

**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  
THE AUTHORS GUILD, INC.,  
THE EDUCATIONAL BOOK & MEDIA ASSOCIATION,  
AND PENGUIN RANDOM HOUSE LLC  
IN SUPPORT OF RESPONDENTS AND AFFIRMANCE**

---

---

Marc A. Fuller  
*Counsel of Record*  
Maggie I. Burreson  
JACKSON WALKER LLP  
2323 Ross Ave., Ste. 600  
Dallas, TX 75201  
(214) 952-6000  
mfuller@jw.com  
mburreson@jw.com

**TABLE OF CONTENTS**

	Page
TABLE OF AUTHORITIES .....	ii
INTEREST OF THE AMICI CURIAE.....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT.....	6
I. The Storybooks Exemplify <i>Amici’s</i> Commitment to Offering Books for Everyone.....	6
II. The Mere Exposure to Books and the Ideas in Them Is Not a Cognizable Burden on the Free Exercise of Religion. ....	14
III. Petitioners’ Argument Will Lead to Removal of Books at a Time When Censorship Is Surging Across the Country. ....	17
CONCLUSION.....	24

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Brown v. Hot, Sexy &amp; Safer Prods., Inc.</i> , 68 F.3d 525 (1st Cir. 1995).....	23
<i>California Parents for the Equalization of Educational Materials v. Torlakson</i> , 973 F.3d 1010 (9th Cir. 2020) .....	19
<i>City of Boerne v. Flores</i> , 521 U.S. 507 (1997) .....	23
<i>Crookshanks as next friend of C.C. v. Elizabeth Sch. Dist.</i> , No. 1:24-CV-03512-CNS-STV, 2025 WL 863544 (D. Colo. Mar. 19, 2025).....	21
<i>Employment Div., Dep’t of Human Res. of Oregon v. Smith</i> , 494 U.S. 872 (1990) .....	23
<i>Fayetteville Pub. Library v. Crawford Cnty.</i> , Arkansas, No. 5:23-CV-5086, 2024 WL 5202774 (W.D. Ark. Dec. 23, 2024).....	21
<i>Fleischfresser v. Dirs. of Sch. Dist.</i> , 15 F.3d 680 (7th Cir. 1994) .....	16, 18, 19
<i>Fulton v. City of Philadelphia</i> , 593 U.S. 522 (2021) .....	19
<i>Kennedy v. Bremerton Sch. Dist.</i> , 597 U.S. 507 (2022) .....	14
<i>Leebaert v. Harrington</i> , 332 F.3d 134 (2d Cir. 2003).....	23
<i>Lyng v. Nw. Indian Cemetery Protective Ass’n</i> , 485 U.S. 439 (1988) .....	14
<i>Matal v. Tam</i> , 582 U.S. 218 (2017) .....	20

**TABLE OF AUTHORITIES – Continued**

	Page
<i>Mozert v. Hawkins County Board of Education</i> , 827 F.2d 1058 (6th Cir. 1987) .....	15, 16, 19
<i>Parker v. Hurley</i> , 514 F.3d 87 (1st Cir. 2008).....	15, 16
<i>PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.</i> , 711 F. Supp. 3d 1325 (N.D. Fla. 2024).....	20
<i>Penguin Random House LLC, et al. v. Ben Gibson, et al.</i> , No. 6:24-CV-1573-CEM-RMN, 2025 WL 902041 (M.D. Fla. Feb. 28, 2025) .....	21
<i>Thomas v. Review Bd. of Ind. Employment Security Div.</i> , 450 U.S. 707 (1981).....	19, 20
<i>Viriden v. Crawford Cnty.</i> , No. 2:23-CV-2071, 2024 WL 4360495 (W.D. Ark. Sept. 30, 2024) .....	21
<i>West Virginia State Board of Education v. Barnette</i> , 319 U.S. 624 (1943) .....	14, 15, 16
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972) .....	16

**CONSTITUTIONAL PROVISIONS**

U.S. Const. amend. I.....	2, 19, 20, 21, 22
---------------------------	-------------------

**TABLE OF AUTHORITIES – Continued**

Page

**JUDICIAL RULES**

Sup. Ct. R. 37.6 ..... 1

**OTHER AUTHORITIES**

Adam Smith,

THE WEALTH OF NATIONS (March 9, 1776) ..... 21

Adolf Hitler,

MEIN KAMPF (1925) ..... 20, 22

Alexis de Tocqueville,

DEMOCRACY IN AMERICA (1835)..... 20

Charlotte Sullivan Wild,

*Love, Violet*, KIRKUS REVIEWS (NOV. 16, 2021) <https://www.kirkusreviews.com/book-reviews/charlotte-sullivan-wild/love-violet/> (last accessed Apr. 2, 2025)..... 11, 22

Hannah Clingan,

*Utilizing Mirrors and Windows in Elementary Literacy to Build Identity and Empathy*, INNOVATIONS AND CRITICAL ISSUES IN TEACHING AND LEARNING Vol. 1 Iss. 2 (2020), <https://cornerstone.lib.mnsu.edu/icitl/vol1/iss1/2> ..... 6

Homer,

THE ILIAD ..... 22

Jodie Patterson,

*Born Ready: The True Story of a Boy Named Penelope*, KIRKUS REVIEWS (APRIL 20, 2021), <https://www.kirkusreviews.com/book-reviews/jodie-patterson/born-ready/> (last accessed Apr. 2, 2025) ..... 13, 22

**TABLE OF AUTHORITIES – Continued**

	Page
Karl Marx and Friedrich Engels, CAPITAL: A CRITIQUE OF POLITICAL ECONOMY (1919) .....	20
Karl Marx and Friedrich Engels, THE COMMUNIST MANIFESTO (February 21, 1848).....	21, 22
M. D. Resnick, et al., <i>Protecting Adolescents from Harm. Findings from the National Longitudinal Study on Adolescent Health,</i> 278 J. AM. MED. ASS’N 823 (Sept. 10, 1997), <a href="https://pubmed.ncbi.nlm.nih.gov/9293990">https://pubmed.ncbi.nlm.nih.gov/ 9293990</a> .....	7
Marina Feijo, et al., <i>Improving School Outcomes for Transgender and Gender-Diverse Youth: A Rapid Review</i> , 9(1) Policy Insights from the Behavioral and Brain Sciences 27 (2022), <a href="https://journals.sagepub.com/doi/abs/10.1177/23727322211068021">https://journals.sagepub.com/doi/ abs/10.1177/23727322211068021</a> .....	7
Mary Ellen Flannery, <i>Why We Need Diverse Books,</i> NEA TODAY (Oct. 26, 2020), <a href="https://www.nea.org/nea-today/all-news-articles/why-we-need-diverse-books">https://www. nea.org/nea-today/all-news-articles/why- we-need-diverse-books</a> .....	6

**TABLE OF AUTHORITIES – Continued**

	Page
Mike Murillo, <i>Montgomery Co. cities top list of most diverse in nation</i> , WTOPNEWS (Apr. 17, 2023), <a href="https://wtop.com/montgomery-county/2023/04/study-3-montgomery-co-cities-top-list-of-most-diverse-in-nation/">https://wtop.com/montgomery-county/2023/04/study-3-montgomery-co-cities-top-list-of-most-diverse-in-nation/</a> .....	8
Niccolo Machiavelli THE PRINCE (1532) .....	20
Plato, THE REPUBLIC (around 375 BC) .....	20
Riley J. Steiner, et al., <i>Adolescent Connectedness and Adult Health Outcomes</i> , 144(1) PEDIATRICS 1 (Jul. 1, 2019), <a href="https://doi.org/10.1542/peds.2018-3766">https://doi.org/10.1542/peds.2018-3766</a> .....	7
Robin Stevenson, PRIDE PUPPY, Orca Book Publishers (May 11, 2021) .....	11, 12
Russell M. Viner, et al., <i>Adolescence and the Social Determinants of Health</i> , 379(9826) ADOLESCENT HEALTH 1641 (Apr. 28, 2012), <a href="https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(12)60149-4/fulltext">https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(12)60149-4/fulltext</a> .....	7
Sarah S. Brannen, <i>Uncle Bobby’s Wedding</i> , KIRKUS REVIEWS (May 5, 2020), <a href="https://www.kirkusreviews.com/book-reviews/sarah-s-brannen/uncle-bobbys-wedding-brannen/">https://www.kirkusreviews.com/book-reviews/sarah-s-brannen/uncle-bobbys-wedding-brannen/</a> (last accessed Apr. 2, 2025) .....	8, 10

**TABLE OF AUTHORITIES – Continued**

Page

Stephanie M. Jones, et al., <i>Promoting Social and Emotional Competencies in Elementary School</i> , 27(1) THE FUTURE OF CHILDREN 49 (Spring 2017), <a href="https://files.eric.ed.gov/fulltext/EJ1144815.pdf">https://files.eric.ed.gov/fulltext/ EJ1144815.pdf</a> .....	7
Thomas Hobbes LEVIATHAN OR THE MATTER, FORME AND POWER OF A COMMONWEALTH ECCLESIASTICALL AND CIVIL (1651) .....	20



## INTEREST OF THE AMICI CURIAE

**THE AUTHORS GUILD, INC.** is the nation's oldest and largest professional organization for published writers. It serves as a collective voice of American authors.

**THE EDUCATIONAL BOOK & MEDIA ASSOCIATION** is a nonprofit organization whose mission is to foster a unique community that brings together a wide range of wholesalers and publishers to address the ever-changing book and media buying needs of the educational marketplace.

**PENGUIN RANDOM HOUSE LLC** publishes adult and children's fiction and nonfiction in print and digital trade book form throughout the United States. The Penguin Random House global family of companies features almost 250 editorially and creatively independent imprints and publishing houses that collectively publish more than 15,000 new titles annually. Its publishing lists include more than 60 Nobel Prize laureates and hundreds of the world's most widely read authors of fiction, historical fiction, narrative nonfiction, and nonfiction.

*Amici* proudly eschew any monolithic view of culture, science, politics, or art, and they endeavor to offer books that encourage readers of all ages to engage with a broad array of ideas and lived experiences.<sup>1</sup>

---

<sup>1</sup> Pursuant to Rule 37.6, *Amici* state that no counsel for any party authored this brief in whole or in part and no person or entity, other than amici curiae, their members, or their counsel has made a monetary contribution to its preparation or submission.

## SUMMARY OF THE ARGUMENT

This case is about the role of books in public education. Petitioners view books as instruments of indoctrination. They cloak their claims in the rhetoric of coercion—“compelling instruction designed to indoctrinate”—but there is no evidence in the record that any students are being compelled to affirm a belief contrary to their religion. Instead, the alleged “indoctrination” is merely that educators have included books with LGBTQ characters and themes in a language arts curriculum. Petitioners argue that the mere exposure to books that represent this community violates their free exercise rights under the First Amendment. So they seek injunctive relief that would insulate public school students from having “to read or to listen to” such books without advance notice and an opportunity to opt out.

As respondents demonstrate, requiring schools to accommodate the opt-out procedure petitioners demand would effectively result in censorship of certain books. Before 2023, Montgomery County public schools allowed opt-outs, but the process proved administratively infeasible. If petitioners’ argument is accepted, schools’ only viable option will be to remove diverse storybooks and other potentially objectionable texts from the curriculum, rather than be forced to implement an impractical opt-out system. In short, would-be censors will have succeeded in subverting the free speech rights of the rest of the school community, in the name of protecting the purported free exercise rights of a few members of the school community. Such a result is anathema to the exercise of *both* freedom of religion and freedom of speech, which require tolerance of dissenting viewpoints.

It is never a good time to countenance—much less, to incentivize—the removal of books from public school classrooms and libraries based on the ideas contained in them. But we are now at an especially fraught moment in our history, as book removal initiatives—couched as attempts to shield children and young adults from harmful subjects and dangerous ideas—are wreaking havoc on school districts and public libraries across the country.

Like the proponents of book removals, petitioners advance a fundamental misconception of the role of books. They fail to recognize that merely exposing students to books that depict a range of family relationships and identities, including some that might fall outside the boundaries of some religious orthodoxies, does not rise to the level of indoctrination. A school district's decision to craft a curriculum that acknowledges and respects the existence of the entire community it serves does not compel students to change or reject their religious beliefs.

Educators must navigate the tensions that arise between members of the community who believe and live differently than some of their neighbors and classmates. Like Montgomery County, school communities across the country include children who have gay parents as well as children whose parents believe that homosexuality is sinful. Schools also have children who identify as transgender and children whose parents believe gender is biologically determined at birth. The Free Exercise Clause is not a forcefield that permits some public school parents to shield their children from exposure to certain people or ideas. While parents may understandably wish to avoid or delay the difficult conversations that will result from

children being raised and educated in a community of diverse religious beliefs, the Free Exercise Clause does not guarantee a right to a public school classroom sanitized according to the dictates of those beliefs.

Acknowledging this, petitioners insist that they are not seeking to ban or remove any books, but rather to exempt their children from having to read or listen to them. But they offer no proposal for how such opt-outs could be implemented. And they refuse to acknowledge the absurdity of a world in which such opt outs were constitutionally mandated. Some parents might seek to opt their children out of books about Charles Darwin. Others might object to portrayals of witchcraft and sorcery. Such concerns are grounded in experience. The *Harry Potter* series, which ignited a passion for reading among millions of children, has long been the subject of religious objections. As a practical matter, a rule requiring schools to accommodate all opt outs asserted by parents in the name of religious freedom would force schools like those in Montgomery County to remove the challenged books because of the cost and administrative difficulty inherent in accommodating all such opt outs.

Such a result would have a profoundly chilling impact on the core mission of *Amici*. As authors and publishers, *Amici* seek to ensure that their works are broadly available to all students: “a book for every reader.” A rule requiring schools to accommodate the objections to *some* books for *some* readers based on religious objections raised by *some* parents necessarily chills the incentive to create books that do not conform to religious orthodoxies. If petitioners’ requested relief is granted, fewer students will be able to find the books that reflect their lived experiences, because books

will be created in order to fit within a more narrow range so as to be found unobjectionable. The world presented to students through the storybooks they read and listen to in school will be smaller and less representative.

The Fourth Circuit majority's careful, nuanced approach is the best way to protect the competing interests at issue here. Plaintiffs who complain of coerced indoctrination should be heard, but they should be required to prove their claims with evidence of how students are actually being instructed. *Amici* emphatically reject any suggestion that public school students should be compelled to personally affirm or deny any particular religious belief on subjects of sexuality, gender, and family life. But it is the prerogative of the school to acknowledge the diversity of the school's community and to choose books that model respectful treatment for all.

## ARGUMENT

### I. The Storybooks Exemplify *Amici's* Commitment to Offering Books for Everyone.

In their misguided effort to characterize books as instruments of indoctrination, petitioners misrepresent the Storybooks at issue and disregard the pedagogical goals they serve. Research shows that, by infusing the curriculum with diverse perspectives, schools foster resilience in students and facilitate the attainment of a broad range of educational objectives.<sup>2</sup> Students who are not allowed to see themselves, their families, and their communities reflected on the pages of books they read may come to see their own experiences as less important than those of their better-represented classmates. But students who can see themselves in books are more likely to become better, more avid readers and to perform better across all academic subjects.<sup>3</sup> Such students also fare better outside the classroom, with fewer problems relating to mental health, violence, sexual behavior, and substance abuse.<sup>4</sup>

The benefits of diverse texts are not limited to students from diverse backgrounds. Just as books are

---

<sup>2</sup> Mary Ellen Flannery, *Why We Need Diverse Books*, NEA TODAY (Oct. 26, 2020), <https://www.nea.org/nea-today/all-news-articles/why-we-need-diverse-books>.

<sup>3</sup> Hannah Clingan, *Utilizing Mirrors and Windows in Elementary Literacy to Build Identity and Empathy*, 1(1) INNOVATIONS AND CRITICAL ISSUES IN TEACHING AND LEARNING 23, 27-28 (2020), <https://cornerstone.lib.mnsu.edu/icitl/vol1/iss1/2> (collecting additional studies).

<sup>4</sup> Russell M. Viner et al., *Adolescence and the Social Determinants of Health*, 379(9826) ADOLESCENT HEALTH 1641, 1641-52 (Apr. 28, 2012), <https://www.thelancet.com/journals/lancet/article/PIIS0140->

mirrors for some, they are windows for others. Books give other students insight into the experiences of their peers, and foster empathy, compassion, and community building. If the Storybooks that petitioners seek to avoid have one common message, it is that members of the LGBTQ community are people too, and therefore deserving of respect. One need not condone homosexuality to be a good classmate or teammate of their gay neighbors. Research shows that children from all backgrounds who are taught these important life tools not only perform better in school but lead more successful lives as adults.<sup>5</sup>

Montgomery County public schools' language arts curriculum appears designed to serve these goals, seeking to create "literate, thoughtful communicators" through the "explor[ation] of a variety of texts," so that students can understand "language and literature as catalysts for deep thought and emotion" and appreciate "the complexities of the world and human experience." JA 5. Such goals are particularly appro-

---

6736(12)60149-4/fulltext; M. D. Resnick et al., *Protecting Adolescents from Harm. Findings from the National Longitudinal Study on Adolescent Health*, 278 J. AM. MED. ASS'N 823, 823-32 (Sept. 10, 1997), <https://pubmed.ncbi.nlm.nih.gov/9293990>; Marina Feijo et al., *Improving School Outcomes for Transgender and Gender-Diverse Youth: A Rapid Review*, 9(1) Policy Insights from the Behavioral and Brain Sciences 27, 27-34 (2022), <https://journals.sagepub.com/doi/abs/10.1177/23727322211068021>; Riley J. Steiner et al., *Adolescent Connectedness and Adult Health Outcomes*, 144(1) PEDIATRICS 1, 1-11 (Jul. 1, 2019), <https://doi.org/10.1542/peds.2018-3766>;

<sup>5</sup> Stephanie M. Jones et al., *Promoting Social and Emotional Competencies in Elementary School*, 27(1) THE FUTURE OF CHILDREN 49, 50 (Spring 2017), <https://files.eric.ed.gov/fulltext/EJ1144815.pdf>.

priate given the demographics of Montgomery County, which is home to some of the most diverse cities in the country.<sup>6</sup> Indeed, even petitioners acknowledge the diversity of lived experiences represented in Montgomery County public school classrooms. Pet. Br. at 6.

Some amici supporting petitioners suggest that, while diverse texts might be valuable in theory or for older children, these Storybooks cross the line into indoctrination for younger children. But that’s not true. The Storybooks challenged by petitioners—which are only a small fraction of the texts available for use in the language arts curriculum—address classic themes of family, friendship, love, working through hard feelings, and overcoming adversity.

For example, *Uncle Bobby’s Wedding* tells the story of a little girl who worries about her place in an expanding family. Chloe is jealous when her uncle announces that he is getting married, concerned that this will mean he will not be able to have as many fun adventures with her.<sup>7</sup>

---

<sup>6</sup> See Mike Murillo, *Montgomery Co. cities top list of most diverse in nation*, WTOPNEWS (Apr. 17, 2023), <https://wtop.com/montgomery-county/2023/04/study-3-montgomery-co-cities-top-list-of-most-diverse-in-nation/>.

<sup>7</sup> *Uncle Bobby’s Wedding*, KIRKUS REVIEWS, <https://www.kirkusreviews.com/book-reviews/sarah-s-brannen/uncle-bobbys-wedding-brannen/> (last accessed Apr. 2, 2025).





As the book's characters help Chloe resolve her concerns, she begins to warm to the idea of her uncle getting married. Her approval is sealed when Uncle Bobby's soon-to-be-spouse joins her on all sorts of adventures.

"But—" said Chloe.  
"But what?" asked Uncle Bobby.  
"But I still don't think you should get married.  
I want us to keep having fun together like always."



"I promise we'll still have fun together," said Bobby.  
"You'll always be my sweet pea."

This is a universal tale of a challenge faced by all kids in all types of families. For some young students in Montgomery County classrooms, it is a story of a favorite uncle marrying his girlfriend or a beloved aunt marrying her boyfriend. But, for others, *Uncle Bobby's Wedding* mirrors their own families and lived experiences. Allowing these students to see themselves—and their peers to see them, too—in a storybook read aloud in class is not coercive.

Another challenged Storybook, *Love, Violet*, is described by *Kirkus Reviews* as a “sweetly empathetic, child-friendly” story of romance.<sup>8</sup> With beautiful illustrations, this book tackles friendship, love, and courage—common tropes in already-available children’s books. *Love, Violet* depicts the intensity of young friendship in a way that is digestible and appropriate for elementary readers.



*Pride Puppy*—the book that draws the most ire from petitioners and their amici, despite the fact that it is no longer being used in Montgomery County schools<sup>9</sup>—is also clearly not a tool of indoctrination. In this story, a family’s puppy gets lost during a visit to a pride parade. An alphabet book, *Pride Puppy* takes readers on a search for the puppy, as the family gets ready for and attends the parade. Readers are told that

---

<sup>8</sup> *Love, Violet*, KIRKUS REVIEWS, <https://www.kirkusreviews.com/book-reviews/charlotte-sullivan-wild/love-violet/> (last accessed Apr. 2, 2025).

<sup>9</sup> Pet. Br. at 11 n.10.



“A for awake, animals and all,” “B is for breakfast, and baby and ball,” and “C for car, our old Chevrolet.” Pet.App.256a, 257a, 261a. Petitioners lament that the last two pages of the book list an additional 200 words, some of which they believe are inappropriate.<sup>10</sup> But these additional words are not part of the story, and questions about *how* books like *Pride Puppy* should be

---

<sup>10</sup> For example, although the story says that “K is for kindness and friends that we’re keeping,” the last two pages of the book list the following additional “K” words: “kilt, kites, kiss, [drag] king, knee-high socks, knapsack, koala, kiwi, keys, knitted [sweater], kangaroo.” Pet.App.270a. It is thus misleading for petitioners to assert that the book sends young readers on a search for drag kings or other allegedly inappropriate terms.

read present issues of age-appropriateness and educational suitability, not the free exercise of religion.

Petitioners' attack on another Storybook illustrates the fundamental fallacy of their argument. Published by amicus Penguin Random House, *Born Ready: The True Story of a Boy Name Penelope* has been called a "triumphant declaration of love and identity" by *Kirkus Reviews*.<sup>11</sup> The book is based on the true story of Penelope's parents' journey of acceptance of their child's identity. Petitioners object to this book merely because it is *about* a person whose identity and practices they disagree with.

Petitioners cannot credibly argue that mere exposure to the Storybooks forces readers to affirm their moral support for the protagonist or renounce their sincere religious beliefs. So they focus instead on teaching guidelines that are not specific to books like *Born Ready*. Pet. Br. at 11. This only confirms, however, that any potential violation of the Free Exercise Clause must be found in the instruction, not in the books themselves.

In sum, there is nothing inherently coercive from a religious perspective about these Storybooks or the district's inclusion of them for potential use in the classroom. No matter the sincerity of petitioners' religious objections to the characters and themes in these books, there is no free exercise right to claim an exemption from reading or listening to them in a public school setting.

---

<sup>11</sup> *Born Ready: The True Story of a Boy Named Penelope*, KIRKUS REVIEWS, <https://www.kirkusreviews.com/book-reviews/jodie-patterson/born-ready/> (last accessed Apr. 2, 2025).

## II. The Mere Exposure to Books and the Ideas in Them Is Not a Cognizable Burden on the Free Exercise of Religion.

Petitioners’ inability to show that the mere reading or listening to the Storybooks is inherently coercive requires the denial of their request for injunctive relief. Although this Court’s Free Exercise Clause doctrine has been refined over the past few decades, coercion remains the touchstone of such a claim. The plaintiff must identify a burden on their religious practice—“some sort of direct or indirect pressure to abandon religious beliefs or affirmatively act contrary to those beliefs.” Pet.App.35a (citing *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 450 (1988)). Resolving this threshold issue involves close examination of the specific nature of the government action at issue. Pet.App.26a (citing *Kennedy v. Bremer-ton Sch. Dist.*, 597 U.S. 507, 524 (2022)).

When it comes to public education, determining whether government action constitutes a cognizable burden under the Free Exercise Clause requires navigating a constitutional chasm. On one side of the divide is forced indoctrination, which burdens religious practice and is thus subject to heightened scrutiny. But mere exposure to ideas lies on the other side of the divide and does not trigger Free Exercise Clause concerns.

This Court has long recognized the distinction between indoctrination and mere exposure to ideas. More than 80 years ago, in *West Virginia State Board of Education v. Barnette*, the Court held that the Free Exercise Clause protects public school students from being forced to pledge their allegiance to the flag—or to the ideas it represents—against their religious

convictions. 319 U.S. 624, 625-26 (1943). But *Barnette* also was careful to distinguish between forced allegiance and mere exposure, noting that the students were not “merely being made acquainted with the flag salute so that they may be informed as to what it is or even what it means.” *Id.* at 631.

Since *Barnette*, circuit courts have uniformly recognized that mere exposure to ideas is not a cognizable burden on the free exercise of religion, even when those ideas are inconsistent with religious doctrine. For example, in *Parker v. Hurley*, the First Circuit rejected claims exactly like petitioners’. 514 F.3d 87, 107 (1st Cir. 2008). The *Parker* plaintiffs, whose religious beliefs were offended by homosexuality, objected to the reading of storybooks with gay characters in public elementary schools. *Id.* at 90. They argued that, by exposing students to such books, the schools were indoctrinating them to take an affirmative view on the morality of gay relationships. *Id.* at 105. But the First Circuit rejected this indoctrination-by-storybook theory, holding that there is “no free exercise right to be free from any reference in public elementary schools to the existence of families in which the parents are of different gender combinations” and that “[r]equiring a student to read a particular book is generally not coercive of free exercise rights.” *Id.* at 106.

Other circuits have reached the same conclusion. In *Mozert v. Hawkins County Board of Education*, the Sixth Circuit rejected the free exercise claim of a religious parent who objected to public schools’ use of language arts textbook that featured subjects ranging from “evolution and ‘secular humanism’ to less familiar themes such as ‘futuristic supernaturalism,’ pacifism, magic and false views of death.” 827 F.2d 1058, 1062

(6th Cir. 1987). As the court recognized, merely being exposed to such ideas through reading did not amount to government compulsion to affirm them. *Id.* at 1066. The Seventh Circuit rejected an identical claim challenging a reading text that featured stories about “supernatural beings including ‘wizards, sorcerers, giants and unspecified creatures with supernatural powers’” over the objection of religious parents who disapproved of such ideas. *Fleischfresser v. Dir. of Sch. Dist.*, 15 F.3d 680, 686 (7th Cir. 1994).

Petitioners and their amici argue that this consensus is “outdated,” but they do not cite any recent decision by this Court that changes the analysis. Indeed, the unsuccessful plaintiffs in *Parker*, *Mozert*, and *Fleischfresser* relied on the same longstanding precedents as petitioners do here, including *Barnette* and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Nor do petitioners offer any compelling reason why this settled doctrine should now be upended to treat mere exposure to ideas as a cognizable burden on religious practice.

Instead, petitioners attempt to bridge the chasm between indoctrination and mere exposure to ideas by utilizing the *rhetoric* of coercion. In petitioners’ telling, the government action at issue here is “compelling instruction designed to indoctrinate [] children” on sensitive matters of sexuality, gender, and family life. Pet. Br. at 21. They allege that the schools are trying “to disrupt their religious beliefs[.]” *Id.* Such “forced instruction,” they argue, is an “obvious burden on [their] free exercise” of religion. *Id.*

The Fourth Circuit majority held them to their evidentiary burden on these allegations. Noting the “threadbare” state of the record, the majority found no



evidence of compelled indoctrination. Pet.App.33a. The court did, however, allow for the possibility that further evidentiary development might change the analysis and the result: “Proof that discussions are pressuring students to recast their own religious views—as opposed to merely being exposed to the differing viewpoints of others—could serve as evidence that the Storybooks are being used in a coercive manner.” Pet.App.43a. But, crucially and correctly, the court rejected petitioners’ attempts to conflate mere exposure to ideas with forced indoctrination. Pet.App.40a-44a.

*Amici* respectfully submit that the Fourth Circuit applied the right standards in the right way. The Free Exercise Clause should not be held to shield students who attend public schools from having “to read or to listen to” storybooks with gay characters and themes or other ideas that they or their parents find religiously objectionable. Courts should instead focus on whether the instruction relating to such texts crosses the line from mere exposure to coerced indoctrination.

### **III. Petitioners’ Argument Will Lead to Removal of Books at a Time When Censorship Is Surging Across the Country.**

Petitioner’s attempt to conflate indoctrination with the mere exposure to ideas is not only at odds with established Free Exercise Clause doctrine, it will lead to de facto censorship. Petitioners request injunctive relief that would require schools to provide advance notice and to honor opt-out requests before the Storybooks—or, presumably, any other potentially objectionable texts—are read in class by a teacher or fellow student. Pet.App.205a-206a.

As respondents explain, however, their experience confirms that such an opt-out procedure is impossible to administer. Resp. Br. at 12-13. Unlike a discrete unit of instruction, such as sex education, the Storybooks are woven into the schools' year-round language arts curriculum. *Id.* at 8-12. Teachers are given considerable leeway in determining which books to read and when to read them. *Id.* And the curriculum encourages students to make their own choices of books for individual reading or to be read aloud in class. *Id.* at 9. As the district learned by experience prior to 2023, there is simply no practical way to offer advance notice and an opt-out mechanism in these circumstances. *Id.* at 12-13.

In other words, the only practical way for respondents and other school districts to comply with demands like petitioners' is to take diverse books out of public schools entirely. If students cannot be required "to read or to listen to" such books (as petitioners argue), and it is practically impossible to administer the opt-out procedure (as the district learned through prior experience), the inevitable result will be self-censorship.

Schools and teachers will be sharply limited in their ability to include books that feature diverse characters and messages of tolerance and respect in the curriculum. Many schools will remove such books from classroom bookshelves and libraries, out of concern that a potentially offending book might be discovered by a student whose parents would not approve of it, or might be chosen by a different student for read-aloud before their classmates could be whisked out of the room. In turn, this will dramatically curtail the range of books that *Amici* can offer for sale to schools.

This problem is not limited to the seven Story-books cited by petitioners. Any books with similar characters and themes could be targeted for removal on the same grounds. Nor would the removals be limited to works involving gay or transgender themes. As *Mozert* demonstrates, books on topics ranging from “evolution and ‘secular humanism’ to less familiar themes such as ‘futuristic supernaturalism,’ pacifism, magic and false views of death” would also be at risk of removal. 827 F.2d at 1062. So, too, would books about “supernatural beings including ‘wizards, sorcerers, giants and unspecified creatures with supernatural powers,’” as *Fleischfresser* illustrates. 15 F.3d at 686. Other forbidden topics might be even less anticipated. In *California Parents for the Equalization of Educational Materials v. Torlakson*, Hindu parents objected to public school curriculum that discussed the caste system inconsistently with their religious views of its divine origin. 973 F.3d 1010, 1020 (9th Cir. 2020) (rejecting free exercise claim).

The settled principle that courts cannot inquire into the contours or merits of religious belief will make it even more difficult to cabin the potential effects of petitioners’ argument. As the Court has recently reiterated, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021) (citing *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 714 (1981)). This will make it even more difficult to predict which books will draw objections and require notice and opt-out procedures. And it will make it impossible for schools to ask whether opt-outs

are motivated by religious belief, politics, or other grounds for disapproval.

The suggestion that such an outcome is somehow mandated by *the First Amendment* is clearly misguided. But it is no accident that petitioners advance this argument. The books targeted by petitioners here are frequently being removed—unconstitutionally—from school bookshelves all over the country. Proponents of such removals argue, like here, that a library book’s content reflects the views of the government.

These arguments have been soundly and uniformly rejected, as courts have consistently recognized that authors are not speaking for the government when they write books. Nor is the government endorsing the author’s viewpoint merely because it decides that their book is worth reading, whether in a curricular or library setting. As the Eighth Circuit explained last year, a well-appointed public school library “could include copies of Plato’s *The Republic*, Machiavelli’s *The Prince*, Thomas Hobbes’ *Leviathan*, Karl Marx and Freidrich Engels’ *Das Kapital*, Adolph Hitler’s *Mein Kampf*, and Alexis de Tocqueville’s *Democracy in America*.” Conflating the government’s views with those of the authors would mean that “the State ‘is babbling prodigiously and incoherently.’” *Id.* (quoting *Matal v. Tam*, 582 U.S. 218, 234 (2017)).

In another recent decision involving a First Amendment challenge to book removals on the basis of ideology, the Middle District of Florida echoed this observation. *PEN Am. Ctr., Inc. v. Escambia Cnty. Sch. Bd.*, 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024) (“[T]he Court simply fails to see how any reasonable person would view the contents of . . . any library . . . as the government’s endorsement of the views expressed

in the books on the library’s shelves.”); *Penguin Random House LLC, et al. v. Ben Gibson, et al.*, No. 6:24-CV-1573-CEM-RMN, 2025 WL 902041, at \*8 (M.D. Fla. Feb. 28, 2025).<sup>12</sup> So did the Western District of Arkansas in ruling in favor of plaintiffs who challenged the county’s policy requiring all children’s books containing LGBTQ themes to be removed, affixed with a prominent label, and placed in a new “social section.” *Viriden v. Crawford Cnty.*, No. 2:23-CV-2071, 2024 WL 4360495, at \*1, 6 (W.D. Ark. Sept. 30, 2024); *Fayetteville Pub. Library v. Crawford Cnty., Arkansas*, No. 5:23-CV-5086, 2024 WL 5202774, at \*1, 16 (W.D. Ark. Dec. 23, 2024).<sup>13</sup> And less than a month ago, the District of Colorado rejected a school district’s identical argument in a case challenging the removal of 19 books from school libraries. *Crookshanks as next friend of C.C. v. Elizabeth Sch. Dist.*, No. 1:24-CV-03512-CNS-STV, 2025 WL 863544, at \*1, 7-8 (D. Colo. Mar. 19, 2025).<sup>14</sup>

Although they involve the First Amendment’s Free Speech Clause, not the Free Exercise Clause, these decisions yield an important insight relevant here. The proponents of book removals make the same fundamental mistake as petitioners, by failing to recognize the difference between the views of the government and those of authors. Just as public school librarians are not advocating for communism when they place *The Communist Manifesto* on library shelves—or for capitalism when they place *The Wealth of Nations* on

---

<sup>12</sup> Amicus Penguin Random House LLC is a plaintiff in these cases.

<sup>13</sup> Amicus Authors Guild, Inc. is a plaintiff in *Fayetteville Public Library*.

<sup>14</sup> Amicus Authors Guild, Inc. is a plaintiff in *Crookshanks*.

the same shelves—public schools are not indoctrinating students or demanding adherence on any religious matter on the basis of book selection alone.

For the same reasons, the mere inclusion of a book in a public school's curriculum cannot be, on its face, coercive. For example, it is perfectly appropriate for a high school history teacher to assign students to read *Mein Kampf* and write a rebuttal, but not to demand a defense of it. Context matters. It also defies logic to assert that simply reading a storybook is tantamount to conversion to the author's values. Reading *The Communist Manifesto* does not require one to become a Marxist. And, no matter the epic poet Homer's timeless brilliance, reading *The Iliad* does not compel worship of Zeus. Similarly, reading the Storybooks does not compel anyone to adopt their perspectives if their personal conscience dictates otherwise. *Love, Violet* does not compel anyone to adopt or endorse its perspective on the intensity of friendships between young girls. And reading *Born Ready* does not compel adoption or endorsement of its characters' views on gender identity.

These books remain the speech of their authors, not the government. Any theory that mistakes mere exposure to ideas with forced indoctrination is inconsistent with the First Amendment's free speech guarantee. Anyone—including children—can read about characters and events beyond their experiences, even if they disagree with the themes or characters in the story.

The idea that the Free Exercise Clause grants some individuals the right to narrow the viewpoints available in the marketplace of ideas is similarly mistaken. *City of Boerne v. Flores*, 521 U.S. 507, 564-65

(1997) (O'Connor, J., dissenting) (“Given the centrality of freedom of speech and religion to the American concept of personal liberty, it is altogether reasonable to conclude that both should be treated with the highest degree of respect.”). Of course, individuals are free to believe and practice as they choose, and to raise their children according to their religious prerogatives. This might include the inculcation of values that are different from—or even that unequivocally reject—core tenets of civil society. But that does not mean that individuals are entitled to a civil order—or a public school education—that adheres to the world view espoused by their religion. *Brown v. Hot, Sexy & Safer Prods., Inc.*, 68 F.3d 525, 533 (1st Cir. 1995) (“We do not think, however, that this freedom encompasses a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children.”); *Leebaert v. Harrington*, 332 F.3d 134, 141 (2d Cir. 2003) (rejecting claimed “fundamental right of every parent to tell a public school what his or her child will and will not be taught.”).

As Justice Scalia explained, the Free Exercise Clause does not implement a “a system in which each conscience is a law unto itself.” *Employment Div., Dep’t of Human Res. of Oregon v. Smith*, 494 U.S. 872, 890 (1990). Nor should it be interpreted to guarantee each conscience a public school classroom unto itself.



**CONCLUSION**

For these reasons, the Court should affirm the Fourth Circuit's judgment.

Respectfully submitted,

Marc A. Fuller  
*Counsel of Record*  
Maggie I. Burreson  
JACKSON WALKER LLP  
2323 Ross Ave., Ste. 600  
Dallas, TX 75201  
(214) 952-6000  
mfuller@jw.com  
mburreson@jw.com

*Counsel for Amici Curiae*

April 9, 2025