

No. 24-297

IN THE
Supreme Court of the United States

TAMER MAHMOUD, *et al.*,

Petitioners,

v.

THOMAS W. TAYLOR, *et al.*,

Respondents.

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

**BRIEF OF *AMICI CURIAE* GLBTQ LEGAL
ADVOCATES AND DEFENDERS, NCLR, HRC,
FAMILY EQUALITY, COLAGE, FREESTATE
JUSTICE, GLSEN, AND THE TREVOR PROJECT
IN SUPPORT OF RESPONDENTS**

KIMBERLY A. HAVLIN
NIKITA E. ASH
ROBERT J. DENAULT
WHITE & CASE LLP
1221 Avenue of the Americas
New York, NY 10020

MARY L. BONAUTO
Counsel of Record
GARY D. BUSECK
PATIENCE CROZIER
HANNAH HUSSEY
COURTNEY DOUGHERTY
GLBTQ LEGAL ADVOCATES
& DEFENDERS
18 Tremont Street, #950
Boston, MA 02108
(617) 388-5521
mbonauto@glad.org

379271



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF THE ARGUMENT.....	4
ARGUMENT.....	5
I. The Montgomery County school board’s curricular decision to include storybooks with a variety of characters and themes is well within the long tradition of public school education.....	5
A. Public schools are foundational institutions tasked with preparing students to become responsible citizens who can contribute meaningfully to communities and uphold American values of liberty and freedom	5
B. The Montgomery County school board’s decision to include books with references to LGBTQ people and families is a legitimate exercise of its curricular authority	8

Table of Contents

	<i>Page</i>
II. The five challenged storybooks fit squarely within the broader Montgomery County English language arts curriculum	9
A. The challenged storybooks share the themes, plots, ideas, and topics of many other books.....	11
B. The Montgomery County English language arts curriculum shares and reflects different perspectives from the community and fosters legitimate pedagogical goals	20
III. Petitioners incorrectly classify ordinary storybooks as specialized curriculum	24
IV. Petitioners' requested relief of a mandated notice-and-opt-out requirement for the five requested books threatens to sweep far more broadly	27
CONCLUSION	29

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Abington Sch. Dist. v. Schempp</i> , 374 U.S. 203 (1963).....	6
<i>Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico</i> , 457 U.S. 853 (1982).....	7, 8
<i>Bethel Sch. Dist. v. Fraser</i> , 478 U.S. 675 (1986).....	5, 7, 24
<i>Colin ex rel. Colin v. Orange Unified Sch. Dist.</i> , 83 F. Supp. 2d 1135 (C.D. Cal. 2000)	26
<i>Epperson v. Arkansas</i> , 393 U.S. 97 (1968).....	6
<i>Gonzalez v. Sch. Bd.</i> , 571 F. Supp. 2d 1257 (S.D. Fla. 2008)	26
<i>Griswold v. Connecticut</i> , 382 U.S. 479 (1965).....	6
<i>Hazelwood Sch. Dist. v. Kuhlmeier</i> , 484 U.S. 260 (1988).....	8, 9
<i>Mahanoy Area Sch. Dist. v. B.L.</i> , 594 U.S. 180 (2021).....	6, 7
<i>Mahmoud v. Taylor</i> , 102 F.4th 191 (4th Cir. 2024)	27, 28

Cited Authorities

	<i>Page</i>
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923).....	6
<i>Minersville Sch. Dist. v. Gobitis</i> , 310 U.S. 586 (1940).....	7
<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925).....	6
<i>San Antonio Ind. School Dist. v. Rodriguez</i> , 411 U.S. 1 (1973).....	6
<i>Tinker v. Des Moines Ind. Comm. Sch. Dist.</i> , 393 U.S. 503 (1969).....	6
<i>W. Va. State Bd. of Educ. v. Barnette</i> , 319 U.S. 624 (1943).....	7
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972).....	6
 Rules	
Supreme Court Rule 37.6	1
 Other Authorities	
<i>Amplify CKLA Trade Book List</i> , https://amplify.com/programs/amplify-core-knowledge-language-arts/ (last visited April 3, 2025)	10

Cited Authorities

	<i>Page</i>
Glenda Armand, <i>Love Twelve Miles Long</i> (2011)	22, 23
Marsha Diane Arnold, <i>Galápagos Girl / Galapegueña</i> (2018).....	21
Carmen Agra Deedy, <i>Martina the Beautiful Cockroach</i> (2007)	17
Helaine Becker, <i>Pirate Queen: A Story of Zheng Yi Sao</i> (2020).....	18
Rudine Sims Bishop, <i>Mirrors, Windows and Sliding Glass Doors, Perspectives: Choosing and Using Books for the Classroom</i> (1990).....	10
Sarah S. Brannen, <i>Uncle Bobby's Wedding</i> (2008).....	11, 12, 13
Vanessa Brantley-Newton, <i>Just Like Me</i> (2020).....	18
Joseph Bruchac, <i>Chester Nez and the Unbreakable Code: A Navajo Code Talker's Story</i> (2018)	18
Joseph Bruchac, <i>Crazy Horse's Vision</i> (2000)....	22, 23
Joseph Bruchac, <i>The First Strawberries: A Cherokee Story</i> (1993)	23
Omar S. Castaneda, <i>Abuela's Weave</i> (1993).....	14

Cited Authorities

	<i>Page</i>
Tami Charles, <i>Fearless Mary: Mary Fields, American Stagecoach Driver</i> (2019)	20
Yangsook Choi, <i>The Name Jar</i> (2001)	18
Joy Cowley, <i>Gracias, the Thanksgiving Turkey</i> (1996)	21, 22
Tomie dePaola, <i>Adelita: A Mexican Cinderella Story</i> (2002)	13
Junot Díaz, <i>Islandborn</i> (2018)	11
Kelly DiPucchio, <i>Grace for President</i> (2008)	20
Susan Middleton Elya, <i>La Princesa and the Pea</i> (2017)	12, 13
Margarita Engle, <i>Drum Dream Girl: How One Girl's Courage Changed Music</i> (2015)	16, 17
Alma Fullerton, <i>Hand over Hand</i> (2017)	20
Paul Goble, <i>Star Boy</i> (1991)	16
Suzanne B. Goldberg, <i>Sticky Intuitions and the Future of Sexual Orientation Discrimination</i> , 57 UCLA L. Rev. 1375 (2010)	25
Daniel Haack, <i>Prince & Knight</i> (2018)	16

Cited Authorities

	<i>Page</i>
Rebecca Hickox, <i>The Golden Sandal: A Middle Eastern Cinderella Story</i> (1998)	12, 22
Deborah Hopkinson, <i>Sweet Clara and the Freedom Quilt</i> (1993).	22, 23
K.M. Jackson, <i>When Diversity Isn't the Point: Mirrors, Windows, and Sliding Glass Doors in the Classroom</i> , <i>Taboo: The Journal of Culture and Education</i> (2023)	10
Rita Jahanforuz, <i>The Girl with a Brave Heart: A Tale from Tehran</i> (2013)	21
Chelsea Johnson, et al., <i>Intersection Allies: We Make Room for All</i> (2019).	13, 14
Aya Kahlil, <i>The Arabic Quilt: An Immigrant Story</i> (2020).	23
Christina Kessler, <i>The Best Beekeeper of Lalibela: A Tale from Africa</i> (2006)	15, 20
Christopher R. Leslie, <i>Creating Criminals: The Injuries Inflicted by "Unenforced" Sodomy Laws</i> , 35 Harv. C.R.-C.L. L. Rev. 103 (2000)	25
Julie Leung, <i>Paper Son: The Inspiring Story of Tyrus Wong, Immigrant and Artist</i> (2019)	22, 23
Lenore Look, <i>Brush of the Gods</i> (2013)	22

Cited Authorities

	<i>Page</i>
Lenore Look, <i>Uncle Peter's Amazing Chinese Wedding</i> (2006).....	12, 17
Ai-Ling Louie, <i>Astronaut Kalpana Chawla: Reaching for the Stars</i> (2014).....	17
Winton Marsalis, <i>Squeak, Rumble, Whomp! Whomp! Whomp!: A Sonic Adventure</i> (2012)	11
Meg Medina, <i>Merci Suárez Changes Gears</i> (2018)	17, 18, 21
Brad Meltzer, <i>I Am Sacagawea</i> (2017).....	15, 21
Pat Mora, <i>Doña Flor: A Tale About a Giant Woman with a Great Big Heart</i> (2005).....	14
Pat Mora, <i>The Bakery Lady / La señora de la panadería</i> (2001)	13, 21
Trinity Neal & DeShanna Neal, <i>My Rainbow</i> (2020).....	11
Jodie Patterson, <i>Born Ready: The True Story of a Boy Named Penelope</i> (2021).....	19
Saviour Pirotta, <i>Turtle Bay</i> (1997).....	17
James E. Ransome, <i>The Bell Rang</i> (2019)	22
Doreen Rappaport, <i>Wilma's Way Home: The Life of Wilma Mankiller</i> (2019)	16

Cited Authorities

	<i>Page</i>
Josephine Ross, <i>The Sexualization of Difference: A Comparison of Mixed-Race and Same-Gender Marriage</i> , 37 Harv. C.R.-C.L. L. Rev. 255 (2002).....	26
Esmeralda Santiago, <i>A Doll for Navidades</i> (2005).....	19
Liz Garton Scanlon, <i>All the World</i> (2009)	24
Maxine Rose Schur, <i>Brave with Beauty: A Story of Afghanistan</i> (2019).....	21, 22
Margot Lee Shetterly, <i>Hidden Figures: The True Story of Four Black Women and the Space Race</i> (2018).....	22, 23
Simran Jeet Singh, <i>Fauja Singh Keeps Going: The True Story of the Oldest Person to Ever Run a Marathon</i> (2020)	15, 16, 23
Linda Skeers, <i>Dinosaur Lady: The Daring Discoveries of Mary Anning, the First Paleontologist</i> (2020).....	20
John Steptoe, <i>Mufaro's Beautiful Daughters</i> (1987)	18
Robin Stevenson, <i>Pride Puppy!</i> (2021).....	11
Emily Style, <i>Curriculum as Window and Mirror, Listening for All Voices</i> , Oak Knoll School Monograph (1988)	10

Cited Authorities

	<i>Page</i>
Maria Tallchief, <i>Tallchief: America's Prima Ballerina</i> (2001)	19
Duncan Tonatiuh, <i>Feathered Serpent and the Five Suns: A Mesoamerican Creation Myth</i> (2020)	22
Aslan Tudor & Kelly Tudor, <i>Young Water Protectors: A Story About Standing Rock</i> (2018)	15, 22, 23
Sarah Warren, <i>Dolores Huerta: A Hero to Migrant Workers</i> (2012)	20
Qin Wenjun, <i>I Am Hua Mulan</i> (2019)	15
Charlotte Sullivan Wild, <i>Love, Violet</i> (2021)	17-19
Karen Williams & Khadra Mohammed, <i>My Name is Sangoel</i> (2009)	19, 22, 23
Gretchen Woelfle, <i>Mumbet's Declaration of Independence</i> (2014)	18
Janet S. Wong, <i>Apple Pie 4th of July</i> (2002)	22, 23
Kelly Yang, <i>Front Desk</i> (2018)	17, 18
Charlotte Zolotow, <i>A Father Like That</i> (2007)	21

INTEREST OF *AMICI CURIAE*¹

GLBTQ Legal Advocates and Defenders (GLAD Law) is a legal rights organization that seeks equality for all persons under the law regardless of their sexual orientation, gender identity, or HIV status. Since 1978, GLAD Law has worked nationally through strategic litigation, public policy advocacy, and education. GLAD Law has an enduring interest in LGBTQ families and children, including in public education.

The National Center for Lesbian Rights (NCLR) is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBT people and their families in cases across the country involving constitutional and civil rights. NCLR has a particular interest in promoting equal opportunity for LGBT people in educational institutions through legislation, policy, and litigation.

Family Equality (formerly Family Equality Council) is a national organization advancing lived and legal equality for LGBTQ families and those who wish to form them. For over 40 years, Family Equality has worked to change

1. In accord with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

attitudes, laws, and policies through advocacy and public education to ensure that all families, regardless of creation or composition, are respected in all aspects of life. Family Equality has an ongoing interest in ensuring that LGBTQ parents and their children have access to classrooms that include their families, which are crucial to addressing the stigmatization, bullying, and discrimination that LGBTQ families often face in public education.

COLAGE is a national organization that unites people with one or more lesbian, gay, bisexual, transgender, queer, intersex, and/or asexual parent into a network of peers and supports them as they nurture and empower each other to be skilled, self-confident, and just leaders in our collective communities.

FreeState Justice, Inc. is Maryland's statewide advocacy non-profit promoting equity, dignity, and justice for Maryland's lesbian, gay, bisexual, transgender, queer, and gender-diverse (LGBTQ+) communities through high-quality legal services, policy advocacy, and resource coordination. FreeState Justice serves all LGBTQ+ Marylanders, with a focus on individuals and families who face disproportionate barriers due to systemic discrimination, social stigma, or lack of access to resources.

Through programming and initiatives, the Human Rights Campaign (HRC) Foundation seeks to make transformational change for LGBTQ+ people by building capacity and shifting policies, practices, and hearts and minds in institutions that shape our daily lives. Its program, Welcoming Schools, is the most comprehensive bias-based bullying prevention program in the nation

to provide LGBTQ+ and gender-inclusive professional development training, lesson plans, booklists, and resources designed for educators and youth-serving professionals. The program uplifts school communities with critical tools to embrace family diversity and prevent bias-based bullying.

GLSEN is a national organization working to build safe, affirming, and inclusive learning environments for LGBTQ+ youth and all students. For over three decades, GLSEN programs, research, and resources have informed school-based efforts to prioritize bullying prevention, inclusive learning, and additional supports so that all youth—including LGBTQ+ students—have equal opportunities to learn, grow, and reach their full potential.

The Trevor Project is the nation's leading LGBTQ+ youth suicide prevention and crisis intervention organization. The Trevor Project offers the only nationwide accredited, free, and confidential phone, instant message, and text message crisis intervention services for LGBTQ+ youth. These services are used by tens of thousands of youths each month. Through analyzing and evaluating data obtained from these services and national surveys, The Trevor Project produces innovative research that brings new knowledge, with clinical implications, to issues affecting LGBTQ+ youth.

SUMMARY OF THE ARGUMENT

The American public school system is a vital civic institution with a responsibility to prepare students from all walks of life for participation in our democratic society. Educating youth is not confined to textbooks; it necessarily involves building students' awareness of others and the presence of divergent social, political, and religious views and experiences. Doing so allows students to see, hear, and engage, whether in agreement or disagreement, with a pluralistic society.

The Montgomery County school board, as the body best positioned and entrusted to select the curriculum for the community it serves, has devised a language arts curriculum that includes storybooks introducing students to characters and subjects reflecting a wide range of backgrounds and cultures. A few of those books include LGBTQ characters and families. As described in detail below, each of these books presents the same themes and plots as many of the other texts in use in the school district. The curriculum's storybooks feature people of varying religions, ethnicities, physical ability and appearance, and family structures. Taken together, these books—as they develop students' English language skills—present grade-appropriate understandings of varied experiences allowing children to see both themselves and others in their school community. By including the different people who comprise Montgomery County and its schools, the curriculum helps students foster skills of civility and respect that are needed in a functioning school system and a healthy democracy.

The special notice-and-opt-out requirement that Petitioners urge this Court to create would impose

an unworkable administrative burden on schools and undermine educators' ability to focus on their core teaching responsibilities. The Petitioners' claims incorrectly treat books featuring LGBTQ families as inherently different from those depicting every other family—when many of the books simply represent various family structures that exist in our communities and acknowledge family compositions that students will encounter in their daily lives. The relief sought also threatens to have a severe chilling effect on any balanced representation in public schools, which is untenable for teachers and invites constant judicial review and adjudication of educational policy that is traditionally and best left to local communities. Creating LGBTQ-only opt-outs from a curriculum fundamentally designed to reflect the reality of American society sends a troubling message to students that some families are less worthy of acknowledgment and respect than others.

ARGUMENT

- I. **The Montgomery County school board's curricular decision to include storybooks with a variety of characters and themes is well within the long tradition of public school education.**
 - A. **Public schools are foundational institutions tasked with preparing students to become responsible citizens who can contribute meaningfully to communities and uphold American values of liberty and freedom.**

A key “role and purpose” of the American school system is to “prepare pupils for citizenship in the Republic.” *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 681

(1986); *see also* *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 230 (1963) (Brennan, J., concurring) (finding public schools are the “most vital civic institution for the preservation of a democratic system of government.”). In so doing, this Court has stated that “the classroom is peculiarly the ‘marketplace of ideas,’” *Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503, 512 (1969), and accordingly held that the State must not arbitrarily “contract the spectrum of available knowledge,” *Griswold v. Connecticut*, 382 U.S. 479, 482 (1965) (discussing this “principle” of *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)). As this Court recently explained, schools are “nurseries of democracy” and learning to hear different viewpoints is essential to that endeavor. *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 190; *see also id.* at 202-03 (Alito, J., concurring).

State and local authorities have broad discretion in the management of school affairs and are best suited to establish and supervise curricula in schools. *See, e.g., Epperson v. Arkansas*, 393 U.S. 97, 104 (1968) (finding “[b]y and large, public education in our Nation is committed to the control of state and local authorities.”); *see also San Antonio Ind. School Dist. v. Rodriguez*, 411 U.S. 1, 42 (1973) (noting that the Court’s “lack of specialized knowledge and experience [on education policy] counsels against premature interference with the informed judgments made at the state and local levels.”).

This Court also recognizes the rights and fundamental role of parents to educate their children. *Wisconsin v. Yoder*, 406 U.S. 205, 230 (1972). While school administrators stand *in loco parentis* to children during the school day,

parents remain central in “protect[ing], guid[ing], and disciplin[ing] them.” *Mahanoy Area Sch. Dist.*, 141 U.S. at 189. Parents guide their children’s development through numerous channels: monitoring behavior and emotional well-being; providing religious instruction; determining where their children grow up and with whom they socialize; and structuring leisure activities. The majority of a child’s time is spent beyond school walls, during which parents may address any subject they deem appropriate and shape their child’s worldview in accordance with family values—whether through direct instruction, private schooling, faith-based programs, homeschooling, or other formative influences.

Just as it is important for a parent to educate their child outside of school, it is also important for public schools to teach the “fundamental values of ‘habits and manners of civility,’” and indeed schools “must teach by example the shared values of a civilized social order.” *Fraser*, 478 U.S. at 681, 683 (“The process of educating our youth is not confined to books, the curriculum, and the civics classes.”). School officials have the authority to “require teaching . . . and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 631 (1943) (citing *Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586, 604 (1940)) (Stone, J., dissenting); see also *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 882 (1982) (Blackmun, J., concurring) (describing this authority to teach and direct study as a form of “positive educational action” entrusted to public schools). Public school curricula include references to different segments of society and cultural backgrounds to equip students

with the knowledge needed to understand their place in the world and strengthen their ability to navigate that world as adults. See *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 278 (1988) (Brennan, J., dissenting) (“Public education . . . prepar[es] the Nation’s youth for life in our increasingly complex society.”). In so doing, public schools expose students to different concepts and facts so as to prepare them for participation in a “pluralistic, often contentious society,” which includes LGBTQ people. *Pico*, 457 U.S. at 868.

B. The Montgomery County school board’s decision to include books with references to LGBTQ people and families is a legitimate exercise of its curricular authority.

The Montgomery County school board has explained that the primary purpose of its English language arts curriculum is to teach students literacy, while using texts intended to foster the tools students need to “[v]alue the richness of cultural pluralism and commonality,” “work effectively in cross-cultural environments,” and “[c]onfront and eliminate stereotypes,” Pet.App.589a, each of which is a proper objective. The five challenged books refer to LGBTQ families and individuals—alongside books that reference the myriad religions, creeds, cultures, and experiences of the school and larger communities.

Amici acknowledge that Americans hold a wide range of sincere religious and personal beliefs about LGBTQ people and families. Such viewpoints, however, do not alter the reality that LGBTQ families exist throughout our communities. Students in Montgomery County will naturally encounter classmates from various

family structures in their educational and life journeys, much as students from different faith backgrounds will encounter traditions that are not their own, and children from two-parent households will interact with peers from single-parent homes regardless of their family's religious teachings about marriage. Children from LGBTQ families likewise attend public schools during their crucial developmental years. Parents maintain substantial influence over their children's upbringing and education outside school hours. Within this framework, public schools may reasonably establish curricula that acknowledge the existence of different family compositions and perspectives that students will encounter in their communities.

II. The five challenged storybooks fit squarely within the broader Montgomery County English language arts curriculum.

As *Hazelwood School District v. Kuhlmeier* explained, the government's exercise of its discretion over curriculum must be "reasonably related to legitimate pedagogical concerns." 484 U.S. at 273. The challenged books are entirely consistent with the legitimate pedagogical goals of the English language arts curriculum in Montgomery County. As demonstrated below, the books contain the same age-appropriate themes, concepts, and ideas as the rest of the language arts curriculum.² Many of the hundreds of books in the Montgomery County curriculum permit elementary school students to see themselves and

2. *Amici* reviewed 190 books out of the curriculum; the titles cited in this brief are a representative but not comprehensive selection of comparable books.

their families reflected in their reading materials, and also foster a familiarity with the backgrounds and traditions of their classmates and the larger community.

This is not a new pedagogical goal. For decades, scholars and educators have recognized the value of a “windows and mirrors” approach to teaching.³ “Mirror” books reflect a student’s own cultural, ethnic, religious, gender, or racial backgrounds back to them, allowing them to feel that their identity is valued; “window” books expose and familiarize students to identities and traditions that are different than their own.⁴ This approach ensures that the Montgomery County curriculum helps students “grow in their understanding of others” and “find connections between domain knowledge and their own lives.”⁵

3. See Emily Style, *Curriculum as Window and Mirror*, Listening for All Voices, Oak Knoll School Monograph (1988); see also Rudine Sims Bishop, *Mirrors, Windows and Sliding Glass Doors*, Perspectives: Choosing and Using Books for the Classroom 9-11 (1990).

4. K.M. Jackson, *When Diversity Isn't the Point: Mirrors, Windows, and Sliding Glass Doors in the Classroom*, Taboo: The Journal of Culture and Education 54, 55 (2023); see also Bishop, at 9-11.

5. *Amplify CKLA Trade Book List*, <https://amplify.com/programs/amplify-core-knowledge-language-arts/> (last visited April 3, 2025).

A. The challenged storybooks share the themes, plots, ideas, and topics of many other books.

Each of the challenged books aligns with others in the curriculum, as noted below:⁶

Uncle Bobby's Wedding (Kindergarten): In *Uncle Bobby's Wedding*,⁷ the protagonist Chloe fears that she will no longer be able to spend time with her favorite uncle, Bobby, when he gets married to his fiancé, Jamie. To alleviate these worries, Bobby and Jamie take Chloe on numerous adventures, hoping to assure her that not only will her relationship with Uncle Bobby not change, but also that she is gaining another caring adult in her life. The book concludes with a wedding celebration where Chloe serves as the flower girl, showing readers that change can be for the better.

6. Petitioners spend a lot of time arguing against two books that are no longer in the curriculum or at issue in this case. Robin Stevenson's *Pride Puppy!* (2021) is an alphabet book that follows a family and their puppy as they attend a local LGBTQ pride parade, much like other pre-kindergarten books like Winton Marsalis's *Squeak, Rumble, Whomp! Whomp! Whomp!: A Sonic Adventure* (2012), which uses onomatopoeia to explore all the sounds a small child hears while adventuring through New Orleans. *My Rainbow* is similar to other books in the second-grade curriculum that feature families supporting a child navigating issues related to identity, in depicting a mother working to make her child the gift of a colorful wig. Trinity Neal & DeShanna Neal, *My Rainbow* (2020). This parallels *Islandborn*, which includes a child struggling with a school assignment to draw the island country from which she came and of which she has no memory; with help from her family and friends, she realizes the island is part of her. Junot Díaz, *Islandborn* (2018).

7. Sarah S. Brannen, *Uncle Bobby's Wedding* (2008).

The plot of *Uncle Bobby's Wedding* is nearly identical to another book in the elementary English language curriculum, *Uncle Peter's Amazing Chinese Wedding*,⁸ which also tells of a young girl who is saddened that her favorite uncle is marrying. She worries they will no longer spend time together, but ultimately, the narrator warms to her new aunt when she gets to play a special role at the wedding reception. Assigned to the third-grade curriculum, *Uncle Peter's Amazing Chinese Wedding* also delves into more mature content than presented by *Uncle Bobby's Wedding*, with references to fertility, childbearing, and a kiss.⁹

More broadly, many other kindergarten storybooks in the Montgomery County curriculum have plots and themes relating to families and marriage. For example, *The Golden Sandal: A Middle Eastern Cinderella Story*¹⁰ is based on an Iraqi folktale in which the main character enchants a wealthy merchant's son, who falls in love and marries her within days of their meeting. In the bilingual book *La Princesa and the Pea*, a prince "in need of affection" falls quickly in love with a princess and

8. Lenore Look, *Uncle Peter's Amazing Chinese Wedding* (2006).

9. *Id.* at 21-22, 24 (depicting kids jumping on a bed following the wedding ceremony with the belief that "the new couple will have as many children as will jump on the bed"; mention of "fertility" soup at the wedding reception which is "good for making babies.").

10. Rebecca Hickox, *The Golden Sandal: A Middle Eastern Cinderella Story* (1998).

determines to marry her “[n]o matter what Mom does[.]”¹¹ The two marry and the book explains they have “hijos galore”¹²—a reference to the couple’s numerous children. These themes continue in the first-grade curriculum for students one year ahead. For example, in *Adelita: A Mexican Cinderella Story*,¹³ a man kisses the protagonist and declares his love; they marry and live happily ever after.

Like *Uncle Bobby’s Wedding*, many kindergarten books share stories of children who live in a variety of family structures. In *The Bakery Lady*,¹⁴ for example, Monica, a young girl lives with her brother and grandparents above a bakery. She achieves her dreams of becoming a baker with the help and love of her family.

Intersection Allies: We Make Room for All (Grade 1): *Intersection Allies*¹⁵ includes a wide variety of characters and focuses on cultivating respect for differences based on religion, disability, and other traits. Each character shares something about themselves. A character who uses a wheelchair explains, “[w]hen I need to get through, friends

11. Susan Middleton Elya, *La Princesa and the Pea* 3 (2017).

12. *Id.* at 14.

13. Tomie dePaola, *Adelita: A Mexican Cinderella Story* 20 (2002).

14. Pat Mora, *The Bakery Lady / La señora de la panadería* (2001).

15. Chelsea Johnson, et al., *Intersection Allies: We Make Room for All* (2019).

help make a way.”¹⁶ Another character, Kate, explains that “[s]kirts and frills are cute, I suppose, [b]ut my superhero cape is more ‘Kate’ than those bows.”¹⁷ That resonates with Adilah, who finds that “just like Kate, [w]hat I wear inspires endless debate. Some give, some chant, some sing, some pray, [m]y hijab is my choice—you can choose your own way.”¹⁸ And through these and similar stories, the storybook shows the characters “striv[ing] to be equal but not all the same.”¹⁹ The first-grade curriculum is filled with books celebrating the traits that make someone who they are, developing understanding of oneself, and respecting differences reflected in the community.

Doña Flor: A Tale About a Giant Woman with a Great Big Heart tells the story of a girl, a giant, who was initially laughed at by other children “because she was different[.]”²⁰ They later come to appreciate that her size is a gift. When faced with a crisis, the “giant woman’s” frightened neighbors rely on her and her height to solve the problem and, despite fear, they venture out to check on her. *Abuela’s Weave*²¹ similarly addresses physical differences and cultural heritage. There, a girl and her grandmother are afraid that the grandmother’s birthmark will deter people from buying their weavings, including

16. *Id.* at 4.

17. *Id.* at 9.

18. *Id.* at 11.

19. *Id.* at 30.

20. Pat Mora, *Doña Flor: A Tale About a Giant Woman with a Great Big Heart* 3 (2005).

21. Omar S. Castaneda, *Abuela’s Weave* (1993).

a tapestry inspired by the sacred book of the Maya. The grandmother's birthmark is a source of stigma, forcing her to cover her face and self-isolate at the market. By the end of the book, illustrations show the grandmother uncovering her face after a successful day selling their weavings. Similarly, in *I Am Sacagawea*, the narrator overcomes others' low opinion of her based on her sex, youth, and Native American identity; she urges readers to "Make your own path. Shatter expectations."²²

The curriculum includes various other stories that demonstrate respect for differences. For example, in *The Best Beekeeper of Lalibela*,²³ a young Ethiopian girl receives wisdom from a priest who tells her, "[m]an, woman, girl, boy is not important. So keep bees," teaching that dedication to one's craft transcends conventional expectations. Second-grade students may also read the classic tale *I Am Hua Mulan*,²⁴ which has been beloved by families for generations, showing how a daughter's devotion to her father led her to serve in his place during wartime. Her story emphasizes family loyalty, bravery, and sacrifice. Students might also encounter *Young Water Protectors: A Story About Standing Rock*,²⁵ which teaches about a young boy honoring his heritage by maintaining traditional hairstyles. Similarly, *Fauja Singh Keeps Going: The True Story of the Oldest Person to Ever Run*

22. Brad Meltzer, *I Am Sacagawea* 35 (2017).

23. Christina Kessler, *The Best Beekeeper of Lalibela: A Tale from Africa* 7 (2006).

24. Qin Wenjun, *I Am Hua Mulan* (2019).

25. Aslan Tudor & Kelly Tudor, *Young Water Protectors: A Story About Standing Rock* (2018).

*a Marathon*²⁶ shares how a Sikh runner was determined to succeed in finishing marathons, even in the face of opposition, and describes the practices he maintained as part of his faith.

Prince & Knight (Grade 3): *Prince & Knight*²⁷ is an adventure story in which, after battling dragons, a prince ultimately marries a knight, with the support of his family. Several other books in the third-grade curriculum feature similar themes of marriages. For example, *Wilma's Way Home: The Life of Wilma Mankiller*²⁸ describes Wilma's marriage to her first husband, their subsequent divorce, and her second marriage to a fellow activist, who had been her friend for years. Further, *Star Boy*²⁹ is a Blackfeet story that includes two marriages. First, a young woman falls in love with the handsome Morningstar. They move to his home in the sky where they marry and have a son, Star Boy. Then, Star Boy falls in love with a chief's daughter and eventually marries her after receiving a blessing from his grandfather, the Sun.

Prince & Knight is also a story about navigating familial expectations, exhibiting bravery in the face of challenge, and working together to succeed just like many other books in the curriculum. In *Drum Dream Girl: How One Girl's Courage Changed Music*, a young girl learns

26. Simran Jeet Singh, *Fauja Singh Keeps Going: The True Story of the Oldest Person to Ever Run a Marathon* (2020).

27. Daniel Haack, *Prince & Knight 1* (2018).

28. Doreen Rappaport, *Wilma's Way Home: The Life of Wilma Mankiller* (2019).

29. Paul Goble, *Star Boy* (1991).

how to play the drums even though her father and the rest of their community tell her that “only boys should play the drums.”³⁰ *Turtle Bay*³¹ tells the story of two unlikely friends who work together to make the beach safe for turtles to come and lay their eggs there. The story shows children how even the most unlikely of pairs can create powerful change if only they work together.³²

Love, Violet (Grade 4): *Love, Violet*³³ tells the story of Violet, a student who daydreams of adventures with her classmate, Mira. Yet, when Mira asks Violet to draw together or play, Violet becomes anxious and shy. On Valentine’s Day, Violet musters the courage to make and give Mira a valentine. *Love, Violet* shows characters navigating the challenges that surround expressing one’s feelings and overcoming embarrassment, common themes in the fourth-grade curriculum. In *Front Desk*, Mia is distressed to find out that her class nemesis, Jason, “likes” her. Asking to talk to her alone, Jason gives her some flowers and explains how he experiences “this tingly feeling” when around her.³⁴ In *Merci Suárez Changes Gears*, Merci is confused and frustrated when the other girls in her class show a seemingly newfound interest in

30. Margarita Engle, *Drum Dream Girl: How One Girl’s Courage Changed Music* 6 (2015).

31. Saviour Pirotta, *Turtle Bay* (1997).

32. See also Carmen Agra Deedy, *Martina the Beautiful Cockroach* (2007); Lenore Look, *Uncle Peter’s Amazing Chinese Wedding* (2006); Ai-Ling Louie, *Astronaut Kalpana Chawla: Reaching for the Stars* (2014).

33. Charlotte Sullivan Wild, *Love, Violet* (2021).

34. Kelly Yang, *Front Desk* 102 (2018).

boys and romance. “The heart is a mystery,”³⁵ her mother says when Mia questions how her older brother could end up going to prom with someone she thought he hated. She recognizes a loving relationship in her parents and grandparents.

Merci Suárez, like *Love, Violet* and other books that fourth grade students may encounter, assists students in approaching increasingly more complex, yet still age-appropriate, plots and themes. For example, *Merci Suárez* addresses puberty and changing bodies.³⁶ The approved books also build on topics encountered in earlier grades, including racial discrimination (*Front Desk*; *Chester Nez and the Unbreakable Code: A Navajo Code Talker’s Story*); poverty (*Front Desk*); marriage and love (*Mufaro’s Beautiful Daughters*); navigating gender expectations (*Pirate Queen: A Story of Zheng Yi Sao*); the history of slavery in the United States (*Mumbet’s Declaration of Independence*); and the importance of respecting and tolerating differences (*The Name Jar*; *Just Like Me*).³⁷

35. Meg Medina, *Merci Suárez Changes Gears* 128 (2018).

36. *Id.* at 32-33, 159-60. For example, Merci goes to the drug store with her aunt to get deodorant because “it’s time”; she worries about having to change in the locker room for gym class, noting that other girls have been made fun of for their bra colors or not wearing a bra at all; she does not want to talk about her chest changing even though she knows it will likely happen soon.

37. Kelly Yang, *Front Desk* (2018); Joseph Bruchac, *Chester Nez and the Unbreakable Code: A Navajo Code Talker’s Story* (2018); John Steptoe, *Mufaro’s Beautiful Daughters* (1987); Helaine Becker, *Pirate Queen: A Story of Zheng Yi Sao* (2020); Gretchen Woelfle, *Mumbet’s Declaration of Independence* (2014); Yangsook Choi, *The Name Jar* (2001); Vanessa Brantley-Newton, *Just Like Me* (2020).

In this context, *Love, Violet* represents one “mirror and window” among many in the fourth-grade curriculum and, like several other books, addresses some of the anxieties that students at this age may be facing with respect to peer relationships.

Born Ready: The True Story of a Boy Named Penelope (Grade 5): *Born Ready*³⁸ tells the story of Penelope, a boy whose gender identity doesn’t match others’ expectations. After facing initial frustration, he tells his family he’s a boy, receives mostly support (with some resistance from his brother), and eventually wins a karate competition through determination. Like other books in the curriculum, *Born Ready* explores themes of family support in overcoming challenges and in pursuing one’s dreams. *A Doll for Navidades*³⁹ shows sisters prioritizing their relationship over a desired toy. In *Tallchief*,⁴⁰ Maria’s parents support her ballet dreams, despite prohibitions on her Osage community holding dances and ceremonies, and despite a cultural tradition in which dancing was only for men.

The curriculum consistently explores identity and persistence. In *My Name is Sangoel*,⁴¹ part of the second-grade curriculum, a Sudanese boy and his family become

38. Jodie Patterson, *Born Ready: The True Story of a Boy Named Penelope* (2021).

39. Esmeralda Santiago, *A Doll for Navidades* (2005).

40. Maria Tallchief, *Tallchief: America’s Prima Ballerina* (2001).

41. Karen Williams & Khadra Mohammed, *My Name is Sangoel* (2009).

refugees in the United States. Knowing that his name is core to who he is, Sangoel persists in correcting people when they mispronounce his name, despite the laughter it invites from his classmates and his mother’s suggestion that he go by a more typically “American”-sounding name. By the end of the book, he successfully teaches other students to properly pronounce his name—and gives them tools to explain their own names in a new way, too.

Several curriculum books feature characters who challenge gender stereotypes, including *Dinosaur Lady*⁴² about Mary Anning becoming a paleontologist despite 19th century gender discrimination. Additional examples include *Grace for President*, *The Best Beekeeper of Lalibela*, and others.⁴³

B. The Montgomery County English language arts curriculum shares and reflects different perspectives from the community and fosters legitimate pedagogical goals.

The books in the Montgomery County elementary curriculum, in employing this “windows” and “mirrors” pedagogy, allow students to learn about themselves and others through characters and stories from a wide range of religions, cultures, and nationalities that reflect the wider community.

42. Linda Skeers, *Dinosaur Lady: The Daring Discoveries of Mary Anning, the First Paleontologist* (2020).

43. Kelly DiPucchio, *Grace for President* (2008); Christina Kessler, *The Best Beekeeper of Lalibela: A Tale from Africa* (2006); Sarah Warren, *Dolores Huerta: A Hero to Migrant Workers* (2012); Tami Charles, *Fearless Mary: Mary Fields, American Stagecoach Driver* (2019); Alma Fullerton, *Hand over Hand* (2017).

The five challenged books fit neatly into these well-established principles. Families are central to many of the stories, and the curriculum books showcase a variety of family types and structures, including books that feature children who live with their mother and father (*Galápagos Girl*), children raised by single mothers (*A Father Like That*), children living with extended family (*Gracias, the Thanksgiving Turkey* and *The Bakery Lady*), teenage and/or young parents (*I Am Sacagawea; Brave with Beauty: A Story of Afghanistan*), families who have gone through divorce (*Merci Suárez Changes Gears*), and blended families (*The Girl with a Brave Heart: A Tale from Tehran*).⁴⁴ For students, some books will be similar to their own experiences; others will display something about the lives of other students and families different from their own. The five challenged books may provide a mirror for students who have a LGBTQ parent, sibling, or relative, and who can see their families represented in these books. For others, the books provide a window to people they will encounter in the Montgomery County community, such as a classmate dropped off at school by same-sex parents.

Books in the curriculum also include tales of people praying consistent with their faith traditions, with stories and references drawn from many faiths—a Buddhist

44. Marsha Diane Arnold, *Galápagos Girl / Galapegueña* (2018); Charlotte Zolotow, *A Father Like That* (2007); Joy Cowley, *Gracias, the Thanksgiving Turkey* (1996); Pat Mora, *The Bakery Lady / La señora de la panadería* (2001); Meg Medina, *Merci Suárez Changes Gears* (2018); Maxine Rose Schur, *Brave with Beauty: A Story of Afghanistan* (2019); Brad Meltzer, *I Am Sacagawea* (2017); Rita Jahanforuz, *The Girl with a Brave Heart: A Tale from Tehran* (2013).

temple in *Brush of the Gods*, a sermon about Moses in *The Bell Rang*, Lakota prayers in *Young Water Protectors*, a blessing at Mass in *Gracias, the Thanksgiving Turkey*, a Mesoamerican creation story in *Feathered Serpent and the Five Suns*, Arabic wedding traditions in *The Golden Sandal*, and the construction of mosques in *Brave with Beauty: A Story of Afghanistan*.⁴⁵ These books expose students to the wide variety of religions they will encounter—even as the students themselves may have different religious beliefs, values, and customs, and are free to express those beliefs (or their lack thereof) in the classroom. Pet.App. 214a-215a.

The curriculum is also rich with stories featuring communities who refused to cede their culture despite challenges to its endurance, including books about African-American families during slavery and segregation (*Love Twelve Miles Long*; *Sweet Clara and the Freedom Quilt*; *Hidden Figures: The True Story of Four Black Women and the Space Race*), Chinese-American immigrant families (*Apple Pie Fourth of July*; *Paper Son: The Inspiring Story of Tyrus Wong, Immigrant and Artist*), a Sudanese refugee family (*My Name is Sangoel*), and Lakota history and stories (*Crazy Horse's Vision*; *Young*

45. Lenore Look, *Brush of the Gods* (2013); James E. Ransome, *The Bell Rang* (2019); Aslan Tudor & Kelly Tudor, *Young Water Protectors: A Story About Standing Rock* (2018); Joy Cowley, *Gracias, the Thanksgiving Turkey* (1996); Duncan Tonatiuh, *Feathered Serpent and the Five Suns: A Mesoamerican Creation Myth* (2020); Rebecca Hickox, *The Golden Sandal: A Middle Eastern Cinderella Story* (1998); Maxine Rose Schur, *Brave with Beauty: A Story of Afghanistan* (2019).

Water Protectors).⁴⁶ Such exposure in no way prevents parents from educating children about their own culture, history, or experiences.

Taken together, this curriculum—including the challenged books—shows students a variety of characters and helps them learn to navigate differences and develop skills around civility and mutual respect. Some books explicitly model this. For example, in *The Arabic Quilt*, a student who initially laughs at her classmate’s mother for speaking Arabic later apologizes after learning “how important a different language is.”⁴⁷ In *Fauja Singh Keeps Going*,⁴⁸ students learn about issues of disrespect, racism, and intolerance. In *The First Strawberries: A Cherokee Story*, a husband and wife show each other forgiveness after an argument—creating a lasting reminder for Cherokee people in the future “to remember that friendship and respect are as sweet as ripe, red berries.”⁴⁹

46. Glenda Armand, *Love Twelve Miles Long* (2011); Deborah Hopkinson, *Sweet Clara and the Freedom Quilt* (1993); Margot Lee Shetterly, *Hidden Figures: The True Story of Four Black Women and the Space Race* (2018); Janet S. Wong, *Apple Pie 4th of July* (2002); Julie Leung, *Paper Son: The Inspiring Story of Tyrus Wong, Immigrant and Artist* (2019); Karen Williams & Khadra Mohammed, *My Name is Sangoel* (2009); Joseph Bruchac, *Crazy Horse’s Vision* (2000); Aslan Tudor & Kelly Tudor, *Young Water Protectors: A Story About Standing Rock* (2018).

47. Aya Kahlil, *The Arabic Quilt: An Immigrant Story* 26 (2020).

48. Simran Jeet Singh, *Fauja Singh Keeps Going: The True Story of the Oldest Person to Ever Run a Marathon* (2020).

49. Joseph Bruchac, *The First Strawberries: A Cherokee Story* 27 (1993).

And in *All the World*, readers are encouraged to recognize and appreciate the connections between themselves and others, stating “everything is you and me, hope and peace and love and trust, all the world is all of us.”⁵⁰

In these ways, the English language arts curriculum “prepare[s] pupils for citizenship in the Republic,” *Fraser*, 478 U.S. at 681 (internal citations omitted), and does so in a way that its local officials are best equipped to calibrate.

III. Petitioners incorrectly classify ordinary storybooks as specialized curriculum.

The five storybooks Petitioners challenge contain the same narrative elements, thematic content, and character development as dozens of other books in the curriculum. They feature characters navigating everyday experiences: family relationships, friendship, community, and personal growth. In one story, a child has two uncles; in another, a character expresses themselves in ways that do not conform to gender stereotypes. These elements appear alongside many depictions of a wide range of different families throughout the curriculum.

Yet Petitioners baselessly classify these books as sex education materials requiring special parental oversight, while making no such claims about substantially similar stories featuring a litany of characters encountering comparable experiences.

When literature includes a married heterosexual couple, we recognize it as a depiction of a family, not as

50. Liz Garton Scanlon, *All the World* 33-36 (2009).

instruction about sexuality or heterosexuality. Similarly, when literature includes characters from different cultural backgrounds, we understand it as reflecting examples of the variety of human experience—not as specialized ethnic instruction. The same principle applies here. The presence of LGBTQ families and characters in a few storybooks serves the same educational purpose as the other reading materials in the curriculum: helping students develop literacy skills while seeing the full spectrum of families and individuals in their communities reflected in what they read. These storybooks are no more instruction on gender and sexuality than telling any other story that references a relationship between a man and a woman.

Amici suggest that the assumption that books containing LGBTQ characters constitute sex education reflects a pernicious trope or stereotype—unfortunately one with a long history—that sexualizes LGBTQ people and limits them to sex and sexuality. Suzanne B. Goldberg, *Sticky Intuitions and the Future of Sexual Orientation Discrimination*, 57 UCLA L. Rev. 1375, 1391 (2010) (the “hypersexualization of gay people, relative to heterosexuals, in the public imagination” does not account for the complex and multi-faceted nature of their existence). This double standard has historically manifested itself in numerous contexts where the conduct or representation of LGBTQ people (in the challenged books, for example, in the depiction of a wedding) is viewed as somehow sexual, where the same conduct or representation among heterosexual people would be no such thing. See Christopher R. Leslie, *Creating Criminals: The Injuries Inflicted by “Unenforced” Sodomy Laws*, 35 Harv. C.R.-C.L. L. Rev. 103, 169 (2000) (noting that some

courts, before recognizing the distinction between conduct and status, reduced LGBTQ people to their perceived sexual acts). As Professor Josephine Ross has noted, “[t]o say that a relationship is ‘sexualized’ means it is viewed as essentially sexual and is not seen to be about commitment, communication or love.” Josephine Ross, *The Sexualization of Difference: A Comparison of Mixed-Race and Same-Gender Marriage*, 37 Harv. C.R.-C.L. L. Rev. 255, 256 (2002).

This double standard has been addressed by federal courts in other educational contexts. In *Colin ex rel. Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000), school administrators refused to recognize a Gay-Straight Alliance (GSA) under the Equal Access Act, labeling it a “sexually charged club.” *Id.* at 1139. The court rejected this characterization, noting that “you can talk about being gay without talking about having sex, just as you can talk about being heterosexual without talking about sex.” *Id.* at 1148. Similarly, in *Gonzalez v. Sch. Bd.*, 571 F. Supp. 2d 1257 (S.D. Fla. 2008), a school board denied recognition to a GSA, claiming it would promote “unhealthy premature sexualization of students.” *Id.* at 1263. The court found this argument “speculative at best and clearly without evidentiary support,” recognizing that discussions of different identities do not inherently contain sexual content. *Id.* at 1266-67.

The Montgomery County school board correctly determined that these storybooks represent pedagogically sound literature that belongs in the general language arts curriculum. Accepting Petitioners’ mischaracterization would mean endorsing a harmful double standard that should have no place in public education.

IV. Petitioners’ requested relief of a mandated notice-and-opt-out requirement for the five requested books threatens to sweep far more broadly.

A constitutionally required notice-and-opt-out requirement for any teacher’s use of the five storybooks challenged here risks far broader consequences. Petitioners’ request for notice-and-opt-outs would be implicated in a long list of day-to-day instances, chilling ordinary references to the LGBTQ families and people that exist in this community. The opt-out threatens curricular references to LGBTQ people beyond these five books into the K-5 classrooms, such as drawing and displaying a family picture that is then discussed by the teacher. Leaving the storybooks on classroom shelves and allowing students to select books for personal reading, as Petitioners suggest, could likewise lead to communication with the classroom teacher about the contents of the storybooks, and therefore would involve the same questions of required notice-and-opt-out advanced by the Petitioners here.

The absence of clarity as to when the notice-and-opt-out requirement would apply, under pain of constitutional lawsuits, undercuts teachers’ focus on education and teaching. It all but assures future litigation as case-by-case references to LGBTQ families and people arise in school settings. And there is no factual record here to assist lower courts in interpreting any precedent set in this case. *See Mahmoud v. Taylor*, 102 F.4th 191, 208-09 (4th Cir. 2024) (the record does not provide “any information about how any teacher or school employee has actually used any of the Storybooks how often the Storybooks are actually being used, what any child

has been taught in conjunction with their use, or what conversations have ensued about their themes.”).

Beyond the chilling effect of Petitioners’ request for notice-and-opt-outs, a constitutional mandate applied to curriculum would require continued judicial review of day-to-day educational policy crafted at the local level. *Mahmoud*, 102 F.4th at 208-09. And while *Amici* do not believe this is Petitioners’ intention, the inescapable message to students of creating a special LGBTQ-only opt-out—in a curriculum that otherwise depicts a wide variety of communities and beliefs—is that LGBTQ people and families are particularly objectionable, and sit outside the broader project of civility and pluralism that the Montgomery County school board is working to foster.

CONCLUSION

For the above-stated reasons, *Amici* respectfully request that the order below be affirmed.

Respectfully submitted,

KIMBERLY A. HAVLIN
NIKITA E. ASH
ROBERT J. DENAULT
WHITE & CASE LLP
1221 Avenue of the Americas
New York, NY 10020

MARY L. BONAUTO
Counsel of Record
GARY D. BUSECK
PATIENCE CROZIER
HANNAH HUSSEY
COURTNEY DOUGHERTY
GLBTQ LEGAL ADVOCATES
& DEFENDERS
18 Tremont Street, #950
Boston, MA 02108
(617) 388-5521
mbonauto@glad.org