No. _____

In the Supreme Court of the United States

M.L., a minor, by his parents and next friends, Akiva and Shani Leiman; AKIVA LEIMAN; SHANI LEIMAN,

Petitioners,

v.

DR. JACK R. SMITH, in his official capacity as Superintendent; MONTGOMERY COUNTY BOARD OF EDUCATION,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Michael J. Eig
Counsel of Record
Meghan M. Probert
Paula A. Rosenstock
MICHAEL J. EIG & ASSOCIATES, P.C.
5454 Wisconsin Avenue
Suite 760
Chevy Chase, MD 20815
(301) 657-1740 (Telephone)
(301) 657-3843 (Facsimile)
Michael.Eig@lawforchildren.com

Counsel for Petitioners

*Gibson*Moore Appellate Services, LLC
206 East Cary Street ♦ Richmond, VA 23219
804-249-7770 ♦ www.gibsonmoore.net

QUESTION PRESENTED

Under the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, *et seq.*, do public school systems have a responsibility to consider a child's cultural and religious background as part of his or her unique, individual circumstances when developing an Individualized Education Program when, without consideration of such circumstances, the child will fail to make the academic and functional progress to which the child is entitled?

LIST OF PARTIES

The petitioners are Akiva and Shani Leiman, appearing in their own right and as parents and next friends of their son, M.L.

The respondents are Dr. Jack R. Smith, Superintendent of the Montgomery County Public Schools, and the Board of Education of Montgomery County, Maryland.

TABLE OF CONTENTS

Page:

TABLE OF AUTHORITIES

Page(s):

Cases:

Statutes:

Other Authorities:

PETITION FOR WRIT OF CERTIORARI

The petitioners – parents of a significantly disabled child – respectfully petition the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit, which ruled that the Individualized Education Program ("IEP") proposed by Montgomery County Public Schools ("MCPS" or "school system) for M.L. provided him a free appropriate public education ("FAPE") by giving him equal access to his education, despite clear evidence that without consideration of his unique religious and cultural circumstances he would not progress.

OPINIONS BELOW

There are three opinions below, culminating in the ruling by the Court of Appeals that is the subject of this petition. In chronological order, they are as follows:

- In 2014, the Administrative Law Judge ("ALJ") denied the parents all relief, finding that the proposed IEP from his local school system did not deny M.L. a FAPE. This unpublished decision is reprinted in the Appendix ("App.") at 46a.

- In 2015, the District Court affirmed the ALJ's decision. This decision is published as *M.L. v. Starr*, 121 F. Supp. 3d 466 (D. Md. 2015). It is reprinted at App. 25a.

- In 2017, the Court of Appeals affirmed the decision of the district court. That decision – the subject of this petition – is published as *M.L. v. Smith*, 867 F. 3d 487 (4th Cir. 2017). It is reprinted at App. 1a.

An unpublished denial of rehearing *en banc* is reprinted at App. 101a.

JURISDICTION

The panel decision of the Court of Appeals was entered on August 14, 2017. The decision of the court of appeals denying the petition for rehearing *en banc* was entered on September 11, 2017. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

This case arises under the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C. § 1400 *et seq*. Reprinted in the Appendix is § 1400, which contains the purpose of the IDEA, as well as § 1414, which contains the definition of an individualized education program, and § 1415, which contains procedural safeguards. App. 103a – 179a.

STATEMENT OF THE CASE

This case involves the educational rights of a disabled child, M.L. As a result of his significant cognitive disability and an inability to generalize across settings, M.L. requires explicit instruction in fundamental life skills throughout his school day, a fact recognized by all parties in this appeal. But M.L. is not the "typical" disabled child living in the general community. He and his family are Orthodox Jews, necessitating specific instruction to prepare him to live in his community. His local school system has refused to incorporate his unique religious and cultural needs into his educational program, despite clear evidence that M.L. will fail to learn much of anything when taught inconsistent skills between home and school. The Court of Appeals has exacerbated the school system's

decision, ignoring the school's responsibility to program for students' unique, individual needs, instead finding that the IDEA contains no explicit requirement to incorporate a student's religion or culture into his IEP. The decision of the Court of Appeals to that effect stands in direct conflict with guidance from this Court.

For the majority of students, the failure to provide explicit instruction aligned with their religious or cultural communities is not a failure to provide an education at all. These students will learn necessary religious and cultural skills outside of the public school setting and generalize between home and school. But, for M.L., the result is a failure to provide him a free appropriate public education and a failure to allow him to freely practice his religion. The Court of Appeals decision cannot stand.

Legal Background

In 1975, Congress passed the first iteration of the IDEA, the Education for All Handicapped Children Act. Seven years later, this Court analyzed that statute for the first time in *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). The Court stressed: "[I]n seeking to provide such access to public education, Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful." *Id.* at 192. Under the IDEA, it has never been enough merely to offer exposure to a general curriculum. That education must be meaningful.

However, in *Rowley*, the Court confined its analysis to the facts before it, a student in a general

education setting advancing from grade to grade, and provided little guidance for disabled students in other settings. *Id.* at 202. The Court did caution, "the determination of when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act presents a more difficult problem." *Id.*

Thirty-five years later, in a decision earlier this year, the Court clarified, rather than discarded, its definition of a FAPE, detailing what a disabled student is entitled to under the IDEA. *Endrew F. v. Douglas County School District RE-1*, 580 U.S. __, 137 S. Ct. 988 (2017). In *Endrew F.*, this Court rejected the Tenth Circuit's limited view of the IDEA, stressing the importance of providing disabled students with educational programs that lead to actual progress. The Court emphasized that an, "IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and *functional* advancement." *Endrew F.*, 137 S. Ct. at 999 (emphasis added). In other words, progress solely in academic subjects, without growth in functional life skills, is insufficient.

In determining what amount of progress one should expect, the Court repeatedly stressed the needs of the actual child, instructing that the IEP must be, "reasonably calculated to enable a child to make progress appropriate *in light of the child's circumstances*" and that the, "educational program must be appropriately ambitious *in light of his circumstances*. *Id.* at 999-1000 (emphasis added). The Court also emphasized that this determination is greatly impacted through parental involvement in the creation of the IEP: "The Act contemplates that

this *fact-intensive* exercise will be informed *not only* by the expertise of school officials, *but also by the input of the child's parents* or guardians." *Id.* (emphasis added).

Factual Background

M.L. has Down Syndrome, resulting in significant delays in many areas. App. 56a. His disability impacts him in functional academics (reading, writing and math), social/emotional behavior, communication, and daily life skills. App. 65a, 67a-68a. As a result of his significant disability, M.L. requires an intensive educational program focusing on teaching him functional life skills that lead towards earning a high school certificate of completion rather than a diploma, a fact recognized by all parties in this appeal. App. 68a, 71a – 72a. Unlike the majority of students who would learn basic functional life skills such as dressing, cooking, and navigating the community by generalizing between home and school without direct instruction during school hours, M.L. cannot generalize these skills. App. 57a.

M.L. and his family practice Orthodox Judaism and live in an Orthodox Jewish community. App. 62a. It is vitally important to M.L.'s parents to have him educated for an Orthodox Jewish lifestyle, as it is a basic tenet of the faith for Orthodox Jewish parents to train their children to follow the same path. *Id.* However, in order to be prepared to live in his Orthodox Jewish community, M.L. needs to learn many different customs and skills, including learning various rules for dressing, eating, and navigating the community unique to an Orthodox Jewish lifestyle. App. 55a, 56a, 66a, 69a, 72a – 79a.

MCPS, M.L.'s local school system, developed an IEP for him on January 9, 2013, proposing placement in its Fundamental Life Skills program ("FLS"). App. 58a, 67a – 68a. By its explicit and detailed terms, the FLS curriculum teaches students functional academics, along with basic life skills such as cooking, self-care, and navigating the community. App. 180a – 235a. The MCPS FLS curriculum recognizes the importance of providing connections to students' lives and real-world experiences in the students' communities. *Id.*

Despite the parents' requests to focus M.L.'s educational program on preparing him to live in *his* community rather than a generic community, MCPS has refused to incorporate the fundamental life skills he needs to live in his Orthodox Jewish community into his IEP. App. 68a – 69a. The result is that not only would M.L. be unable to participate in many fundamental aspects of the FLS curriculum such as cooking or trips in the community, but the record is clear that he would not learn these fundamental life skills without consistent repetition, a fact acknowledged by MCPS with its selection of the FLS curriculum for him.

M.L. attends Sulam, a private special education school housed in a contemporary Orthodox Jewish academy. App. 56a. The school provides mainstreaming opportunities with general education peers in the Jewish academy and offers students a bilingual education in Hebrew and English. M.L. spends two-and-a-half hours with his general education peers each day, including specials such as art and music and morning prayers. He is provided with initial instruction in Orthodox Jewish customs during his religious studies time with a Rabbi, but

the religious concepts are reinforced throughout the day by his special education teacher through culturally relevant examples and trips into the community to practice new skills. For example, M.L. is taught to identify Kosher symbols during his Judaic studies class, but the skill is retaught and reinforced on trips to a store to buy food or in cooking classes. M.L. has made progress at Sulam with the consistent instruction he receives between home and school.

Proceedings Below

1. M.L.'s parents filed a due process complaint challenging the appropriateness of the MCPS IEP in July 2013, and seeking reimbursement for the secular portion of M.L.'s tuition at Sulam. App. 46a – 47a. They maintained that, without consistent instruction across home, school, and community settings, M.L. would not make meaningful educational progress or learn the skills he needs to be a member of his community. App. 72a. The ALJ determined that nothing in the IDEA requires MCPS to prepare M.L. for life in his Orthodox Jewish community and that the absence of IEP goals addressing his religious and cultural needs did not render the MCPS IEP inappropriate. App. 97a. The ALJ found Sulam to provide a "proper education" for M.L. based upon his review of the record and the testimony from the parents' witnesses. App. 97a – 98a.

2. The parents appealed the ALJ's decision to the United States District Court for the District of Maryland, basing jurisdiction on the IDEA, 20 U.S.C. §§ 1400 *et seq*.; the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794; 42 U.S.C. § 1983

("Section 1983"); and 28 U.S.C. §§ 1331 and 1343. App. 25a. The district court agreed with the ALJ, summarizing the key issue as whether the MCPS IEP provides M.L. a FAPE when it does not account for his individual religious and cultural needs. App. 41a. The Court found that the MCPS IEP was written to confer educational benefit on M.L. as required by the IDEA. App. 45a.

3. M.L.'s parents appealed to the United States Court of Appeals for the Fourth Circuit, which affirmed the District Court's decision. App. 1a – 24a. The Court of Appeals found that the IDEA places no requirement on schools to provide religious or cultural instruction and that students' individual needs must only be addressed to provide access to the general curriculum. App. 17a – 18a. The Court concluded that MCPS provided M.L. with equal access to education and has no duty to provide religious or cultural instruction. App. 23a – 24a. The Court specifically determined that it did not need to consider how *Endrew F.* or Establishment Clause cases impact its decision. App. 24a.

4. Following the panel decision, the Court of Appeals denied a petition for rehearing *en banc*. App. 101a.

REASONS WHY THE WRIT SHOULD BE GRANTED

The decision by the Court of Appeals denies M.L. and his family the ability to receive special education services from their local school system and practice their religion; it is in direct conflict with guidance from this Court.

I. THE FOURTH CIRCUIT'S DECISION IS IN DIRECT CONFLICT WITH A NUMBER OF CASES FROM THIS COURT.

A. The Decision is in Conflict with Guidance Regarding Disabled Children's Right to a Free Appropriate Public Education Under the IDEA.

Earlier this year, this Court considered the level of educational benefit required under the IDEA in order to provide students a free appropriate public education. In *Endrew F. v. Douglas County School District RE-1,* 580 U.S. __, 137 S. Ct. 988 (2017), the Court stressed the importance of considering a student's unique circumstances and providing students with IEPs leading to actual progress. The decision considers issues at the heart of the IDEA – how much educational benefit can parents expect school systems to provide disabled children. It is relevant to all students like M.L. who qualify to receive special education services under the IDEA.

Acknowledging *Endrew F.*'s importance to M.L.'s case, on January 23, 2017, the Fourth Circuit granted the parents' request to place the case in abeyance pending the outcome of *Endrew F.* App. 10a. After *Endrew F.* was decided, the Court ordered the parties to submit supplemental briefs addressing its impact on M.L.'s case. *Id.* Yet, despite the supplemental briefing and this Court's clear guidance, the Fourth Circuit's decision conflicts with *Endrew F.*

Endrew F. stresses the importance of considering a student's unique circumstances when crafting his or her educational program. *Endrew F.*, 137 S. Ct. at 999. This Court rejected the Tenth Circuit's

limited view of the IDEA, stressing the importance of providing disabled students with educational programs that lead to actual progress. The Court emphasized that an, "IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement." *Id.* The Court clarifies that, "a substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act." *Id.* In determining what amount of progress one should expect, the Court repeatedly stresses the needs of the actual child, instructing that the IEP must be, "reasonably calculated to enable a child to make progress appropriate *in light of the child's circumstances*" and that the, "educational program must be appropriately ambitious in light of his circumstances. *Id*. at 999-1000 (emphasis added).

The decision of the Court of Appeals cannot be reconciled with *Endrew F.* The central issues in M.L.'s case are, (1) what level of educational benefit his parents can expect from his local school system when developing his IEP, and (2) to what extent does the school system have to incorporate his individual circumstances into his IEP. As a significantly cognitively disabled student being raised in the Orthodox Jewish community, M.L.'s unique, individual circumstances are key to his education. *Endrew F.'s* "meaningful educational progress" cannot be achieved and retained if fundamental life skills in school are inconsistent with what M.L. must learn to function in his home and community. In fact, under that scenario, there will be no meaningful progress.

The Court of Appeals concluded that it did not need to consider the impact of *Endrew F.* because the IDEA does not provide the remedy sought by the parents. App. 17a. Despite this Court's guidance surrounding the importance of considering a student's individual needs, the Court of Appeals concluded that nothing in the IDEA requires school systems to develop what it termed a religious or cultural curriculum. App. 17a – 18a.

Without intervention by this Court, students like M.L. requiring explicit instruction of fundamental life skills and with unique circumstances necessitating instruction for their particular community will not receive a FAPE from their local school systems. Their individual needs will not be addressed and they will not make *progress meaningful to them*.

B. The Decision Conflicts with Cases Involving Special Education, Religion, and the Establishment Clause.

Over many years, this Court has confirmed that local educational agencies must accommodate access to the general education curriculum even when students attend religious schools and that there is no violation of the First Amendment when providing special education services to students in parochial schools. The Court has addressed the intersection of a student's need for special education services and the student's family's desire to provide the student with religious instruction in a nonpublic school. The current case is in direct conflict with the holdings in three cases from this Court: *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993), *Agostini v. Felton*, 521 U.S. 203 (1997), and *Board of Educ. of*

Kiryas Joel Village School Dist. v. Grumet, 512 U.S. 687 (1994).

In *Zobrest,* the Court held that the Establishment Clause does not prevent a school system from providing a deaf student with a full-time sign-language interpreter – under the IDEA – at a Catholic high school. *Zobrest*, 509 U.S. at 3. The student had been provided with an interpreter when he attended a public school for sixth through eighth grades, before being enrolled by his parents in a Catholic high school for religious reasons, beginning in ninth grade. *Id.* at 4. What was critical to the Court was:

> the service at issue in this case is part of a general government program that distributes benefits neutrally to any child qualifying as 'disabled' under the IDEA, without regard to the 'sectarian-nonsectarian, or public-nonpublic nature' of the school the child attends. By according parents freedom to select a school of their choice, the statute ensures that a government-paid interpreter will be present in a sectarian school only as a result of the private decision of the individual parents. In other words, because the IDEA created no financial incentive for parents to choose a sectarian school, an interpreter's presence there cannot be attributed to state decisionmaking.

Id. at 10. The Court stressed that the IDEA created a neutral government program dispensing aid not to schools, but to *individual disabled children*. *Id.* at 13. Therefore, the Establishment Clause would not

prevent a school district from furnishing a student enrolled in a private, sectarian school with a sign-language interpreter at the school in order to enable his education. *Id.* at 13-14.

In *Kiryas Joel*, the Court considered the constitutionality of a state statute creating a separate school district for the village of Kiryas Joel in New York, a religious enclave of Satmar Hasidim, practitioners of a strict form of Judaism. *Kiryas Joel,* 512 U.S. at 690. The Court held that the statute, which followed village lines and excluded all but its practitioners, violated the Establishment Clause of the First Amendment. *Id.* at 709-710. However, the Court emphasized that, although enacted improperly in the case before it, the Constitution does allow the State to accommodate religious needs by alleviating special burdens:

> Our cases leave no doubt that in commanding neutrality the Religion Clauses do not require the government to be oblivious to the impositions that legitimate exercises of state power may place on religious belief and practice. Rather, there is "ample room under the Establishment Clause for 'benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.'"

Id. at 705.

The Court continued, "government may (and sometimes must) accommodate religious practices and . . . may do so without violating the Establishment Clause." *Id.* at 705-6. Of particular relevance here, the Court identified numerous alternatives for providing bilingual and bicultural

special education to Satmar children, other than setting up a public school district for them:

> their children may receive bilingual and bicultural instruction at a public school already run by the Monroe-Woodbury district. Or if the educationally appropriate offering by Monroe-Woodbury should turn out to be a separate program of bilingual and bicultural education at a neutral site near one of the village's parochial schools, this Court has already made it clear that no Establishment Clause difficulty would inhere in such a scheme, administered in accordance with neutral principles that would not necessarily confine special treatment to Satmars.

Id. at 707.

Finally, in *Agostini*, the Supreme Court reversed its earlier decision in *Aguilar v. Felton,* 473 U.S. 402 (1985), which had held that the Establishment Clause barred the city of New York from sending public school teachers into parochial schools to provide remedial Title I education to disadvantaged children. *Agostini*, 521 U.S. at 208-9. The Court recognized that, while it continued to rely upon the same principles to evaluate whether government aid violated the Establishment Clause, such as asking whether the government acted with the purpose of advancing or inhibiting religion, its understanding of the criteria used to assess whether aid to religion has an impermissible effect had changed since its earlier decisions. *Id.* at 222-3.

The Court described that it had modified its approach in two significant respects, both quite

important here. First, the Court noted that it had abandoned the presumption, "that the placement of public employees on parochial school grounds inevitably results in the impermissible effect of state-sponsored indoctrination or constitutes a symbolic union between government and religion." *Id.* at 223. Second, the Court noted that it had departed from the rule that, "all government aid that directly assists the educational function of religious schools is invalid." *Id.* at 225.

In *Agostini*, as in *Zobrest* or the hypothetical alternatives in *Kiryas Joel*, there was no incentive for religious institutions because the aid was provided on the basis of neutral, secular criteria that neither favored nor disfavored religion. The aid was made available to both religious and secular beneficiaries on a nondiscriminatory basis. *Agostini*, 521 U.S. at 231. The Court concluded that, "under such circumstances, the aid is less likely to have the effect of advancing religion." *Id.* Rather, it was there to enable the students to access curriculum, precisely what M.L.'s parents have continued to seek.

Without this Court's intervention, M.L. and other significantly disabled children and their families will be forced to choose between their religious beliefs and their right to receive special education services. Despite its assertion that the IDEA only requires that school systems consider a student's unique needs, the Fourth Circuit's decision draws a blanket conclusion that, because the IDEA does not specifically require schools to provide religious or cultural instruction, MCPS did not have to do so for M.L. The Court failed to consider these cases because it had determined that MCPS provided M.L.

a FAPE. App. 24a. Clearly, the spirit, if not the letter, of this line of cases envisions exactly what M.L.'s parents seek here: permitting parents to make educational choices consistent with their First Amendment rights while protecting their child's right to a FAPE. Further, the only reason voiced by MCPS for denying the educational program sought by M.L.'s parents is because of the religious aspects they sought to be incorporated into his program. This is precisely the issue in the Establishment Clause cases and should not have been ignored by the Court of Appeals. This Court should intervene.

C. The Decision is in Conflict with Recent Guidance Regarding the Free Exercise Clause.

A recent decision by this Court involving the free exercise clause also appears to be in direct conflict with M.L.'s case. In *Trinity Lutheran Church v. Comer,* 582 U.S. __ , 137 S. Ct. 2012 (June 26, 2017), this Court considered the question of whether the exclusion of a church from an otherwise neutral and secular government aid program violates the Free Exercise Clause of the First Amendment. The Court held that the State's policy violated the rights of the church, explaining,

> the Department's policy puts Trinity Lutheran to a choice: It may participate in an otherwise available benefit program or remain a religious institution. Of course, Trinity Lutheran is free to continue operating as a church . . . . But that freedom comes at the cost of automatic and absolute exclusion from the benefits of a public program for which the Center is otherwise fully qualified.

Id. at 2021-2. The Court further instructed, "Trinity Lutheran is not claiming any entitlement to a subsidy. It instead asserts a right to participate in a government benefit program without having to disavow its religious character." *Id.* at 2022.

M.L.'s case has consistently been presented as a conflict over the IDEA and whether he would receive meaningful educational benefit under the proposed educational program and placement by MCPS. However, the practical result of the school system's policy to fail to include M.L.'s unique religious and cultural needs in its IEP would be that M.L. and his family will be forced to choose between their religion and receiving public education services. In order to participate in receiving special education services under the IDEA from their local public school system, the family would be forced to give up their ethical obligation to prepare M.L. to live in his religious and cultural community. Without direct instruction consistent with the religious principles of his life, M.L. will fail to make educational progress, instead unlearning and re-learning skills between the home and school settings.

As Chief Justice Roberts observed in *Trinity Lutheran*, disqualifying anyone from rights to which others are entitled solely on account of that person's religious faith, "is odious to our Constitution." *Id.* at 2025. Without intervention by this Court, M.L. and his parents will be forced to give up either the otherwise available benefit program under the IDEA or the practice of their religion.

II. THE CONSIDERATION OF RELIGIOUS AND CULTURAL NEEDS IN CONSIDERING THE APPROPRIATNESS OF AN EDUCATIONAL PROGRAM IN IDEA CASES IS AN IMPORTANT ISSUE THAT THIS COURT SHOULD DECIDE.

Families like M.L.'s are faced with the difficult task of choosing between the right to receive special education services under the IDEA for their disabled children and the freedom to fully practice their religion, including raising their children to live in their religious and cultural community. The program proposed by MCPS does not allow M.L. and his family to do both. Other families with significantly disabled children requiring explicit instruction in functional life skills throughout the school day would be faced with a similar dilemma, whether it be for their religious beliefs, cultural circumstances, or some other situation.

However, despite being of exceptional importance, M.L.'s inability to generalize skills across home and school settings, and thus the need for direct instruction in functional life skills during the school day, only applies to a small number of disabled students. There are nearly six million students in the United States receiving services under the IDEA. U.S. Department of Education, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, *38th Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2016*, Washington, D.C. 2016; *https://www2.ed.gov/about/reports/annual/osep/2016/parts-b-c/38th-arc-for-idea.pdf*; Exhibit 18.

And, of those students receiving services, seven percent receive services under the classification of Intellectual Disabilities. *Id.* at Exhibit 20. The need for direct instruction in functional life skills in accordance with unique religious and cultural circumstances is an even smaller percentage of that population. Yet, despite these small numbers, the issue is one of fundamental importance, involving two deep-seated rights in this country, the right of disabled children to receive an appropriate education and the right to practice the religion of one's choice. With the decision of the Court of Appeals, M.L. must either accept the MCPS offer of "FAPE," and forego learning the skills he needs to be a member of his community, or choose to practice his religion, thereby giving up his right to a FAPE.

Further, as demonstrated above, this Court regularly grants review in cases involving the IDEA and religious liberties under the First Amendment, both as separate issues and when a direct conflict arises. *See also Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005); *Cedar Rapids Cmty. Sch. Dist. v. Garret F.*, 526 U.S. 66 (1999); *Honig v. Doe*, 484 U.S. 305 (1988); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009); *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993); *Burlington Sch. Comm. v. Dep't of Educ.*, 471 U.S. 359 (1985).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

/s/

Michael J. Eig*
Meghan M. Probert
Paula A. Rosenstock
Michael J. Eig and Associates, P.C.
5454 Wisconsin Avenue
Suite 760
Chevy Chase, MD 20815
(301) 657-1740
Michael.Eig@lawforchildren.com
*Counsel of Record

Counsel for Petitioners