

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 Muslim Organizations as *Amici Curiae*
in Support of Respondents**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTERESTS OF <i>AMICI CURIAE</i>.....	1
SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. <i>Amici</i> Believe Islam Teaches Them to Learn from Gender and Sexual Diversity, Resist Injustice, Refrain from Religious Coercion, and Support Children’s Learning.....	3
A. Gender and Sexual Diversity Has Always Been a Part of Muslim Communities.	5
B. <i>Amici</i> Believe Muslims Should Respond to Difference with Curiosity, Humility, and a Firm Commitment to Justice.	11
C. <i>Amici</i> believe children deserve truthful information, guidance, and trust.	13
II. Exposure to Diverse People, Ideas, and Beliefs in Public Education Does Not Burden the Free Exercise of Religion.....	17
III. Acknowledging Gender and Sexual Diversity Does not Favor Irreligion, Religion, or any Particular Religion.	20
IV. Constitutionalizing Notice and Opt-Outs Would Harm Students.....	23

V. Public Education Cannot Align with All Religious Views.....	27
A. No School Can Align with All Religious Views About Anything.....	28
B. No School Can Align with All Religious Views as to Gender and Sexuality.....	30
CONCLUSION	34
APPENDIX TABLE OF CONTENTS	A-1
APPENDIX A – LIST OF <i>AMICI CURIAE</i>.....	A-2

TABLE OF AUTHORITIES

Cases

<i>Bauchman for Bauchman v. West High School</i> , 132 F.3d 542 (10th Cir. 1997).....	28
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INTERESTS OF *AMICI CURIAE*¹

Amici Curiae are Muslim organizations, masjid, and secular organizations with substantial Muslim membership. All have LGBTQI+ Muslims among their members and leaders. They have an interest in ensuring that all people have freedom of religion and access to education, including those who are Muslim, LGBTQI+, or both. For a complete list of *Amici*, please see Appendix A.

SUMMARY OF ARGUMENT

Respondents integrated storybooks into their elementary school language arts curriculum to cultivate literacy, teach mutual respect, and reflect the diversity of the school district. Some storybooks depict LGBTQI+ characters, such as a transgender boy who meets acceptance from his mother, a child whose uncle marries his boyfriend, and a girl who has a crush on another girl.

For some children, inclusive storybooks may feel relatable and reflect their families, experiences, or feelings. For others, the storybooks may reveal lives unlike their own. For all children, the storybooks

¹ Pursuant to U.S. Supreme Court Rule 37, counsel for *Amici Curiae* states that no counsel for a party authored this brief in whole or in part, and no person—other than the *Amici* or their counsel—made a monetary contribution intended to fund the preparation or submission of this brief.

present the reality that LGBTQI+ people exist and deserve respect.

Petitioners believe allowing their children to access these books in school violates their religion, unless they receive advance notice and an opportunity to remove their children from classes. They argue a school violates their free exercise rights when it acknowledges LGBTQI+ people to their children, as their religious beliefs require adherents to “[embrace] their biological sex.” Pet. Br. 16. Although Petitioners demand a right to opt out of storybooks, in reality, they seek to sequester their children from pluralism by obscuring access to information about LGBTQI+ people’s existence. The First Amendment does not justify their demands.

Amici’s religious beliefs lead them to support public schools that choose to teach fairness toward LGBTQI+ people without special notice or opportunity to remove children from classes. That *Amici* have a different understanding of what Islam requires than Muslim Petitioners is not surprising, as many Muslims deeply and thoughtfully engaged with their faith and traditions arrive at different, and sometimes contradictory, conclusions on many topics. Gender and sexuality are no exception. The First Amendment embraces and protects diverse religious beliefs and practices, and *Amici* present how, as Muslims, many of them believe Islam encourages embracing gender and sexual diversity, religious plurality, justice, truth, and support for children.

These beliefs resonate with the Constitution. Although opt-outs are generally permitted under the

First Amendment, they are not constitutionally required in this context for four reasons. First, because the First Amendment protects diversity of belief in the public sphere, encountering beliefs that conflict with one's own in public school does not create a cognizable substantial burden on free exercise. Second, there is no basis to treat diversity of beliefs as to LGBTQI+ people differently from any other form of diversity of beliefs. Third, making it a constitutional *requirement* to create curricula customized to the religious beliefs of each parent and child would harm all LGBTQI+ and Muslim students, and would particularly harm LGBTQI+ Muslim students. Fourth, doing so would make the constitutional running of a public school an impossibility.

ARGUMENT

I. ***Amici* Believe Islam Teaches Them to Learn from Gender and Sexual Diversity, Resist Injustice, Refrain from Religious Coercion, and Support Children's Learning.**

Religious practice and beliefs are highly varied and deeply personal for many people of faith, including Muslims. For some Muslims, Islam means more than praying, fasting, going on pilgrimage, helping the needy, or recognizing the Oneness of God or the prophethood of Muhammad (PBUH)². Islam is

² PBUH stands for "May the peace and blessings of God be upon him."

their *deen*—their ‘way of life’ and ‘religion.’ It informs Muslims’ prayer and other major life activities, including cooking, eating, drinking, speaking, washing, dressing, sleeping, and working. See generally *Riyâd-us-Sâliheen*, (compiled by Al-Imâm Abu Zakariya Yahya bin Saraf An-Nawawi ad-Dimashqi, commentary by Hafiz Salahuddin Yusuf, Vols. 1 & 2, 1983, 1998). It also governs how to form and dissolve marriages, bury the dead, grieve loss, engage in commerce, resolve conflict, express contrition, and forgive wrongdoing. *Id.* Many Muslims also look to Islam to guide how they understand themselves and interact with others, including LGBTQI+ people—whom some, like *Amici*, see as part of the Divine plan for diversity within humanity.

The many Muslims³ in this country and around the world do not all have the same views on any of the wide range of subjects for which they seek guidance from God.⁴ As some *Amici* emphasized, the practice of

³ Islam is the fastest growing religion on the planet, counting nearly 2 billion adherents worldwide and over 3.5 million in the United States. Beshar Mohamed, *New estimates show U.S. Muslim population continues to grow*, Pew Research Center (Jan. 3, 2018), <https://www.pewresearch.org/short-reads/2018/01/03/new-estimates-show-u-s-muslim-population-continues-to-grow/>; Michael Lipka, *Muslims and Islam: Key findings in the U.S. and around the world*, Pew Research Center (Aug. 9, 2017), <https://www.pewresearch.org/short-reads/2017/08/09/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/>.

⁴ *The World’s Muslims: Unity and Diversity*, Pew Research Center (2012), <https://www.pewresearch.org/religion/2012/>

Islam is highly decentralized. Indeed, even within *Amici*'s own organizations and communities, there is considerable diversity of belief. One leader at Al-Wāsi' Collective (Al-Wāsi') notes that those who attend Al-Wāsi' jummah services come from a wide range of backgrounds: "We have many who were born into religious Muslim families, who converted to Islam, who left Islam and came back, who believe in *hadith* [accounts of what Muhammad (PBUH) may have said or done], who are more strictly Qur'anist..." Queer Muslims of Boston (QMOB) notes, "Muslim, to us is defined less by the orthodoxy of practice and more by someone's chosen relationship to Islam." And Queer Crescent⁵ emphasizes, "Being Muslim is not one experience, one language, one race, or one way of practicing." *Amici* express some of the beliefs of their organizations, leaders, and members below. Not all *Amici* agree with all these statements, and no *Amicus* purports to speak for all Muslims—much less for God.

A. Gender and Sexual Diversity has Always Been a Part of Muslim Communities.

Recognizing humanity's heterogeneity, many Muslims, including *Amici*, believe God created diverse sexual orientations, gender identities, and sex characteristics by Divine design. "We have been Divinely created to be different—it's part of our Divine blueprint that lives in us in this human body.

08/09/the-worlds-muslims-unity-and-diversity-executive-summary/.

⁵ A fiscally sponsored project of Center for Empowered Politics Education Fund, a 501c3 public charity.

The reason for it is so we can get to know each other, and through getting to know each other, get to know God.” Al-Wāsi’. The Qur’an explicitly acknowledges human diversity. *e.g.*, Qur’an 49:13 (“O humanity! Truly, We create you from a male and a female and made you into peoples and types that you recognize one another.”)⁶; 30:22 (“And among His signs are the creation of the heavens and the earth and the alteration of your languages and hues.”).

Historically, not all Muslims were assigned a binary sex at birth,⁷ conformed with expectations for their assigned sex, or formed intimate relationships exclusively with people assigned a different sex. *See generally*, Khaled El-Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500-1800*, The University of Chicago Press (2005) (describing prevalence of open same-sex love poetry and affairs in the Ottoman Empire); Vanja Hamzić, *Sexual and Gender Diversity in the Muslim World: History, Law, and Vernacular Knowledge* (2019) (describing various forms of gender and sexual diversity among Muslims over time).

Early in the history of Islam, respected ascetics assigned female at birth often did not adhere to

⁶ Quotations from *The Sublime Qur’an* (Laleh Bakhtiar trans., 15th Ed. 2012).

⁷ Those born with visible intersex traits were sometimes treated as at least a somewhat distinct group, *khuntha*. *See, e.g.*, Simonetta Calderini, *Women as Imams: Classical Islamic Sources and Modern Debates on Leading Prayer* 40 (2022) (noting an early scholarly ruling that *khuntha* could lead prayer for women and other *khuntha*, but not men).

gender norms for women of the time: some traveled alone, taught men, did not marry, prayed with men, or wore clothing typical of men. Asma Sayeed, *Women and the Transmission of Religious Knowledge in Islam* 71 (2013); Abu ‘Abd ar-Rahman as-Sulami, *Early Sufi Women* 128, 142, 226 (Rkia Cornell, trans. 1999); Charles Upton, *Doorkeeper of the Heart: Versions of Rabi’a*, Pir Press (1988). At least since 1193 and still today, a community of *aghawat*, people assigned male at birth sometimes referred to in English as eunuchs, have served as the sole guardians and custodians of the grave of Muhammad (PBUH) in Medinah. Hamzić, *supra*, at 121. Over the ages, many male and female Muslim poets, saints, and scholars have openly composed passionate love poetry to people of the same sex. See, e.g., Beverly Mack & Jean Boyd, *One Woman’s Jihad: Nana Asma’u Scholar and Scribe*, Indiana University Press 170-71 (2000); El-Rouayheb, *supra*; Zebunissa, *the Poet Princess: Why every kid needs to grow up on her story!*, The Heritage Lab (Last Accessed April 4, 2025) <https://www.theheritagelab.in/zebunissa-poet-princess/>. In Delhi, a community of *hijra*, a culturally-specific gender sometimes referred to in English as nonbinary or transfeminine, have overseen Hijron Ka Khanqah, a Sufi mosque and shrine that contains the tombs of revered *hijra* from centuries ago. Kerry Wolfe, *Hijron ka Khanqah*, Atlas Obscura (Last visited April 4, 2025), <https://www.atlasobscura.com/places/hijron-ka-khanqah>. Everyday Muslims and Islamic scholars have had a range of opinions on

sexual and gender diversity.⁸ Today, LGBTQI+ Muslims publish scholarship,⁹ tell their stories,¹⁰ live, work, love, and pray all over the world, from Cape

⁸ M. Alipour, *Islamic shari'a law, neotraditionalist Muslim scholars and transgender sex-reassignment surgery: A case study of Ayatollah Khomeini's and Sheikh al-Tantawi's fatwas*, 18 Int. J. of Transgenderism 91 (2016), <https://www.tandfonline.com/doi/full/10.1080/15532739.2016.1250239#abstract>; Shireen Hamza, *Islamic History and Medicine in Trans Muslim Lives*, *Journal of the History of Ideas Blog* (July 1, 2020), <https://www.jhiblog.org/2020/07/01/islamic-history-and-medicine-in-trans-muslim-lives/>; *Religion and views on LGBTQ issues and abortion*, Pew Research Center (Feb. 26, 2025), <https://www.pewresearch.org/religion/2025/02/26/religion-and-views-on-lgbtq-issues-and-abortion/>.

⁹ For theology, scholarship, and prayerbooks by LGBTQI+ Muslims, see *The Black Trans Prayer Book* (Dane Figeroa Edidi & J Mase III, ed. 2020); Amina Wadud, *Inside the Gender Jihad: Women's Reform in Islam* (2006); Scott Siraj al-Haqq Kugle, *Living Out Islam: Voices of Gay, Lesbian, and Transgender Muslims* (2013).

¹⁰ For memoirs of LGBTQI+ Muslims, see, e.g., Lamya H, *Hijab Butch Blues* (2023); Leyla Jagiella, *Among the Eunuchs: A Muslim Transgender Journey* (2022); Samra Habib, *We Have Always Been Here: A Queer Muslim Memoir* (2019); Amrou Al-Khadi, *Life As A Unicorn: A Journey from Shame to Pride and Everything in Between* (2020); Mohsin Zaidi, *A Dutiful Boy: A memoir of secrets, lies, and family love* (2021).

Town¹¹ to Toronto,¹² Berlin¹³ to Yogyakarta,¹⁴ Mymensingh¹⁵ to Melbourne.¹⁶

At the same time, gender and sexual diversity have not always been celebrated or even tolerated among Muslims. *Amici* grieve the loss of openly gay Imam Muhsin Hendricks, who was recently

¹¹ Anna Bruce-Lockhart, *Meet the imam of Africa's first gay-friendly mosque*, WEF (May 4, 2017), <https://www.weforum.org/stories/2017/05/gay-lgbt-mosque-imam-muhsin-hendricks/>.

¹² *Toronto mosque welcomes LGBT community for Ramadan feast*, CBC (June 11, 2016), <https://www.cbc.ca/news/canada/toronto/unity-mosque-peace-iftar-toronto-1.3630935>.

¹³ Alice Su, *The German mosque that attracts women imams, gays and death threats*, Politico (July 27, 2017), <https://www.politico.eu/article/berlin-feminist-mosque-ibn-rushd-goethe-germany-first-liberal-mosque-sparks-debate-in-berlin/>.

¹⁴ Reuters, *In Indonesia, transgender women find haven in Islamic boarding school*, NBC (Oct. 16, 2018), <https://www.nbcnews.com/feature/nbc-out/indonesia-transgender-women-find-haven-islamic-boarding-school-n920631>.

¹⁵ *Bangladesh opens mosque for transgender hijra community*, Al Jazeera (Apr. 5, 2024), <https://www.aljazeera.com/gallery/2024/4/5/bangladesh-opens-mosque-for-transgender-hijra-community>.

¹⁶ *Melbourne's queer Muslims break fast together during Ramadan*, ABC Australia (Apr. 18, 2023), <https://www.abc.net.au/news/2023-04-19/queer-iftar-melbourne-muslim-lgbtqi/102236650>.

assassinated.¹⁷ In the experience of the leaders and members of *Amici*, LGBTQI+ Muslims commonly encounter discrimination, violence, and exclusion from Muslims and non-Muslims alike. Queer Crescent's recent survey of over 680 LGBTQI+ Muslims illustrate the vulnerability and precarity faced: Only 53% of respondents felt a sense of belonging in U.S. LGBTQI+ communities, and only 15% felt belonging in U.S. Muslim spaces. *See also* A. I. Ahmed, H. Daoud, & F. Gowani, *Presencing Ourselves: Initial Findings Report of Queer Crescent's Survey of Queer and Trans Muslims in the United States*, Queer Crescent, p. 22 (2024).¹⁸ Quoting a *hadith* promising that God will elevate or forgive a believer based on the tribulations they face, a leader at QMOB shares:

Every day I am inspired by the creativity and fortitude of queer and trans Muslims.... They face ostracization from within the *ummah* [Muslim community]. They are discriminated against in the U.S. context both for their queerness and their Muslimness. And yet, they choose to continue to practice, to gather, and to believe. In that way, queer and trans Muslims are an example of a community of people who choose to do the hard work of believing and investing in their faith and in

¹⁷ Todah Opeyemi, *World's 'first openly gay imam' shot dead in South Africa*, BBC (Feb. 16, 2025), <https://www.bbc.com/news/articles/c05l33j7rq7o>.

¹⁸ Document available upon request.

each other, knowing the blessings that will come from that patience and perseverance.

B. *Amici* Believe Muslims Should Respond to Difference with Curiosity, Humility, and a Firm Commitment to Justice.

For *Amici*, their faith asks them to lean into learning with humility and curiosity and to fight against injustices. Excluding learning about LGBTQI+ lives runs counter to these principles.

To *Amici*, rejecting diversity or claiming and asserting superiority over others is a sin. According to a leader at Atlanta Unity Mosque, the story of shaytan (Satan) teaches how Muslims should embrace diversity:

Supremacy is the first sin. When God makes humans and tells shaytan to bow to them, shaytan is like, ‘Hell no! I’m better than that. I’m superior.’ So, he refuses to honor humans. That was the first going against God. People keep thinking they’re better than other people and species. That’s the problem. Difference is not bad or evil, difference is just difference.

The Qur’an emphasizes the importance of humility. See, e.g., 49:11 (“O those who believed! Let not a folk deride another folk. Perhaps they be better than they.”). It reminds humanity that the only differences that ultimately matter among people are how much good they do and how conscious of God they are. 49:13; 2:148; 2:62.

Respect for difference includes accepting aspects of oneself that differ from dominant norms.

Many *Amici* believe it is important to look within, discovering aspects of oneself and one's connection with God. *See, e.g.*, Qur'an 41:53 ("We will cause them to see Our signs on the horizons and within themselves until it becomes clear to them that it is The Truth."). This process includes accepting the truth of one's gender identity and sexual orientation—and the truth of a continued connection with the Divine. "When I think of Allah's 99 names, an overwhelming majority of them point to notions of Love, Forgiveness, and Kindness. How could the Al-Wadud, the Most-Loving, not be able to encompass queer love?" QMOB.

Amici believe that behaving with injustice toward others, including LGBTQI+ people, is prohibited. Qur'an 57:25. But more than that, it is the duty of every believer to actively intervene to stop oppression. *See, e.g.*, Hadith 34, 40 Hadith an-Nawawi, <https://sunnah.com/nawawi40:34>; Sahih al-Bukhari 6952, <https://sunnah.com/bukhari:6952>. "Our human diversity is often cause for exclusion and violence, but it is actually God's way of challenging us to rise up to the demands of justice beyond the limitation of our individual egoism and communal chauvinism." QMOB. This commitment to justice must override self-interest and even family loyalty. *See* Qur'an 4:135 ("Oh those who believed! Be staunch in equity as witnesses to God even against yourselves or the ones who are your parents or the nearest of kin.").

The community that Muslims are called on to create, according to *Amici*, is one characterized by freedom, equity, care, and peace. "Our prophetic

tradition is about liberation.” Al-Wāsi’; *See* Qur’an 90:12-18. “Truthfully, I believe excluding any type of people, including queer people, violates my religious beliefs. God has taught us in the Qur’an to make peace with our neighbors and be in community with them.” QMOB. Muhammad (PBUH) reportedly behaved kindly toward children and condemned showing favoritism toward some children over others. *See, e.g.,* Sahih al-Bukhari 708 <https://sunnah.com/bukhari:708>; Sunan Ibn Majah 2375, <https://sunnah.com/ibnmajah:2375>; For many *Amici*, opting out of stories that depict LGBTQI+ people is a form of exclusion or favoritism, as refusing to engage with those stories others the people they are about.

C. *Amici* believe children deserve truthful information, guidance, and trust.

Many *Amici* believe that Muslims should call on others, including their children, to do right and avoid wrong. *See* Qur’an 3:104. But they do not believe they should shield children from truthful information or beliefs that differ from their own. A QMOB leader considers “the desire to insulate students from things their parents disagree with to be an affront to the very way Islam thinks about knowledge and education. It is our responsibility to teach children, to provide them with the relevant information needed to form their own sense of self.” Truthful information includes information about gender and sexual diversity within and outside Muslim communities. *See supra.*

The duty to tell the truth is a sweeping one, without exceptions for children. See Qur'an 5:119. So is the duty to seek the truth. A leader from Al-Wāsi' points out that the very first verse revealed of the Qur'an is a command to read, 96:1. Time and again God reminds humans to use their reason, learn from one another and the natural world, and look for proof. See, e.g., Qur'an 2:111, 2:242, 13:3-4, 49:13. "The pursuit of knowledge is a virtue enshrined in Islam. To withhold knowledge or even try to erase it is not only inconsistent with my religious beliefs, but it is sinful." QMOB. Queer Crescent has used the framing of *iqra*, knowledge seeking, as a core tenet of Islam to resist censorship.¹⁹

Accordingly, *Amici* do not see Islamic tradition as calling for shielding children from appropriate discussion of gender and sexuality. In much of the Islamic world, it is customary to teach children Qur'an from a very young age.²⁰ The Qur'an, like the

¹⁹ Shenaaz Janmohamed, *Opinion: I'm a queer Muslim. Dearborn schools pulling LGBTQ books puts kids in danger*, Detroit Free Press (Oct. 28, 2022), <https://www.freep.com/story/opinion/contributors/2022/10/28/dearborn-library-lgbtq-books-ban/69594317007/>.

²⁰ See, e.g., Rudolph T. Ware, *The Walking Qur'an: Islamic Education, Embodied Knowledge, and History in West Africa* 43 (2014) ("For Muslims, the Qur'an is the purest divine revelation, and it is taught to children at the very dawn of reason and moral responsibility. In Maliki legal thought, a child is judged sufficiently mature to begin ritual prayer at the age of seven, precisely the same moment that children were usually sent to Qur'an school to be entrusted with the very essence of the Muslim faith").

Bible,²¹ includes verses on a range of challenging topics and discusses gender and sexuality. *See, e.g.*, Qur'an 3:36 (describing Maryam's mother giving birth to a girl); 16:97 (acknowledging spiritual equality between women and men); 65:1-6 (laying out how many months to wait following divorce to see if someone who is not menstruating is pregnant); 24:4 (prescribing 80 lashes for those who falsely accuse women of extramarital sex); 24:31 (mentioning men who do not desire women); 11:77-82 (describing punishment for those who sought to expel Lut from their city by raping his guests); 12:32-35 (describing imprisonment of Yusuf for refusing to have sex with the wife of the man who purchased Yusuf as a slave).

Amici's beliefs guide them to support, challenge, and trust children. Imam 'Ali reportedly asked his children challenging questions in front of guests when they were still young, and, when they answered well, pointed out the wisdom of their replies. *Part 1: The Prophet's Attitude towards Children*, Al-Islam.org (Last accessed Apr. 3, 2025), <https://al-islam.org/prophets-attitude-towards-children-and-youth-muhammad-ali-chenarani/part-1-prophets-attitude-towards>. A *hadith* reports that a young child led adults in prayer, because Muhammad (PBUH) instructed them to follow the one who knew the most Qur'an, and the child knew the most. Sunan an-Nasa'i 789, <https://sunnah.com/nasai:789>.

²¹ Esha Pendharkar, *Why the Bible is Getting Pulled Off School Bookshelves*, EducationWeek (Dec. 15, 2022), <https://www.edweek.org/teaching-learning/why-the-bible-is-getting-pulled-off-school-bookshelves/2022/12>.

Ultimately, many *Amici* believe that they should not try to control what children believe. That is partly because it would be futile: The choice to believe and do good—or not—is up to the individual and to God. *See, e.g.,* Qur'an 6:39. Refraining from efforts to control may also support moral development, as unthinking obedience to parents can itself lead to immorality. *See* Qur'an 7:28. "Schools have the obligation to teach, parents have the obligation to guide, and ultimately children have the responsibility to take these lessons and apply them to life as they mature." QMOB. The Qur'an is replete with examples of children acting wisely, including the examples of Ibrahim who demolished his father's idols, 21:58, Maryam (Miriam) who arranged for her mother to care for her brother once Pharoah's wife had adopted him, 20:40, Maryam (Mary) who instructed her elders on God's bounty, 3:37, and 'Isa (Jesus) who shared God's message even as an infant, 19:30. It also has examples of children doing wrong, such as when Yusuf's older brothers threw Yusuf in a well. 12:15.

Amici also believe they should not try to control their children because trying to force someone—even one's own child—to adopt one's religious beliefs would violate the Qur'anic prohibition on compulsion in matters of religion. 2:256. *Amici* understand freedom from religious persecution and respect for religious plurality to be central Islamic values. "We are not supposed to let the dominant views of those in power claim control over truth." Al-Wāsi'. Rather, pluralism in religious beliefs and practices is another aspect of the diversity of God's creation to be valued and

learned from. So long as those with different beliefs do not attack Muslims or try to drive Muslims from their homes, Muslims are instructed to live peacefully with those of different beliefs and respect their choice to go a different way. Qur'an 60:8; 109:6; 18:29; 8:61.

II. Exposure to Diverse People, Ideas, and Beliefs in Public Education Does Not Burden the Free Exercise of Religion.

The First Amendment protects the plurality and tolerance that *Amici* value as Muslims. Indeed, exposure to different beliefs, practices, values, and people in the public sphere is not a substantial or cognizable harm under the First Amendment—it is instead at the core of what the First Amendment protects. Thus, depicting transgender people or teaching fairness toward LGBTQI+ people in a public school does not burden free exercise.

Whether employing *Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872 (1990) or some alternative test, a plaintiff in a free exercise claim must establish that the government has imposed a cognizable, substantial burden on that individual's religious practice—that the government is “prohibiting the free exercise [of religion].” U.S. Const. amend. I. “[T]he Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government.” *Bowen v. Roy*, 476 U.S. 693, 700 (1986), quoting *Sherbert v. Verner*, 374 U.S. 398, 412 (1963) (Douglas, J., concurring). “[I]t is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against

him in the practice of his religion.” *School Dist. of Abington Tp., Pa. v. Schempp*, 374 U.S. 203, 223 (1963); *see also* *Fulton v. City of Philadelphia, Pa.*, 593 U.S. 522, 533 (2021) (threshold question is whether the city burdened organization’s right to free exercise).

Petitioners’ contention that their children’s exposure to LGBTQI+ people in public school offends their religious beliefs does not rise to a cognizable or substantial free exercise burden. The burden is not substantial because Petitioners are not prohibited from practicing their religion: there is no “coercive effect.” *See School Dist. of Abington Tp., Pa.*, 374 U.S. at 223. They are free to embrace their own “biological sex” and instruct their children to embrace theirs. Pet. Br. 16. They are also free to remove their children from public school altogether to limit the risk of their exposure to different ideas—as indeed they have. Pet.App.640a (Sept. 12, 2024). Their children, too, are free to embrace their “biological sex” at birth or not. *Id.* But even if the burden *were* substantial, it would still not be cognizable, because recognizing exposure to different beliefs, values, and people in the public sphere as a religious burden undermines the First Amendment’s purpose and infringes on others’ free exercise rights. *See Kennedy v. Bremerton School District*, 597 U.S. 507, 543 (2022) (a coach praying at a school event where students will see them and might feel pressure to join does not infringe on the First Amendment, but preventing the coach from praying would).

In a functioning, tolerant, pluralistic democracy, people engaging in the public sphere will

inevitably encounter people with identities or practices contrary to their or their family's religious beliefs, because all have the freedom to practice and profess their beliefs as they will. "[L]earning how to tolerate speech or prayer of all kinds is 'part of learning how to live in a pluralistic society,' a trait of character essential to 'a tolerant citizenry.'" *Kennedy*, 597 U.S. 507; *citing Lee v. Weisman*, 505 U.S. 577, 590 (2022). "Of course, some will take offense to certain forms of speech or prayer they are sure to encounter in a society where those activities enjoy such robust constitutional protection. But '[o]ffense ... does not equate to coercion.'" *Id.*, at 539; *citing Town of Greece, N.Y. v. Galloway*, 572 U.S. 565, 589 (2014) (plurality opinion).

Accordingly, the courts of appeal have overwhelmingly held, applying this Court's precedents, that mere exposure of oneself or one's children to ideas or people offensive to one's religious beliefs does not burden free exercise. "Public schools are not obliged to shield individual students from ideas which potentially are religiously offensive, particularly when the school imposes no requirement that the student agree with or affirm those ideas. . . ." *Parker v. Hurley*, 514 F.3d 87, 106 (1st Cir. 2008) (cert denied); *see also, e.g., Mozert v. Hawkins County Bd. Of Educ.*, 827 F.2d 1058, 1068 (6th Cir. 1987) (exposure to reading material offensive to plaintiffs' religious beliefs was not a free exercise violation); *Fleischfresser v. Directors of School Dist. 200*, 15 F.3d 680 (7th Cir. 1994) (exposure to a book series did not violate the free exercise right of parents to control the religious upbringing of their children); *Parents for*

Privacy v. Barr, 949 F.3d 1210, 1239 (9th Cir. 2020) (rejecting free exercise claim that allowing a trans boy to use the boy’s restroom burdened plaintiffs’ free exercise); *Bauchman for Bauchman v. West High School*, 132 F.3d 542, 557 (10th Cir. 1997) (student’s exposure to song lyrics in choir that offended religious beliefs did not sustain free exercise claim). “The lesson is clear: governmental actions that merely offend or cast doubt on religious beliefs do not . . . violate free exercise.” *Mozert*, 827 F.2d at 1068.

For *Amici*, the Free Exercise Clause works as designed when diversity is promoted and knowledge is shared, with each person able to contextualize such information as appropriate within their own religious beliefs and practices, free from coercion of the government. According to a leader of QMOB, “You must let [the children] learn and decide for themselves, that is their religious Liberty.”

III. Acknowledging Gender and Sexual Diversity Does not Favor Irreligion, Religion, or any Particular Religion.

Petitioners and some supporting them argue including LGBTQI+ people in curriculum creates a substantial burden because it amounts to “irreligious indoctrination,” *see, e.g., Amicus Br. for Muslim Parents et al.* at 6–7; imposition of “secular orthodoxy,” *Amicus Br. for the Church of Jesus Christ of Latter-Day Saints et al.* at 24 (March 10, 2024); or instruction intended to convey values, *Pet. Br.* at 29. In reality, acknowledging the existence of LGBTQI+ people does not favor irreligion or any particular religion, as the religious beliefs of *Amici* make clear.

On the contrary, holding that instruction about LGBTQI+ people is inherently opposed to religion would amount to declaring orthodoxy in religion. *Cf. Thomas v. Rev. Bd. Of Indiana Employment Sec. Div.*, 450 U.S. 707, 714 (1981) (“The determination of what is a ‘religious’ belief or practice . . . is not to turn upon a judicial perception of the particular belief or practice in question.”).

The First Amendment does not give any parent the right to a public-school education for their children that only conveys messages with which they agree. “There 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). Perhaps aware of that, Petitioners’ supporters argue that they still have the right to a public education for their children free of this particular content, because gender and sexuality are of special religious concern and LGBTQI+ inclusion is irreligious. *See Amicus Br. for Muslim Parents* at 6–7; *Amicus Br. for the Church of Jesus Christ of Latter-Day Saints et al.* at 23 (March 10, 2024). In doing so, they invite this Court to impermissibly rule on whether, as a general matter, a particular topic is necessarily more central to religion or a particular position inherently opposed to religion. “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

Nothing in the text, history, or purpose of the First Amendment suggests that the government may prioritize the religious beliefs of those for whom teachings of gender or sexuality are central to their faith and who oppose LGBTQI+ existence. See *Thomas*, 450 U.S. at 714; *Watson v. Jones*, 80 U.S. 697, 728 (1871) (“The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.”). To find that LGBTQI+ inclusion in the classroom is “irreligious” would not only discount *Amici’s* religious beliefs, but would also deny the existence of LGBTQI+ people of faith. But many of *Amici’s* members and leaders are LGBTQI+ Muslims and believe that LGBTQI+ inclusion is not only consistent with Islamic values, but that uprooting injustice towards LGBTQI+ people is a religious duty.

The acknowledgment within the elementary school curricula of sexual and gender diversity is simply that—a recognition that some people have different lived experiences than heterosexual, cisgender people. That some people (for religious or secular reasons) would like to insulate their children from this information and others (for religious or secular reasons) would like to ensure all students have access to this information does not transform the school district’s choice into one that favors or disfavors religion. Nor does it distinguish this topic from any other topic in a curriculum.

IV. Constitutionalizing Notice and Opt-Outs Would Harm Students.

Notice and opt-out requirements are not the harmless intervention Petitioners characterize them to be. *See* Pet. Br. 22. Opt-outs harm children whose family or identity falls outside of what is depicted as the “norm.”

Discrimination and harassment against LGBTQI+ students in K-12 schools is pervasive, particularly against LGBTQI+ students of color and trans students. Joseph G. Kosciw et al., *The 2021 National School Climate Survey: The Experiences of LGBTQI+ Youth in Our Nation’s Schools*, GLSEN (2022), <https://perma.cc/M98G-G55F>; *2023 U.S. National Survey on the Mental Health of LGBTQI+ Young People: Negative Experiences at School*, The Trevor Project <https://www.thetrevorproject.org/survey-2023/#anti-lgbtq-victimization> (last visited April 4, 2025). Discrimination toward Muslim students is also widespread. *See* Nadin Abu Khalaf, et al., *The Impact of Islamophobia on Muslim Students: A Systematic Review of the Literature*, 52 Sch. Psych. Rev. 206 (2022), doi: 10.1080/2372966X.2022.2075710; Deepa Kumar, *Islamophobia and the Politics of Empire: 20 Years After 9/11* (2021).

LGBTQI+ Muslims face both forms of discrimination. N. L., Truong, & J. G. Kosciw, *The Experiences of Middle Eastern and North African (MENA) LGBTQ Students in U.S. Secondary Schools*, GLSEN (2022), <https://perma.cc/4UJA-YDMP> (Over a third of respondents reported hearing negative

remarks about their actual or perceived religion from other students and almost half experienced harassment or assault at school because of their religion. Nearly two-thirds experienced anti-LGBTQI+ discrimination at school.). Many of *Amici*'s members have experienced anti-Muslim, racist, sexist, anti-trans, or anti-queer discrimination. See Ahmed, *Presencing Ourselves* at 78, 94, 96, 97 (reporting discrimination against LGBTQI+ Muslims from medical providers and law enforcement).

These problems have solutions. When schools create inclusive policies and curricula, model fairness and empathy, accept and support trans children's gender identities, and respond to reports of discrimination or harassment appropriately, LGBTQI+ students thrive. Stephen Russell et al., *Safe Schools Policy for LGBTQ Students*, 24 Soc. Pol'y Rep., at 1, 9–10 (Dec. 2010); S. D. Snapp et al., *Students' Perspectives on LGBTQ-Inclusive Curriculum*, 48 Equity & Excellence Educ. 249 (2015); Shannon D. Snapp et al., *LGBTQ-Inclusive Curricula: Why Supportive Curricula Matter*, 15 Sex Educ. 580, 591–92 (2015). Fostering respectful interfaith and intercultural dialogue may reduce discrimination against Muslim students. Yaseen Eldik & Monica C. Bell, *The Establishment Clause and Public Education in an Islamophobic Era*, 8 Stan. J. C. R. & C. L. 245, 249 (2012). But notice requirements and opt-outs make these solutions impossible.

First, with an opt-out regime, teachers need to plan their lessons to only acknowledge LGBTQI+ existence on certain days, so they can give parents

advance notice. This discourages teachers from acknowledging LGBTQI+ people or supporting fairness toward them, as they will need to plan alternative activities for the students whose parents opt them out. But LGBTQI+ students need support and fairness every day of the year.

Second, LGBTQI+ students and students with LGBTQI+ family members will watch their classmates file out of the room when something about them or their family is discussed, which can lead to stigma and contribute to feelings of shame, alienation, or isolation. See *Experiences of Students with LGBTQ+ Caregivers and their Families in K-12 Schools*, GLSEN (2023), <https://perma.cc/7K4P-3RLU>. LGBTQI+ students whose parents opt them out may not have an opportunity to learn they are not alone, and it is okay to be who they are, increasing risk of depression and poor performance in school. See Hilary Burdge, et al., *Implementing Lessons That Matter: The Impact of LGBTQ-Inclusive Curriculum on Student Safety, Well-Being, and Achievement*, GSA Network, 9 (2013), <https://perma.cc/CW8D-XR8F>.

Third, if teachers cannot tell certain students that they should treat LGBTQI+ people fairly, they cannot effectively prevent or respond to bullying of LGBTQI+ students.

Fourth, teachers may feel compelled to silence LGBTQI+ students or students with LGBTQI+ families from talking about their lives or expressing themselves unless it is on one of the specially designated days and other students leave the room first. Such censorship would profoundly harm the

mental health and wellbeing of LGBTQI+ students, signal that discrimination against them is okay, and interfere with their right to free speech and free exercise. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

Fifth, if this Court creates a constitutional right to insulate students from people or beliefs contrary to their parents' religious views, those with religious objections to Islam could also insist on notice and opt-out of anything acknowledging Muslim existence or conveying that it is okay to be Muslim. Indeed, such things have already happened to Muslims and members of other religious minorities. *See United States v. Bd. of Educ. for Sch. Dist. of Phila.*, 911 F.2d 882, 894 (3d Cir. 1990) (upholding a school board's refusal to allow a Muslim teacher to wear a headscarf), *called into question by Tenaflly Eruv Ass'n, Inc. v. Borough of Tenaflly*, 309 F.3d 144, n.33 (3d Cir. 2002); *Cooper v. Eugene Sch. Dist. No. 4J*, 723 P.2d 298, 313–14 (Or. 1986) (upholding suspension of a Sikh teacher for wearing a turban); *Wood v. Arnold*, 321 F. Supp. 3d 565 (D. Md. 2018) (parent objected to a unit on Islam in a world history course); *Hilsenrath ex rel. C.H. v. Sch. Dist. of the Chathams*, 698 F. Supp. 3d 752 (D.N.J. 2023), *on appeal* No. 23-3030 (3d Cir. 2023); Ben Brumfield, *All schools shut down in Augusta County, Virginia, over Islam homework*, CNN (Dec. 19, 2005, 9:52 AM), <https://www.cnn.com/2015/12/18/us/virginia-school-shut-islam-homework/index.html>. As such, the harms to LGBTQI+ students discussed above could also impact all Muslim students. Atlanta Unity Mosque observes: "It doesn't matter how much

we assimilate or try to align ourselves with power structures. We're never going to be cool enough for the country club."

The harms above will be magnified for a queer or trans Muslim student, who could reasonably understand the school to be saying that trans or queer existence and Islam are so incompatible that Muslims cannot even go to class to read a storybook that *mentions* LGBTQI+ people. This damage to a growing young person attempting to find their identity and exploring their own religious beliefs would be incalculable. As Queer Crescent explains, queer and trans Muslims:

Too often feel like they can't show up in spaces as their whole self, having to choose between one identity and another. This fragmentation of self is deeply isolating. When schools erase LGBTQI+ communities or diverse religious perspectives, they don't protect students—they isolate those already on the margins and reinforce the message that queer and trans Muslim students don't belong anywhere, not in their schools, their masjids, or their families.

V. Public Education Cannot Align with All Religious Views.

Everyone's sincere religious beliefs receive equal weight under the Constitution. *Thomas*, 450 U.S. at 714 ("[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."). That diversity of belief highlights the

unworkability of the standard Petitioners propose. Catering to or creating carve-outs for religious beliefs of all parents and students is not only inconvenient, costly, or challenging—it is impossible. No elementary school curriculum will align with everyone’s religious beliefs. Beliefs may vary even within a single family; many of *Amici*’s Muslim members have parents, partners, or children who belong to a different religion or practice Islam differently than they do. “If we are to eliminate everything that is objectionable to any [religious group] or inconsistent with any of their doctrines, we will leave public schools in shreds. Nothing but educational confusion and a discrediting of the public school system can result from subjecting it to constant law suits.” *McCollum v. Board of Educ.*, 333 U.S. 203, 235 (1948) (Jackson, J. concurring).

A. No School Can Align with All Religious Views About Anything.

Virtually any instruction on any topic involves some value statement that may be objectionable. For many Muslims, Islamic values inform every aspect of life—and Muslims have incredibly diverse beliefs and practices. Instruction about careers implies that it is a good thing to pursue and value a career, which may contradict some people’s religious beliefs about focusing instead on spiritual development, family, or community. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 211 (1972). Instruction on financial literacy may imply it is okay to buy insurance (which some

Muslims consider to be impermissible gambling)²² or open an interest-earning bank account (which some Muslims consider to be impermissible usury).²³ Science and history classes may teach information that some consider at odds with accounts in the Qur'an or Bible.²⁴ An English teacher could have to manage a class where every single book has some subset of students whose parents have said they may not read it, because one or more parent thinks it glorifies something that is against their religion. The same can be said for a high school civics teacher attempting to teach the opinions of this Court.

This is not to say that people are not entitled to free exercise protections for their wide-ranging beliefs, but rather that schools cannot be required to sequester students from conflicting viewpoints. For example, most Muslims understand God to have forbidden consumption of pork. Qur'an 2:173. A public

²² *Life Insurance*, Islamweb.net (Jan. 1, 2001), <https://islamweb.net/en/fatwa/81441/life-insurance>.

²³ *Interest Given By Commercial Banks is Forbidden Riba*, Islamweb.net (May 4, 2016), <https://islamweb.net/en/fatwa/323740/interest-given-by-commercial-banks-is-forbidden-riba>.

²⁴ See, e.g., Dr. Yamina Bouguenaya, *Facts vs. Interpretations: Understanding Islam & Evolution*, Yaqeen Institute (Aug. 31, 2018, last updated July 22, 2024), <https://yaqeeninstitute.org/read/paper/facts-vs-interpretations-understanding-islam-evolution>; Amanda Borschel-Dan, *In Ancient Mass Graves, Archaeologists Find Child Slaves of Biblical Egypt*, The Times of Israel (June 9, 2017), <https://www.timesofisrael.com/in-ancient-mass-graves-archaeologists-find-child-slaves-of-biblical-egypt/>.

school compelling a Muslim to eat pork would impose a cognizable, substantial burden under the First Amendment. But the First Amendment does not permit Muslims to sue a schoolteacher for reading, “Amy Wu and the Perfect Bao” or “Green Eggs and Ham” to a classroom—or for failing to insulate Muslim children from seeing others eat ham or pork dumplings.

B. No School Can Align with All Religious Views as to Gender and Sexuality.

No attempt at designing a “neutral” curriculum or a system of notice and opt-outs can accommodate all religious views even just as to gender and sexuality. Purging all mention of LGBTQI+ people is not “neutral,” reference to LGBTQI+ people will inevitably arise spontaneously at school, and sometimes no solution will align with all concerned people’s beliefs. In sum, to attempt to accommodate all religious views on gender and sexuality via notice and opt-out requirements will undermine the efficacy and purpose of public education.

Messages about gender and sexuality exist in every classroom. The curriculum may portray only heterosexual and cisgender identity, romance, and family structure, as Respondents’ language arts curriculum did until recently. Pet.App.78-79a. Or it may offer a more realistic and holistic view of human diversity. Either option may offend some people’s religious beliefs. The former option also harms LGBTQI+ children. A member of Queer Crescent is “a single mom of a 9-year-old, who is also a queer Muslim. Countless times her daughter has returned

from school describing how isolated she feels when reading stories about families that insist a father and two (straight) parents are essential in a family structure.”

Regardless, removing acknowledgment of LGBTQI+ identities from the school’s curriculum does not erase the presence of LGBTQI+ people in the classroom. LGBTQI+ students, parents, and teachers exist in elementary schools, as do students with LGBTQI+ family members and friends. *LGBT Populations*, Movement Advancement Project (last accessed Apr. 4, 2025), https://www.lgbtmap.org/equality-maps/lgbt_populations (showing estimates of LGBTQ people living in each state using data from 2012-2017). The content Petitioners object to in the storybooks are things that happen and people that exist in children’s lives. Teachers cannot prevent students from speaking about LGBTQI+ people and the community. Even if they were to try—for example, by announcing at the beginning of the year that no students should talk about LGBTQI+ people—some parents may object to the mere mention and acknowledgment of LGBTQI+ existence, while others may object to the message that LGBTQI+ people are to be excluded. No solution satisfies everyone.

The countless spontaneous ways this content can arise demonstrates the impossibility of a school providing parental notice and an opportunity to opt out of everything involving LGBTQI+ people. On any day, a child could request that people use *they/them* pronouns when referring to them. A transgender girl’s classmates could notice that she is growing her hair

long, or a transgender boy's classmates could notice that he is wearing "boys" clothing. When sharing the highlights of their summer break, one student may mention meeting their uncle's new husband; another may discuss going to a Pride parade with their moms. How teachers respond to the ways LGBTQI+ people come up (and come out) will inevitably send some message about gender and sexuality, such as whether it is okay to be LGBTQI+ or whether it is okay to exclude or mistreat people for being LGBTQI+ – both of which different parents may find objectionable.

Even for planned classroom activities, opt-outs can be unworkable. Consider two families with different beliefs based in Islam. Parents A and B are a devout Muslim couple with a transgender child. They believe they have a duty to educate their child in a way that will not crush their spirit or harm them. They believe it would greatly harm their child to attend a school that only portrays straight, cisgender people in stories outside of one or two designated days a year on which their child's classmates leave the classroom. If the public school adopts a notice and opt-out regime for curriculum acknowledging LGBTQI+ existence, Parents A and B would be compelled to violate their religious beliefs or pull their child out of school. But Parents C and D, if they shared Petitioners' beliefs, could be in the same position if the school did *not* do those very things. No solution would absolve the school district from liability.

Even this hypothetical assumes that everyone within each family has the same religious beliefs, but many families are interfaith. Constitutional requirements to accommodate everyone's religious

beliefs via notice and opt-outs could push school districts into having to decide whose religious beliefs to prioritize with regard to whether a particular child is removed from a particular class—that of one parent, another parent, or the child. No matter the decision, the school district would violate someone’s rights.

Requiring curricula to align with religious beliefs defeats the purpose of public education.

If all parents had a fundamental constitutional right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school’s choice of subject matter. We cannot see that the Constitution imposes such a burden on state educational systems.

Brown v. Hot, Sexy & Safer Prods., Inc., 68 F.3d 525, 534 (1st Cir. 1995). If it did, public education would be in “shreds.” *See McCollum*, 333 U.S. at 235.

Shielding children from knowledge in furtherance of adults’ religious practices is not the role of public schools, and the Constitution does not require it. A member of QMOB explains:

There are a thousand ways this ruling could harm relationships within schools. But it does something much more sinister than that, it absolves kids of the ability to think critically and form thoughts for themselves. It absolves them of the responsibility to learn how to disagree, to be tolerant of things that are new

and potentially beyond their current reference point, and it ultimately robs children of the necessity to understand and build diversity within their social lives.

To respect the myriad religious beliefs of parents and students in the public school system, while preserving the purpose and efficacy of public education, notice and opt-out requirements must not be constitutionally mandated.

CONCLUSION

Amici respectfully request the Court affirm judgment for Respondents.

Respectfully submitted,

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APPENDIX TABLE OF CONTENTS

Appendix A—list of *Amicus Curiae*A-2

APPENDIX A – LIST OF *AMICI CURIAE*

Atlanta Unity Mosque is a safe place for everyone to worship, commune, and just be and a place where pluralism and diversity are celebrated, based on the certainty that all human beings, without exception, are equal socially and ritually and in potential Divine agency.

Al-Wāsi’ Collective is a New York based inclusive spiritual community for Muslims and seekers alike to deepen knowledge of the Islamic faith and grow in God-consciousness. It celebrates and affirms LGBTQ+ identities in active resistance to the ways Islam has been weaponized to oppress and stymie the spiritual growth of queer and trans Muslims and seekers.

Desi Rainbow Parents & Allies is a nonprofit 501(c)(3) organization dedicated to building a Desi Diaspora community that values, affirms and celebrates all LGBTQIA+ identities. It provides support, education and advocacy for Desi LGBTQIA+ individuals and their families who trace their origins to South Asia.

Hidayah LGBTQ US (Hidayah US) is a volunteer-led 501(c)(3) secular non-profit organization that aims to provide support and welfare for LGBTQIA+ Muslims, promote social justice and education about our community to counter discrimination, prejudice, and injustice, and create a safe and sustainable community.

Tarab NYC is a non-profit that fosters an inclusive and safe community of lesbian, gay, bisexual, trans queer, and/or gender non-conforming Arab, Middle Eastern, and/or North African people in the greater New York City area. Tarab NYC is non-sectarian and secular, respecting all religious and non-religious backgrounds as equal.

Muslim Alliance for Sexual and Gender Diversity (MASGD) is a Black/Indigenous Global Majority, Trans, and Muslim led organization that supports, empowers, and connects LGBPQ+ and 2STGNCI+ Muslims to challenge the root causes of oppression, including misogyny, racism, and capitalism and xenophobia.

Queer Crescent, a fiscally sponsored project of the Center for Empowered Politics and Education Fund, a 501(c)3 public charity, imagines futures where LGBTQIA+ Muslims are building possibilities towards collective liberation, where trans and queer Muslims live with dignity and freedom.

Queer Muslims of Boston (QMOB) is a grassroots organization of LGBTQIA+ Muslims in the Boston Area open to queer and trans people who identify with Islam, whether in faith, culture, or background, regardless of level of practice or belief, and inclusive of any and all sects. QMOB operates a monthly masjid space called QMOSQUE.