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

AMICUS BRIEF OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS[1]

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of religious liberty and parental rights. The ACLJ has appeared before this Court in many cases advocating for religious liberty, as counsel for a party, *e.g., Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); *Locke v. Davey*, 540 U.S. 712 (2004), or for amicus, *e.g., Carson v. Makin*, 596 U.S. 767 (2022); *City of Boerne v. Flores*, 521 U.S. 507 (1997).

SUMMARY OF ARGUMENT

A threshold question in a Free Exercise case is whether the state has "burdened" the right freely to exercise one's faith. The decision below erred right out of the gate when it held that the petitioner parents had not shown any burden on their parental Free Exercise right to raise their own children. The Fourth Circuit held that "mere exposure" (Pet. App. 40a) of children to contrary ideas does not amount to "coercion" (Pet. App. 40a) or "pressure . . . to change views or act contrary to their faith" (Pet. App. 41a). Respondents pick up this same theme, contending that the issue is whether children "were coerced to change their beliefs or act contrary to their religious faith."

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[1] No counsel for any party authored this brief in whole or in part. No such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity aside from the ACLJ, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

Opp. at i. This characterization of the issue and of the case is wrong on multiple fronts. The issue here is not "exposure" but rather "teaching," and the whole point of "teaching" is to change the student. As this Court has emphasized repeatedly, mandatory instruction inherently constitutes a coercive environment entailing pressure on the students to conform to what is taught.

Teaching involves the presentation and dissemination of values. Teaching children values and ideas that contradict those of their parents clearly burdens parental Free Exercise rights.

ARGUMENT

TEACHING CHILDREN IDEAS CONTRARY TO THEIR PARENTS' FAITH AND MORALS BURDENS PARENTAL FREE EXERCISE RIGHTS.

The Fourth Circuit held that a Free Exercise plaintiff must, first and foremost, "establish[] that a government action has burdened his religious exercise," Pet. App. 26a, and that the Petitioners' failure to show such a burden defeated their Free Exercise claim here, at least at this stage of the proceedings, Pet. App. 48a. The Fourth Circuit's conclusion that Petitioners had not shown a burden on their Free Exercise rights was wrong and should be reversed.

Government schools that intentionally seek to inculcate in students views which are incompatible with parental religious and moral beliefs flagrantly undermine, and thus burden, parental rights to direct the religious and moral upbringing of their children.

I. The Whole Point of Teaching Is to Change Students.

A dose of common sense is in order here. *Education is a complete waste unless it actually, or likely, changes the students who are taught.* Yes, some parents may send their children to school just to use the school as a babysitter, or to comply with truancy laws. But the *purpose* of schooling is to produce an educated student – someone who is *different* in terms of scope of knowledge, power to reason, capacity to identify sources of information, etc. Moreover, education also – inevitably and more importantly – includes instruction in *values and character*. As this Court explained,

> The role and purpose of the American public school system were well described by two historians . . .: "[Public] education must prepare pupils for citizenship in the Republic. . . . It must inculcate the *habits and manners of civility as values* in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation." C. Beard & M. Beard, New Basic History of the United States 228 (1968). In *Ambach v. Norwick*, 441 U.S. 68, 76-77 (1979), we echoed the essence of this statement of the objectives of public education as the "[*inculcation of*] *fundamental values* necessary to the maintenance of a democratic political system."

Bethel Sch. Dist. v. Fraser, 478 U.S. 675, 681 (1986) (emphasis added; brackets in original).

And the central part of schooling is the *teaching*, the *curriculum*, precisely what is at issue here. To

label that mere "exposure . . to material," Pet. App. 40a, as the Fourth Circuit did, is profoundly to undersell education.[2] This is not a case about students being merely "exposed" to a classmate's words, appearance, or lifestyle. Nor is this a case about mere "exposure" to a teacher's purple hair or unconventional attire. Rather, this case focuses on *the very instruction* being given to students – that is, *what the students are being told to learn.* As this Court observed,

> 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.

Edwards v. Aguillard, 482 U.S. 578, 584 (1987) (citations omitted). *See also Lee v. Weisman*, 505 U.S. 577, 592 (1992) ("As we have observed before, there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools") (and cases cited). While the Establishment Clause analysis articulated in these and many other school cases no longer governs, the Court's observations about the

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[2]To hold to the contrary would be to regard as absurd a family's preference for a college education at an institution of higher ed that supports the family's values. And if such choices make sense for *college-age* children, they are all the more vital when it comes to youth. As Justice Brennan wrote for this Court, "The government's activities in this area can have a magnified impact on impressionable young minds," *School Dist. v. Ball*, 473 U.S. 373, 383 (1985). Impressionability applies not just to the alleged promotion of religion but also to its *undermining*.

reality of the school environment still hold true.

> 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.

Edwards, 482 U.S. at 584. This holds true regardless of whether the "religious views" which the public school advances bolster or undercut the parents' faith, and regardless of whether the "views" are openly anti-religious or simply irreconcilable with the tenets of a family's faith.[3] Parental choice is therefore crucial. That way parents can see to it that their children are "not required or expected to participate" in a program that "sought to persuade" students in a direction in conflict with parental beliefs. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 541-42 (2022)

Education is a multi-directional sword. It can be used to further some parental goals, or to undermine them. To raise believers, or to eliminate them. To form patriots, or to mold rebels. *Compare West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 640 (1943) ("National unity as an end which officials may foster by persuasion and example is not in question") *with* Vladimir Lenin, *A-Z Quotes* ("Give me just one

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[3]Indeed, it would be an anemic First Amendment which would only shield families from views that conflict with their private beliefs when those school-inculcated beliefs were themselves labelled religious. Thus, public schools teaching that "there is no Heaven" would be religious and thus impermissible, but teaching that "the material world is all that exists" would be philosophical and thus allowed.

generation of youth, and I'll transform the world"). Protection of parental rights therefore has the virtue not just of being essential to freedom, but apolitical – and religiously agnostic – as well. "There can be no assumption that today's majority is 'right' and the [Petitioners] and others like them are 'wrong.'" *Wisconsin v. Yoder*, 406 U.S. 205, 223-24 (1972).

II. Teaching Students Things that Contradict Parental Teaching Burdens Parental Free Exercise.

It follows that subjecting children to instruction that runs counter to their parents' faith and morals corrodes – burdens – parental efforts to raise their children in accord with such values.

This Court has already held that public schools have no monopoly on the instruction of the young. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). "In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969). But one does not need a *monopoly* to exert *influence*.

That the parents remain "free to impart their religion at home," Pet. Br. at 45 (quoting Respondents' lower court brief), is of small consolation.

> 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, 60 n.51 (1985)

(internal quotation marks and citation omitted).

This Court has already recognized that even isolated exposure of children to speech can have a lasting effect: "broadcast [of obscene words] could have enlarged a child's vocabulary in an instant." *FCC v. Pacifica Found.*, 438 U.S. 726, 749 (1978). So much more so when the child is instructed in a curriculum *day in and day out,* while parents are left to try to undo lessons explicitly or implicitly taught. Just as it is specious to say the "remedy for an assault is to run away after the first blow," *id.*, it is fallacious to say that parents can unfailingly rehabilitate a student's worldview after repeated, systematic "blows" against parental values.

In short, the decision below disregarded what should be an obvious point: the parental right to direct the religious and moral upbringing of one's children is burdened, and burdened heavily, if parents must surrender those children to daily, intentional inculcation of antagonistic values, without even notice or a right to opt out. That is not "mere exposure." It is teaching children to embrace values at odds with those of their parents.

* * *

Teaching a child values which contradict those of his or her parents plainly burdens parental free exercise rights, even if the teaching is not openly "coercive."

> The history and culture of Western civilization reflect a strong tradition of *parental* concern for the nurture and upbringing of their children. This *primary role of the parents in the upbringing of their children* is now established beyond debate as an enduring American tradition.

Yoder, 406 U.S. at 232 (emphasis added). Importantly, this conclusion does not depend on which values are being taught. Assuming the parents have an identifiable religious concern, the question could be whether the school defends or condemns Christopher Columbus and other explorers and colonists; embraces or warns against the Sexual Revolution; teaches why students should oppose or support abortion; promotes or denounces Marxism; or cultivates alarm or peace regarding future climate developments. Government-run schools – at least in the United States – do not have the right, at the expense of parents, to occupy pride of place in deciding what values children must daily be taught, leaving it to parents to supplement, correct, or undo, as best they can, any errors they perceive their children inevitably to have absorbed.

The Fourth Circuit viewed the constitutional question as whether a public school "directly or indirectly coerces the Parents or their children to believe or act contrary to their religious faith." Pet. App. 49a. One answer is that *all* education at least "*indirectly* coerces" students to adopt the positions being taught. Another answer is that the intentional, attempted inculcation or "disruption"[4] of values in *this* case certainly pressures students to conform, and thus to reject contrary parental values. This plainly burdens parental Free Exercise rights, whether that pressure is characterized as a carrot or a stick.

Either way one looks at it, the decision below was flatly incorrect and fundamentally incompatible with parental rights. This Court should reverse.

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[4]Pet. Br. at 29 (citing Respondent Board's documents).

CONCLUSION

This Court should reverse the judgment of the Fourth Circuit.

Respectfully submitted,

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