No. _____

In the
Supreme Court of the United States

CALEIGH WOOD,
Petitioner,

v.

EVELYN ARNOLD; SHANNON MORRIS,
Respondents.

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

For the past several decades, courts have struggled to determine when public schools may permissively teach about religion and when public schools cross the line and offend the First Amendment. In the decision below, the Fourth Circuit held that a public school may require students to write and declare the existence of a particular god and to recite prayer in written format. The Fourth Circuit reached this conclusion due to the public school's assertion that requiring the religious practices bore a pedagogical basis. The questions presented are:

1. Whether the Establishment Clause permits a public school to make preferential statements about one religion over another under *Lemon v. Kurtzman*, 403 U.S. 602 (1971)?

2. Whether a public school may require a student to assert religious beliefs and recount a prayer that offends the student's religious convictions as part of a homework assignment?

PARTIES TO THE PROCEEDING

Petitioner is Caleigh Wood, who was plaintiff in the courts below. Respondents are Evelyn Arnold and Shannon Morris of the Charles County Public Schools, who were defendants in the courts below.

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The Fourth Circuit panel's decision appears at 915 F.3d 308 and is reproduced at Pet. App. 1a. The District Court's decision appears at 321 F.Supp.3d 565 and is reproduced at Pet. App. 20a.

JURISDICTION

The Fourth Circuit's order granting summary judgment to Respondents Evelyn Arnold and Shannon Morris was entered on February 11, 2019. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. 1.

INTRODUCTION

Decades ago, this Court famously stated,

> 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.

W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943). However, First Amendment jurisprudence, as

applied by the lower courts, has substantially departed from this eloquent dictate. This celebrated quotation from *Barnette* presupposes that public schools support debate, diverse viewpoints, and accept limitations on what they require students do and say. More and more, this presupposition bears less relation to the actual state of the nation's classrooms. This case exemplifies this reality.

Hollow from the freedoms discussed in *Barnette* and *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969), the Fourth Circuit upheld the ability for Respondents to denigrate Petitioner Caleigh Wood's faith and require her to write out statements and prayers contradictory to her own religious beliefs. The Court should grant this petition for writ of certiorari because the Fourth Circuit's opinion abrades the rights granted to students under the First Amendment and compounds the confusion and misapplication of the Establishment Clause and compelled speech doctrine in the public-school setting.

STATEMENT OF THE CASE

A. Factual History

The facts in this case are not in dispute. Petitioner Caleigh Wood is a Christian. Pet. App. 4a-7a. During the 2014-2015 school year, Ms. Wood was a junior at La Plata High School, a public high school in Charles County, Maryland. Pet. App. 3a. To fulfill a requirement for graduation, Petitioner enrolled in World History. Pet. App. 3-4a. As part of the history class, Respondents required Ms. Wood to complete a section on the Muslim World in which she encountered

the religion of Islam. Pet. App. 4a. To teach the unit, Respondents used a PowerPoint slide to describe the Muslim faith. *Id.* One of the slides taught the students that "Most Muslim's [sic] faith is stronger than the average Christian." *Id.*, *see also* Pet. App. 72a. Upon reviewing the controversial material, the content specialist for Charles County, Jack Tuttle, testified that this statement denigrating Christianity was "inappropriate" and that teachers should not be forwarding this statement. Pet. App. 4a.

In addition, Ms. Wood was required to profess in writing that "There is no god but Allah and Muhammad is the messenger of Allah." Pet. App. 4-5a. This statement is known as the *shahada*. Pet. App. 5a. The *shahada* is the Islamic conversion creed, the declaration a person recites to convert to Islam and then prays and repeats during the Muslim call to prayer. *Id.*, Pet. App. 65a-66a; *see also* The Religion of Islam, The First Pillar of Islam: The Muslim Profession of Faith, https://www.islamreligion.com/articles/193/first-pillar-of-islam/ (last visited May 10, 2019).

Writing this statement that "[t]here is no god but Allah" and that "Muhammad is god's messenger," violated Ms. Wood's Christian convictions. Pet. App. 5a. Ms. Wood sincerely believes that it is a sin to profess, by word or in writing, that there is any other god except the Christian God. Pet. App. 5a-7a, *see also* Pet. App. 4a-7a, 55a-58a.

Respondents also characterized the religion of Islam to students differently than they characterized the religion of Christianity. Pet. App. 63a-64a. Respondents taught Islamic principles as if they were

true facts, while Christian principles were treated as mere beliefs. *Id*. For example, Ms. Wood and her classmates were instructed that the "Qur'an *is* the word of Allah as revealed to Muhammad in the same way that Jews and Christians *believe* the Torah and Gospels were revealed to Moses and the New Testament writers." Pet. App. 5a-7a, 63a-66a (emphasis added). Respondents subjected Ms. Wood to this promotional instruction in Islam, and also refused to grant her an opt out or alternative assignment when Ms. Wood, holding fast to her Christian beliefs, refused to write that the Muslim god is the only god. Pet. App. 5a, 23a, 55a-62a.

B. Relevant Procedural History

Ms. Wood sued Respondents alleging two arguments: first, that Respondents violated the Establishment Clause of the First Amendment by "impermissibly endors[ing] and advance[ing] the Islamic religion." Pet. App. 5a. Second, Ms. Wood alleged that Respondents violated the Free Speech Clause of the First Amendment by requiring her to complete the *shahada* and "depriv[ing] [her] of her right to be free from government compelled speech." Pet. App. 5a-6a. Both the district court and the Fourth Circuit found in favor of the Respondents, granting Respondents' motion for summary judgment. Pet. App. 6a.

The Fourth Circuit held that Respondents' mandatory religious assignments and teachings did not violate the Establishment Clause under the three-prong test set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Pet. App. 7a. The Fourth Circuit found

that Respondents' actions were 1) driven in part by a secular purpose, 2) had the primary effect that neither advanced nor inhibited religion, and 3) did not excessively entangle Church and State. Pet. App. 7a (quoting *Moss v. Spartanburg Cty. Sch. Dist. 7*, 683 F.3d 599, 608 (4th Cir. 2012) (citing *Lemon*, 403 U.S. at 612-13)). The Fourth Circuit opined that "[s]chool authorities, not the courts, are charged with the responsibility of deciding what speech is appropriate in the classroom." Pet. App. 9a-10a (citing *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 267 (1988); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986)). And the Fourth Circuit stressed the importance of examining statements in context and found that the Respondents' proffered reason for forwarding the religious teachings and assignments, for the "secular purpose of teaching about Muslim empires in the context of world history," was not pretextual. Pet. App. 8a-11a.

The Fourth Circuit opined that a reasonable observer would not view the Respondents' mandatory religious assignments as an endorsement of religion. Pet. App. 13a-14a. The Fourth Circuit held

> This is not a case in which students were being asked to participate in a daily religious exercise, *see Lee v. Weisman*, 505 U.S. 577, 598-99 (1992) (holding that requiring students to stand for graduation prayer constituted compelled participation in religious ritual); *Engel v. Vitale*, 370 U.S. 421, 424-25 (1962) (striking down state-sponsored prayer due to the inherently religious nature of prayer), or a case in which Islamic

> beliefs were posted on a classroom wall without explanation, *see Stone v. Graham*, 449 U.S. 39, 41-42 (1980) (holding that posting the Ten Commandments on a public school classroom wall violated the Establishment Clause). Rather, the challenged materials were "integrated into the school curriculum" and were directly relevant to the secular lessons being taught. *Stone*, 449 U.S. at 41-42.

Pet. App. 14a. The Fourth Circuit found Ms. Wood's belief that the religious assignments offended her Christian convictions and caused her to act outside her sincerely held religious beliefs "unavailing." Pet. App. 14a-15a at n.4. The Fourth Circuit found the statements of the Charles County school officials finding the Respondents' religious teachings "inappropriate" to also be "unavailing." *Id.*

The Fourth Circuit also ruled in Respondents' favor as to Ms. Wood's compelled speech claim. The Fourth Circuit stated that "First Amendment jurisprudence recognizes that the educational process itself may sometimes require a state actor to force a student to speak when the student would rather refrain." Pet. App. 18a (quoting *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 187 (3d Cir. 2005)). The Fourth Circuit minimized the impact of writing out prayers and statements that offend one's religious beliefs, and concluded that the *shahada* assignment did not violate Ms. Wood's right to be free from government compelled speech in the public-school setting. Ms. Wood timely petitions this Court to review her important First Amendment claims.

REASONS FOR GRANTING THE PETITION

Petitioner requests that this Court grant the petition to resolve: 1) how the *Lemon* test should be applied to Establishment Clause violations in the public-school setting, and 2) how the compelled speech doctrine should be applied to a statement of faith when the public school is asserting a pedagogical basis for requiring the statement. Both issues are unsettled questions of law requiring clarification from this Court.

I. THE FOURTH CIRCUIT'S DECISION PERTAINING TO THE ESTABLISHMENT CLAUSE CONFLICTS WITH PRECEDENT OF THIS COURT

Petitioner's Establishment Clause claim centers around two issues: 1) Respondents teaching that "Most Muslim's [sic] faith is stronger than the average Christian," Pet. App. 4a, 72a, and 2) Respondents requiring Ms. Wood, a Christian, to profess in writing that "There is no god but Allah and Muhammad is the messenger of Allah," a prayer known as the *shahada*, Pet. App. 4-5a. The Fourth Circuit held that Respondents did not violate the Establishment Clause by requiring Petitioner be subjected to these teachings and assignments. However, the Fourth Circuit's opinion runs afoul to this Court's holdings in *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844 (2005); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203 (1963); and *Lee v. Weisman*, 505 U.S. 577 (1992).

This Court has held that the pinnacle characteristics of an Establishment Clause violation are the absence of neutrality and coerced engagement in religious exercise. This is not to say that government institutions must be void of religion entirely, but institutions, such as the public schools, must not disparage a student's faith or require students to engage in prayer or religious exercises contrary to a student's deeply held religious convictions. On the subject of religion, the public schools are supposed to be "neutral, and, while protecting all, it prefers none, and it disparages none." *Schempp*, 374 U.S. at 215; *see also McCreary*, 545 U.S. at 860 ("the touchstone for Establishment Clause challenges remains 'the principle that the First Amendment mandates government neutrality between religion and religion, and between religion and nonreligion.'").

This Court has set forth a three-prong test to analyze Establishment Clause claims. *Lemon*, 403 U.S. 602. Under the *Lemon* test, "a government practice violates the Establishment Clause if it (1) lacks a legitimate secular purpose; (2) has the primary effect of advancing or inhibiting religion; or (3) fosters an excessive entanglement with religion." *Lemon*, 403 U.S. at 612–13.

This Court has advanced two other approaches by which an Establishment Clause violation is analyzed. First, in what may simply be an alternate way of framing the second *Lemon* prong, a governmental practice violates the Establishment Clause if it has "'the effect of communicating a message of government

endorsement or disapproval of religion.'" *Lynch v. Donnelly*, 465 U.S. 668, 692 (1984) (O'Connor, J., concurring)); *see also Cty. of Allegheny v. ACLU, Greater Pittsburgh Chapter*, 492 U.S. 573, 592–93 (1989). Under that test, the Court analyzes the totality of the circumstances to determine whether a reasonable person would believe that the alleged violation amounts to an endorsement of religion. *See, e.g.*, *Stone v. Graham,* 449 U.S. 39 (1980).

Second, a governmental practice violates the Establishment Clause if it "applie[s] coercive pressure on an individual to support or participate in religion." *Santa Fe Indep. Sch. Dist.,* 530 U.S. 290; *Lee*, 505 U.S. 577. Though it is not clear whether or where this test belongs in the *Lemon* test, it is evident that if the state "coerce[s] anyone to support or participate in religion or its exercise," an Establishment Clause violation has occurred." *Lee*, 505 U.S. at 587.

Where impressionable youths are involved, this Court has forwarded a stricter application of the Establishment Clause. *See, e.g., Lee*, 505 U.S. 577 ("[T]here are heightened concerns with protecting freedom of conscience from subtle coercive pressure in schools."); *Edwards v. Aguillard,* 482 U.S. 578 (1987) ("The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools."); *Schempp*, 374 U.S. 203 (Goldberg, J., concurring) ("The pervasive religiosity and direct governmental involvement inhering in the prescription of prayer and Bible reading in the public schools, during and as part of the curricular day, involving young impressionable

children whose school attendance is statutorily compelled, and utilizing the prestige, power, and influence of school administration, staff, and authority, cannot realistically be termed simply accommodation, and must fall within the interdiction of the First Amendment."); *Board of Ed. of Westside Community Schools v. Mergens*, 496 U.S. 226, 261–62 (1990) (Kennedy, J., concurring) ("The inquiry with respect to coercion must be whether the government imposes pressure upon a student to participate in a religious activity. This inquiry, of course, must be undertaken with sensitivity to the special circumstances that exist in a secondary school where the line between voluntary and coerced participation may be difficult to draw."). Thus, while the Supreme Court has upheld the opening of legislative sessions with prayer, *Town of Greece, N.Y. v. Galloway*, 572 U.S. 565 (2014), it has declared unconstitutional the opening of school sessions with prayer. *Engel v. Vitale*, 370 U.S. 421(1962). Likewise, whereas the Supreme Court upheld the constitutionality of the creche and menorah displays in *Lynch* and *Allegheny*, the Court also noted that it would have a different case if the displays arose in the school setting. *See, e.g., Allegheny,* 492 U.S. at 620 n.69 ("This is not to say that the combined display of a Christmas tree and a menorah is constitutional wherever it may be located on government property. For example, when located in a public school, such a display might raise additional constitutional considerations. *See Aguillard*, 482 U.S. at 583–584 ("Establishment Clause must be applied with special sensitivity in the public-school context."); *see also Stone,* 449 U.S. at 42 (citing *Schempp*, 374 U.S. 203, and *Engel,* 370 U.S. 421). It appears from this Court's

analysis that context is critical, and the courts heed attention to the receptivity of schoolchildren to school-endorsed messages. As such, this Court seems to envisage that the lower courts apply a heightened standard for coercion in the public-school context. This did not occur below.

The Fourth Circuit determined that teaching "Most Muslim's [sic] faith is stronger than the average Christian" and requiring students to recount and write out prayer did not violate the Establishment Clause because both generally targeted pedagogical goals. The lower court, however, failed to articulate what those specific goals might be and how appropriate such religious activities are for schoolchildren in a public-school setting. Surely, a statement denigrating the strength of Christians in their faith serves no secular goals. And the Fourth Circuit even noted in its opinion that a representative of the Charles County School District admitted such. Pet. App. 4a ("use of the comparative faith statement was inappropriate").

The Fourth Circuit also gave short shrift to Ms. Wood's concerns that recounting prayer of a different faith than her own and writing, even in fill in the blank form, violated her religious conscience. This conflicts with this Court's history of treating such engagements with such religious texts and prayer, especially in the public-school context, with great scrutiny. The nature of the *shahada* is patently religious. Engagement in this prayer is, by its nature, non-secular as it is the conversion creed of the Muslim faith. Requiring a student to engage and recount this prayer, contrary to the student's deeply held religious beliefs, conflicts

with this Court's precedent. *See Stone,* 449 U.S. at 42 (holding that the posting of the Ten Commandments on the school wall violated the Establishment Clause and stating that if "the posted copies of the Ten Commandments [were] to have any effect at all, it [would] be to induce the schoolchildren to read, meditate upon, perhaps to venerate and obey, the Commandments."); *Abington,* 374 U.S., at 223–224 (holding that required Bible study in public schools was patently religious and therefore violated the Establishment Clause). The religious nature of the school's teachings and required assignment yield an even higher level of government coercion due to the fact the Respondents required the completion of these religious activities without an option of an alternative assignment or an accommodation. This Court should grant Ms. Wood's petition to clarify the proper application of the *Lemon* test, and whether the factors ignored by the Fourth Circuit are required under this Court's precedent.[1]

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[1] Arguably, the nation's Establish Clause jurisprudence is one of the most ununiformed, unpredictable, and misapplied constitutional analysis. As Justice Thomas has noted, the Court's Establishment Clause jurisprudence "has confounded the lower courts and rendered the constitutionality of displays of religious imagery on government property anyone's guess." *Utah Highway Patrol Ass'n v. Am. Atheists, Inc.*, 132 S. Ct. 12, 13 (2011) (Thomas, J., dissenting). Justice Scalia once noted that "[a]s bad as the *Lemon* test is, it is worse for the fact that, since its inception, its seemingly simple mandates have been manipulated to fit whatever the Court aimed to achieve." *McCreary*, 545 U.S. at 900 (Scalia, J., dissenting). There is a great need for this Court to clarify how lower courts should properly apply the *Lemon* test in the public-school setting.

II. THE FOURTH CIRCUIT'S DECISION PERTAINING TO THE COMPELLED SPEECH DOCTRINE CONFLICTS WITH PRECEDENT OF THIS COURT

The Fourth Circuit's holding requires a student to write out statements of faith contrary to the student's sincerely held religious beliefs. The Fourth Circuit ruled that such compelled speech was allowed under the First Amendment because Respondents espoused a pedagogical basis for their requirement and that written completion of the faith statements was *de minimis* because the student need only complete a fill in the blank worksheet. Such a holding, generally, is a departure from this previous Court's holdings. *Barnette*, 319 U.S. at 642; *see also Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1745 (2018) (Thomas, J., concurring in part and concurring in the judgment) ("States cannot put individuals to the choice of being compelled to affirm someone else's belief or being forced to speak when they would prefer to remain silent.") (citation and internal quotation marks omitted). Thus, "[i]n general, '[l]aws that compel speakers to utter or distribute speech bearing a particular message are subject to . . . rigorous scrutiny.'" *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor of Balt.*, 879 F.3d 101, 107-08 (4th Cir. 2018) (quoting *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 642 (1994)).

Inherent in the importance of the compelled speech doctrine is that the First Amendment can prevent a government actor from compelling an individual to express a certain view. *See Barnette*, 319 U.S. at 624

(holding that First Amendment rights are violated when a public school official infringes upon a student's "freedom of mind" or conscience). In *Tinker*, this Court stated that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker*, 393 U.S. at 506. However, *Tinker* is considered "the 'high water mark' of student speech rights" and "with every subsequent student-speech decision, the Supreme Court has 'expanded the kinds of speech schools can regulate.' Indeed, the rights announced in *Tinker* do not extend to several broad categories of student speech: 'lewd, indecent, or offensive' speech; school-sponsored speech; and speech 'that a reasonable observer would interpret as advocating illegal drug use.'" *Morgan v. Swanson*, 659 F.3d 359, 374–75 (5th Cir. 2011) (*en banc*) (internal citations omitted). Public-school students do not necessarily enjoy free speech rights that are coextensive with those of adults in other settings. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988). Schools enjoy far greater latitude to regulate student speech that fairly occurs as part of the school curriculum so long as the school's actions are reasonably related to legitimate pedagogical concerns. However, there is a conflict in the law when a school compels speech as part of its curriculum that would otherwise be impermissible under *Barnette*, such as compelled religious statements, compelled prayer, and national pledges. One Court described *Hazelwood* as "grossly insufficient regarding a school's compulsion of affirmative expression." *Brinsdon v. McAllen Indep. Sch. Dist.*, No. 7:13-CV-93, 2014 WL 12677688, at *9 (S.D. Tex. Aug. 11, 2014), *aff'd*, 863 F.3d 338 (5th Cir. 2017). The Fifth, Sixth, Ninth, and Tenth Circuits

have all struggled to apply *Hazelwood* to compelled speech in the public-school context. *Id.*, *Settle v. Dickson County Sch. Bd.,* 53 F.3d 152 (6th Cir.1995), *Brown v. Li*, 308 F.3d 939, 953 (9th Cir. 2002); *Axson–Flynn v. Johnson*, 356 F.3d 1277, 1291–92 (10th Cir. 2004).

In *Axson-Flynn*, the Tenth Circuit reversed the District Court's dismissal of a student's compelled speech claim. *Axson–Flynn,* 356 F.3d 1277. The Plaintiff, a theater student, objected to reciting lines that offended her religious convictions. *Id*. at 1283. The school would not alter its requirement that the Plaintiff recite the original script that contained offensive language. *Id*. at 1282. Plaintiff brought a First Amendment claim arguing that the school violated her First Amendment right to be free from compelled speech. *Id*. at 1283. The Tenth Circuit remanded Plaintiff's claim, finding that limits exist to the appellate court's blanket acceptance of a school's asserted pedagogical wisdom. *Id*. at 1293. The Tenth Circuit held that when the school departs from accepted academic norms or fails to demonstrate professional judgment, the court "may override the educator's judgment." *Id*. In contrast, the Fifth Circuit upheld a school's compulsion of a pledge of allegiance to a foreign country, finding that compelling the pledge of allegiance as a graded assignment bore pedagogical legitimacy, despite the Plaintiff's objections based upon *Barnette*. *Brinsdon*, 863 F.3d 338. The implementation

of *Hazelwood* has caused division in the lowers courts and clarity is needed.[2]

CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari to the Fourth Circuit.

Respectfully submitted,

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[2] There is also substantial confusion in the lower court as to whether *Hazelwood* permits educators to engage in viewpoint discrimination. *See*, e.g., 2 RODNEY A. SMOLLA, SMOLLA & NIMMER ON FREEDOM OF SPEECH, § 7:14.50 (Westlaw current through March 2011) ("There is a division among courts as to whether the . . . deferential First Amendment standard articulated in *Hazelwood* is nonetheless trumped and displaced by the First Amendment norm heavily disfavoring viewpoint discrimination."); *Chiras v. Miller*, 432 F.3d 606, 615 (5th Cir.2005); *Fleming v. Jefferson Cty. Sch. Dist. R-1*, 298 F.3d 918, 928 (10th Cir. 2002) ("*Hazelwood* does not require educators' restrictions on school-sponsored speech to be viewpoint neutral."); *Ward v. Hickey*, 996 F.2d 448, 454 (1st Cir.1993) ("[T]he Court in [*Hazelwood*] did not require that school regulation of school-sponsored speech to be viewpoint neutral."); *Searcey v. Harris*, 888 F.2d 1314, 1319 n. 7 (11th Cir. 1989) ("[T]here is no indication that the [*Hazelwood*] Court intended to drastically rewrite First Amendment law to allow a school official to discriminate based on a speaker's views.").