No. 24-297

# In the Supreme Court of the United States

TAMER MAHMOUD, ET AL., PETITIONERS

*v.*

THOMAS W. TAYLOR, ET AL.

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

**BRIEF FOR THE UNITED STATES**
**AS AMICUS CURIAE SUPPORTING PETITIONERS**

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## QUESTION PRESENTED

Whether a public school's decision to compel children to participate in instruction that violates their parents' sincere religious convictions—without notice or an opportunity to opt out—constitutes a cognizable burden under the Free Exercise Clause of the First Amendment.

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## INTEREST OF THE UNITED STATES

This case concerns the application of the Free Exercise Clause of the First Amendment to a county school board's policy that compels children to participate in classroom instruction contrary to the sincerely held religious convictions of their parents. The United States has a substantial interest in preserving the constitutional guarantee of the free exercise of religion. Congress has also enacted statutes addressing religious burdens, 42 U.S.C. 2000bb-2(4), 2000cc-5(7)(A), and religious accommodations in the education context, 20 U.S.C. 1232h(c), 6312(e)(2)(A). The United States thus has a substantial interest in this case.

## INTRODUCTION

This case involves whether a State burdens parents' rights under the Free Exercise Clause by refusing to

allow them to opt their children out of compulsory classroom instruction that contravenes the parents' religious obligations to their children. Under this Court's precedents, the answer is undoubtedly yes. Sixty years ago, the Court considered it "too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." *Sherbert* v. *Verner*, 374 U.S. 398, 404 (1963). That principle resolves this case.

Petitioners are parents whose various faiths require them to direct whether, when, and how their children should be taught about gender and sexuality. Respondent Montgomery County Board of Education (Board) initially allowed parents to opt their children out of classroom instruction involving storybooks addressing those issues—instruction that petitioners sincerely believe conflicts with their faiths. The Board then reversed course, mandating that all elementary-school children participate in such instruction without regard to parents' religious objections. Under that policy, parents can respect their religious obligations vis-à-vis their children only by forgoing the benefit of a free public education, since the Board has declined to give notice before the storybooks will be used and refuses to permit opt-outs. That is textbook interference with the free exercise of religion.

The Fourth Circuit below instead held that petitioners failed to show *any* cognizable burden. That court correctly recognized that the Free Exercise Clause protects against both "direct coercion" and "indirect coercion or penalties on the free exercise of religion." Pet. App. 24a-25a (citation omitted). But the court then held that burdens on religious exercise arise only when there is "coerc[ion] * * * to *believe* or *act* contrary to [parents]

religious views." *Id.* at 31a. The court found no such burden by reasoning that children were "simply hearing about other views," which in the court's view "does not necessarily exert pressure to believe or act differently than one's religious faith requires." *Id.* at 35a.

That reasoning—which respondents echo, Br. in Opp. 18-27—is flawed. It overlooks that the relevant religious practices are *parents'* sincere beliefs that sending their children to participate in the compelled classroom instruction at issue violates their religious obligations. The Board compromises parents' ability to act consistent with those beliefs regardless of whether their children feel pressured or coerced by the instruction. The Fourth Circuit's and respondents' contrary approach would require unworkable line-drawing between "exposure" versus "coercion" of children—a distinction that presumably varies by age, the nature of the instruction, and other factors. Such line-drawing would aggravate the free-exercise burden. Courts would improperly second-guess matters of faith by deciding whether those children would feel coerced or pressured by particular instruction. But the relevant burden arises because petitioners' faiths teach that their children must be protected from such material.

To resolve the narrow but important question presented, this Court need only hold that the Board has inflicted a cognizable burden on petitioners' Free Exercise rights. To the extent the Court wishes to provide further guidance, there are substantial reasons to conclude that the Board's no-opt-out policy must satisfy strict scrutiny and is unlikely to do so. The present record suggests that the policy is not generally applicable because the Board has permitted ad hoc faith-based exemptions, as well as religious exemptions from *non*cur-

ricular activities and opt-outs for sex education. Moreover, the Board appears to treat requests for religion-based accommodations differently from requests made for nonreligious reasons. Those facts refute the Board's argument that its policy serves a compelling interest or is narrowly tailored.

## STATEMENT

### A. Legal And Factual Background

1. Like all States, Maryland generally requires parents residing in the State to send their children to public school or to provide an alternative education. Md. Code, Educ. § 7-301(a-1)(1) and (e); see Dep't of Educ., Nat'l Ctr. for Educ. Statistics, *Enrollment and State Education Practices (SEP)* Tbl. 1.2 (2020).[1] Noncompliance is a crime: Parents or other legal guardians of children aged five to 16 commit a misdemeanor if they "fail[] to see that the child attends school or receives instruction" required by state law. Md. Code, Educ. § 7-301(e)(2).

The Maryland Department of Education oversees public education in Maryland and has promulgated regulations addressing curricular matters. See Md. Code Regs. 13A (2019). Those regulations require instruction on "[f]amily life and human sexuality," which must "represent all students regardless of ability, sexual orientation, gender identity, and gender expression." *Id.* 13A.04.18.01.C(1)(c) and D(2)(a). "Direct teaching of" those subjects must "begin" by fifth grade. *Id.* 13A.04.18.01.D(2)(d). Like many States, Maryland also requires schools to "establish policies, guidelines, and/or procedures for student opt-out" from such instruction. *Id.* 13A.04.18.01.D(2)(e)(i); see Pet. Br. 7 n.3.

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[1] https://nces.ed.gov/programs/statereform/tab1_2-2023.asp.

2. Montgomery County Public Schools, Maryland's largest school district, serves more than 160,000 students in one of the Nation's most religiously diverse counties. Pet. App. 597a-598a, 601a-602a; NPR, *This county is the most religiously diverse in the U.S.* (Nov. 16, 2024), https://perma.cc/766Q-WS4Y. The Montgomery County Board of Education sets the County's specific curriculum, consistent with state regulations. Pet. App. 598a.

For the 2022-2023 school year, the Board approved certain storybooks for use in its English language arts curriculum for "prekindergarten and the Head Start program" and for "kindergarten through fifth grade." Pet. App. 80a; see *id.* at 10a-11a, 234a-240a, 254a-271a, 279a-482a, 548a-580a. The Board's stated objective in approving those particular books was "to further its system-wide goals of promoting diversity, equity, and nondiscrimination." *Id.* at 78a.

The storybooks address "sexual orientation and gender identity." Pet. App. 10a. One of the books, *Pride Puppy*, depicts a family whose puppy gets lost amidst a LGBTQ-pride parade, and invites its intended audience of three- and four-year-old children "to look for items such as '[drag]king,' 'leather,' 'lip ring,' '[drag]queen,' and 'underwear.'" *Ibid.* (citation omitted); see *id.* at 254a-271a. Another book, *Intersection Allies: We Make Room for All*, is intended for "Kindergarten through Grade 5" and involves nine characters who "proudly describe themselves and their backgrounds." *Id.* at 236a; see *id.* at 309a-356a. The discussion guide accompanying the book states that "at any point in our lives, we can choose to identify with one gender, multiple genders, or neither gender," and asks questions such as, "What pronouns fit you best?" *Id.* at 350a (emphasis omit-

ted). *Love, Violet* "chronicles a shy child's efforts to connect with her same-sex crush on a wintry Valentine's Day." *Id.* at 88a; see *id.* at 429a-447a. And *Born Ready: The Story of a Boy Named Penelope*, tells the story of a transgender child. *Id.* at 448a-482a. A resource guide for *Born Ready* "encourages teachers to respond to questions and comments about the main character's 'body parts' by suggesting people only 'make a guess' about gender at birth." *Id.* at 89a (citation omitted).[2]

The Board conveyed that teachers are "expected to 'incorporate the [storybooks] into the curriculum in the same way that other books are used, namely, to put them on a shelf for students to find on their own; to recommend a book to a student who would enjoy it; to offer the books as an option for literature circles, book clubs, or paired reading groups; or to use them as a read aloud' for all students in the class." Pet. App. 11a (citation omitted; brackets in original). The Board's policy is that teachers have "a choice regarding which [storybooks] to use and when to use them" in class, but cannot "elect not to use the [books] at all." *Id.* at 12a (citation omitted); see *id.* at 605a.

The Board provided teachers with materials and talking points to use in classroom discussions about the

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[2] The Board "recommend[ed]" additional books without adding them to the curriculum. Pet. App. 80a n.1. In one storybook, *What Are Your Words?*, a character explains that "[s]ometimes I change my pronouns." *Id.* at 552a; see *id.* at 548a-564a. Another book, *Jacob's Room to Choose*, depicts two children who identify as transgender and, along with their classmates, replace "male" and "female" signs on bathroom doors with signs that say "Be[] respectful" and "Be[] kind." *Id.* at 578a; see *id.* at 565a-580a. Petitioners note (Br. 11 n.10) that, after they had sought this Court's review, the Board removed certain books—including *Pride Puppy*—from the curriculum.

books and to respond to anticipated student or parent concerns. If, for example, a student were to say that one of the books implicated material or views that the student considers to be "wrong and not allowed in [the student's] religion," the Board advised teachers to respond, "I understand that is what you believe, but not everyone believes that. We don't have to understand or support a person's identity to treat them with respect and kindness." Pet. App. 12a (citation omitted). The materials also included "such recommendations as disagreeing with [a parent's or caregiver's] concerns that elementary-age children are 'too young to be learning about gender and sexual[] identity.'" *Id.* at 13a (citation omitted; brackets in original). And "[i]n response to a caregiver's concern that values in the books 'go against the values we are instilling . . . at home,'" the Board recommended that teachers say, "'If a child does not agree with or understand another student's . . . identity . . . , they do not have to change how they feel about it.'" *Ibid.* (citation omitted).

For much of the 2022-2023 school year, schools provided parents notice and the opportunity to opt out of the storybooks' use "through agreements with individual principals and teachers." Pet. App. 14a. The Board's "Guidelines for Respecting Religious Diversity" in effect that year stated that, "[w]hen possible, schools should try to make reasonable and feasible adjustments to the instructional program to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs." *Id.* at 81a (citation omitted). Principals and teachers thus "sought to accommodate" parents' faith-based

exemption requests "by telling parents that students could be excused" when the books "were read in class." *Id.* at 606a-607a.

In March 2023, however, the Board announced that it would no longer provide parents notice or grant opt-outs from instruction using the storybooks "for any reason." Pet. App. 608a; see *id.* at 15a. Under the Board's revised policy, a school could still excuse students "from noncurricular activities, such as classroom parties or free-time events that involve materials or practices in conflict with a family's religious, and/or other, practices." *Id.* at 672a. But the policy prohibited schools from "accommodat[ing] requests for exemptions from required curricular instruction or the use of curricular instructional materials based on religious, and/or other, objections." *Ibid.* "What motivated the policy change" at the time "is largely unknown." *Id.* at 15a. In later litigation, the County's associate superintendent stated that the prior notice-and-opt-out policy had caused student absenteeism, was not feasible, and risked exposing students "who believe that the books represent them or their families" to social stigma and isolation. *Id.* at 15a-16a, 606a-608a.

3. Petitioners are parents of various faiths whose children attend public school in Montgomery County—and an association of teachers and parents—who wish to restore the previous notice-and-opt-out policy so as to accommodate their religious beliefs. Pet. App. 16a-17a & nn.3-4. They believe that "all persons should be respected regardless of sex, gender identity, sexual orientation, or other characteristics." *Id.* at 82a-83a. Petitioners also believe "they have a religious duty to train their children in accord with their faiths on what it means to be male and female; the institution of mar-

riage; human sexuality; and related themes," and that the storybooks contravene their religious obligations as to their children under their respective faiths. *Id.* at 18a.

Petitioners "do not challenge the Board's adoption of the Storybooks or seek to ban their use in Montgomery County Public Schools." Pet. App. 17a. Rather, based on their sincere beliefs that exposing their children to the storybooks would violate their religious obligations as parents, petitioners request "notice and an opportunity to opt out from use or discussions relating to" those books during classroom lessons. *Id.* at 17a-18a.

**B. Proceedings Below**

After the Board implemented its no-opt-out policy, petitioners filed suit in the United States District Court for the District of Maryland against the Board and several county officials (respondents). Pet. App. 16a-18a. Petitioners allege that the Board's policy of refusing to allow parents to opt out of having their children remain in the classroom when the storybooks are read or discussed violates their own rights (and their children's rights) under the Free Exercise and Free Speech Clauses of the First Amendment, the Due Process Clause of the Fourteenth Amendment, and Maryland law. *Id.* at 156a-209a. Petitioners seek declaratory and injunctive relief requiring an opportunity to opt their children out of classroom instruction using the storybooks. *Id.* at 205a-206a. Petitioners also request damages. *Id.* at 206a.

1. As relevant here, the district court denied petitioners' motion for a preliminary injunction. Pet. App.

76a-155a.[3] The court concluded that petitioners are unlikely to show a cognizable burden on their free exercise of religion because they did not establish that the "policy likely will result in the indoctrination" of their children, *id.* at 131a, or that their children are "likely to be coerced into violating" their religious beliefs, *id.* at 135a.

The district court further opined that the Board's no-opt-out policy does not substantially interfere with petitioners' "sacred obligations" as parents "to raise their children in their faiths" because the policy "does not prevent the parents from exercising their religious obligations or coerce them into forgoing their religious beliefs." Pet. App. 136a-137a. "No government action," the court added, "prevents the parents from freely discussing the topics raised in the storybooks with their children or teaching their children as they wish." *Id.* at 136a-137a. The court also rejected petitioners' argument that they face unconstitutional coercion "to choose between the benefits of a public education and exercising their religious rights." *Id.* at 139a. In the court's view, "[t]he no-opt-out policy does not pressure the parents to refrain from teaching their faiths, to engage in conduct that would violate their religious beliefs, or to change their religious beliefs." *Ibid.*

2. The court of appeals affirmed in a 2-1 decision. Pet. App. 1a-75a.

a. The panel majority agreed with the district court that petitioners are unlikely to suffer a cognizable bur-

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[3] Petitioners did not seek preliminary relief on their state-law claims. Petitioners asserted in the courts below a "so-called 'hybrid-rights' claim" based on their Due Process and Free Exercise rights, Pet. App. 20a & n.7, but did not renew that claim in this Court, Pet. i; see Pet. App. 50a-51a, 143a-152a.

den. Pet. App. 34a-50a. The majority reasoned that the Free Exercise Clause "requires some sort of direct or indirect pressure to abandon religious beliefs or affirmatively act contrary to those beliefs," *id.* at 35a, and found "no evidence at present that the Board's decision not to permit opt-outs compels [petitioners] or their children to *change* their religious beliefs or conduct, either at school or elsewhere," *id* at 34a.

The panel majority also determined that petitioners had not shown that being required to have their children remain in class while the storybooks are read or discussed denies them access to a public benefit because of their religious exercise. Pet. App. 46a-48a. The majority concluded that petitioners are not pressured to "disavow their religious views before they c[ould] send their children to public school," *id.* at 46a, and that "government coercion does not exist merely because an individual may incur increased costs as a consequence of deciding to exercise their religious faith in a particular way," *id.* at 47a.

b. Judge Quattlebaum dissented. Pet. App. 52a-75a. He emphasized that "interfering or burdening the exercise of religion is not limited to direct coercion," *id.* at 59a, such as "requir[ing] the parents or their children to change their religious views," *id.* at 63a. In his view, "the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege," such as public schooling. *Id.* at 60a (quoting *Sherbert* v. *Verner*, 374 U.S. 398, 404 (1963)). And because petitioners' faiths "compel[] that they teach their children about sex, human sexuality, gender and family life," and "dictate that they shield their children from teachings that contradict and undermine their religious views on those topics," the dissent would

have found that the "decision to deny religious opt-outs prevents the parents from exercising these aspects of their faith if they want their children to obtain a public education." *Id.* at 61a, 63a.

Judge Quattlebaum also would have concluded that the no-opt-out policy triggers strict scrutiny because the Board has "discretion" whether "to grant religious opt-out requests," such that the policy is not neutral or generally applicable. Pet. App. 68a-71a. The dissent would have further held that the policy fails that heightened standard, *id.* at 71a-73a, and that the remaining preliminary-injunction factors support granting interim relief, *id.* at 73a-75a.

## SUMMARY OF ARGUMENT

The Free Exercise Clause provides that "Congress shall make no law * * * prohibiting the free exercise" of religion. U.S. Const. Amend. I. The question presented is whether the Board's no-opt-out policy imposes *any* cognizable burden on a parent's Free Exercise rights. Pet. i. The answer is yes. Petitioners can obtain the benefit of a free public education for their children only at the price of their religious obligations as parents. That choice burdens parents' religious exercise.

A. This case involves obvious protected religious conduct. The Free Exercise Clause protects not only "the right to harbor religious beliefs inwardly and secretly," but also "the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'" *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022) (citation omitted).

Petitioners sincerely believe that they have religious obligations to direct whether, when, and how their young children should be taught about gender and sex-

uality. Across their faiths, petitioners share the belief that they "have 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." Pet. App. 18a. Fulfilling that religious duty plainly qualifies as part of the "free exercise of religion."

B. This case also involves a clear burden on religious conduct. Government "prohibits" the free exercise of religion—and imposes a cognizable burden—through many forms of interference with those rights. Proscribing religious observance or attaching criminal or civil penalties to religious practices are obvious examples. So too, government action burdens religious exercise when it "put[s]" an adherent "to the choice of curtailing" his exercise or behaving "inconsistent[ly] with [his] beliefs," *Fulton* v. *City of Philadelphia*, 593 U.S. 522, 532 (2021), or "exclude[s] religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits" or "religious status," *Carson* v. *Makin*, 596 U.S. 767, 787, 789 (2022).

The Board's no-opt-out policy burdens petitioners' religious practice by forcing them to send their children to classrooms that will instruct their children using the storybooks' materials involving gender and sexuality. Petitioners believe that sending their children to school in those circumstances violates their religious obligations. To respect their faiths, petitioners must forgo public education entirely and comply with Maryland's compulsory-education laws some other way, for instance by shouldering the expenses of private schooling. By "exclud[ing] religious observers from otherwise available public benefits" in that manner, the policy un-

ambiguously burdens petitioners' religious exercise. *Carson*, 596 U.S. at 778; see *Fulton*, 593 U.S. at 532.

C. The Fourth Circuit held that burdens on religious exercise arise only when there is "coerc[ion] * * * to *believe* or *act* contrary to [parents] religious views," and found no such burden here. Pet. App. 31a. Rather, the court reasoned, children were "simply hearing about other views," which in the court's view "does not necessarily exert pressure to believe or act differently than one's religious faith requires." *Id.* at 35a-36a.

That reasoning flouts this Court's precedent and unnaturally cabins Free Exercise rights. It disregards petitioners' sincerely held beliefs that sending their children to participate in compelled classroom instruction on issues of gender and sexuality would contravene petitioners' own religious obligations. That approach also relies on an unworkable distinction between "exposure" and "coercion" that would invite judges to assess how particular children might react to particular instruction —thereby second-guessing the lines drawn by petitioners' faiths. The Fourth Circuit's and respondents' remaining contentions likewise lack merit.

D. The Court could simply vacate and remand the case for further proceedings after holding that the Board's policy burdens petitioners' religious exercise. The next step of the inquiry involves evaluating whether, under the applicable level of scrutiny, that policy is constitutional notwithstanding its burdens on religion. To the extent the Court wishes to offer guidance on that score, there are strong reasons to conclude that strict scrutiny should apply.

## ARGUMENT

### SCHOOLS BURDEN PARENTS' FREE EXERCISE RIGHTS BY DISALLOWING OPT-OUTS FOR COMPELLED INSTRUCTION THAT VIOLATES PARENTS' FAITHS

The Board's no-opt-out policy unambiguously burdens petitioners' Free Exercise rights. Petitioners' religions require them to direct whether, when, and how their children are taught about gender and sexuality and to avoid subjecting their children to teachings that contravene their faiths. The Board's policy instead requires teachers to use storybooks addressing those subjects and bars parents from opting their children out of such instruction. Thus, if petitioners send their children to school, they act in dereliction of their religious duties. And if petitioners refrain and respect their faiths, they must forgo a free public education, since they cannot otherwise ensure that their children will not receive such instruction. Under this Court's precedents, that is a quintessential burden under the Free Exercise Clause.

#### A. Parents Engage In Protected Religious Conduct By Following Religious Obligations As To Child-Rearing

1. The Free Exercise Clause of the First Amendment, which applies to the States under the Fourteenth Amendment, provides that "Congress shall make no law * * * prohibiting the free exercise" of religion. The concept of "free exercise" of religion extends well beyond acts of public worship and encompasses the right to subscribe to articles of faith free of governmental interference. That conclusion flows from how the public that ratified the First Amendment in 1791 would have understood its text. The word "free" meant "[u]ncompelled" or "unrestrained." 1 Samuel Johnson, *A Dictionary of*

*the English Language* (1755); see *Fulton* v. *City of Philadelphia*, 593 U.S. 522, 566 (2021) (Alito, J., concurring in the judgment). The term "exercise," in turn, included both a "practice" or "outward performance," or an "act of divine worship whether public[] or private." *Ibid.* (brackets omitted).

Consistent with that understanding, this Court has observed that the "free exercise" of religion "embraces two concepts": the "freedom to believe" and the "freedom to act." *Cantwell* v. *Connecticut*, 310 U.S. 296, 303 (1940). The Free Exercise Clause protects not only "the right to harbor religious beliefs inwardly and secretly," but also public or "'physical acts.'" *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022) (citation omitted).

This Court has recognized many forms of religious exercise as constitutionally protected. "[U]nquestionably," the Free Exercise Clause covers outward acts, such as "preach[ing]" or "proselyt[izing]," *McDaniel* v. *Paty*, 435 U.S. 618, 626 (1978), or "giv[ing] a talk before [a] congregation" of believers, *Fowler* v. *Rhode Island*, 345 U.S. 67, 68 (1953). Publicly kneeling and "giv[ing] 'thanks through prayer'" also counts. *Kennedy*, 597 U.S. at 525-526 (citation omitted); see *id.* at 512-513. So does engaging in "the practice of animal sacrifice" during "worship." *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 531 (1993).

By the same token, the "abstention from[] physical acts" can constitute religious exercise. *Kennedy*, 597 U.S. at 524 (citation omitted). For Seventh-day Adventists, refraining from Saturday work is "the practice of * * * religion" because adherents are observing "the Sabbath Day of [their] faith." *Sherbert* v. *Verner*, 374 U.S. 398, 399, 403-404 (1963). Likewise, refusing to par-

ticipate in armament production qualifies as religious exercise for a Jehovah's Witness. *Thomas* v. *Review Bd. of the Ind. Emp't Sec. Div.*, 450 U.S. 707, 709, 720 (1981).

Similarly, States at the Founding recognized that refraining from military service could be a form of religious observance. *Fulton*, 593 U.S. at 583-584 (Alito, J., concurring in the judgment). "[A]lmost all States" by the Founding recognized that refusing to swear an oath could also constitute a religious practice. *Id.* at 582. And States at the Founding considered refusing to "remov[e] [one's] hat[] in court" to be a form of religious exercise for Quakers, whom States thus "exempted * * * from the requirement." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1471-1472 (1990).

Particularly relevant here, this Court has emphasized that parents may engage in religious exercise through how they control their children's upbringings. Many faiths hold beliefs as to how parents should raise children in that religion. See, *e.g.*, *Wisconsin* v. *Yoder*, 406 U.S. 205, 213-214 (1972). This Court has concluded that parents may engage in religious practice when "direct[ing] 'the religious upbringing' of their children." *Espinoza* v. *Montana Dep't of Revenue*, 591 U.S. 464, 486 (2020) (citation omitted). And "sending [one's] children to religious schools" may itself be an exercise of religion. *Ibid.*; see *Carson* v. *Makin*, 596 U.S. 767, 779 (2022).

Likewise, shielding children from certain lessons—or withholding children from public school entirely—can be an exercise of one's faith. This Court has held that adherents of the Older Order Amish religion engaged in the "exercise of religious belief" by declining

to send their children to secondary school. *Yoder*, 406 U.S. at 214. The Court viewed Amish parents' acts of opting children out of secondary schooling as "legitimate claims to the free exercise of religion," *id.* at 215, because the parents' decisions were "firmly grounded in" the sincere religious belief that, "by sending their children to high school, they would * * * endanger their own salvation and that of their children," *id.* at 209-210.

Determining what acts qualify as a religious "practice" can be "a difficult and delicate task," but this Court's precedents yield some common threads. See *Thomas*, 450 U.S. at 714. Courts do not decide what qualifies as religious exercise based "upon a judicial perception of the particular belief or practice in question," because "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Ibid.* The religious belief need not be "central" to a particular faith. *Lyng* v. *Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 457 (1988) (citation omitted). Nor must the religious exercise involve a religious duty; that is sufficient, but not necessary. *Espinoza*, 591 U.S. at 486; *Carson*, 596 U.S. 776. The Free Exercise Clause can also extend to non-obligatory conduct. Sherif Girgis, *Defining "Substantial Burdens" on Religion and Other Liberties*, 108 Va. L. Rev. 1759, 1773, 1798 (2022); cf. 42 U.S.C. 2000cc-5(7)(A) (defining "'religious exercise'" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief").

2. Given that history and precedent, petitioners clearly engage in religious exercise by fulfilling their religious obligations as parents. Petitioners believe that their faiths impose 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." Pet. App. 18a. Those solemn obligations, according to petitioners, require parents to determine whether, when, and how to teach their children about such topics. *Ibid.*

Specifically, petitioners Tamer Mahmoud and Enas Barakat believe that their "religious duty" as Muslims is "to raise [their] children in accordance with [their] faith," which includes the parents' obligation to avoid "exposing [their] young, impressionable, elementary-aged son to activities and curriculum on sex, sexuality, and gender that undermine Islamic teaching." Pet. App. 529a-530a, 532a. Petitioners Jeff and Svitlana Roman similarly believe that their faith instructs them that "[p]arents should politely but firmly exclude any attempts" to "impos[e] premature sex information" on a child, because "such attempts compromise the spiritual, moral and emotional development of growing persons who have a right to their innocence." *Id.* at 541a (citation omitted). And petitioners Melissa Persak and Chris Persak view it as their "God-given responsibility to raise [their] children in accordance with the tenets of" their Catholic faith. *Id.* at 543a. Those are heartland examples of constitutionally protected religious conduct.

### B. Public Schools Burden Religious Exercise By Requiring Parents To Choose Between Religious Obligations And Forgoing Public Education

1. In many free-exercise cases, "[t]he crucial word in the constitutional text is 'prohibit.'" *Lyng*, 485 U.S. at 451 (citation omitted). The term "'prohibit'" had "essentially the same meaning in 1791 as [it does] today," *i.e.*, "to forbid" or "to hinder." *Fulton*, 593 U.S. at 566 (Alito, J., concurring in the judgment) (quoting 2 John-

son). This Court's cases have asked whether governmental action burdens the free exercise of religion before determining what standard of scrutiny applies and whether the governmental action can survive.

This Court has recognized various ways in which government may burden religion. Obviously, "outright prohibitions" on religion constitute burdens. *Carson*, 596 U.S. at 778 (citation omitted). And criminalizing or penalizing religious beliefs or practices are burdens, whether they involve criminal sanctions on "religious animal sacrifice," *Lukumi*, 508 U.S. at 527, or discipline against a football coach for praying immediately after games, *Kennedy*, 597 U.S. at 525.[4]

But the Free Exercise Clause guards against other forms of "coercion or penalties" on religious exercise as well. *Carson*, 596 U.S. at 778 (citation omitted). Most relevant here, "a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program." *Thomas*, 450 U.S. at 716. This Court has reiterated that the government imposes a constitutionally significant burden when it "forces [someone] to choose between fol-

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[4] This Court applies similar reasoning in analyzing the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. 2000cc *et seq.*, and the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.* A prison's grooming policy "substantially burden[ed]" a prisoner's religious exercise because the policy "put[]" him "to th[e] choice" of "shav[ing] his beard" in violation of his sincere religious beliefs, or "fac[ing] serious disciplinary action." *Holt* v. *Hobbs*, 574 U.S. 352, 361-362 (2015). And a statute "clearly impose[d] a substantial burden" to the extent it required a closely held corporation either to fund certain "contraceptive methods [that] violate[d]" the owners' religious beliefs or to face penalties worth "as much as $475 million per year." *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726 (2014).

lowing the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work" or other benefits. *Sherbert*, 374 U.S. at 404; see *Carson*, 596 U.S. at 780 ("disqualif[ying]" prospective recipients from a "generally available benefit 'solely because of their religious character' * * * 'effectively penalizes the free exercise' of religion") (quoting *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 462 (2017)); *Fulton*, 593 U.S. at 532 (similar); *Espinoza*, 591 U.S. at 475 (similar).

This Court has accordingly found cognizable burdens across contexts where the government effectively required individuals to disregard aspects of their faiths in order to be eligible for public benefits. South Carolina burdened religious exercise by putting Adell Sherbert to the choice of working on Saturdays—a Sabbath day for Seventh-day Adventists—or forgoing eligibility for unemployment benefits. *Sherbert*, 374 U.S. at 399, 402. That created a "clear * * * burden" by "forc[ing] her to choose between following the precepts of her religion and forfeiting benefits" and "abandoning one of the precepts of her religion in order to accept work." *Id.* at 403-404 (citation omitted).

Indiana likewise burdened Eddie Thomas's religious exercise by putting him to the choice of working in an armament-production job—something he believed his faith as a Jehovah's Witness prohibited—or losing unemployment benefits on the ground that his religious objections were insufficiently concrete. *Thomas*, 450 U.S. at 714-718. And this Court found it "plain" that Philadelphia burdened a Catholic foster-care agency's religious exercise "by putting it to the choice of curtailing its mission" of serving children in need "or approv-

ing relationships inconsistent with its beliefs" by certifying same-sex couples. *Fulton*, 593 U.S. at 532.[5]

This Court has found similar burdens on religion when parents or schools are forced to choose between hewing to religious beliefs or following school-related rules. Wisconsin unconstitutionally burdened Amish parents' Free Exercise rights by putting them to the choice of complying with state compulsory-education laws, or complying with "basic religious tenets and practice of the Amish faith" that teach that high-school age children should be secluded from "worldly influences in terms of attitudes, goals, and values contrary to [the parents'] beliefs." *Yoder*, 406 U.S. 217-218; see *id.* at 230-231, 234-235. This Court held that Amish parents had a constitutional right to opt out of compulsory education based on their sincere beliefs that "the values and programs of the modern secondary school are in sharp

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[5] This Court's decision in *Bowen* v. *Roy*, 476 U.S. 693 (1986), comports with that understanding. There, two applicants objected that a "condition of receiving" government benefits—that they "obtain[] a Social Security number for their" child—violated their sincere religious beliefs that a unique identifier would "'rob the spirit' of [their] daughter and prevent her from attaining greater spiritual power." *Id.* at 695-696 (plurality opinion). The Court rejected the applicants' contention that the Free Exercise Clause required the *government* to "refrain[] from using a number to identify their daughter," because the Clause does not "require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens." *Id.* at 699-700; see, *e.g.*, *id.* at 724 (O'Connor, J., concurring in part and dissenting in part). But a majority of this Court recognized that forcing the *parents* to provide the government a social security number for their child to receive certain benefits—in violation of the parents' beliefs—*could* burden religion. *Id.* at 714-716 (Blackmun, J., concurring in part); *id.* at 727 (O'Connor, J., concurring in part and dissenting in part); *id.* at 733 (White, J., dissenting).

conflict with the fundamental mode of life mandated by the Amish religion." *Id.* at 217. *Yoder* thus stands for the proposition that parents themselves can engage in religious exercise by shielding their children, and that a school policy that thwarts that exercise may constitute a burden. *Ibid.*[6]

Likewise, this Court held, Missouri burdened a religious school's Free Exercise rights by requiring the school to "disavow its religious character" to enable it to "participate in a government benefit program"—there, grants for playground resurfacing. *Trinity Lutheran*, 582 U.S. at 463. Further, this Court held, Montana burdened the free exercise of religious schools and parents by putting the schools to the choice of retaining their religious character—and losing eligibility for generally available scholarship funding—or "divorc[ing]" from "any religious control or affiliation" to obtain those funds. *Espinoza*, 591 U.S. at 478. This Court emphasized that this sort of "penalty on the free exercise of religion * * * triggers the most exacting scrutiny." *Id.* at 475 (quoting *Trinity Lutheran*, 582 U.S. at 462).

Most recently, this Court held that Maine burdened religious exercise by disqualifying private religious schools from eligibility for public funds solely because they provide religious instruction. *Carson*, 596 U.S. at 778-780. Those schools faced the choice of continuing their religious missions of "[e]ducating young people in

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[6] This Court has also recognized that the liberty interest protected by the Due Process Clause of the Fourteenth Amendment includes parents' right "to control the education of" their children. *Meyer* v. *Nebraska*, 262 U.S. 390, 401 (1923); see *Pierce* v. *Society of Sisters*, 268 U.S. 510, 534-535 (1925). The Court need not address any such liberty interest here, since the question presented focuses on petitioners' own First Amendment rights to free exercise. Pet. i.

their faith"—and forgoing generally available funding —or abandoning the kinds of religious instruction that rendered them ineligible. *Id.* at 787 (citation omitted). Again, this Court considered that choice as plainly unconstitutional discrimination. *Id.* at 787-788.

Taken together, this Court's cases establish that cognizable burdens include "direct" prohibitions on religious practice as well as "indirect" measures that "impede the observance" of one's faith. *Sherbert*, 374 U.S. at 405. And a cognizable burden need not force someone to violate their beliefs; "a fine imposed against" a Seventh-day Adventist "for her Saturday worship" would also place a "burden upon the free exercise of religion." *Id.* at 404. But this case does not require the Court to fully define the contours of when burdens on religion become constitutionally cognizable. See Girgis, *supra*, at 1769-1771 (noting additional line-drawing questions).

2. This Court's precedents make this a simple case. The Board burdened petitioners' religious exercise because petitioners are put to the choice of violating their sincere religious beliefs—which forbid them to expose their children to outside instruction regarding gender and sexuality—or forgoing the benefit of public schooling.

Maryland requires petitioners' children to attend school; parents face potential criminal penalties for noncompliance. Md. Code, Educ. § 7-301(e)(2). To attend Montgomery County public schools, parents must send their children for compulsory classroom instruction on matters of gender and sexuality using the Board-approved storybooks. Under the Board's policy, parents are not notified of when the instruction will happen; even if they were, parents could not validly absent their children from school based on their religious ob-

jections. Rather, the Board forbids schools to "accommodate requests for exemptions from required curricular instruction or the use of curricular instructional materials based on religious, and/or other, objections." Pet. App. 672a.

Petitioners cannot abide by that compulsory-attendance regime without violating their sincere religious beliefs. Petitioners Mahmoud and Barakat have averred that, "[a]s Muslims," they sincerely believe that they have "a sacred duty to teach [their] children [their] faith, including religiously grounded sexual ethics." Pet. App. 529a-530a. They further explain that their faith includes an obligation to avoid "exposing [their] young, impressionable, elementary-age son to activities and curriculum on sex, sexuality, and gender that undermine Islamic teaching." *Id.* at 529a-530a, 532a. Accordingly, they believe that forced classroom instruction addressing sexuality and gender identity using the storybooks would conflict with their "religious duty to raise [their] children in accordance with [their] faith." *Id.* at 532a. Petitioners Jeff and Svitlana Roman—who are Roman Catholic and Ukrainian Orthodox, respectively —attested to their "sacred obligation" and "duty to provide [their] son an 'education in the virtues'" of their faiths. *Id.* at 538a (citation omitted). They believe that permitting their son to participate in lessons "about sexuality or gender identity that conflict with [their] religious beliefs" would "significantly interfere[] with" their religious duties "to form his religious faith" in accordance with Catholic and Orthodox tenets. *Id.* at 541a. And petitioners Melissa and Chris Persak, who are "Catholics by faith," believe that "exposing [their] elementary-aged daughters to viewpoints on sex, sexuality, and gender that contradict Catholic teaching"

would "conflict[] with [their] religious duty" as parents. *Id.* at 542a, 544a.

The Board's policy thus burdens religion just as the State in *Yoder* burdened Amish parents' religious exercise. Both sets of parents were required to send their children to school in contravention of "the basic religious tenets and practice of the[ir] faith[s]." *Yoder*, 406 U.S. at 217-218. And the Board's "condition[]" on the "receipt of an important benefit," *Thomas*, 450 U.S. at 717-718, "plain[ly]" burdens Free Exercise rights, *Fulton*, 593 U.S. at 532. Petitioners (Br. 31-32) identify further case-specific factors that they contend increases the burden here, such as that their children are young and impressionable, that parents have traditionally enjoyed deference on "instruction on gender and sexuality," and that sex education was not a standard topic of instruction before the 1970s. In the United States' view, those extra factors highlight why this case is particularly straightforward, but those factors need not be present to establish a burden on religion. The touchstones of the inquiry should be how a particular faith defines its tenets, and what effect government policy has on exercising that faith.

### C. The Fourth Circuit's And Respondents' Contrary Approach Lacks Merit

The Fourth Circuit held that petitioners failed to show any burden on their religious exercise because, in the court's view, petitioners' children were "simply hearing about other views." Pet. App. 35a. That rationale—along with the Fourth Circuit's and respondents' further reasoning—is incorrect.

1. The Fourth Circuit opined that burdens on religious exercise could arise in this case only if petitioners or their children are "coerce[d] * * * to *believe* or *act*

contrary to their religious views." Pet. App. 31a. The court concluded that petitioners failed to satisfy that standard because "simply hearing about other views does not necessarily exert pressure to believe or act differently than one's religious faith requires." *Id.* at 35a-36a.

That reasoning overlooks the relevant religious exercise here: *parents'* sincere religious beliefs that they must protect their children from the Board-mandated instruction in Montgomery County schools. The Board's policy requires parents to "shed their religious beliefs," Br. in Opp. 24, about how to raise their children within their faiths: They cannot subject their children to the schools' instruction regarding the storybooks without violating those beliefs. See pp. 24-26, *supra*. As Judge Quattlebaum observed, "the [B]oard's own internal documents * * * instruct teachers on how to discuss" certain matters that petitioners believe they have a religious duty to shield from their children. Pet. App. 62a (Quattlebaum, J., dissenting) (citing *id.* at 629a-630a); see *id.* at 12a-13a. Regardless of whether the Board's policy burdens petitioner's *children*, petitioners have established a burden on their *own* religious exercise.

The Fourth Circuit distinguished *Yoder* as involving more serious burdens on religious exercise because the parents there believed that compulsory secondary schooling threatened the survival of the Amish faith. Pet. App. 36a-38a. By contrast, the court reasoned that "mere exposure to the Storybooks" would not "'affirmatively compel[]'" petitioners or their children to act contrary to "their religious views." *Id.* at 39a (citation omitted); see Br. in Opp. 18-23. That reasoning misunderstands *Yoder*, which made clear that the Court's holding turned

on "the parents[']" "right of free exercise, *not* that of their children." 406 U.S. at 230-231 (emphasis added). *Yoder* also based its holding on *what parents sincerely believed* their faith required, not whether in the judiciary's view the Amish faith could survive if Amish children attended secondary school. *Id.* at 209, 217-218.

More broadly, respondents' and the Fourth Circuit's distinction between "mere exposure" and "coercion," Pet. App. 39a-40a, is not administrable. Under that test, it is anyone's guess whether reading a storybook aloud would cross the line if it happened just once, or just once a week, or daily. Likewise, the test prompts questions about how courts should weigh students' ages and relative impressionability. Are preschoolers always more impressionable than teenagers? Does it depend on the particular material? The court below faulted petitioners for failing to "connect[] the requisite dots" between a child's "age[] or mental capacity" and "exposure" to classroom material, *id.* at 41a, but plaintiffs do not require social-science experts to make out claims for other constitutional rights.

The exposure-versus-coercion test would also invite the kind of entanglement the Religion Clauses forbid by asking judges to assess *how* objectionable certain material would be under a plaintiff's religion. "It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith." *Hernandez* v. *Commissioner*, 490 U.S. 680, 699 (1989); see *New York* v. *Cathedral Acad.*, 434 U.S. 125, 133 (1977) ("The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment."). If a public school required teachers to conduct a read-along from a storybook con-

taining images of the Prophet Mohammad, a parent who adheres to tenets of Islam could surely claim a cognizable burden from "exposure" of their child to religiously forbidden depictions. Respondents offer no sound basis to distinguish that case from this one.

2. The Fourth Circuit also reasoned that petitioners' claims "fall outside the scope of the Free Exercise Clause" because the Clause does not "'require the Government to conduct its own internal affairs' * * * 'in ways that comport with the religious beliefs of particular citizens.'" Pet. App. 40a (quoting *Bowen* v. *Roy*, 476 U.S. 693, 699 (1986) (plurality opinion)).

But this case does not implicate "internal" government affairs in any relevant sense. Unlike internal processes—such as the federal government's use of social-security numbers already in its possession "to identify" citizens, *Roy*, 476 U.S. at 700 (plurality opinion)—the Board's no-opt-out policy operates externally by forcing *private parties* to participate in classroom instruction. This case thus resembles the scenario that a majority of the Court in *Roy* suggested could constitute a burden, *i.e.*, requiring parents to *provide* the government a social security number for their child to receive certain benefits—in violation of the parents' sincerely held beliefs. See p. 22 n.5, *supra*. Put differently, petitioners "seek[] only an accommodation that will allow [them] to continue" receiving a public benefit "in a manner consistent with [their] religious beliefs." *Fulton*, 593 U.S. at 542.

Equally mistaken is respondents' view that any remedy in this case would improperly "intrude on the government's 'internal affairs'" by "[t]elling public school teachers what to teach and not to teach[] * * * to a particular student." Br. in Opp. 26 (citation omitted).

For one thing, the question presented in this case addresses only the *existence* of a burden, not any appropriate remedy. Pet. i. For another, almost any remedy in the free-exercise context could be described as "telling" a state actor not to penalize religious exercise. One could easily recast this Court's First Amendment precedents as "telling" a government what contracts it may cancel, *Fulton*, 593 U.S. at 532; what funds it may disburse, *Carson*, 596 U.S. at 780; *Espinoza*, 591 U.S. at 480; *Trinity Lutheran*, 582 U.S. at 463; or which students to excuse from school, *Yoder*, 406 U.S. at 217. The relevant point is that respondents have engaged in "*compulsion*" by forbidding petitioners to opt their children out of class during required lessons. Br. in Opp. 26 (citation omitted).

3. The Fourth Circuit further suggested that petitioners suffered no burden because they could opt to pay for private school. See Pet. App. 46a-48a. But that proves, rather than refutes, the existence of a burden. Petitioners' children can attend free public schools only if petitioners are willing to violate their religious beliefs. Requiring petitioners to pay for private schools to respect their religious beliefs is itself a burden.

The Fourth Circuit dismissed this Court's decisions in *Carson*, *Fulton*, *Espinoza,* and *Trinity Lutheran* as inapplicable. The court of appeals reasoned that "the government actors in each of those cases overtly barred religious adherents from eligibility to participate in the benefit *because of* the plaintiff's religious beliefs or *unless* the plaintiff agreed to act in contradiction to his religious beliefs," whereas the public schools in this case "are open to" petitioners without regard to "religious affiliation or beliefs." Pet. App. 45a-46a; see Br. in Opp. 24. But this Court has repeatedly rejected the notion

that overt exclusions from eligibility are the *only* ways in which government might burden the free exercise of religion. Rather, such burdens may stem from "the denial of or *placing of conditions upon* a benefit or privilege." *Carson*, 596 U.S. at 778 (emphasis added) (quoting *Sherbert*, 374 U.S. at 404). That is precisely what the Board's policy did here: parents can send their children to public school only at the price of violating their own religious beliefs. See pp. 24-26, *supra*.

4. Finally, respondents suggest (Br. in Opp. 7, 15 n.3) that providing petitioners notice and an opportunity to opt their children out of certain classroom instruction would be infeasible. Of course, administrators entrusted with operating public schools "have a difficult job, and a vitally important one." *Morse* v. *Frederick*, 551 U.S. 393, 409 (2007). But respondents' objection concerns whether their policy is appropriately tailored to a sufficiently important government interest. It has nothing to do with whether petitioners have suffered a cognizable First Amendment burden in the first place.

Regardless, respondents appear to overstate the difficulty in permitting opt-outs in this elementary-school context. State law already requires respondents to "establish policies, guidelines, and/or procedures for student opt-out regarding instruction related to family life and human sexuality." Md. Code Regs. 13A.04.18.01.D(2)(e)(i) (2019). And petitioners ask (Br. 14) only to "restore" the Board's pre-existing opt-out policy, which for months had allowed parents to exempt their children only from "specific classroom discussions or activities," such as formal instruction or a class-wide read-along, Pet. App. 606a.

### D. Vacatur And Remand For Further Proceedings Is Warranted

This Court should hold that the Fourth Circuit erred in dismissing any cognizable free-exercise burden. Correcting that error would resolve the question presented and the division of authority that warranted this Court's review. See Pet. i, 19-23.

If the Court wishes to offer further guidance, there are substantial reasons to conclude that the Board's no-opt-out policy must satisfy strict scrutiny and is unlikely to do so. See Pet. App. 66a-73a (Quattlebaum, J., dissenting); Pet. Br. 47-52. Strict scrutiny applies to government policies that are either not neutral towards religion or not generally applicable. *Kennedy*, 597 U.S. at 525. And strict scrutiny is indeed strict; "so long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 593 U.S. at 541.

The preliminary-injunction record strongly suggests that the Board's no-opt-out policy is not generally applicable. A policy is not generally applicable if it "'invites' the government to consider the particular reasons for a person's conduct by providing a 'mechanism for individualized exemptions,'" *Fulton*, 593 U.S. at 533-534 (brackets and citation omitted), or "treat[s] *any* comparable secular activity more favorably than religious exercise," *Tandon* v. *Newsom*, 593 U.S. 61, 62 (2021) (per curiam); see, *e.g.*, *Lukumi*, 508 U.S. at 537; *Sherbert*, 374 U.S. at 401 n.4.

Here, for at least part of a school year, respondents undisputedly granted ad hoc faith-based exemptions. Pet. App. 14a-15a. To this day, respondents permit religious exemptions from "noncurricular activities." *Id.* at 15a n.2 (citation omitted). Respondents also allow

students to "opt[] out of the * * * sex education unit of their health courses, which are taught in both elementary and high schools." Pet. 14-15 (citation omitted); see Pet. App. 80a. Indeed, the only exemptions that appear to be forbidden are "religious opt-outs for the [storybooks] for K-5 children." Pet. App. 70a (Quattlebaum, J., dissenting). That suggests that the Board has treated "secular activity more favorably than religious exercise." *Tandon*, 593 U.S. at 62; see *Fulton*, 593 U.S. at 533-534.

Further, the way the Board has apparently prohibited opt-outs only for religious grounds raises "serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring [religious practices]." *Brown* v. *Entertainment Merchs. Ass'n*, 564 U.S. 786, 802 (2011); see Pet. App. 73a (Quattlebaum, J., dissenting). And a policy that restricts religious exemptions but not comparable secular ones is, by definition, not narrowly tailored, which would alone generally "establish the invalidity of [a policy]" under strict scrutiny. *Lukumi*, 508 U.S. at 546; see *Tandon*, 593 U.S. at 63-64. The Court need not address that issue now, but further guidance could ensure that "[t]he door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs as such." *Sherbert*, 374 U.S. at 402 (emphasis omitted).

## CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be vacated, and the case remanded for further proceedings.

Respectfully submitted.

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