

No. 26-8

In the
Supreme Court of the United States

KIMBERLY ANN POLK,
Petitioner,

v.

MONTGOMERY COUNTY PUBLIC SCHOOLS, *et al.*,
Respondents.

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

**BRIEF OF *AMICI CURIAE*
FIRST AMENDMENT SCHOLARS
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

Amici are legal scholars who teach and write about the First Amendment, both freedom of speech and freedom of religion, and who are committed to maintaining and implementing First Amendment principles, in general and in the public schools. A list of the *Amici* is found at Appendix A.

SUMMARY OF ARGUMENT

This brief builds on a proposition that is firmly entrenched in American law: the United States Constitution prohibits governmentally-imposed orthodoxies and compelled affirmations. As this Court’s most celebrated articulation of the proposition explains, the “no imposed orthodoxies, no compelled affirmations” proposition is not merely supported in the law; if there is any “fixed star in our constitutional constellation,” this is it. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943). See also *Mahmoud v. Taylor*, 606 U.S. 522 (2025) (reaffirming *Barnette* in a case arising from the same school district that is involved in this case).

This brief embraces and reenforces the proposition articulated in *Barnette* and reasserted in *Mahmoud* in two principal ways. First, although the prohibition on compelled affirmations is not limited to religious ideas, and although the prohibition is typically (and properly) associated with the First Amendment’s free speech clause, the prohibition is also firmly grounded

¹ Per Rule 37.2, each party received notice of *amici*’s intent to file this brief, and per Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and no person other than the *amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

in the religion clauses, and it applies with special force to compelled affirmations that violate a person's religious beliefs.

In recent years, the Justices of this Court have debated whether general free exercise doctrine should be formulated in terms of an "accommodation/compelling interest" test, a "neutrality/general applicability" test, or something else. Regardless of how the more general doctrine is formulated, however, a specific prohibition on compelled affirmations is central to the very concept of free exercise of religion.

Second, the constitutional principle prohibiting governmentally-imposed orthodoxies and compelled affirmations does not disappear just because an issue arises in the context of public schools. To be sure, application of the principle in the school setting can be complicated, and context-sensitive. Schools (and hence school teachers) necessarily teach curricula as approved by school officials. And students are called upon to read, discuss, and sometimes recite ideas and information that they may not agree with. It can be tempting to avoid such complications by doing what the lower courts in this case effectively did—i.e., by simply treating the ideas compellingly expressed in *Barnette* and similar decisions as inapplicable and irrelevant to public school pedagogy.

But *Barnette* itself was a public school case in which this Court acted to limit the imposition of orthodoxy in the schools. As was this Court's decision last year in *Mahmoud*. More fundamentally, to suspend the central and long-standing prohibitions on imposed orthodoxies and compelled affirmations for the operations of a vast and vital public enterprise that

encompasses many millions of teachers and students—and indeed that supervises on a daily basis the majority of American citizens for years during the formative period of their lives—would be a tragic abnegation of the constitutional commitments expressed in *Barnette*, *Mahmoud*, and many other decisions.

The present case does not call for this Court to articulate any categorical rule or to announce any general conclusion regarding matters such as the use of pronouns in public schools. Indeed, the complexities of public schooling may preclude the reduction of constitutional prohibitions on imposed orthodoxies and compelled affirmations to any simple rule or formula. More careful attention to context is required. *Cf. Mahmoud*, 606 U.S. at 550 (observing that “the question whether a law ‘substantially interfer[es] with the religious development’ of a child will always be fact-intensive. . . . It will depend on the specific religious beliefs and practices asserted, as well as the specific nature of the educational requirement or curricular feature at issue.”).

But attention to the context of this case compels the conclusion that the Montgomery County School District regarded itself as beyond the reach of these central constitutional commitments. Thus, both the plaintiff, Kimberly Ann Polk, and the District’s compliance officer, Khalid Walker, believed that an acceptable accommodation of Polk’s religious beliefs could be reached—one that would respect the legitimate concerns of both Polk and the schools. But the District, effectively overruling its compliance officer, refused to consider any such accommodation. *Cf. Mahmoud* 606 U.S. at 552 (noting the Montgomery County School Board’s “abject refusal to heed

widespread and impassioned pleas for accommodation”). Instead the District demanded that all teachers, including Polk, sign onto and support the District’s transgenderism policy. And the lower courts upheld the District’s “no accommodation” policy.

That policy and the lower court decisions upholding it betray a central constitutional commitment, and they must be corrected.

ARGUMENT

I. The repeatedly reasserted constitutional protections against governmentally-imposed orthodoxies and compelled affirmations are rooted not only in freedom of speech but also in freedom of religion; and these protections have special force with respect to expression that implicates religious beliefs.

A. Constitutional protections against imposed orthodoxies and compelled affirmations enjoy a preeminent place in the nation’s constitutional law, history, and traditions.

Among the various components of the freedom assured by the Constitution, none are more cherished or more central than the paired prohibitions on government-imposed orthodoxies and government-compelled affirmations. The complementary commitments were articulated in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), in a passage that has been lauded as “eloquent and epochal” and as “among the great paeans to human liberty,”² and that has been quoted in hundreds

² These laudatory descriptions (by Leo Pfeffer and John Noonan respectively), as well as other similar commendations, are

of judicial opinions: “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.”

These prohibitions go hand-in-hand, reflecting complementary strategies for preserving the same basic freedom. Thus, the prohibition on prescribed orthodoxies focuses on the state and creates a substantive limitation on state power. Conversely, the prohibition on compelled affirmations focuses on the individual person and emphasizes the correlated freedom of individuals over what ideas they will or will not affirm.

The vital importance of these freedoms is manifest in the fact that they have been emphatically asserted over and over again in numerous decisions of this Court, in a wide variety of settings and phrasings. Indeed, this Court reaffirmed *Barnette* just last year (and also explicitly confirmed the strong free exercise protection of *Wisconsin v. Yoder*, 406 U.S. 205 (1972)) in a case arising from this same school district, in a controversy provoked by the District’s refusal to accommodate the religious diversity of the residents of the county. *Mahmoud v. Taylor*, 606 U.S. 522 (2025). See also *Wooley v. Maynard*, 430 U.S. 705 (1977) (state cannot compel objecting individuals to display the state’s motto on a license plate); *Hurley v. Irish-American Gay, Lesbian & Bi-Sexual Group of Boston*, 515 U.S. 557 (1995) (government cannot compel, under

collected in Jay S. Bybee, Common Ground: Robert Jackson, Antonin Scalia, and a Power Theory of the First Amendment, 75 Tul. L. Rev. 251, 261 & n. 15 (2000).

antidiscrimination laws, a privately-sponsored parade to include participants to whose message the sponsors object); *Janus v. AFSCME*, 585 U.S. 878 (2018) (prohibiting compelled public employee speech supporting organized labor); *NIFLA v. Becerra*, 585 U.S. 755 (2018) (mandated disclosures by pro-life crisis pregnancy centers); *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (website designer). *See also* *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (explaining that the philosophy of our Constitution and our Republic “excludes any general power of the State to standardize its children . . .”). As the Court explained in *Janus*:

When speech is compelled . . . individuals are coerced into betraying their convictions. Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason one of our landmark free speech cases [*Barnette*] said that a law commanding “involuntary affirmation” of objected-to beliefs would require “even more immediate and urgent grounds” than a law demanding silence.

Beyond official constitutional jurisprudence, the “no imposed orthodoxies” and “no compelled affirmations” commitments are firmly grounded in the nation’s history and traditions. An early and often admired articulation occurred in Thomas Jefferson’s Virginia Statute for Religious Freedom (which the eminent historian Bernard Bailyn described as “the most important document in American history bar none”³): “To compel a man to furnish contributions of

³ Quoted in Vincent Phillip Munoz, *Religious Liberty and the American Founding* 69 (2022).

money for the propagation of opinions which he disbelieves” is “sinful and tyrannical.” If the indirect coercion implicit in taxation for the purpose of supporting ideas some citizens oppose is unacceptable (a broad proposition obviously subject to qualifications), it would follow *a fortiori* that direct coercion of affirmations by individuals is “sinful and tyrannical.” Indeed, Jefferson’s statement was quoted by this Court, twice, as support for the “no compelled affirmations” ruling in *Janus*. 585 U.S. at 893, 905.

But the recognition of forced affirmations as a fundamental violation of human dignity and integrity is hardly limited to American constitutional traditions; it is evident in the reverence accorded in this country and elsewhere to historical figures who courageously defied such compulsion. Revered instances include Sir Thomas More, who chose to suffer execution rather than affirm an oath which he disbelieved; and the hundreds of Christian and Jewish martyrs who accepted death rather than pay homage to foreign or pagan gods; and even Socrates who, despite the earnest pleas of close friends, refused to assert a defense that he disbelieved in order to avoid a death sentence.⁴

All of these precedents underscore the importance of the “fixed star in our constitutional constellation”: the government of a free people must refrain from

⁴ On Thomas More, see, e.g., Joanne Paul, *Thomas More: A Life* 349–439 (2025). On the Christian martyrs, the classic and historically influential source is John Foxe’s *Book of Martyrs*. Devout Jews have on many occasions suffered a similar fate for refusing to deny their faith. See, e.g., 2 Maccabees, as well as the story of Hananiah, Mishael, and Azariah (renamed Shadrach, Meshach, and Abednego by their Babylonian captors) from the book of Daniel. On Socrates, see Plato’s *Apology*.

imposing state-favored orthodoxies, and citizens must not be compelled to affirm things contrary to their beliefs.

B. The paired constitutional prohibitions on imposed orthodoxies and compelled affirmations are grounded not only in freedom of speech but also in freedom of religion, and the prohibitions have special force in the context of religious expressions.

The prohibition on compelled affirmations is not limited to religious affirmations; consequently, decisions upholding that prohibition have often grounded it—and properly so—in the First Amendment’s free speech clause. It is noteworthy, however, that many or most of the precedents—and indeed the most celebrated precedents—have occurred in the context of religion. *Barnette* involved Jehovah’s Witness students who held religious objections to reciting the Pledge of Allegiance. Jefferson’s statement condemning state efforts to induce citizens to support “opinions which [they] disbelieve” was directed at taxes for the support of churches. Thomas More chose to suffer execution rather than take an oath that he opposed on religious grounds; Christian and Jewish martyrs made a similar choice. Even Socrates was prosecuted and condemned for his perceived offenses against the gods of Athens.

This close association of compelled affirmations and religion is hardly surprising. “Religion,” though difficult to define, is commonly associated with ultimate matters and beliefs that are central to individuals’ conception of themselves, of providence, of the meaning of life and the cosmos—and also to a

society's own self-understanding (even if a particular society defines itself as *not* interfering in religion—i.e., as “secular”). Hence, governments have historically been most eager to secure general agreement or acquiescence in matters with religious content or implications; and individuals have conversely been most resistant to affirming propositions that they oppose on religious grounds. Indeed, for many devout individuals, to affirm ideas contrary to their religious beliefs would be not only to sacrifice their own integrity but to deny or betray God. Thomas More thus explained to beseeching family and friends, as well as to the king's officials, that for him to take the mandated oath would entail “perpetual damnation.”⁵

The prohibitions on imposed orthodoxies and compelled affirmations are thus properly grounded not only in the free speech clause but also in the First Amendment's religion clauses. Indeed, the prohibition on imposed orthodoxies is most naturally associated with the establishment clause. *See, e.g., Torcaso v. Watkins*, 367 U.S. 488 (1961). And where ideas implicating religion are involved, the prohibition on compelled affirmations resonates powerfully with the free exercise clause.

Consequently, whatever the more general free exercise doctrine may be—whether it be a *Sherbert v. Verner*-type “exemptions” doctrine or an *Employment Division v. Smith* “neutrality” doctrine or something else—government attempts to compel citizens to affirm things contrary to their religious beliefs should be regarded as a quintessential violation of the free exercise of religion.

⁵ Thomas More, *The Last Letters of Thomas More* 58 (Alvaro de Silva ed. 2001).

The Supreme Court of Virginia recently recognized and embraced this point in a case strikingly similar to this one, in a decision rendered not under the First Amendment but rather under the counterpart provision of Virginia’s constitution—Section 16 of the Virginia Declaration of Rights—to which James Madison decisively contributed. (Historians have repeatedly praised Madison’s contribution, and have recognized Section 16 as an essential predecessor to the First Amendment’s free exercise clause⁶). In a lengthy and scholarly opinion upholding a public school teacher’s objection to using students’ preferred pronouns in violation of his religious beliefs, the court declared that “the right to ‘exercise’ one’s religion, if it means anything, includes the right to speak or not speak and to act or not act based upon one’s religious sincerely held opinions or beliefs.” *Vlaming v. W. Point Sch. Bd.*, 895 S.E.2d 705, 725 (Va. 2023).

To acknowledge this grounding in the religion clauses is not merely to provide additional support for a constitutional commitment already securely enough rooted in freedom of speech. Rather, it is to recognize that the prohibition on imposed orthodoxies is distinctively applicable to *religious* orthodoxies—it is after all “establishment[s] of religion” that the First Amendment forbids—and that the prohibition on compelled affirmations likewise has special force where *religious* beliefs are concerned. Considerations that might conceivably be sufficient to deflect or outweigh the constitutional prohibition for non-

⁶ See, e.g., Jack Rakove, *Beyond Belief, Beyond Conscience: The Radical Significance of the Free Exercise of Religion* 10–11 (2020); Lynne Cheney, *James Madison: A Life Reconsidered* 59–60 (2015); John T. Noonan, *The Lustre of Our Country: The American Experience of Religious Freedom* 69–70 (1998).

religious beliefs and propositions may be insufficient to defeat the constitutional commitment where religious beliefs are involved.

This implication was already manifest in Jefferson's oft-quoted assertion that it is "sinful and tyrannical" to "compel a man to furnish contributions of money for the propagation of opinions which he disbelieves." On its face, Jefferson's resounding statement constituted a sweeping condemnation not merely of coerced affirmations but even of taxation that might more indirectly support ideas some citizens oppose; moreover, the statement applied this prohibition to "opinions" generally—not merely to *religious* opinions. But to extend such a prohibition in full force to *all* opinions might well have the effect of crippling government and of precluding public schools altogether: that is because in a diverse and pluralistic society, tax-supported governments and schools will inevitably promote some ideas that many citizens disagree with. Thus, Jefferson's statement was presumably intended, and has typically been understood, to apply with maximum force to governmental propagation of opinions with *religious* implications.

In *Barnette*, similarly, the Court's oft-quoted "no orthodoxy" statement literally referred to "matters of opinion" generally; it included but did not explicitly prioritize matters of religious opinion. And yet the Court allowed the Jehovah's Witness students to opt out of a school exercise (the pledging of allegiance to the flag) that they opposed on religious grounds. Whether students have the same constitutional right to opt out of any school exercise or instruction that they disagree with on any ground would at least seem more debatable. Although the majority opinion in

Barnette relied on the free speech clause, moreover, several Justices who had supported the opposite conclusion just three years earlier in *Minersville School Dist. v. Gobitis*, 310 U.S. 586 (1940), declared in concurring opinions that they had been persuaded to change their views based on reflection on the importance of free exercise.

Thus, Justice Frank Murphy explained that “there is before us the right of freedom to believe, freedom to worship one’s Maker according to the dictates of one’s conscience, a right which the Constitution specifically shelters. Reflection has convinced me that, as a judge, I have no loftier duty or responsibility than to uphold that spiritual freedom to its farthest reaches.” *Barnette*, 319 U.S. at 645 (Murphy, J., concurring). And Justices Hugo Black and William O. Douglas wrote that although they continued to share *Gobitis*’s reluctance to interfere in state regulations for the public welfare, “[l]ong reflection convinced us that, although the principle is sound, its application in the particular case was wrong. . . . We believe that the statute before us fails to accord full scope to the *freedom of religion*” 319 U.S. at 643 (Black and Douglas, JJ., concurring) (emphasis added). Professor Douglas Laycock has observed that “votes essential to the [*Barnette*] majority filed concurring opinions based on the Free Exercise Clause.” Douglas Laycock, *The Remnants of Free Exercise*, 1990 Sup. Ct. Rev. 1, 63 n. 253.

In sum, although the central constitutional commitment against compelled affirmations is properly associated with the freedom of speech, that commitment is also firmly grounded in the First Amendment’s religion clauses. And the commitment

has special force where religious beliefs and religious expression are involved.

II. Although the application of constitutional protections against governmentally-imposed orthodoxies and compelled affirmations can be complicated and context-sensitive in the public school setting, such protections also are especially imperative in that setting.

Applying the constitutional prohibitions against imposed orthodoxies and compelled affirmations can be a complicated matter in public schools, with respect to both teachers and students. After all, schools (and hence their teachers) will necessarily teach some things and will decline to teach other things, and the schools will typically present the ideas they teach as true (or “orthodox”). Moreover, students will of necessity be required to read, write, recite, and be tested on the matters that the schools choose to teach. Thus, a biology teacher could hardly be permitted to refuse to teach evolutionary theory on the ground that it contradicted his religious belief in young earth creationism. Nor could a first grader refuse on an arithmetic exam to answer that “2 plus 2 equals 4” because she sincerely believed the correct answer was “5.”

Given such complications, it is tempting to adopt the convenient conclusion that the constitutional prohibitions on imposed orthodoxies and compelled affirmations simply have no application in the public school setting. Dissenting below, Judge Harvey Wilkinson argued that as a practical matter this was precisely what the district and circuit courts did in this case. “The majority all but decrees that the First Amendment and its strictures on compelled speech

now evaporate the second a teacher passes through these [schoolhouse] gates and meets a student.” *Polk v. Montgomery County Public Schools*, App. to Cert. Petition, at 47a (Wilkinson, J., dissenting). More specifically, the lower courts interpreted *Garcetti v. Ceballos*, 547 U.S. 410 (2006), to mean that in performing their educational functions, as opposed to when they speak as private citizens outside their school functions, public school teachers are state functionaries, or mouthpieces of the state, who can be required to say or not to say whatever the school district instructs them to say or not to say.⁷

But to exempt from these central principles a vital public enterprise that encompasses several million teachers and some 50 million students—and that closely supervises and monitors children day after day, hour after hour, year after year, during the most formative period of their lives—would amount to a massive and tragic abnegation of commitments central to the constitutional vision of freedom.

Although he strongly believed that all people should receive an education, in his classic *On Liberty*, John Stuart Mill forcefully described the danger:

A general State education is a mere contrivance for molding people to be exactly like one another; and as the mold in which it casts them is that which pleases the predominant power in the government—whether this be a

⁷ Thus, the district court ruled that “[b]ecause the speech that Polk challenges is part of her official duties as a teacher, it is unprotected by the First Amendment. The Board may require Polk to speak in accordance with the Guidelines.” App. to Cert. Petition at 94a. The Court of Appeals agreed with the district court’s analysis “in all respects.” *Id.* at 3a.

monarch, a priesthood, an aristocracy, or the majority of the existing generation— in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body.⁸

The present case eerily illustrates Mill’s concerns. The Montgomery County School District is one of the largest in the country, extending its supervisory control to over 160,000 students, 13,000 teachers, and 3,000 substitute teachers. App. to Cert. Petition at 4a. As this Court recently noted in *Mahmoud*, “[i]n the 2022–2023 school year, [the District] enrolled 160,554 students in its 210 schools and had an operating budget of nearly \$3 billion.” 606 U.S. at 532. The Court also noted that the District serves what is, according to a recent survey, “the ‘most religiously diverse county’ in the Nation. In addition to hosting a diverse mix of Christian denominations, the county ranks in the top five in the Nation in per-capita population of Jews, Muslims, Hindus, and Buddhists.” *Id.* at 531. Rather than respect and celebrate this religious and cultural diversity, the District’s policy has been to ignore and flatten it. But to reduce all of the District’s thousands of teachers to mouthpieces of the District, bound to speak or not speak to students as and in the manner that the District dictates, would convert the District into a massive engine for promoting doctrinal and ideological orthodoxy.⁹

⁸ John Stuart Mill, *On Liberty* 129 (Currin V. Shields ed. 1956).

⁹ The danger is underscored and aggravated by the position taken by the District before the Equal Opportunity Employment Commission: as described by the plaintiff and acknowledged by the district court, the District’s position was that “it could not tolerate even a single person in its teaching ranks who holds a

Mill’s concerns about compelled uniformity led him to be skeptical of government-run schooling. In American history and tradition, by contrast, the common or public schools have been a cherished American institution. But Mill’s concerns are nonetheless real and serious, and they are allayed in part by the application of constitutional principles in the public school setting. These principles protect both teachers and students from being compelled to promote or endorse an orthodoxy dictated by the schools. Conversely, that essential protection would be lost if it came to be accepted that, as the lower courts in essence concluded in this case, protections against imposed orthodoxies and compelled affirmations do not apply in public schools.

And indeed, the most celebrated of this Court’s decisions asserting the “no imposed orthodoxy” and “no compelled affirmations” principles—namely, *Barnette* itself—occurred precisely in the public school context, and served to constrain the power of schools to impose an orthodoxy. This Court’s *Mahmoud* decision last year reaffirming *Barnette* also arose in a public school setting (and indeed from the same school district that is involved in this case). And the *Janus* decision forcefully rejected and overruled the earlier decision in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), which had failed to apply the “no compelled affirmations” principle in the context of public schools.

The Fourth Circuit majority asserted that the only remedy for the risks and harms of an imposed orthodoxy within the school system is political in

traditional religious view of transgenderism and parental authority over minor children.” *Id.* at 70a.

nature: if the voters in Montgomery County do not like the ideas and policies being promoted by the school district, they can elect different people to run the school board. App. to Cert. Petition at 35a. But this proposed remedy is stunningly insouciant with respect to the constitutional concerns at stake in the case. A central purpose of the Constitution's guarantees of freedom of speech and religion, after all, is to protect dissenters and minorities *against* orthodoxies imposed by dominant majorities and rulers. It is and always has been possible, no doubt, to brush off dissenters with the comment that if people are unhappy with the state-supported orthodoxy they should appoint officials who will promote a different orthodoxy more to their liking. But such advice would be merely obtuse, because a) the prescription is not feasible (even in democratic systems, as dissenters are by definition in the minority) and b) it misses the central point—namely, that imposed orthodoxies, whatever they may be, are anathema to the constitutional conception of freedom.

Indeed, the lower courts tacitly acknowledged the danger of the position they took. Thus, the district court (with which the Fourth Circuit majority agreed “in all respects,” *id.* at 3a) limited its “teachers as state functionaries” analysis to primary and secondary school teachers; the court acknowledged that this analysis should not be extended to college and university teachers, who should be afforded greater rights to speak or not speak in accordance with their convictions. *Id.* at 84a–85a. The distinction is understandable: College students are presumably more mature and less susceptible to indoctrination by professors. And, as the district court noted, education at the lower levels is compulsory; university education

is not. *Id.* at 87a. Yet these very facts also underscore the ominous aspect of the lower courts' position. That position suspends the constitutional protections against imposed orthodoxies and compelled affirmations precisely for the period—a period extending for well over a decade—in which malleable students are in the process of formation into the persons they will eventually become, and hence are most vulnerable to indoctrination, and in which (for the majority of children for whom private schooling is not an acceptable or viable option) the law compels them to undergo such state-directed formation.

If anything, concerns about indoctrination into imposed orthodoxies should be *greater* for that formative period, not less.⁹ What would be the sense of saying that as long as the state is engaged in the formation of persons, it can subject them to a uniform orthodoxy delivered day after day, year after year, by functionaries who dutifully present the views and ideas favored by the state, and that only after this process of formation is completed will students be permitted to encounter teachers who are allowed to express views that do not conform to the official orthodoxy?

⁹ For development of this point, see Steven D. Smith, *Meyer, Pierce, and the Formation of Persons*, 26 J. Contemp. Legal Issues 55 (2025).

III. The school district's refusal to consider or accommodate Ms. Polk's sincere religious beliefs is incompatible with constitutional protections for freedom of religion.

The complicated nature of the public school context may mean that no simple constitutional formula or doctrine can serve to answer all of the complex questions that arise. More context-sensitive analysis is required. *Cf. Mahmoud*, 606 U.S. at 550 (observing that “the question whether a law ‘substantially interfer[es] with the religious development’ of a child will always be fact-intensive. . . . It will depend on the specific religious beliefs and practices asserted, as well as the specific nature of the educational requirement or curricular feature at issue.”). However, a close examination of the context of the present case shows that the school district shunned such contextual sensitivity, and instead simply regarded itself as excused from honoring the constitutional principles articulated in *Barnette* and similar decisions.

Thus, this case did not arise out of any *de facto* conflict between Ms. Polk's sincere beliefs and the concerns or objections of students. Polk had previously taught as a substitute at several different schools in the school district, during which her evaluations were, as the Fourth Circuit acknowledged, “uniformly positive.” App. to Cert. Petition at 6a. Nor has Polk ever expressed any reservation about teaching the curriculum prescribed by the District. The disagreement arose only when the District decided to require all teachers to sign onto a general policy requiring, among other things, that teachers use the pronouns preferred by students.

Polk declined to make such a commitment because she believed that “God created individuals as either male or female and she would act unethically if she assisted children to present as other than their God-given sex.” *Id.* at 7a. Instead, she attempted to reach an acceptable accommodation; and the District’s compliance officer, Khalid Walker, encouraged her that an accommodation could likely be worked out. Various possibilities were on the table. Polk might have avoided using pronouns in addressing students (as the teacher in *Vlaming* had done). As a substitute teacher assignable to classes temporarily and as needed, Polk might have been placed in classrooms without students who desired to use pronouns other than those associated with their biologically-indicated gender. Since Polk had substituted in preschool and kindergarten classes as well as in lower grade classes, it was likely that such classes would be plentiful enough. In addition, compliance officer Walker suggested that if conflicts did nonetheless arise, the school might assign administrative officers to negotiate such conflicts; Polk was agreeable to this suggestion as well. *Id.* at 58a–59a.

Thus, possibilities for accommodation were abundant. But no accommodations materialized because the school district overruled its compliance officer, refused to consider any accommodation, and insisted that Polk conform to the District’s policy. This unyielding stance, similar to its position that this Court in *Mahmoud* described as an “abject refusal” to accommodate, 606 U.S. at 532, evidently reflected the District’s position, as presented to the EEOC, and as noted above, that for the District’s teachers, any deviation from the District’s policies on transgenderism could not be tolerated.

The District’s categorical position thus amounted to a flat rejection of the constitutional “no imposed orthodoxies” and “no compelled affirmations” principles in the context of public school pedagogy. That rejection was portentous. In this particular instance, the imposed orthodoxy happened to involve pronouns. But as Judge Wilkinson forcefully argued below, the position taken by the school district and by the lower courts has implications extending far beyond pronouns. “[T]he majority leaves teachers completely vulnerable to becoming the unwilling mouthpieces of government messaging.” *Id.* at 39a.

Such a position is fundamentally incompatible with the liberty contemplated by the First Amendment commitments to freedom of speech and religion—to the “fixed star in our constitutional constellation” articulated in *Barnette*. That position must not go uncorrected.

Because the school district refused to consider accommodations, it is neither necessary nor possible at this stage to say what accommodations might have been possible (as both Polk and compliance officer Walker believed) that would honor the legitimate concerns of both Polk and the schools. Specifically, there is no occasion here to announce any general policy on what the free exercise of religion dictates with respect to the use of pronouns in public schools.

What *is* imperative is for this Court to reject the lower courts’ position that the constitutional principles of “no imposed orthodoxy” and “no compelled affirmations” are somehow suspended in the context of public school pedagogy.

CONCLUSION

For the foregoing reasons, *amici* urge that the decision of the Fourth Circuit should be taken up for review and reversed.

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July 29, 2026

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