No. 24-297

IN THE
Supreme Court of the United States

TAMER MAHMOUD, ET AL.,
Petitioners,
v.

THOMAS W. TAYLOR, ET AL.,
Respondents.

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

Brief of National Religious Broadcasters, Parental Rights Foundation, Wagner Faith and Freedom Center, and Concerned Women for America as *Amici Curiae* in support of Petitioners

MICHAEL P. FARRIS
Counsel of Record
NATIONAL RELIGIOUS BROADCASTERS
20 F. Street, Seventh Floor
Washington, D.C. 20001
(202) 341-4783
mfarris@nrb.org
Counsel for Amicus Curiae

WILLIAM WAGNER
5600 West Mount Hope Highway
Lansing, MI 48917
(517) 643-1765
prof.wwjd@gmail.com

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Interest of Amici

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.[1]

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.

The Parental Rights Foundation (PRF) is a national, nonprofit, nonpartisan advocacy organization with supporters in all fifty states. The PRF is concerned about the erosion of the legal protection of loving and fit parents to raise, nurture, and educate their children without undue state interference. The Parental Rights Foundation seeks to protect children by preserving the liberty of their parents by educating those in government and the public about the need to roll back some of the intrusive state mechanisms that

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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 the named amici herein furnished any monetary contribution for the preparation of this brief.

have worked to harm more children than they help, and about the need to strengthen fundamental parental rights at all levels of government.

Housed on the campus of Spring Arbor University, the Wagner Faith & Freedom Center (WFFC) serves as a national academic voice for freedom of thought, conscience, and religion. The WFFC strategically works to ensure the next generation may exercise this liberty free of persecution and oppression. In public forums throughout the world the WFFC speaks on behalf of the persecuted and most vulnerable. The WFFC champions the cause of the defenseless and oppressed, standing for faith and freedom all around the world.

Concerned Women for America (CWA) is the largest public policy organization for women in the United States, with approximately half a million supporters from all 50 States. Through its grassroots organization, CWA encourages policies that strengthen women and families and advocates for the traditional virtues that are central to America's cultural health and welfare. CWA actively promotes legislation, education, and policymaking consistent with its philosophy. Its members are people whose voices are often overlooked-everyday, middle-class American women and mothers whose views are not represented by the powerful elite. CWA is profoundly committed to fundamental principles of religious liberty and the protection of parental rights in law and culture.

Religious freedom cannot survive when religious people and organizations are treated as second class citizens. When religious neutrality in the public schools means that non-religious children may not be even exposed to religious materials, but religious children must endure efforts by public school officials to disrupt and change their religious beliefs—no one's religious rights are safe in this country.

Summary of the Argument

The right to believe has been repeatedly acknowledged by this Court as an absolute right. In this case, the record is clear that the school district trains its teachers to contradict and "disrupt" the religious beliefs of students expressing traditional religious values at odds with the worldview embraced by the school district. It is illegitimate *per se* for any agency of any government in this country to seek to change the religious beliefs of anyone and especially the beliefs of five and six-year-old children.

Moreover, this Court has promised the public school parents of this country that the First Amendment is not hostile to religion but instead requires public schools to operate with religious neutrality. Specifically, this Court has repeatedly held that public schools can neither advance nor denigrate religious beliefs. Unless the federal judiciary uses the same tests for cases involving denigration of beliefs as it uses for cases involving the advancement of religion, religious neutrality becomes an empty promise or a cruel hoax.

In several cases involving public school activities determined to be advancing religion, this Court has observed that children are impressionable and that attendance in the public schools is not required by law. Moreover, teachers and other officials stand as authority figures with an overpowering opportunity to influence the beliefs of children. Even though this Court has said that coercion is required as an element in Establishment Clause cases, it has found these factors to in fact be coercive.

Religious children are just as impressionable and vulnerable as the children who have objected to being subjected to pro-religious teachings and activities. The coercive power of the state is just as real in this case as any case decided under the Establishment Clause.

The conclusion by the Fourth Circuit that there is no burden on the religious beliefs of these parents because there is no proof of coercion is erroneous for two reasons. First, it ignores the multiple holdings from this Court regarding the impressionability of children and the coercive power inherent in the public schools. Second, it ignores the very real consequences arising from the training given by the school district which clearly aims at changing and disrupting the religious beliefs of the plaintiffs' children.

Argument

I. The School District Seeks to Change the Religious Viewpoints of Students

> 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 v. Aguillard, 482 U.S. 578, 584 (1987).

Maryland's Montgomery County Public Schools adopted a group of "LGBTQ-Inclusive Books [Storybooks] as part of the English Language Arts Curriculum" for elementary students. *Mahmoud v. McKnight*, 102 F.4th 191, 197 (4th Cir. 2024). While some latitude is granted to teachers in how they employ the books in their classroom, teachers "cannot, however, elect not to use the Storybooks at all." *Id* at 198.

Initially, the District allowed parents to opt their children out of the use of the Storybooks. *Id.* at 199. However, the materials were offensive to so many parents, that the District cited "high student absenteeism" as one of the reasons for terminating the opt out program. *Id.* at 200.

The single most important set of facts in this record is the training of the School District's teachers to answer common objections and problems. The Fourth Circuit gave this summary of the training:

> For example, if a student says "Being ___ (gay, lesbian, queer, etc) is wrong and not allowed in my religion," teachers "can respond," "I understand that is what you believe, but not everyone believes that. We don't have to understand or support a person's identity to treat them with respect and kindness." The guidance also counsels that if a student says that "a girl ... can only like boys because she's a girl," the teacher can "[*d*]*isrupt* the either/or thinking by saying something like: actually, people of any gender can like whoever they like.... How do you think it would make __ to hear you say that? Do you think it's fair for people to decide for us who we can and can't like?" (emphasis added). If a student asks what it means to be transgender, the teacher could explain, "When we're born, people make a guess about our gender and label us 'boy' or 'girl' based on our body parts. Sometimes they're right and sometimes they're wrong.... Our body parts do not decide our gender. Our gender comes from our inside[.]"

Id. at 198–99 (citations to JA omitted) (emphasis in original).

There can be no doubt that the theme of this training is that teachers are to mold the mind of the child to align with the values preferred by the School District rather than the values taught by their parents and religious leaders.

- Children who express a religious view about LGBTQ issues are to be told that other people think differently about it. Teachers are not told

to tell children who affirm the Storybooks that other people think differently about these things.

- Children who express a religious viewpoint are told that they may not understand people who identify as LGBTQ. This has the undoubted effect of undermining a child's viewpoint when his or her teacher tells the student that he or she doesn't understand. Teachers are molding impressionable young children by challenging their viewpoint as unenlightened.
- Children who express the viewpoint that opposite sex attraction is the norm are to be *disrupted* by teachers. This intentional disruption, which can mean nothing other than the teacher is seeking to change the views of the child, is accomplished by stating as a fact: "People of any gender can like whoever they like." The District not only says that the children's expressed religious views are wrong, but also directs the teacher to endeavor to change those views.
- Children whose religious beliefs teach them that moral principles come from God, are universal, and are not a matter of individual choice, are to be directly undermined by being questioned by their teachers "Do you think it's fair for people to decide for us who we can and can't like?" This directly and intentionally contradicts the idea that moral standards come from God.
- Children who believe that there are only two genders given by God and that this is evidenced by biological reality are to be directly contradicted by the teacher saying that gender

> is merely a "guess" at birth based on body parts. Children are also told that body parts do not decide gender. "Gender comes from the inside." Once again, the school is seeking to "correct" the beliefs of the children that gender is an objective reality stemming from God's creation.

Any book could be used to teach language arts. The instructions given to the teachers reveal beyond any doubt that the District's purpose for selecting these particular books is to indoctrinate children in a worldview that conflicts with the faith of a considerable number of the families within the school system.

II. It is Unconstitutional *Per Se* for Public Schools to Seek to Change the Religious Views of Students

This Court has described the Free Exercise Clause as containing an "absolute prohibition of infringements on the 'freedom to believe.'" *McDaniel v. Paty*, 435 U.S. 618, 627 (1978). See also, *Braunfeld v. Brown,* 366 U.S. 599, 603 (1961) ("The freedom to hold religious beliefs and opinions is absolute.")

In *Braunfeld,* this Court relied on an oft-quoted passage from Thomas Jefferson that is fully applicable here.

> Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that *the legislative powers of government reach actions only, and not*

> *opinions*, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. (Emphasis added.) 8 Works of Thomas Jefferson 113.

Id. at 604.

By seeking to change the religious views held by students, the School District acts in a manner that is illegitimate for any level of government in this nation. Without question, schools may seek to control behavior. In this context, a prohibition against bullying another student based on sexual orientation or gender identity would fall within the school's clear and constitutional authority. But the District is absolutely forbidden by the First Amendment to do what it seeks to accomplish here: to change the religious views of students.

Parents may not expect public schools to affirmatively reinforce the beliefs they teach to their children. *Bowen v. Roy,* 476 U.S. 693, 699 (1986). Nor is the absolute right to believe involved when schools present academic information that conflicts with the views of students or parents, such as teaching the theory of Darwinian evolution. *Edwards v. Aguillard*, 482 U.S. 578 (1987).

However, the right to believe could properly be invoked if the teaching of scientific evidence

concerning Darwinian evolution were accompanied by explicit efforts to undermine the religious faith of children who believed otherwise. For example, if biology teachers were instructed to go beyond the presentation of scientific information and to attempt to ensure that all students understood that views of God as creator were wrong, the right to believe might indeed be violated.

Montgomery County is not seeking to impart scientific or historical information through the Storybooks. As the teacher training makes incredibly clear, the School District is seeking to indoctrinate children in a worldview that is designed to supplant the worldview that children learn from their parents and religious leaders.

No level of American government has the authority to do any such thing. It is *per se* unconstitutional.

Even though a case could be made that such intentional indoctrination could be required to be removed from public schools under the Establishment Clause, the parents in this case have only sought the very modest remedy of being allowed to opt their own children out of such instruction. If the right to believe is to have any meaning at all, surely it should give these parents the relief that they seek.

III. This Court Has Promised Parents that Public Schools Must Adhere to Religious Neutrality

> The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. 'The great American principle of eternal separation'—Elihu Root's phrase bears repetition—is one of the vital reliances of our Constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity.

People of State of Ill. ex rel. McCollum v. Bd. of Ed. of Sch. Dist. No. 71, Champaign Cnty., Ill., 333 U.S. 203, 231 (1948) (plurality).

When this Court held that Arkansas could not forbid the teaching of evolution in the public schools, it promised religious parents who supported the law that: "The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion." *Epperson v. State of Ark.*, 393 U.S. 97, 104 (1968). Moreover, the Court said that public schools "may not be hostile to any religion." *Id.*

And when the Court held that Bible reading and recitation of the Lord's Prayer must be removed from the public schools of Pennsylvania and Maryland, the Court promised religious parents: 'The government is neutral, and, while protecting all, it

prefers none, and it disparages none." *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 215 (1963) (cleaned up.) *Schempp* quoted with approval Justice Frankfurter's plurality opinion in *People of State of Ill. ex rel. McCollum, supra,* which held that the Constitution prohibits "the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages." *Schempp, supra* at 219.

The promise that the public schools would not be used to disparage religious beliefs is precisely the issue in this case. In the many cases where this Court has announced that the First Amendment equally protects against the advancement as well as the disparagement of religion, there has never been a hint that different legal standards would be used to judge cases which arise from these different sides of the same coin. Indeed, in *McCollum*, this Court plainly communicated the essential nature of this form of equality.

> To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a governmental hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion. For the First Amendment rests upon the premise that both religion and government

> can best work to achieve their lofty aims if each is left free from the other within its respective sphere.

McCollum, supra, at 211-212.

This principle of equality should apply with full force to the consideration of the need to show a "burden" of religious rights within the public schools. This means that the standard employed when public schools seek to advance religion should be fully applicable to cases when such schools seek to undermine or change the religious faith of its students.

IV. Students are Protected from Mere Exposure to Materials that Advance Religious Beliefs

In *Schempp,* the complaint filed by the famed atheist, Madylyn Murray, summarized the impact of exposing her son to daily Bible readings or the recitation of the Lord's prayer:

> [I]t threatens their religious liberty by placing a premium on belief as against non-belief and subjects their freedom of conscience to the rule of the majority; it pronounces belief in God as the source of all moral and spiritual values, equating these values with religious values, and thereby renders sinister, alien and suspect the beliefs and ideals of your Petitioners, promoting doubt and question of their morality, good citizenship and good faith.'

Schempp, supra, at 212.

Schempp is the fountainhead for the rule that "a violation of the Free Exercise Clause is predicated

on coercion while the Establishment Clause violation need not be so attended." *Id.* at 223. This is despite the fact that this Court has often found the mere exposure to religious materials to have a coercive effect. In fact, in *Schempp,* this Court quoted *Engel v. Vitale,* 370 U.S. 421, 430-431 (1962) to reveal that coercion was found to be present:

> This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When 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.

Schempp, supra, at 221.

Likewise, the coercive pressure of public school exposure to religious teaching was acknowledged in *McCollum*.

> 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 nonconformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend.

333 U.S. at 227.

Even in the case of a moment of silence, accompanied by the suggestion that it might be used for prayer, this Court noted the claim from the

plaintiff's complaint "that the minor children were exposed to ostracism from their peer group class members if they did not participate." *Wallace v. Jaffree*, 472 U.S. 38, 42 (1985). Moreover, the *Wallace* Court quoted *Engel:* "[T]he indirect coercive pressure upon religious minorities is plain." And then added: "This comment has special force in the public school context." *Id.* at 61, fn. 51.

This Court need not reverse the rule that Free Exercise Clause violations require a showing of coercion. Religious neutrality can be achieved by employing the finding of coercion recognized in *Engel* and *Schempp* in cases involving efforts to undermine the religious faith of public school students.

It is easy to see why parents in Montgomery County, Maryland feel very much like Madalyn Murray felt over a half century ago. The instructions given to the teachers today to promote the LGBTQ worldview of the school "renders sinister, alien and suspect the beliefs and ideals of your Petitioners, promoting doubt and question of their morality, good citizenship and good faith." *Schempp* at 212.

What the Petitioner-parents cannot be expected to accept is the use of one test to evaluate their claims and another to evaluate the claims of Mrs. Murray. Religious children are just as subject to the inherent coercion of public-school pressure as Mrs. Murray's son being raised in atheism.

The Fourth Circuit is far from the only court to fail to consider the coercive pressure of public school programs designed to change the beliefs of children.

In *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058 (6th Cir. 1987), the Sixth Circuit found no "burden" on the Free Exercise rights of the plaintiff-parents in that case, on the basis that the children were not coerced to believe the materials that they were required to read. Even though the children in that case were suspended from school for refusing to read the offensive texts (*Id.* at 1060), and even though the school district stipulated that the materials were in fact offensive to the sincere beliefs of the plaintiffs (*Id.* at 1061), the lack of any pressure to actually believe the material was fatal to their case. (*Id.* at 1064).

However, the Superintendent of Hawkins County Schools was more realistic in his assessment of how it all worked.

> Bill Snodgrass, the Hawkins County Public School Superintendent at that time, said it was better for children to be forced to read materials to which they objected, than to give them an alternative book, because "after a while, they would quit kicking and screaming." Superintendent Snodgrass said he believed that forcing children to read material that violated their religious beliefs would build character and develop self-discipline.

Mozert v. Hawkins County Public Schools, U.S. Supreme Court No. 87-1100, Cert. Pet. at 8. (1987), *cert denied* 484 U.S. 1066 (1988).

This Court's decisions have repeatedly recognized that the coercive effect upon children to conform to what their teachers or school officials want them to believe is very real. Montgomery County

schools intentionally attempt to "disrupt" the beliefs of the children. Teachers question their faith. Teachers suggest that the students' religious views reflect an inaccurate understanding of others. All of this is far more coercive than any case in which this Court has found religious activity to violate the Establishment Clause.

What Montgomery County seeks to do is inherently coercive. It is an egregious imbalance of power. Professionally trained teachers who have been coached by the school district on how to counteract the expressed religious beliefs of students can be expected to drive deep doubts into the minds and souls of plaintiffs' children. This is coercion in the extreme.

This is not to say that there are no relevant distinctions between materials that promote religion versus those which denigrate faith. In all cases, materials that violate the Establishment Clause are required to be removed from the public schools. In most cases involving denigration of faith, the appropriate remedy would be to allow parents to opt their children out of the offending material or activity. This is not to say that an especially direct denigration of faith might not give rise to a valid request for removal in an appropriate case. But this Court need not determine where such a line needs to be drawn in the present case. The Plaintiff-parents have only asked to be notified so that they can protect their own children by opting them out of reading the offending texts.

The Eighth Circuit found the correct balance in a case involving Christmas celebrations in the public

schools. After the court found that there was no Establishment Clause violation since there had been a careful balance of secular and religious material in choral performances and the like, the Court endorsed the right of parents to opt out their children if offended by the religiosity of the material.

> These inevitable conflicts with the individual beliefs of some students or their parents, in the absence of an Establishment Clause violation, do not necessarily require the prohibition of a school activity. On the other hand, forcing any person to participate in an activity that offends his religious or nonreligious beliefs will generally contravene the Free Exercise Clause, even without an Establishment Clause violation. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972). In this case, however, the Sioux Falls School Board recognized that problem and expressly provided that students may be excused from activities authorized by the rules if they so choose.

Florey v. Sioux Falls Sch. Dist. 49-5, 619 F.2d 1311, 1318–19 (8th Cir. 1980).

In the case at bar, the Fourth Circuit followed a different line of lower court precedents for its central holding, which was that the parents had not satisfied the burden test necessary because of the failure to prove coercion to believe the Storybooks. The court cited three court decisions to justify this conclusion. *Cal. Parents for the Equalization of Educ. Materials v. Torlakson*, 973 F.3d 1010, 1020 (9th Cir. 2020); *Parker v. Hurley,* 514 F.3d 87, 90, 106 (1st Cir.

2008); *Mozert v. Hawkins Cnty. Bd. of Educ.*, 827 F.2d 1058, 1065 (6th Cir. 1987). *Mahmoud, supra,* 104 F.4th at 210.

Torlakson involved an attempt to remove public school curricular material because of an alleged bias against Hinduism. The constitutional issues surrounding efforts to remove curriculum are very different from cases where parents merely seek the right to opt out of material that they believe denigrates their religious faith. *Parker* and *Mozert* are both opt-out cases. And *Parker* relies heavily on *Mozert* in reaching its decision. Neither of these cases acknowledge the inherent coercive pressure upon public school children when forced to participate in activities which they find religiously objectionable. That is, they fail to follow the rules of religious neutrality that are required under the First Amendment. Coercive pressure is the same on religious and non-religious children alike.

Prior to *Mozert,* federal courts generally recognized parental rights under the Free Exercise Clause to opt their children out of material that they found to be religiously objectionable even if there was no violation of the Establishment Clause.

In addition to the Eighth Circuit's decision in *Florey,* the Sixth Circuit had a clear precedent prior to *Mozert* that established the right of pacifist parents to opt out their children from mandatory ROTC classes in a public high school. Written by retired Justice Tom Clark, *Spence v. Bailey,* 465 F.2d 797 (6th Cir. 1972), held that the Free Exercise Clause required the district to allow a student to opt out of

such training. The school in that case said, in effect, ROTC or leave. Justice Clark struck this down saying: "The State may not put its citizens to such a Hobson's choice consistent with the Constitution without showing a compelling state interest within the State's constitutional power to regulate." *Id.* at 800.

In a concurring opinion, a Ninth Circuit judge assumed, without deciding, that a high school student might well have the right to opt out of reading a literature book that, among other things, called Jesus Christ "a poor white trash God" and a "long-legged white son-of-a-bitch." *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1540 (9th Cir. 1985).

> Plaintiffs allege that they believe that "eternal religious consequences" result to them and their children from exposure to The Learning Tree or discussion of it. That allegation would probably be sufficient to present a free exercise question if Cassie Grove had been compelled to read the book or be present while it was discussed in class. She was not.

Id. at 1541–42.

A district court decision of the pre-*Mozert* era ruled for parents seeking the right to opt out of religiously objectionable, public-school co-ed, physical education classes in *Moody v. Cronin,* 484 F. Supp. 270 (C.D. Ill. 1979). Additionally, numerous state court appellate decisions of this era recognized the right of parents to obtain an opt out for their children from offensive sex education classes. See, *Smith v. Ricci,* 89 N.J. 514, 446 A.2d 501 (1982); *Mederios v. Kiyosaki*, 52 Hawaii 436, 478 P.2d 314 (1970); *Citizens for Parental Rights v. San Mateo Bd. of Ed.,*

51 Cal. App. 3d, 124 Cal. Rptr. (1975); *Hobolth v. Greenway,* 52 Mich. App. 682, 218 N.W.2d 98 (1974); *Valent v. N.J. State Bd. of Ed.,* 114 N.J. Super. 63, 274 A.2d 832 (1971).

None of these cases revealed a school district quite as intentional as Montgomery County in terms of actively seeking to change the beliefs of students. A simple conflict of beliefs in the context of coercive public education was sufficient to win the right to opt out of such courses. How much more should this right be recognized when, in addition to the normal coercive power of schools to induce conformity, there is proof that the teachers are trained to be change-agents who are seeking to influence the values of young children.

V. The Idea that this Case Needs to be Remanded for Evidentiary Development is Seriously Flawed

The Fourth Circuit held that this case requires a remand to see how the materials are actually employed to determine whether there is evidence of actual coercion. 102 F.2d. at 211-213. Unless cameras are installed in every classroom, or unless parents are allowed to be physically present to monitor the actual presentations, evidence of what actually happens will be hard to obtain. It will boil down to a comparison of the memories of five and six-year-olds versus professionally trained teachers who have been coached by the School District to block and parry each religious argument raised by children.

The training offered by the School District, together with the texts, are the best evidence, and

more than sufficient to determine the questions before the Court. The Montgomery School District is seeking to change the religious values of any student who disagrees with the philosophy of the Storybooks. Some teachers may be more effective change-agents than others. Some may be ham-fisted in their approach. Some may be more diplomatic. But the constitutionality of this program may be correctly assessed by using the clear and unmistakable admissions that teachers are to be disrupters of religious values and viewpoints.

Conclusion

For the foregoing reasons, the decision below should be reversed.

Respectfully submitted,

MICHAEL P. FARRIS
Counsel of Record
NATIONAL RELIGIOUS BROADCASTERS
20 F. Street, Seventh Floor
Washington D.C. 20001
(202) 341-4783
mfarris@nrb.org
Counsel for Amicus Curiae

WILLIAM WAGNER
5600 West Mount Hope Highway
Lansing, MI 48917
(517) 643-1765
prof.wwjd@gmail.com