No. 25-89

In the Supreme Court of the United States

JONATHAN LEE, ERIN LEE, NICOLAS JURICH, and LINNAEA JURICH,
Petitioners,
v.
POUDRE SCHOOL DISTRICT R-1,
Respondent.

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

BRIEF FOR LIBERTY COUNSEL AND DUSTIN GONZALEZ AS AMICI CURIAE SUPPORTING PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Liberty Counsel is a national civil liberties organization that provides education and legal defense on issues relating to religious liberty, the family, and sanctity of life. Liberty Counsel is committed to upholding the historical understanding and protection of the rights to free speech and free exercise of religion and ensuring those rights remain an integral part of the country's cultural identity. Liberty Counsel has been substantially involved in advocating for the religious liberty of Americans whose sincerely held religious beliefs compel adherence to Biblical positions on education, sexual orientation, gender, and marriage. Liberty Counsel attorneys have represented clients before this Court, including in a number of cases in which the Free Exercise Clause was a seminal issue, *see*, *e.g.*, *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 889 (2020); *Harvest Rock Church, Inc. v. Newsom*, 141 S. Ct. 1289 (2021), and frequently represent clients in free exercise cases in every federal circuit court of appeals and federal district courts. Its attorneys have also spoken and testified before Congress on matters relating to government infringement on First Amendment rights.

Dustin Gonzalez is the father of a thirteen-year-old girl who attends public school in the Jefferson County School District in Colorado. Recently, when the child was twelve, the school counselor, acting in accordance with District policy, aided the child in

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[1] No counsel for any party authored this brief in whole or in part, and no person other than Amici or its counsel made a monetary contribution intended to fund this brief's preparation or submission.

assuming a male gender identity at school, including the use of a male name and pronouns, while intentionally hiding this from Mr. Gonzalez. After months of the clandestine double life, Mr. Gonzalez discovered some clues among the child's belonging that caused him to question school officials and eventually learn – over and in spite of the school's obstructionist tactics – what was occurring. Mr. Gonzalez is a devout Christian and believes that each person is created perfectly by God, and that biological sex is immutably determined at conception by God, who never makes mistakes. Mr. Gonzalez has taught biblical values and a Christian worldview to his daughter during her childhood, and strives to continue to so in her adolescence and against what she is being taught at school.

Amici have an interest in ensuring that parents are not deprived of their First Amendment right to direct the religious upbringing of their children by public school districts and their policies of secrecy regarding their children's gender confusion. Parents – not the government – are the rightful arbiters of how to best address children questioning their gender identity and other such consequential questions and decisions developing children grapple with throughout their adolescence and teenage years.

SUMMARY OF THE ARGUMENT

This Court recently, and once again, made clear in *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025), that the "government burdens the religious exercise of parents when it requires them to submit their children to instruction that poses 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill." *Id.* at 2342 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)). In Mahmoud, a Maryland school district perpetrated this constitutional harm against parents by infusing into its curriculum indoctrination about gender that deviated from the parents' religious beliefs. Here, a Colorado school district has promulgated policies and directives to its employees to guide adolescents and young teenagers through – or even into – gender confusion while intentionally hiding the children's struggles from their parents. The secrecy policies maintained by the Poudre School District R-1 (the "District") intentionally divest parents of the opportunity to guide their children through these very consequential life questions based upon the tenets of their faith.

What's more, rather than dealing with the issue at hand and relegating the District to its proper role, the Tenth Circuit dodged the constitutional question and upheld the district court's dismissal of the initial complaint on the grounds that petitioners ("the parents") failed to plausibly allege municipal liability. The court denied the parents leave to amend as futile.

Amici request that this Court grant certiorari to make clear (once again) that parents have a First Amendment right to direct the religious upbringing of their children, and that this right is infringed when

public school districts intentionally hide critical information about children from their parents, thereby effectively preventing parents from providing advice, guidance, and direction to their children on how to navigate a potentially life-altering circumstance in accordance with the dictates of their faith.

REASONS FOR GRANTING THE PETITION

I. The Tenth Circuit's Opinion must be reversed in view of this Court's recent holding in *Mahmoud v. Taylor*, because the actions of the school district substantially interfered with the religious development of students, thereby impermissibly burdening the parents' religious exercise.

In *Mahmoud*, this Court rightly "reject[ed] [the dissent's] chilling vision of the power of the state to strip away the critical right of parents to guide the religious development of their children." 145 S.Ct. at 2358. This critical right must extend to a pivotal area of development that has become quite widespread in our culture – when adolescents are presented with the possibility of embarking on a life altering and often irreversible path to live as a gender that differs from their biological sex determined at conception.

Though exposure to a variety of value systems may be unavoidable by virtue of living in a pluralistic society, parents understandably desire to instill the values consistent with their faith in their children. Conversely, parents work to shield their children from ideologies they deem harmful or adverse to the values promoted in the home. Parents have a First Amendment right to guide their children on the

questions of biological sex and gender in accordance with their religious beliefs. The Tenth Circuit's Opinion dismissing this action ought to be reversed as inconsistent with this Court's recent holding in *Mahmoud*.

A. The parents plausibly alleged a Free Exercise claim by alleging that their sincerely held religious beliefs dictate that gender is determined by biological sex immutably determined at birth, and that they desire to instruct their children in accordance with these beliefs.

Although the proposed Amended Complaint "assert[ed] a sole Fourteenth Amendment substantive due process claim against the District, again invoking § 1983" (*Lee v. Poudre Sch. Dist. R-1*, 2024 WL 2212261, at *3 (D. Colo. May 16, 2024)), the proposed Amended Complaint also contained the following allegations:

- The Jurich and Lee families both have strong and sincere religious convictions regarding the education of their children on these sensitive topics; had they been notified of the highly sexual nature of the topics discussed at the GSA meetings, they would have had the capacity to (1) direct their minor children not to attend the GSA meetings; or (2) make an informed decision on whether to seek an alternative to public education at WMS. (Doc 64-2 at ¶ 142).
- Had the Plaintiffs been provided notice of the topics planned for discussion and germane to GSA, they would have elected to opt their child

> out of PSD public schools and sought alternative education based on these deeply held religious beliefs. (*Id*. at ¶ 143).

In determining if a complaint states a claim, courts are to examine and evaluate the factual allegations contained therein. *See Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009) ("We next consider the factual allegations in respondent's complaint to determine if they plausibly suggest an entitlement to relief."); *see also Bell Atl. Corp. v Twombly*, 550 U.S. 544, 555 (2007) ("[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.") (cleaned up). Even if not labeled as such, the factual allegations contained in the proposed Amended Complaint stated a claim for relief under the Free Exercise clause of the First Amendment. At worst, if the court deemed the pleading insufficient to state a claim for violation of the parents' right to Free Exercise, leave to amend should have been granted; the case should not have been dismissed with prejudice. *See, e.g.*, *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014); *see also* Fed. R. Civ. P. 15(a).

B. The District violated the parents' right to free exercise of religion by providing instruction to the children that contravened the religious beliefs the parents sought to instill.

Accepting the factual allegations of the Amended Complaint as true, particularly when read in view of *Mahmoud*, *supra*, 145 S.Ct. at 2332, it is clear that the District violated the parents' right to direct the religious upbringing of their children by its policies

that substantially interfere with that right by withholding morally consequential information from parents. *Id.* at 2350.

1. Strict scrutiny is the appropriate test to assess the District's policies.

The District's policies "substantially interfered with the religious development of the parents' children and posed a very real threat of undermining the religious beliefs and practices that the parents wish to instill in their children." *Mahmoud*, 145 S.Ct at 2361. Therefore, the court must apply strict scrutiny to determine the constitutionality of the subject policies. *See id.*

The District's written and *de facto* policies, which the parents allege violate their parental rights, are substantial and recounted in the Tenth Circuit's Opinion. The most pertinent and plainly unconstitutional of these policies in light of *Mahmoud* include:

- "School personnel should not disclose information that may reveal a student's transgender or non-binary status to others, including students, parents, or community members, unless legally required to do so or unless the student has authorized such disclosure." *Id.* at 311; *see id.* at 292 ¶ 163.

- "When contacting or communicating with a parent/guardian of a transgender or non-binary student, school staff should use the name and pronouns that the student's parent/guardian use, unless the student requests otherwise." *Id.* at 311; *id.* at 293 ¶ 167.

- "If a parent/guardian asks a staff member about whether their student uses another name/pronoun at school or has other gender-related questions, the staff member should refer them to the school counselor, who can address questions and concerns that the parent/guardian may have. If a school counselor receives questions from a parent/guardian, they should use their professional judgment to determine how best to follow up with the student and then the parent/guardian." *Id.* at 311; *id.* at 293 ¶¶ 167, 169–70.

Gender Support FAQ ("FAQ"). The district provided official responses to frequently asked questions about its handling of gender-identity issues. In one response, the district advised that it would not inform a parent of any private discussions between staff and students about sex, sexual orientation, or gender identity. In another, the district said that to "the extent possible, a school counselor will not out the student to their parent(s)/guardian(s) before the student is ready to come out themselves." *Id.* at 294 ¶ 175 (alteration accepted). And in another, the district expressed that school counselors needed to "balance the inherent right of parents and guardians to their student's information and the potential impact this sharing [of a child's transgender or non-binary status at school] could have on the student and the student's trust in sharing future concerns with the school counselor." *Id.* at 294–95 ¶ 176 (emphasis omitted).

* * *

GSA Meetings. The district had a "*de facto* policy of refusing to notify parents of the child's participation" and of telling the students that the meeting was confidential. *Id.* at 298 ¶¶ 198–99.

Personnel Training. The district encouraged staff to attend training sessions on LGBTQ issues at which staff were trained not to reveal a student's non-conforming gender-identity to the student's parents.

Circumventing Parental Notice. The district stored on its record-keeping software students' personal-identifying information, and any changes needed to be made by a parent or by means that would notify a parent. Even so, district staff sometimes circulated lists of students' preferred names and pronouns without updating the record-keeping software so parents would be unaware of the district's use of a preferred name or pronoun. And the district's medical staff sought guidance from the district on maintaining and using medical records with a student's preferred name without those records becoming legally accessible to parents under federal-disclosure law.

Misleading Responses to Parental Inquiries. After Riep repeatedly met privately with C.L. to discuss gender-identity issues, and after C.L. attended the GSA meeting, the Lees met with Principal Benedict in 2022 and asked whether Riep had an "appropriate relationship" with C.L. Benedict said yes.

After the Juriches learned that H.J. had attended two GSA meetings, they met with Benedict and asked if the district had taught any lessons on

> sexuality at GSA meetings during that academic year. Benedict said it had not.

Lee v. Poudre Sch. Dist. R-1, 135 F.4th 924, 930–31 (10th Cir. 2025). The above policies burden the parents' right to direct the religious upbringing of their children in that they direct school employees to provide guidance to children regarding sexuality and transgenderism without mandating the involvement of parents. In fact, not only is parental notification not required, but it is also discouraged and even prohibited. The matters for which secrecy is encouraged implicate religious doctrine, so excluding parents from these discussions necessarily prevents them from directing – or even meaningfully impacting – the religious upbringing of their children. Because "the burden imposed is of the same character as that imposed in *Yoder*, [a court] need not ask whether the law at issue is neutral or generally applicable before proceeding to strict scrutiny." *Mahmoud*, 145 S. Ct at 2361.

2. The District's policies will not survive strict scrutiny because there is no compelling state interest in instructing children that their gender may be inconsistent with their biological sex immutably determined at conception, particularly where such instruction is at odds with the parents' religious beliefs.

"To survive strict scrutiny, a government must demonstrate that its policy advances interests of the highest order and is narrowly tailored to achieve those interests." *Mahmoud*, 145 S.Ct at 2361 (cleaned up). It is difficult to fathom any valid – let alone compelling – state interest that would support the government standing in the place of parents to advise children regarding matters of sex and gender identity.

"The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce v. Soc'y. of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 535 (1925). The Court recognized in *Mahmoud* and *Yoder* that public schools' attempts to instill values in students that undermine or substantially interfere with the religious values their parents seek to instill violate parental rights.

Lest the District allege that the minor children in their temporary care have a right to the secrecy their policies require, this Court has "recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in

an informed, mature manner; and the importance of the parental role in child rearing." *Bellotti v. Baird*, 443 U.S. 622, 634 (1979). Put differently, this Court has recognized "that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *Id.* at 635. "Consent and involvement by parents in important decisions by minors long have been recognized as protective of their immaturity." *Id.* at 649. The graver the decision faced by the child, the more important parental involvement becomes. *See, e.g.*, *H. L. v Matheson*, 450 U.S. 398, 412 (1981) ("The Utah statute is reasonably calculated to protect minors in appellant's class by enhancing the potential for parental consultation concerning a decision that has potentially traumatic and permanent consequences.").

The District, and others like it across the nation, purport to hide students' gender confusion or transition from their parents because parents may hypothetically not support or otherwise react poorly – in the estimation of the District – upon learning their child's wishes to assume a gender identity different from his or her biological sex. But this is not a justifiable basis for the District's policies. As this Court made clear in *Parham v. J. R.*, 442 U.S. 584 (1979):

> Simply because the decision of a parent is not agreeable to a child…does not automatically transfer the power to make that decision from the parents to some agency or officer of the state…Most children, even in adolescence, simply are not able to make sound judgments

> concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments. The fact that a child may balk…or complain about a parental refusal to provide cosmetic surgery does not diminish the parents' authority to decide what is best for the child.

Id. at 603-04 (citing Joseph Goldstein, *Medical Case for the Child at Risk: On State Supervention of Parental Autonomy*, 86 Yale L.J. 645, 664–668 (1977); Robert Bennett, *Allocation of Child Medical Care Decisionmaking Authority: A Suggested Interest Analysis*, 62 Va. L. Rev. 285, 308 (1976)).

In other words, it is not the role of public schools to supplant their judgment for that of parents. The District may think – and apparently does think – a minor student's choice of gender identity is in all circumstances right and good and something to be defended, but if a parent holds a different opinion in accordance with the dictates of his/her faith and conscience, it is the prerogative of the parent to deal with the child and the situation in the manner the parent deems appropriate.

The District overstepped its bounds in providing instruction to students about gender identity and transition, and in secreting these matters from parents. This Court has oft "recognized the potentially coercive nature of classroom instruction of this kind [and that 't]he State exerts great authority and coercive power through' public schools 'because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure.'" *Mahmoud*, 145 S. Ct. at 2355 (quoting *Edwards v.*

Aguillard, 482 U.S. 578, 584 (1987)). The law has also long recognized that "the family has a privacy interest in the upbringing and education of children…which is protected by the Constitution against undue state interference." *Hodgson v. Minnesota*, 497 U.S. 417, 446 (1990). Thus, even if we accept for argument's sake that parental support of a child's gender transition is a desirable societal norm, "it cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means." *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923). Excluding parents from such a serious matter concerning their children violates their constitutional rights.

At bottom, it would be a departure from precedent to hold that it is in the best interests of the child that a parent be excluded from the decision-making process. *See, e.g.*, *Hodgson*, 497 U.S. at 456 ("We have concluded that the State has a strong and legitimate interest in providing a pregnant minor with the advice and support of a parent during the decisional period.") Just as "permitting a child to obtain an abortion without the counsel of an adult who has responsibility or concern for the child would constitute an irresponsible abdication of the State's duty to protect the welfare of minors," *Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 72-73 (1976), concealing a child's gender transition and depriving that child's parents from guiding their child through such a physically and emotionally taxing time is equally improper and irresponsible.

II. The Tenth Circuit erred in dismissing the complaint for failure to plausibly allege municipal liability.

The Tenth Circuit skirted the constitutional issue altogether by holding that the parents "failed to plausibly allege municipal liability" because they "have not plausibly alleged that policy was the moving force behind their alleged constitutional injury." *Lee*, 135 F.4th 924, 934–35. Even if there was a defect in the pleading, such defect could have been cured by simple amendment, which was impermissibly disallowed by the courts below.

"It is well established that in a § 1983 case a city or other local governmental entity cannot be subject to liability at all unless the harm was caused in the implementation of 'official municipal policy.'" *Lozman v. Riviera Bch.*, 585 U.S. 87, 95 (2018) (quoting *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 691 (1978)). "The 'official policy' requirement was intended to distinguish acts of the *municipality* from acts of *employees* of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479 (1986). "To be sure, 'official policy' often refers to formal rules or understandings—often but not always committed to writing—that are intended to, and do, establish fixed plans of action to be followed under similar circumstances consistently and over time." *Id.* at 480-81. Here, petitioners allege the existence of both.

Notwithstanding the parents identifying both written policies and what they term "*de facto*" – or

unwritten – policies, the lower court opined that the parents failed to sufficiently allege causation between the District's policies and the harms they suffered. The court held:

> The parents don't explain how policies that presume the district knows better than parents, or that discourage disclosure, directly caused district staff to do any of the following:
>
> - recruit students to attend GSA meetings (including by misleading one student to coax her attendance),
> - present dubious information to students about being transgender and about suicide,
> - award prizes to students if they identify as transgender at the meeting,
> - offer the staff's personal contact information to students so they could talk any time, and
> - tell students that they didn't have to tell their parents about what happened at the meeting, and that it might be unsafe to talk with their parents about gender-identity issues.
>
> Though a formal regulation or widespread practice that discourages disclosure may be "in harmony" with what happened here, under our rigorous causation standard, the parents haven't plausibly alleged it was the moving force of their alleged injury.

Lee, 135 F.4th at 935.

The court of appeals' reasoning is perplexing. In accepting all the facts alleged in the complaint as

true, as the court was required to do at the relevant juncture, the conclusion that the constitutional harms alleged directly flowed from the District's challenged policies (recited in Section I. B. 1. above) was obvious and unavoidable. The policies track almost verbatim with the allegations of the actions perpetrated by District employees against the parents and their children.

The Court should see through the lower court's proffered basis for dismissal as pretextual. "Where a plaintiff claims that a particular municipal action *itself* violates federal law, or directs an employee to do so, resolving these issues of fault and causation is straightforward." *Bd. of Cnty. Com'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 404 (1997). The District's policies, as alleged in the complaint, directed staff to guide students through gender questioning and transition, and to conceal the matters from parents. These allegations satisfy the causation pleading requirement. This Court has made clear:

> [P]roof that a municipality's legislative body or authorized decisionmaker has intentionally deprived a plaintiff of a federally protected right necessarily establishes that the municipality acted culpably. Similarly, the conclusion that the action taken or directed by the municipality or its authorized decisionmaker itself violates federal law will also determine that the municipal action was the moving force behind the injury of which the plaintiff complains.

Id. at 405. Insofar as the district court dismissed the case in its entirety at the pleading stage and before the parents had an opportunity to offer proof in

support of their allegations that the District intentionally deprived parents of their right to direct the religious upbringing of their children without the substantial interference of school personnel, the parents have at this juncture established the necessary causation to prevent dismissal of their claims. Thus, the parents' claims must be reinstated and the parents afforded leave to amend, as necessary to cure any pleading deficiencies.

CONCLUSION

The judgment of the Tenth Circuit Court of Appeals should be reversed.

Respectfully Submitted,

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