

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 *AMICI CURIAE*
LEBO PRIDE, EDUCATION LAW CENTER
PENNSYLVANIA, AND PENNSYLVANIA
YOUTH CONGRESS FOUNDATION
IN SUPPORT OF RESPONDENTS**

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INTERESTS OF *AMICI CURIAE*¹

Amici are three Pennsylvania-based organizations dedicated to educational equity for LGBTQ students. *Amici* pursue this goal using various tools, including legal advocacy, movement building, community education, and public policy development, and have advocated for the incorporation of LGBTQ-inclusive policies in school districts across Pennsylvania as a means of combating discrimination and improving educational outcomes for LGBTQ students.

Amicus Lebo Pride is a nonprofit organization bringing queer and gender diverse education and visibility to the larger Mt. Lebanon, Pennsylvania community through a combination of celebration, outreach, and advocacy. It is community-based and led by local LGBTQIA+ individuals and allies. A significant portion of Lebo Pride’s community service involves working directly with young people, their families, and school administrators to create a supportive educational environment where all students can flourish.

Amicus Education Law Center Pennsylvania (“ELC”) is a Pennsylvania-based 501(c)(3) nonprofit organization whose mission is to ensure access to a quality public education for all children in Pennsylvania. ELC pursues this mission by focusing on the most underserved students: children living in poverty, children of color, children with disabilities, children in the foster care and juvenile justice

1. No counsel for a party authored this brief in whole or in part, and no person other than these *Amici Curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

systems, children experiencing homelessness, English learners, LGBTQ and gender-nonconforming students, and many who are at the intersection of these identities.

Amicus Pennsylvania Youth Congress Foundation (“PYC”) is a Pennsylvania-based 501(c)(3) nonprofit organization dedicated to advancing freedom and justice for young LGBTQ Pennsylvanians. PYC focuses on policy advocacy within local and state government, and extensively works on education issues particularly with local school districts. Originally formed as a statewide coalition of LGBTQ student organizations, PYC represents the interests of many LGBTQ students and young people throughout Pennsylvania.

Collaboratively and individually, *Amici* have a strong interest in ensuring that LGBTQ young people have access to educational environments that are safe, supportive, and free of discrimination. *Amici* are concerned that if the Fourth Circuit is reversed and parents are allowed to opt their children out of LGBTQ-inclusive curriculum, an educational tool known to make schools safer and more welcoming for *all* students, this decision will cause direct and lasting harm to the LGBTQ students, families, and communities *Amici* represent.

SUMMARY OF ARGUMENT

In 1982, this Honorable Court noted that “[i]t is evident beyond the need for elaboration that a State’s interest in ‘safeguarding the physical and psychological well-being of a minor’ is ‘compelling.’”² That statement is

2. *New York v. Ferber*, 458 U.S. 747, 756–57 (1982) (quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982)).

as true now as it was over forty years ago and is as true for LGBTQ children as it is for any other child.

One of the greatest threats to the health and safety of young people today is school-based bullying and harassment. Bullying is the most common form of violence experienced by today's youth.³ It is even more common for LGBTQ youth.⁴ Harms associated with bullying and harassment include poor school performance; suicidal thoughts and attempts; depression, anxiety and other mental health disorders; and poor physical health.⁵ To ensure the well-being of students, school districts must find effective ways to foster school environments that are free from bullying, harassment, and discrimination, including for LGBTQ students. This interest is so compelling that over the past twenty-five years every state has adopted legislation requiring school districts to implement anti-bullying policies and reforms.⁶

Policies that expose students to age-appropriate LGBTQ-inclusive curricula, like the Montgomery County School Board's [the "Board's"] LGBTQ-inclusive

3. Marizen R. Ramirez et al., *Building A Comprehensive, Longitudinal Dataset to Advance Research on the Efficacy of State-Level Anti-bullying Legislation: 1999 to 2017*, 25 *Trauma, Violence, & Abuse* 2598 (2024).

4. Joseph G. Kosciw et al., *The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation's Schools*, GLSEN 10, 16, 19–20 (2022), <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf>.

5. Ramirez et al., *supra* note 3.

6. *Id.* at 2599.

storybook policy, are effective and narrowly tailored to protect the physical and psychological well-being of students. Allowing broad opt-outs from LGBTQ-inclusive curricula diminishes the effectiveness of these policies and puts the well-being of LGBTQ students at risk.

While *Amici* agree with the Fourth Circuit that the Petitioners in this case “have not shown a cognizable burden to support their free exercise claim,”⁷ if the Court finds that strict scrutiny applies to the Petitioners’ claims, *Amici* encourage the Court to hold that the Board’s LGBTQ-inclusive storybook policy is narrowly tailored to achieve the Board’s compelling interest in protecting the physical and psychological well-being of its students.

ARGUMENT

A. The Board’s policy of making age-appropriate LGBTQ-inclusive books available for use in classrooms, without providing parental notice or opt-out, is not subject to strict scrutiny review.

School districts and courts across the country are grappling with the challenges of fostering a safe and inclusive environment for LGBTQ students while remaining respectful of the constitutional rights of all members of the community. Constitutional challenges implicating these school district policies include claims based on free speech and expression,⁸ free exercise of

7. *Mahmoud v. McKnight*, 102 F.4th 191, 209 (4th Cir. 2024), cert. granted sub nom. *Mahmoud v. Taylor*, No. 24-297, 2025 WL 226842 (U.S. Jan. 17, 2025).

8. *L.M. v. Town of Middleborough, Massachusetts*, 103 F.4th 854, 878–79 (1st Cir. 2024); *Parents Defending Educ. v. Linn Mar*

religion,⁹ parental rights pursuant to the Fourteenth Amendment's Due Process Clause,¹⁰ Equal Protection Clause violations,¹¹ and privacy rights.¹² In considering this balancing act, the Circuit Courts of Appeals have, in the overwhelming majority of cases, held in favor of LGBTQ-inclusive policies and struck down LGBTQ-exclusive ones. Some circuits have concluded, as in the instant matter, that no infringement of the challengers' constitutional rights has taken place, negating the need for strict scrutiny analysis.¹³ Others have held that the policies survive

Cnty. Sch. Dist., 83 F.4th 658, 669 (8th Cir. 2023); *Robertson v. Anderson Mill Elementary Sch.*, 989 F.3d 282, 289 (4th Cir. 2021).

9. *Parents for Priv. v. Barr*, 949 F.3d 1210, 1217–18 (9th Cir. 2020); *Parker v. Hurley*, 514 F.3d 87, 105–07 (1st Cir. 2008).

10. *Littlejohn v. Sch. Bd. of Leon Cnty., Fla.*, ___ F.4th ___, No. 23-10385, 2025 WL 785143, at *8–9 (11th Cir. Mar. 12, 2025); *Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 352, 356 (1st Cir. 2025); *Parents for Priv.*, 949 F.3d at 1217–18; *Parker*, 514 F.3d at 105–07.

11. *Hecox v. Little*, 104 F.4th 1061, 1080–81 (9th Cir. 2024); *Doe v. Horne*, 115 F.4th 1083, 1109 (9th Cir. 2024); *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 773 (7th Cir. 2023); *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 803 (11th Cir. 2022) (*en banc*); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 613–15 (4th Cir. 2020); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1052 (7th Cir. 2017), *abrogated on other grounds by Illinois Republican Party v. Pritzker*, 973 F.3d 760 (7th Cir. 2020).

12. *Littlejohn*, 2025 WL 785143 at *8–9; *Parents for Priv.*, 949 F.3d at 1217–18.

13. *Mahmoud*, 102 F.4th at 209; *Littlejohn*, 2025 WL 785143 at *8–9 (finding that strict scrutiny did not apply and that the school board did not violate parents' substantive due process rights); *Foote*, 128 F.4th at 352, 356 (same); *L.M.*, 103 F.4th at 878–

intermediate scrutiny for sex-based classifications,¹⁴ that the unique responsibility of public schools to control the learning environment justified the policies,¹⁵ or that the challengers had no standing.¹⁶ The overwhelming consensus, though, is that constitutional challenges of these sorts do not trigger strict scrutiny analysis. *Amici* encourage the Court to follow this consensus and reject

79 (school did not violate First Amendment by prohibiting student from wearing shirt that said “There Are Only Two Genders”); *Parents for Priv.*, 949 F.3d at 1217–18 (trans-inclusive bathroom policy did not violate Fourteenth Amendment privacy protections, fundamental parental rights, or First Amendment free exercise rights); *Parker*, 514 F.3d at 105–07 (elementary school curriculum including books depicting same-sex parents did not violate free exercise and parental due process rights). *But see Parents Defending Educ.*, 83 F.4th at 669 (policy requiring students to “respect a student’s gender identity” was unconstitutionally vague restriction on First Amendment free speech rights); *Robertson*, 989 F.3d at 289 (restrictions on school-sponsored student speech survived rational basis review).

14. *Hecox*, 104 F.4th at 1080–81 (trans-exclusive statute restricting participation in female student athletics was likely to fail intermediate scrutiny); *Horne*, 115 F.4th at 1109 (same); *A.C.*, 75 F.4th at 773 (trans-exclusive bathroom policy likely failed intermediate scrutiny for sex-based discrimination); *Grimm*, 972 F.3d at 613–15 (trans-exclusive bathroom and school records policies likely failed intermediate scrutiny); *Whitaker*, 858 F.3d at 1052 (trans-exclusive bathroom policy likely failed intermediate scrutiny). *But see Adams by & through Kasper*, 57 F.4th at 803 (trans-exclusive bathroom policy did not violate the Equal Protection Clause under intermediate scrutiny analysis).

15. *E.g., L.M.*, 103 F.4th at 878–79.

16. *Parents Protecting Our Child., UA v. Eau Claire Area Sch. Dist., Wisconsin*, 95 F.4th 501, 503 (7th Cir. 2024); *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 629 (4th Cir. 2023).

the argument made by the Petitioners in this case that the Board's notice and opt-out policy should be analyzed under strict scrutiny.

B. The Board has a compelling interest in fostering a learning environment that protects the physical and psychological well-being of all students, including LGBTQ students.

If the Court concludes that strict scrutiny should apply to the Board's LGBTQ-inclusive storybook policy, significant evidence supports the conclusion that the Board's current policy has cleared that bar. The Third Circuit Court of Appeals stands alone as the only circuit court to consider whether an LGBTQ-inclusive policy, in that case a trans-inclusive bathroom policy, furthered a compelling government interest. *See Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018). Despite this exacting standard, the court concluded that it did, stating:

[T]ransgender students face extraordinary social, psychological, and medical risks and the School District clearly had a compelling state interest in shielding them from discrimination. There can be “no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity.” The risk of experiencing substantial clinical distress as a result of gender dysphoria is particularly high among children and may intensify during puberty. The Supreme Court has regularly held that the state has a compelling interest in protecting the physical and psychological well-being of minors. We have similarly found that the government has a compelling interest

in protecting and caring for children in various contexts. Mistreatment of transgender students can exacerbate gender dysphoria, lead to negative educational outcomes, and precipitate self-injurious behavior. When transgender students face discrimination in schools, the risk to their wellbeing cannot be overstated—indeed, it can be life threatening. This record clearly supports the District Court’s conclusion that the School District had a compelling state interest in protecting transgender students from discrimination.

Id. at 528–29. In *Boyertown*, the Third Circuit easily determined that the defendant school district had a compelling interest in protecting the physical and psychological well-being of students,¹⁷ which included an interest in safeguarding transgender students from discrimination, harassment, and violence based on their gender identity.¹⁸

17. See also *Ferber*, 458 U.S. at 756–57; *Globe Newspaper Co.*, 457 U.S. at 607.

18. At the District Court level, the Montgomery County School Board argued that its policy survives strict scrutiny because it is narrowly tailored to meet the Board’s compelling interest in, *inter alia*, fostering a safe educational environment for all of its students, Defendants’ Memorandum of Law in Opposition to Plaintiffs’ Motion for Preliminary Injunction at 9, 25, *Mahmoud v. McKnight*, 688 F. Supp. 3d 265 (D. Md. 2023) (No. 8:23-cv-01380-DLB) (filed July 12, 2023), an interest which can be accomplished by “tak[ing] ‘proactive steps to identify and redress implicit biases and structural and institutional barriers[,]’” *id.* at 3–4 (quoting Ex. 1 at 1-2), including through the use of instruction that “nurtures appreciation and understanding of diverse individuals, groups, and cultures.” *Id.* at 3–4 (quoting Ex. 2 at 2).

This interest is supported by research on the well-being of LGBTQ students, which unequivocally shows that LGBTQ students face a greater risk of discrimination and harassment in school than other students. A 2021 national survey of LGBTQ students found that 68% felt unsafe at school because of their sexual orientation, gender identity, and/or gender expression, and 76% had been verbally harassed, 22% had been physically harassed, and 12.5% had been physically assaulted at school in the past year based on sexual orientation, gender identity, and/or gender expression.¹⁹ With respect to transgender students, specifically, research shows that transgender students “may be as much as four times more likely to experience bullying and harassment as cisgender students.”²⁰ School-based harassment has serious consequences for LGBTQ students and can result in higher risk for PTSD, depression, anxiety, and suicidality.²¹ Discrimination against transgender students “has been shown to decrease one’s ability to focus at school, has a negative impact on grades and leads to school avoidance and truancy. It is also associated with decreased feelings of school belonging and

19. Kosciw et al., *National School Climate Survey*, *supra* note 4.

20. Michelle Johns et al., *Strengthening our Schools to Promote Resilience and Health among LGBTQ Youth: Emerging Evidence and Research Priorities from The State of LGBTQ Youth Health and Wellbeing Symposium*, 6 *LGBT Health* 146, 147 (2019).

21. Russel B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 *Dev. Psychology* 1580, 1581 (2010).

educational aspiration.”²² For instance, the 2021 national survey of LGBTQ students cited above found that over 30% had missed one or more days of school in the past month because they felt unsafe or uncomfortable at school and 16% had changed schools due to safety concerns.²³ In light of these sobering statistics and the well-documented harms LGBTQ students face in school absent meaningful interventions, school districts, including Montgomery County Public Schools, have a compelling interest in protecting the safety and well-being of LGBTQ students, specifically by ensuring that their school environments are free of bullying, harassment, and discrimination based on sexual orientation, gender identity, and gender expression.

C. The Board’s LGBTQ-inclusive storybook policy advances its compelling interest in protecting the physical and psychological well-being of LGBTQ students.

Research shows that one of the most effective methods to promote the safety and well-being of students, including protecting LGBTQ students from discrimination and harassment, is integrating gender diversity and the representation of LGBTQ-individuals into the standard curriculum, also known as LGBTQ-inclusive curriculum.²⁴

22. Tania Ferfolja & Jacqueline Ullman, *Inclusive Pedagogies for Transgender and Gender Diverse Children: Parents’ Perspectives on the Limits of Discourses of Bullying and Risk in Schools*, 29 *Pedagogy, Culture, & Soc’y* 793, 795 (2021).

23. Kosciw et al., *National School Climate Survey*, *supra* note 4, at 12–13.

24. “LGBTQ-inclusive curriculum” is a broad term. It can include exposure to LGBTQ characters, direct instruction on gender identity and sexual orientation, as well as “the inclusion

Implementing an LGBTQ-inclusive curriculum is associated with reduced incidences of bullying and victimization,²⁵ reduced adverse mental health outcomes,²⁶ reduced prejudices,²⁷ higher GPAs,²⁸ greater perceptions

of the sexual minority civil rights movement in history courses, acknowledging that certain pioneers in many fields (e.g., the arts and sciences) identified as lesbian, gay, bisexual, or transgender, or ensuring that word problems in math assignments are not strictly heteronormative (e.g., only referring to opposite-sex couples or “nuclear” families).” V. Paul Poteat et al., *Factors Affecting Academic Achievement Among Sexual Minority and Gender-Variant Youth*, 47 *Advances in Child Dev. & Behav.* 261, 289 (2014); for best practices in LGBTQ-inclusive curriculum, see *Developing LGBTQ-Inclusive Classroom Resources*, GLSEN (2019), https://www.glsen.org/sites/default/files/2019-11/GLSEN_LGBTQ_Inclusive_Curriculum_Resource_2019_0.pdf.

25. Chelsea Proulx et al., *Associations of LGBTQ-Inclusive Sex Education with Mental Health Outcomes and School-Based Victimization in U.S. High School Students*, 64 *J. Adolescent Health* 608, 611 (2019); Joseph Kosciw et al., *The Effect of Negative School Climate on Academic Outcomes for LGBT Youth and the Role of In-School Supports*, 12 *J. Sch. Violence* 45, 55 (2013); Shannon Snapp et al., *LGBTQ-Inclusive Curricula: Why Supportive Curricula Matter*, 15 *Sex & Educ.* 580, 590–92 (2015); William Hall, *Psychological Risk and Protective Factors for Depression Among Lesbian, Gay, Bisexual, and Queer Youth: A Systematic Review*, 65 *J. Homosexuality* 263, 283 (2018).

26. Proulx et al., *supra* note 25, at 611 (finding that the amount of reported student suicide plans decreased when schools introduced and increased use of LGBTQ-inclusive curricula).

27. Shannon D. Snapp et al., *Students’ Perspectives on LGBTQ-Inclusive Curriculum*, 48 *Equity & Excellence in Educ.* 249, 251 (2015).

28. Kosciw et al., *The Effect of Negative School Climate*, *supra* note 25, at 55.

of safety,²⁹ and more positive school climates.³⁰ Experts regularly cite inclusive curricula as one of the primary tools schools can use to protect the health, safety, and well-being of LGBTQ youth.³¹ Further, research shows that LGBTQ-inclusive curricula are beneficial to all youth.³²

These findings hold true even for children in early elementary school. Research shows that children are

29. S. Russell et al., *California Safe Schools Coalition Research Brief 4: LGBT Issues in the Curriculum Promotes School Safety*, California Safe Schools Coalition (2006), <http://www.casafeschools.org/FactSheet-curriculum.pdf>.

30. Snapp et al., *Students' Perspectives*, *supra* note 27, at 590–92 (“[T]he presence and supportiveness of LGBTQ-inclusive curricula reduce students’ reports of bullying and have positive implications for safety, which suggests that the overall school climate improves when inclusive curriculum is taught and is supportive.”).

31. See Samskruthi Madireddy & Sahiti Madireddy, *Strategies for Schools to Prevent Psychological Stress, Stigma, and Suicidality Risks among LGBTQ+ Students*, 8 *Am. J. Educ. Rsch.* 659 (2020); Clare Bartholomaeus & Damien W. Riggs, *Whole-of-School Approaches to Supporting Transgender Students, Staff, and Parents*, 18 *Int’l J. Transgenderism* 361, 365 (2017); Johns et al., *supra* note 20; Snapp et al., *Students' Perspectives*, *supra* note 27.

32. See V. Paul Poteat et al., *supra* note 24, at 290 (“[A]n inclusive curriculum that promotes respect for [gender and sexual orientation] diversity stands to benefit all youth along indices of psychological and social well-being.”); Snapp et al., *Students' Perspectives*, *supra* note 27, at 251 (“[W]hen schools teach LGBTQ-inclusive curriculum, all students, including heterosexual . . . students felt safer, experienced less victimization, reported hearing fewer homophobic slurs, and experienced greater peer acceptance.”).

aware of their gender identity at a very young age³³ and begin to engage in gender prejudice and discrimination as early as preschool.³⁴ These early attitudes and behaviors manifest in many forms, including through “correction (‘give that girl puppet to a girl’), ridicule, and ‘identity negation’ (e.g., ‘Jeff is a girl’)”.³⁵ Elementary school is an environment in which children become aware of their own gender identity, as well as societal expectations of gender for themselves and for others,³⁶ and “research

33. Michael Zaliznyak et al., *How Early in Life do Transgender Adults Begin to Experience Gender Dysphoria? Why This Matters for Patients, Providers, and for Our Healthcare System*, 9 *Sexual Medicine* 1, 4 (2021) (finding average onset of gender dysphoria is “prior to age 7”); Michael Zaliznyak et al., *Age at First Experience of Gender Dysphoria Among Transgender Adults Seeking Gender-Affirming Surgery*, 3 *JAMA Network Open* 1, 3 (2020) (“[G]ender identity typically becomes constant at ages 5-7 years”).

34. Carol Lynn Martin & Diane N. Ruble, *Patterns of Gender Development*, 61 *Annual Rev. Psychology* 353, 357–61 (2010) (collecting studies showing the tendency among preschoolers to feel more positively about their own sex and to respond negatively to gender norm violations).

35. *Id.* at 360.

36. See Melissa J. Smith & Elizabeth Payne, *Binaries and Biology: Conversations with Elementary Education Professionals After Professional Development on Supporting Transgender Students*, 80 *The Educ. Forum* 34, 37 (2016) (“When transgender children go to school, they enter environments where LGBTQ identities are doubly present – spoken into being through both the taboo against their mention and the consistent presence of homophobic discourse. Despite educators’ insistent claims that gender identity and sexuality are not relevant topics to preadolescent children, numerous scholars have illustrated how elementary schools are, in fact, significant social contexts for the gender socialization of children.”).

suggests that reenforcing gender stereotypes in young children can lead to gender-based harassment.”³⁷ Given the importance the elementary school setting plays for children in developing and regulating gender norms—both for themselves and for their peers—many studies highlight the need to integrate LGBTQ-inclusive curricula at the elementary school level, especially as a tool for reducing gender-based harassment.³⁸

While some parents may feel that young children are not ready to learn about such topics,³⁹ the research shows

37. Caitlin L. Ryan et al., *Discussing Princess Boys and Pregnant Men: Teaching About Gender Diversity and Transgender Experiences within an Elementary School Curriculum*, 10 J. LGBT Youth 83, 87 (2013).

38. *Id.* (“Because research suggests that reenforcing gender stereotypes in young children can lead to gender-based harassment, issues of gender diversity and gender nonconformity should be discussed in elementary school classrooms to head off such harassment.”); Smith & Payne, *supra* note 36, at 37 (“Elementary school is, therefore, a critical phase for teaching about gender and sexuality diversity and for raising both adult and student awareness about how heteronormativity regulates the identity expressions of all students.”); Ferfolja & Ullman, *supra* note 22, at 802 (discussing teaching gender identity “early on, so it’s a non-issue.”); Jill M. Hermann-Wilmarth & Caitlin L. Ryan, *Reading and Teaching the Rainbow: Making Elementary School Classrooms LGBTQ-Inclusive*, 43 Am. Educator 17 (2019).

39. Smith & Payne, *supra* note 36, at 35 (“Resistance is most intense in elementary schools, where adults cling to entrenched beliefs about childhood innocence and adult responsibility for preserving it. . . . A growing body of research has noted the fallacy of such beliefs, . . . documenting the ways children’s lives are saturated with normative gender expectations.”).

that children are presented with gender expectations from a very early age and that “children are, in fact, quite ready to learn about gender diversity.”⁴⁰ Thus, using age-appropriate curricula, like the books and resources identified in the Board’s LGBTQ-inclusive storybook policy,⁴¹ which expose children to LGBTQ-inclusive characters and themes, is especially important and appropriate for elementary school children. The alternative is to cut out such representation from the curriculum, either for all students or for some, in order to ensure students are exposed only to stereotypical representations of sexual orientation and gender identity, a practice that only serves to reinforce gender norms and lead to gender-based harassment.⁴² Thus, because the Board has a compelling interest in protecting the well-being of students, including its often more vulnerable LGBTQ students, and the research overwhelmingly shows that implementing a developmentally-appropriate

40. Wayne Martino et al., *Supporting Transgender Students in Schools: Beyond an Individualist Approach to Trans Inclusion in the Education System*, 74 Educ. Rev. 753, 763 (2020); see also Hermann-Wilmarth & Ryan, *supra* note 38, at 86 (finding, based on a year-long case study integrating ongoing education about gender diversity into a third grade classroom, that “students’ engagement with and thoughtful responses to such lessons indicate that even elementary school-aged children are ready for this kind of curriculum, especially when teachers scaffold increasing complexity over time.”).

41. For additional examples of developmentally appropriate LGBT-inclusive materials, see *Ready, Set, Respect! GLSEN’s Elementary School Toolkit*, GLSEN (2016), [glsen.org/sites/default/files/GLSEN%20Ready%20Set%20Respect.pdf](https://www.glsen.org/sites/default/files/GLSEN%20Ready%20Set%20Respect.pdf); Hermann-Wilmarth & Ryan, *supra* note 38.

42. Hermann-Wilmarth & Ryan, *supra* note 38.

LGBTQ-inclusive curriculum at the elementary school level is an effective tool for protecting LGBTQ students, the Board's LGBTQ-inclusive storybook policy serves a compelling interest.

D. Permitting students to opt out of instruction on gender identity would undermine the Board's compelling interest.

The opt-out policy the Petitioners seek in this case is not a harmless compromise or a narrow tailoring of the Board's policy; rather, opt outs undermine the purpose and efficacy of LGBTQ-inclusive curricula entirely. In *Boyertown*, the plaintiff parents presented the Third Circuit with a similar "compromise," in the context of a trans-inclusive bathroom policy, proposing that the school district require transgender students to use single-stall restrooms, rather than permit transgender students to use restrooms in accordance with their gender identity. The Third Circuit rejected this proposal on the basis that relegating transgender students to single-user restrooms would "significantly undermine" the school district's compelling interest in reducing stigma and discrimination, and that the school district was not required to adopt a compromise in the name of narrow tailoring if that compromise undermined the compelling state interest it was trying to achieve.⁴³

As in *Boyertown*, requiring the Board in this case to permit the Petitioners to opt their children out of LGBTQ-inclusive materials would undermine the Board's ability to achieve its compelling interest in protecting LGBTQ

43. *Boyertown*, 897 F.3d at 530.

students. As the Third Circuit explained, policies that treat transgender students differently “‘invite[] more scrutiny and attention from [] peers.’ Adopting [a trans-exclusive policy] would very publicly brand all transgender students with a scarlet ‘T,’ and they should not have to endure that as the price of attending their public school.”⁴⁴ The same can be said of the opt out policy requested here. Allowing students to leave the classroom or skip class when a book shows a same-sex couple or includes a character who is transgender invites attention and scrutiny from peers and results in the same sort of stigma the Third Circuit condemned in *Boyertown*.⁴⁵ Increasing the risk of stigma directly undermines an LGBTQ-inclusive curriculum, as stigma is one of the “theorized drivers of the negative health outcomes experienced by LGBTQ populations.”⁴⁶ A practice or policy, like an opt out, which marks transgender students as “other” “subjects their identities to excessive analysis and arbitration, reinforcing their outsider status while impacting their mental health.”⁴⁷

An opt out from instruction exposing students to the existence of LGBTQ individuals and the LGBTQ community is, therefore, its own form of discrimination, as it further stigmatizes LGBTQ students, erases their existence, and validates the perspective that their identity

44. *Id.* (quoting *Whitaker*, 858 F.3d at 1045).

45. See Ferfolja & Ullman, *supra* note 22, at 805 (“[S]ilences and redirections are not without their own pedagogy, marking the child as different and conversations about gender transitions as taboo.”).

46. Johns et al., *supra* note 20, at 146.

47. Ferfolja & Ullman, *supra* note 22, at 804.

is too controversial to acknowledge in the classroom. This messaging makes LGBTQ students more vulnerable to harm⁴⁸ in direct contravention of the Board's compelling interest in protecting student well-being.

Additionally, the Petitioners' proposed opt out would diminish the efficacy of the Board's LGBTQ-inclusive curriculum, undermining its efforts to protect LGBTQ students. Research suggests that providing an opt out from an LGBTQ-inclusive curriculum reduces the positive effects this curriculum has on school climate. Studies examining LGBTQ-inclusive curricula as tools for protecting LGBTQ youth have found that an LGBTQ-inclusive curriculum is most effective for this purpose when implemented *school-wide*. For example, one study, which used data from over 1,300 students to examine the impact of LGBTQ-inclusive curricula on school safety, found that "inclusive and supportive curricula are important, but are only effective in promoting a positive overall school climate when they reach a critical mass within a school."⁴⁹ Conversely, researchers found that when these curricula are "scarce" within a school, they are

48. Studies show that transgender people are regularly made invisible across institutional and cultural settings, *see* Viviane Namaste, *Invisible Lives: The Erasure of Transexual and Transgendered People* (2000), and that this erasure makes transgender individuals more vulnerable to harm. *See, e.g.*, Ben Colliver & Marisa Silvestri, *The Role of (In)visibility in Hate Crime Targeting Transgender People*, 22 *Criminology & Criminal Justice* 235 (2020); Greta R. Bauer et al., "I Don't Think This Is Theoretical; This Is Our Lives": *How Erasure Impacts Health Care for Transgender People*, 20 *Nurses in AIDS Care* 348 (2009). Scholars have argued that including gender identity in the school curriculum is one means "for interrupting trans erasure and invisibility." Martino et al., *supra* note 40, at 764.

49. Snapp et al., *Students' Perspectives*, *supra* note 27, at 590.

not associated with improved school climate, prompting the conclusion that “students feel safer and report less bullying when the overall school level of inclusive and supportive curricula is higher.”⁵⁰

Another study looked at the effects of LGBTQ-inclusive curricula at three different schools. Of the three schools, only one introduced LGBTQ-inclusive curriculum to a significant portion of the student body.⁵¹ While each school saw some improvement in school climate, the school that introduced LGBTQ-inclusive curriculum to a significant portion of students saw improvement across six school safety measures, compared to only one safety measure for the other schools,⁵² and six measures of support for LGBTQ people, compared to zero and one measure of support at the other schools.⁵³ Based on these findings, researchers concluded that LGBTQ-inclusive

50. *Id.*

51. Hilary Burdge et al., *Implementing Lessons that Matter: The Impact of LGBTQ-Inclusive Curriculum on Student Safety, Well-Being, and Achievement*, Gay Straight Alliance Network, 25 (2013), https://gsanetwork.org/wp-content/uploads/2018/08/Implementing_Lessons.pdf.

52. *Id.* at n.19. These measures were increased safety for gender non-conforming students and LGBTQ+ students, teachers, and staff; decreased prevalence of slurs; increased response to slurs; increased knowledge of “out” teachers and staff; and increased knowledge of where to go for support and information about sexuality or gender identity.

53. *Id.* at n.20. These measures were increased support for LGBTQ+ people and issues from teachers and staff; library materials; school sports; history/social studies classes; health/life skills classes; and sexuality education classes.

curriculum “will have the greatest impact on school safety and perceptions of support for LGBTQ people” when it “reaches a substantial portion of the school’s population.”⁵⁴

Data shows that when it comes to LGBTQ-inclusive curricula, smaller scale interventions do not have the same positive effects for LGBTQ students as school-wide implementation. Allowing students to opt out of LGBTQ-inclusive materials negates the “whole-of-school educational approach” recommended by experts and reduces the reach and efficacy of LGBTQ-inclusive curricula.⁵⁵

Because LGBTQ-inclusive curricula are effective in advancing the Board’s compelling interest in protecting the well-being of LGBTQ students when they reach a critical mass of the student body, allowing parents to opt their children out of this instruction threatens the fundamental purpose of an LGBTQ-inclusive curriculum in the first place.⁵⁶ Thus, the opt-outs sought by the

54. *Id.* at 26.

55. Ferfolja & Ullman, *supra* note 22, at 806 (“[P]edagogies of containment and disclosure that limit access and understanding for all students, work against the needs of [transgender and gender diverse] students (and their families) who are often already in a vulnerable position. School based approaches need to normalise diversity, preferably through a *whole-of-school educational approach.*” (emphasis added)).

56. While it may seem that individual opt outs here or there would not significantly undermine the value of LGBTQ-inclusive curriculum, the record in this case shows otherwise. Opt out requests from the Board’s policy were not isolated incidents, and the Montgomery County School District chose to

Petitioners in this case are not constitutionally required, as the Board’s age-appropriate LGBTQ-inclusive storybook policy is already narrowly tailored to achieve its compelling interest in ensuring the well-being of LGBTQ students and fostering a safe school environment for all. Opt outs would not serve to further this narrow tailoring, but instead would undermine this interest by making the Board’s LGBTQ-inclusive storybook policy less effective at protecting LGBTQ students and by contributing to the very stigma that harms LGBTQ students in the first place.

CONCLUSION

The research is clear that adopting an LGBTQ-inclusive curriculum reduces harm and improves outcomes not only for LGBTQ students, but for all students,⁵⁷ and can be implemented in ways that are developmentally appropriate and aligned with educational standards.⁵⁸ If the Court holds that the Board’s LGBTQ-inclusive storybook policy is subject to strict scrutiny, *Amici* encourage the Court to find that the Board has a compelling interest in protecting LGBTQ students and

no longer entertain these requests upon finding that teachers and principals “could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom environment and undermining [the school district’s] educational mission.” Petitioners’ Appendix at 607a, *Mahmoud v. Taylor*, No. 24-297 (U.S. Sept. 12, 2024).

57. See V. Paul Poteat et al., *supra* note 24, at 290; Snapp et al., *Students’ Perspectives*, *supra* note 27, at 251; Proulx et al., *supra* note 25, at 611.

58. See *supra* notes 24 and 41 for examples of developmentally appropriate LGBTQ-inclusive curricula.

fostering a safe school environment for all, and that the adoption of its LGBTQ-inclusive storybook policy, without an opt out, is a narrowly tailored means to achieve this interest.

For the foregoing reasons as well as those advanced by the Respondents, *Amici Curiae* urge the Court to affirm the ruling below.

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Respectfully submitted,

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