NO. 25-77

IN THE
Supreme Court of the United States

STEPHEN FOOTE, INDIVIDUALLY AND AS GUARDIAN AND NEXT FRIEND OF B. F. AND G. F., MINORS, ET AL.,
Petitioners,

v.

LUDLOW SCHOOL COMMITTEE, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

AMICI CURIAE BRIEF OF NC VALUES INSTITUTE AND ADVOCATES FOR FAITH & FREEDOM IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae respectfully urge this Court to grant the Petition and reverse the First Circuit ruling.

NC Values Institute, formerly known as the Institute for Faith and Family, is a North Carolina nonprofit corporation that works in various arenas of public policy to protect faith, family, and freedom, including parental rights. See https://ncvi.org.

Advocates for Faith & Freedom is a nonprofit legal organization dedicated to protecting the fundamental constitutional liberties that have long defined the United States as a beacon of freedom. These include the rights to free speech, the free exercise of religion, and the fundamental right of parents to direct the upbringing, education, and care of their children. See https://faith-freedom.com.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case implicates the time-honored fundamental right of parents to make decisions for the welfare of their children, including medical care and education. Parental rights are "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

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[1] Counsel of record for all parties received notice at least 10 days prior to the due date of *amici curiae*'s intention to file this brief. *Amici curiae* certify that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amici*, their members, or their counsel, has made a monetary contribution to its preparation or submission.

Parental rights to the care, custody, and control of their children are not created by statute or even by constitutions but are natural, inalienable rights uniformly recognized by courts throughout American history. The "social transitioning" of children, facilitated with secrecy by a growing number of public schools, assaults these fundamental rights so severely as to constitute a virtual termination of rights.

ARGUMENT

I. PARENTAL RIGHTS ARE INALIENABLE AND FUNDAMENTAL.

History reveals "a founding generation that believed parents to have complete authority over their minor children and expected [them] to direct the development of those children." *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 834 (2011) (Thomas, J., dissenting). Justice Scalia, even as he departed from the *Troxel* majority, vigorously affirmed the "right of parents to direct the upbringing of their children" as being "among the unalienable Rights' with which the Declaration of Independence proclaims all Men . . . are endowed by their Creator." 530 U.S. at 91 (Scalia, J., dissenting) (internal quotation marks omitted).

There is such "extensive precedent" on point that it cannot possibly be doubted that "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel*, 530 U.S. at 66. Due process rights to life, liberty, and property encompass "not merely

freedom from bodily restraint but also the right of the individual to . . . marry, establish a home and bring up children, to worship God . . . ." *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923). These rights to establish a family have been characterized as "essential." *Ibid.*; *see Troxel*, 530 U.S. at 65. As noted in the context of a child custody dispute, a parent's "right to the care, custody, management and companionship" of his or her children is a "right[] more precious . . . than property rights" or even financial support from a former spouse. *May v. Anderson*, 345 U.S. 528, 533 (1953).

Parental rights are rightly classified as fundamental. "Marriage and procreation are fundamental to the *very existence and survival* of the race." *Skinner v. Oklahoma,* 316 U.S. 535, 541 (1942) (emphasis added). In *Skinner*, this Court struck down a sterilization requirement, stressing the potentially "far-reaching and devastating effects" of depriving the individual of "a basic liberty." *Ibid*. The often repeated language used to recognize fundamental rights is easily applied to parental rights—"deeply rooted in this Nation's history and tradition," *Moore v. East Cleveland,* 431 U.S. 494*,* 503 (1977) (plurality opinion); "so rooted in the traditions and conscience of our people as to be ranked as fundamental," and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937). *See Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1977) (discussing the criteria to recognize fundamental rights beyond those enumerated in the Bill of Rights).

In upholding a child labor law, this Court explained that "the family itself is not beyond regulation in the public interest," but simultaneously affirmed the paramount importance of parental rights: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince v. Massachusetts,* 321 U.S. 158, 166 (1944).

II. PARENTAL RIGHTS FOLLOW THE CHILD EVERYWHERE.

Parental rights extend broadly to public and private life—medical care, education, religion, custody, and associations. Judicial precedent touches them all.

Education is one key area of life within the sphere of parental rights. The "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." *Pierce v. Society of Sisters,* 268 U.S. 510, 534-535 (1925). Reasoning that a child is "not the mere creature of the state," this Court explained that "those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.* at 534-535. Accordingly, *Pierce* upheld the right of parents to place their children in private school rather than "forcing them to accept instruction from public teachers only," a practice designed to "standardize" them. *Id.* at 535.

But parental rights do not end with the decision to choose between public and private education. Parental rights to control the upbringing of their children were addressed at length in the landmark *Wisconsin v. Yoder* ruling. "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." 406 U.S. 205, 232 (1972). The government's "interest in universal education," important as it may be, "is not totally free from a balancing process when it impinges on fundamental rights" such as the "traditional interest of parents with respect to the religious upbringing of their children." *Id.* at 214. *Yoder*'s rationale logically extends even where parents hold non-religious moral objections to a school's actions. Here, the government's alleged interest in nondiscrimination must be weighed against the paramount interest of parents in making important decisions about their children's medical care. This is *especially* true where the decision—a transition from one sex to the other—has such obviously radical implications for the child's future.

A. Parental rights follow the child into the doctor's office.

This Court recently upheld a state law enabling the "nonconsenting parent of an injured minor to sue a healthcare provider for violating the [state] law" that prohibited certain medical treatments for minors. *United States v. Skrmetti*, 222 L. Ed. 2d 136,

148 (2025). The law removed certain conditions—"gender dysphoria, gender identity disorder, and gender incongruence—from the range of treatable conditions." *Id*. at 155. *Skrmetti* is a landmark victory, not only for general parental rights to make medical decisions—but specifically in the context of gender issues.

1. Children lack the maturity to make their own medical decisions.

It is difficult to imagine a more critical application of parental rights than basic medical decisions necessary to preserve the life and health of a child. In *Skrmetti*, Tennessee enacted its law based on its conclusion that minors lack the "maturity to fully understand and appreciate the life-altering consequences" of the prohibited procedures. 222 L. Ed. 2d at 158, citing Tenn. Code Ann. §68-33-101(h). "Mounting evidence" supports the conclusion that children are unable to provide informed consent to "irreversible sex-transition treatments." *Skrmetti*, 222 L. Ed. 2d at 169 (Thomas, J., concurring). As this Court has explained, a child's "lack of maturity" and "underdeveloped sense of responsibility" can lead to "impetuous and ill-considered actions and decisions." *Ibid*., citing *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (internal quotation marks omitted). The voices of a "growing number of detransitioners" echo the commonsense conclusion that children are unable to comprehend and consent to sex transition treatments. *Skrmetti*, 222 L. Ed. 2d at 170 (Thomas, J., concurring).

It is imperative that public schools respect the right of parents to be informed and consent when a child asks to socially transition—the first step on a journey that may end in deep regret and disaster. "The law's concept of the family rests on the presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." *Parham v. J. R.,* 442 U.S. 584, 602 (1979). In *Parham*, this Court upheld Georgia's statutory procedure for parents to voluntarily commit a minor to a hospital for mental health treatment, reversing the state court's conclusion that the law was unconstitutional. A child "lacks the "maturity, experience, and capacity for judgment" required to make such a difficult decision. *Ibid*. Historically, American jurisprudence "reflects Western civilization concepts of the family as a unit with broad parental authority over minor children" and "cases have consistently followed that course." *Ibid*. Medical treatment falls well within the rights and duties of a fit parent. Common law has long recognized that "the only party capable of authorizing medical treatment for a minor in normal circumstances is usually his parent or guardian." *Newmark v. Williams*, 588 A.2d 1108, 1115-1116 (Del. 1990) (child's parents declined chemotherapy); *see* W. Posser & W. Keeton, The Law of Torts § 118 at 114-115 (5th ed. 1984).

2. The State may only override parental authority in cases of imminent danger.

Parental authority is not absolute, but the state may exercise its *parens patriae* authority to override

a parent's right to consent to healthcare treatment only when the child is "subject to . . . apparent danger or harm." *Mueller v. Auker,* 700 F.3d 1180, 1187 (9th Cir. 2012). The burden is on the State to prove "by clear and convincing evidence that intervening in the parent-child relationship is necessary to ensure the safety or health of the child, or to protect the public at large." *Newmark*, 588 A.2d at 1108. The state may intervene where a child is subject to life threatening conditions. *Id.*, at 1116, citing *In re Application of L. I. Jewish Med. Ctr.*, 147 Misc. 2d 724, 729, 557 N.Y.S.2d 239, 243 (N.Y. Sup. Ct. 1990).[2]

Under normal, non-emergency circumstances, parents have a "liberty interest in family association to be with their children while they are receiving medical attention" and children have "a corresponding right to the love, comfort, and reassurance of their parents. . . ." *Wallis ex rel. Wallis v. Spencer*, 202 F.3d 1126, 1142 (9th Cir. 1999). These associational rights are especially critical in a context where medical decisions are likely to have irreparable, life-altering consequences.

3. Social transitioning is medical treatment.

Courts consistently recognize social transitioning as a "medically necessary component" of gender

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[2] Courts have ordered medical care (e.g., blood transfusions) over parental objections in cases where the child's life was in danger. *See, e.g., In re McCauley*, 565 N.E.2d 411 (Mass. 1991); *In re Guardianship of L.S. & H.S.*, 87 P.3d 521 (Nev. 2004). But that is far afield from the situation presented here.

dysphoria treatment. *Janiah v. Meeks*, 584 F. Supp. 3d 643, 678 (S.D. Ill. 2022) (prisoner's "housing in a facility matching one's gender identity and access to gender-affirming clothing and other items"); *Edmo v. Corizon, Inc.*, 935 F.3d 757, 770 (9th Cir. 2019) ("[t]reatment options" for gender dysphoria include "changes in gender expression and role," such as "living part time or full time in another gender role, consistent with one's gender identity"); *Lamb v. Norwood*, 899 F.3d 1159, 1161 (10th Cir. 2018) (same). "Treatment" typically includes "a social transition in which the person adopts a new name, pronouns, appearance, and clothing" combined with surgical interventions. *Tirrell v. Edelblut*, 748 F. Supp. 3d 19, 25-26 (D.N.H. Sept. 10, 2024) (girls' sports); *Clark v. Quiros*, 2024 U.S. Dist. LEXIS 132251, *13 (D. Conn. July 26, 2024) (prisoner) (noting "four broad categories" of "gender affirming care" —"mental healthcare, social transition, medical or somatic treatments, and surgical interventions"); *Pinson v. Hadaway*, 2020 U.S. Dist. LEXIS 170246, *2 (D. Minn. July 13, 2020) ("social transition, hormone therapy, psychotherapy, or surgery"); *Porter v. Allbaugh*, 2019 U.S. Dist. LEXIS 83633, *3 n. 3, citing *Lamb*, 899 F.3d at 111 (in addition to hormones, surgeries, and psychotherapy, current treatments include "social transition . . . dressing and grooming oneself as well as taking on gender roles consistent with one's gender identity").

Public schools recklessly endanger the lives and health of young children when they usurp the role of a child's parents by secretly facilitating a child's sex transition—even when it is "only" social transitioning.

B. Parental rights follow the child into the classroom.

The First Circuit declared that "[this] Court has never suggested that parents have the right to control a school's curricular or administrative decisions." *Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 351 (1st Cir. 2025). The circuit court rejected a parent's right to object to "a student's pronouns in the classroom" or "decisions about bathroom access"—"none of those concerns restrict parental rights under the Due Process Clause." *Id.* at 352. But now, scarcely four months later, the ink is barely dry on this Court's strong affirmation of parental rights in *Mahmoud v. McKnight*. Those rights "extend[] to the choices that parents wish to make for their children outside the home." 2025 U.S. LEXIS 2500, *36. Public schools are not a Constitution-free zone. Parental rights follow the child through the schoolhouse door. *See Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506-507 (1969).

As this Court has recognized for a century, parents may choose a private education rather than public school. *Pierce v. Society of Sisters*, 268 U.S. at 532-535. But disenrollment cannot be the sole available remedy for a public school's violation of parental rights. Not all families can afford the cost of alternatives. Many—perhaps even most—parents "have no choice but to send their children to a public school." *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring). Parental rights to direct the upbringing of their children "would be an empty promise if it did not follow those children into the

public school classroom." *Mahmoud*, 2025 U.S. LEXIS 2500, *37.

1. The Protocol is grounded in secrecy and deceit.

Mahmoud emphasized parents' rights to be informed and to opt out of curriculum they find objectionable. Ludlow's Protocol goes even further in its destruction of these rights by requiring school personnel to actively deceive parents. The Protocol is founded on "nondisclosure, instructing teachers not to inform parents about their child's expressions of gender without that student's consent." *Foote*, 128 F.4th at 342. This turns parental rights on its head. Even more, the school in this case proceeded with its Protocol in direct defiance of the parents' instructions—"we request that you do not have any private conversations with [the Student] in regards to this matter." *Id.* at 341, quoting email from the student's mother.

In *Mahmoud*, the school board "stated that it w[ould] not notify parents" when the objectionable books would be used. 2025 U.S. LEXIS 2500, *56. It was "not clear how" parents could obtain that information unless and until they heard about it later from their young child. *Ibid.* As in *Mahmoud*, the Protocol is intentionally veiled with secrecy that restricts the ability of parents to even *know* what is happening at their child's school.

2. The Protocol subjects public education to unconstitutional conditions.

"Public education is a public benefit, and the government cannot condition its availability on parents' willingness to accept a burden on their [parental rights]." *Mahmoud,* 2025 U.S. LEXIS 2500, *57, citing *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017). Since parents are required by law to send their children to school, the burden is even heavier than foregoing a public benefit—their failure to follow the law would result in serious penalties. It is "insulting and legally unsound" to demand that parents abandon their parental rights to direct the educational upbringing of their children "when alternatives can be prohibitively expensive and they already contribute to financing the public schools." *Mahmoud,* 2025 U.S. LEXIS 2500, *58.

3. The school's Protocol and related "Guidance" upend the most basic parental rights.

The Commonwealth's Department of Elementary and Secondary Education ("DESE") perpetrated certain "Guidance" that undermines parental rights by proclaiming "the person best situated to determine a student's gender identity is that student." *Foote*, 128 F.4th at 342. The "Guidance" was published to facilitate schools' compliance "with Massachusetts's then newly enacted statutory prohibition against discrimination based on gender identity in public schools. *See* Mass. Gen. Laws ch. 76, § 5 (effective July 1, 2012)." *Ibid*.

This Court's recent *Mahmoud* decision clashes with the Guidance, the Protocol, and the Massachusetts law on which these anti-parent policies are founded. The Protocol turns parental rights upside down, placing the *child* in control over the parents. In this case, school staff were directed to act "[c]onsistent with the *Student*'s request," in defiance of clear instructions from the parents. *Foote*, 128 F.4th at 341 (emphasis added).

Parental rights are even broader than the religious liberty rights addressed in *Mahmoud*. Certainly it undermines the rights of parents to "direct the [religious] upbringing of their children" (*Yoder*, 406 U.S. at 233) when schools "[t]each[] young children about sexual and gender identity in ways that contradict parents' religious teachings." *Mahmoud*, 2025 U.S. LEXIS 2500, * 79-80 (Thomas, J., concurring). The storybooks posed "a very real threat of undermining" the religious beliefs the parents were teaching their children. *Id.* at 46, quoting *Yoder*, 406 U.S. at 218. But it also undermines parental rights when a school socially transitions a child to the opposite sex in defiance of parental instructions *for any reason*, religious or otherwise. Such transitioning is even more radical than the storybooks in *Mahmoud*. Indeed, "if a State were empowered, as *parens patriae*, to save a child from the supposed ignorance of his religious upbringing . . . [s]uch an arrangement would upend the enduring American tradition of parents occupying the primary role . . . in the upbringing of their children." *Mahmoud*, 2025 U.S. LEXIS 2500, *74 (Thomas, J., concurring); *Yoder*, 406 U.S. at 222, 232-233 (internal citations and quotation marks omitted).

4. The Protocol lacks roots in historical precedent.

In recent years, this Court has been inclined to undertake a historical analysis to examine key constitutional rights. *See, e.g.*, *American Legion v. American Humanist Assn.*, 588 U.S. 19, 60 (2019) (religious display); *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014) (legislative prayer); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 536 (2022) (Establishment Clause). That is a worthwhile approach here. Parental rights are easily traced back to America's founding generation (Sect. I). But "sex education" in public schools is a "20th-century innovation." *Mahmoud*, 2025 U.S. LEXIS 2500, *70-71 (Thomas, J., concurring). Public schools have increasingly shifted to a controversial "comprehensive approach." *Id.* at 71. The growing trend to introduce transgender ideology and secretly "transition" schoolchildren from one sex to the other is even more alarming and radical, as this case illustrates. There is no historical warrant for such a dramatic departure from the educational practices of past decades.

C. Secret "social transitions" are tantamount to a termination of parental rights.

It is imperative for this Court to ensure that public schools respect the authority of parents to make important decisions for their children. The Ludlow School Committee's severe interference with parental rights is tantamount to the termination of those rights without any notice or opportunity for a hearing. A shocking secrecy pervades the school's

unwritten "Protocol," which demands "nondisclosure, instructing teachers not to inform parents about their child's expressions of gender without that *student*'s consent." *Foote,* 128 F.4th at 343 (emphasis added). This Protocol upends parental rights, flipping the positions of parent and child. If such a policy does not "shock the conscience," it is difficult to know what would.

Because parental rights are fundamental, the state must jump a high hurdle to remove a child from the custody of his/her parents or to terminate a parent's rights entirely. Parental rights, like other "liberties of the individual which history has attested as the indispensable conditions of an open as against a closed society . . . come to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." *Stanley v. Illinois,* 405 U.S. 645, 651 (1972), citing *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring). The unwed father in *Stanley* was entitled to a fitness hearing before termination of his parental rights, where the child's mother had died.

Even where parents "have not been model parents," or "blood relationships are strained," or custody has been temporarily lost, fundamental parental rights "do not evaporate." *Santosky v. Kramer,* 455 U.S. 745, 753 (1982). Due process is required and the state must present "clear and convincing evidence" to "completely and irrevocably" terminate a natural parent's rights. *Id*. at 747-748. When the state intervenes "to destroy weakened familial bonds, it must provide the parents with

fundamentally fair procedures." *Id.* at 753-754. Choices about raising children "are among associational rights . . . sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996). These rights are ranked as "of basic importance in our society." *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971). In *M.L.B. v. S.L.J.*, where the mother lacked funds to pay the costs of the record she needed to appeal a decision terminating her parental rights, this Court held that, "just as a State may not block an indigent petty offender's access to an appeal afforded others, . . . so Mississippi may not deny M.L.B., because of her poverty, appellate review of the sufficiency of the evidence on which the trial court found her unfit to remain a parent." *M.L.B. v. S.L.J.*, 519 U.S. at 107. Parental rights were found "sufficiently strong to require the state to pay those costs." *Ibid.*

The landmark *Troxel* decision upheld the right of fit custodial parents to control their children's associations, even with respect to other close relatives—let alone the unrelated persons who interact with a child at school. This Court invalidated a Washington state statute that provided for any person to petition the court for child visitation rights that might serve the child's best interests. In *Troxel*, paternal grandparents had petitioned for the right to visit the children of their deceased son, who had never married the mother. The mother had married and her husband had adopted the children. Based on the Due Process Clause, U.S. Const. amend. XIV, this Court held that the "breathtakingly broad" nonparental visitation statute infringed the mother's parental

right to control her children's associations, even if visiting their grandparents might have benefited the children. *Troxel*, 530 U.S. at 67.

III. PARENTAL RIGHTS IMPLICATE SPEECH AND RELIGIOUS LIBERTIES.

Transgender ideology is invading American life at an alarming rate. In addition to the Protocol's massive intrusion on parental rights, it jeopardizes First Amendment rights to both speech and religion by demanding use of a child's preferred name and pronouns—not only without parental consent or knowledge—but under an official policy that directs school personnel to actively deceive a child's parents if they do not affirm the *child*'s life-altering decision to transition to the opposite sex. This massive interruption of a school's expected truthfulness should at least demand the voluntary, informed consent of parents before enrolling their children. Instead, the school surreptitiously facilitates a major life decision that is virtually guaranteed to cause irreparable harm. The Protocol turns family structure on its head. Instead of children requiring parental permission, the Protocol bows to the will of a child. This policy is unconscionable.

A. The Protocol compels speech that aligns with the school's viewpoint on a highly controversial matter.

The Protocol's speech mandate is obviously *content*-based. Worse yet, it is *viewpoint*-based, demanding compliance with transgender ideology regardless of conscience, moral convictions, or

religion. A government edict that commands "involuntary affirmation" demands "even more immediate and urgent grounds than a law demanding silence." *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2464 (2018), citing *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 633 (1943) (internal quotation marks omitted). The Protocol transgresses freedom of thought, long recognized as the "indispensable condition" of "nearly every other form of freedom." *Palko v. Connecticut*, 302 U.S. at 326-27, *overruled on other grounds by Benton v. Maryland*, 395 U.S. 784 (1969). The freedom of thought that undergirds the First Amendment merits "unqualified attachment." *Schneiderman v. United States*, 320 U.S. 118, 144 (1943).

The Protocol cannot be implemented without demanding that everyone in the school system—personnel, students, parents—*speak* according to a child's preferred name and pronouns. That mandatory speech may conflict with the conscience and/or religious convictions of persons required to be complicit in the school's Protocol, which forces students, teachers, and parents to become "instrument[s] for fostering . . . an ideological point of view" that many find "morally objectionable." *Wooley v. Maynard*, 430 U.S. 705, 714-715 (1977).

Pronouns are an integral part of common, everyday speech, based on objective biological reality concerning another person's sex and often coupled with the belief that each person is created immutably male or female. This aspect of speech touches a matter of intense public concern and debate. Not everyone

accepts culturally popular "gender identity" concepts or believes that a person can transition from one sex to the other. The First Amendment safeguards the rights of students, teachers, and parents to speak according to each one's own beliefs on these matters, even in public schools. School personnel and students can respect the dignity of others without sacrificing their own rights of thought, speech, conscience, or religion.

B. The Protocol jeopardizes religious liberty by promoting ideological conformity in defiance of this Court's precedent.

As in *Barnette*, there is "probably no deeper division" than a conflict provoked by the choice of "what doctrine . . . public educational officials shall compel youth to unite in embracing." Richard F. Duncan, *Article: Defense Against the Dark Arts: Justice Jackson, Justice Kennedy, and the No-Compelled Speech Doctrine*, 32 Regent U. L. Rev. 265, 292 (2019-2020), citing *Barnette*, 319 U.S. at 641. The Protocol's demand for compliance with a particular ideology is blatant viewpoint discrimination.

Convictions about sexuality are intertwined with religion and conscience. Many faith traditions have strong teachings about sexual morality, marriage, and the distinction between male and female. Compelled speech—that a boy is a girl or a girl is a boy—tramples these deeply held convictions. Religious speech is not only "as fully protected . . . as secular private expression," but historically, "government suppression of speech has so commonly been directed

precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (internal citations omitted).

Compelled speech is abhorrent to the First Amendment, particularly where government mandates conformity to its preferred viewpoint. The Protocol's blatant viewpoint discrimination does not hinge on the presence of religious objections. *Barnette, Wooley*, and *NIFLA* are "eloquent and powerful opinions" that stand as "landmarks of liberty and strong shields against an authoritarian government's tyrannical attempts to coerce ideological orthodoxy." Duncan, *Defense Against the Dark Arts*, 32 Regent U. L. Rev. at 266; *Barnette*, 319 U.S. 624; *Wooley v. Maynard*, 430 U.S. 705 (1977); *Nat'I Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018).

The "proudest boast" of America's free speech jurisprudence is that we safeguard "the freedom to express 'the thought that we hate.'" *Matal v. Tam*, 582 U.S. 218, 246 (2017) (plurality opinion) (quoting *United States v. Schwimmer*, 279 U.S. 644, 655 (1929) (Holmes, J., dissenting)). Gender identity may be "embraced and advocated by increasing numbers of people," but that is "all the more reason to protect the First Amendment rights of those who wish to voice a different view." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660 (2000). Our law also protects the right to remain silent—to *not* express viewpoints a speaker hates. Compelled expression is even worse than compelled silence because it affirmatively associates the speaker with a viewpoint he does not hold.

Mahmoud recently reaffirmed this Court's aversion to coerced ideological conformity. The challenged Storybooks "present[ed] as a settled matter a hotly contested view of sex and gender that sharply conflict[ed]" with the beliefs of the parent plaintiffs. *Mahmoud*, 2025 U.S. LEXIS 2500, *45. That viewpoint is not universally accepted. Some may agree, "[b]ut other Americans wish to present a different moral message to their children," and "that message is undermined when the exact opposite message is positively reinforced in the public school classroom at a very young age." *Id.* at *44. This Court has long expressed "heightened concerns" about protecting children from "subtle coercive pressure" in public schools, where the State exercises "great authority and coercive power." *Id.* at 48, citing *Lee v. Weisman*, 505 U.S. 577, 592 (1992), *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987). In *Mahmoud*, the school's "LGBTQ+-inclusive curriculum and no-opt-out policy pursue[d] the kind of ideological conformity that *Pierce* and *Yoder* prohibit." *Mahmoud*, 2025 U.S. LEXIS 2500, at *76 (Thomas, J., concurring).

Parental rights follow the child outside the home, "extend[ing] to the choices that parents wish to make for their children" in other contexts. *Mahmoud*, 2025 U.S. LEXIS 2500, at *36. One basic choice is the right of parents to direct "the religious upbringing" of their children, as "long recognized" by this Court. *Id.* at *35; *see Espinoza v. Mont. Dept. of Revenue*, 591 U.S. 464, 486 (2020) (quoting *Yoder*, 406 U.S. at 213-214). The no-opt-out policy "undermine[d] parents' religious beliefs" and interfered with their right to "direct the religious upbringing of their children." *Mahmoud,* 2025 U.S. LEXIS 2500, at *79 (Thomas, J.,

concurring), citing *Yoder*, 406 U.S. at 232-233. The surreptitious social transitions at stake in this case are equally dangerous to these fundamental parental rights.

IV. PARENTAL RIGHTS DEMAND THE APPLICATION OF STRICT SCRUTINY.

This case presents one of the most extreme parental rights violations ever to knock on the door of this Court. Undoubtedly the state has "a compelling interest in protecting the physical and psychological well-being of minors." *Foote*, 128 F.4th at 356-357, quoting *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989). But while public schools must strive "to protect children who are particularly vulnerable" (*Foote*, 128 F.4th at 357), that does not warrant flouting parental rights when a child demands to "transition" to the opposite sex.

Courts must safeguard the rights of parents to make medical decisions for their children. These rights are critical to the health, safety, and life of children across the nation. The First Circuit should have considered the fundamental nature of the rights at stake and subjected the claims to strict scrutiny. This case presents no medical emergency, life threatening or otherwise, that would warrant government intervention to override the parent's decision.

Ludlow considers the Protocol "appropriate and *necessary* to ensure a safe and inclusive school learning environment for students." *Foote*, 128 F.4th at 340 (emphasis added). In *Mahmoud*, similarly, the

School Board regarded its curriculum and no-opt-out policy necessary to accomplish its allegedly compelling interest in "maintaining a school environment that is safe and conducive to learning for all students." 2025 U.S. LEXIS 2500, at *62, citing Brief for Respondents 49 (internal quotation marks omitted).

Here, strict scrutiny should be required by the *nature* of parental rights. In *Mahmoud*, this Court found that because "the character of the burden" was the same "as that imposed in *Yoder*," it was unnecessary to ask whether the law was "neutral or generally applicable," as might otherwise be required by *Employment Div. v. Smith*, 494 U.S. 872 (1990). *Mahmoud*, 2025 U.S. LEXIS 2500, at *60-61. Although *Mahmoud* was specifically concerned with religious rights, the analogy is close enough to apply its rationale. Parental objections to secret transition policies are often founded on religious convictions, morality, conscience, or simply biological reality. This case, like *Yoder*, rests on the bedrock nature of parental rights. But whatever the basis for a parent's objections—religious or otherwise—parental rights must be respected as "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel*, 530 U.S. at 65. Public schools have no right to flip the order and demand that parents comply with the will of their *child*.

CONCLUSION

This Court should reverse the First Circuit ruling.

Respectfully submitted,

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