IN THE SUPREME COURT OF THE UNITED STATES

Spring Term, 2025

SUSAN AND TEDDY AKEL; VALENTINE AND JORGE SUAREZ; AND TIFFY AND ROGER ALTMAN IN THEIR INDIVIDUAL CAPACITIES AND EX REL. THEIR MINOR CHILDREN,

Petitioners,

v.

TOURVANIA DEPARTMENT OF EDUCATION; SIDNEY JONES IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT OF TOURVANIA PUBLIC SCHOOLS; AND DESERIEE SOTO AND LAURA MCQUILLAN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE BOARD OF EDUCATION,

Respondents,

On appeal from the United States Court of Appeals for the Eighteenth Circuit

BRIEF FOR THE PETITIONER

Team 11
Brief for the Petitioner

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QUESTIONS PRESENTED

I. Whether the Policy mandating classroom instruction using LGBTQ+ inclusive storybooks, without notice or an opt-out provision for religious objections, violates the Free Exercise Clause of the First Amendment?

II. By what standard should the Court assess a claim that the Policy violates the parents' fundamental rights to direct the education and upbringing of their children, and under that standard, whether the Policy violates those rights?

STATEMENT OF THE CASE

The current action is an appeal of the United States Court of Appeals decision for the Eighteenth Circuit rendered on December 11, 2024. R-15. The Plaintiff-Petitioners, Susan and Teddy Akel, Valentina and Jorge Suarez, Tiffany and Roger Altman, and their minor children (hereinafter "the Parents" and/or "the Children"), brought this suit pursuant to 42 U.S.C. § 1983. R-2. The Parents allege the LGBTQ+ inclusive materials taught to children in pre-Kindergarten through eighth grade (hereinafter "the Policy") violated: (i) their rights under the Free Exercise Clause of the First Amendment, and (ii) their fundamental right to parent pursuant to the Substantive Due Process Clause under the Fourteenth Amendment. R-2-3.

The Defendants-Respondents, Tourvania Department of Education, Sidney Jones in her official capacity as superintendent of Tourvania Public Schools, Deseriee Soto and Laura McQuillan in their official capacities as Members of the Board of Education (hereinafter "the School Board"), deny the principal allegations and affirmatively allege the Policy comports with relevant constitutional standards. R-3. The Parents moved for judgment on the pleadings pursuant to Federal Rules of Civil Procedure 12(c) and the School Board opposed. *Id*.

At the United States District Court for the District of Tourvania, the court correctly held for the Parents on both claims, asserting: (i) the School Board sought to suppress the religious view on societal issues embedded in religious discourse and replace those views with secular orthodoxy, and (ii) the parental right to choose is deeply rooted in this Nation's history and tradition thereby exposing the Policy to strict scrutiny review which it fails. R-11, 13-14.

The School Board timely appealed the decision and order of United States District Court for the District of Tourvania dated November 24, 2024, granting the Parent's motion under Rule 12(c) of the Federal Rules of Civil Procedure. R-15. The School Board contested the District

Court's decision that the Policy violated the Parents and the Children's rights under the Free Exercise Clause of the First Amendment and the Fourteenth Amendment Due Process Clause. *Id*. The Circuit Court first addressed the Free Exercise Clause violation holding the Parents failed to demonstrate the Policy "significantly burden[ed]" their religious exercise. R-19. In so holding, the court determined the Parents Free Exercise Clause was not entitled to strict scrutiny because the "coercion" the Parents refer to was "merely exposure, or [] highly-influential exposure." R-18.

Regarding the Substantive Due Process Clause of the Fourteenth Amendment, the Circuit Court held the Policy does not impede the Parents from exercising their right to direct the education and upbringing of their children. R-20. In so holding, the Circuit Court declined to hold the parental right to choose as an unenumerated fundamental right pursuant to the Constitution and instead enlisted a balancing test between the School Board and Parent's interests. R-20-21. Ultimately, the court determined the Policy does not infringe upon childrearing in the privacy of the Parent's home. *Id*.

In his dissent, Judge Berman saw the controversy plainly and asked whether the Parent's constitutional rights were jeopardized. R-22. Answering in the affirmative, Judge Berman identified the moral conundrum the Parents found themselves in – choosing between a public education or alternative education – and decided in line with the United States District Court for the District of Tourvania. R-23.

JURISDICTIONAL STATEMENT

The United States District Court for the District of Tourvania had original jurisdiction over the instant matter as a federal question pursuant to 42 U.S.C. § 1983. The District Court granted the Appellants-Plaintiff's motion under Rule 12(c) of the Federal Rules of Civil

Procedure, holding that "it can hardly be disputed that respect for the parent-child relationship 8uand the right of the parents to make decisions about their children's upbringing is deeply rooted in this Nation's history and tradition. R-13. The Appellees-Defendants gave notice of a timely appeal. Subsequently, the United States Court of Appeals for the Eighteenth Circuit reversed the District Court's decision, holding that the Policy does not significantly burden the Appellants-Plaintiffs' religious exercise and the parental right to choose is not an unenumerated fundamental right protected by the Substantive Due Process Clause of the Fourteenth Amendment. R-19-21. The Appellants-Plaintiffs submitted a petition for certiorari regarding the judgment the Eighteenth Circuit of Appeals issues, which this Court granted. R-24.

STATEMENT OF THE FACTS

I. FRAMING OF THE POLICY

Tourvania has a large public school system and a diverse student population. R-3. In the fall of 2022, the School Board forced upon their classroom teachers more than twenty (20) new "LGBTQ+ inclusive storybooks (hereinafter "Storybooks"). *Id*. The School Board's regime required the Storybooks to be included in all classrooms from pre-kindergarten through eighth grade. *Id*.

These Storybooks were not discrete in what they sought to accomplish with titles like "Diversity Captain!," "Crossed Galaxies," and "The Adventures of Alex and Their Pronouns." *Id*. However, the Defendants did not stop there; some Storybooks were explicitly left for particular grade levels. R-3-4. The Storybooks pervasively taught children as young as three about proper bathroom usage and asked ten-year-olds to discuss the meaning of "binary" and "non-binary" identities. *Id*. One Storybook was even a call to action, advocating for fifth-grade

students to do what feels best even if it does not make sense and to subvert the views and beliefs of their parents. R-4.

The Proclaimed Goal of the Storybooks is to "introduce children as young as pre-kindergarten to concepts of gender transitions, gender fluidity, non-binary identities, and same-sex relationships." *Id*. The Board's goal and course change from the historical course curriculum were mandatory for *all* educators. *Id*. The Board identified potential backlash and implemented a system of pre-determined responses to support educational professionals in navigating "sensitive questions." *Id*. However, the pre-determined responses served two objectives: (1) to alleviate the pressure from their educational professionals and (2) to "*promote the Policy's LGBTQ+ inclusive message while discouraging other views*." *Id*.

However, the Policy had a fatal flaw – it failed to consider the devout religious beliefs of students and their parents. *See* R-5. Rightfully so, the Parents recognized the coercive effects of the Policy on the Children. *Id*. The Altmans are Orthodox Jews, and the Policy wholly undermined the core tenant of their faith – "that romantic love and marriage should exist only between members of the opposite genders." *Id*. The Suarez family, who practice Catholicism and Orthodox, believe the exposure to the Storybooks and the Policy identifies cultural stereotypes instead of praising devout religious beliefs grounded in the biologically sexed body given at birth. *Id*.

The most egregious departure from religious values is the Akels, who are devout Muslims. R-5. In the Muslim faith, the parents must instill religious principles in their children. *Id*. Requiring the use of the Policy in the Defendants' school system did not only counteract the Akels' obligation, but it was "specifically prohibited by their family's religion." *Id*.

II. THE OPT-OUT PROVISION

When the Policy was first introduced, the School Board had an obligation to provide all parents with notice and the opportunity to opt their children out of classroom activities utilizing the Storybooks. R-5-6. The School Board was bound to the 2022-2023 Guidelines for Respecting Religious Diversity (hereinafter "the Former Guidelines"), but before 2023-2024, the School Board repealed the Former Guidelines. *Id*. This had dire consequences – parents were no longer aware of what their children were learning and could not ask to have their children excused. *Id*. Now, instead of being fully aware and directing their child's education, the Families were completely unaware of the pro-LGBTQ+ indoctrination that fundamentally opposes their religious beliefs. *Id*.

SUMMARY OF THE ARGUMENT

The Parents and Children have a Constitutional right to the free exercise of their religion without undue infringement from the School Board. The First Amendment mandates this right, "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." U.S. Const., amend. I. Regulations that infringe these rights can only escape strict scrutiny "under the Free Exercise Clause so long as they are both neutral and generally applicable." *Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 523 (2021). The School Board's Policy burdens religious exercise and is neither neutral nor generally applicable.

The School Board's Policy is inherently coercive and places an unjustifiable burden on the Children's exercise of their religious beliefs. The Policy admits to seeking the promotion of its "LGBTQ+ inclusive message while discouraging other views." R-4. The policy change, removing the religious opt-out, places the Parents in a position of either financial burden or religious nonadherence. Suggesting the Children forego their right to a public school education

to protect their beliefs is an unacceptable divergence from precedent. Allowing such a violation would be inconsistent with this Court's decisions in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), *Thomas v. Review Bd. Of Indiana Employment Sec. Division*, 494 U.S. 872 (1990), and *Lee v. Weisman*, 506 U.S. 577 (1992).

The Policy is not neutral nor generally applicable as it targets the Children because of their belief systems. This Court has established that, "[M]ere compliance with the requirement of facial neutrality" is insufficient. *Church of the Lukumi Babalu Aye, Inc. v. City of Hiaeah*, 508 U.S. 520, 534 (1993). Removing the opt-out provision after it had been functional the year prior indicates discretionary judgement on the importance of this right to the religious Children. The Policy also leaves discretion as to which Storybooks are read and how to guide group discussions in the hands of the teachers. R-4. This presents uncertainties to Parents, who are not obligated to suppress their views to "yield to those of the teacher." *Morrow v. Wood*, 35 Wis. 59, 63 (1874). Determining this Policy to be neutral and generally applicable contradicts the judicial interpretation present in *Yoder* and *Lukumi*.

The burden imposed coupled with the lack of neutrality and general applicability demand strict scrutiny review. This Court has stated that 'A government policy can survive strict scrutiny only if it advances "interests of the highest order" and is narrowly tailored to achieve those interests."' *Fulton*, 593 U.S. at 541. The School Board has not proven its interest sufficiently compelling nor can it be advanced as the least restrictive means to accomplish their goal. This interpretation reflects this Court's judgement in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), where the policy goals of Harvard University were deemed too unclear and unmeasurable. Merely possessing the goal of diversity is insufficient within the context. Even if the Policy was contrived to be not unduly burdensome to

the religious Children, deemed neutral and generally applicable, the Policy still fails rational basis review based on its logical incongruence.

The parental right to choose the destiny of their children is "deeply rooted in this Nation's history and tradition," making it an unenumerated fundamental right. *Washington v. Glucksberg,* 521 U.S. 702 (1997). The Fourteenth Amendment clarifies that "[no] State shall deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1.

The School Board's Policy departs from this Nation's history and tradition because it fails to recognize the parental right to choose. In 1215, the Magna Carta recognized the responsibility of decedents to leave their children and wives land and "movable goods" to ensure their stability. Magna Carta 1215, cl. 11, 26. The Magna Carta spoke regarding financial stability, but in doing so, it conditioned that a decedent must pass down their riches. Also, in *Blackstone Commentaries*, Sir William Blackstone recognized the parental duty to maintain their children and that children have the "perfect right" to receive maintenance from their parents. [CITE]. Finally, state legislatures across this Nation have enacted legislation cementing the parental right to choose.

Stare decisis supports the Parent's identification of the parental right to choose as fundamental. *Meyer v. Nebraska* recognized that the Fourteenth Amendment protected the right to establish and "bring up children." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Two years after *Meyer*, this Court again held in *Pierce* that the child is not a mere creature of the state and that parents are responsible for ensuring readiness for adult obligations. *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 535 (1925). Throughout the approximately one hundred years following *Pierce*, this Court consistently recognized parents'

role in their children's upbringings. *See Stanley v. Illinois,* 405 U.S. 645 (1972); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

The Policy is entitled to strict scrutiny review and fails. Strict scrutiny requires the School Bard articulate a compelling interest that is narrowly tailored. *Griswold v. Connecticut*, 381 U.S. 479, 497 (1965) (Goldberg, J., concurring). Applying *Students for Fair Admissions, Inc.,* this Court should align itself with precedent to determine that the School Board's interest is not compelling. As in *Students for Fair Admissions, Inc.*, the School Board has forwarded a Policy intending to develop empathy and diversity in the Children. R-4. The Policy forwards an impermissive, immeasurable, and unconstitutional compelling interest.

Even if this Court holds that the School Board forwarded a compelling interest, the Policy is not narrowly tailored. A policy is narrowly tailored when no less restrictive means exist to achieve a goal and is neither over-inclusive nor under-inclusive. *Griswold,* 381 U.S. at 497 (Goldberg, J., concurring). When the School Board revoked its Former Guidelines, the Policy became an inescapable black box that forced the Parents to decide between their religious views and public education. This is precisely what this Court prohibits. *Yoder*, 406 U.S. (1972); *Keyes v. School Dis. No. 1, Denver, Colo.*, 413 U.S. 189 (1973).

A decision for the School Board will disarray nationwide public school systems. The floodgates will open, and actors with improper motives will impose their will on the impressionable minds of children as young as pre-kindergarten.

ARGUMENTS

I. THE IMPOSITION OF THE STORYBOOKS WITHOUT NOTICE OR AN OPT-OUT PROVISION VIOLATES THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT.

a. The Policy goes beyond mere exposure, subjecting the Children to coercion that impermissibly burdens their religious exercise.

The School Board transgressed the Constitution's Free Exercise Clause by removing the religious opt-out policy. The United States is a nation that has revered and constantly pursued freedom since its inception. Consequently, this Court has long asserted, "Freedom of thought, which includes freedom of religious belief, is basic in a society of free men." *United States v. Ballard*, 322 U.S. 78, 86 (1944). The First Amendment establishes what this freedom mandates in the context of religion: "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." U.S. Const., amend. I. This Constitutional standard frees citizens to live out their beliefs as "the performance of (or abstention from) physical acts" without an undue burden. *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 877 (1990). Allowing the School Board to violate such profound rights brings the sanctity of the Constitution itself into question.

The Courts have already clarified that when it comes to what someone believes, it is not their job to determine the centrality of the belief in the faith system or its sincerity. *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 699, (1989). Ergo, religious beliefs should be held as sincere and not disputed on their theological grounds. *Id.* The culmination of this Court's precedent articulates that religious practitioners have the right to observe their religion without it being unduly burdened. When a state "conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to

violate his beliefs, a burden upon religion exists." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 717–718 (1981).

Central tenets of religious freedom in American jurisprudence are under attack by the School Board. The School Board violated religious freedoms by removing the opt-out provision from their "Guidelines for Respecting Religious Diversity." R-5. The opt-out previously gave parents notice and an opportunity to opt their child out of classroom instruction involving the Storybooks. *Id.* The Parents have expressed that the ideology espoused by these Storybooks directly contradicts their faith and how it is to be practiced. R-5 The Storybooks expressly discuss concepts of gender, sex, types of relationships, transitioning, and different sexual behaviors. R-4. The Parents state that the Storybooks are "specifically prohibited" in their religion and that they are "obligated" to instill the foil of this message. R-5. Exposure to such content for religious children in grades pre-kindergarten through eighth grade is impermissibly coercive, prompting children to believe things antithetical to their religious teachings.

The School Board's contention that teaching this content constitutes mere exposure and is therefore insufficient to burden religious practice runs contrary to logic. What the School Board refers to as "mere exposure" is a teaching curriculum that openly admits its motive to infuse particular beliefs. R-4,10. The School Board effectuates its objectives by providing teachers with pre-prepared responses to student questions. R-4. These scripted answers "promote the Policy's LGBTQ+ inclusive message while discouraging other views." *Id.* One book expressly educates students on gender transitioning while concurrently advocating for a child-knows-best approach and discouraging children from looking to adults for guidance. R-4.

This Court has established that "the [First] Amendment embraces two concepts,-freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot

be." *Ballard*, 322 U.S. at 86. The Policy at issue expressly promotes a specific set of beliefs. These ideas relate to a perspective on fundamental components of reality, namely what a man and a woman are and their relation to one another. When issues encroach upon religious territory, the First Amendment demands pause. This can only be especially true when applied to ideas that have yet to reach consensus in government. *Obergefell* was decided in 2015, just 10 years ago. *See Obergefell v. Hodges*, 576 U.S. 644 (2015). The Supreme Court still has yet to take a definitive stance on the gender transitioning of minors. Mandating religious Children learn such complex and nuanced topics while explicitly promoting it takes on the modality of indoctrination. Coercion need not be direct; it can take on myriad forms.

In *Lee v. Weisman* a prayer was said at a public high school graduation. *Lee v. Weisman*, 505 U.S. 577, 593, (1992). This Court determined the act to be unlawful, stating that the "school district's supervision and control of a high school graduation ceremony places public pressure, as well as peer pressure, on attending students to stand as a group or, at least, maintain respectful silence during the invocation and benediction. *Id.* This pressure, though subtle and indirect, can be as real as any overt compulsion." *Id*. at 593. If this Court can determine that high school students who passively listen to a prayer are put in a position of pressure and compulsion, this same principle must be applied evenly to all ages. *Id.* With such malleable minds, it is unrealistic to espouse the idea that children in pre-kindergarten would not be similarly compelled. This compulsion would occur while the Children listen to their teacher, as part of their English Language Arts curriculum, explain the nuances of gender identity in the presence of their peers during motivated discussions.

The element of peer pressure from other students and the custom that the words teachers state are generally accepted to be accurate, especially among younger students, all suggest

coercion. The principle nature of a teacher is to impart knowledge to students, who typically do not assume other subjects, such as history and math, are not as they are said to be. Although there is the physical capability to disbelieve what is being taught, it has been severely hindered by the surrounding factors. Furthermore, "Research in psychology supports the common assumption that adolescents are often susceptible to pressure from their peers towards conformity, and that the influence is strongest in matters of social convention." *Id.* at 593. Given these inescapable realities, the School Board has placed an unacceptable burden on the students' Free Exercise rights. Coercion is not always direct and "the State may no more use social pressure to enforce orthodoxy than it may use direct means." *Weisman*, 505 U.S. at 578.

The urgent concern behind the policy change, removing religious opt-outs, springs from the overlap between the school's curriculum and religious instruction. When topics overlap, and the school does not accommodate the religious beliefs of impressionable young kids, students are forced to either participate or protest by leaving the school entirely. Coercion is in effect. If a belief is what someone holds to be true, then teachers are heavily influencing their students' beliefs. Meanwhile, the Parents' religions obligate them to instruct their children on their beliefs. R-5. The motivation behind this directive is to ensure their prescripts stick with the Children throughout their lives. R-5. This Court acknowledged that having different guidance take root during a "crucial and formative adolescent period of life" speaks irreparable harm to the children's religious journey. *Wisconsin v. Yoder*, 406 U.S. 205, 211 (1972).

In *Thomas v. Review Bd. Of Indiana Employment Sec. Division* a Jehovah's Witness quit his job after his position got changed to one that violated his religion, namely a position that involved creating war materials. *Thomas*, 450 U.S. at 719. The plaintiff fought for unemployment benefits after losing his job, this Court held that the plaintiff could not be denied

these benefits because of his Free Exercise Clause protection. *Id.* This Court rested its conclusion on the axiom that without an interest sufficiently compelling, there was no justification to burden his religious liberties. *Id.* However, one of the concerns advanced was that "widespread unemployment" would be created from allowing the plaintiff his unemployment benefits. *Id*.

This corresponds to the importance of religious freedoms, but more pertinently, that concerns surrounding the school's curriculum are insufficient. Although it has been suggested that allowing for religious opt-outs, which had been functional the year prior, would "leave public education in shreds," these concerns are incongruent fear-mongering similar to what was stated in *Thomas. Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707 (1981). Such ominous predictions are founded on a misunderstanding of why this issue is unique. R-21. This is not mere exposure to contradictory ideas, as could be taking place during any lesson. The Storybooks content overlaps with religious differences in instruction and sets out to infuse particular beliefs. R-4. This is displayed through the content of the material chosen as well as through the scripted answers that the teachers are provided with. The need for scripted answers only further evidence that the School Board knows it is treading on a recognizably sensitive subject.

Finally, to allege that "'children are already learning about LGBTQ+ topics because "messages about gender are everywhere,"' is to misinterpret seeing people living a certain way in society with having a particular understanding or view on said people. R-4. Viewing something and being taught how to understand it are uniquely different. This is why students can learn about other faith systems as is relevant in history, but cannot have these beliefs promoted to them in public schools. U.S. Const., amend. I. Additionally, to say that children are already learning about such topics prompts the question of from whom? If parents decide to teach their

child about LGBTQ+ doctrine, they are free to do so, but if a parent elects not to and shelters their child while only sending them to public school, they should not live in fear of someone else breaking ground on the subject with their child. It can be acknowledged that the goal of inclusivity is admirable, but it need not be done in a way that abridges the fundamental Constitutionally imbued rights of the students.

b. <u>The Policy is not neutral or generally applicable because it targets particular religions and is discretionary.</u>

The School Board cannot make discretionary value judgments on their students' beliefs. Policies that burden religious freedoms can only escape strict scrutiny if "under the Free Exercise Clause so long as they are both neutral and generally applicable." *Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 523 (2021). It has long been established that "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Rev. Bd.*, 450 U.S. 707, 714 (1981). There is precedent validating the interpretation that although a policy may seem neutral, an application that does not meet this standard is a violation. This has been consistently reiterated, "[a] regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972); *Walz v. Tax Comm'n*, 397 U.S. 664, 666 (1970). Again, courts state explicitly that,"[M]ere compliance with the requirement of facial neutrality" is not sufficient. *Lukumi*, 508 U.S. at 534.

This Court has readily established that "the government may not compel affirmation of religious belief, punish expression of religious doctrine it believes to be false, impose special disabilities on basis of religious views or religious status, or lend its power to one or other side in controversies over religious authority or dogma." *Smith,* 494 U.S. at 877. The School Board

expressly violated this precedent. Unfortunately, the courts seem to have also turned a blind eye on the vast differences between religions, deciding instead to operate as though they are a monolith. However, the courts are prohibited from targeting or assisting particular religions with their policies. *Id.*

Here, there is a glaring lack of acknowledgment of the diversity of beliefs within society. Numerous religions praise the inclusivity teachings present in the Storybooks content, which the school is actively working to promote. R-4. Religious faiths that align with the school's messaging include the United Church of Christ (UCC), Unitarian Universalism (UU), Reform & Reconstructionist Judaism, Metropolitan Community Church (MCC), Episcopal Church (USA), and certain Buddhist traditions. These groups affirm LGBTQ+ inclusions and would benefit from the advanced curriculum. This directly contradicts the posture of the courts as "The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position." *Ballard*, 322 U.S. at 87. Again, the court has expressed that the government cannot levy its power on any side in a controversy over religious dogma. Allowing the School Board to promote diversity and inclusion by endorsing specific beliefs amid controversy concerning religious dogma directly violates this principle.

This imposition is an impermissible violation that can hardly be considered neutral in its application as it contradicts "the State's duty under the First Amendment not to base laws or regulations on hostility to a religion or religious viewpoint." *Masterpiece Cakeshop v. Colorado C.R. Comm'n,* 584 U.S. 617, 618 (2018). In *Sherbert v. Verner,* the Court states, "If the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect." *Sherbert v. Verner,* 374 U.S. 398, 404 (1963).

Another explicit principle is that policy cannot "target religious conduct for distinctive treatment." *Lukumi*, 508 U.S. at 546. However, the overt discretion over these regulations is inherently partial, triggering strict scrutiny. *Fulton*, 593 U.S. at 537-538. Even if it were accepted that the Storybook content was not inherently religious in nature, taking away the right to a religious opt-out implicitly displays the opinion of the School Board. More specifically, it shows their decision to place people's moral convictions below their cause and convenience. This can be flagged as Constitutional infringement given that "The Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion." *Lukumi*, 508 U.S. at 534. Furthermore, the School Board also leaves discretion as to which Storybooks are read and how to guide the group discussions in the hands of the teachers. R-4. This presents uncertainties to Parents, who are not obligated to suppress their views to "yield to those of the teacher." *Morrow v. Wood*, 35 Wis. 59 (1874).

Furthermore, the original policy, which the Parents request, only requires the school "to make reasonable and feasible adjustments to the instruction program." R-5. Regardless of relevant considerations, the School Board simply took away the rights of the students who had opted out. This displays that the School Board was aware of the students who had previously used their constitutionally merited religious exemption when they disallowed it. Therefore, removing the religious opt-outs functionally targeted the students who used their religious exemption. In *Fulton v. City of Philadelphia, Pennsylvania*, the court established that state action is "not generally applicable if it 'invite[s]' the government to consider the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions.'" *Id*. at 533 (quoting *Smith*, 494 U.S. at 884). Here the School Board was aware of why students opted out and assessed it as below their concerns.

To claim that this change in school policy is not unduly burdensome and coercive is to claim that it is not difficult for the Parents to either bend their morals to keep their Children in the public school or to cough up money for a private education, or even more demanding- to become a teacher themselves, homeschooling their children. Such proclamations are apathetic and disconnected from the average American's life, many of whom work and do not have the time nor the funds to pursue either alternative. Such a Catch-22 is surely not what was intended by the Court when it said, "Freedom of thought, which includes freedom of religious belief, is basic in a society of free men." *Ballard*, 322 U.S. at 86. This sentiment is infused into the proclamation that "The Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion." *Masterpiece*, 584 U.S. at 173. The School Board cannot meet such a standard for neutrality.

c. <u>The Policy fails strict scrutiny standards because it is not narrowly tailored and does not promote a compelling government interest.</u>

The School Board cannot burden the exercise of religion without sufficient justification. Although the Policy sets out a commendable goal of promoting empathy and understanding, it does not justify Constitutional infringement. R-4. Policies burdening religious freedoms can only escape strict scrutiny if they are "both neutral and generally applicable." *Fulton*, 593 U.S. at 523. Given the School Board's Policy fails to meet this criterion, it must now succumb to "the most demanding test known to constitutional law," strict scrutiny. *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

Strict scrutiny requires policies to be narrowly tailored to suit a compelling government interest. Furthermore, under the Free Exercise Clause, a municipality may not refuse to extend an exemption system to cases of religious hardship without compelling reason. See *Sherbert v.*

Verner, 374 U.S. 398, 406 (1963). Here, the School Board's reasoning is not only insufficiently compelling and not narrowly tailored, but it undermines their own goal.

Removing the religious opt out policy is not the least restrictive means that could have been used to promote diversity and inclusion. Conversely, it could not be further from the least restrictive means, as was shown by the previous year's inclusion of an opt-out provision. R-5. However, it has gone so far that it has come back around to undermine its own cause. Removing the religious opt-out targets students of particular religious faiths and directly causes division as it forces students to either bend their beliefs or leave the public school system entirely, measurably diminishing diversity.

This Court places the highest standard on policies that encroach Constitutional rights, ensuring that 'A government policy can survive strict scrutiny only if it advances "interests of the highest order" and is narrowly tailored to achieve those interests.' *Fulton*, 593 U.S. at 541. The School Boards' interests include promoting diversity and inclusion with their LGBTQ+ curriculum and reducing classroom disruptions and absenteeism due to opt outs. Although these interests have varying degrees of merit, they fall significantly below the standards of strict scrutiny review. In *Students for Fair Admissions, Inc.*, 600 U.S. at 143, this Court found the admissions policy unconstitutional despite the fact that the goal was diversity.

Furthermore, when assessing the purposes of the school's policy, they found it "unclear how courts are supposed to measure any of these goals." *Id.* at 214. In *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ*., 82 F.4th 664, 671–72 (9th Cir. 2023), the court determined that although policies aimed at anti-discrimination are important, they cannot be "utilized in a manner that transgresses or supersedes the government's constitutional commitment to be steadfastly neutral to religion." Here, the School Board has stated goals but

not established that they are up to the challenge of proving that there is no better way to reach them or that they are of such pressing importance so as to escape the Constitutionally imposed standard of strict scrutiny. This Court has already invalidated goals that "fail to articulate a meaningful connection between the means they employ and the goals they pursue" *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll*., 600 U.S. 181 (2023).

The School Board's excuse for disallowing the opt-out provision is alleged concerns about disruptions and absenteeism. R-7. If the School Board is truly concerned about potential "absenteeism" and "disruptions" they could have modified their approach to the material or substituted it with more general inclusive messages. *Id*. Despite rhetoric stating that students in the opt-out group will cause problems for the school system, this policy has already been functionally in place and operating. If LGBTQ+ empathy was pressing enough to mandate, there is no explanation as to why the original opt-out provision had ever been acceptable.

It has consistently been made clear that this change in policy places a clear burden on religious students. It has also been shown that the school is able to implement the opt-out provision but has used its discretion to take away this right despite being aware of the Children exercising it the year prior. When the change in policy took place there was no dire need asserted for this change, indicating a damning shift in perspective. Therefore, it fails to justify itself, and the policy change of the School Board must be reversed to the way it once was. Such decisions are not neutral or generally applicable. Furthermore, strict scrutiny requires that a policy be narrowly tailored to suit a compelling government interest; this is not met as the policy is impermissibly broad and serves no compelling government interest.

d. <u>The Policy fails rational basis review because it is based on unsound reasoning.</u>

It has been established that strict scrutiny should be applied to the foregoing facts, however, the application of rational basis review would yield the same result. Rational basis review necessitates "that the law at issue be rationally related to a legitimate governmental interest." This is a low standard that the School Board still cannot meet. The School Board's Policy goal to "help young people develop empathy for a diverse group of people and learn about identities that might relate to their families or even themselves" is insufficient because it is self-defeating. R-4.

In practice, the school's policy promotes segregation. The Parents previously had the right to notice and an opportunity to opt-out of Storybook instruction on behalf of their Children. R-5. This provision was in place to protect the integrity of religious exercise from the Storybook's content and subsequent discussion. *Id*. The School Board repealed this right from their "Guidelines for Respecting Religious Diversity," declaring they would no longer provide accommodations. *Id.* Preventing Children of a particular religious persuasion from the opt-out forces them to either be home-schooled or attend private institutions. The effects of this Policy only decrease the diversity of beliefs in public schools. In a quest for acceptance, the School Board targets its young students and drives them out of the public school system they would otherwise attend. This Policy hardly reflects "empathy" in such cases. R-4.

The School Board has made the bold assertion that the Children are "already learning" about topics of gender and sexual identity because messages about gender are "everywhere." R-4. Assuming this to be true leads to the conclusion that the Storybooks themselves are a pointless drain on classroom time. If the Children are familiar with such concepts, the need to further educate students in the middle of the English Language Arts curriculum becomes unclear. If the

Children are meant to master an understanding of gender, it indicates the need for an entirely new subject. The implementation of this policy undermines its goal. If this is the case, it can hardly be rationally related to anything, as the policy itself is irrational.

II. THE PARENTAL RIGHT TO CHOOSE IS "DEEPLY ROOTED IN THIS NATION'S HISTORY AND TRADITION" AND IS THEREFORE ENTITLED TO STRICT SCRUTINY TREATMENT.

A parent's right to choose is "deeply rooted in this Nation's history and tradition," making it an unenumerated fundamental right granted under the Constitution of the United States. *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997). Decisions regarding a child and their upbringing are best left to their parent[s] or legal guardian. Imposing a state interest in this right is inconsistent with this Court's interpretation of the Substantive Due Process Clause under the Fourteenth Amendment of the United States.

The Fourteenth Amendment is unambiguous: "[no] State shall deprive any person of life, *liberty*, or property, without due process of law." U.S. Const. amend. XIV, § 1. An analysis of the Substantive Due Process Clause has two primary features: (1) the Court protects fundamental rights and liberties which are *objectively*, deeply rooted in this Nation's history and tradition; and (2) the Court requires a "careful description" of asserted fundamental liberty interests. *See Moore v. East Cleveland*, 431 U.S. 494, 503 (1937); *See also Reno v. Flores*, 507 U.S. 292, 302 (1993).

A "liberty" interest cannot be limited to the precise terms of specific guarantees elsewhere provided in the Constitution. *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, 501-502 (1977). Liberty is as a "rational continuum" that protects against all purposeless constraints. *Id*. Family is a unique vessel; it allows the passage of society's most closely held moral and cultural values from parent to child. *Id*.

a. <u>An analysis into this Nation's history and tradition, and *stare decisis* illuminates affirms the parental right to choose is an unenumerated fundamental right pursuant to the Substantive Due Process Clause.</u>

Proving a right is fundamental pursuant to the Constitution, which requires this Court to assess whether a regulation is "consistent with this Nation's historical tradition of" control. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 18-19 (2022). It must be objectively asserted that the right in question is "deeply rooted in this Nation's history and tradition." *Williams v. Attorney General of Ala.,* 378 F.3d 1232 (2004). However, an analysis of history and tradition cannot be facial; history and a policy at issue must share the same principle. *Obergerfell v. Hodges*, 576 U.S. 644 (2015). The Policy forwarded by the School Board does not share the same principle of this Nation's history and tradition. This Nation has intentionally supported the parental right to choose, whereas the Policy aims to wholly negate parental right.

The Magna Carta is one of the earliest historical documents to recognize a parent's legal obligation to control their child's destiny. Clause 11 of the Magna Carta states, "If he [a decedent] leaves underage children, their needs may also be provided for on a scale appropriate to the size of his lands." Clause 26 states, "If no debt is due to the Crown, all the movable goods shall be regarded as property of the deadman, except the reasonable shares of his wife and children."

Although the Magna Carta spoke about financial stability, it did so because there is an age-old recognition that the parental figures *must* (emphasis added) care for their offspring. The operative word in Clause 11 is "if" because it adds a condition that must be met when an event occurs. When John Lackland and Stephen Langton crafted the Magna Carta, they could have implemented far-less conditional language like "could," "may," or "should." However, Lackland

and Langton went a step further, cementing their view and the obligation of a parent to care for their child.

Ninety-seven years before the United States Constitution was first ratified, John Locke published the *Second Treatise of Civil Government*. Locke recognized that "to supply the defects of this imperfect state, till the improvement of growth and age hath removed them, Adam and Eve, and after them, all parents were, by the law of nature, under an obligation to preserve, nourish, and educate the children they had begotten." *Second Treatise of Civil Government*, Chapter VI.

Approximately seventy years after the publication of the *Second Treatise of Civil Government*, Sir William Blackstone published *Blackstone's Commentaries,* aiming to provide an accessible explanation of the English law system. Blackstone articulated that "provid[ing] for the maintenance of their children is a principle of natural law; an *obligation*." An "obligation" elicits a variety of definitions, but all have the same foundation – it is a "legal or moral duty to do or not do something. *Black's Legal Dictionary* 1292 (11th ed. 2019).

Blackstone did not stop there; instead, he stated, "And thus the children will have a *perfect right* of receiving maintenance from their parents." Blackstone could have ended his analysis with the obligation of parents but instead made parental maintenance a "perfect right." Black's Legal Dictionary defines a "perfect right" as a right that is recognized by the law and is fully enforceable. *Black's Legal Dictionary* 1583 (11th ed. 2019) (*See also* "Perfect rights are those which may be asserted in rigor, even by employing force to obtain the execution, or to secure the exercise thereof in opposition to all those who should attempt to resist or disturb us. Thus, reason would empower us to *use force against anyone who would make an attack* on our

lives, our goods, or *our liberty*." 1 Jean-Jacques Burlamaqui, *The Principles of Natural and Politic Law* 52 (1748; Thomas Nugent trans., 1823).

Furthermore, the United States House of Representatives declared, "[it is] the fundamental right of parents to direct the education of their children is firmly grounded in this Nation's history and traditions." H. Res.547—109th Congress (2005-06). This is further verified by the recent recognition by State legislatures of the fundamental importance of the parental right to choose.

In 2022, Utah enacted the Parental Rights Amendment, creating a comprehensive statutory scheme recognizing the controlling dynamic of the parent or guardian over their child. Utah Code states, "Under *both* the United States Constitution and the constitution of this state, a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children." U.C.A. 1953 § 80-2a-201(1)(a). Coupled with the Utah state law, additional, less overt statutory schemes recognize a parent or guardian's role in their child's upbringing. But Utah has just been the most recent example. Through this Nation, state legislatures have enacted appropriate and constitutional legislation to ensure the parental right to choose, and one's freedom of religion are both cemented in this Nation's bedrock. *See* Ala. Code §§ 16-40A-5; Ala. Code § 16-41-6; Ark. Code § 6-16-1006; Fla. Stat. § 1001.42; Fla. Stat. 1003.42; Ind. Code § 20-30-5-17; Ind. Code § 20-30-17-2; Iowa Code § 256.11; Iowa Code § 279.80; Ky. Rev. Stat. § 158.1415; Md. Code Educ. § 7-301; Minn. Stat. § 120B.20; Mont. Code § 20-7-120; Tenn. Code § 49-6-1305; Tenn. Code § 49-6-1307; Tenn. Code § 49-6-1308.

When *Dobbs* was decided, this Court reasoned that "The Constitution makes no reference to abortion, and any constitutional provision implicitly protects no such right." *Dobbs v. Jackson Women's Health Org.,* 597 U.S. 215, 231 (2022). The Appellate Court failed to consider that a

parental right to choose falls into the second category of protected rights articulated by *Dobbs*, which is "a list of select fundamental rights that are not mentioned anywhere in the Constitution." *Id*. at 237.

Dobbs reasoned that before the 20th century, there was no support in American law for the constitutional right to obtain an abortion. *Dobbs*, 597 U.S. at 241. The Court exclaims that neither a treatise nor federal or state court recognized such a right. *Id*. Abortion was so counter to American idealism that it was illegal in nearly every State. *Id*. However, that same conclusion cannot be drawn for the right to parental control.

History supports the Parents. *Dobbs*'s requiring pre-20th-century support as a requisite for "history and tradition" supports the Parent's position and demonstrates that the parental right to choose is an unenumerated fundamental right. Making this determination does not undercut nor reverse *Dobbs*; instead, it strengthens its position, aligning with this Court's storied precedent of parental decision-making. *See Dobbs,* 597 U.S. 215 (2022); *See also Yoder*, 406 U.S. 205 (1972); *Skinner v.* Oklahoma, 16 U.S. 535 (1974); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-640 (1974) ("This Court has long recognized that freedom of personal choice in matters of marriage is one of the liberties and *family life* (emphasis added) is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.").

i. ***Stare decisis* can guide this Court to a conclusion opposite to what the Circuit Court declared.**

Stare decisis supports the Parents' assertion that the right to choose the upbringing of their children is an unenumerated fundamental right. In 1923, this Court declared under the Fourteenth Amendment of the Constitution that "liberty" guarantees the "right to establish a home and *bring up children* (emphasis added), to worship God according to the dictates of his own conscience." *Meyer*, 262 U.S. 390, 399 (1923).

In *Meyer v. Nebraska*, the state attempted to enforce an act relating to the teaching of a foreign language in its public schools. *Id*. at 396-397. Nebraska identified a problem: some residents who migrated from different nations were teaching their children the language of their native land. *Meyer v. State*, 107 Neb. 657, 102 (1922). The Nebraska Supreme Court decision clarified that teaching German in a public school "does not unlawfully interfere with [] religious freedom as guaranteed by the Constitution." *Meyer*, 107 Neb. 657, 103 (1922). This Court recognized the fallacy of the State Supreme Court and wrote the wrong – their motivation connected to the fundamental right to choose. *See Meyer*, 262 U.S. 390 (1923).

But this Court did not stop with *Meyer*. In *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary,* the Court stated, "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce*, 268 U.S. at 535. Using the principle established in *Meyer*, this Court determined that the Compulsory Education Act of 1922 "unreasonably interfer[ed] with the liberty of parents and guardians to direct the upbringing and education of children under their control" by requiring all children to attend public schools. *Id*. at 534-535, 529-530.

In the seminal case of *Wisconsin v. Yoder*, this Court correctly held that parents have a constitutional right to assume the primary role in decisions concerning the rearing of their children. *See Yoder*, 406 U.S. 205 (1972). However, *Wisconsin*'s ruling is not unusual in this Court's history; in fact, issuing a decision in favor of the Parent's is consistent with this Court's interpretation of parental rights. *Glucksberg*, 521 U.S. 702 (1997). Various fact patterns have continuously recognized that family is a fundamental societal pillar. The fabric of the Constitution unambiguously supports the Parent's position that the right to [] raise a family is of

"similar order and magnitude as the fundamental rights specifically protected." *Griswold v. Connecticut*, 381 U.S. 479, 495 (1965) (J. Goldburg Concurrence).

In *Wisconsin v. Yoder,* this Court recognized competing interests argued by the State and parents but correctly held the right of parents to practice and maintain their religious beliefs is paramount. *Yoder*, 406 U.S. at 236. *Wisconsin*'s analysis understands that the state has a "high responsibility for educating its citizens," but state interests cannot be considered in a vacuum. *Id*. at 213. No matter how high this Court or any other court believes, education to be, "it [education] is not totally free from a balancing process when it impinges fundamental rights and interests, such as [] the traditional interests of the parents concerning the religious upbringing of their children. *Id*. at 214 (*See Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925)).

In the same term *Yoder* was decided, this Court bolstered its view that the parental right to choose is an unenumerated fundamental right with its decision in *Stanley v. Illinois*. Once again, this Court clarified that "the custody, care, and nurture of the children reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Stanley,* 405 U.S. at 651 (Citing *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)).

In essence, the State does not wield the power to "standardize its children" nor "foster a homogenous people" by forcing a specific path of education. *Brown v. Hot, Sexy and Safer Products*, 68 F.3d 525, 533-534 (1995).

b. The Policy fails strict scrutiny because the School Board fails to assert a "compelling interest" that is "necessary, [] not merely related" to a permissible policy.

The parental right to choose is an unenumerated fundamental right and is therefore entitled to strict scrutiny review. When "there is a significant encroachment upon personal liberty, the State may prevail *only* upon showing a subordinate interest which is compelling," and the law must be "necessary, and not merely rationally related to, the accomplishment of a permissible policy." *Griswold v. Connecticut*, 381 U.S. 479, 497 (1965) (Goldberg, J., concurring); *Yoder*, 406 U.S. 235 (1972).

i. The School Board has failed to offer a "compelling interest" in the Policy, therefore failing Prong One of the strict scrutiny analyses.

This Court has defined a compelling interest in a strict scrutiny analysis, the interest forwarded by the School Board goes against the grain. Under well-established precedents, state action supported by racial classifications, preventing certain family members from living together to reduce overcrowding, second-guessing parental decisions solely on judicial oversight, and race-based admissions policies to promote a more diverse student population are not compelling enough interests to succeed under strict scrutiny. *Loving v. Virginia*, 388 U.S. 1, 12 (1967); *Troxel v. Granville*, 530 U.S. 57, 67-68 (2000); *Moore v. City of East Cleveland, Ohio*, 431 U.S. 494, 503-505 (1977); *Students for Fair Admissions, Inc.*, 600 U.S. at 191-193, 214-215. When there is a competing interest between state action and a parent's fundamental right, "the primacy of the parent's authority must be recognized and should yield only when the school's action is tied to a compelling interest." *Gruenke v. Seip*, 225 F.3d 290, 305 (2000).

Deciding that the School Board's Policy justification is "compelling" would be a stark departure from precedent. The facts are undisputed: the Policy intends to "help young people

develop empathy for diverse group[s] of people and learn about identities that might relate to their families or even themselves." R-4. Although a commendable goal, a "compelling interest" like the one asserted by the School Board falls within the bounds of what this Court disallowed in *Students for Fair Admissions, Inc.* There, the appellee-defendants enacted a race-based admissions process to: (1) "train[] future leaders in the public and private sectors" ; (2) "prepar[e] graduates to 'adapt to an increasingly pluralistic society'"; (3) "better educate[] its students through diversity"; and (4) "produc[e] new knowledge stemming from diverse outlooks." *Students for Fair Admissions, Inc.*, 600 U.S. at 191-193, 214-215. Although the goals forwarded in *Students for Fair Admissions, Inc.* were commendable, "they are not sufficiently coherent for purposes of strict scrutiny." *Id*.

The dispositive issue with *Students for Fair Admissions, Inc.* was the inability to effectively and consistently measure the achievement of the asserted goals or "compelling interests." *Id*. Inquiring into the progress of the Policy is not judicially workable because it is inevitably subjective rather than objective. A lack of workability would create a complete disarray of the judicial system, creating a lack of uniformity in this Nation's public schools. *See Parents Defending Educ. v. Linn. Mar Cmty. Sch. Dist.*, No. 22-2927, 2023 WL 6330394, at *4 (8th Cir. Sept. 29, 2023) (requiring "respect" for students' gender identity, without meaningful guidance as to what falls within the scope of the word "respect" is a "constitutional problem").

But even if the School Board's Policy compels this Court, its coercive nature must mitigate any compelling interest. For the Policy to be constitutional under the Due Process Clause, the School Board could have argued that within the Tourvania Public School system, there was increased bullying, discrimination, or harassment. *Tatel v. Mt. Lebanon School District*, F.Supp.3d, 33 (2024).

ii. Even if the School Board succeeds in asserting a "compelling interest" aligned with this Court's precedent, the Policy still fails because it is not narrowly tailored.

A state action is narrowly tailored when an alternative cannot be achieved through less restrictive means. *See Students for Fair Admissions, Inc*., 600 U.S. 181 (2023). The Policy fails the second prong of strict scrutiny because the least restrictive means exist, and the Policy is overinclusive.

1. The Policy is *not* narrowly tailored because alternative, least restrictive, means exist to achieve its stated goal.

Although commendable, when the School Board enacted the Policy in 2022, it recognized its limitations by initially enacting an opt-out policy. A similar fallacy was identified in *Yoder*, and this Court attempted to identify whether the Wisconsin compulsory education statute was the least restricting means to achieve its goal – educating children. In the end, this Court found that requiring Amish children to attend school beyond the eighth grade "contravenes the basic religious tenants and practice of the Amish faith." *Yoder*, 406 U.S. at 218. In essence, the burden imposed upon the Amish community was severe and inescapable because Amish citizens were left with only two options: violate their religious beliefs or leave their community.

The Parents are ultimately left with the same predicament – violate their deeply held faith or leave their community. When the Policy was enacted, the School Board implemented an opt-out policy aligned with its 2022-2023 Guidelines for Respecting Religious Diversity. R-5. During the 2023-2024 school year, the School Board repealed the opt-out policy (herein "Former Guidelines"), eliminating any opportunity for a parent to effectively practice their religions. R-5-6. When a parent seeks a public education for their child, they should not be forced into the same position as the Parents find themselves. Suppressing the beliefs of some parents for those of

others is "impractical [because it] [] allow[s] the wishes of particular parents to be controlling." *Keyes v. School Dis. No. 1*, *Denver, Colo.,* 413 U.S. 189 (1973).

Remedial steps are necessary, and the answer is quite simple – reinstate the Former Guidelines and allow the School Board to return to the status quo.

2. The Policy is overinclusive because it applies regardless of religious belief.

The School Board overstepped when it enacted the Policy, but during the 2022-2023 school year, it avoided repercussions because of the Former Guidelines. With the Former Guidelines revoked, the Policy is overinclusive because it mandates a curriculum forced upon the School Board's students regardless of religious beliefs. This Court held in Troxel that the Washington state statute allowing "any person" to petition visitation rights was overinclusive because its scope allowed any third party to claim an interest. *Troxel*, 530 U.S. at 60.

Although the Policy and Washington statute applies to different family aspects, their principles are entwined. There are approximately 70,000 elementary school students, and the Policy is required in all pre-K through eighth-grade classrooms. R-3-4. The Policy is mandatory, and the only leeway educators have in circumventing it is by straying away from pre-determined answers after already teaching the Storybook material. *Id*.

c. The School Board's argument that the Policy succeeds rational basis review may be unpersuasive.

If this Court finds parental control is not an unenumerated fundamental right that elicits strict scrutiny review, the Policy forwarded by the School Board could fail rational basis review. Rational basis review elicits "a strong presumption of validity," requiring "only a rational

relationship between the disparity of treatment and some legitimate government purpose." *Heller v. Doe*, 509 U.S. 312, 319-320 (1993).

Romer v. Evans is one of the few Supreme Court cases that applied rational basis review, and the law was deemed unconstitutional. *Romer v. Evans*, 517 U.S. 620, 635 (1996). The state of Colorado attempted to enact Amendment 2, which repealed city ordinances protecting gay and homosexual individuals. *Id*. at 623-624. Colorado argued that Amendment 2 places gay and homosexual persons in the same position as others; therefore, it does not take anything away nor disadvantage the suspect class. *Id*. 626. The effect of Amendment 2 "is to prohibit any governmental entity from adopting similar, or more protective statutes, regulations, ordinances, or policies in the future unless the state constitution is first amended to permit such measures." *Id*. at 627 (Citing *Evans v. Romer*, 854 P.2d 1270, 1284-1285 (1993)).

The School Board acted in the same manner as Colorado in *Romer* when it revoked the Former Guidelines.

d. <u>If this Court agrees with the Federal Court of Appeals for the Eighteenth Circuit that a parental right to choose is not an unenumerated fundamental right, applying a balancing test still favors the Parents</u>.

In coming to their decision, the Court of Appeals made clear that even though the Policy is pervasive, it "does not infringe upon the childrearing that happens in the privacy of the Parent's homes or carpools or cybercommunications, nor in any of the infinite other venues, indoor and out-of-door, where childrearing occurs." R-21. Upholding this rationale is atypical and will open the floodgates for sister courts to impose their will into family dynamics.

Society is flexible – it allows for change on a large scale and impacts persons across the Nation. But when change occurs it is critical not to erode or dilute fundamental rights engrained

in the cloth this great Nation was built by. A decision against the Parents goes beyond the School Board and Tourvania Public Schools – it fundamentally alters parental autonomy. More significant government intrusion into the home and family lives will make it increasingly more challenging for parents to instill their closely held values in their children.

Additionally, a decision for the School Board will provide a roadmap to State intervention beyond public education. If the School Board can mandate exposure to private citizens' children, future policies will likely be able to erode parental rights. The present controversy deals with a pervasive school policy attempting to indoctrinate children with values counter to their parents. However, such a decision would set the tone for mandating moral, philosophical, and political ideologies.

Deciding in favor of the Parents will not leave the public school system in "shreds" because key subjects like math, english and science remain unscathed while returning public education to its intended function. *People of State of Ill. ex rel McCollum v. Board of Ed. Of Sch. Dist. No. 71, Champaign County, Ill., et al.,* 333 U.S. 203, 235 (1948) (Jackson, J., concurring). Reinstituting the opt-out policy advocates for consistency within a school by allowing administrators to protect parents or guardians with devout beliefs while maintaining a diverse educational policy. *People of State of Ill. ex rel McCullom*, 333 U.S. 203, 237-239 (1948).

CONCLUSION

Given America's values as enumerated in the Constitution and promulgated by the courts, the decision of the Eighteenth Circuit Court of Appeals in favor of the School Board should be reversed to reflect the religious protections Americans are entitled to nationwide.