

In the Supreme Court of the United States

LIBBY HILSENATH,
ON BEHALF OF HER MINOR CHILD, C.H.,
Petitioner,

v.

SCHOOL DISTRICT OF THE CHATHAMS,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit**

**BRIEF IN OPPOSITION OF RESPONDENT
BOARD OF EDUCATION OF THE SCHOOL
DISTRICT OF THE CHATHAMS**

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QUESTION PRESENTED

Whether a public school's indirect inclusion of religiously proselytizing content as a supplement to its classroom instruction on several major world religions, taught solely for pedagogical purposes in a course for seventh-grade students focused on geography history, culture, and comparative religion, violates the Establishment Clause.

PARTIES TO THE PROCEEDINGS

Petitioner is LIBBY HILSENATH on behalf of her minor child, C.H. C.H. was a seventh-grade student enrolled in the seventh-grade World Cultures and Geography course at issue in this matter.

Respondent is the BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CHATHAMS, who is responsible for ensuring that its students comply with State educational standards and become well-rounded members of society.

CORPORATE DISCLOSURE STATEMENT

Respondent is a public entity and is not subject to the Corporate Disclosure Statement requirement pursuant to Sup. Ct. R. 29.6.

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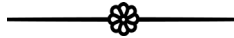
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OPINIONS BELOW

The opinion of the Third Circuit Court of Appeals is reported at 136 F.4th 484, No. 23-3030 (May 5, 2025). App.1a-26a. The opinion of the District Court granting summary judgment to the Respondents and denying summary judgment to Petitioner is reported at 698 F. Supp. 3d 752 (D.N.J. 2023). App.27a-55a. Because it is referenced in the reported opinion of the District Court granting summary judgment to Respondents, the initial decision of the District Court granting summary judgment to the Respondents is reported at 500 F. Supp. 3d 272 (D.N.J. 2020). Pet. App.62a-102a.



JURISDICTION

This Court possesses jurisdiction to consider Petitioner's Petition for Writ of Certiorari pursuant to 28 U.S.C. § 1254(1).



CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution states, in relevant part, that

Congress shall make no law respecting an establishment of religion[.]

U.S. Const., amend. I



INTRODUCTION

According to Petitioner, this case presents two questions: (1) whether a public school can teach about Islam in its classrooms without violating the Establishment Clause, and (2) whether the Establishment Clause provides the same protections to parents and their children as that provided by the Free Exercise Clause. The second question can be dispensed with quite easily since no Free Exercise claim was ever asserted by the Petitioner in the first instance, nor was a claim for violation of her parental rights to direct her son's religious upbringing ever asserted in the District Court or on appeal. In fact, during arguments before the Third Circuit on October 29, 2024, Petitioner had denied that she was bringing a claim on behalf of herself individually under the Establishment Clause. See Oral Argument audio at 13:11 through 13:59, *Hilsenrath on behalf of C.H. v. Sch. Dist. of Chathams*, 136 F.4th 484 (3d Cir. 2025), <https://www2.ca3.uscourts.gov/oralargument/audio/20-3474Hilsenrathv.SchoolDistrictofChathams.mp3>.

More importantly, teaching students the basic history and tenets of various world religions is an important “part of learning how to live in a pluralistic society.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 510 (2022) (quoting *Lee v. Weisman*, 505 U.S. 577, 590 (1992)). Recognizing this fact, the State of New Jersey's Department of Education mandated that New Jersey middle school students be knowledgeable about various major world religions, including Islam, and that, by eighth-grade, students should be able to compare and contrast the tenets of various world

religions and their history (*i.e.*, Buddhism, Christianity, Confucianism, Hinduism, Islam, Judaism, Sikhism, and Taoism). Accordingly, the State of New Jersey set forth mandated Learning Standards and materials “designed to broaden the pupil’s understanding of the many cultures of the world” and representing “the many religious, ethnic, and cultural groups and their contribution to American heritage.” *See* App.3a; N.J. Dep’t of Educ., *2020 New Jersey Student Learning Standards – Social Studies: Grades 6-8*, Standard 6.2.8.D.3.d (June 2020) https://www.nj.gov/education/standards/socst/docs/2020NJSL-SS_Grades6-8.pdf (last visited Oct. 25, 2025).

In adherence to the educational requirements set forth by the State, Respondent, the School District of the Chathams, provided its seventh-grade students with World Culture and Geography classes to educate the students, in a purely pedagogical manner, on the various major world religions, their tenets, and their history. Included in the class material was a unit on the Middle East and Northern Africa, which included just two (2) classes instructing students on the tenets and beliefs of Islam. Despite now claiming for the first time in her Petition that the supplemental educational materials featuring Islam conflicts with her right to direct C.H.’s religious upbringing, Petitioner had merely objected to the fact that Islam was being exposed to her child while ignoring the religions of Judaism and Christianity, and thus, in essence, equal treatment was not being given to all religions. This argument then shifted in her motion for summary judgment and on appeal to the Third Circuit to an objection as to the manner in which the lessons on Islam were being delivered—not by the teacher—but

in third party content (videos) that could be accessed at home by Petitioner via weblinks in Power Point Presentations posted on Google Classroom. Pet.Br.3.

However, an objective review of the manner in which the information in the videos and worksheet at issue in this case had been utilized or was intended to be utilized indisputably demonstrates that Islam was never taught in a proselytizing manner, and the alleged proselytizing materials were designed to merely introduce students to Islam in the context of all world religions, their history, and their impact on the culture of the various regions of the world today. Such instruction is a standard component of a well-rounded 21st Century public education and is commonly taught in classrooms throughout the nation, notwithstanding Petitioner's attempts to repeatedly mischaracterize the objective and non-proselytizing nature of the actual instruction and curriculum at issue.

This Court should deny the Petition for Writ of Certiorari because the Third Circuit's decision underneath comports with the Establishment Clause analysis established by this Court in *Town of Greece v. Galloway*, 572 U.S. 565 (2014), *American Legion v. American Humanist Ass'n*, 588 U.S. 29 (2019), *Shurtleff v. City of Boston*, 596 U.S. 243 (2022), and finally in *Kennedy* to apply identically to schools, and it is well-established that public school students may be taught about other religions for pedagogical purposes without same being historically understood as an establishment of religion and running afoul of the First Amendment.



STATEMENT OF THE CASE

I. Factual Background

During the 2016-2017 school year (the “Relevant Period”), C.H. was a seventh-grade middle school student at Chatham Middle School, a public school located within the School District of the Chathams and operated by Respondent, the Board of Education of the School District of the Chathams (the “District”). C.H. was enrolled in a mandatory seventh-grade course entitled World Cultures and Geography (“WCG”), initially taught by Megan Keown and later taught by long-term leave substitute teacher Christine Jakowski. App.65a. The aim for the course was to “develop [] a broad understanding of the world and its people” so that “students will become active and informed global citizens. App.31a.

In addition to learning geography, economics, history, and culture of the different regions of the world, namely Latin America, Middle East and North Africa (“MENA”), Europe, Sub-Saharan Africa, Australia/Oceania and Asia, the WCG course devoted a unit of study to each of these region’s major religions. A439 Syllabus; and A150 Keown Testimony at T29:18-25; App.3a. Specifically, students were taught about and compared the religions commonly practiced around the globe. App.31a. One of these units, titled Middle East and North Africa (“MENA Unit”), included a lesson on Islam, which was mentioned in only two (2) class periods out of a total 180 class periods. App.4a. Islam, of course, is a religion prevalent in the Middle East and Northern Africa. App.31a-32a. Thus, the WCG

curriculum implemented State standards, including requiring that students be able to “[c]ompare and contrast the tenets of various world religions” by the time they graduated eighth grade. App.3a.

In addition to being provided information about Muslims generally and the basic tenets of the Islamic faith, Chatham Middle School students learned about Christianity, including lessons on “God” and “Jesus,” during the preceding Latin America Unit. App.3a. Similarly, students were taught about the basics of the religions of Buddhism, Hinduism and Judaism. *Ibid*; App.17a. For the subsequent Asia Unit 6, C.H. watched two different in-class videos regarding the religious tenets and beliefs of Hindus and Buddhists and took notes on the key tenets of each religion. *Ibid*; App.17a. In addition, C.H. was asked to compare and contrast Buddhism with what he had learned earlier in the year about Islam. App.3a. Thus, the WCG curriculum implemented State standards, including requiring that students be able to “[c]ompare and contrast the tenets of various world religions” by the time that they graduated eighth grade. App.3a.

In the first two (2) classes of the MENA unit, students were taught about the general attributes of the Islamic people and the impact of Islam on the daily lives of a majority of people living in the Middle East and North Africa. App.32a. Students were presented with two in-class PowerPoint slide presentations, the first regarding a critical thinking exercise in making generalizations about the Islamic culture as shaped by its music, art, architecture and religious beliefs and the second, about the basic religious tenets of Islam, both of which were posted on Google Classroom, an online platform for teachers to post

homework as well as supplemental course material. App.4a; App.32a. The last slide of the first PowerPoint (“PowerPoint 1”) included a link to a YouTube Video, titled “Intro to Islam” and seemingly instructed students to watch the video and to discuss generalizations about Islam that come to mind from the video. App.32a. However, Video 1 was not played in class, and was not assigned as homework. *Ibid.*

The five-minute “Intro to Islam” video (“Video 1”), which was not assigned viewing for students in or out of class nor graded, contains images, and written text, and features background music and Arabic chants that were not understood by C.H. *Ibid.* The first half of Video 1 alternates between quotations from the Quran and a series of questions and answers about Islam from the perspective of a believer. *Ibid.* The video then turns to images and a discussion of Islamic Art and Architecture and other Muslim contributions to society. App.6a. On the last slide of the video, the text reads: “May God help us all find the true faith, Islam Ameen.” *Ibid.* C.H. testified that he did not remember much about the video, and that he did not recall feeling coerced after watching same at home with his mother. App.34a; App.7a.

In the second class of the MENA Unit, students were taught through another PowerPoint (“PowerPoint 2”) about the “5 Pillars of Faith” and the significance of each in Muslim culture. App.6a; App.34a. During the second lesson, students completed a worksheet instructing them to take notes on the PowerPoint slides, and to fill in the blanks and correct information scattered throughout. One statement of the worksheet read: “There is no god but ____ and ____ is his messenger.” App.7a; App.35a. This statement, also

known as the “shahadah,” is “the basic statement of Islamic faith” and is a centrifugal force to Islam. *Ibid.*

PowerPoint 2 also included a hyperlink to a YouTube video titled “The 5 Pillars of Islam” (“Video 2”). App.7a; App.36a. Video 2 was never played in class nor was it assigned as homework. App.36a; App.7a. The video was created by an educational group called UKIslam and opened with a statement that read: “the following is an Islamic educational presentation for primary and secondary schools.” App.36a. Video 2 consisted of an animated cartoon, which featured a conversation between two cartoon children, a non-Muslim named Alex and a Muslim named Yusuf. Alex asks Yusuf a series of questions about Islam, and after Yusuf answers each question, Yusuf asks Alex to join him in prayer. App.36a. Video 2 concludes by providing an email address and website belonging to an organization located in the United Kingdom, through which viewers could contact UKIslam to “organize a mosque tour, or order an information pack.” App 36a; App.7a.

While the PowerPoint slides were presented in class to the students, Video 1 and Video 2 were not shown during class, and students were not explicitly instructed to view the videos. App.7a. Rather, C.H. watched Video 1 and Video 2 at home on his own accord, with his mother, Libby Hilsermath, the Petitioner. *Ibid.*

II. Procedural History

Petitioner sued the District, the Board of Education, and several teachers and administrators on behalf of C.H. claiming that the School’s MENA unit violated the Establishment Clause of the First Amendment.

App.8a. Notably, Petitioner’s Complaint did not assert, and was never amended to include, an allegation that the District violated Libby Hilsenrath’s parental rights or the Free Exercise Clause of the First Amendment. The parties filed cross-motions for summary judgment before the District Court, who applied the *Lemon* test in granting summary judgment in favor of the District. App.8a. Petitioner timely appealed the decision, and following oral arguments, the Third Circuit *sua sponte* remanded the District Court’s judgment in view of this Court’s decision in *Kennedy v. Bremerton School District*. App.8a-9a.

On remand, the District Court again considered the parties’ cross-motions for summary judgment. The Court granted summary judgment in favor of the District and denied Petitioner’s motion for same, citing the historical lens analysis established by this Court in *Kennedy*. App.9a. Petitioner timely appealed this decision to the Third Circuit. App.10a. The Third Circuit affirmed the decision below. App.13a. The majority opinion properly applied the instructions from this Court in *Kennedy* and interpreted the Establishment Clause by reference to historical practices and understandings. App.13a. In so doing, the Third Circuit ultimately determined that Plaintiff had not proven any set of facts to demonstrate that the District’s MENA curriculum did not bear any of the “historical hallmarks” of religious establishment. App.15a. Specifically, the majority concluded that, because the District’s curriculum was presented “in an academic rather than devotional context,” they do not “come close to crossing any line’ separating permissible curricular materials from impermissible proselytization.” App.18a. The majority also noted

that the record did not show any favoritism toward Islam, but rather clearly evinced that world religions were treated equally by the teachers in C.H.'s WCG class. App.19a.

Writing separately, Judge Phipps did not utilize the “hallmarks of religious establishment” used by the majority to apply to the curricular materials being challenged in the matter at bar as violative of the Establishment Clause. Rather, Judge Phipps found that the “hallmark” test was not even necessary to “conclude that materials about Islam assigned to seventh-grade students at Chatham Middle School do not establish a religion.” App.24a. Instead, Judge Phipps determined that all that is needed to determine that the District did not violate the Establishment Clause “is a recognition that teaching on matters of religion or even encouraging religious belief or practice in public schools does not constitute a ‘law respecting an establishment of religion.’” App.24a. Thus, regardless of the specific test utilized by the Third Circuit in the decision underneath, each Justice interpreted the Establishment Clause based upon historical practices and understandings as this Court instructed in *Kennedy*.



REASONS FOR DENYING THE PETITION

The First Amendment States, in relevant part, that “Congress shall make no law respecting an establishment of religion[.]” U.S. Const., amend. I. This clause of the First Amendment, the Establishment Clause, had previously been analyzed by courts

under the test established in *Lemon v. Kurtzman*. However, in *Kennedy v. Bremerton School District* this Court rejected the *Lemon* test and instructed that the Establishment Clause must be interpreted by “reference to historical practices and understandings.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022). While no one size fits all test for evaluating Establishment Clause cases was established in the wake of *Lemon*, this Court in *Kennedy* made clear that the Establishment Clause must be interpreted by reference to historical practices, understandings, and traditions, including an analysis as to whether there is direct evidence of coercion. The Third Circuit’s application of the “hallmarks test” to interpret the Establishment Clause through historical practices and understandings, specifically, the benchmarks regarding establishment of religion, including but not limited to whether there is direct evidence of coercion, throughout history, is entirely in line with this Court’s prescribed analysis of the Establishment Clause as first established in *Town of Greece v. Galloway*, *American Legion v. American Humanist Ass’n*, *Shurtleff v. City of Boston*, and then, in *Kennedy*, to apply identically in the public-school context.

In the case at bar, the Third Circuit properly applied the analysis established by this Court in *Kennedy* by evaluating whether the District’s conduct in teaching the basic history and tenets of Islam, in a purely pedagogical manner, along with all other major world religions as part of its world history curriculum resembled a traditional hallmark of religious establishment. In conducting its analysis, the Third Circuit properly determined that the District’s conduct in teaching Islam, along with the other major world

religions, in an objective and educational manner did not resemble a traditional hallmark of religious establishment, and affirmed the District Court’s grant of summary judgment in favor of the District. Moreover, the Third Circuit accurately concluded that exposure of world religions and their religious aspects to seventh-graders in an academic rather than devotional context does not “come close” to violating the Establishment Clause. *Hilsenrath on behalf of C.H. v. Sch. Dist. of Chathams*, 136 F.4th 484, 493 (3d Cir. 2025). Petitioner’s Writ for Certiorari should be denied because, contrary to Petitioner’s contentions, this case does not have widespread national implications regarding the propriety of proselytizing or religious-based curricular materials when used for objectively pedagogical non-religious purposes, there is no circuit split on this issue, and Petitioner’s arguments pertain to factual disputes rather than uncertain legal questions. The question presented is a well settled legal issue. That is, public schools may teach about religion in academic non-devotional contexts involving history, comparative religion, and the like without violating the Establishment Clause of the First Amendment. In fact, where history shows a specific practice is permitted, “it is not necessary to define the precise boundary of the Establishment Clause.” *Town of Greece*, 572 U.S. 577.

I. CERTIORARI SHOULD NOT BE GRANTED BECAUSE THE SOLE ISSUE IN THIS CASE LACKS NATIONAL IMPORTANCE CONCERNING RELIGIOUS CURRICULUM IN PUBLIC EDUCATION SO AS TO WARRANT REVIEW BY THIS COURT

In the case at bar, the issue of whether a public school may use religious-based curricular materials

to teach about Islam for pedagogical purposes does not have widespread national implications. “To use [the Court’s] resources most efficiently,” the Court must confine its review of certiorari to “those cases that will enable [the Court] to resolve particularly important questions.” *Yee v. Escondido*, 503 U.S. 519, 536 (1992). This Court has long held that public schools may use religious texts and teachings as part of an objective secular program of education without violating the First Amendment’s Establishment Clause. Accordingly, the Court should not grant certiorari in favor of Petitioner, as the instant Petition does not raise an unsettled or pressing issue of national importance.

The Supreme Court has cautioned that when evaluating claims under the Establishment Clause, “[f]ocus exclusively on the religious component of any activity would inevitably lead to its invalidation under the Establishment Clause.” *Lynch v. Donnelly*, 465 U.S. 668, 680 (1984). Rather, courts must look at the “proper context” to determine whether the Establishment Clause was violated. *Id.* For decades, this Court has recognized the secular value of studying religion on a historical and comparative basis. *See Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 255 (1963) (“[I]t might well be said that one’s education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization.”).

In *Stone v. Graham*, a case which dealt with a Kentucky statute that required that the Ten Commandments be posted on all public school classroom walls, the Supreme Court expressly acknowledged that the use of religious materials for pedagogical purposes in public school would not violate the Establishment

Clause, stating that “[t]his is not a case in which the Ten Commandments are integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like.” *Stone v. Graham*, 449 U.S. 39, 42 (1980). Rather, the “pre-eminent purpose” of the state statute requiring the Ten Commandments to be posted in classrooms “[was] plainly religious in nature.” *Id.* at 41.

This Court’s precedent makes clear that the objective study of religion, when presented as part of a secular program, does not offend the Establishment Clause. *Epperson v. State of Ark.*, 393 U.S. 97, 106 (1968) (“While study of religions and of the Bible from a literary and historic viewpoint, presented objectively as part of a secular program of education, need not collide with the First Amendment’s prohibition, the State may not adopt programs or practices in its public schools or colleges which ‘aid or oppose’ any religion.”); *See also Schempp*, 374 U.S. at 225 (“Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment”).

Petitioner’s argument relies extensively on entirely distinguishable cases, none of which stand for the proposition that religious material cannot be taught in public schools. Specifically, Petitioner’s entire argument relies upon this Court’s decisions in *Lee v. Weisman*, *Edwards v. Aguillard* and *Mahmoud v. Taylor*. Each of these cases actually lend support to the Third Circuit’s decision underneath, in that compelling religious exercise is prohibited under the First Amendment, but mere academic teaching of religion is not.

Notably, *Lee* and *Edwards* were decided over 30 years ago, in 1992 and 1987, respectively. In *Lee*, the Court contemplated whether religious exercise may be conducted at a graduation ceremony where a public-school graduation included invocations and benedictions from a rabbi in the form of prayer. *Lee v. Weisman*, 505 U.S. 577, 580 (1992). The invitation to prayer was found by this Court to constitute a “religious exercise.” *Id.* at 580–82, 588, 589, 598. Specifically, this Court found that the State’s involvement in determining that a benediction should be given at graduation ceremonies directly violated the fundamental limitations imposed by the Establishment Clause, as it effectively forced students to engage in a “formal religious exercise.” *Id.* at 589. Significantly, however, the *Lee* Court noted that “[w]e do not hold that every state action implicating religion is invalid if one or a few citizens find it offensive. People may take offense at all manner of religious as well as nonreligious messages, but offense alone does not in every case show a violation.” *Lee*, 505 U.S. at 597 (emphasis added). In fact, the *Lee* Court expressly confined its holding to formal religious exercises. *Id.* at 586-587 (“These dominant facts mark and control the confines of our decision: State officials direct the performance of a formal religious exercise at promotional and graduation ceremonies for secondary schools . . . at a minimum the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.”). Here, Plaintiff has not proven that any formal religious exercise was taking place in C.H.’s WCG class. Hence, *Lee* is not relevant to the determination as to whether religion may be taught about in public schools.

Similarly, in *Edwards*, a statute forbidding the teaching of evolutionary theory in schools, unless accompanied by instruction on “creation science,” was found to have violated the Establishment Clause as the statute lacked a secular purpose. *Edwards v. Aguillard*, 482 U.S. 578 (1987). Petitioner exclusively relies upon the dicta in *Edwards* noting merely that students are susceptible to certain pressures in the classroom, *Id.* at 584, but the Court later clarified that this dicta was not relevant to the Court’s application of the law to the facts of *Edwards*. See *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 116 (2001) (“In *Edwards*, we mentioned that students are susceptible to pressure in the classroom, particularly given their possible reliance on teachers as role models. But we did not discuss this concern in our application of the law to the facts.”) (internal citations omitted). In *Good News Club*, the Supreme Court clarified its decision in *Edwards* noting that “we did not suggest that, when the school was not actually advancing religion, the impressionability of students would be relevant to the Establishment Clause issue.” *Id.* (emphasis added). *Edwards* even confirmed again that religion and religious texts “may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like.” *Edwards*, 482 U.S. at 607, citing *Stone*, 449 U.S. at 42; *Schempp*, 374 U.S. at 225.

Mahmoud, which Petitioner cites extensively throughout their Brief, did not even involve the Establishment Clause, but rather was brought under the Free Exercise Clause of the First Amendment. In *Mahmoud*, parents brought a Free Exercise claim against the school district for the board’s refusal to

provide notice that LGBTQ inclusive storybooks would be taught and where the parents were not given an opportunity to opt their children out of those lessons due to their contradictory religious beliefs. *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2353 (2025). This case has no bearing on the Third Circuit’s *Hilsenrath* decision herein as Petitioner did not assert an individualized Free Exercise claim, and in the instant matter, the opt-out provision for parents in the District was never suspended, but at all times remained in full force and effect. See School District of the Chathams Policy 5250; App.25a.

Moreover, the *Mahmoud* decision does not reflect upon the propriety of the application of the *Kennedy* historical practices and understandings standard to interpret the Establishment Clause, as the dissent in *Mahmoud* similarly recognized the inescapable reality that students will all, at one time or another, come across curricular material in their education that they disagree with on religious grounds. *Id.* at 2399 (Justice Sotomayor, dissenting) (“for public schools to function, it is inescapable that some students will be exposed to ideas and concepts that their parents may find objectionable on religious grounds. Indeed, this Court has long recognized that reality”). As Justice Sotomayor noted in her dissent in *Mahmoud*, “never, in the context of public schools or elsewhere, has this Court held that mere exposure to concepts inconsistent with one’s religious beliefs could give rise to a First Amendment claim.” *Mahmoud*, 145 S. Ct. at 2387.

Again, this is not a case in which students were being asked to participate in an Islamic religious exercise, see e.g., *Lee*, 505 U.S. at 598-99 (1992)

(holding that requiring students to stand for graduation prayer constituted compelled participation in religious ritual); or prayer, *see e.g., Engel v. Vitale*, 370 U.S. 421, 424-25 (1962) (striking down state-sponsored prayer due to the inherently religious nature of prayer). Nor is it a case in which Islamic beliefs were posted on a classroom wall without explanation, *see e.g., Stone*, 449 U.S. at 41-42 (holding that posting the Ten Commandments on a public school classroom wall violated the Establishment Clause). Nor is this a Free Exercise case where Petitioner sought to opt their child out of the lessons on Islam due to their conflicting beliefs, *see, e.g., Mahmoud*, 145 S. Ct. at 2364 (holding that public school policy eliminating parental opt-outs for instruction conflicting with religious beliefs can substantially burden Free Exercise rights).

Rather, the challenged materials and lessons in the case at bar were integrated into the curriculum, which included lessons on all major world religions (*i.e.*, Christianity, Buddhism, Judaism, Hinduism, Taoism, etc.), and were directly relevant to the secular lessons being taught. *See Stone*, 449 U.S. at 41-42. These types of educational materials, which identify the views of a particular religion or ask students to engage in critical thinking exercises, even in response to a third party's alleged proselytizing statements, do not amount to a coercion of religion. *See id.*; *see also Parker v. Hurley*, 514 F.3d 87, 106 (1st Cir. 2008) ("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."). In fact, no reasonable person, aware of

the context of the world history curriculum being taught, would ever view the challenged materials as communicating a message of coercion in a religious activity or established church.

Thus, this case lacks any issue of national importance concerning religion in the curriculum and as such, certiorari to review the Third Circuit's reasoned analysis and decision in the matter at bar should respectfully be denied.

II CERTIORARI SHOULD NOT BE GRANTED BECAUSE THERE IS NO CIRCUIT SPLIT ON THE LEGAL QUESTION PRESENTED

This Court should reject the petition because the Circuit “split” alleged by Petitioner does not exist. Contrary to Petitioner's arguments, Circuit Courts of Appeals throughout this Country all apply the standard set forth in *Kennedy* when evaluating Establishment Clause challenges in any setting, that is, interpreting the Establishment Clause through reference to historical practices and understandings. Petitioner is merely attempting to create a Circuit split that does not exist because different Circuit Courts may use different verbiage when interpreting the Establishment Clause under *Kennedy*.

As this Court has noted, “it is no secret that Circuit splits get our attention.” *Stanley v. City of Sanford, Fla.*, 145 S. Ct. 2058, 2073 (2025); *Sup. Ct. R.* 10(a) (conveying that one of this Court's leading considerations in deciding whether to grant certiorari is whether “a United States court of appeals has entered a decision” that conflicts with “the decision of another United States court of appeals”); *see also* S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb,

SUPREME COURT PRACTICE § 4.4, p. 4–11 (11th ed. 2019) (“The Supreme Court often . . . will grant certiorari where the decision of a federal court of appeals . . . is in direct conflict with a decision of another court of appeals on the same matter of federal law”) (emphasis added).

Contrary to Petitioner’s assertions, there is no direct conflict with the decision rendered by the Third Circuit in *Hilsenrath*. The Supreme Court in *Kennedy* made clear that in place of the *Lemon test*, the Establishment Clause must be interpreted by “reference to historical practices and understandings.” *Kennedy*, 597 U.S. at 535. In this and each of the cases offered by Petitioner, the applicable test or lack thereof are not in conflict with each other, as they all interpret the Establishment Clause through reference to historical practices and understandings, in accordance with this Court’s instructions in *Kennedy*.

In *Hilsenrath*, the Third Circuit referenced historical understandings of religious materials in public schools, noting that “history teaches that established churches often bore certain ‘telling traits[.]’” *Hilsenrath*, 136 F.4th at 491; *Shurtleff*, 596 U.S. at 286. The Third Circuit then referenced the list of traits noted by Justice Gorsuch’s concurrence in *Shurtleff* to be the historical hallmarks of establishing a religion expressly because Petitioner had not met her burden of proving a different set of facts that would have historically been understood as an establishment of religion.” *Id.* at 491, n. 54, *citing Firewalker v. Lee*, 58 F.4th 104, 122 n. 7 (4th Cir. 2023). Based upon this “hallmarks test,” which is merely representative of the foremost historical practices and understandings of establishing a religion, the Third Circuit found no

violation of the Establishment Clause under the facts presented by the Petitioner in the instant matter.

Therefore, while Petitioner asserts that the Fifth Circuit’s refusal to evaluate the issue presented in *Roake v. Brumley* under the hallmarks analysis utilized by the Third Circuit constitutes a Circuit split, it does not. Rather, the Fifth Circuit merely noted that *Kennedy* did not explicitly “adopt” Justice Gorsuch’s “hallmarks test” used by the Third Circuit in *Hilsenrath* as the “exclusive Establishment Clause test . . .” *Roake v. Brumley*, 141 F.4th 614, 646 (5th Cir. 2025) (emphasis added). Thus, contrary to Petitioner’s assertions, the Fifth Circuit in *Roake* did not reject the “hallmarks test,” but merely declined to use it because it is not the “exclusive” Establishment Clause test. The Third Circuit too recognized that the hallmarks of religion listed by Justice Gorsuch was not “an exhaustive list of practices that violate the Establishment Clause under a historical approach.” *Hilsenrath* 136 F.4th at 491, n. 54 Thus, like the Third Circuit in *Hilsenrath*, the Fifth Circuit in *Roake* interpreted the Establishment Clause in reference to historical practices and understandings.

Indeed, due to the fact that the issue in the Fifth Circuit involved a practice that was previously recognized by the Supreme Court to be violative of the Establishment Clause, the Fifth Circuit in *Roake* instead evaluated the challenge to a state statute mandating the posting of the Ten Commandments in every public classroom by analyzing: “Whether the challenged practice [*i.e.*, the posting of the Ten Commandments in every public classroom] ‘fits within’ or is ‘consistent with a broader tradition’ at the time of the Founding or incorporation.” *Roake*, 141 F.4th at

646, quoting *Freedom From Religion Found., Inc. v. Mack*, 49 F.4th 941, 951 (5th Cir. 2022). The Fifth Circuit went on to state that their analysis “depends on the ‘original meaning and history,’ with particular attention paid to ‘historical practices.’” *Id.*, citing *Kennedy*, 597 U.S. at 535. This analysis is the same analysis that *Kennedy* instructed was to be employed in lieu of the “*Lemon* test” and utilized by the Third Circuit in *Hilsenrath*, that is, interpreting the Establishment Clause through any hallmarks of historical practices and understandings offered by the Petitioner. Moreover, the issue in *Roake* was whether a Louisiana state statute that required the Ten Commandments to be posted prominently in public school classrooms was constitutional, not whether a school may teach religion in the context of a world history and comparative religion curriculum. Hence, the mere fact that the analysis by the Third and Fifth Circuit in interpreting the Establishment Clause based upon historical practices and understandings was different does not create a Circuit split, as the facts before each court were drastically different.

Next, Petitioner argues that the Ninth Circuit has not established a test, further creating a Circuit split. Petitioner’s argument toward any existence of a Circuit split in reference to Ninth Circuit decisions which have not articulated a formal test is similarly unavailing. Specifically, Petitioner cites dicta from *Loffman v. California Department of Education* to support their flawed reasoning that the Ninth Circuit’s view of *Kennedy* in that decision creates a Circuit split. Pet.Br.15 (“While the Ninth Circuit has not adopted a specific test, it has indicated that *Kennedy* has had a significant impact on this Court’s

Establishment Clause jurisprudence: “in light of its methodological mandate, *Kennedy* ‘has called into doubt much of our Establishment Clause case law.’” *Citing Loffman*, 119 F.4th at 1171). This is not evidence of a Circuit split.

To the contrary, these decisions acknowledge that in evaluating an Establishment Clause claim, Courts are guided by reference to historical practices and understandings as established in *Kennedy* and which analysis was utilized by the Third Circuit to evaluate the claim in *Hilsenrath*. *See Loffman v. California Dep’t of Educ.*, 119 F.4th 1147, 1171 (9th Cir. 2024) (“the State Appellee fails to address ‘by reference to historical practice and understandings,’ why the applicable federal regulations that govern religious entities performing government contracts are insufficient to address the State’s neutrality concerns”). Moreover, like *Roake*, the facts of *Loffman* are significantly different than the facts in *Hilsenrath* since that case involved a claim for discriminating against religious parents and schools in its special education programs. No such claim for religious discrimination or disparate treatment was brought by the Petitioner on her behalf or on behalf of C.H. in the matter at bar.

Petitioner’s additional argument that two District Court decisions, which, according to Petitioner, undermine the Ninth Circuit’s purportedly overstated impact of *Kennedy* on the Establishment Clause, are sufficient to warrant review by the United States Supreme Court to resolve the alleged split in opinions, is entirely without merit. First, neither of these cases come from a United States Court of Appeals, but rather come from District Courts that have no binding

authority in any Circuit nor on the issues involved in the matter at bar. *See Sup. Ct. R.* 10 (the Court will grant certiorari, in its discretion, when “a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter”). (emphasis added). Moreover, neither case questioned the standard established in *Kennedy* that the Establishment Clause be interpreted by “reference to historical practices and understandings.” *See Williams v. Bd. of Educ. of City of Chicago*, 673 F. Supp. 3d 910, 921 (N.D. Ill. 2023) (acknowledging the *Kennedy* historical analysis test, but stating it is unnecessary to the application of the facts of this case because *Kennedy* did not overrule prior decisions regarding problematically coercive prayer); *Stinson v. Fayetteville Sch. Dist. No. 1*, No. 5:25-CV-5127, 2025 WL 2231053, at *6 (W.D. Ark. Aug. 4, 2025) (“Just three years ago, the [Supreme] Court’s ruling in [*Kennedy*—another prayer case—solidified the need for in-depth inquiry into historical practices and understandings when evaluating certain Establishment Clause cases.”). Put simply, none of the cases cited by Petitioner call into question the standard established by this Court in *Kennedy* to be applicable in the public-school context, and as such there is no true Circuit split to be resolved in regard to the Third Circuit’s Establishment Clause analysis in *Hilsenrath*.

III. THE PETITION RAISES FACTUAL DISPUTES AND THE LEGAL STANDARDS GOVERNING THE ESTABLISHMENT CLAUSE ARE SETTLED BY THIS COURT’S PRECEDENT

The heart of petitioner’s argument turns entirely upon factual disputes that were resolved in the

District's favor. Specifically, Petitioner is arguing, despite the finding by the Third Circuit to the contrary, that the District was "advancing" Islam to students in its social studies curriculum that covered all major world religions, including and two (2) lessons covering Islam — one of the most commonly practiced major religions in the world. *See* Pet.Br.20. Moreover, Petitioner, while citing extensively to a case dealing entirely with the Free Exercise clause, advances an argument that had never been asserted below, namely that the mere introduction of Islam and exposure to its tenets and beliefs in an educational context had undermined Petitioner's religious beliefs and practices which she sought to instill on her child. *See* Pet.Br.31. These newly-minted factual arguments do not alter the well-established precedent clearly holding that world religions taught in a nonsectarian context in public schools do not violate the Establishment Clause. *See Stone*, 449 U.S. at 42; *Epperson*, 393 U.S. at 106; *Schempp*, 374 U.S. at 225. Nor does Petitioner's "subtle coercive effects" argument alter the well-established precedent that an individual's rights are not violated under the Free Exercise Clause where history shows a specific practice has been permitted and/or no person would understand that they were being coerced into any particular religious doctrine. *See Town of Greece*, 572 U.S. at 577; *American Legion*, 588 U.S. at 29. In fact, C.H. denied feeling coerced into Islam after watching and discussing the videos at home with his mother. App.34a; App.7a.

As such, this case a poor vehicle for review of the Establishment Clause, and certiorari should be denied. In the case at bar, the underlying legal question is

well settled. Specifically, can a public school teach religious material to students for pedagogical reasons that are inconsistent with the beliefs held by that student or its parents? That answer is unequivocally, yes. *Kennedy* made clear, in building upon decisions from *Town of Greece v. Galloway* and *American Legion v. American Humanist Ass’n*, that “the Establishment Clause must be interpreted by historical practices and understandings.” *Kennedy*, 597 U.S. at 535 (cleaned up). While Petitioner extensively cites to dicta in *Mahmoud*, that case dealt with the Free Exercise clause, and the issue was whether a student could opt out of lessons that conflict with their religious beliefs. Here, Petitioner did not even attempt to opt her child out of the lessons on Islam, much less raise an individual Free Exercise claim against the District. *Hilsenrath*, 136 F.4th at 495, fn. 6 (J. Phipps, concurring).

The “hallmark tests” utilized by the Third Circuit to assess whether the District infringed on Petitioner’s First Amendment rights and the Third Circuit’s analysis of whether there was any evidence of coercion by the District is a proper application of Establishment Clause precedent. *See Kennedy*, 597 U.S. at 537 (noting coercion to be one of the “foremost hallmarks of religious establishments” at its founding) (citations omitted). The Third Circuit correctly noted that to find an Establishment Clause violation, Petitioner had to demonstrate that Respondent’s MENA curriculum, when looking at the “whole record in which an ostensibly religious activity took place” resembled the hallmarks of a religious establishment, as interpreted through historical practices and understandings. *Hilsenrath*, 136 F.4th at 491. The Third Circuit

correctly found that the District was not proselytizing here, and even assuming that students were compelled to watch the alleged proselytizing statements in videos that it was clearly not in a devotional context that would otherwise be historically associated [or for that matter, interfere] with an established religion.

Indeed, the Establishment Clause does not “compel the government to purge from the public sphere all that in any way partakes of the religious.” *Van Orden v. Perry*, 545 U.S. 677, 699 (2005). In the context of public schools, which prepare students to live in a 21st century pluralistic society, “the Establishment Clause does not prohibit schools from teaching about religion.” *Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 76 (2d Cir. 2001) (citing *Stone*, 449 U.S. at 42). And the Establishment Clause of the First Amendment does “not mean that the Constitution prohibits public schools from making any mention of religion when teaching a secular lesson about pluralism and tolerance.” *Skoros v. City of New York*, 437 F.3d 1, 31 (2d Cir. 2006).

As is noted above, the study of certain religions, as well as proselytizing religious texts and quotes, do not offend the Establishment Clause so long as they are objectively secular and for pedagogical purposes. See *Stone*, 449 U.S. at 42 (“[t]his is not a case in which the Ten Commandments are integrated into the school curriculum, where the Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like.”); *Schempp*, 374 U.S. at 225 (“Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected

consistently with the First Amendment“); *Epperson*, 393 U.S. at 106 (“While study of religions and of the Bible from a literary and historic viewpoint, presented objectively as part of a secular program of education, need not collide with the First Amendment’s prohibition, the State may not adopt programs or practices in its public schools or colleges which ‘aid or oppose’ any religion.”). Rather, this is a case where students were taught about each major world religion and their tenets in the context of world history and comparative religion, uses that are explicitly permissible under the Constitution and Supreme Court precedent.

Rather than accept that the Constitution and relevant Supreme Court precedent clearly permits that world religions may be taught in public schools for purely pedagogical reasons, Petitioner argues that “normative lessons on Islam ‘advance religious views that may conflict with the private beliefs of the student and his or her own family.” See Pet.Br.30. Petitioner then extensively relies upon *Mahmoud*, which was a Free Exercise case that is entirely irrelevant to the instant matter. The factual arguments and attempt to confuse the issue by invoking the Free Exercise clause when no such claim was raised further demonstrate that this Court must deny the Petition. *Hilsenrath*, *supra*. fn. 6. In fact, this Court routinely finds that arguments not raised below are waived. See *United States v. Jones*, 565 U.S. 400, 413 (2012) (arguments not raised or considered below are forfeited); *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 455 (2007) (Supreme Court ordinarily does not consider points neither raised nor addressed below); *TRW Inc. v. Andrews*, 534 U.S. 19,

34-35 (2001) (refusing to reach issue not raised or briefed below).

Significantly, it should be noted that this Court denied granting certiorari in a case with facts virtually identical to the instant matter. In *Wood v. Arnold*, 915 F.3d 308 (4th Cir. 2019), the Fourth Circuit dealt with a nearly identical case, where a parent objected to their child being taught Islam in a world history class, and being assigned worksheets that required students to fill in the blanks based upon the “Five Pillars of Islam” and the “Shahada.” *Id.* at 313. Like the instant case, those worksheets included statements which read: “There is no god but Allah and Muhammad is the messenger of Allah[,]” which comes from the Shahada. *Id.* The students father objected to the use of the challenged materials, and sued the school district under the Establishment Clause. The Fourth Circuit, affirming the district court’s grant of summary judgment in favor of the school district, found that these lessons had predominantly secular purposes, and that they did not endorse any religion. *Id.* at 316-319. This case that this Court denied certiorari on, *Wood v. Arnold*, 140 S. Ct. 399 (2019), is nearly identical to the case at bar, and as in *Wood*, this Court should deny petitioner’s application for certiorari, as the legal issues presented are well settled by decades of precedent.

For all of the foregoing reasons, this case is a poor vehicle for resolving any alleged ambiguity regarding the Establishment Clause following *Kennedy*, and the Third Circuit’s decision at issue here is in line with well-settled law. Accordingly, the Petition for Certiorari should be respectfully denied.



CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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November 4, 2025