

No. 26-8

In The
Supreme Court of the United States

KIMBERLY ANN POLK,

Petitioner,

v.

MONTGOMERY COUNTY PUBLIC SCHOOLS; MONTGOMERY
COUNTY BOARD OF EDUCATION; SHEBRA L. EVANS,
MONIQUE FELDER, LYNNE HARRIS, GRACE RIVERA-OVEN,
KARLA SILVESTRE, REBECCA SMONDROWSKI, BRENDA
WOLFF, AND JULIE YANG, individually and in their
official capacities as members of the Montgomery
County Board of Education,

Respondents.

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

BRIEF FOR *AMICI CURIAE* UPPER MIDWEST LAW CENTER,
MOMS FOR LIBERTY, TRUE NORTH LEGAL,
AND MINNESOTA PARTNERSHIP FOR ACHIEVEMENT
IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICI CURIAE*¹

The Upper Midwest Law Center (“UMLC”) is a nonpartisan public-interest law firm headquartered in Minnetonka, Minnesota which litigates for individual liberty and religious freedom and against governmental and special interest overreach. UMLC regularly represents litigants in cases challenging the constitutionality of government action such as in this case.

Moms for Liberty is a leading national parental rights advocacy organization empowering parents to defend their fundamental right to direct the upbringing, education, and care of their children at all levels of government. They have 130,000 members across 49 states including their Maryland chapters located in Anne Arundel, Carroll, Cecil, Frederick, Harford, Howard, Montgomery, Talbot, Worcester, and Wicomico counties.

True North Legal (“TNL”) is a nonprofit public-interest law firm and Christian legal ministry located in St. Paul, Minnesota that works to advance religious freedom and free speech, promote marriage and family, and protect human life. TNL regularly represents litigants challenging government action that interferes with their right to live, speak, and work in accordance with their deeply held religious beliefs.

¹ Counsel provided timely notice to all parties of *amici*’s intent to file this brief. No counsel for any party authored this brief in any party; no person or entity other an *amici*, their members, or their counsel made a monetary contribution intended to fund its preparation or submission.

Minnesota Partnership for Achievement (“MPFA”) is a nonprofit organization based in Minnetonka, Minnesota dedicated to improving K–12 education by educating, empowering, and uniting champions for student achievement. MPFA equips K–12 stakeholders, particularly reform-minded school board members, with the information and guidance needed to make well-informed decisions regarding education policy, curriculum, instruction, governance, and district finance. MPFA offers a variety of professional services, resources, trainings, and collaborative partnerships to elevate and advance lawful, practical, and accountable solutions that strengthen parental involvement and improve student outcomes.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is about whether a public school district can force a substitute first grade teacher to violate her sincerely held, fundamental, and historically grounded religious beliefs by requiring her to follow the alleged wishes of a first grader and use pronouns that do not accord with biology and without the knowledge or consent of his parents. For almost all of human history, that sentence would have been nonsensical. First, the notion that pronouns were changeable and not fixed based upon biology and biblical truth would have been unthinkable. Second, even if a first grader expressed such an idea, the thought that her parents would not be allowed to consent (and be kept unaware of) to a potential social gender transition would have been inconceivable. Third, the concept that a school district could and would fire a teacher for failing to use the “preferred

pronouns” of a first grader against the dictates of her religion and conscience would have been unimaginable.

Yet, here we are.

Not only does Respondent Montgomery County Public Schools (“Montgomery County”) accept all of those novel premises in its “preferred pronoun” policy, but it does so with a religious fervor that would make even the most committed believer proud. It seeks to require a public declaration, on pain of forfeiting one’s job, of support for the LGBTQ+ community’s “preferred pronoun” edicts by all its teachers, regardless of their religious beliefs. Montgomery County’s righteous zealotry brooks no dissent, tolerates no accommodation, permits no flexibility. Kimberly Polk, a first-grade substitute teacher with religious beliefs that forbid her from accepting Montgomery County’s brave new world, must then lose her job.

In this *Amicus*, we will unpack the historical, philosophical, and religious premises at issue in this case. These premises underpin and help explain Montgomery County’s discriminatory actions, which violate the Free Exercise Clause of the First Amendment. Montgomery County’s actions are also similar to other cases where this Court has found a violation of the Free Exercise Clause notwithstanding its decision in *Employment Division v. Smith*, 494 U.S. 872 (1992).

ARGUMENT

I. **Montgomery County's Personal Pronoun Requirement is Grounded in a Radical Re-Definition of Humanity and Sexuality.**

The long road that ended with Kimberly Polk's firing started with the adoption of a philosophy that defines reality as psychological and individualized. Carl Trueman, *THE RISE AND TRIUMPH OF THE MODERN SELF* 45 (Crossway 2020). Historically, most societies defined reality by reference to an order which was thought to be objectively true. Trueman, *supra* at 39. Those societies were generally agrarian, where the created order was obvious and undeniable – sowing seed in December or harvesting crops in April would inevitably result in failure. *Id.* at 40. They were also usually religious, where truth derived from Holy Scriptures, and the rhythms of daily and seasonal life were defined by attending mass, celebrating feast days, taking part in religious processions, and going on pilgrimages. *Id.* at 44. In such a society, where reality was fixed by external, religious authority, biology was taken as a given, and the notion of “transgender” would not merely be absurd, but literally impossible to conceive.

In recent centuries, a competing view has arisen. For many, absolutes are no longer; nature does not dictate daily life; and there is no religious orthodoxy. Instead, personhood is malleable, autonomy dominates, authenticity is exalted, and full affirmation of all personal choices is demanded. Charles Taylor, *A SECULAR AGE* 474-476 (Belknap Press 2007). The causes of this radical shift are numerous and complex, but include the loss of

centralized religious authority post-Reformation, the rise of capitalism and its cycle of creative destruction, and major technological advances such as irrigation, fertilizers, electricity, telecommunication, the automobile, and medical technology. Trueman, *supra* at 40-41. All of these innovations freed men and women from dependence on the natural environment and made it “increasingly easy to imagine that reality is something we can manipulate according to our own wills and desires.” *Id.* at 41.

The replacement for a religious and ordered world based upon known truth came from an obscure Viennese neurologist named Sigmund Freud. Freud placed the central source of meaning and grounding in each human mind. Philip Rieff, *THE TRIUMPH OF THE THERAPEUTIC: USES OF FAITH AFTER FREUD* 29-47 (Harper 1966). No longer was meaning something to be sought from nature or religion. Instead, Freud decided that “men could not change the dynamics of culture (which were unchangeable anyway), but they could at least change their own relationship to these dynamics.” *Id.* at 30.

Philip Rieff, a Sociology professor at the University of Pennsylvania, has termed this paradigm shift as the “Triumph of the Therapeutic.” In the therapeutic worldview, “psychological categories and an inward focus are the hallmarks of being a modern person.” Trueman, *supra* at 46. A core belief of this radically self-focused and expressive philosophy is the centrality of eros, a “whole-hearted embrace of sex and sensuality as good in itself...” Taylor, *supra* at 476-77. This philosophy chafes at the alleged repressive sexual codes and strictures of the bourgeois and religious. Trueman, *supra* at 51.

Indeed, “[s]hattering sexual codes is therefore one of the principal emancipatory tasks of the political revolutionary.” *Id.*

Montgomery County’s Gender Identity policy perfectly tracks the modern therapeutic, psychological, and sexualized worldview generated by Freud and his disciples. It extols the value of “diversity” and argues that “students should be able to express their gender identity authentically” so that their learning environment “respects their unique identity and life experiences.” Joint Appendix of the Parties (“JA”) 59. It also defines “gender identity” as a person’s “internalized sense or psychological knowledge of the person’s own gender.” JA65. Students, without any age restriction, are permitted, without parental knowledge or consent, to determine their own gender, adopt different pronouns, participate in sports with the other sex, use bathrooms of the other sex, and sleep in the same room with the other sex. JA66-69.

Under this view of the world, which one judge has called the “Transgender Vision,” it is not only valid, but a moral good for the state to permit children to purport to change their gender without parental knowledge or consent. See Montgomery County Public Schools, GENDER IDENTITY POLICY 2023-24, JA59; *State v. Loe*, 692 S.W.2d 215, 249-53 (Tex. 2024) (Blacklock, J., concurring). In the Transgender Vision, sex is not immutable biology but is instead “assigned at birth” based on visual evidence of physical traits, which may or may not correspond to an inward belief which that person believes to be his or her “gender identity.” *Loe*, 692 S.W.2d at 249-253; JA66 (Montgomery County’s definition of “sex

assigned at birth”). The Transgender Vision holds that a child who feels out of place in her biologically formed body should be allowed to transition her gender first socially (through name and pronoun changes, cross-dressing, and using the facilities of the other sex) and then physically (through puberty-blocking drugs and, ultimately, surgery to remove healthy sexual organs). *Loe*, 692 S.W.2d at 249-253.

This view of the world is fundamentally at odds with people who hold what could be called the “Traditional Vision,” which is consistent with the pre-psychological worldview, and includes a continuing belief in biblical truth, seeing sex as immutable biology, and disagreeing that anyone’s feelings can alter these truths. *Loe*, 692 U.S. at 239. Advocates for homosexuality and the Transgender Vision initially framed their ask as a plea for toleration to those who hold the Traditional Vision and vigorously disputed those who claimed that the request for accommodation would inevitably move towards coercion. *See, e.g.*, Abby Dees, *The End of the Slippery Slope*, Philadelphia Gay News (Nov. 21, 2013)²; *see also* Darel E. Paul, *FROM TOLERANCE TO EQUALITY: HOW ELITES BROUGHT AMERICA SAME SEX MARRIAGE* (Baylor University Press 2018). Yet, that is exactly what has happened over the past 20 years. *See* Department of Justice, *ERADICATING CHRISTIAN BIAS IN THE FEDERAL GOVERNMENT*, Key Findings 6-8 (2026). In that time, the transgender worldview has moved from a request for tolerance to a requirement that all fully accept, embrace, and publicly

² <https://epgn.com/2013/11/21/24095589-the-end-of-the-slippery-slope/>

accommodate their vision of self and the world. *See, e.g., Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018); Trueman, *supra* at 53. The Transgender Vision sees any limits on bodily autonomy and sexual choice as sins that must be punished and blotted out as soon as they are discovered. Expressing disagreement with homosexuality or transgenderism is not only incorrect, but those who do so must be “raked over hot coals,” lose their jobs, and sent to rehab. Simon Aronoff, *Demagogues of Defamation*, Washington Blade (April 27, 2007).³

This is now the world we live in, and it is the predicate for the decision of the Montgomery County School District to fire Kimberly Polk for her unwillingness to recant her deeply held religious beliefs and call her first-grade students by their “preferred pronouns” without informing their parents.

II. Nearly All Religious Traditions, Including Polk’s, Maintain that Sex is Fixed at Birth, and that Purported Gender Transitions Do Not Comport with Reality

Despite Montgomery County’s newly discovered orthodoxy, the Traditional Vision of sex being immutable, binary, and prescribed by a divine Creator has been the overwhelming consensus of most world religions and their billions of adherents for thousands of years.

³ <https://groups.google.com/g/transgender-news/c/45vTVQ4BbCA?pli=1>

A. The Historical, Traditional, and Still Predominant Christian Belief is that God Made People Male and Female Without the Possibility of a Transgender Change

For the 2.4 billion⁴ Christians today, the Bible is the measuring stick on matters of morality and sexuality. The Bible states that “God created man in his own image, in the image of God he created him; male and female he created them.” Genesis 1:27 (English Standard Version); *see also* Matthew 19:4 (where Jesus said “he made them male and female”) and Mark 10:6. Following these Biblical mandates, most Christian denominations hold fast to the Traditional Vision and reject the Transgender Vision.⁵ For example, the Southern Baptist Convention, the largest Protestant denomination in the United States,⁶ adopted a resolution in 2014

⁴ World Population Review, *Most Christian Countries* (2026), <https://worldpopulationreview.com/country-rankings/most-christian-countries>,

⁵ Some “mainline” protestant churches have affirmed the Transgender Vision and reject the biblical standard of binary sexuality. *See, e.g.*, United Church of Christ, *Transgender and Nonbinary Dignity and Rights Under Attack* 2026, <https://www.ucc.org/what-we-do/wider-church-ministries/gsjm/lgbtqia/transgender-and-nonbinary-dignity-and-rights-under-attack/>, <https://perma.cc/X5VM-SZBR>; United Methodist Church, *Protecting Transgender Civil and Human Rights*, (March 23, 2026), <https://www.umcjustice.org/latest/protecting-transgender-civil-and-human-rights-9151>

⁶ Pew Research, *7 Facts About Southern Baptists* (2019), https://en.wikipedia.org/wiki/Protestantism_in_the_United_States, <https://perma.cc/8TAE-T464>;

stating that “God’s design was the creation of two distinct and complementary sexes, male and female.” See Southern Baptist Convention, *On Transgender Identity* (2014). Therefore, it “oppose[s] efforts to alter one’s bodily identity . . . to refashion it to conform with one’s perceived gender identity.” *Id.* The Presbyterian Church in America (PCA) also believes that “God creates human beings distinctly male and female.” Presbyterian Church in America, *Letter to Leaders of the United States Government* (Jan. 21, 2024).⁷

The Catholic Church has a similar view. Among many other statements, the Catholic Church’s 2024 *Dignitas Infinita* cites to Genesis 1:27 and states that “all attempts to obscure reference to ineliminable sexual difference between man and woman are to be rejected: ‘We cannot separate the masculine and feminine from God’s work of creation, which is prior to all our decisions and experiences, and where biological elements exist which are impossible to ignore.’” See Catholic Church, *Declaration “Dignitas Infinita” on Human Dignity* (2024), paragraph 59.

The Orthodox Church, which has 200 million members worldwide and 5 million in the United States, cites 2000 years of church tradition and the Bible for its view that “God made them male and female.” Canonical Orthodox Bishops in the Americas, *Statement of Standing Conference* (2003). One Orthodox Church summarized Orthodox Church

<https://www.pewresearch.org/short-reads/2019/06/07/7-facts-about-southern-baptists/>

⁷ <https://www.pcaac.org/wp-content/uploads/2024/07/General-Letter.pdf>

teachings as follows: “For millenia, societies functioned with two modes of humanity: male and female. In the beginning, God created us male and female.”⁸ Similarly, the Anglican Church in North America states that “Scripture reveals that we are made male and female in God’s image.”⁹

Petitioner Kimberly Polk’s view of gender identity is consistent with the dominant Christian view—she believes “God created individuals as either male or female and she would act unethically if she affirmatively assisted children to present as other than their God-given sex.” JA24. She also believes it would “unethical for her to hide from parents that their child is transitioning genders at school.” JA24.

B. Islam Also Holds that God Made People Male and Female with No Ability for Transgender Transition

For the world’s over 2 billion Muslims, with 3.5 million in the United States,¹⁰ the Qu’ran is the sacred word of God, revealed to the Prophet

⁸ Saint John the Evangelist Orthodox Church, *Orthodox Christianity and Transgenderism* (Nov. 12, 2024), <https://www.saintjohnchurch.org/transgenderism/>

⁹ Anglican Church, *Sexuality and Identity; A Pastoral Statement From the College of Bishops* (Jan. 2021), <https://anglicanchurch.net/sexuality-and-identity-a-pastoral-statement-from-the-college-of-bishops/> (Jan. 2021)

¹⁰ World Population Review, *Muslim Population by Country* (2026) <https://worldpopulationreview.com/country-rankings/muslim-population-by-country>

Muhammad.¹¹ The Qu’ran states that “O mankind! We created You from a single (pair) Of a male and a female.” Qu’ran Sura 49:13 (Abdullah Yusuf Ali Surah 1934); *see also* Qu’ran Sura 42:49-50 and Qu’ran Sura 3:36. Therefore, the Fiqh Council of North America states that “contemporary claim that gender is an imaginary or cultural human construct, with no necessary link to biological sex, is untenable in light of Scripture, the Shari’ah, biology, common sense, and the cumulative history of mankind.” Fiqh Council of North America, *What is Islam’s Position on Transgenderism?* (June 17, 2022). Therefore, “those who wish to abide by the Shari’ah must identify their gender with their biological sex (this includes the issue of personal pronouns) and live by the rulings associated with that gender.” *Id.*

**C. Orthodox and Hasidic Judaism
State that God made Men and
Women, Without the Possibility of a
Transgender Change**

The Orthodox and Hasidic branches of Judaism share the same biblical view of most Christian and Islamic religious bodies with respect to the singularity of the male and female sex: “The Torah and its extension, *halacha*, or Jewish religious law, are unequivocal about the fact that being born in a male body requires living the life of a man, and being born female entails living as a woman.” Rabbi Avi Shafran, *Trans and Torah*, TIMES OF ISRAEL (June 26, 2023).¹²

¹¹ Yaqeen Institute, *Basics of Islam*, (2026) <https://yaqeeninstitute.org/what-islam-says-about/basics-of-islam#what-is-the-qur-an>

¹² <https://blogs.timesofisrael.com/trans-and-torah>. Reform and Conservative Judaism held the same view until the 1970’s, when

III. *Smith* Should Not Apply Given Polk’s Historic and Fundamental Christian Belief; Alternatively, this Court Should Determine that Montgomery County’s Policy Is Not “Neutral” under *Smith*

A. The Court Should Take this Case to Explain Why Reasoning of *Yoder* and *Mahmoud* (Not *Smith*) Applies in Cases Like This One

As outlined in Section II, Kimberly Polk’s Christian beliefs about the unchangeability of biological sex are consistent with the historic and still predominant view of Christians and other major religions. What has changed over the past forty years is the adoption by many in the secular world of the Transgender Vision, which is, in turn, premised on a psychological view of man that privileges and demands affirmation of individual sexual preferences. The expansion of such a view to children as young as six, while incomprehensible to those who adhere to the Traditional Vision, is the logical extension (and even vital necessity) to those who hold the Transgender Vision. Thus, under the Transgender Vision, Ms. Polk must either convert or be fired.

Thus, Polk is in the same position as the Amish families in *Yoder v. Wisconsin*, 406 U.S. 205 (1972). In *Yoder*, Amish families were required by Wisconsin to attend public schools, which those families believed was “contrary to the Amish religion and way of life.”

they began to accept the Transgender Vision. Jesse Maier, *Queering Eve: Imagining Transgender Acceptance in Orthodox Judaism*, WOMEN IN JUDAISM: A MULTIDISCIPLINARY E-JOURNAL, Volume 19, No. 1, 2 (2022).

406 U.S. at 209. This Court found that the Amish’s “deep religious conviction” was “fundamental” to their faith, which had lasted centuries. *Id.* at 216-17. This faith, the Court held, protected the Amish families from Wisconsin’s compulsory schooling requirement. *Id.* Otherwise, Wisconsin would be “substantially interfering” with the Amish families’ religious beliefs because the law “affirmatively compels them . . . to perform acts undeniably at odds with fundamental tenets of their religious beliefs.” *Id.* at 218.

Wisconsin argued that its compulsory schooling requirement was a law of general applicability, and therefore the Amish must comply. The Court rejected this argument, stating that “there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability.” *Id.* at 220. The Court acknowledged that compulsory schooling was an important state interest, but held that this interest was not sufficiently compelling to override the Amish parents’ free exercise rights. *Id.* at 235.

In following years, some commentators and courts argued that the *Yoder* decision was *sui generis*, and essentially non-precedential. *See, e.g., Miller v. McDonald*, 130 F.4th 258, 270 (2d Cir. 2025); *Mahmoud v. McKnight*, 688 F.Supp. 265, 295 (D. Md. 2023). This notion was disposed of by this Court in *Mahmoud v. Taylor*, 606 U.S. 522 (2025). In *Mahmoud*, the Court denied that *Yoder* was *sui generis* or that it should be confined to its facts, stating that “[t]o the contrary, we have treated it like any other precedent. We have at times relied on it as a statement of general principles.” *Id.* at 558. The

Court then applied *Yoder* to the *Mahmoud* case, finding that the same Montgomery County that is Respondent in this case had violated the free exercise rights of parents by denying them notice or the right to opt their children out of story-times where “LGBTQ+-inclusive” storybooks were read. *Id.* at 569.

The *Mahmoud* court specifically found that *Smith* did not apply. *Id.* at 564. In *Smith*, the Court had announced a new rule that governments may in some cases burden religious exercise pursuant to neutral and generally applicable laws. *Smith*, 494 U.S. at 878. But, the Court specifically excluded situations like *Yoder* from its holding because the case not only involved religious rights, but the right of parents to direct the upbringing of their children. *Id.* at 881. *Mahmoud* explained that, because the “burden in this case is of the exact same character as the burden in *Yoder*,” *Smith* was inapplicable. *Mahmoud*, 606 U.S. at 565. The Court then proceeded to apply strict scrutiny analysis to Montgomery County’s policy, which it failed. *Id.*

In all important ways, Ms. Polk’s situation is the same as the Amish in *Yoder* and the parents in *Mahmoud*. As in *Yoder*, Ms. Polk has orthodox, long-standing beliefs that the state wishes to ignore to advance its policy goals. JA38. She sincerely believes that the Bible instructs that men and women are biologically distinct, and that any effort to change one’s so-called “gender identity” is both impossible and contrary to her faith. She also believes that it is sinful to mislead parents about their children’s desire to transition their gender. JA38.

As discussed in Section II, Ms. Polk’s beliefs were the nearly universal view of all Christians and most other religions from time immemorial until very recently, and are still the predominant view among most people of faith. Requiring Ms. Polk to “affirm” someone’s “preferred pronouns” would cause her to speak against the dictates of the historic Christian faith that she believes in. This is nearly identical to the situation in *Yoder*, where the Court recounted how Wisconsin’s policy would have undermined the Amish’s historic faith. *Yoder*, 406 U.S. at 209-12.

In one important way, Ms. Polk’s situation is even more troubling than the *Yoder* case. *Yoder* did not apparently involve any animus (or even awareness) by Wisconsin against the Amish when it enacted its compulsory schooling requirement. In this case, no one could seriously argue that Montgomery County was not aware of the deep divisions in society about its pronoun requirements, especially among devout religious people. *See, e.g., Janus v. AFSCME, Council 31*, 585 U.S. 878, 913-914 (2018) (calling gender identity a “sensitive political topic” of “profound value and concern to the public” in 2018) (quotation marks and citations omitted); *Meriwether v. Hartop*, 992 F.3d 492, 506 (6th Cir. 2021) (same).

There is one potential distinction between this case and the holdings in *Yoder* and *Mahmoud*. In those cases, the litigants were parents seeking the right to protect their children, while Ms. Polk’s religious liberty claim is based instead on her own religious freedom. But, her decision to not comply with Montgomery County’s policy was also about the protection of parental rights. JA38. Thus, the same

concerns that animated *Yoder* and *Mahmoud* are present here as well.

Moreover, even without Ms. Polk's parental rights claim, *Yoder* and *Mahmoud* should apply. The key point of *Yoder* and *Mahmoud* is that when a substantial, historic, and fundamental religious liberty right is at issue, a law of general applicability should not overwhelm the Free Exercise concerns implicated by a limitation on those rights. *Yoder*, 406 U.S. at 220; *Mahmoud*, at 606 U.S. at 564. As described in Section II of this Brief, Ms. Polk's Christian faith is similarly historic, substantial, and fundamental. This is exactly the sort of "general principle" that *Mahmoud* explained should have precedential value, and should be applied here as well. *Mahmoud*, 606 U.S. at 558.

B. If the Court Determines that *Yoder* and *Mahmoud* Do Not Apply, then it Should Determine that Montgomery County's Policy is not Neutral

In affirming dismissal of Ms. Polk's claim, the Fourth Circuit determined that *Smith* applied because Montgomery County's policy was "neutral" and did not target religious people. *Polk v. Montgomery County Public Schools*, 166 F.4th 400, 415-16 (4th Cir. 2025). The previous two sections make it clear that this claim is ahistorical and wrong. As recounted above, from time immemorial to the 1960's, nearly every major religion in America held the view that God created only two sexes, men and women. Even today, most Christians, Muslims, and many Jews still hold to that view, including Ms. Polk.

See Section II; JA38. When Montgomery County decided to force all of its teachers to lie about first graders' pronouns and to deceive their parents, it knew that that its policy would force many Christians, Muslims, and Jews to choose between following their religious beliefs and keeping their job.

This is wrong. The First Amendment prohibits States from “discriminat[ing] against individuals or groups because they hold religious views abhorrent to the authorities.” *Sherbert v. Verner*, 374 U.S. 398, 402 (1963) (citation omitted). The government may not force someone “to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.” *Id.* at 404. That pressure would unconstitutionally “penalize” people for exercising their First Amendment rights. *Id.* at 406. At minimum, the Free Exercise clause protects “religious observers against unequal treatment.” *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993).

This Court has made clear, moreover, that any understanding of the Free Exercise Clause that stopped there would be too narrow. In fact, the First Amendment gives “special solicitude” to the rights of religious people. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 189 (2012). Even when a State exercises its “broad police power” to further important government interests, the First Amendment imposes stiff limits. *Yoder*, 406 U.S. at 220. “[A]reas of conduct protected by the Free Exercise Clause” are often “beyond the power of the State to control, *even under regulations of general applicability.*” *Id.* (emphasis added).

The strong prohibitions against laws disfavoring religious organizations have remained after *Smith*. In *Fulton v. City of Philadelphia*, 593 U.S. 522, 530 (2021), for example, this Court firmly reaffirmed the principles of religious freedom under the First Amendment. In *Fulton*, Catholic Social Services believed that “marriage [was] a sacred bond between a man and a woman,” and therefore that it could not certify same-sex couples for foster care. *Fulton*, 593 U.S. at 530. Finding this longstanding and historic belief to be evidence of discrimination, Philadelphia refused to enter a contract with CSS unless CSS surrendered that belief. *Id.* at 531. This Court found that Philadelphia “burdened CSS’s religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs,” and held that burden to be unconstitutional. *Id.* at 532, 542.

In a different context, *Carson v. Makin*, 596 U.S. 767 (2022) invoked the same principle. In *Carson*, Maine disqualified schools “from [a] generally available benefit”—tuition assistance—“solely because of their religious character.” *Carson*, 596 U.S. at 780 (2022) (cleaned up). The Court held that “nothing neutral” can be found in a program that operates to intentionally exclude religious groups. *Id.* at 781.

Additionally, a state’s discrimination against free exercise does not become constitutional just because the state hides its motives. The Free Exercise Clause protects against more than just “facial discrimination.” *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (1993). It bars any “subtle departures from neutrality,” “covert suppression of particular religious beliefs,” or

concealed “governmental hostility.” *Id.* (cleaned up); *see also Masterpiece Cakeshop*, 584 U.S. at 634. “Facial neutrality is not determinative” of whether a law is constitutional. *Lukumi*, 508 U.S. 534. An ostensibly neutral policy designed to “disrupt” children’s thinking about sexuality and gender” can unduly burden religion when it does not provide opt-outs to accommodate free exercise rights. *Mahmoud*, 606 U.S. at 529, 538, 561. So, courts must “meticulously” survey government action to bar any “religious gerrymanders.” *Walz v. Tax Comm’n of City of N.Y.*, 397 U.S. 664, 696 (1970) (Harlan, J., concurring).

Montgomery County’s policy may be facially neutral, but that surface-level view does not mean it satisfies the demands of the Free Exercise Clause. See *Yoder*, 406 U.S. at 220. The First Amendment protects Ms. Polk against Montgomery County’s thinly veiled “governmental hostility,” *Lukumi*, 508 U.S. at 534, towards her religious beliefs about gender identity. This hostility is clearly seen by Montgomery County’s response to Ms. Polk’s thoughtful request for religious accommodation based on her sincerely held religious beliefs. In her application, she outlined the deeply held basis of her beliefs and offered to call transgender students by their chosen name instead of their given name. JA85-86. Montgomery County failed to acknowledge these beliefs in any way and refused to offer any substantive accommodation. JA87. Instead, Montgomery County accused Ms. Polk of not treating her students with “care and respect” and termed Ms. Polk as unwilling to “abide or follow” its anti-discrimination policies. JA93, 107. To call Ms. Polk’s sincere, fundamental, and historically

grounded religious beliefs discriminatory would allow governments to label any religious practice discrimination. For example, any religion's disagreement with another religion's beliefs (which is definitional) could, under that logic, be termed discriminatory by Montgomery County. The First Amendment forbids Montgomery County's "covert suppression" of religious views. *Lukumi*, 508 U.S. at 534.

All of this Court's free exercise precedent points the same way: Montgomery County's policy must face strict scrutiny, which it will almost certainly fail to satisfy.

CONCLUSION

For the above reasons, and those stated in the cert. Petition, this Court should grant the petition.

Respectfully submitted,

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