

No. 24-297

In the Supreme Court of the United States

TAMER MAHMOUD, ET AL., *Petitioners*,

v.

THOMAS W. TAYLOR, ET AL.

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

**BRIEF OF PROTECT THE FIRST
FOUNDATION, THE JEWISH COALITION
FOR RELIGIOUS LIBERTY, THE ISLAM AND
RELIGIOUS FREEDOM ACTION TEAM,
CARMILLA TATEL, GRETCHEN MELTON,
AND STACY DUNN AS *AMICI CURIAE*
SUPPORTING PETITIONERS**

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QUESTION PRESENTED

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

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INTRODUCTION, SUMMARY, AND INTERESTS OF *AMICI CURIAE*¹

The petition raises an important, recurring question about the rights of parents to control their children’s education on moral and religious issues. And the question presented implicates the intersection of two fundamental constitutional rights: the right to freely exercise religion and the right of parents to control their children’s education on issues of religious or moral significance.

This is no new issue. For a century, the Court has deemed fundamental the right of parents to “direct the upbringing and education of children under their control.” *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925). And the Court supplemented that protection in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), correctly emphasizing that parental primacy “in the upbringing of their children is now established beyond debate as an enduring American tradition”—such that, “however strong the State’s interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests.” *Id.* at 215, 232.

The overriding question in this case is whether that “enduring American tradition” must yield when a parent participates in a government benefit: public schooling. Or, in other words, may the state condition

¹ This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amici curiae* or their counsel has made a monetary contribution toward the brief’s preparation or submission. All parties were given at least 10 days’ notice before the brief’s filing.

that benefit on parents' ceding to the government the right to indoctrinate children on contested moral and religious issues?

Remarkably, a growing number of circuits have started to circumvent the free-exercise, free-speech, and free-association rights of parents in this setting. They do this by holding that those rights are not even implicated, let alone burdened, when the state propagandizes children regarding sexuality and gender with messages that directly contradict the religious or moral lessons the children are taught at home. Such manipulation of a captive and vulnerable audience, imposed by an unconstitutional condition on a public benefit, is both wrong and unconstitutional.

Taken together, this Court's cases show that, when the government coerces participation in education on sex and gender that undermines the parent's guidance and instructions, such coercion (at very least) imposes a burden on parental beliefs and the exercise of their fundamental right to direct the upbringing of their children. A contrary conclusion would have cataclysmic consequences for religious and nonreligious families nationwide, many of whom hold strong beliefs directly contrary to prevailing sexual mores—whether liberal or conservative—in their States or localities.

These are some of the reasons why this case is deeply important to *Amici* Protect the First Foundation, the Jewish Coalition for Religious Liberty, and the Islam and Religious Freedom Action Team, all nonpartisan groups dedicated to preserving First Amendment protections for all. These groups are

joined by *Amici* Carmilla Tatel, Gretchen Melton, and Stacy Dunn—parents whose rights were upheld in a recent decision involving facts similar to those here.

Amici are particularly concerned about the harms that the decision below, and others of its ilk, will inflict on religious and non-religious parents alike. Whatever other differences they may have, *Amici* share the twin convictions that any threat to religious liberty is shared by all religious believers and non-believers, and that the Nation’s continued commitment to parental autonomy over the education of children is essential to our Nation’s scheme of ordered liberty.

Amici thus agree with Petitioner that the decision below, which declined to even find a free-exercise burden from forced education on issues of sex and gender, cannot be squared with “a long line of burden cases” holding “that even indirect pressure to forgo a religious practice creates a religious burden.” Pet. 2-3.

Amici write separately to note four points. First, they highlight various religious and secular groups’ strong beliefs on not only sexuality and gender, but also the importance of instilling those values in their children.

Second, *Amici* show how parents’ attempts to instill those beliefs in their children are undermined when their children are forced to participate in activities and lessons that contradict deeply held religious, moral, or ethical beliefs as a precondition to their participating in public schooling.

Third, *Amici* highlight the individual *Amici*’s case to show how this Court’s cases establish that the government’s requiring viewpoint-driven instruction,

without an opt-out, on controversial topics that contradict a parent's religious or non-religious beliefs not only harms those parents, but does so in a way the Constitution forbids.

And fourth, *Amici* show that the decision below, and others like it taking a narrow view of what constitutes a burden on free exercise and parental rights, will impose significant harms on public school children and parents served by the thousands of school systems in the five circuits that have found no free-exercise burden in functionally identical circumstances.

To prevent harms to the fundamental rights of religious and non-religious parents nationwide, the Court should grant the petition and reverse the Fourth Circuit's erroneous holding that the government's forced instruction on sexuality and gender does not burden the rights of parents striving to instill in their children contrary moral lessons.

STATEMENT

The facts giving rise to this case are straightforward. The Montgomery School Board added a series of “LGBTQ-Inclusive” texts to its English Language Arts Curriculum designed for use in classrooms ranging from pre-kindergarten to middle school. Pet.App. 10a, 53a. Several books, including those approved for young students, covered sexually explicit topics. Pet.App.10a.

The Board also provided materials instructing teachers on how to answer student questions stemming from these texts. Pet.App.55a. Under that guidance, teachers were told, for example, that if a student asked what it means to be transgender, the teacher was to tell that student that at birth, doctors merely “guess about our gender and label us ‘boy’ or ‘girl’ based on our body parts.” Pet.App. 62a.

This case arose after religious parents with children at Montgomery schools unsuccessfully sought to opt their children out of such sexually explicit lessons based on inconsistency with their sincerely held religious beliefs. Both the district court and the Fourth Circuit held that these parents’ free-exercise rights were not burdened at all. Pet.App. 34a-35a, 143a. And the Fourth Circuit found no burden because, on the record before it, the parents had not established that the lessons had a “coercive effect” on the parents or their children. Pet.App. 36a.

ADDITIONAL REASONS FOR GRANTING THE PETITION

I. Many Faiths and Ethical Systems Impose on Parents a Duty to Transmit to Their Children Specific Views About Sexuality and Gender.

Many religions and non-faith-based institutions with otherwise disparate beliefs share this unambiguous charge: parents are responsible for the moral education and upbringing of their children. Admittedly, members of these traditions are diverse, each with their own views as to their exact religious, moral, or ethical mandate. Yet, despite any disagreements about what lessons parents are to teach, significant subsets of families, whether from faith-based or non-faith-based traditions, hold a firm belief that parents are responsible for their children's instruction about morality, including beliefs about sexuality and gender.

A. Jewish Teachings

Starting with Judaism, the Torah affirms that parents have a divine responsibility to instruct their children in Jewish law. One of the most important texts in the Jewish faith begins with the command that parents are to teach their children in principles of faith. It reads: “[T]hese words which I command you today shall be upon your heart. *You shall teach them thoroughly to your children*, and you shall speak of them when you sit in your house and when you walk on the road, when you lie down and when you rise.”²

² *Deuteronomy* 6:6-7 (emphasis added).

And the instruction to teach Torah is not limited to scriptural directives. A rabbinic commandment—known as a chinuch—also directs that one of the most important obligations of parents is to educate their children in accordance with the Torah and its values.³

Many Jewish scholars, moreover, interpret the Torah to generally prohibit homosexuality and transgenderism. One Torah passage states, for example, that men “shall not lie down with a male, as with a woman.”⁴ Another Torah passage states that “[a] man’s attire shall not be on a woman, nor may a man wear a woman’s garment.”⁵ And one scholar has explained that this passage describes the divine command to “maintain[] a strict distinction between gender roles and enforc[e] a firm boundary between masculinity and femininity,” a commandment contravened by transgender and gender-nonconforming practices.⁶ And, while other parts of the Jewish community may take different positions on these issues, the core point—that Judaism expects parents to teach their children the Torah and the lessons and commands therein—is constant notwithstanding any potential disagreement on exactly what the Torah teaches about sexuality and gender.

³ *Jewish Education 101*, Chabad.org, <https://tinyurl.com/56zp7c5w> (last visited Oct. 9, 2024).

⁴ *Leviticus* 18:22.

⁵ *Deuteronomy* 22:5.

⁶ Dr. Hilary Lipka, *The Prohibition of Cross-Dressing*, TheTorah.com, <https://tinyurl.com/5fv9vrys> (last visited Oct. 11, 2024).

B. Islamic Teachings

Much like the Torah, the Quran teaches that parents have a responsibility to educate their children in divine law, including in matters relating to morality. The Quran states: “O believers! Protect yourselves and your families from a Fire whose fuel is people and stones.”⁷ According to one interpretation, this scripture imposes on Muslim parents “an obligation for the Muslim to teach his near family members * * * what Allah has made obligatory for them and what Allah has forbidden for them.”⁸

Ancient and modern teachings, moreover, confirm that many understand Islam to forbid same-sex sexual activity and the imitation of members of the opposite sex. Based on the divine destruction of Sodom, a passage in the Quran condemns men who “lust after men instead of women.”⁹ This excerpt is widely understood to prohibit all homosexual behavior,¹⁰ leading to a consensus among classical and contemporary Islamic scholars that “sexual relations are permitted within the bounds of marriage, and

⁷ Quran, *Surah at-Tahrim* 66:6.

⁸ *Ibn Kathir (Abridged)*, Quran.com, <https://tinyurl.com/27yshx3n> (last visited Oct. 11, 2024).

⁹ Quran, *Al-A'raf* 7:80-81.

¹⁰ Wahiduddin Khan, *Tazkirul Quran*, Quran.com, <https://tinyurl.com/26tjdms2> (last visited Oct. 11, 2024).

marriage can only occur between a man and a woman.”¹¹

The Hadith—a collection of the prophet Muhammad’s revelations—has likewise been understood to prohibit transgender behavior. For example, “[t]he Prophet (ﷺ) cursed effeminate men (those men who * * * assume the manners of women) and those women who assume the manners of men,”¹² and “[t]he Messenger of Allah (ﷺ) cursed the women who imitate men and the men who imitate women.”¹³ And, based on those teachings, a group of over 200 Islamic scholars and religious leaders recently clarified that “Islam strictly prohibits medical procedures intended to change the sex of healthy individuals, regardless of whether such procedures are termed gender ‘affirming’ or ‘confirming.’”¹⁴

Here again, even if some followers of Islam depart from these more traditional understandings, all agree that parents have the responsibility to teach their children how Islamic principles apply to issues of sex and gender.

¹¹ *Navigating Differences: Clarifying Sexual and Gender Ethics in Islam*, Navigating Differences (June 7, 2023, 3:41 PM), <https://tinyurl.com/29tz7e38> [hereinafter *Navigating Differences*].

¹² 7 Imam Muhammad al-Bukhari, *Sahih al-Bukhari*, Hadith 774 (Dr. M. Muhsin Khan), <https://tinyurl.com/3jrv9v8x> (last visited Oct. 11, 2024).

¹³ 5 Imam `Isa Muhammad at-Tirmidhi, *Jami` at-Tirmidhi*, Hadith 2784, <https://tinyurl.com/m5b4v2p9> (last visited Oct. 11, 2024).

¹⁴ *Navigating Differences*, *supra* note 11.

C. Christian Teachings

Finally, like their Jewish counterparts, many Christian parents (including Catholics, members of The Church of Jesus Christ of Latter-day Saints, and Southern Baptists) follow both the ancient Hebrew teachings addressed above *and* the New Testament injunction to “[n]urture [their children] in the discipline and instruction of the Lord.”¹⁵ Central to this instruction is a divine understanding of the proper role of sexuality and gender, and many Christian groups maintain strong beliefs about each.

The Roman Catholic Church, for example, declares that “any sex-change intervention, as a rule, risks threatening the unique dignity the person has received from the moment of conception.”¹⁶ And, whatever disagreement there may be between individual Catholics about what the church teaches, the Catechism of the Catholic Church states that the Bible “presents homosexual acts as acts of grave depravity.”¹⁷ The Catechism continues that because “homosexual acts are intrinsically disordered,’ * * * [u]nder no circumstances can they be approved.”¹⁸

¹⁵ *Ephesians* 6:4.

¹⁶ *Declaration of the Dicastery for the Doctrine of the Faith “Dignitas Infinita” on Human Dignity, 08.04.2024*, Holy See Press Office, <https://tinyurl.com/mr4tmaf7> (last visited Oct. 11, 2024).

¹⁷ U.S. Conf. of Cath. Bishops, *Catechism of the Catholic Church* 566 (2d ed. 2019), <https://tinyurl.com/4chf428r>.

¹⁸ *Ibid.* (citation omitted).

Southern Baptists similarly “affirm God’s good design that gender identity is determined by biological sex and not by one’s self-perception”¹⁹ and “deplore the proliferation of all homosexual practices, unnatural relations of any character, and sexual perversion whenever found in our society and reaffirm the traditional position of Southern Baptists that all such practices are sin and are condemned by the Word of God.”²⁰ Given these strong beliefs, Southern Baptists condemn not only “[h]omosexual behavior,” but even “[a]ny public policy normalizing” such behavior.²¹

The Church of Jesus Christ of Latter-day Saints holds similar beliefs. It teaches, for example, that “[g]ender is an essential characteristic of individual premortal, mortal, and eternal identity and purpose”²² and instructs that, with rare exception, those who have pursued “surgical, medical, or social transition away from their biological sex at birth” cannot be baptized or attend the temple—the pinnacle of the

¹⁹ S. Baptist Convention, *On Transgender Identity* (June 1, 2014), <https://tinyurl.com/mvkzw52n>.

²⁰ S. Baptist Convention, *Resolution on Homosexuality* (June 1, 1980), <https://tinyurl.com/2wzf4jjf>.

²¹ S. Baptist Convention, *On Biblical Sexuality and Public Policy* (June 1, 2009), <https://tinyurl.com/5cjzu7n6>.

²² The First Presidency & Council of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints, *The Family Proclamation*, Church of Jesus Christ of Latter-day Saints (Sept. 23, 1995), <https://tinyurl.com/yhr7e75r> [hereinafter *The Family Proclamation*].

church’s worship.²³ Likewise, the church recognizes as a matter of doctrine that “[t]he family is ordained of God” and “[m]arriage between man and woman is essential to His eternal plan.”²⁴ And, like other faith traditions, the church affirms the responsibility of parents to teach these doctrines to their children.

D. Non-Faith-Based Traditions

Non-faith-based traditions likewise have strong teachings about the importance of educating children, albeit with substantive beliefs that may contradict those embraced by many religious parents. Some humanists, for example, consider “instilling strong moral values in children” to be “of paramount importance.”²⁵ And many deem these strong moral values to include, among other things, *support* for same-sex marriage and *rejection* of “defined gender roles.”²⁶

Parents with similar beliefs from limitless other groups, no less than parents with more traditional beliefs on sexuality and gender, thus place the

²³ Church of Jesus Christ of Latter-day Saints, *General Handbook: Serving in The Church of Jesus Christ of Latter-day Saints: 38. Church Policies and Guidelines*, <https://tinyurl.com/27u9autn> (last visited Oct. 9, 2024) [hereinafter *General Handbook*].

²⁴ *The Family Proclamation*, *supra* note 22.

²⁵ Becca Ray, *Humanist Parenting: The Ethical Development of Children*, TheHumanist.com (July 12, 2023), <https://tinyurl.com/2vyxyktx>.

²⁶ *Humanism on ... Relationships*, Humanist Soc’y Scotland, <https://tinyurl.com/msftjeu7> (last visited Oct. 11, 2024).

responsibility to teach their children on these issues high on the list of key parental obligations.

II. Parents Striving to Fulfill This Duty Will Be Harmed if the State Can Undermine Their Efforts with Contrary Instructions.

For many members of these groups, the obligation to teach their children is deeply personal. As shown above, in some faiths, sexuality and gender touch directly on one's relationship with the divine; in others, these issues go to the core of personhood. And how one addresses such matters is no less important for those with a non-religious or humanist perspective. For that reason, many parents consider educating children on sex and gender to be not only a fundamental religious or ethical obligation, but also a nondelegable one. Indeed, even a cursory view of the various religions discussed above reveals that the religious obligation to teach children on issues of sexuality and gender belongs primarily, if not exclusively, to faithful parents. And even a superficial awareness of the controversies surrounding LGBTQ+ issues illustrates that parents with more liberal substantive views on sexuality and gender likewise object to state efforts to impose opposing views on their children.

1. Some contemporary Jewish scholars, for example, confirm that parents bear the responsibility for educating their children on how best to follow the Torahic commandments listed above. With specific regard to education about sex and gender, Rabbi Simcha Feuerman taught that "parents are not only

charged to educate their children about the facts[,] but also to guide them about the morals and ethics.”²⁷

Still others stress the importance of “[t]alking about sexuality and relationships from a Jewish perspective” to ensure that “children appreciate the wisdom and relevance of Judaism to their lives.”²⁸ And such discussions “about where babies come from” should come from the *parents* “in different ways at different stages of * * * development and not from *anyone* else.”²⁹

2. Similar views on the nondelegable nature of the parent’s responsibility to educate their children in sex and sexuality are found in other faiths as well. As the record here shows, many Muslims refuse for religious reasons to allow the state to teach their children about these issues at all. See Pet.1.

And just last year, hundreds of “Muslim scholars and preachers representing a diverse range of theological schools” issued a statement that strongly rejected the “increasing push to promote LGBTQ-centric values among children through legislation and regulations, disregarding parental consent and denying both parents and children the opportunity to

²⁷ Rabbi Simcha Feuerman, *A Torah Perspective on Educating Our Children About Sexuality (Part IX)*, JewishPress.com (Oct. 21, 2009), <https://tinyurl.com/4jx8khzk>.

²⁸ Dr. Yocheved Debow, *How to Talk to Your Children about Intimacy* 58, HaMizrachi (Apr. 2021), <https://tinyurl.com/2sxxcmap>.

²⁹ *Ibid.* (emphasis added).

express conscientious objection.”³⁰ They explained that “[s]uch policies subvert the agency of Muslim parents to teach their children their religiously grounded sexual ethics, violate their constitutional right to freely practice their religion, and contribute to an atmosphere of intolerance toward faith communities.”³¹

3. Catholicism, for its part, acknowledges the opportunity for productive alliances between parents and other educators. But a recent statement from the Congregation for Catholic Education clarified that no such collaboration can come at the expense of parental control: “[P]edagogical activity should be informed by the principle of subsidiarity: ‘All other participants in the process of education are only able to carry out their responsibilities in the name of the parents, with their consent and * * * authorization.’”³² When parents have neither the ability to consent to education on sexual or gender issues nor to otherwise control certain aspects of a child’s education, the principle of subsidiarity is turned on its head.

4. Similarly, the Church of Jesus Christ of Latter-day Saints instructs that “[p]arents have a sacred duty to rear their children in love and righteousness * * * and to teach them to * * * observe

³⁰ *Navigating Differences*, *supra* note 11.

³¹ *Ibid.*

³² The Congregation for Cath. Educ., “*Male and Female He Created Them*”: *Towards a Path of Dialogue on the Question of Gender Theory in Education*, Vatican (2019), <https://tinyurl.com/53d8tafu> (citation omitted).

the commandments of God.”³³ This sacred duty means that “[p]arents have primary responsibility for the sex education of their children.”³⁴ And, for members of the church, a parent’s disregard for these responsibilities warrants divine reprimand: Parents “will be held accountable before God for the discharge of these obligations.”³⁵

Likewise, the Southern Baptists recognize 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.”³⁶

5. And this addresses only the beliefs of more traditional believers. While the constitutional principle at issue here would protect them, it would be wrong to assume that it reaches *only* them. The Constitution protects parents of all stripes. And a rule that forbade, for example, a gay couple who worships in an LGBTQ-affirming church³⁷ from opting their children out of state-mandated lessons on the importance of man-woman marriage would be no less

³³ *The Family Proclamation*, *supra* note 22.

³⁴ *General Handbook*, *supra* note 23.

³⁵ *The Family Proclamation*, *supra* note 22.

³⁶ Baptist Faith & Message 2000, Art. XVIII, <https://tinyurl.com/3h5e7axn> (emphasis added).

³⁷ *E.g.*, *Find an Affirming Church*, gaychurch.org, <https://tinyurl.com/4bazxypp> (last visited Oct 10, 2024) (compiling the “largest welcoming and affirming church directory in the world”).

odious to the Constitution than the Fourth Circuit's rule here.

This list is far from exhaustive. But what is clear from this small group of doctrinal positions is that, given these views, the Fourth Circuit's position effectively forces at least *some* members of these religions or ethical traditions to delegate to the State a responsibility that their beliefs impose on them alone. And, if these parents want to take advantage of public schooling, they will also be forced to do so without any say in the matter. That is both wrong and unconstitutional.

III. A Recent Case Illustrates Both the Errors in the Fourth Circuit's Analysis and the Practical Impact of the Current Circuit Split.

The individual parent *Amici's* recent win in *Tatel v. Mt. Lebanon School District* shows how these harms play out in practice. No. 22-CV-837, 2024 WL 4362459 (W.D. Pa. Sept. 30, 2024). The opinion highlights not only that forced instruction on sexuality and gender harms parents' fundamental rights, but also how this Court's cases already show that such instruction burdens parents who lack any ability to opt their children out of participating.

1. *Amici's* case began after a "first-grade teacher, without providing notice or opt outs, decided to observe Transgender Awareness Day" with her first-grade students by reading them a book that concerned transgender issues. *Id.* at *1. As part of these lessons, the teacher taught her students that "[s]ometimes

parents are wrong” in “guess[ing] whether [their child is] a boy or a girl.” *Id.* at *28.

After the teacher read the story, Carmilla Tatel’s daughter asked Tatel how Tatel knows that the daughter is a girl. *Id.* at *13. This question forced the Tatels to discuss gender identity with her and explain that Roman Catholic beliefs reject the idea of gender identity. *Ibid.* But—because the school got there first—Tatel’s “child remained confused.” *Ibid.* And Gretchen Melton’s child, who had missed part of the transgender lesson, expressed confusion about the issue, but “Melton did not press the issue” since she felt that “her child was not old enough.” *Ibid.*

Tatel (a Roman Catholic), Melton (a member of The Church of Jesus Christ of Latter-day Saints), and Dunn (who is nonreligious but holds similar moral views) each expressed concern with the way this instruction conflicted with their beliefs. *Id.* at *4. All three believe “human beings are created male or female and that the natural created order regarding human sexuality cannot be changed.” *Ibid.* And those beliefs “teach that parents do not select a child’s gender—a child’s gender is determined by God and (scientifically) by the child’s X and Y chromosomes.” *Ibid.*

As to the importance of parental guidance on issues of sexuality and gender, Tatel explained her belief that, as a parent, it is her “job to keep the guide rails in place, to keep her [daughter] safe, to make sure she stays on the right path both morally and as a human being, a citizen.” *Id.* at *29. Likewise, Melton explained that “God sent those kids to [her and her

husband] to raise them, to instill morals and values and teach them how to be good people.” *Ibid.* And she continued, “When a teacher steps in and starts teaching things that are contrary to the value system” in which she believes, it infringes upon her “right as a parent to teach that to [her] own child.” *Ibid.*

With these understandings in mind, the parents objected to their young children being taught about gender identity, but “the principal, assistant superintendent[,] and superintendent backed the teacher’s conduct”—thereby ratifying the teacher’s use of non-curricular material—and declined to let the parents opt their children out of future lessons “despite permitting notice and opt out rights for numerous other religious and secular topics.” *Id.* at *1. The parents then sued after they unsuccessfully sought to opt their children out of these lessons that contradicted their sincerely held religious beliefs. *Id.* at *2. And they sought “only to have effective prior notice and the ability to opt their own young children out of that kind of instruction.” *Id.* at *28. They alleged that the school district and their children’s teacher “deliberately supplanted the Parents’ role to control the instruction of their young children about gender identity in accordance with the Parents’ religious values.” *Id.* at *37.

2. On these facts, the district court had no problem properly finding that the school district had burdened Tatel’s and Melton’s free-exercise rights. *Id.* at *41. Similarly, the court determined that Tatel’s, Melton’s, and Dunn’s parental rights to control the upbringing of their children had been violated. *Ibid.* Each had sent their children to school only for their

children to be instructed in a way that “conflicts with [their] beliefs about their role as parents to make decisions about their young children.” *Id.* at *29. And, unlike the Fourth Circuit, the district court recognized that this Court’s cases do “not require coercion as an element of a Free Exercise claim” in the face of a non-neutral or non-generally applicable law. *Id.* at *38 n.29. The court further understood that the parents’ “being able to discuss with their children after the fact” did not “undo the infringement” on the parents’ rights. *Id.* at *32. The harm was done the moment the child was taught about an issue in a way that conflicted with the parents’ beliefs without their first having an opportunity to opt out. See *ibid.*

The analysis in *Tatel*, moreover, would not have been materially different if the substantive views on gender identity had been reversed as between the parents and the teacher. Had the teacher instead taught a class critical of transgender persons and views, and the parents objected to such teachings from a different religious or non-religious moral perspective, the parents would have been just as injured by the lack of notice and ability to opt their children out. *Id.* at *33 n.24 (“If the roles were reversed, and one of the Plaintiffs was the first-grade teacher and proclaimed in the classroom her beliefs about gender identity to [the teacher’s] child, [the teacher] would likely be upset.”).

The decision in *Tatel* shows how the analysis *should* proceed under this Court’s precedents. But until this Court steps in, a case decided on the same facts as *Tatel* would come out the other way in five circuits. Granting the present petition will give the

Court an opportunity to end that senseless geographic disparity.

IV. The Issue Presented by This Case Affects Millions of Religious and Non-Religious Parents Across the Country.

For the faithful like Petitioners here and *Amici* Tatel and Melton in Pennsylvania, and for parents with different sincerely held moral and ethical beliefs like *Amicus* Dunn, the imposition of government dogma on sexuality and gender (in either direction) is no small burden. As the petition shows, for religious parents unable to opt their young, impressionable children out of instruction that contradicts the parents' most sincerely held beliefs on sex and gender, the consequences of the decision below are enormous—even eternal. And for non-religious parents with deeply held views on how to teach their kids morality and ethics, the consequences are just as immediately important. And these harms will only increase with time. Indeed, the decision below furthers a troubling trend under which parents across the United States are increasingly left unable to shield their children from public-school materials that conflict with their sincerely held beliefs, both religious and non-religious.

1. Indeed, the record already establishes that many religious and non-religious parents are eager to bear the responsibility of controlling their children's own education on these moral issues. If given no opportunity to opt their children out of curricula that incorporate materials contrary to their fundamental beliefs, these parents are left with limited options: tolerate the indoctrination, pay for private school, homeschool their children, or risk legal penalties.

Properly understood, the First Amendment forbids the government from imposing such coercive choices on parents as a precondition to participating in a public benefit, including public education. See, e.g., *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463 (2017) (“[T]he liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.” (cleaned up)).

Petitioners, moreover, are but a portion of those potentially harmed by the decision below. That decision, on its face, applies to over 4.5 million public-school children.³⁸ Many of those students come from families that comprise the Fourth Circuit’s approximately 16 million Protestants (of various sects), 2.8 million Catholics, 333,000 members of the Church of Jesus Christ of Latter-day Saints, 250,000 Orthodox Christians, 348,000 Jews, and 200,000 Muslims.³⁹ And that says nothing of the millions of

³⁸ The total number of public students enrolled in the Fourth Circuit was calculated from the students reported in each state. Md. State Dep’t of Educ., Enrollment Data (2023) (Aug. 5, 2024), <https://tinyurl.com/4vb7yytf>; N.C. Pub. Schs. Statistical Profile, School Year 2022-23, <https://tinyurl.com/yc46femh> (last visited Oct. 11, 2024); S.C. Dep’t of Educ., S.C. School Report Cards 2022-23, <https://tinyurl.com/msxt4z6h> (last visited Oct. 11, 2024); Va. Dep’t of Educ., Fall Membership, <https://tinyurl.com/2x7hmx6m> (last visited Oct. 11, 2024); W. Va. Dep’t of Educ., Education Snapshot in Numbers: Kindergarten-12th Grade, <https://tinyurl.com/mrx26f49> (last visited Oct. 11, 2024).

³⁹ The religious population of the states in the Fourth Circuit was compiled from the 2020 U.S. Census and Pew Research data. U.S. Census Bureau, Maryland: 2020 Census (Aug. 25, 2021), <https://tinyurl.com/48b6m75t>; *Religious Landscape Study: Adults in South Carolina*, Pew Rsch. Ctr., <https://tinyurl.com/4m5y4k7v> (last visited Oct. 11, 2024);

other religious or non-religious parents and students in the other four circuits that, like the Fourth Circuit here, have found no religious burden from the lack of an opt-out provision that would allow parents to ensure that their children are taught consistently with the parents' religious, moral, or ethical beliefs.⁴⁰

Religious Landscape Study: Adults in Virginia, Pew Rsch. Ctr., <https://tinyurl.com/2tppjfk> (last visited Oct. 11, 2024); *Religious Landscape Study: Adults in West Virginia*, Pew Rsch. Ctr., <https://tinyurl.com/k6vmwj9m> (last visited Oct. 11, 2024); *Religious Landscape Study: Adults in North Carolina*, Pew Rsch. Ctr., <https://tinyurl.com/ypwyvcj5> (last visited Oct. 11, 2024); *Religious Landscape Study: Adults in Maryland*, Pew Rsch. Ctr., <https://tinyurl.com/4mk7zfxu> (last visited Oct. 11, 2024).

⁴⁰ There are around 13.1 million students in these other circuits, and their parents—depending on their views of sexuality and gender—each face constitutional harm without an opt-out provision. See Me. Dep't of Educ., Student Enrollment Data, <https://tinyurl.com/27jvf59a> (last visited Oct. 11, 2024); Mass. Dep't of Elementary & Secondary Educ., Enrollment Data (Jan. 3, 2024), <https://tinyurl.com/y4pp6ukt>; N.H. Dep't of Educ., State Totals Ten Years Public and Private Fall Enrollments (Feb. 23, 2024), <https://tinyurl.com/5x8wra7k>; Nat'l Ctr. for Educ. Stat., Annual Reports and Information Staff, <https://tinyurl.com/htzm5ub9> (last visited Oct. 11, 2024); R.I. Dep't of Elementary & Secondary Educ., Information Systems, Reports of Public Enrollment, Dropouts, Graduates, and Graduation Rates, October Enrollments, 2023-24, <https://tinyurl.com/58v9s5ux> (last visited Oct. 11, 2024); Conn. Rep. Cards, State of Connecticut, <https://tinyurl.com/uxevf7m4> (last visited Oct. 11, 2024); N.Y. State Educ. Dep't, N.Y. State Public School Enrollment (2022-23), <https://tinyurl.com/4k23pam4> (last visited Oct. 11, 2024); Vt. Educ. Dashboard, Enrollment Report, <https://tinyurl.com/5u3xwrf5> (last visited Oct. 11, 2024); Ky. Dep't of Educ., School Report Card, <https://tinyurl.com/yy37dpzc> (last visited Oct. 11, 2024); Mich. Sch. Data, Student Enrollment Counts Report, <https://tinyurl.com/mr2jcwn4> (last visited Oct. 11, 2024); Ohio

Because of this growing list of circuits on the wrong side of the split, parents in nineteen states are left unprotected because no school district is required to provide any relief to parents or children who oppose instruction on sexuality or gender. This, in turn, leaves millions of children whose “parents, realistically, have no choice but to send their children to a public school,” *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring), to face sexually explicit lessons and stories that undermine their faith or moral views without any recourse. And this is made all the worse by the fact that many of these children are too young to fully understand the importance of their parents’ religious or moral teachings or the ways the government’s sex lessons conflict with them. Indeed, even parents who ultimately agree with the content of the school’s lessons in general might have serious misgivings regarding the *timing* of the teaching, given their children’s maturity or readiness.

True, not every school board will require sexually explicit instruction or, if they do offer such instruction, forbid opt-out protections for religious or other families. And, as acknowledged above, not all religious families share understandings of their respective faiths such that instruction on LGBTQ+ issues would contradict their religious teaching. Similarly, in more

Dep’t of Educ. & Workforce, Facts and Figures (Nov. 17, 2023), <https://tinyurl.com/3he5k85e>; Tenn. Dep’t of Educ., State Report Card, <https://tinyurl.com/tmcs9w56> (last visited Oct. 11, 2024); Ill. Report Card 2022-2023, Enrollment, <https://tinyurl.com/4469d92t> (last visited Oct. 11, 2024); Ind. Dep’t of Educ., Data Center & Reports, <https://tinyurl.com/ycx93jeh> (last visited Oct. 11, 2024); Wis. Dep’t of Pub. Instruction, Wisconsin’s Information System for Education Data Dashboard, <https://tinyurl.com/bd9h8n44> (last visited Oct. 11, 2024).

conservative school districts, there may not be much instruction at all on sexuality and gender. And not all parents with contrary views may find the curriculum sufficiently disagreeable to opt their children out.

But these varied circumstances offer little comfort to those parents whose attempts to instill in their children a particular tradition of faith, morality, or ethics are undermined solely because they send their children to public school—whatever the reason for that decision. Petitioners here were not protected, even though *Amici* Tatel, Melton, and Dunn were. First Amendment freedoms and constitutional rights should not turn on either geography or the whims of the current school board.

And even if the issue presented affects only a small fraction of parents with strong views on how to educate their children about sexuality and gender, the Fourth Circuit’s decision will eviscerate these parents’ attempts to teach their children how to live consistently with the higher law required by their religion, morality, or ethics. As soon as those important religious, moral, or ethical lessons are taught, the parents will be left fearing that today may be the day that they are “untaught” by the government. On the other side of the same coin, parents in those jurisdictions face the risk that, when they finally do have those discussions with their young children, the government will have gotten there first—as was the case in *Tatel*.

Parents in the First, Second, Fourth, Sixth, and Seventh Circuits should not face these harms if, for whatever reason, they cannot send their children anywhere but public school. If, as this Court has repeatedly emphasized, the “loss of First Amendment

freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury,” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality op.), then the time to decide the question presented—and thereby prevent these harms—is now. The Court should not wait for the entire dam to break before fixing the Fourth Circuit’s errors—and in so doing protecting those parents whose rights to teach their children about sexuality and gender in their own way are undermined by overzealous school officials teaching the government’s current dogma.

CONCLUSION

The decision below—together with similar decisions in other circuits—gets the burden analysis wrong. In the process, it threatens the free-exercise and other constitutional rights of hundreds of thousands of religious and non-religious parents across the country who now live in fear that the religious, moral, or ethical principles they attempt to instill in their children at home will simply be unwound at school. This Court should grant the petition and reverse the decision below.

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Respectfully submitted,

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