

APP NO. 25A949

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IN THE SUPREME COURT OF THE UNITED STATES  
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KIMBERLY ANN POLK,

*Petitioner,*

v.

MONTGOMERY COUNTY BOARD OF EDUCATION; MONTGOMERY COUNTY PUBLIC SCHOOLS; and RITA MONTOYA, GRACE RIVERA-OVEN, LAURA STEWART, KARLA SILVESTRE, BRENDA WOLFF, JULIE YANG, and NATALIE ZIMMERMAN, in their individual and official capacities as board members,

*Respondents.*

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On Application for an Extension of Time  
to File Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Fourth Circuit  
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**PETITIONER'S SECOND APPLICATION TO EXTEND TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI**

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To the Honorable John G. Roberts, Jr., as Chief Justice and Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Kimberly Ann Polk respectfully requests that the time to file her Petition for Writ of Certiorari in this matter be extended for an additional 30 days up to and including June 29, 2026. The Court of Appeals issued its opinion on January 28, 2026. On February 23, 2026, Petitioner timely requested a 30-day extension of time, up to and including May 28, 2026. That request was granted on February 26, 2026. Petitioner requests an additional extension of 30 days, up to and including June 29, 2026 (since June 27, 2026, is a Saturday). Petitioner is filing this Application more than ten days before that current filing deadline. See S. Ct. R. 13.5.

### **Background**

This case presents a question of substantial importance, one left open by this Court's recent, per curiam decision in *Mirabelli v. Bonta*, 146 S. Ct. 797 (2026): whether the First Amendment allows a public school to (1) compel its teachers to use students' self-identified names and pronouns, and (2) prohibit those teachers from telling parents about their child's efforts to socially transition to a different gender at school unless legally required or the child consents.

Plaintiff Kimberly Ann Polk was a substitute teacher for the public schools of Montgomery County, Maryland, the same school district that insisted parents had no right to know when teachers used books affirming transgenderism with their children as young as four years old. See *Mahmoud v. Taylor*, 606 U.S. 522 (2025). The school's

Guidelines mandated that school staff members—including teachers and substitute teachers like Ms. Polk—“address students by the name and pronoun corresponding to the gender identity that is consistently asserted at school.” *Polk v. Montgomery Cnty. Pub. Schs.*, 166 F.4th 400, 405–06 (4th Cir. 2026). The Guidelines further provided that school staff were prohibited from discussing a student’s “transgender status or gender nonconforming presentation at school” with anyone, including “parents/guardians,” “unless legally required to do so or unless students have authorized such disclosure.” *Id.* at 406.

The district court dismissed Ms. Polk’s complaint, which sought declaratory and injunctive relief and compensatory damages for lost wages after Respondents refused to accommodate her religious beliefs. And a divided panel of the Fourth Circuit affirmed. Regarding Ms. Polk’s free-exercise claim, the panel majority held that, “because the Guidelines are neutral and generally applicable, they need only survive rational basis review,” and they did so. *Id.* at 416–17. As for her free-speech claim, the majority held that a school can compel and censor a teacher’s speech as part of her official duties. *Id.* at 417–420.

Judge Wilkinson, “vigorously” dissenting, *id.* at 422, would have granted Ms. Polk a preliminary injunction and held that she was likely to succeed on the merits of her free-speech claim. Because her compelled and censored speech involves matters of public concern, Judge Wilkinson would have applied the balancing test this Court articulated in *Pickering v. Board of Education of Township High School*, 391 U.S. 563 (1968), and ruled that the balance favored Ms. Polk. After all, if “the majority’s

reasoning is correct, then there is no limit to the words the state can put in teachers' mouths." *Id.* at 426. Judge Wilkinson concluded that, "[a]lthough transgender-rights advocates may now cheer the majority opinion, they will find today's cure in truth a poison when states enact legally indistinguishable policies *preventing* teachers from using preferred pronouns in schools." *Id.* at 422.

As for Ms. Polk's free-exercise claim, this Court in *Mahmoud* held that it mattered that the right of parents to direct the religious upbringing of their children is based on an "enduring American tradition." 606 U.S. at 547 (citation modified). The right to be free from compelled religious expression is equally part of that enduring tradition: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion *or force citizens to confess by word or act their faith therein.*" *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (emphasis added). Indeed, in *Mahmoud* itself, this Court singled out *Barnette* as an "early example" of the "limits on the government's ability to interfere with a student's religious upbringing in a public school setting." 606 U.S. at 547–48. Accordingly, Ms. Polk should have prevailed on her free-exercise claim as well.

### **Reasons For Granting An Extension Of Time**

The time to file a Petition for a Writ of Certiorari should be extended for an additional 30 days for the following reasons:

1. Petitioner has recently retained John Bursch and other attorneys at Alliance Defending Freedom to assist in the preparation of the petition for writ of certiorari.

ADF was not involved in the litigation below, and it will take time for these attorneys to familiarize themselves with the record and prepare a concise petition that is most helpful to the Court.

2. In addition, Mr. Bursch has numerous litigation deadlines in the weeks leading up to and immediately following the current deadline:

- Cert reply brief to this Court on May 26, 2026, *Grand v. City of University Heights*, No. 25-965.
- Opening brief to the Court of Appeals for the Fourth Circuit on May 26, 2026, *Johnson v. Fleming*, No. 26-1437.
- Opening brief to the Court of Appeals for the Seventh Circuit on June 2, 2026, *Pregnancy Care Center of Rockford v. Bennett*, No. 26-1861.
- Opening brief to the Court of Appeals for the Tenth Circuit on June 8, 2026, *XX-XY Athletics v. Sullivan*, No. 26-1103.
- Opening brief to the Court of Appeals for the Tenth Circuit on June 8, 2026, *Born Again Used Books v. Sullivan*, No. 26-1104.
- Reply brief to the Court of Appeals for the Fifth Circuit on June 18, 2026, *McComb Children's Clinic v. Kennedy*, No. 26-60101.
- Amicus brief to the Court of Appeals for the Eighth Circuit on June 29, 2026, *Cave v. Jester*, No. 26-1829

3. An extension will not cause prejudice to Respondents.

## Conclusion

For the foregoing reasons, Petitioner respectfully requests that the time to file the Petition for a Writ of Certiorari in this matter be extended an additional 30 days, up to and including June 29, 2026.

Respectfully submitted.

*s/ Frederick W. Claybrook, Jr.* \_\_\_\_\_

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