NO. 24-410

IN THE
Supreme Court of the United States

L.M. a minor by and through his father and stepmother and natural guardians, Christopher and Susan Morrison,

Petitioner,

v.

TOWN OF MIDDLEBOROUGH, MASSACHUSETTS; MIDDLEBOROUGH SCHOOL COMMITTEE; CAROLYN J. LYONS, Superintendent, Middleborough Public Schools, in her official capacity; HEATHER TUCKER, Acting Principal, Nichols Middle School, in her official capacity,

Respondents.

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

Brief of National Religious Broadcasters as *AMICUS CURIAE* in support of Petitioner

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Interest of Amicus

National Religious Broadcasters (NRB) is a non-partisan association of Christian broadcasters united by their shared purpose of proclaiming Christian teaching and promoting biblical truths. NRB's 1,487 members reach a weekly audience of approximately 141 million American listeners, viewers, and readers through radio, television, the Internet, and other media.

Since its founding in 1944, NRB has worked to foster excellence, integrity, and accountability in its membership. NRB also works to promote its members' use of all forms of communication to ensure that they may broadcast their messages of hope through First Amendment guarantees. NRB believes that religious liberty and freedom of speech together form the cornerstone of a free society.

NRB believes that freedom of speech must be preserved for students in public schools if we are to have a society that values freedom of speech for the generations yet to come. If students are taught that freedom of speech is expendable in school, it will become expendable in society at large in the years ahead.[1]

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[1] Pursuant to Supreme Court Rule 37.6, counsel for your amicus certifies that no counsel for any party authored this brief in whole or in part. No person or entity other than NRB furnished any monetary contribution for the preparation of this brief. Counsel additionally certifies that he gave written notice more than ten days prior to the due date to counsel for both parties that he intended to file this brief in support of granting the writ.

Summary of the Argument

This case differs from most cases involving messages on shirts or armbands in public schools. Typically, students have sought to speak out on general issues of the day. In this case, however, L.M., a middle school student, wore a shirt to school with a message that was clearly in response to a major campaign by the school officials to promote a point of view supportive of transgenderism and similar causes.

This case is about the right of the student to reply to the opinions expressed by school officials.

L.M.'s viewpoint and desired message arise from his sincerely held beliefs. The school officials have made it abundantly clear that his views are wrong and unwelcome. The lower courts only considered the impact of his message on transgender students while ignoring two other important factors.

First, the overwhelming support for the viewpoint that students have the right to change their gender has been repeatedly delivered by the school itself and has been reinforced by many students who agree with the school's viewpoint. The lower courts evaluated this case as if the only message that transgendered students received in their school was from L.M.'s shirt. The balance of equities in suits for an injunction should consider the entire context, not simply one factor.

Second, and more importantly, the lower courts have failed to consider the impact on L.M. by the school subjecting him to a year-round campaign promoting views he rejects and then censoring his mild, polite effort to disagree.

This Court has repeatedly promised America's school children and their parents that the public schools must adhere to a policy of neutrality when it comes to matters of belief or opinion. This Court has been extremely diligent when it comes to removing any hint of religious coercion in public schools, even a legislature's suggestion that a moment of silence could be used, if the student wished, for silent prayer. The First Amendment was construed to protect the conscience of the dissenting student even in that extremely mild form of "coercion."

In *W. Virginia State Bd. Of Educ. V. Barnette*, 319 U.S. 624, 642 (1943) this Court boldly declared that any form of ideological coercion on *any matter of opinion* was foreclosed by the First Amendment. This Court has never said anything that should lead to the conclusion that the rule against coercion varies based on the ideology being advanced. The protections offered by the First Amendment should not vary. Protection against coercion of the mind and spirit—at a minimum—requires the strongest possible protection for the right of a student to dissent from a viewpoint incessantly advanced by school officials.

Telling L.M. that his views are unwelcome in school and that he must take them elsewhere renders the idea of ideological neutrality into a one-way street. Protecting some objecting students from a

mere suggestion that they might want to pray while silencing a dissenting student subjected to an ideological campaign, is not ideological neutrality and must not be allowed to masquerade as such.

Facts and Introduction

The Middleborough School Committee has established its own official viewpoint on a highly contentious matter of opinion. It has determined that gender is not defined by biological sex but is fluid and may be decided by individuals according to their own wishes.

The School Committee's viewpoint is openly, regularly, and forcefully communicated on multiple occasions throughout the school year in a manner that is impossible to escape or ignore. A whole month is devoted to the special promotion of this viewpoint.

L.M. is a middle school student who has a different point of view on this disputed matter of opinion. He believes, as do millions of Americans, that gender is determined by God through biological sex.

L.M. sought to communicate his disagreement with the viewpoint of the school district in a common manner—he wore a t-shirt with a simple slogan: "There are only two genders." It is self-evident that L.M. was not aiming to bully or harass any other student. Rather, he gave voice to his disagreement with the campaign operated by the School Committee. There is utterly no doubt that the School Committee deems L.M.'s viewpoint to be false and unwelcome.

This all occurs in a school funded by coercive taxation, and L.M.'s attendance is not fully voluntary. He must attend the public school or "some other day school approved by the school committee." Mass. Gen. Law c. 76 §1. He must be educated in a manner approved by the School Committee.

L.M. has not sought to silence the school's communication of its preferred viewpoint. Indeed, the District Court quoted L.M.'s public testimony at a School Committee meeting that clearly establishes his acknowledgement of the right of others to communicate their views.

> What did my shirt say? Five simple words: "There are only two genders." Nothing harmful. Nothing threatening. Just a statement I believe to be a fact. I have been told that my shirt was targeting a protected class. Who is this protected class? Are their feelings more important than my rights? I don't complain when I see "pride flags" and "diversity posters" hung throughout the school. Do you know why? Because others have a right to their beliefs just as I do. Not one person, staff, or student told me that they were bothered by what I was wearing. Actually, just the opposite. Several kids told me that they supported my actions and that they wanted one too.

Petition for Cert. 69a-70a.

The School Committee is not satisfied with monopolizing all official means of communication to

ensure the dominance of its own viewpoint on this matter of belief. It seeks to silence any opposition.

The student is told, by both the School Committee and the federal district court, that he "remains free to convey his message elsewhere." Petition for Cert. 82a.

Nothing in the record suggests that there would be any difference in outcome if, rather than wearing a shirt with his message, L.M. raised his hand during a class discussion and offered his belief that there are only two genders. It's fair to infer that the school officials may have warned him the first time not to make such statements, but if he persisted in communicating the offending message whenever the subject was raised by school officials, there is little doubt that he would have been silenced in some fashion.

Your amicus urges this Court to grant the writ to review this case to confront a problem that threatens to unravel a critically important constitutional rule that is supposed to control public education—ideological neutrality. This Court has repeatedly declared that the Constitution requires public schools to be neutral on matters of worldview and opinion.

Your amicus asks this Court to accept this case to review the viability of this promise of neutrality, and to enforce it by protecting the right of a single middle school student to courageously offer a viewpoint contrary to the school's proclamation of orthodoxy on a matter of public opinion.

Argument

I. The Constitutional Promise of Neutrality

This Court has often quoted the preamble of the Virginia Bill for Religious Liberty, which was a precursor to the First Amendment. "[T]o compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." *Everson v. Bd. Of Ed. Of Ewing Twp.*, 330 U.S. 1, 13 (1947). See also, *Keller v. State Bar of California*, 496 U.S. 1, 10 (1990); *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 893 (2018).

The First Amendment's promise of neutrality on matters of opinion was most thoroughly and elegantly stated by this Court in response to the efforts of a state legislature to mandate participation in the pledge of allegiance.

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

W. Virginia State Bd. Of Educ. V. Barnette, 319 U.S. 624, 642 (1943).

It is important to emphasize at the outset that the promise of neutrality is not merely a shield

against the use of government institutions to propagate religious doctrine. It is a broad promise encompassing "politics, nationalism, religion, or other matters of opinion." While the government certainly may speak on topics of opinion, even in public schools, it moves from speaking to indoctrinating when its views are accompanied by either coercion or suppression of dissent.

Indeed, *Barnette* serves as the chief example of the relevant application of the First Amendment sought here. The advancement of preferred opinions on civic topics cannot be achieved via the means of coercing the consciences of dissenting students in public schools.

While this case does not appear to involve a religious student, the lessons from this Court's many cases involving the coercion of conscience on matters of opinion are nonetheless instructive.[2] Conscience is conscience regardless of its perceived foundation.

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[2] Your amicus recognizes that these cases discussing the protections offered by the Establishment Clause were decided under the framework of *Lemon v. Kurtzman,* 403 U.S. 602 (1971) and that *Lemon's* famous three-part test was abandoned by this Court in cases like *Town of Greece v. Galloway,* 572 U.S. 565 (2014). That abrogation was, of course, made explicit in *Kennedy v. Bremerton School District,* 597 U.S. 507 (2022). Nonetheless, even though this Court may well review future cases of this nature using history rather than *Lemon* as its guide, the holdings of these cases have not been reversed, nor should there be any doubt that the generalized principle that public schools cannot be used to coerce or silence the beliefs of students would not be sustained under proper historical analysis. To be sure, there may be some differences in applications on specific facts, but the broad principle prohibiting ideological coercion and

In cases involving public education, this Court has repeatedly said that government may neither "advance nor inhibit religion." See, e.g., *Wallace v. Jaffree*, 472 U.S. 38, 55 (1985). Rather the Court has recognized "an established principle that the government must pursue a course of complete neutrality toward religion." *Id.* at 60. See also, *Comm. For Pub. Ed. & Religious Liberty v. Nyquist*, 413 U.S. 756, 792–93 (1973) ("A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of 'neutrality' toward religion.") Neutrality is not a one-way street. The Constitution "forbids hostility toward any" religion. *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984). See also, *Sch. Dist. Of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 225 (1963) ("We agree of course that the State may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion, thus 'preferring those who believe in no religion over those who do believe.'")

Students who object to any form of religious activity in public schools have been shown great solicitude by this Court. The "Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools." *Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987). This extra diligence flows from this Court's view that any effort to coerce the beliefs of the child is constitutionally inappropriate.

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requiring neutrality seems to be a principle that would not be abandoned under a new framework.

> Families entrust public schools with the education of their children but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary. The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure.

Id. at 583–85. (Internal citations omitted.)

This same point was made in a case involving entirely secular matters (a student-held poster promoting drug use).

> When public school authorities regulate student speech, they act as agents of the State; they do not stand in the shoes of the students' parents. It is a dangerous fiction to pretend that parents simply delegate their authority—including their authority to determine what their children may say and hear—to public school authorities.

Morse v. Frederick, 551 U.S. 393, 424 (2007) (Alito, with Kennedy, concurring.)

This Court forbade public schools from arranging for a brief prayer at a graduation ceremony, reasoning that the impact on the student who did not wish to participate was constitutionally intolerable.

> [W]hat might begin as a tolerant expression of religious views may end in a policy to indoctrinate and coerce. A state-created orthodoxy puts at grave risk that freedom of belief and conscience which are the sole assurance that religious faith is real, not imposed.

Lee v. Weisman, 505 U.S. 577, 591–92 (1992).

Such prayers "places public pressure, as well as peer pressure, on attending students." *Id.* at 593. The dissenting student had the right to avoid any suggestion that "the group exercise signified her own participation or approval of it." *Id.* Indeed, L.M. experienced "censure" from both school officials and other students for dissenting from the official views. Other students who agreed with his views were afraid to speak out because of the official coercion and peer pressure. Petition for Cert. 99a-100a.

Perhaps the most rigorous application of this principle of neutrality comes from *Wallace v. Jaffree*, where this Court invalidated a Louisiana law that combined a required moment of silence with the mere suggestion that students could, if they wished, use that moment to pray. Such coercion of a student's conscience was held to be constitutionally intolerable.

Moreover, this Court has noted that "[w]hen the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially

approved religion is plain." [*Engel v. Vitale, 370* U.S. 421], 431. This comment has special force in the public-school context where attendance is mandatory. Justice Frankfurter acknowledged this reality in *Illinois ex rel. McCollum v. Board of Education,* 333 U.S., at 227 (concurring opinion):

> That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and non-conformity is not an outstanding characteristic of children.

Wallace v. Jaffree, 472 U.S. 38, 61 (fn. 51) (1985).[3]

In this case, L.M. is not asking this Court to shield him from exposure to a steady barrage of messages from the school officials that he disbelieves. Rather, he seeks to have his right as a dissenter protected by a far less drastic remedy. He seeks to express his dissent from the school committee's opinions through his right to say, "I disagree."

If this Court's promise of neutrality bars government from creating an orthodoxy on matters of opinion, the protection of the right to dissent should

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[3] Even though the viability of *Jaffree* may be reasonably questioned after the abrogation of *Lemon,* the principle that children should not be coerced would appear to be unquestioned. If *Jaffree* was wrongly decided, its official reversal would likely be on the basis that the mere suggestion of prayer does not constitute coercion. Censoring those who disagree would still be forbidden by the general principles that should endure.

be at the pinnacle of constitutional remedies afforded to dissenters.

The notion that silencing L.M. to protect the sense of identity of transgender students requires a reexamination considering this Court's statements concerning coercion of conscience.

School officials affirm transgender students through multiple lines of communication. Not only are these students told that they are welcome, but they are also told that their views about gender and sexuality are right and those with different beliefs and opinions are wrong. The net effect of the overwhelming affirmation transgender students receive from school officials and supportive students compared to a single student wearing a shirt that says "There are only two genders" skews dramatically in favor of the transgender students.

L.M. also has an identity and a system of beliefs. His sense of identity and self-esteem are equally on the line. Constantly telling him he is wrong and then telling him to take his views elsewhere must have a serious implication for a middle school student. Voicing his dissent allows him some hope of defending his own sense of self-worth.

L.M. is being told day in and day out that his beliefs are not only bigoted, but that he is wrong to believe them. It is beyond question that the school desires L.M. to modify his beliefs—either to change them to the opposite viewpoint, or at least to conclude that his beliefs aren't all that important. He is told that his beliefs belong elsewhere, and that they

cannot be a part of his life at school. His system of beliefs is not something he can shed at the schoolhouse door, nor can the school officials demand that he do so.

Schools don't have to conduct these kinds of campaigns on matters of opinion. They could enact anti-bullying rules and strictly enforce them. A student speaking in opposition to transgender philosophy in that context would raise a very different set of issues.

But this is far from that case. This is a case of a lone student standing in opposition to constant indoctrination on a matter of opinion.

If the doctrine of neutrality protects objecting students from a once-a-year graduation prayer but fails to protect a student like L.M. in securing his right to dissent in the face of a constant campaign, the doctrine of neutrality is a one-way street and little more than a hoax.

Conclusion

For the foregoing reasons, your amicus urges this Court to grant the petition for certiorari and, upon full consideration, reverse the decision below.

Respectfully submitted,

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