

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 A Writ of Certiorari to the
United States Court of Appeals for the Fourth
Circuit

Brief For *Amici Curiae*
Our Duty—USA and Child & Parental Rights
Campaign
In Support of Petitioner

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INTEREST OF *AMICI CURIAE*¹

Our Duty—USA (“Our Duty”) is a secular nonprofit corporation with more than 1,000 members from all fifty states who have varied political backgrounds, ethnicities, and sexual orientations but share the experience of raising former and current trans-identified children. The members’ children adopted transgender identities after being introduced to the concept through school settings, peer groups, and online. Our Duty appreciates that the distress is genuine, but the adoption of transgender identities is not organic, and the cure is not drugs or surgeries.

Our Duty members have children who have been influenced by teachers, peers, and social media to adopt trans identities only to later drop the identity when they are removed from the schools or other indoctrinating settings. Consequently, Amicus has a compelling interest in protecting the fundamental constitutional rights of parents to direct the upbringing and education of their children and asks this Court to grant the Petition and reverse Respondents’ attack on parents’ fundamental rights.

Child & Parental Rights Campaign, Inc. (CPRC) is a nonprofit, public-interest law firm that represents parents across the country in challenging governmental actions that threaten parental rights, including, as is true here, a policy that requires school staff to conceal from parents that their children have

¹ All parties were timely notified of the filing of this brief. This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amicus curiae* or its counsel has made a monetary contribution toward the brief’s preparation or submission.

asserted a discordant “gender identity” at school. CPRC represents parents and teachers who have challenged policies which conceal from parents that their children are being treated as something other than their sex at school, and parents who have lost custody of their gender confused child if they fail to “affirm” their child’s asserted discordant “gender identity.” CPRC’s clients have suffered significantly from parental secrecy policies such as the one Montgomery County Public Schools (“MCPS”) has adopted. It urges this Court to grant the Petition and vindicate parents and teachers who are standing up for children.

SUMMARY OF ARGUMENT

As was true of its “LGBTQ-inclusive” book policy in *Mahmoud v. Taylor*, 606 U.S. 522, 559 (2025), Respondents’ Parental Secrecy Policy infringes parents’ fundamental rights to direct the religious development of their children. In fact, MCPS’ Parental Secrecy Policy, like the California policy enjoined in *Mirabelli v. Bonta*, 607 U.S. 492, 496-497 (2026) (per curiam), is even more intrusive and violative of parents’ free exercise rights than was the book policy in *Mahmoud*. As was true of the policy enjoined in *Mirabelli*, the Parental Secrecy Policy also likely violates parents’ fundamental right to direct the upbringing of their children, including making mental health decisions. 607 U.S. at 497-98.

Sex-rejecting interventions, including social transition at school, frequently leading to administration of puberty blockers, cross-sex hormones and/or surgery, are fiercely debated and of questionable efficacy. Excluding parents from these

decisions, as MCPS does, leaves them in the hands of disinterested school officials and immature adolescents who are incapable of appreciating the gravity of the decisions.

MCPS's Parental Secrecy Policy usurps the doctrine of in loco parentis to empower children to supersede their parents' decision-making authority when children assert discordant identity (reject their sex). Ms. Polk sought an accommodation so as not to participate in the usurpation of parental rights, for which she was terminated.

Ms. Polk sought to withdraw her cooperation from MCPS's unconstitutional procedure, which violates parental rights, based on the statist notion that governmental authority should supersede parental authority. MCPS's decision to terminate her employment furthers the deprivation of parental rights. This Court should grant the Petition.

ARGUMENT

- I. **Ms. Polk was fired for refusing MCPS's directive that she give children veto power over their parents' fundamental constitutional right to make decisions about consequential and controversial sex-rejecting interventions for their children.**

MCPS unilaterally granted children who claim a discordant "gender identity" a right of self-determination that exceeds constitutional boundaries and supersedes fundamental parental rights. Ms. Polk objected to the District's impermissible

usurpation of constitutional rights. She sought a religious accommodation that would protect her free speech and free exercise rights and preserve the fundamental rights of her students' parents. Instead of honoring her request, MCPS chose to terminate her employment and protect its policy that requires Ms. Polk to conceal from parents that their children are being affirmed to reject their sex at school (Parental Secrecy Policy). As Judge Wilkinson said in his dissent from the panel decision below:

MCPS has established a hierarchy of public opinion, valuing pro-transgender messages above more socially conservative positions—a paradigmatic example of viewpoint discrimination. But whether speech is “right” or “wrong,” we must reject a policy that exists for “no better reason than promoting an approved message or discouraging a disfavored one.”

Polk v. MCPS, 166 F.4th 400, 423 (4th Cir. 2026) (Wilkinson, J., dissenting) (citing *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 579 (1995)). As well as “[f]orcing free ... individuals [in this case, Ms. Polk] to endorse ideas they find objectionable,” which “is always demeaning,” *id.*,² the Parental Secrecy Policy also subverts the longstanding constitutional balance between parental rights and children’s rights of self-determination.

² Citing *Janus v. AFSCME Council 31*, 585 U.S. 878, 893 (2018).

“Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, *i.e.*, the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians.” *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654 (1995). “Minors are entitled to a significant measure of First Amendment protection. But we have also made clear that courts must apply the First Amendment ‘in light of the special characteristics of the school environment.’” *Mahanoy Area Sch. Dist. v. B. L.*, 594 U.S. 180, 187 (2021). (citing *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988)). The nature of children’s rights at school are not unlimited or, as MCPS believes, self-defining, but are cabined by “what is appropriate for children in school.” *Id.* at 656 (citing *Goss v. Lopez*, 419 U.S. 565, 581–582, (1975)).

In *Vernonia*, this Court described the appropriate balance between children’s rights and parental rights in school in the context of random drug testing for student athletes. In rejecting a challenge to the policy by a couple of parents and students, the Court noted that the “primary guardians of Vernonia’s schoolchildren,” *i.e.*, their parents, approved the policy. *Id.* at 665. It was the parents’ judgment, not the children’s preferences, that mattered in determining whether the policy was constitutionally valid.

The *Vernonia* Court’s description of the relative role of parents vis-a-vis school officials reflects a proper application of the modern meaning of the doctrine of *in loco parentis*. Traditionally, parents

“delegated to school officials their own control of [their child]” under the doctrine of *in loco parentis* “under circumstances where the children’s actual parents cannot protect, guide, and discipline them.” *Mahanoy*, 594 U.S. at 192 (2021).

Under the common law, as Blackstone explained, “[a father could] delegate part of his parental authority ... to the tutor or schoolmaster of his child; who is then in loco parentis, and has such a portion of the power of the parent committed to his charge, [namely,] that of restraint and correction, as may be necessary to answer the purposes for which he is employed.” 1 W. Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 441 (1765) (some emphasis added).

Id. at 198 (Alito, J., concurring).

If in loco parentis is transplanted from Blackstone's England to the 21st century United States, what it amounts to is simply a doctrine of inferred parental consent to a public school's exercise of a degree of authority that is commensurate with the task that the parents ask the school to perform. Because public school students attend school for only part of the day and continue to live at home, the degree of authority conferred is obviously less than that delegated to the head of a late-18th century boarding school, but because public school students are

taught outside the home, the authority conferred may be greater in at least some respects than that enjoyed by a tutor of Blackstone's time.

Id. at 200. So how much authority do parents implicitly delegate when they enroll a child in public school? Not enough to justify MCPS's Parental Secrecy Policy. According to Justice Alito:

The answer must be that parents are treated as having relinquished the measure of authority that the schools must be able to exercise in order to carry out their state-mandated educational mission, as well as the authority to perform any other functions to which parents expressly or implicitly agree—for example, by giving permission for a child to participate in an extracurricular activity or to go on a school trip.

Id. at 200-201. It does not include delegating their authority to make medical or mental health decisions to their children or school staff as MCPS has done with its Parental Secrecy Policy. “[S]tate officials acting in loco parentis cannot be equated with parents.” *Parham v. J. R.*, 442 U.S. 584, 638 (1979) (Brennan, J, concurring in part and dissenting in part).

That is particularly true with regard to decisions related to a child’s rejection of his or her sex which is the subject of “fierce scientific and policy debates about safety, efficacy, and propriety” of social and medical interventions associated with children who claim a discordant identity. *United States v. Skrmetti*, 605 U.S. 495, 525 (2025). “There is no dispute...that

the ‘decision-making capacity’ of adolescents ‘is developing, but not yet complete. This Court has recognized as much in other contexts, explaining that children’s ‘lack of maturity’ and ‘underdeveloped sense of responsibility’ often lead to ‘impetuous and ill-considered actions and decisions.’” *Id.* at 540 (Thomas, J. concurring). Consequently, it is particularly critical that parents be involved in, not excluded from, decisions regarding their children’s assertion of a discordant identity. Ms. Polk’s requested accommodation would have protected the critical decision-making authority of parents in this context from the usurpation of MCPS’s Parental Secrecy Policy.

Contrary to MCPS’s argument, parental control is not a limit on the child’s liberty but a fulfillment of it:

The tradition of parental authority is not inconsistent with our tradition of individual liberty [for a child]; rather, the former is one of the basic presuppositions of the latter. Legal restrictions on minors, especially those supportive of the parental role, may be important to the child’s chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding.

Bellotti v. Baird, 443 U.S. 622, 638-39 (1979) (plurality). MCPS’s policy deprives children of that liberty as well as depriving parents of their fundamental right to make these decisions.

II. Ms. Polk was fired for refusing to participate in MCPS's violation of parents' fundamental constitutional rights as established in *Mahmoud* and *Mirabelli*.

MCPS has violated this Court's cardinal rule 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." *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000) (citing *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)).

[O]ur constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations. ... The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children.

Id. at 68–69 (citing *Parham*, 442 U.S. at 602). "Accordingly, so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of

that parent to make the best decisions concerning the rearing of that parent's children." *Id.* at 68-69.

Indeed, as this Court confirmed in *Mirabelli*, "the doctrine of substantive due process has long embraced a parent's right to raise her child, which includes the right to participate in significant decisions about her child's mental health." 607 U.S. at 804 (Barrett, J., concurring). Similarly, the Free Exercise clause includes the "right of parents to guide the religious development of their children," which includes the right not to have the school facilitate "a child's gender transition without parental consent" as MCPS is doing here. *Id.* at 496 (citing *Mahmoud*, 606 U.S., at 559).

MCPS violated both of those rights when it enacted its Parental Secrecy Policy. Ms. Polk should have been applauded, not terminated, for requesting an accommodation.

A. Ms. Polk was fired for seeking to protect parents' fundamental right to direct the upbringing and mental health decision-making for their children.

As was true of the injunction reinstated in *Mirabelli*, 607 U.S. at 497. Ms. Polk's requested accommodation from MCPS's Parental Secrecy Policy "promotes child safety by guaranteeing fit parents a role in some of the most consequential decisions in their children's lives." Respondents claim that MCPS's policy advances student safety. To the contrary, "those policies cut out the primary protectors of children's best interests: their parents."

Id. (citing *Troxel*, 530 U.S. at 68–69). This Court emphasized that the fundamental parental right to direct the upbringing and education of their children includes the right to receive information necessary for parents to exercise their rights when their children exhibit signs of gender dysphoria at school. *Id.*

Under long-established precedent, parents—not the State—have primary authority with respect to “the upbringing and education of children.” *Pierce v. Society of Sisters*, 268 U.S. 510, 534–535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); accord, *Meyer v. Nebraska*, 262 U.S. 390, 399–400, 43 S.Ct. 625, 67 L.Ed. 1042 (1923). *The right protected by these precedents includes the right not to be shut out of participation in decisions regarding their children’s mental health.* *Parham v. J. R.*, 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979). Gender dysphoria is a condition that has an important bearing on a child’s mental health, but when a child exhibits symptoms of gender dysphoria at school, California’s policies conceal that information from parents and facilitate a degree of gender transitioning during school hours. These policies likely violate parents’ rights to direct the upbringing and education of their children.

Id. (emphasis added). As is true with MCPS, “California prohibits its public schools from informing parents of their child’s gender transition at school

unless the child consents. The record in this case indicates that the State’s non-disclosure policy applies even if parents expressly ask for information about their child’s gender identification.” *Id.* at 499. (Barrett, J., concurring). Depriving parents of the information regarding their child’s “gender identity” at school “quite obviously excludes parents from highly important decisions about their child’s mental health.” *Id. Ipso facto*, parents are unable to exercise their fundamental right to make decisions about their child’s upbringing, including their mental health, as established by this Court for more than 100 years. *Pierce*, 268 U.S. at 534–535; *Parham*, 442 U.S. at 602.³

While dissenting from the decision in *Mirabelli* based on its procedural posture, Justice Kagan confirmed that “parents have rights, even though unenumerated, concerning their children and the life choices they make.” *Id.* at 507 (Kagan, J. dissenting) (citing *Pierce*, 268 U.S. at 534–535; *Parham*, 442 U.S. at 602–603). “California’s policy, in depriving all parents of information critical to their children’s health and well-being, could have crossed the constitutional line. And that would entitle the parents, at the end of the day, to relief.” *Id.* The same is true of MCPS’s Parental Secrecy Policy that also

³ The Ninth Circuit has recognized the likelihood that the parental exclusion policy analyzed in *Mirabelli* likely violates parents fundamental right to direct the upbringing of their children by issuing an injunction against implementation of California’s AB 1955 which codified the parental exclusion policies addressed in *Mirabelli*. *City of Huntington Beach v. Newsom*, 2026 WL 1785110 (9th Circuit Case # 25-3826 June 18, 2026).

deprives all parents of information critical to their children's health and well-being.

Ms. Polk's requested exemption from the Parental Secrecy Policy would protect those long-established constitutional rights and concomitantly, the best interests of the district's students. Instead of championing those rights on behalf of the best interests of their student charges, Respondents are directing teachers like Ms. Polk to violate those rights. This Court should grant the Petition and reverse.

B. Ms. Polk acted to protect parents' fundamental right to direct the religious upbringing of their children.

In *Mirabelli*, this Court addressed the same type of Parental Secrecy Policy implemented by MCPS. In that case, California education officials had adopted statewide guidelines that prohibited teachers from notifying parents when their children asserted a discordant gender identity at school. This Court concluded that as well as likely violating parents' right to direct mental health decision-making, California's policies also likely violated the parents' free exercise right to guide the religious development of their children under *Mahmoud*, 606 U.S. at 559. *Mirabelli*, 607 U.S. at 496.

The parents who assert a free exercise claim have sincere religious beliefs about sex and gender, and they feel a religious obligation to raise their children in accordance with those beliefs. California's policies violate those beliefs

and “impos[e] the kind of burden on religious exercise that [*Wisconsin v. Yoder* [406 U.S. 205 (1972)] found unacceptable.” [*Mahmoud*,] 606 U.S., at 550, 145 S. Ct. 2332. Indeed, the intrusion on parents’ free exercise rights here—unconsented facilitation of a child’s gender transition—is greater than the introduction of LGBTQ storybooks we considered sufficient to trigger strict scrutiny in *Mahmoud*. See *id.*, at 563, 145 S. Ct. 2332.

Id. The same is true of the Parental Secrecy Policy, which also “cut[s] out the primary protectors of children’s best interests: their parents.” *Id.* In addition, as was true of the California policy examined in *Mirabelli*, the policy here provides for an unconsented facilitation of a child’s “gender transition” that is even more intrusive of parents’ free exercise rights than was the MCPS “LGBTQ-inclusive” book policy analyzed in *Mahmoud*. *Id.* Consequently, the Parental Secrecy Policy here, like the California parental secrecy policy in *Mirabelli*, likely unconstitutionally burdens parents’ free exercise. 607 U.S. at 497.

The Parental Secrecy Policy’s ban on sharing information regarding a child’s assertion of a discordant identity with parents (unless the child consents) “carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent.” *Mahmoud*, 606 U.S. at 546. “At its heart, the Free Exercise Clause of the First Amendment protects ‘the ability of those who hold religious beliefs of all kinds

to live out their faiths in daily life through the performance of religious acts. And for many people of faith across the country, there are few religious acts more important than the religious education of their children.” *Id.* (citing *Kennedy v. Bremerton School Dist.* 597 U.S. 507, 524 (2022)). “Indeed, for many Christians, Jews, Muslims, and others, the religious education of children is not merely a preferred practice but rather a religious obligation.” *Id.* at 547 (citing *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 754-56 (2020)).

Parents’ right to direct their children’s religious upbringing encompasses not just teaching religion at home, but “extends to the choices that parents wish to make for their children outside the home,” including educational choices such as enrolling their children in MCPS. *See, id.* “The right of parents to direct the religious upbringing of their” children would be an empty promise if it did not follow those children into the public school classroom. We have thus recognized limits on the government’s ability to interfere with a student’s religious upbringing in a public school setting.” *Id.* Those limits include not mandating that children be exposed to books that conflict with their parents’ religious beliefs, *id.*, and not compelling secrecy when children assert a discordant identity, *Mirabelli*, 607 U.S. at 496, and this case.

As this Court held in *Mahmoud*, providing accommodations for religious objectors, such as opt outs from curriculum for parents, preserve parents’ constitutional rights while permitting the school district to continue carrying out its pedagogical purpose. 606 U.S. at 568. “It must be emphasized that what the parents seek here is not the right to

micromanage the public school curriculum, but rather to have their children opt out of a particular educational requirement that burdens their well-established right ‘to direct ‘the religious upbringing’ of their children.’” *Id.*

Similarly here, Ms. Polk’s accommodation would respect parents’ roles as primary protectors while also serving the state’s compelling interest in student safety and privacy. It would also preserve her free exercise rights.

Ms. Polk is not threatening to use biological pronouns or to harass transgender students. She has merely asked for reasonable accommodations that would allow students to self-identify however they choose while still respecting Ms. Polk’s convictions. Many such alternatives exist, and Ms. Polk referenced some. The most obvious solution would be to permit Ms. Polk to call all students by their last name (*e.g.*, “Bueller, please answer question 43.”). In light of this easy “win-win” for teachers and school districts, the result of the interest balancing is as obvious as if MCPS were playing seesaw with a lead block.

Polk, 166 F4th at 425 (Wilkinson, J., dissenting) (citation omitted). This Court should accept review and reverse.

III. MCPS's Parental Secrecy Policy is an unconstitutional presumptive procedure based on the statist notion that governmental authority should supersede parental authority because *some parents* are found to abuse their children.

MCPS's Parental Secrecy Policy is contrary to this Court's long-standing presumption that "fit parents act in the best interests of their children." *Troxel v. Granville*, 530 U.S. 57, 68 (2000) (plurality). This presumption can be overcome only by a judicial finding that the parents are not acting in their child's best interest, *Santosky v. Kramer*, 455 U.S. 745, 768-769 (1982), or "[i]n an emergency situation." *Mueller v. Auker*, 700 F.3d 1180, 1187 (9th Cir. 2012). Parental unfitness cannot be presumed categorically as MCPS does with its Parental Secrecy Policy. *Stanley v. Illinois*, 405 U.S. 645, 657 (1972). Presumed parental fitness is not overcome simply because a child disagrees with her parents' decision. *Parham*, 442 U.S. at 603.

Contradicting *Parham*, MCPS is unilaterally upending the parental fitness presumption based on MCPS's perception that there is a disagreement between parents and children. Its Parental Secrecy Policy empowers children to supersede their parents' authority if the parents do not agree with the children's assertion of a discordant identity. MCPS presumes that parents who might disagree with their children are "unsafe" and incapable of making appropriate decisions—medical and otherwise—for their children. MCPS officials assume that only parents who believe in and approve of the concept of

“gender identity” are capable of effectively helping their children cope with gender dysphoria or any other mental distress that may be causing them to want to be perceived as something other than their sex. Parents are prevented from exploring the causes of their children’s sex rejection and helping them accept their natural bodies. Instead, parents are secretly presumed abusive *in absentia* without due process or a judicial finding while the school cements with their children the harmful notion that they are born in the wrong body.

MCPS has adopted a “procedure by presumption” that is repugnant to the Constitution. *Stanley*, 405 U.S. at 656-657. “Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities...it needlessly risks running roughshod over the important interests of both parent and child. It therefore cannot stand.” *Id.* The same is true here. MCPS’s nonconsensual deprivation of parental rights to guide their child through an identity crisis without due process runs roughshod over the important interests of parent and child and cannot stand.

Instead of adhering to the presumption that “natural bonds of affection lead parents to act in the best interests of their children,” MCPS has adopted the constitutionally repugnant “statist notion that governmental power should supersede parental authority in all cases because *some* parents abuse and neglect children.” *Parham*, 442 U.S. at 602-603

(emphasis in original). MCPS's statist notion is to create a state-dictated treatment of children who reject their sex and force parents to accept that their children are "transgender" and affirm that the sex-rejecting identity is natural, consistent with their religious beliefs, and in the child's best interest. "The Due Process Clause does not permit a state to infringe on the fundamental right of parents to make the child rearing decision simply because [the government] believes a 'better decision' could be made." *Troxel*, 530 U.S. at 72-73. Yet that is precisely what MCPS has done in enacting its Parental Secrecy Policy.

MCPS's statist notion is particularly antithetical to parental rights in the context of children asserting a discordant identity. As discussed *supra*, social transitioning, *i.e.*, the use of opposite gender names, pronouns and privacy facilities at school, is the first in a series of controversial interventions for children who reject their sex. *Skrmetti*, 605 U.S. at 525. The "fierce scientific and policy debates" surrounding the interventions "raise sincere concerns; the implications for all are profound." *Id.* That fact alone makes clear that parental involvement in decision-making about this fundamental aspect of their child's upbringing is essential. MCPS deprives parents of that critical constitutional right.

In refusing to participate in MCPS's Parental Secrecy Policy, Ms. Polk is rejecting the presumption that parents will not act in the best interest of their children and, instead, is buttressing parents' fundamental rights to make mental health decisions and direct the religious upbringing of their children.

MCPS's termination of Ms. Polk's employment facilitates infringement of parents' fundamental constitutional rights and should not be permitted to stand.

CONCLUSION

MCPS's Parental Secrecy Policy contradicts this Court's decisions in *Mirabelli* and *Mahmoud* and is an unconstitutional procedure based on the statist notion that MCPS can make a better decision about children's mental health than can their parents.

Ms. Polk should be applauded, not terminated, for seeking an accommodation to not deprive parents of their fundamental constitutional rights at a time when they are most exigent.

This Court should grant the Petition to preserve parental rights and children's health.

July 31, 2026

Respectfully Submitted,

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