persaks believe that "all humans are created as male or female, and that a person's biological sex is a gift bestowed by God that is both unchanging and integral to that person's being. *See* Genesis 5:2." *Id.* at 543a. And Kids First parents "believe in prioritizing the needs of children and "allowing elementary-age children to be kids first, without prematurely exposing them to issues regarding human sexuality, gender identity, and gender transitioning." *Id.* at 86a.

B. Petitioners' Religious Beliefs Track the Doctrines of Many Religious Faiths.

1. Diverse religions believe that parents have a religious duty to guide their children regarding marriage, sexuality, and gender.

Petitioners' statements of faith reflect not only their own religious commitments, but religious beliefs cherished by many others as well.

Islam recognizes a duty of parents to guide their children. The Prophet Muhammad taught: "All of you are shepherds and each of you is responsible for his flock. A man is the shepherd of the people of his house and he is responsible. A woman is the shepherd of the house of her husband and she is responsible." Al-Adab Al-Mufrad, Book 10, Hadith 212. Muslims understand this teaching to encompass an obligation to teach children regarding gender and sexuality. See Siti Suhaila Ihwani et al., *Sex Education: An Overview from Quranic Approach*, 1 J. Quran Sunnah Educ. & Special Needs, no. 2, at 1 (Dec. 2017).

Roman Catholics understand the family as "the domestic church. In it parents should, by their word and example, be the first preachers of the faith to their children." Pope Paul VI, *Dogmatic Constitution on the Church:* Lumen Gentium, para. 11 (Nov. 21, 1964). Pope John Paul II taught that "[s]ex education, which is a basic right and duty of parents, must always be carried out under their attentive guidance, whether at home or in educational centers chosen and controlled by them." Pope John Paul II, *Apostolic Exhortation:* Familiaries Consortio (Nov. 22, 1981).

Orthodox Christians affirm that parents are charged with sacred duties toward their children, to

"bring them up in the discipline and instruction of the Lord (Ephesians 6:4)." Holy Synod of Bishops of the Orthodox Church in America, *Synodal Affirmations on Marriage, Family, Sexuality, and the Sanctity of Life*, para. 48 (July 1992).

Southern Baptists believe that "[p]arents are to teach their children spiritual and moral values and to lead them, through consistent lifestyle example and loving discipline, to make choices based on biblical truth." Southern Baptist Convention, *Baptist Faith & Message 2000*, art. XVIII (June 14, 2000).

Among its official teachings and policies, The Church of Jesus Christ of Latter-day Saints declares that "[p]arents have primary responsibility for the sex education of their children. Parents should have honest, clear, and ongoing conversations with their children about healthy, righteous sexuality." The Church of Jesus Christ of Latter-day Saints, *General Handbook: Serving in The Church of Jesus Christ of Latter-day Saints* § 38.6.17 (*Handbook*).

Jewish scripture describes Jehovah's words to Moses after receiving the Ten Commandments: "Take heed to thyself, and keep thy soul diligently, lest thou forget the things which thine eyes saw, and lest they depart from thy heart all the days of thy life; but make them known unto thy children and thy children's children." *Devarim* (Deuteronomy) 4:8–9. Jews today understand these ancient commands as an important duty for parents to guide children on matters of gender and sexuality. See Derech Project, *Sex and Relationships Education in Jewish Schools* 11 (2006).

2. Diverse religions share petitioners' belief that sexual expression belongs only between a married man and woman.

A consensus among Islamic scholars holds that sexuality belongs only within marriage. "By a decree from God, sexual relations are permitted within the bounds of marriage, and marriage can only occur between a man and a woman. For Muslims, God explicitly condemns sexual relations with the same sex (see, e.g., Quran, *al-Nisā'*: 16, *al-A'rāf*: 80–83, and *al-Naml*: 55–58). Moreover, premarital and extramarital sexual acts are prohibited in Islam." *Navigating Differences: Clarifying Sexual and Gender Ethics in Islam* (May 23, 2023).

Roman Catholics believe that "Holy Scripture affirms that man and woman were created for one another. It is not good that the man should be alone." *Catechism of the Catholic Church* § 1605 (USCCB 2d ed. 2019) (*Catechism*). Marriage is exclusively between one man and one woman: "The intimate community of life and love which constitutes the married state has been established by the Creator and endowed by him with its own proper laws." *Id.* § 1603.

Southern Baptists believe that "[m]arriage is the uniting of one man and one woman in covenant commitment for a lifetime * * *. It is the framework for intimate companionship, the channel of sexual expression according to biblical standards, and the means for procreation of the human race." *Baptist Faith & Message 2000*, art. XVIII.

Orthodox Christians believe that "[t]he union between a man and a woman in the Sacrament of Marriage reflects the union between Christ and His Church (Ephesians 5:21–33). Marriage is necessarily monoga-

mous and heterosexual. Within this union, sexual relations between a husband and wife are to be cherished and protected as a sacred expression of their love that has been blessed by God." Standing Conference of the Canonical Orthodox Bishops in the Americas, *Statement on Moral Crisis in Our Nation*, para. 4 (May 16, 2012) (*Moral Crisis*).

The Church of Jesus Christ of Latter-day Saints "solemnly proclaim[s] that marriage between a man and a woman is ordained of God and that the family is central to the Creator's plan for the eternal destiny of His children." The First Presidency and Council of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints, *The Family: A Proclamation to the World*, para. 1 (Sept. 23, 1995) (*Family Proclamation*). Further, the Church "declare[s] that God has commanded that the sacred powers of procreation are to be employed only between man and woman, lawfully wedded as husband and wife." *Id.* para. 4.

Within the orthodox tradition, "Judaism recognizes the central role of the two-parent, mother-father led family as the vital institution in shaping the entire human race. Within the Jewish people, the two-parent marriage is a model not only for human relations but for relations with the Divine." Rabbi Tzvi Hersh Weinreb, *Orthodox Response to Same-Sex Marriage*, paras. 3–4 (June 5, 2006).

3. Diverse religions share petitioners' belief that gender is a function of birth sex.

Scholars of Islam agree that "[t]he notion that humanity is divided into male and female and that sex or gender is a defining characteristic of human experience is firmly embedded into the Muslim worldview."

Kecia Ali & Oliver Lehman, *Islam: The Key Concepts* 42 (2008).

Roman Catholics believe that "'[b]eing man' or 'being woman' is a reality which is good and willed by God: man and woman possess an inalienable dignity which comes to them immediately from God their Creator." *Catechism* § 369.

Southern Baptists believe that "[m]an is the special creation of God, made in His own image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God's creation." *Baptist Faith & Message 2000*, art. III.

Orthodox Christian tradition holds that "God made them male and female * * * (Mark 10:6–8)." *Moral Crisis*, para. 3. People with gender identity conflicts "are to be cared for with the same mercy and love that is bestowed by our Lord Jesus Christ upon all of humanity." *Id.* para. 5.

The Church of Jesus Christ of Latter-day Saints teaches that "[a]ll human beings—male and female—are created in the image of God * * *. Gender is an essential characteristic of individual premortal, mortal, and eternal identity and purpose." *Family Proclamation*, para. 2. "Gender" is authoritatively defined as "biological sex at birth." *Handbook* § 38.6.23.

Orthodox Judaism understands personal identity as eternally male or female. The Torah records, "And G-d Created man in His image, in the Image of G-d He Created him, male and female He created them." Genesis 1:27; see also Jonathan Sacks, *The Role of Women in Judaism*, *in Man, Woman, and Priesthood* 29 (Peter Moore ed., 1978) ("Man as such—and woman as such—was made in the image of God * * *. It was

the recognition of this that was to be the basis of the covenant between God and all humanity.").

Petitioners' objections to MCPS's new reading program thus reflect religious beliefs that are broadly consistent with each other and mutually reinforced by religious beliefs common among all Abrahamic faiths. Those beliefs are not the preserve of an eccentric or hard-to-accommodate minority. They are the honest convictions of men and women trying to rear their children within their faith. See *Emp't Div., Dep't of Human Res. of Or.* v. *Smith*, 494 U.S. 872, 884 (1990) (recognizing that the Free Exercise Clause guards against "an attempt to regulate * * * the raising of one's children in those [religious] beliefs").

II. MONTGOMERY COUNTY LACKS COMPELLING INTERESTS TO SATISFY STRICT SCRUTINY.

A. MCPS's Animus Toward Petitioners' Religion Triggers Strict Scrutiny.

Although the question presented concerns the burden on petitioners' religious exercise, Pet. i, that question is particularly urgent because of the strength of their free exercise claim.

"[L]aws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable." *Fulton*, 593 U.S. at 533 (citing *Smith*, 494 U.S. at 878–882). This Court's precedents teach that "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature." *Ibid.* Strict scrutiny of a challenged law or regulation is required when the government indulges in "official expressions of hostility to religion." *Masterpiece Cakeshop, Ltd.* v.

Colo. Civil Rights Comm'n, 584 U.S. 617, 639 (2018). That rule calls for strict scrutiny here.

Petitioners faced remarkable hostility toward their religious beliefs. One MCPS board member publicly disparaged objecting parents for engaging in a "dehumanizing form of erasure." Pet.App.187a. On another occasion, the same board member accused parents with religious objections of promoting "hate" and compared them with "white supremacists" and "xenophobes." *Id.* at 107a. Vituperative rhetoric such as this exhibited "a clear and impermissible hostility toward the sincere religious beliefs" held by petitioners and other objecting parents. *Masterpiece Cakeshop*, 584 U.S. at 634. Montgomery County thus defied "[t]he principle that government may not enact laws that suppress religious belief or practice." *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 523 (1993). Such open hostility toward religion triggers the closest judicial scrutiny. In our experience, parents often encounter such religious hostility from school boards as they consider controversial policies.

Even without official expressions of religious bigotry, the Storybooks and their presentation seek to impose an ideological orthodoxy that contradicts the religious beliefs of tens of millions of Americans. The entire approach evinces animus toward religion. The text of the Storybooks plus MCPS's guidance intentionally pressure children not merely to learn about LGBT-related concepts and concerns, but to accept the official viewpoint on marriage, gender, and sexuality. That effort crosses the critical line separating education from indoctrination. See *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 politics, nationalism, religion, or other

matters of opinion or force citizens to confess by word or act their faith therein."). Why else teach four-year-olds to look for drag queens, *Pride Puppy*, Pet.App.270a; ask first graders, "**What pronouns fit you best**?", *Intersection Allies*, *id.* at 350a (emphasis in original); or invite young girls to explore a same-sex romance, *Love, Violet*, *id.* at 446a? MCPS then instructs teachers to deflect and rebut contrary religious beliefs when students express them.

Montgomery County's own elementary school principals expressed concern that the board's treatment of LGBT-related topics is "dismissive of religious beliefs" and invites "shaming comment[s]" toward students who disagree. *Id.* at 619a–620a. Yet MCPS guidance instructs teachers to describe traditional religious views about gender identity as "hurtful" and to "disrupt" the thinking of children who express such views. *Id.* at 629a, 634a.

Compounding all this is Montgomery County's determination to deny religious objectors any accommodation. *Id.* at 15a. The County's no-opt-out policy appears to apply *only* to the Storybook program and contravenes the board's then-applicable Religious Diversity Guidelines, which instructed schools to provide opt-outs "[w]hen possible" from "specific classroom discussions or activities that" parents or students "believe would impose a substantial burden on their religious beliefs." *Id.* at 81a. That reversal confirms MCPS's hostility toward traditional religion.

Because the burden on petitioners' religious practice is genuine and MCPS has triggered strict scrutiny by acting out of hostility toward religion, MCPS must identify compelling interests justifying its Storybook program. *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S.

507, 531 (2022). But the interests MCPS asserts are anything but compelling.

B. Montgomery County's Asserted Interests Do Not Satisfy Strict Scrutiny.

1. Only genuinely compelling interests justify a substantial burden on religious exercise.

"[O]nly those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972). Such an interest may not be framed "at a high level of generality." *Fulton*, 593 U.S. at 541. The pertinent question "is not whether [the government] has a compelling interest in enforcing [a law or policy] generally, but whether it has such an interest in denying an exception to [free exercise claimants]." *Id.*

The First Amendment does not relax the requirements of strict scrutiny for educational officials. Montgomery County claims "leeway" to shape public school curriculum, Defs.-Appellees' Br. 51, *Mahmoud v. McKnight*, No. 23-1890 (4th Cir. Oct. 24, 2023) (Resp.), but it's not automatically "owed deference" for its curricular policies, *Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.*, 600 U.S. 181, 217 (2023). Any discretion must "comport[] with the transcendent imperatives of the First Amendment." *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26* v. *Pico*, 457 U.S. 853, 864 (1982). Nor can MCPS glibly recite its ultimate goal of LGBT equality to justify depriving petitioners of their First Amendment rights. As the Ninth Circuit held, "[a]nti-discrimination laws and policies serve undeniably admirable goals, but when those goals collide with the protections of the Constitution, they must yield—no matter how well-intentioned."

Fellowship of Christian Athletes v. *San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 695 (9th Cir. 2023) (en banc) (citations omitted).

2. Montgomery County's asserted interests are vague and standardless.

MCPS asserts two threadbare interests for not providing notice and opt-out rights to parents. One is "ensuring an educational environment that is safe and conducive to learning." Resp. 17. By this, the County means an environment that "minimizes disruptions to the work and discipline of the school, fosters achievement by all students, and protects the school's educational mission." *Ibid.* MCPS's other purported interest is "meeting [the County's] obligations under antidiscrimination law." *Ibid.* Neither interest satisfies "the most demanding test known to constitutional law." *Boerne* v. *City of Flores*, 521 U.S. 507, 534 (1997).

MCPS's asserted interests fall short for the same reasons that this Court identified in *Students for Fair Admissions*. There, Harvard pressed interests such as "training future leaders" and "preparing graduates" for life in an "increasingly pluralistic society." 600 U.S. at 214. But these supposed interests were not compelling because they "cannot be subjected to meaningful judicial review." *Ibid.* The same is true of MCPS's professed interests. Like the interests that Harvard pressed, see *id.* at 214–15, MCPS's interest in avoiding classroom "disruptions," Resp. 17, is essentially "standardless": "[I]t is unclear how courts are supposed to measure" that goal or "when [it has] been reached," *Students for Fair Admissions*, 600 U.S. at 214.[3] So too, an interest

[3] The County's approach to classroom disruption is also underinclusive since the record nowhere suggests that students are not free to leave class for other reasons, such as restroom

in "foster[ing] achievement" falters because MCPS does not explain what kind of "achievement" its exceptionless reading program serves. Resp. 17. Nor does Montgomery County explain why excusing select children from a few classroom discussions impedes such achievement. And an interest in "protect[ing] the school's educational mission" fares no better since it too resists objective evaluation. *Ibid.*

An interest in "meeting [the County's] obligations under antidiscrimination law," *ibid*, is no more coherent. MCPS cites no law commanding public schools to teach young children about LGBT topics. See *id.* at 51–52. Title IX does not. To the contrary, Congress specifically barred federal "direction, supervision, or control over the curriculum * * * or over the selection of * * * textbooks, or other printed or published materials by any * * * school system * * *." 20 U.S.C. § 1232a. MCPS's reference to Title IX therefore cannot justify the County's aim of re-norming young children to reject their parents' religion. See Pet.App.345a (inviting first-grade students to "rewrite the norms").

3. No compelling interest justifies denying accommodations for religious parents.

MCPS offers no satisfactory explanation why its new policies "can brook no departures." *Fulton*, 593 U.S. at 542. The County operated its reading program for most of the 2022–23 school year while giving parents notice and opt-outs. CA4 App. 678. Yet MCPS claims that such opt-outs "caused significant disruptions,

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breaks and medical appointments. See *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 543 (1993) (criticizing an asserted governmental interest as not compelling when it "fail[s] to prohibit nonreligious conduct that endangers [governmental] interests in a similar or greater degree").

as teachers and principals grappled with widespread student absenteeism, tracking opt-out requests, and shuttling students in and out of classrooms." Resp. 51. MCPS adds that opt-outs presented "the risk of exposing students to social stigma and isolation." *Ibid.* None of these reasons is sound.

Complaints about absenteeism, tracking requests, and "shuttling students," *ibid.*, suggest that the reason for denying notice and opt-outs is to avoid administrative burdens. But such burdens are wholly immaterial. "[T]he prospect of additional administrative inconvenience has not been thought to justify invasion of fundamental constitutional rights." *Carey* v. *Population Servs., Int'l*, 431 U.S. 678, 691 (1977).

Nor is it enough that MCPS worries accommodating petitioners' religion creates the "risk of exposing students to social stigma and isolation." Resp. 51. The Free Exercise Clause has no principle like a "modified heckler's veto" that licenses the suppression of religious exercise lest others feel stigmatized. *Good News Club* v. *Milford Cent. Sch.*, 533 U.S. 98, 119 (2001).

MCPS's refusal to accommodate petitioners gets no support from any differences between an opt-out from the Storybooks and an opt-out from a classroom unit on human sexuality. Resp. 43. Maryland law requires student opt-outs for both. See Code Md. Regs. § 13A.04.18.01(D)(2)(e)(*i*) ("The local school system shall establish policies, guidelines, and/or procedures for student opt-out regarding instruction related to family life and human sexuality objectives.").[4] Nor do petitioners ask to "allow students to leave class

[4] An irrelevant provision excuses a school from providing a student opt-out for classroom instruction on menstruation. See Code Md. Regs. § 13A.04.18.01(D)(2)(e)(*iii*).

whenever instructional materials acknowledge the existence of LGBTQ families." Resp. 43. That baldly misstates petitioners' narrow request for their children to be excused from discussions involving a few contested Storybooks.

4. Neither Parker *nor* Mozert *aids MCPS.*

Parker v. *Hurley*, 514 F.3d 87 (1st Cir. 2008), does not bolster the County's case. It held that public schools did not violate parents' free exercise rights by declining to excuse their children from reading books aimed at "promot[ing] toleration of same-sex marriage." *Id.* at 106. *Parker* rests on the same mistaken ground as the decision below. The First Amendment protects "the free exercise of religion," not merely freedom from government coercion. U.S. Const. amend. I; see *Thomas* v. *Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 718 (1981). Unlike *Parker*, this case *does* involve "a formalized curriculum requiring students to read many books affirming gay marriage," along with gender nonconformity. 514 F.3d at 106. Also unlike *Parker*, petitioners' claim does not rest on "the mere fact that a child is exposed on occasion in public school to a concept offensive to a parent's religious belief." *Id.* at 105. MCPS's Storybooks, coupled with County guidelines, intentionally guide students to approve contested viewpoints about sexuality and gender and blunt objections based on a child's and parent's religious beliefs. *Parker* is defective and distinguishable.

Mozert v. *Hawkins County Board of Education*, 827 F.2d 1058 (6th Cir. 1987), is also inapt. It rejected free exercise claims challenging textbooks used for language arts in public school. *Mozert* rested, like the decision below, on the alleged absence of government coercion. See *id.* at 1069. What's more, the parents in *Mozert* pressed an unworkably broad range of objections to

"seventeen categories" of instruction covering "evolution and 'secular humanism'" to "'futuristic supernaturalism,' pacifism, magic and false views of death." *Id.* at 1062. Here, petitioners' objections narrowly involve a few Storybooks covering LGBT-specific themes directed to young children.

Montgomery County has not identified interests that the law deems compelling. Without such interests, the County's refusal to accommodate objecting parents fails strict scrutiny.

III. This Case Offers an Ideal Vehicle to Resolve the Question Presented.

A. The Facts Are Cleanly Presented.

No material factual disputes obstruct review of the question presented in the petition. The school board's policy is clear. See Pet.App.11a (teachers are "expected to incorporate the Storybooks into the curriculum in the same way that other books are used" (cleaned up)). Equally clear are petitioners' religious objections. See *id.* at 18a ("Because [petitioners] believe that the ideological views of family life and sexuality portrayed in the Storybooks conflict with their views on these and related topics, they object to their children being exposed to them." (cleaned up)).

The Fourth Circuit's complaint about "the scant record" is misplaced. *Id.* at 9a. "[N]o one disputes" the Storybooks "will be used to instruct * * * K-5 children." *Id.* at 62a (Quattlebaum, J. dissenting). MCPS's actions, petitioners' objections, and their claims are plainly documented. See *id.* at 10a–14a (majority op.). Further development is unnecessary to reach the question presented concerning the burden on petitioners' exercise of religion.

B. This Case Offers an Important Opportunity to Vindicate Parental Rights.

Litigation involving claims of parental rights—especially the rights of religious parents—is mushrooming in the lower courts. See, e.g., *Bates* v. *Pakseresht*, No. 23-4169 (9th Cir.) (oral argument held July 9, 2024) (challenge to Oregon agency's denial of adoption application based on applicant's religious beliefs); *Chino Valley Unified Sch. Dist.* v. *Newsom*, No. 2:24-cv-1941 (E.D. Cal.) (challenge to California law barring schools from notifying parents of child's gender transition at school without child's consent). Cases in this vein have already reached this Court—including a case pending oral argument. *L.W.* v. *Skrmetti*, 83 F.4th 460 (6th Cir. 2023), *cert. granted*, 144 S. Ct. 2679 (2024) (challenge to Tennessee law barring gender-transition drugs and surgeries for minors).

This case presses critical questions in the familiar setting of education, where parental rights ought to be at their zenith. See *Yoder*, 406 U.S. at 213–14 (affirming that "the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society") (citations omitted); *Meyer* v. *Nebraska*, 262 U.S. 390, 400 (1923) (holding that a Nebraska statute prohibiting the teaching of modern languages in public school violated the due process right of parents to determine their children's education); *Pierce* v. *Soc'y of Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 532 (1925) (holding that an Oregon statute requiring attendance at public school violated due process because it interfered with "the right of parents to choose schools" for their children, including private religious schools). These principles amply cover the narrow right asserted here—the right of

parents to exercise their religion by guiding their children in matters concerning marriage, sexuality, and gender.

C. Petitioners' Requested Remedies Are Modest and Easily Administered.

Petitioners do not seek to terminate the reading program. Nor do they demand a substitute program. They ask only for the same accommodations long granted to parents who wish to excuse their children from sex education in public school—notice and the right to have their children excused from the objectionable curriculum. See Pet.App.74a (Quattlebaum, J. dissenting) (emphasizing "the limited nature of the relief the parents seek").[5]

Granting petitioners' relief is consistent with Maryland law. State regulations require schools to provide opt-outs for any "instruction related to family life and human sexuality objectives" other than "menstruation." Code Md. Reg. § 13A.04.18.01(D)(2)(e)(*i*). It's hard to see how MCPS can refuse that remedy to petitioners when the reading program operated for a year with the accommodations MCPS stubbornly denies.

* * *

Petitioners seek to exercise their religion by guiding their children in matters concerning marriage, sexuality, and gender. MCPS has instituted a reading program that teaches young children about LGBT characters

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[5] It has long been understood that "[s]ex education" can be used as a "weapon in an ideological war against the family," with the aim of "divest[ing] the parents of their moral authority." Philip Rieff, *The Triumph of the Therapeutic* 160 (1966). That pernicious result can be avoided by giving objecting parents the kind of reasonable accommodations that petitioners seek.

and concerns from a viewpoint that is antithetical to petitioners' sincere religious beliefs. Petitioners do not seek to upend the County's program. They ask only for notice and an opportunity for their children to be excused. Under the First Amendment, their claim is sound and the issue they raise holds national importance. The petition should be granted.

CONCLUSION

The Court should grant this exceptionally important petition.

Respectfully submitted,

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