

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 AMICUS CURIAE
WOMEN'S LIBERATION FRONT
IN SUPPORT OF PETITIONERS**

ELSPETH B. CYPHER, BOARD SECRETARY
Counsel of Record

NANCY K. STADE, BOARD TREASURER

LAUREN A. BONE, LEGAL DIRECTOR

WOMEN'S LIBERATION FRONT

1802 Vernon Street NW #2036

Washington, DC 20009

(202) 507-9475

elspeth@womensliberationfront.org

Counsel for Amicus Curiae

131040



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Does a public elementary school mandate that all students be exposed to gender ideology constitute a state establishment of religion in violation of the Establishment Clause of the First Amendment to the United States Constitution?

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INTEREST OF *AMICI CURIAE*¹

Amicus is the Women’s Liberation Front (“WoLF”), a non-profit radical feminist organization dedicated to the liberation of women and girls by abolishing gender and sex discrimination.² As a radical feminist organization, WoLF rejects gender identity beliefs because they are founded on regressive sex stereotypes and undermine women’s sex-based rights (including the rights of lesbian and bisexual women who comprise nearly 40% of WoLF’s membership). WoLF’s interest in this case stems from its interest in protecting girls from ideologically-based interference into their freedom of beliefs and from coerced indoctrination into misogynistic ideologies. WoLF’s goals are thwarted when the state abandons its responsibility

1. No counsel for any party authored any part of this brief, and no party, their counsel, or anyone other than WoLF, has made a monetary contribution intended to fund its preparation or submission.

2. *Amicus* uses “sex” throughout to refer to the fundamental distinction, found in most species of animals and plants, based on the type of gametes each individual’s body is organized to produce. In humans these fundamental sex differences divide people into two sexual reproductive categories: Females are those whose bodies are organized to support the production of ova and the creation of offspring through sexual reproduction; Males are those whose bodies are organized to support the production of sperm. Sex in humans is determined at conception and remains fixed throughout all life stages, regardless of individual life experiences such as aging, illness, or infertility, and regardless of whether the individual has a “difference (or disorder) of sexual development” (DSD), sometimes incorrectly labeled “intersex.” See Sex, Male, and Female, MILLIER-KEANE ENCYCLOPEDIA AND DICTIONARY OF MEDICINE, NURSING, AND ALLIED HEALTH (7th ed. 2003), <https://medical.dictionnaire.thefreedictionary.com> (last visited March 7, 2025).

to maintain neutrality with respect to religious belief and objective reality.

SUMMARY OF ARGUMENT

Both parties frame this matter as one concerning the rights of religious parents to opt out of public-school instruction in materials offensive to their religion, a right that principally implicates the Free Exercise Clause of the First Amendment. This framing deflects scrutiny from the nature of the contested materials themselves, materials that promote a mystical ideology known as “gender ideology” that is regressive and hostile to women and girls and neglects the rights of all students to be free from coercive indoctrination into a system of beliefs that is fundamentally religious in nature. Montgomery County’s mandatory instruction in this ideology must be struck down as an impermissible establishment of religion in violation of the Establishment Clause of the First Amendment.

ARGUMENT

I. Mandatory Instruction in Gender Ideology is an Unconstitutional Establishment of Religion

At issue in this case is whether public elementary schools may require children—both religious and nonreligious—to be exposed to materials that promote the concept of “gender identity,”³ a concept Petitioners

3. The materials in question also address sexual orientation, the straightforward concept that some people are attracted to the opposite sex, some are attracted to the same sex, and some are attracted to both. As will be discussed, “gender identity” is

(parents of children in Montgomery County public schools), consider contrary to their religion. Many parents of children in Montgomery County schools also objected to these materials on non-religious grounds, including those who belong to Kids First, a nonreligious organization of parents and teachers supporting opt out rights, *see Mahmoud v. McKnight*, No. 23-1890 at 7-9 and n.4 (4th Circuit, 2024), *cert. granted*, *Mahmoud v. Taylor*, No. 24-297 (January 17, 2025). This opposition is unsurprising: the concept of “gender identity” is widely contested and controversial.⁴ Radical feminists in particular have long criticized the concept—and the beliefs, practices, and activist demands associated with it—as inherently misogynistic, opposed to reality, and harmful in its effects. *See, e.g.*, Janice Raymond, *THE TRANSSEXUAL EMPIRE: THE MAKING OF THE SHE-MALE*, Teachers College Press (1994) (*reissuance of 1979 Beacon Press edition*).

an entirely different concept (and, because it denies the reality of sex is in fact antithetical to the idea of sexual orientation). This brief addresses only the “LGBTQ Inclusive” storybooks, instructor guidelines, and supporting materials that promote a belief in gender identity. *See Mahmoud v. McKnight*, No. 23-1890 at 7-9 (4th Circuit, 2024), *cert. granted*, *Mahmoud v. Taylor*, No. 24-297 (January 17, 2025). This brief refers to these storybooks, supportive materials, and guidelines collectively as “the Materials.”

4. The concept is the purported justification for a host of practices grounded in the idea that sex is fluid, including medical interventions to change the sex traits of minors, male participation in female sport, and the housing of violent male sex offenders in women’s prisons. Popular opposition has led to state-level bans, widespread litigation, and/or Executive Orders seeking to end these practices. *See, e.g.*, Executive Order 14168, *DEFENDING WOMEN FROM GENDER IDEOLOGY EXTREMISM AND RESTORING BIOLOGICAL TRUTH TO THE FEDERAL GOVERNMENT* (January 20, 2025).

Ignoring the roiling public controversy around the concept, Respondents defend their program of mandatory instruction, claiming “a decades-old consensus that parents who choose to send their children to public school are not deprived of their right to freely exercise their religion simply because their children are exposed to curricular materials the parents find offensive.” This assertion pits the prerogative of public-school officials to teach a (presumably secular) curriculum against the religious beliefs of parents; the entire force of the argument lies in the unspoken equation between the materials in question and secular or scientific instruction that States have sought to suppress as inconsistent with religious doctrine. *See, e.g., Edwards v. Aguillard* (1987) 482 U.S. 578 (striking a state statute that prohibited instruction in Darwin’s theory of evolution unless accompanied by instruction in “creation science”). For the materials at issue in this case, this analogy simply doesn’t hold. In fact, these materials promote an ideology that is itself quasi-religious in nature, making the mandatory exposure of children to such materials an impermissible establishment of religion in violation of the Establishment Clause of the United States Constitution.

A. The Materials Promote a System of Belief Known as Gender Ideology.

The Respondents seek to characterize the Materials as benign, describing them as “everyday tales of characters who experience adventure, confront new emotions, and struggle to make themselves heard” and “archetypal stories that touch on the same themes introduced to children in such classic books as Snow White, Cinderella, and Peter Pan.” Respondent’s Brief

in OPPOSITION TO PETITION FOR CERTIORARI at 5, *Mahmoud v. Taylor*, No. 24-397 (2025) (“RESPONDENT’S BRIEF”). It is true that like those fairytales, the Materials depict scenarios that defy belief: they feature small children who know themselves to be “transgender,” children whose “gender identity” is so transient that it “changes like the weather,” untethered from the sex binary, and sex change made possible simply through love. RESPONDENT’S BRIEF at 13-14. Respondents’ benign characterizations of the Materials, however, overlook the overtly ideological instructions that accompany these fantastical scenarios and that the scenarios themselves are used to justify policy prescriptions.

For example, the Materials include the instruction that “there is no single way to be a boy, girl, or any other gender,” *Mahmoud* at 9, suggesting that children can be something other than boys and girls. They instruct public school teachers:

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. These instructions further include:

guidance that directs teachers to emphasize that “not everyone is a boy or girl” and that “[s]ome people identify with both, sometimes one more than the other and sometimes

neither,” so students “shouldn’t” “guess” but instead solicit others’ “pronouns.” The guidance directs teachers to frame disagreement with these ideas as “hurtful,” and to “[d]isrupt the either/or thinking” of students[.]

RESPONDENT’S BRIEF at 13 (*citations to the record omitted*). Moreover, the Materials attach real-world policy prescriptions to these made-up stories about identity. One story encourages children to ponder “[w]hat pronouns fit you?” while another depicts children with placards that read “[choose] the bathroom that is comfy 4 u,” promoting the use of pronouns and bathrooms associated with a child’s “gender identity” rather than sex. RESPONDENT’S BRIEF at 12-13.

These instructions and policy prescriptions treat the fantastical scenarios in the Materials not like pumpkins that turn into coaches or something out of Neverland, but instead as part of a belief system or “a system of ideas that aspires both to explain the world and to change it.” *See* Maurice Cranston, Ideology, ENCYCLOPEDIA BRITANNICA (2025) <https://www.britannica.com/topic/ideology-society> (last visited March 7, 2025). Stated differently, Montgomery County uses the Materials to promote a particular system of ideas, that is, an ideology.

The Materials reveal three tenets central to this ideology:

- (1) people have an ethereal essence known as a “gender identity”;

(2) this identity may be different from a person's sex ("Our body parts do not decide our gender. Our gender comes from our inside"); and

(3) when a person's gender identity and sex conflict, gender identity rather than sex decides that person's access to single sex spaces, pronouns, and more.

The corner piece of this ideology is the term "gender identity." This term is associated with John Money the mid-20th century sexologist who is infamous for a disastrous experiment in which he sought to impose a female "identity" on a boy who later killed himself. Money defined "gender identity" as "the private experience of a gender role." John Money, GENDER ROLE, GENDER IDENTITY, CORE GENDER IDENTITY: USAGE AND DEFINITION OF TERMS, *J. Amer. Acad. Psychoanalysis*, 1(4):397-403 (1973). He defined "gender role" as:

All those things that a person says or does to disclose himself or herself as having the status of boy or man, girl or woman, respectively. It includes, but is not restricted to sexuality in the sense of eroticism. Gender role is appraised in relation to the following: general mannerisms, deportment and demeanor; spontaneous topics of talk in unprompted conversation and casual comment; content of dreams, daydreams and fantasies; replies to oblique inquiries and projective tests; evidence of erotic practices and, finally, the person's own replies to direct inquiry.

Id. As this quote reveals, “gender identity” is rooted in the idea that sex stereotypes define a core part of a person’s identity. The system of beliefs built around this regressive idea—and reflected in mandatory curriculum contained in the Materials—is known as “gender ideology.”⁵

B. Gender Ideology is Religious in Nature.

This ideology is not named in the Materials nor even acknowledged as an ideology in Respondents’ brief. Denial of any ideological bent is characteristic of gender ideology adherents; its strongest proponents instead frame their beliefs as grounded in indisputable fact and universally observed truth.⁶ But the very concept of “gender identity”

5. The description of “gender ideology” that appears in E.O. 14168 aligns with the three tenets underlying the Materials. The EO states that:

Gender ideology” replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity [tenet 1], permitting the false claim that males can identify as and thus become women and vice versa [tenet 2], and requiring all institutions of society to regard this false claim as true [tenet 3]. Gender ideology includes the idea that there is a vast spectrum of genders that are disconnected from one’s sex. Gender ideology is internally inconsistent, in that it diminishes sex as an identifiable or useful category but nevertheless maintains that it is possible for a person to be born in the wrong sexed body.

6. For example, GLAAD (Gay and Lesbian Alliance Against Defamation), an activist group that believes “everyone has a gender identity,” issued a fact sheet advising reporters to avoid the term “gender ideology.” See GLAAD, *Fact Sheet for Reporters—Term to Avoid: “Gender Ideology”* (December 3, 2024), <https://glaad.org/fact-sheet-for-reporters-term-to-avoid-gender-ideology/>

and its opposition to the observable fact of sex refutes this framing. The concept and the ideology built on it are instead fundamentally religious in nature.

There is no consistently applied legal definition of “religion” and even lay definitions of the term vary widely.⁷ But a common understanding of that term includes the idea of a set or attitudes, beliefs, and practices towards things sacred. In contrast with secular attitudes, beliefs and practices, religious attitudes, beliefs and practices often cannot be fully explained by reference to observable phenomena.

Indeed, while sex is an observable characteristic based in reality, “gender identity” is wholly self-determined. *See Mahmoud* at 9 (discussing the Materials, including the claim that “[o]ur body parts do not decide our gender. Our gender comes from our inside[.]”) The disconnect of the metaphysical “gender identity” from physical sex is

(last visited March 7, 2025). The Fact Sheet states that “gender identity is the accurate term to describe a person’s internal sense of their own gender” and that “gender diverse people have existed throughout history and cultures around the world.” The Fact Sheet provides no support for these claims, yet states that “Gender ideology” is “an inaccurate term” and that unverifiable claims about gender identity do not constitute an ideology because “‘ideology’ describes a political construct and opinion that can be debated, argued about, and can change over time.”

7. *Compare* “Religion.” MERRIAM-WEBSTER.COM DICTIONARY, Merriam-Webster, <https://www.merriam-webster.com/dictionary/religion> (last visited March 7, 2025) (defining religion as “a personal set or institutionalized system of religious attitudes, beliefs, and practices” with (defining religion as “human beings”“ relation to that which they regard as holy, sacred, absolute, spiritual, divine, or worthy of especial reverence.”)

akin to the religious concept of a soul: “the principle of life, feeling, thought, and action in humans, regarded as a distinct entity separate from the body, and commonly held to be separable in existence from the body; the spiritual part of humans as distinct from the physical part.” Soul Definition, *Dictionary.com* (based on Random House Unabridged Dictionary, 2020).

Prominent advocates for gender ideology from the former President of the United States to the most well-known trans-identified person in the world echo this religious language. President Biden has referred to opposition to gender ideology as “sinful”⁸ while Caitlyn Jenner has claimed to have “the soul of a woman.”⁹ Activist protesters were not content to simply protest Dave Chappelle’s jokes about gender ideology but called for the comic to “repent.”¹⁰

Leaders within the movement to promote gender ideology openly describe the spiritual nature of their belief. The publication *them*, which bills itself as “the award-winning authority on what LGBTQI means today,” published an interview on the “divinity of transness”

8. Kevin Liptak, *Biden says efforts to restrict transgender rights ‘close to sinful,’* CNN, March 13, 2023, <https://www.cnn.com/2023/03/13/politics/joe-biden-daily-show-trans-rights/index.html> (last visited March 7, 2025).

9. Chris Bodenner, *Is the Transgender Movement a Spiritual One?*, THE ATLANTIC, June 28, 2016, <https://www.theatlantic.com/national/archive/2016/06/is-the-transgender-movement-a-spiritual-one/623668/> (last visited March 7, 2025).

10. Jesse Singal, *Netflix’s Chappelle of hate*, THE SPECTATOR, November 18, 2021, <https://thespectator.com/topic/netflixs-chappelle-of-hate-netflix/> (last visited March 7, 2025).

with Reverend Valerie Spencer, the founder of a spiritual organization for “LGBTQI communities.” Spencer states:

[t]o be trans is one of the most spiritual things one can ever be in and itself—even should you never pray. We are the rare people that caught a glimpse of God being itself as us, dancing around as us. And when we begin to move towards that vision, that is divine.¹¹

The most disturbing part of gender ideology’s fundamentally religious nature is that its adherents use its mystical associations to shield a highly idiosyncratic and unscientific belief system from inquiry. Ideologues have long treated gender ideology as a rigid orthodoxy concerning which there can be “no debate”¹² and any dissenter as an apostate, making reasoned questioning of its tenets impossible. Critics of the ideology may be tarred as hateful, bigoted, or—in the case feminist critics—trans-exclusionary radical feminists or TERFs, a term used to demean critics of the belief in gender ideology.¹³ These critics have faced job loss, deplatforming,

11. Rev. Valerie Spencer and Wren Sanders, *Reverend Valerie Spencer Sees the Divinity of Transness*, them, July 1, 2022.

12. See, e.g., Ellen Pasternak, “No Debate” No Longer an Option, *THE CRITIC MAGAZINE* (September 22, 2021) (describing the “taboo” around discussing beliefs critical of gender ideology dogma, such as that sex is binary and fixed); Frances Widowson, *The Campus Trans Diktat: No Debate, No Dissent—And No Jokes*, *QUILLETTE* (September 6, 2022) (college campus debates about gender ideology dogma are commonly shut down as exercises in “debating the trans community’s very existence”).

13. See <https://terfisaslur.com/> (website documenting the abuse, harassment and misogyny directed at feminists critical of gender ideology).

censorship, and cancellation, punishments that have been visited disproportionately on women.¹⁴ The attributes of doctrinal rigidity and dogmatic intolerance of dissent are on display here, where Montgomery County unaccountably overrode its own internal guidelines, and—without explanation—refused to allow anyone to opt-out from instruction in the Materials, effectively mandating that students be indoctrinated in gender ideology. *Mahmoud*, No. 23-1890 at 10-11.

C. Public School Programs of Mandatory Student Exposure to Gender Ideology Constitute an Establishment of Religion.

Montgomery County’s mandate that students submit to instruction in gender ideology is an establishment of religion. While the legal standard for finding an impermissible establishment of religion has evolved, *see Kennedy v. Bremerton*, 597 U.S. 507 (2022), No. 21-418, the principle that “[t]he Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools” remains, *Edwards v. Aguillard*, 482 U. S. 578, 583–584 (1987) as does the basic requirement that government must remain neutral towards religion. Finding an impermissible establishment of religion here is not overly complicated by evolving Establishment Clause precedent because a program of coercive indoctrination of elementary school students that favors religious dogma over secular belief violates the constitution under any analysis.

14. *See* List of Women Cancelled in the United States Over Gender Ideology, <https://womensliberationfront.org/list-of-cancelled-women> (last visited March 7, 2025).

i. Montgomery County’s Program of Instruction in Gender Ideology is Coercive and Constitutes an Endorsement of Religion.

In *Kennedy*, the Court wrote that “the Establishment Clause must be interpreted by “reference to historical practices and understandings,” including the principle “that government may not, consistent with a historically sensitive understanding of the Establishment Clause, ‘make a religious observance compulsory.’” *Kennedy*, slip op. at 23, 24-25 (*internal citations omitted*). The Court then contrasted the facts of the case, in which a coach engaged in prayer on a school football field following the school team’s victory, with cases in which the Court found religious observance in the setting of a public school to be compulsory and impermissible. In finding that there was no coercion, the Court relied on several facts starkly different from the facts here. In particular, the court noted that there was no evidence that parents had complained of the on-field prayers, that students were not required to participate in the prayer and that there was no evidence that students felt pressured to participate. The Court also noted the relative maturity of secondary school students, which affected the analysis of whether they were likely to feel coerced. *Id.* at 27-30. The facts of this case could not be more different.

This case exists only because religious parents objected to instruction involving the Materials. But the opposition is not limited to those who object to gender ideology as offensive to their religion. The secular group Kids First, “an unincorporated association of parents and teachers’ advocating ‘for the return of parental notice and

opt-out rights’ in Montgomery County Public Schools” joined the complaint against the schools. *Mahmoud*, n.4.¹⁵ Opposition was widespread, and included not only parents, both religious and nonreligious, but teachers and administrators as well:

Almost as soon as the Storybooks were first adopted and integrated into Montgomery County schools during the 2022–2023 academic year, numerous teachers, administrators, and parents began voicing concerns about their efficacy and age appropriateness. Some complaints were based on religious grounds, but many were not. For instance, several elementary school principals signed onto a document that identified numerous instances in the Storybooks of age-inappropriate content such as words being used without definitions; inherent problems with depicting young children “falling in love” with another individual regardless of orientation; and the overall difficulty of some of the concepts presented. Many parents, including the eventual plaintiffs in this case, expressed concerns about having their children exposed to content at odds with their religious faith or that they deemed to be inappropriate for their children’s age and development. In short, the Storybooks’ rollout was contentious and many caregivers sought—for religious and secular reasons—to have their children exempted from the Storybooks.

15. Kids First did not, however, join in the motion for preliminary injunction, so the Fourth Circuit did not consider the interests of nonreligious parents and students. *Mahmoud* at n.4.

Id. at 10. Though Montgomery County initially recognized religious objections, allowing an opt out of instruction in the Materials for religious reasons, the county did an immediate about face, revoking the option of opting out and effectively mandating that all students receive instruction in mystical gender ideology dogma. In other words, the program of instruction in gender ideology was on its face coercive, in that no student could avoid instruction in gender ideology. As the Court noted in *Kennedy*, coerced participation in religious activity “was among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment.” *Kennedy* at 25 and 29-30 (discussing favorably precedent in which mandatory exposure to prayer in public schools was found to violate the First Amendment.)

The decision in *Kennedy* also relied on the relative maturity of secondary school students to reject that coercion had occurred. *Id.* at 26. In this case, Montgomery County mandated that students as young as kindergartners be exposed to gender ideology. *Mahmoud* at n.1. The Supreme Court has evaluated religious-based public-school instruction that included elementary-aged students according to a three-pronged test:

First, the legislature must have adopted the law with a secular purpose. Second, the statute’s principal or primary effect must be one that neither advances nor inhibits religion. Third, the statute must not result in an excessive entanglement of government with religion.

Edwards v. Aguillard, 482 U.S. 578, 583 (citing to *Lemon v. Kurtzman*, 403 U.S. 602, 612-613, 91 (1971)). Under this

test, known as “the Lemon Test,” religious instruction in public school that fails any of the three prongs constitutes an establishment of religion.

Concerning the first prong, courts look to whether the religious instruction amounts to an endorsement of religion. While the Supreme Court has moved away from the Lemon Test, *Edwards* and its inquiry into state endorsement of religion remains precedent when considering the “particular concerns” that arise in public school instruction in religious material, *id.* at 585. The Court in *Edwards* emphasized the particular sensitivities in considering religious instruction on public schools:

In this case, the Court must determine whether the Establishment Clause was violated in the special context of the public elementary and secondary school system. States and local school boards are generally afforded considerable discretion in operating public schools. . . .

The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. 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. 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. Furthermore, "[t]he 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. . . ."

Edwards at 584 (*internal citations* omitted). Given the relative immaturity and impressionability of younger public-school students, these concerns may be heightened when the religious instruction occurs in elementary school students. *See Mahmoud* at 10.

In *Edwards*, the Court invalidated a state law that forbade the teaching of Darwin's theory of evolution in public schools unless accompanied by instruction in the religious doctrine of creationism. The Court looked to legislative history and practical effect of the law in finding that it was enacted for the purpose of endorsing religion. *Edwards* at 587-589. Although the Fourth Circuit found that the record was not sufficiently developed to determine the intent of Montgomery County in revoking its opt-out option for religious parents, *Mahmoud* at 26-27, the relevant inquiry here for an Establishment Clause analysis is the motivation behind the Materials themselves. That motivation is plain. The instructional guidelines within the Materials include the direction to teachers to respond to students who question what "transgender" is with dogmatic shibboleths, such as that the sex-based categories of "boy" and "girl" are a "guess" based on "body parts," while true gender identity "comes from the inside." *Mahmoud* at 9. The Materials

instruct teachers to respond to the concerns of parents and caregivers by affirming the reality of transgender identities and “genders” other than boy and girl. *Id.* These instructions overtly endorse the mystical tenets of gender ideology.

ii. Montgomery County’s Program Favors Religion over Secular Belief.

In fact, the religious endorsement here is explicit and heavy-handed in a way even the religious law invalidated by *Edwards* was not. The law in question in *Edwards* sought to present an appearance of neutrality between religious and non-religious belief by allowing either the teaching of evolution alongside religious doctrine or not teaching either. Nonetheless, the Court found this contrived attempt at neutrality to be a sham for several reasons, one of which was that the law in question required the use of instructional guidelines for “creation science,” but not for evolution. *Edwards*. at 588.

In contrast to the law in *Edwards*, Montgomery County offered no option of nonreligious, sex-based instruction. Students who questioned the content in the Materials would only receive further indoctrination in gender ideology about the subjective and fluid nature of gender identity. Moreover, as with the law in *Edwards*, instructional guidelines were contemplated only to amplify religious doctrine. There is no indication that the Materials made provision for including alternative, science-based instruction, such as that one’s sex is binary, immutable, and observed at birth.

This preference for religious doctrine over secular truth is plainly at odds with Court precedent. The Court has held that “[t]here is and can be no doubt that the First Amendment does not permit the State to require that teaching and learning must be tailored to the principles or prohibitions of any religious sect or dogma.” *Epperson v. Arkansas*, 393 U.S. 97, 106 (1968) (invalidating a state law criminalizing the teaching of evolution). The favoring of religion over non-religion violates the fundamental principle under the Establishment Clause of government neutrality towards religion. Under this principle:

[g]overnment in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion, and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.

Id. at 103. But the Montgomery County program not only favors the religious doctrine of gender ideology over a nonreligious, science-based understanding of sex. The program also favors gender ideology over other faiths. While parents of traditional religious faith were allowed to opt their children out of standard sex education, only when it came to the program of instruction in gender ideology was instruction made mandatory with no opt out available to religious students. See PETITION FOR WRIT OF CERTIORARI, *Mahmoud v. Taylor*, No. 24-397 (2025). This differential treatment effectively created

a hierarchy of religion, with gender ideology trumping Islam, Catholicism, and all other faiths. A public-school program for elementary age students like the one devised by Montgomery County, which favors gender ideology over all other religions and favors religion over nonreligion by confining instruction to the teaching of gender ideology in the fluid, subjective concept of gender, while omitting instruction in the objective, science-based reality of sex is, on its face neutral neither among religions nor between religion and nonreligion. Such a program violates the Establishment Clause under any analysis.

II. Gender Ideology Harms Children, Women, and LGB People.

Gender Ideology has been promoted as “progressive,” but it is, in fact, a regressive approach to sex stereotypes and homosexuality. Indoctrinating children in the ideology in school promotes social harms to vulnerable groups by leading often troubled children to question their sex, by subverting the basis for necessary sex segregation, and by confounding the meaning of same sex attraction.

A. Gender Ideology Harms Children Psychologically and Physically.

The Materials discussed in section I A are designed to teach children of tender years that when they were born, they were assigned “boy” or “girl,” based on a “guess” by a doctor who might have been wrong. The Materials teach children, who are as young as 4 or 5 years old, that “gender” comes from inside and that sometimes their inside does not align with their outside. The gender industry has never provided a consistent or clear definition of gender or sex or transgender. Often gender and sex are used interchangeably. This creates categorization and

cognitive confusion as the logic of the proposition cannot be untangled without agreed to definitions. Attempts to define “transgender” result in circular reasoning.

If the child is fortunate to be mature enough to think more critically and be able to challenge the idea of gender identity, the teachers are instructed to tell the child that such questions are “hurtful.” This teaching also instructs children that what is on the “outside” is not as important as what is on the inside. In other words, gender identity is more important than sex.

To teach such a destabilizing concept to young children can erode their trust in their parents, their teachers, and their doctors, as well as in themselves. The children have been deceived and learn confusing and false beliefs that children can be born in the wrong body, and that sex change is possible. Children in pre-kindergarten through elementary school, most of whom are in a period of growth in which they believe in the magical and fantastic, this can be devastating as they mature.

From there, harms may escalate to the practice of “social transition” whereby educators and other children “affirm” the new gender or sex. This can lock in a child’s identification with the wrong sex. See e.g., Jane Martin, MD, “*What is ‘Social Transition’ and Why is it Important?*” Clinical Advisory Network on Sex and Gender (can-sg.org) (2023) (citations omitted). Once a wrong-sex identity is cemented by social transition, there is evidence that children are likely to pursue irreversible hormonal and surgical interventions such as puberty blockers. See Ruth Hall et al., *Impact of Social Transition in Relation to Gender for Children and Adolescents: A Systematic Review*, *Archives Disease Childhood* 1. 1 (2024).

Puberty blockers halt the development of secondary sexual characteristics like breasts, height, Adam’s apple, and facial and pubic hair. They are not “reversible” despite the gender industry’s claim that they are merely a harmless, reversible, “pause.” See Meghan Twohey, Chrstitina Jewett, *They Paused Puberty, but is there a Cost?* N.Y. TIMES (November 14, 2022). But, if the child is not socially transitioned, then between 80-90 percent of children who express gender or sex confusion before puberty grow out of the confusion after puberty. http://www.sexologytoday.org/2016/01/do-trans-kids-stay-trans-when-they-grow_99.html (last visited March 7, 2025) Puberty blockers have serious physical consequences for growing children. Puberty blockers may interfere with normal cognitive development. See Sallie Baxendale, *The impact of suppressing puberty on neuropsychological function: A review*, ACTA PAEDIATRICA (February 9, 2024), <https://doi.org/10.1111/apa.17150> (last visited March 7, 2025).

Serious medical consequences can result from the use of puberty blockers to prevent puberty. Both sexes may experience “diminished bone density, infertility, and sexual dysfunction.” *L. W. by & through Williams v. Skrmetti*, 83 F.4th 460, 489 (6th Cir.), cert. dismissed in part sub nom. *Doe v. Kentucky*, 144 S. Ct. 389, 217 L. Ed. 2d 285 (2023), and cert. granted sub nom. *United States v. Skrmetti*, 144 S. Ct. 2679, 219 L. Ed. 2d 1297 (2024).

Other hormonal interventions include the administration of cross-sex hormones to promote secondary sex traits associated with the opposite sex. Females taking sufficient levels of testosterone to induce changes in their body increases the risk of erythrocytosis, myocardial infarction, liver dysfunction, coronary artery disease, cerebrovascular disease, hypertension, and breast and uterine cancer. Males taking sufficient levels of estrogen

to induce changes may experience sexual dysfunction and increased the risk of hypertriglyceridemia. *Id.* at 489.

For many years gender advocates have maintained that if children are not “affirmed” and permitted to transition, they will commit suicide. Parents who ask questions about alternatives, such as waiting, or exploratory therapy, or if they show any resistance are asked “Would you rather have a dead girl or a live boy?” This is perhaps the most pernicious manner of eliminating challenges from parents, other family members, teachers, coaches, other medical professionals, journalists, and, even judges. Gender advocates and the gender industry have persisted with this claim, despite the fact that it is completely false and has always been completely false. The data relied on to support this was from studies that have been discredited. See <https://www.transgendertrend.com/the-suicide-myth/> (last visited March 7, 2025); Correction of a Key Study: No Evidence of “Gender Affirming” Surgeries Improving Mental Health, August 2020, https://www.segm.org/ajp_correction_2020 (last visited March 7, 2025); Sapir, Leo Reckless and Irresponsible, <https://www.city-journal.org/article>, 16. May 17, 2023. A more relevant and recent study shows the opposite is true. Children who transition are more likely to commit suicide. (Source). On December 4, 2025, Chase Strangio admitted in the United States Supreme Court that the statistics did not support that position.¹⁶ Sapir, Leo,

16. Excerpt from transcript of oral argument in *U.S. v. Skrmetti*, United States Supreme Court, December 4, 2024, Page 88-89.

JUSTICE ALITO: Well, I—I don’t regard the Cass review as—necessarily as—as the Bible or as something that’s, you know, true in every respect, but, on page 195 of the Cass report, it says: There is no evidence that gender-affirmative treatments reduce suicide.

December 5, 2024 <https://www.city-journal.org/article/aclu-attorneyconfesses-transgender-suicide-claim-is-a-myth> (last visited March 7, 2025). Thus, we have all been led on our own “gender journey” right along with the children who hear that if they do not transition, they too will commit suicide.

This is not a grass roots civil rights movement, but an AstroTurfed project that has been successful, generating approximately in the United States 1.2 billion dollars in 2022 for surgical procedures alone. Grandview Research, *U.S. Sex Reassignment Surgery Market Size*, report ID Report ID: GVR-4-68039-258-0, <https://www.grandviewresearch.com/industry-analysis/us-sex-reassignment-surgery-market> (last visited March 7, 2025). Activists often minimize the prevalence of pediatric sex trait modification procedures and deny that such surgeries are performed on minors at all, but data from a recent analysis of insurance claims shows that in the United States between 2019 and 2023: 13,994 minors underwent sex trait modification treatments, 5,747 minors had sex trait modification surgeries; 8,579 minors received hormones and puberty blockers; and 62,682 sex change prescriptions were written for minors. See Do No Harm, Stop the Harm Database at <https://stoptheharmdatabase.com/about/> (last visited March 7, 2025). This database does not include data from Kaiser Permanente or the Department of Veterans Affairs. “Gender affirming care” is a medical scandal. See amicus brief of the State of Alabama in *U.S. v. Skrametti*, 23-477, page 1, <https://www.supremecourt.gov/DocketPDF/23/23-477/>

MR. STRANGIO: What I think that is referring to is there is no evidence in some—in the studies that this treatment reduces completed suicide. And the reason for that is completed suicide, thankfully and admittedly, is rare and we’re talking about a very small population of individuals with studies that don’t necessarily have completed suicides within them.

328275/20241015131826340_2024.10.15%20-%20Ala.%20Amicus%20Br.%20iso%20TN%20FINAL.pdf (last visited March 7, 2025).

Almost all children who receive “gender affirming care” have one or more co-morbidities such as depression, anxiety, autism, self-harming behaviors, and suicidal ideation. *See, e.g.*, Lisa Littman, *Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria* (2018) PLOS ONE 13(8): <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0214157> (last visited March 7, 2025). Many have a history of trauma and abuse. *Id.* Nevertheless, where there should be exploratory therapy to identify the source of a child’s difficulty they are immediately “affirmed” and set on a path of medical interventions contrary to their biology. The evidence relied on by gender advocates is extremely weak. The World Professional Association of Transgender Health (WPATH) hired Johns Hopkins University to review the evidence supporting the permanent alteration of children’s bodies to address gender confusion, the team “found little to no evidence about children and adolescents, . . . ” WPATH resisted the publication of the review. See exhibit 175, pages 20-25 (pages not redacted) at <https://www.alabamaag.gov/wp-content/uploads/2024/10/SJ.DX173-560-23-HHS-5-REDACTED.pdf> (last visited March 7, 2025); Azeen Ghorayshi, U.S. Study on Puberty Blockers Goes Unpublished Because of Politics, Doctor Says, *New York Times*, October 23, 2024, <https://www.nytimes.com/2024/10/23/science/puberty-blockers-olson-kennedy.html> (last visited March 7, 2025).

None of the interventions, including social transition, are benign. The medical interventions, including puberty blockers, cross-sex hormones, genital and other surgeries all carry grave risks and future complications. A recent study of over 100,000 patients who identified as transgender “were at significantly higher risk for depression, anxiety, suicidal ideation, and substance use disorder than those who did not have surgery. See Examining the Gender Specific Mental Health Risks After Gender Affirming Surgery: A National Database Study, Joshua E Lewis, BS, Amani R Patterson, MBS, Maame A Effrim, BS, Manav M Patel, BSA, Shawn E Lim, BS, Victoria A Cuello, BS, Marc H Phan, BS, Wei-Chen Lee, PhD *Journal of Sexual Medicine*, qdaf026, February 23, 2025, <https://academic.oup.com/jsm/advance-article-abstract/doi/10.1093/jsxmed/qdaf026/8042063> (last visited March 7, 2025). In addition, the John Hopkins review found that adolescents who identified as transgender and had surgery suffered more depression, anxiety, suicidality and distress or dysphoria than trans-identified adolescents who did not have surgery. See exhibit 175, page 25 (pages not redacted) at <https://www.alabamaag.gov/wp-content/uploads/2024/10/SJ.DX173-560-23-HHS-5-REDACTED.pdf> (last visited March 7, 2025). Gender ideology should not be taught to children in school, especially without notice to the parents and the ability to “opt-out.”

B. Women and Girls

When government decision makers ignore the actual science and accept theoretical biology (perhaps because they too have heard the suicide story) necessary and relevant sex distinctions between men and women are denied and women and girls are disproportionately harmed by the resulting unworkable public policy.

In contrast to sex, gender is a classification based on the social construction (and maintenance) of cultural distinctions between males and females.” Institute of Medicine Committee on Assessing Interactions Among Social, Behavioral, and Genetic Factors in Health, (Hernandez, LM and Blazer, DG, editors) *Genes, Behavior, and the Social Environment: Moving Beyond the Nature/Nurture Debate*, National Academies Press, 2006. The United States Department of Health and Human Services (DHHS) agrees, defining “gender” as “a social construct of identities, norms, behaviors, and roles that vary between societies and over time.” DHHS, *Gender Identity Non-Discrimination and Inclusion Policy for Employees and Applicants at 2* (2023).

Women and girls suffer from the loss of single-sex spaces where, because sex change is impossible and men mimicking women may enter also, women and girls lose their ability to police the space. This increases the risk to women and girls as they also become trained to ignore their instincts. Women and girls are vulnerable to male violence. Men are far more likely to commit violent offenses including homicide and rape than women, and rape is overwhelmingly committed by men against. See FBI Crime Data Explorer at <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend> (last visited March 7, 2025) (official U.S. crime statistics over a five-year period). Male violence and femicide is a threat and reality for women. <https://www.populationinstitute.org/news/new-report-exposes-surprising-prevalence-of-femicide-child-marriage-and-female-genital-mutilation-in-the-us/> (last visited March 7, 2025); https://vpc.org/revealing-the-impacts-of-gun-violence/female-homicide-victimization-by-males/?campaign=14820441548&gad_source=1&gclid=CjwKCAiArKW-BhAzEiwAZhWs

IIRDBMy0_U7xXSsHBOIK9d6Z7vkxdMDuT2sETOH yj48oTCC4SVEIWB0CC2kQAvD_BwE (last visited March 7, 2025). Male pattern criminality is not changed by transitioning. Evidence and Data on Trans Women’s Offending Rates, Professor Rosa Freedman, Professor Kathleen Stock and Professor Alice Sullivan, <https://committees.parliament.uk/writtenevidence/18973/pdf/> (last visited March 7, 2025).

Furthermore, the deprivation of single sex spaces favors men who mimic female sex stereotypes over women, effectively establishing a preference by the government for conformity to sex stereotypes. If males can identify into the sex class of women, then there is no such class and women are once again, invisible.¹⁷

C. Lesbians, Gay Men, and Bisexual People.

Lesbians, gay men, and bisexual people are harmed as they are more likely to be given sex trait modifications as children. Lucy Bannerman, *It Feels Like Conversion Therapy for Gay Children*, THE TIMES, August 4, 2019. Though billed as progressive, the “born in the wrong body” narrative is homophobic and has been notably embraced by countries such as Pakistan and Iran (where homosexuality is punished by death, but “sex change” is government subsidized). See, e.g., Ali Hamedani, *The Gay People Pushed to Change Their Gender*, BBC News (2014) available at <https://www.bbc.com/news/magazine-29832690> (last visited March 7, 2025); Sofia Bloem, *Pathologizing Identities Paralyzing Bodies*,

17. When males are permitted to assume a female identity, crime statistics become skewed, law enforcement does not have accurate descriptive identification when necessary, and some perpetrators are able to hide their crimes and evade accountability.

Justice for Iran, 2014. This attitude may be more common in the west than many realize—whistleblowers from a child “gender” clinic in the UK have stated that “gender-affirming” care is sometimes sought by families who prefer a “transgender” child over a gay child. See BBC Newsnight report on the Tavistock GIDS (2020), available at <https://www.transgendertrend.com/bbc-newsnight-tavistock-gids/> (last visited March 7, 2025). “The evidence shows that the majority of adolescents and young people now identifying as transgender are lesbian, gay or bisexual, and that homophobic bullying is indicated as a possible reason. This is cause for serious concern that ‘affirmation’ is a way of ‘transing away the gay.’” <https://www.transgendertrend.com/affirmation-gay-conversion-therapy-children-young-people/> (last visited March 7, 2025)

This is true in the United States as well. Kimberly Shappley, a mother, admits publicly to beating and abusing her son, Kai, when he was just a toddler, for demonstrating an interest in “feminine” things. She stated in an interview, “I remember thinking even before Kai was 3, this kid might be gay. And, I thought, that cannot happen, would not happen. We started praying fervently. Prayers turned to googling conversion therapy, and how can we implement these techniques at home to make Kai not be like this.” (quote from imgur post: <https://imgur.com/a/kai-shappley-BqM7g1O>) (last visited March 7, 2025). Kai’s experience is heralded as a success story for “trans children.” Madeleine Carlisle, Kid of the Year Finalist Kai Shappley, 11, Takes on Lawmakers in Her Fight for Trans Rights, TIME, January 12, 2022, <https://time.com/6128490/kid-of-the-year-kai-shappley-trans-activist/> (last visited March 7, 2025). It is clear that “transitioning” children who are gender nonconforming is, in many cases, constructing a medicalized heterosexuality—and is the

express aim of some children who choose this path or have it chosen for them.

These drugs and procedures serve no medical purpose but rather are undertaken in attempt to resemble the opposite sex, ostensibly to treat clinically significant distress that a person experiences as a result of not appearing “masculine” or “feminine” enough. These drugs and procedures can lead to sterilization and adult sexual dysfunction; the children who “consent” to them are simply too young to meaningfully consent to permanent impairment of fertility or of adult sexual experiences that they cannot yet comprehend. Given the high rate of desistance from childhood gender dysphoria, as well as the very high number of dysphoric youth who are same-sex attracted, serious caution should be urged. Littman L., Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners, *Archives of sexual behavior* 50(8), 3353–3369; Wallien MS, Cohen-Kettenis PT, Psychosexual outcome of gender-dysphoric children, *J Am Acad Child Adolesc Psychiatry*, (Dec 2008) 47(12):1413-23.

New organizations have been created to preserve the rights that Lesbians, Gay Men, and Bisexuals have fought for, to stop the medical treatment of children for gender confusion, and to fight for sex-based rights. See The LGB Alliance USA, <https://lgbausa.org/>, and Gays Against Groomers, <https://www.gaysagainstgroomers.com/> (last visited March 7, 2025) (organizations fighting the sexualization, indoctrination, and medicalization of children).

Even people who identify as transgender have joined with lesbians, gay men, and bisexuals to reform gender medicine for children. See The LGBT Courage Coalition <https://www.lgbtcourage.org/> (last visited March 7, 2025). These groups recognize that the children and young adults being medicalized for not conforming to sex-based stereotypes are disproportionately same-sex attracted (LGB). See, e.g. Lisa Littman, Rapid-Onset Gender Dysphoria in Adolescents and Young Adults: A Study of Parental Reports, 13 PLoS One 1 (2018).

CONCLUSION

The decision below should be reversed.

Respectfully submitted,

ELSPETH B. CYPHER, BOARD SECRETARY
Counsel of Record

NANCY K. STADE, BOARD TREASURER

LAUREN A. BONE, LEGAL DIRECTOR

WOMEN'S LIBERATION FRONT

1802 Vernon Street NW #2036

Washington, DC 20009

(202) 507-9475

elspeth@womensliberationfront.org

Counsel for Amicus Curiae