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 COURTS OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF *AMICUS CURIAE* LEGAL INSURRECTION FOUNDATION IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Legal Insurrection Foundation (LIF)[2], whose tagline is "Liberty, Equality, Family," is a Rhode Island tax-exempt not-for-profit corporation devoted, among other things, to advancing the liberty interests of American citizens, including the rights of parents to direct the upbringing of their children. LIF publishes the Legal Insurrection website,[3] which provides news coverage of these issues. LIF also publishes CriticalRace.org,[4] which documents the now-pervasive and expansive race-based educational and training mandates at colleges and universities; LIF's "Parents' Guide to CRT" is one of LIF's feature products in this arena.[5] Finally, in early 2023, LIF created the Equal Protection Project (EPP),[6] which is devoted to the fair treatment of all persons without regard to race or ethnicity. EPP's guiding principle is that there is no "good" form of racism, and that the remedy for racism never is more racism. At bottom, LIF has long

1. This brief conforms to the Court's Rule 37, in that no counsel for a party authored this brief in whole or in part, and no person or entity other than *Amicus Curiae* the Equal Protection Project of the Legal Insurrection Foundation funded its preparation or submission.

2. https://legalinsurrectionfoundation.org/.

3. https://legalinsurrection.com/.

4. https://criticalrace.org/.

5. *See New guide helps parents protect kids against 'woke' ideologies in schools*, available at https://www.foxnews.com/media/new-guide-helps-parents-protect-kids-against-woke-ideologies-schools.

6. https://equalprotect.org/.

documented citizens' struggles for religious liberty, free expression and racial discrimination, and has long held a deep and abiding interest in ensuring religious freedom for all citizens of all faiths and parents' rights to raise their children in the religion of their choice. While LIF supports Petitioner's arguments, it submits this amicus brief to highlight the fundamental constitutional nature of parental rights, this Court's established recognition of the unique vulnerability of youth in matters of religious liberty, and the unconstitutional Hobson's choice imposed by the Board.

SUMMARY OF THE ARGUMENT

The decision below conflicts with this Court's precedent, allowing the government to coerce parents into choosing between their children's right to a public education and their right to raise them as observant religious citizens. But parental authority over a child's upbringing is a fundamental liberty, deeply rooted in this Nation's history. For over a century, this Court has affirmed that parents—not the State—hold primary authority in the care, custody, and education of their children.

This principle is settled law. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), this Court upheld parental rights against state interference. *Prince v. Massachusetts*, 321 U.S. 158 (1944), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), reaffirmed that parents—not the State—direct their children's religious upbringing. Most recently, in *Troxel v. Granville*, the Court recognized parental control as perhaps the oldest of the fundamental liberty interests.

530 U.S. 57, 65 (2000). *Yoder* further confirms that the "primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." 406 U.S. at 232.

The Fourth Circuit disregarded this settled precedent. By trivializing parental concerns in deference to state-imposed curricula, the lower court undermined "the private realm of family life which the state cannot enter." *Prince*, 321 U.S. at 166. This Court must reaffirm that parental authority over their children's moral and religious development is paramount. Government policies that interfere with this right—such as the Board's mandated curriculum—demand strict scrutiny.

Second, compelling young children to participate in classroom activities that contradict their family's religious beliefs violates the Free Exercise Clause. What may be exposure for adults is indoctrination for impressionable children. Petitioners' children are elementary-school age—an age when authority figures heavily shape beliefs. Coercing them to accept, or at minimum, refrain from dissenting against, state-imposed moral views pressures them to abandon their faith. The State has no authority to override parents in shaping their children's worldview on profound moral questions. The Free Exercise Clause prohibits not only bans on religious worship but also government actions that burden religious upbringing. Here, the burden is clear: the Board's curriculum signals to children that their family's religious beliefs are invalid or, at best, no more valid than their opposites. Courts have rightly recognized this as coercive. The same holds true here. The Board's forced curriculum violates Petitioners'

religious exercise and cannot withstand constitutional scrutiny.

Finally, the Board's policy is coercive in another way: it forces religious parents to choose between their faith and a public benefit—access to public education. Decades of Free Exercise jurisprudence confirm that the government may not condition public benefits on the surrender of religious rights. *See Sherbert v. Verner*, 374 U.S. 398 (1963); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017). Here, the benefit is a fundamental right—public education, an essential service supported by taxpayers and legally mandated for all children. The Board conditions full enjoyment of that benefit on submission to state-imposed instruction that violates religious convictions. Devout parents who cannot, in good conscience, expose their children to such teachings must either withdraw from public schools—bearing the financial burdens of private or home education—or face truancy penalties. The Free Exercise Clause prohibits such coercion.

This Court has long held that government cannot force citizens to choose between their religious beliefs and receiving a government benefit. *Carson v. Makin*, 596 U.S. 767, 784 (2022). That principle controls here. The Board's policy excludes religious families from public schooling unless they submit to ideologically charged curricula.

Each of these violations independently warrants reversal. Together, they present an overwhelming case that the Fourth Circuit erred. This Court should hold that the Maryland school district's no-opt-out policy violates

the Free Exercise Clause. At a minimum, the judgment below should be reversed, and the case remanded for strict scrutiny—scrutiny the Board's policy cannot survive. The First Amendment and our Nation's traditions demand no less.

ARGUMENT

I. Parents' Right to Control Their Children's Upbringing Is a Fundamental Liberty That the Decision Below Failed to Honor

From the founding of the Republic, American law has affirmed that parents—not the government—hold the primary responsibility for raising their children. This principle, deeply rooted in history and enshrined in the Constitution, safeguards parental authority as a fundamental liberty. Nearly a century ago, this Court declared: "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925).

In *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Pierce*, the Court struck down state efforts to override parental authority in education, explicitly recognizing the liberty interest of parents to bring up children and direct their education in line with family values. These cases cemented the Due Process Clause of the Fourteenth Amendment as a safeguard against governmental encroachment on parental rights.

Subsequent decisions reinforced this foundation. In *Prince v. Massachusetts*, 321 U.S. 158 (1944), the Court, while upholding a child labor law, reaffirmed that custody, care, and nurture reside first with parents, who are uniquely responsible for their children's moral and intellectual development. *Yoder*, 406 U.S. 205 (1972), extended this principle further. There, the Court ruled that compelling Amish children to attend public school beyond eighth grade violated the Free Exercise Clause, as it interfered with the parents' right to raise their children in accordance with their religious traditions. The Court affirmed that "the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society." 406 U.S. at 213–14. The decision left no doubt: "This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Id*. at 232.

Though *Yoder* was grounded in Free Exercise, its reasoning cannot be separated from the broader doctrine of parental rights. The Court recognized that Wisconsin's school mandate "affirmatively compel[led] [the Amish parents], under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs." 406 U.S. at 218. The Amish way of life depended on parental authority in shaping children's moral and vocational futures, which state-imposed schooling threatened to erode. *Yoder* thus stands at the intersection of religious liberty and parental authority, emphasizing that government cannot intrude into the "private realm of family life" to dictate a child's moral and religious development.

Decades later, *Troxel v. Granville*, reaffirmed that parental rights remain fundamental. 530 U.S. 57 (2000). A plurality of the Court described the right to direct a child's upbringing as "perhaps the oldest of the fundamental liberty interests" protected by the Due Process Clause. *Id.* at 65. Justice Thomas, in concurrence, argued that parental rights warrant strict scrutiny, emphasizing that the state may not infringe on the fundamental right of parents to rear their children without some powerful justification. *Id.* at 80 (Thomas, J., concurring). No Justice disputed the fundamental nature of parental rights.

The Montgomery County policy in question defies this established precedent. By mandating that all students, regardless of parental objections, be subjected to government-imposed views on gender and sexuality, the Board usurps the very authority the Constitution reserves for parents. This is not the case of the State intervening to protect children from abuse or neglect. Instead, it is an outright displacement of parental judgment on matters of profound moral significance. The Board's refusal to permit opt-outs effectively dictates a six-year-old's moral education, overriding the family's religious convictions. That is a power the Constitution does not grant the State.

The Fourth Circuit's approach compounds this error. The majority ignored the parents' well-established liberty interest and framed the issue as though only the children's rights were at stake. It suggested that unless the school actively forced a child to violate their religion—such as compelling them to recite a creed—parents had no constitutional claim. But this reasoning misreads precedent. The question is not whether the child is directly coerced into an act of worship; rather, it is whether the

State is interfering with parental authority over the child's moral upbringing. *Pierce* directly rejected the notion that the government can "standardize its children" by forcing them into state-mandated beliefs. 268 U.S. at 535. By disregarding parents' objections, the Board treated children as mere creatures of the State, to be inculcated with whatever values the government chooses—parental opposition notwithstanding.

This approach contradicts our constitutional tradition. In *Meyer*, the Court struck down a state law banning foreign-language instruction before eighth grade, recognizing that parents have a right to direct their child's education without unjustified government interference. The Court condemned Nebraska's goal of enforcing civic unity through standardized schooling: "The desire of the Legislature to foster a homogeneous people . . . is easy to appreciate . . . But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to [the plaintiffs]." 262 U.S. at 402–03. If the State cannot dictate which language a child learns, it surely cannot dictate when and how a child must be introduced to sensitive questions of sexual morality—especially in defiance of religious conviction.

It is true that public schools retain discretion in shaping curricula. But as the Fourth Circuit dissent rightly observed, that discretion is not absolute and must comply with the transcendent imperatives of the First Amendment. *Mahmoud*, 102 F.4th at 217-18 (quoting *Bd. of Educ. v. Pico*, 457 U.S. 853, 864 (1982) (plurality op.)). The Constitution does not allow the government to override fundamental rights under the guise of pedagogical policy. A school could not compel all students to affirm a particular

political ideology—such compulsion would violate freedom of conscience. Likewise, compelling young children to internalize values that contradict their family's faith is a direct affront to parental rights. At a minimum, the Constitution demands that parents be given the right to opt out. The Board's refusal to permit any accommodation reflects a dangerous assumption: that the government's interest in "inclusion" education categorically outweighs parental rights. That assumption must be rejected.

Here, the infringement on parental rights is undeniable. The Petitioners do not seek to dictate what other students learn; they simply seek the right to shield their own children from exposure to materials that conflict with their religious beliefs. This request aligns with the Court's precedent, which has consistently upheld the right of individuals to opt out of government-imposed orthodoxy. *Barnette v. West Virginia Bd. of Educ.*, 319 U.S. 624 (1943), upheld the right to be let alone by exempting students from forced flag salutes. *Yoder* allowed Amish families to withdraw their children from high school. The present case is far less sweeping—Petitioners seek only to remove their own children from lessons while otherwise remaining in public school. That is a modest accommodation well within the "enduring American tradition" of respecting parental authority, particularly in the domain of religious upbringing.

By insisting on absolute compliance, the Board obliterates parental rights. It "respect[s]" no "private realm of family life." *Prince*, 321 U.S. at 166. Worse still, its actions suggest open hostility toward religious parents, treating them as obstacles rather than partners in education. The Constitution does not allow such state-

mandated ideological conformity. As *Yoder* recognized, even the government's legitimate interest in education yields when it directly collides with fundamental constitutional rights. 406 U.S. at 221.

The right of parents to direct a child's upbringing—especially in matters of faith and morals—is among the most cherished liberties in our legal tradition. It is "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (cleaned up). That right does not dissolve at the schoolhouse gate. The Fourth Circuit's failure to recognize this fundamental liberty was a grave error. This Court should reaffirm that any government policy infringing upon parental rights—particularly in the religious formation of children—must withstand strict scrutiny. The Board's policy cannot survive such scrutiny. It must be struck down.

II. Coercing Young Children to Embrace Views of Sexuality Contrary to Their Family's Faith Burdens Their Religious Development and Thus Burdens Petitioners' Free Exercise Rights

The Free Exercise Clause protects not only private worship but also the right of parents to pass their faith to their children. A fundamental aspect of religious liberty is the parental right to direct the religious upbringing of their children. *Wisconsin v. Yoder*, 406 U.S. at 213-14. The Constitution recognizes that parents, not the government, bear the primary duty to educate their children in matters of faith and morality. When the State undermines that right—by exposing young children to teachings that contradict their family's faith—it raises

serious constitutional concerns. This is especially true when the children are too young to critically evaluate conflicting messages and instead absorb them as truth. Psychological research confirms that children at this stage are highly impressionable, looking to authority figures for moral guidance and struggling to distinguish between competing perspectives. The State may not impose an ideological orthodoxy on a captive audience of children absent a compelling interest, and even then, it must tread carefully. Here, the Board has disregarded that principle, crossing from exposure into coercion.

The coercive effect of the Montgomery County curriculum is evident when considering the audience: children as young as three, up to ten or eleven. Studies in child psychology confirm that children at this stage are highly impressionable and dependent on authority figures for moral guidance. Empirical research establishes that exposure to ideological contradictions in early education leads to cognitive dissonance, psychological stress, and diminished parental influence.[7]

Studies show that young children lack the cognitive maturity to compartmentalize conflicting values and instead internalize what trusted adults present as truth. Courts have recognized the same phenomena for decades. As this Court noted in *Edwards v. Aguillard*, "[s]tudents in [public schools] are impressionable and their attendance is involuntary." 482 U.S. 578, 584 (1987).

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7. *See, e.g.*, Greenfield & Quiroz, *Cultural Mismatch and the Impact on Childhood Learning*, J. Applied Dev. Psychol., Vol. 34, pp. 108–118 (2013); Padilla-Walker & Thompson, *Combating Conflicting Messages of Values: A Closer Look at Parental Strategies*. Soc. Dev., Vol. 14, No. 2 (2005).

Similarly, in *Abington Sch. Dist. v. Schempp*, Justice Goldberg emphasized that state-imposed religious or anti-religious exercises affect children's beliefs due to their impressionability. 374 U.S. 203, 307 (1963) (Goldberg, J., concurring). If the State cannot promote religion in school, it likewise cannot undermine religion by imposing conflicting moral teachings on impressionable students.

The purpose of the Board's LGBTQ-inclusion curriculum is to reshape children's beliefs on gender and marriage. The Board openly seeks to replace traditional religious teachings with the view that all gender identities and family structures are equally valid. Books like *Pride Puppy!* introduce concepts such as drag queens to impressionable, young minds. *Mahmoud v. McKnight*, 102 F.4th 191, 198 (4th Cir. 2024). Other books depict same-sex couples or transgender characters, portraying dissenters as intolerant. The curriculum does not neutrally present different views; it affirms one side of a moral debate while dismissing religious perspectives. Teachers are instructed to deflect religious-based objections, reinforcing the school's ideological stance. This effectively pressures children to reject their parents' faith and conform to the school's message. Psychological coercion of this kind—especially against children—is no less unconstitutional than direct compulsion.

The Free Exercise Clause forbids government officials from coercing religious believers into changing or silencing their convictions. As Justice Jackson declared, "If there is any fixed star in our constitutional constellation, it is that no official . . . can prescribe what shall be orthodox in . . . religion." *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). In *Barnette*, the Court struck

down mandatory flag salutes for Jehovah's Witness students, recognizing that coerced affirmation of belief violates the First Amendment. The principle applies here. The Board's policy forces children to internalize a secular moral orthodoxy that contradicts their religious beliefs. Unlike *Barnette*, where children could refuse to salute the flag, here, students are a captive audience with no opt-out. The Board eliminated exemptions precisely to ensure exposure to its message. This is coercion, not mere education.

Courts have recognized that compulsory ideological instruction burdens religious freedom. In *Tatel*, a federal court allowed parents' Free Exercise claims to proceed after a teacher introduced transgender topics to first-graders without parental notice or opt-out. 675 F. Supp. 3d 551 (W.D. Pa. 2023). Citing Third Circuit and Supreme Court precedent, the court emphasized that "[p]ublic schools must not forget that 'in loco parentis' does not mean 'displace parents.'" *Id.* at 561 (quoting *Gruenke v. Seip*, 225 F.3d 290, 305 (3d Cir. 2000)). Instead, "parents, not schools, have the primary responsibility to inculcate moral standards, religious beliefs, and elements of good citizenship." *Id.* Likewise, in *Mahmoud*, the Fourth Circuit dissent recognized that the Board's policy prioritizes ideological goals over religious rights. 102 F.4th at 217. These rulings underscore that the Free Exercise Clause extends beyond formal worship to protecting parental authority over religious upbringing.

The burden here is clear: the Board's policy directly interferes with parents' ability to raise their children in their faith. Free Exercise violations are not limited to outright prohibitions on worship; they include policies that

force religious believers to act against their conscience or create undue burdens on religious practice. *See Sherbert*, 374 U.S. at 404. The Board's curriculum makes it significantly harder for Petitioners to instruct their children in their faith, as the school actively contradicts their teachings. Parents are left to counteract the school's influence, creating confusion for young children. The Constitution does not permit the State to impose such burdens on religious families.

For many faiths, religious practice includes avoiding the normalization of conduct deemed sinful. By compelling students to participate in LGBTQ-affirming instruction, the Board forces them into an ideological exercise contrary to their beliefs. This situation is analogous to *Lee v. Weisman*, 505 U.S. 577 (1992), where the Court found a school's graduation prayer coercive because it pressured students to participate in religious exercises. Here, the school imposes a secular moral doctrine, coercing religious students into exposure without an opt-out. If psychological coercion in religious settings is impermissible under *Lee*, then psychological coercion against religious beliefs must also be unconstitutional.

The State's interest does not justify this infringement. Accommodating Petitioners would not disrupt the Board's broader educational mission. Petitioners do not seek to prevent others from learning this material; they simply request an exemption for their children. Indeed, religious accommodations in public education are well-established. Maryland law itself mandates opt-out policies for instruction on "family life" and "human sexuality." Md. Code Regs. § 13A.04.18.01(D)(2)(e)(i). The existence of such policies undermines the Board's claim that universal

participation is necessary. That the Board refuses to provide an opt-out suggests not necessity, but hostility toward religious dissent. This hostility violates the Free Exercise Clause's neutrality requirement. In *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, the Court struck down laws targeting religious practice, holding that the government may not craft policies to suppress religious views. Here, the Board's refusal to accommodate religious objectors demonstrates an intent to override their beliefs, not merely educate. 508 U.S. 520, 534 (1993). Therefore, the policy burdens religious exercise, not as an unintended consequence, but as its very design.

The Board's curriculum, as applied to Petitioners' children without opt-out, constitutes religious coercion. It disrupts the children's faith formation and obstructs parents' right to raise their children in accordance with their beliefs. The Free Exercise Clause forbids such state-mandated indoctrination. The Court should recognize that Petitioners have demonstrated a likely Free Exercise violation and are entitled to constitutional protection. At minimum, the case should be remanded with instructions that the burden triggers strict scrutiny—a standard the Board's policy cannot survive.

III. Forcing Parents to Choose Between Public Education and Adherence to Their Faith Imposes an Unconstitutional Condition on the Free Exercise of Religion

In addition to the direct burden on religious upbringing discussed above, the Board's no-opt-out policy is independently unconstitutional because it conditions a public benefit on the surrender of religious rights.

The benefit here is the free public education to which all children in Maryland are entitled by law. Public schooling is funded by taxpayers (including Petitioners) and is a baseline government service. The Supreme Court has long held that the government may not deny or penalize a generally available benefit because of a person's religious exercise. To do so is to exert a form of coercion—pressuring individuals to forsake their religious convictions to receive an otherwise available public good. This doctrine, sometimes called the "unconstitutional conditions" doctrine in the religion context, traces back to at least the 1960s and has been robustly reaffirmed in recent decisions. Under it, the Board's ultimatum to Petitioners—"you can have public education for your kids or you can live by your faith, pick one"—is blatantly unlawful.

As noted, *Sherbert v. Verner*, is a foundational case. There, a Seventh-day Adventist was denied state unemployment benefits after refusing a job that required work on Saturday (her Sabbath). 374 U.S. 398 (1963). The Court held this violated the Free Exercise Clause. Justice Brennan wrote: "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." *Id.* at 404. The *Sherbert* Court reasoned that forcing a person to choose between following her religion (not working on Sabbath) and receiving a government benefit (unemployment compensation) effectively penalized her religion. This principle was not new even then; the Court cited earlier cases involving conditioned benefits and speech. What *Sherbert* crystallized for religion is that the withdrawal of a generally available public benefit,

because of religious conduct, imposes a burden requiring compelling justification.

Although the *Sherbert* test (which asked whether a law substantially burdened religion and, if so, applied strict scrutiny) was effectively overruled for most cases by *Employment Division v. Smith*, 494 U.S. 872 (1990) for neutral laws, the fundamental insight about conditions on benefits remains vital. Indeed, post-*Smith*, the Court has continued to enforce the rule that the government cannot target religious adherents by disqualifying them from public benefits on account of their religion. *Trinity Lutheran Church v. Comer*, 582 U.S. 449, (2017), is directly on point. Missouri had a program providing grants to resurface playgrounds with rubber material; it excluded a church-run preschool from eligibility solely because it was religious. The Court ruled this violated the Free Exercise Clause, holding that the policy "puts Trinity Lutheran to a choice: It may participate in an otherwise available benefit program or remain a religious institution." 582 U.S. at 450. Forcing that choice was "odious to our Constitution." *Id.* at 467. The Court quoted *Sherbert*'s maxim about conditions on benefits, reaffirming that point even as it distinguished Smith (because Missouri's policy was not "generally applicable" if it excluded religious entities). The takeaway is that disqualifying an entity or person from a public benefit solely because of their exercise of religion triggers the highest scrutiny and presumptively violates Free Exercise.

The same logic was extended in *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464 (2020), where Montana barred students from using generally available scholarship funds at religious schools. The Court held

Montana's exclusion of religious options violated Free Exercise because the state "cannot disqualify some private schools solely because they are religious." *Id.* at 487. More recently, in *Carson v. Makin*, 596 U.S. 767, (2022), the Court struck down Maine's restriction that prohibited families from applying state tuition assistance to schools that provided religious instruction. Critically, *Carson* emphasized that once a state decides to provide a benefit (there, tuition aid for students without a local public school), it cannot exclude families or schools on the basis of religious exercise. *Id.* at 596 U.S. 779-80. The Court reiterated: "[W]e have repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits." *Id.* at 778. In *Carson*, the state argued it wasn't punishing religion but simply not funding it, but the Court saw through that: the families were being denied the benefit (tuition aid) solely because they chose a religious school. That violated the "unconstitutional conditions" principle.

Now apply this doctrine to our case. The public benefit at issue is a free public school education. Every family in Montgomery County is entitled by law to send their children to public school, and schooling (public or equivalent private/home) is compulsory. Petitioners want to utilize this public benefit; they have every right to, especially as taxpayers and citizens. However, the Board has conditioned full enjoyment of that benefit on acceptance of certain instruction that contravenes Petitioners' religion. In effect, the Board told religious parents: If you want your child to attend our public schools, you must surrender your religious objection to early, values-laden LGBTQ instruction. If you won't surrender it, your only

recourse is to pull your child out (foregoing the benefit) or violate your conscience by staying in. This is precisely the kind of unconstitutional choice that this Court has found violates religious freedom. It is not quite as explicit as a statute saying "no religious people may enroll in public school," but the practical impact is similar for those with sincere objections to the curriculum. They are being excluded from a benefit "solely because of their religious exercise"—their exercise in this context being the act of raising their child according to their faith, which includes shielding the child from certain teachings.

The Fourth Circuit majority avoided this conclusion by affirming a decision by the district court that grounded its reasoning (as stated by the dissent) that the Board's policy "did not force the parents to forego exercising their religion" because they could still teach religion at home. *Mahmoud v. McKnight*, 102 F.4th at 223. This reasoning fundamentally misses the mark. The question is not whether parents can technically still pray or talk about God at home. Of course they can, just as the plaintiff in *Sherbert* could still theoretically observe her Sabbath even if denied benefits, or the church in Trinity Lutheran could still worship even without a playground grant. The question is whether the government is imposing a penalty or cost on the free exercise of religion. Here, the penalty for Petitioners' religious stance (objecting to objectionable curriculum) is the loss of an important benefit—the ability to keep their children in public school without spiritual compromise. The Constitution does not countenance that trade-off.

It bears noting that this coercive dynamic implicates not just Free Exercise but also what the Court in *Pierce*

implicitly recognized—that forcing all children into only one mode of education (state-run) is tyrannical. While *Pierce* struck down Oregon's ban on private schooling, the essence was that the state cannot make public education effectively compulsory to the exclusion of parental choice. Here, by making public education unusable for families unless they abandon a key aspect of their religion, the Board is achieving indirectly what Oregon attempted directly: a monopoly on the hearts and minds of all children. Parents are legally allowed in Maryland to opt for private or homeschooling; that option is not outlawed as it was in Pierce. But for many families, practical and financial realities mean public school is the only feasible choice. They shouldn't have to sacrifice their core values to use it. The Constitution protects their ability to both be faithful and partake in public life (including public schools).

It is also noteworthy that the Board's position here undermines the very idea of public school as a place for all. Public schools have long accommodated various religious needs (dietary, dress, excusals for religious holidays, etc.) to ensure that students of different faiths can attend without violating their beliefs. Montgomery County itself surely has students excused from certain activities (say, Jehovah's Witnesses not forced to sing patriotic songs, Muslim students allowed to step out for prayer, etc.). The opt-out for family life instruction was exactly such a common accommodation. By revoking it, the Board signaled that religious families who disagree with the new sexual ideology no longer welcome participants in the school community unless they conform. This is a profound departure from our commitment to pluralism and the Free Exercise Clause's guarantee that one may be religious *and* a full member of society. It sends a

message: "If you hold traditional religious beliefs about gender, you better keep them to yourself or keep your kids at home." But as this Court recently reaffirmed, religious observers cannot be treated as second-class citizens. *See, e.g., Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525-26 (2022). Excluding devout families from public education unless they bend the knee to the state's ideology is the essence of second-class status.

The coercion here is also akin to the pressure identified in *Yoder*. There, Amish parents faced a choice between obeying state law (sending kids to high school) or adhering to their religious practice (pulling them out after 8th grade), with potential criminal sanctions if they chose the latter. The Court found that law "coercive" and unjustified as applied to the Amish, because it would inescapably force them to act in violation of their genuine religious beliefs. 406 U.S. at 218.

It's true that *Yoder's* facts were unique, but the principle—do not force people into a corner where their only options are violating the law or violating their faith—is a general one in free exercise law. Petitioners' situation shares that structure: comply with the school's indoctrination (violate your religious duty to shield your child) or pull your child out (suffer loss of educational opportunity and possible legal hassle of setting up alternative schooling). That is an inescapably coercive choice for conscientious parents, just as much as Wisconsin's law was for the Amish. The major difference is the penalty. In *Yoder* it was prosecution; here it is the deprivation of a public benefit. But as demonstrated, deprivation of a benefit is sufficient to trigger strict scrutiny under *Sherbert/Trinity Lutheran/Espinoza/*

Carson. It is a penalty in its own right—indeed, education is arguably a more significant loss than unemployment checks or playground surfacing funds.

Some might argue that the Board isn't *targeting* religion because the curriculum applies to everyone. But that is irrelevant under the benefit line of cases. Those cases consider exclusion or conditionality. Here, religious parents and children are effectively excluded from an otherwise general benefit (undisturbed public schooling) because of their religion. That is a Free Exercise violation whether the policy is deemed "neutral" on its face.

At bottom, the Board's policy operates as an unconstitutional condition on the exercise of religion. It tells parents: If you want your child to benefit from public schooling, you must subject them to teaching those conflicts with your religion. If you refuse, you are effectively excluded from this public benefit. That is legally indistinguishable from denying a church a public contract because it's a church or denying a student aid because she attends a religious school—practices the Court has invalidated. Our constitutional tradition safeguards religious individuals from having to make the cruel choice between faith and public life. The promise of the Free Exercise Clause is that one may be fully religious and fully American, participating in all public institutions without discrimination. The Board's policy broke that promise for Petitioners. This Court's intervention is needed to restore it.

CONCLUSION

For the foregoing reasons, and those given by Petitioners, the Court should reverse the decision of the Fourth Circuit and hold that the Montgomery County Board of Education's refusal to accommodate religious objectors violates the First Amendment. The judgment below should be reversed and the case remanded with instructions to grant appropriate injunctive relief in favor of Petitioners.

Respectfully submitted,

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