No. 25-106

In the

Supreme Court of the United States

Susan and Teddy Akel; Valentina and Jorge Suarez; and Tiffany 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 Petition for Writ of Certiorari to the United States Court of Appeals for the Eighteenth Circuit

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RESPONDENTS' BRIEF

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Law & Religion
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QUESTIONS PRESENTED

1. Does a public school's required use of LGBTQ+ inclusive storybooks in its English Language Arts curriculum without notice to parents or an opt-out option, which merely exposes students to diverse viewpoints that are contrary to their religious beliefs, violate the Free Exercise Clause?
2. Under the substantive component of the Due Process Clause, what standard of review applies to the parental assertion of a right to withdraw one's children from exposure to subjectively objectionable material in public school, and under that standard, does the use of LGBTQ+ inclusive curriculum without a choice to opt-out violate that right?

STATEMENT OF THE CASE

I. Factual History

Tourvania School District is the most extensive public education system in the State of Tourvania. J.A. at 3. The student body is well known for its diversity and encompasses roughly 160,000 students, 70,000 of whom attend elementary school. J.A. at 3. The Tourvania Board of Education ("Board"), acting through authority delegated by the State of Tourvania, ensures that the educational needs of its students are fulfilled. J.A. at 2.

In the fall of 2022, the Board introduced over twenty new LGBTQ+ inclusive books ("Storybooks") into the pre-kindergarten through eighth-grade English Language Arts curriculum. J.A. at 3. The Storybooks' use in classrooms is mandatory. J.A. at 3. However, per the Superintendent's instructions, teachers can exercise discretion in the selection and use of the Storybooks. J.A. at 4.

The Storybooks are primarily utilized to further the students' basic reading skills, while simultaneously enlightening students about concepts such as "gender transitioning, gender fluidity, non-binary identities, and same-sex relationships." *See* J.A. at 3, 7. Various storybook titles include "Diversity Captain!," "Crossed Galaxies," "The Adventures of Alex and Their Pronouns," "A Boy Named Grace," and "Colors Beyond a Rainbow Cloud," among others. J.A. at 3-4.

The Storybooks vary in their messages. *See* J.A. at 4. One of the fifth-grade level books proposes that the individual knows best regarding the decision to transition genders–rather than parents or other adults–and that the decision does

not have to "make sense." J.A. at 4. Some books include exercises for the students; one asks three- and four-year-olds to match images with words from a list of various LGBTQ+ terms, while another invites ten-year-olds to talk about what "binary" and "non-binary" mean. J.A. at 4.

To promote the use of the Storybooks, the Board provides teachers with support materials and internal directives, which address possible questions or concerns about the LGBTQ+ content. J.A. at 4. Among these directives are pre-prepared answers that promote the Board's decision to implement LGBTQ+ inclusive materials and counter objections to the curriculum. J.A. at 4. For example, one pre-prepared answer addressing concerns that students may be too young to learn about LGBTQ+ topics is as follows: "'children are already learning about it' because 'messages about gender are everywhere. . . . [B]eginning these conversations in elementary school will help young people develop empathy for a diverse group of people and learn about identities that might relate to their families or even themselves.'" J.A. at 4. Additional support materials exist to foster an environment where students feel safe to acknowledge their discomfort or nervousness when sharing their romantic feelings. J.A. at 4.

From 2022-2023, the Board's "Guidelines for Respecting Religious Diversity" ("Former Guidelines") directed schools to notify parents when the Storybooks were to be used and permitted parents to opt their children out of activities using the Storybooks. J.A. at 5. The Former Guidelines required schools to "make reasonable and feasible adjustments" to the Storybook curriculum to accommodate those

utilizing the opt-out provision. J.A. at 5. The following school year (2023-2024), the Board repealed the Former Guidelines, eliminating the notice and opt-out provisions (this repeal is hereinafter referred to as the "Policy"). J.A. at 5.

Three families, the Altmans, Akels, and Suarezes (collectively, "Parents"), challenge the use of the Storybooks without parental notice or the ability to opt their children out of the curriculum. J.A. at 2-3. The Altmans are Orthodox Jews and believe the LGBTQ+ curriculum "undermines fundamental tenets of their faith," such as that humans are either male or female and that romantic love and marriage should exist only between opposite genders. J.A. at 5. The Akels are Muslim and believe the Storybooks "directly conflict" with their religious principles that humans are either male or female. J.A. at 5. The Suarezes are Roman Catholic and Ukrainian Orthodox and claim the LGBTQ+ material "undermines their religious observance" because their child is shown "content that explores cultural stereotypes instead of *praising their religious belief*" that gender is determined by biological sex at birth. J.A. at 5 (emphasis added).

II. Procedural History

On May 23, 2023, Petitioners, the Parents, filed a complaint seeking declaratory relief under 42 U.S.C. § 1983. J.A. at 2. They claim that the Policy violates both their religious freedom under the First Amendment's Free Exercise Clause and their substantive Due Process right to direct the education and upbringing of their children under the Fourteenth Amendment. J.A. at 2-3.

Respondents, Tourvania Board of Education, filed an answer and denied that the Parents' constitutional rights had been violated. J.A. at 3. Subsequently, on June 12, 2023, the Parents moved for a judgment on the pleadings under Federal Rules of Civil Procedure 12(c), which the Board opposed. J.A. at 3. On November 24, 2024, the District Court granted the Parents' motion in its entirety, holding that the Board's Policy was a violation of both the Free Exercise and Due Process Clauses. J.A. at 14.

The District Court reasoned that the religious burden on the Parents was substantial because of the coercive nature of mandatory participation in the LGBTQ+ curriculum, therefore triggering strict scrutiny. J.A. at 10-11. The court further found that the Board's asserted interests were unpersuasive and that the means to achieve those interests were overly restrictive. J.A. at 11. Additionally, the court held that the asserted parental Due Process right is fundamental, therefore triggering heightened scrutiny. J.A. at 13. The court reasoned that the Board's Policy failed heightened scrutiny for the same reasons it failed strict scrutiny under the Free Exercise claim. J.A. at 14.

The Board filed an appeal to the United States Court of Appeals for the Eighteenth Circuit. J.A. at 15. On December 11, 2024, in a two-to-one opinion, the Eighteenth Circuit reversed the District Court's decision to grant the Parents' motion for judgment on the pleadings for both the Free Exercise and Due Process claims. J.A. at 22. First, the court held the Policy did not place a substantial burden on the Parents' free exercise, rendering application of strict scrutiny inappropriate.

J.A. at 19. Instead, under rational basis review, the court concluded the Policy did not violate the Parents' Free Exercise rights. J.A. at 19. Second, the court concluded the parental Due Process right was not violated. J.A. at 20. The court reasoned that the Parents' right to make educational decisions is not unqualified, as the State, too, has powers rooted in history and tradition. J.A. at 21. Applying a balancing test, the court found it tipped in favor of the Board. J.A. at 21.

In dissent, Judge Berman argued that the Parents had demonstrated a substantial burden on their free exercise and ultimately agreed with the District Court's decision and reasoning on the Free Exercise claim. J.A. at 23.

The Parents filed a petition for a writ of certiorari, which this Court granted for the October term of 2025. J.A. at 24.

SUMMARY OF THE ARGUMENT

This case involves parents' unavailing attempt to classify mere exposure to material contrary to their religious beliefs as a violation of the First Amendment's Free Exercise Clause and the Fourteenth Amendment's Due Process Clause. With respect to the Free Exercise claim, the Board's Policy eliminating notice and opt-outs for the LGBTQ+ curriculum does not impose a substantial burden on the Parents' and children's free exercise because no government coercion is present. This Court has never held that mere exposure to material that "undermines" or is contrary to one's religious beliefs is government coercion, and many Circuit Courts of Appeals agree. Therefore, the Policy is not a violation of the Free Exercise Clause. Furthermore, the Policy is neutral and generally applicable, thereby warranting

rational basis review. The Policy applies to all parents and children equally and there is no evidence it was enacted specifically to target and suppress religious beliefs or practices.

Even if subjected to strict scrutiny, the Policy prevails. The Board sets forth several compelling interests pertaining to the avoidance of administrative and classroom burdens, and instilling values conducive to good citizenship in its student population. These goals are capable of meaningful judicial review, because of their numerical measurability, and are of the highest order, as evinced by this Court's past decisions. The interests are narrowly tailored because they are fit precisely to address the specific evils to be avoided. For the same reasons, the Policy satisfies the lesser rational basis test.

The Due Process claim also fails. The Parents' asserted right to "choose not to let their children be exposed to materials in school they consider objectionable" is not fundamental. This Court has only labeled as fundamental the most meaningful parental rights that hit the crux of parental authority, which is not so in the present case. Because the right is not fundamental, the Board's Policy is not subject to strict or "heightened" scrutiny. Moreover, in prior cases before this Court, the facts that warranted application of a heightened level of scrutiny were of a much graver nature than those here. Therefore, rational basis review governs. Even if strict scrutiny were applied, for the same reasons the Policy withstands Free Exercise scrutiny, the Policy survives Due Process scrutiny.

Therefore, the Respondents ask this Court to affirm the Eighteenth Circuit's decision to deny the Parents' motion for judgment on the pleadings for both the Free Exercise and Due Process claims.

ARGUMENT

I. The Policy does not violate the Free Exercise Clause because there is no substantial burden on religious freedom, the Policy is neutral and generally applicable, and the Policy satisfies strict scrutiny.

The First Amendment's Free Exercise Clause protects the right of individuals to believe and profess whatever religious doctrine one desires. *Employment Division v. Smith*, 494 U.S. 872, 877 (1990). Generally, the Clause also protects individuals' right to perform or abstain from physical acts, consistent with their religious beliefs. *Id.* However, the government can restrict free exercise if the claimant fails to demonstrate a substantial burden on his religious beliefs or practices, *see Hernandez v. C.I.R.*, 490 U.S. 680, 699 (1989), the government's law or policy is neutral and generally applicable, *Smith*, 494 U.S. at 879, or if the government action satisfies strict scrutiny. *Id.* at 883.

This Court should hold that the Board's Policy eliminating the notice and opt-out provisions does not violate the Parents' and children's Free Exercise rights because (1) the Parents have not demonstrated that the Board's Policy requiring their children to be present during the use of the LGBTQ+ material is a substantial burden on their religious beliefs, (2) the Policy is neutral and generally applicable, warranting rational basis review, and (3) the Policy satisfies strict scrutiny.

A. The Parents have failed to demonstrate that the Policy substantially burdens the free exercise of their religion because there is no government coercion.

The Policy does not substantially burden the Parents' and children's Free Exercise rights because the implementation of the LGBTQ+ material without notices and ability to opt-out does not directly nor indirectly coerce them to violate their religious beliefs. The material merely exposes the students to a diversity of alternative opinions, and mere exposure has never been held to equate to coercion. Numerous Courts of Appeals have supported this proposition by consistently recognizing that mere exposure to ideas in the classroom that are contrary or offensive to one's religious beliefs is not a substantial burden on free exercise.

To prevail on a Free Exercise claim, claimants must first demonstrate that the government has placed a substantial burden on their religious beliefs or practices. *Hernandez*, 490 U.S. at 669. A substantial burden can exist if the government directly or indirectly coerces the claimant to believe or act contrary to his religious beliefs. *See Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *Thomas v. Review Bd. of Indiana Employment Sec. Division*, 450 U.S. 707, 717–718 (1981).

Demonstrating specific evidence of coercion is paramount to finding that a law or policy is coercive on a claimant's practice of his religion. *See Kennedy v. Bremerton*, 597 U.S. 507, 539, 540, 541 (2022). In *Kennedy*, this Court held that a school district violated the Free Speech and Free Exercise Clauses when it fired a high school football coach for praying on the field after games. *Id.* at 512–13, 544.

This Court found that the after-game prayers were not coercive on players and students because of the absence of any evidence of coercion. *See Id.* at 539, 540. Instead, this Court indicated that learning how to tolerate all kinds of speech or diverse expressive activities is "part of learning how to live in a pluralistic society." *Id.* at 538. Invoking its profound reasoning from *Town of Greece v. Galloway*, this Court indicated that it is inevitable individuals will be offended by certain forms of speech or prayer, but that "offense . . . does not equate to coercion." *Id.* at 538–39 (quoting 572 U.S. 565, 589 (2014)) (quotation marks omitted).

Direct or indirect coercion exists if the government forces a claimant to choose between upholding his religious convictions or receiving an important benefit upon conduct proscribed by his religious beliefs. *Thomas*, 450 U.S. at 718. In *Sherbert*, this Court held that the State's denial of unemployment compensation benefits to the appellant because of her inability to work on Saturdays, which was her Sabbath, imposed a substantial burden on her free exercise. 374 U.S. at 399, 401, 404. The State had forced her to choose between "following the precepts of her religion and forfeiting benefits, . . . and abandoning one of the precepts of her religion in order to accept work . . . ." *Id.* at 404. This exact reasoning was applied thereafter in *Thomas*, in which this Court held that the denial of unemployment compensation benefits to the petitioner for quitting his job was a substantial burden on his free exercise because his religious beliefs forbade participation in the production of war materials. 450 U.S. at 709, 717. The coercive impact on the

petitioner was indistinguishable from that in *Sherbert*, as he was put to the choice between "fidelity to religious belief or cessation of work." *Id.* at 717.

Direct coercion also exists when the government forces an individual to participate in a particular act or affirm a particular belief that is contrary to his religious beliefs. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 633, 634 (1943). In *Barnette*, this Court held that a state requirement that all teachers and students salute the American flag in the classroom when reciting the Pledge of Allegiance was a violation of the First Amendment. *Id.* at 626, 628, 642. Failure to salute the flag resulted in severe consequences, including expulsion and the student then possibly being proceeded against as a delinquent, in which parents could be prosecuted and face a fine up to $50 and jail time up to 30 days. *Id.* at 629. This Court reasoned that the obligatory flag salute compelled "affirmation of a belief and an attitude of mind," as opposed to exposure or familiarization with the concept and meaning of the salute. *Id.* at 631-33.

A general law or policy advancing the government's secular goals that imposes only an indirect burden on the exercise of religion will be upheld. *See Braunfeld v. Brown*, 366 U.S. 599, 607 (1961). In *Braunfeld*, this Court held that a Sunday Closing Law did not violate the appellants' religious beliefs, despite the alleged substantial economic loss they would endure for complying. *Id.* at 601, 602, 609. The statute did not make any religious belief or practice unlawful, nor force anyone to embrace, say, or believe anything that conflicted with their religious beliefs. *Id.* at 603, 605. Instead, the secular law had only an indirect burden on the

appellants by making the practice of their religious beliefs more expensive, which is not government coercion. *See Id.* at 605, 606. This Court made clear that to strike down legislation imposing only an indirect burden on free exercise, such as legislation that does not make the religious practice itself unlawful, would radically restrict the legislature's ability to operate. *Id.* at 606.

Following this Court's First Amendment jurisprudence, numerous Courts of Appeals have held that mere exposure to ideas contrary to one's religious beliefs is not government coercion and is therefore not a substantial burden on free exercise.

- In *Parker v. Hurley*, 514 F.3d 87 (1st Cir. 2008), the First Circuit held that the Free Exercise Clause was not violated when a school district did not give parents prior notice or ability to exempt their children from exposure to books they found religiously repugnant. *Id.* at 90, 107. The court reasoned that "requiring a student to read a particular book is generally not coercive," that exposure "to a concept offensive to a parent's religious belief does not inhibit the parent from instructing the child differently," and that no criminal statute was involved or other punishment imposed if the parents chose to educate their children in alternative ways. *Id.* at 100, 105, 106.
- In *Leebaert v. Harrington*, 332 F.3d 134 (2nd Cir. 2003), the Second Circuit held that a father's Free Exercise rights were not violated when a school prohibited him from excusing his son from its mandatory health curriculum that conflicted with the father's beliefs about sex before marriage. *Id.* at 135, 137, 144–45.

- In *Mozert v. Hawkins County Board of Educ.*, 827 F.2d 1058 (6th Cir. 1987), the Sixth Circuit held that mere exposure to material that plaintiffs objected to on religious grounds was not a substantial burden under the Free Exercise Clause when the students were "not required to affirm or deny a belief or engage or refrain from engaging in a practice prohibited or required by their religion." *Id.* at 1060, 1065, 1070. The court noted that proof a student was required to participate further than reading and discussing the materials or was disciplined for objecting to the materials might then constitute a Free Exercise violation because compulsion would be present. *Id.* at 1064.
- In *Fleischfresser v. Directors of School Dist. 200*, 15 F.3d 680 (7th Cir. 1994), the Seventh Circuit held that a school district's implementation of a particular reading series that was contrary to parents' and their children's religious beliefs was not a substantial burden on free exercise because of the absence of government coercion. *Id.* at 683, 690.
- In *California Parents for the Equalization of Educational Materials v. Torlakson*, 973 F.3d 1010 (9th Cir. 2020), the Ninth Circuit held that a school district's History-Social Science curriculum did not violate the Free Exercise Clause when it conflicted with parents' and children's religious beliefs. *Id.* at 1013, 1020. The court indicated that no penalty or coerced conduct was alleged and that "offensive content that does not penalize, interfere with, or otherwise burden religious exercise does not violate Free Exercise rights." *Id.* at 1019–20.

In the present case, the Parents claim the LBGTQ+ curriculum and the Policy's elimination of notice and opt-outs significantly burdens their and their children's religious beliefs. J.A. at 5. They allege that the concepts discussed in the Storybooks are contrary to their beliefs and that the Policy coerces the children to question, suppress, change, and violate their religious beliefs and practices. J.A. at 5, 6. They believe that over time, the children will be indoctrinated to adopt views contrary to their religion. J.A. at 6. They also claim the curriculum violates their religious duties as parents to "instill their religious beliefs in their children and to safeguard them from corruption." J.A. at 6.

The Policy clearly does not resemble the type of government coercion this Court has recognized in its First Amendment jurisprudence. The Policy does not prohibit any particular religious practices, punish the holding of any religious belief that is contrary to the LGBTQ+ material, nor force any student to embrace, say, or believe anything that conflicts with their religious beliefs.

In *Sherbert* and *Thomas*, the government directly compelled the claimants to choose between upholding their religious beliefs or receiving an important benefit. That grave choice is missing in the present case. The Parents never indicate that they are being put to any sort of choice. Instead, the Parents allege the LGBTQ+ curriculum simply "undermines" and conflicts with their religious beliefs. J.A. at 5. This is not equivalent to conditioning a benefit upon upholding or abandoning a religious practice or belief. The children are in no way prevented from upholding their religious beliefs. They are welcome to process the material as they please, and

there is no punishment if the children disagree with the material. Likewise, the parents are not prohibited from instilling their religious beliefs in their children, as they are free to discuss their faiths with the children at home or even tell the children to disregard the Storybooks. Additionally, there is no punishment if the parents wish to change schools. They have a myriad of alternative schooling options if they do not want their children exposed to the LGBTQ+ curriculum, such as switching to another school district, attending a religious or private school, or homeschooling.

Unlike the students in *Barnette*, the children are not coerced to participate in a particular act or affirm or deny a particular belief that is contrary to their beliefs. Importantly, similar to the record in *Kennedy*, the record here contains absolutely no evidence demonstrating the alleged coercive nature of the LGBTQ+ curriculum. For example, there is no evidence children are required to participate in role playing exercises, affirm they believe in gay marriage, or draw pictures depicting LBGTQ+ individuals. Further, there is no evidence the children are even required to agree with the curriculum's messages. Like the Sixth Circuit in *Mozert* noted, had the Parents produced proof the children are required to participate further than reading and discussing the material or are disciplined for objecting to the material, then they might have a valid Free Exercise claim because government coercion might exist. But that is not the case here. Although some of the Storybooks include exercises, there is no evidence any of the students are required to participate in these exercises, or that the teachers even utilize them in the first place. Instead, the

evidence in the record seemingly indicates that the children are only required to be present in class when the LGBTQ+ material is used.

This Court in *Barnette* alluded to the idea that merely acquainting students to a particular concept so they can be informed as to what it is or even means, does not rise to the level of government coercion necessary to sustain a Free Exercise claim. The LGBTQ+ curriculum and Policy does just that, it exposes students to and informs them of diverse opinions that they will inevitably encounter outside of school. In *Kennedy*, this Court again seemingly supported the idea that mere exposure to alternative views does not amount to coercion. Learning how to live in a pluralistic society includes being exposed to contrary, and at times repugnant, beliefs and opinions. Moreover, objections that mere exposure to curriculum which "undermines" or conflicts with religious beliefs more so resembles "offense" rather than coercion. But this Court has held that offense does not equate to coercion.

Furthermore, although the teachers are provided with pre-prepared answers to promote the LGBTQ+ curriculum and to counter objections and concerns over the material, their purpose is not to condemn or "discourage" other views, as the District Court phrased it. J.A. at 4. This is evidenced in the examples of pre-prepared answers included in the record. *See* J.A. at 4. The substance of the pre-prepared answers does not emit hostility towards or suppress certain beliefs. Nor does it coerce individuals to affirm or deny a particular belief. Instead, the answers simply attempt to defend and promote the Board's decision to use the material to anyone who might object to it for whatever reason.

The Parents do not demonstrate a substantial burden on their religious beliefs, but instead only an indirect burden, similar to the appellants in *Braunfeld*. The indirect burden is the Parents' increased efforts in addressing the LGBTQ+ message and preventing their children from deviating from their faith. These increased efforts undoubtedly are not a substantial burden. If it were to be found as such, then an exemption or change in school curriculum would be required any time parents express concerns that mere exposure to a particular topic will result in their child deviating from or questioning their faith.

However, this Court has indicated it would then be a violation of the Establishment Clause for a state to require the public-school curriculum be tailored to the principles or prohibitions of any religious sect or beliefs. *Epperson v. State of Arkansas*, 393 U.S. 97, 106 (1968). Holding that the Parents' increased efforts constitute a substantial burden would do just this. The First Amendment forbids both the preference of a religious doctrine or the prohibition of theory which is deemed antagonistic to a particular religion. *Id.* at 271–72. If courts were required to find a Free Exercise violation every time mere exposure to material "undermines," offends, or contradicts one's religious beliefs, a flood of litigation would ensue, and parents would dictate school curriculum. As Justice Jackson famously noted, "If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds. Nothing but educational confusion and a discrediting of the

public school system can result from subjecting it to constant law suits." *McCollum v. Board of Education*, 333 U.S. 203, 235 (1948) (Jackson, J., concurring).

The Courts of Appeals have correctly applied this Court's Free Exercise jurisprudence, and we agree with their determinations that mere exposure in a public-school setting to material that is contrary to one's religious beliefs is not government coercion. Adopting the court's reasoning in *Parker*, there is no Free Exercise right to be free from any reference in public schools to the existence of individuals in the LGBTQ+ community. There is no Free Exercise right to be completely free from reading material that is contrary to one's beliefs.

Therefore, the Policy is not a substantial burden on the Parents' and their children's Free Exercise rights because no government coercion exists.

B. The Policy is neutral and generally applicable because it treats all parents and children equally regardless of religious beliefs, therefore warranting rational basis review.

The Policy is neutral and generally applicable because the elimination of notice and opt-outs applies to all students equally and was not instituted to suppress religious views. Therefore, the Policy is subject to rational basis review.

The Free Exercise Clause does not excuse an individual from complying with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *Smith*, 494 U.S. at 879. Incidental effects of government regulations, "which may make it more difficult to practice certain religions but which have no tendency to

coerce individuals into acting contrary to their religious beliefs," does not require the government to demonstrate a compelling justification for its otherwise lawful actions. *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450–51 (1988). Instead, if a law is neutral and generally applicable, the government only must satisfy the rational basis test. *See Smith*, 494 U.S. at 885. Under the rational basis test, the law or policy must rationally advance a legitimate governmental purpose. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

A law is not neutral if it is intolerant of religious beliefs or restricts practices because of their religious nature. *Fulton v. City of Phila., Pa.*, 593 U.S. 522, 533 (2021). For example, this Court has held that disparaging and hostile comments made by the government towards an individual's religious beliefs when deciding whether to take action that restricts religious practices can indicate a lack of neutrality. *See Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540–42 (1993); *See Masterpiece Cakeshop v. Colo. Civ. Rights Comm'n*, 584 U.S. 617, 634–636 (2018). Additionally, a law is not generally applicable if it provides a mechanism for individualized exemptions or if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way. *Fulton*, 593 U.S. at 533, 534.

In the present case, the Parents argue that the Policy should be subject to strict scrutiny. J.A. at 6. However, the Policy should be subject to the rational basis test because it is plainly neutral and generally applicable. There is no evidence in the record that the Policy was enacted specifically to prohibit religious practices or

to intentionally target certain religious beliefs. Unlike the obviously hostile and disparaging comments made by government officials in *Masterpiece* and *Lukumi*, there is no record that the Board made any negative or degrading comments towards the Parents' or children's religious beliefs when deciding to enact the Policy. To the contrary, the Policy applies to every parent and child equally.

Prior to enacting the Policy, the Board was sympathetic to those who opted out of the LGBTQ+ curriculum for religious reasons. *See* J.A. at 5. The Former Guidelines required schools "to make reasonable and feasible adjustments to the instruction program to accommodate requests by parents that their child be excused from specific classroom discussion or activities in Tourvania." J.A. at 5. However, after observing the effects of the opt-out for a year, the Board enacted the Policy as a necessary means to reduce classroom disruptions and absenteeism. J.A. at 7.

Evidently, the Policy was not enacted with the object of infringing upon religious practices but was enacted because the opt-outs were affecting the classroom setting. Any burdens the Parents faced were therefore incidental. Although the Board was initially sympathetic to those desiring notice and opt-outs, the Board appropriately exercised its authority and duty to maintain a productive and undisruptive school environment. There was no ulterior motive in the Board's determination that it can no longer feasibly accommodate notice and opt-outs.

Therefore, the Policy is neutral and generally applicable and only needs to satisfy rational basis review.

C. Even if this Court found a substantial burden on free exercise and that the Policy is not neutral and generally applicable, the Policy satisfies strict scrutiny because it is narrowly tailored to serve the Board's compelling governmental interests.

Strict scrutiny requires contested government action to be justified by a "compelling governmental interest" that is "narrowly tailored," or "necessary," to fulfill that interest. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 206-207 (2023). An interest is compelling if it is "of the highest order." *See Carson v. Makin*, 596 U.S. 767, 780 (2022) (quotation marks omitted). A law or policy is narrowly tailored if it "targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby v. Schultz*, 487 U.S. 474, 485 (1988). In other words, the law or policy must be written to achieve only its intended goals. *See Id.*

An interest is not compelling if it is not capable of "meaningful judicial review"—i.e., no means exist of measuring the interest or ascertaining when it has been fulfilled. *See Students for Fair Admissions*, 600 U.S. at 214. This Court concluded that such was the case when interests like "better educating [] students through diversity" and "producing new knowledge stemming from diverse outlooks" were put forth as justifications for the use of racial discrimination in college admissions. *Id.* Because no means existed to quantify those goals, they were "inescapably imponderable" and, therefore, were not compelling. *Id.* at 215.

The factual circumstances in the present case, however, are readily distinguishable from those in *Students for Fair Admissions*. The interests here are easily calculable because of their tangibility when realized and numerical measurability. The Board's Policy furthers its goals in (1) strengthening the effectiveness of public education through avoidance of administrative burdens, "classroom disruptions and absenteeism," (2) "fostering diversity and acceptance in public schools," (3) "raising student awareness of the challenges faced by some of their peers," and (4) "promoting student discourse on important if delicate contemporary issues." J.A. at 7. These interests can be measured through means such as the number of students introduced to the material, attendance records, grades, test scores, accounting, and hitting classroom objectives.

The Board's interests are also of the highest order. The State has essential, and long-recognized interests in the education and welfare of its citizens, even with moral development. *See infra* at 26-27. Students not only grow up to be adults; they grow up to be participants in our democracy. Public schools play a vital role "in the preparation of individuals for participation as citizens, and as vehicles for inculcating fundamental values necessary to the maintenance of a democratic political system." *See Island Trees Union Free Sch. Dist. v. Pico*, 457 U.S. 853, 864 (1982) (quotation marks omitted). Learning how to tolerate ideas that one does not subscribe to is "part of learning how to live in a pluralistic society." *Kennedy*, 597 U.S. at 538. Therefore, the State's interest in ensuring that its children are well-educated and morally developed (i.e., accepting and tolerant) is paramount.

"[G]iving . . . information to the people . . . is the most certain and the most legitimate engine of government. Educate and inform the whole mass of the people . . . They are the only sure reliance for the preservation of our liberty." Letter from Thomas Jefferson to Uriah Forrest (December 31, 1787).

Moreover, this Court has recognized the compelling interest that schools have in avoiding classroom disruptions. *See Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 509, 513 (1969). In allowing notice and opt-outs, schools face substantial classroom interference when children abruptly leave. The School District also shoulders a hefty administrative burden of tracking which parents object to what, knowing when certain material will be used, maintaining a notification system, paying for additional personnel to supervise opted-out children, providing alternative curriculum, and devising an alternative grading scheme. *See infra* at 29-31 (discussing in greater length the damage opt-outs cause). These burdens heavily decrease the efficacy of public-school education and avoiding them cannot be more dire. Thus, all the Board's asserted interests are compelling.

The Policy is also narrowly tailored to serve these compelling interests. First, the Policy is evidently narrowly tailored because discontinuing the opt-outs is absolutely necessary to avoid their administrative costs. Even one opt-out would spawn a host of new administrative burdens. *See infra* at 29-30. Further, to avoid student absenteeism and classroom disruption, the elimination of opt-outs is necessary because it, too, eliminates the *precise* issue.

Second, because the goal is to foster acceptance and diversity "in public schools," meaning the goal is district-wide, preventing opt-outs is the exact action necessary for the message to reach *all* students, initiating the growth of both values. Third, the Policy achieves the interest of raising student awareness by going only so far as to expose all students to the material. Finally, like the latter two goals, the promotion of student discourse is achieved through only the most necessary means: a simple exposure to the LGBTQ+ material. Therefore, because the Board's interests are narrowly suited to achieve its compelling interests, the Policy does not violate the Free Exercise rights of the Parents.

Since the Policy passes strict scrutiny, it also passes the lesser rational basis standard; it is rationally related to the Board's legitimate interest in effectively educating and inculcating the moral standards of good citizenship in its youth.

II. The Board's Policy is a constitutional exercise of authority under the Due Process Clause because the specific asserted right is not fundamental, and regardless of the standard of judicial scrutiny applied, the Policy is necessary to serve the Board's interests.

The Due Process Clause offers crucial *procedural* safeguards when a person's "life, liberty, or property" is to be deprived. U.S. Const. amend. XIV, § 1. However, the Clause also contains a *substantive* component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

The Parents' substantive Due Process claim fails because (1) the specific right asserted is not fundamental, (2) rational basis review applies, and (3) even under strict scrutiny, the Policy prevails because it is narrowly drawn to serve the Board's compelling interests in avoiding excessive administrative burdens and instilling the values of good citizenship into its youth.

A. While the general right of parents to direct their child's education is fundamental, the specific parental right alleged–to withdraw a child piecemeal from public school attendance because of exposure to "objectionable" material–is not.

The substantive element of Due Process protects unenumerated rights only if they are fundamental. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 237 (2022). Such a right is fundamental if, objectively, it is "deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty." *Glucksberg*, 521 U.S. at 720-21 (citations omitted) (quotation marks omitted). In previous substantive Due Process cases, this Court has required "a careful description of the asserted right, for [t]he doctrine of judicial self-restraint requires [the Court] to exercise the utmost care whenever [it is] asked to break new ground in th[e] field." *Flores*, 507 U.S. at 302 (quotation marks omitted).

Here, the Parents attempt to "break new ground" by contending that a fundamental right exists, independent from religion, to "choose not to let their children be exposed to materials in [public] school that they consider objectionable or age inappropriate." J.A. at 8. In other words, the Parents claim that a specific

constitutional right exists to remove their child from class whenever that child is to be exposed to anything they do not like. However, the Parents have not met their burden of proving that right is fundamental. *Dobbs*, 597 U.S. at 237.

Relevant law decided by this Court and Courts of Appeals demonstrates that the specific right asserted is not fundamental. This Court has recognized the general right of parents to make decisions regarding the "care, custody, and control of their children" as "perhaps the oldest of the fundamental liberty interests." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (citing from *Meyer v. Nebraska*, 262 U.S. 390 (1923), onward). This Court has also upheld the fundamental right of parents to "direct the education and upbringing of children under their control." *Pierce v. Society of the Sisters*, 268 U.S. 510, 534-35 (1925) (citing *Meyer*, 262 U.S. at 399). However, these expansive rights *are not* beyond limitation and may be restricted by the state. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

The state may restrict parental rights because it, too, has interests in the education and upbringing of children that are just as deeply rooted in this Court's jurisprudence. *See Meyer*, 262 U.S. at 401-402 (recognizing the State's authority to "compel attendance . . . make reasonable regulations for all schools," prescribe curriculum, and "improve the quality of its citizens . . . morally"); *Pierce*, 268 U.S. at 534 (noticing the State's power to regulate schools, compel attendance, "[and ensure] that certain studies plainly essential to good citizenship . . . be taught"); *Prince*, 321 U.S. at 166-67 (explaining the State's "wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this

includes, to some extent, matters of conscience"); *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) (acknowledging the State's "high responsibility for education of its citizens," and its power "to impose reasonable regulations for the control and duration of basic education"); *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 681 (1986) (explaining that the role of public schools is to inculcate democratic values into students, such as the "tolerance of divergent political and religious views, even when the views expressed may be unpopular").

In light of this power, it is unsurprising that in none of the cases discussed, or any others that have come before this Court, has the specific right pleaded by the Parents ever been recognized. Rather, the parental rights identified have been of an entirely different nature. First, *Meyer* established that parental rights encompass the freedom to *learn* the German language in public schools. 262 U.S. at 400; *see Prince*, 321 U.S. at 166. Second, *Pierce* confirmed the right of parents to choose between public and private schools. 268 U.S. at 534-35; *see Runyon v. McCrary*, 427 U.S. 160, 177 (1976). Third, *Yoder* recognized the right of the Amish to be free from compulsory high school attendance in mind of the probable "destruction" of their community. 406 U.S. at 212, 234. Finally, *Troxel* affirmed the right of parents to "make decisions concerning the care, custody, and control" of their children with regard to forced visitation rights. *Troxel*, 530 U.S. at 72.

Likely because this Court has never affirmed the asserted right, Federal Courts of Appeals have rejected similar declarations of parental rights.

- Under First Circuit precedent, there exists no fundamental parental right "to demand an exemption for [] children from exposure to certain books used in public schools." *See Parker,* 514 F.3d at 102 (involving parents who sought to exempt their kindergarten through second-grade children from exposure to books that depicted gay marriage and homosexuality).
- In the Second Circuit, there is no fundamental parental right "to tell a public school what his or her child will and will not be taught." *See Leebaert*, 332 F.3d at 141 (concerning a father who sought to opt his seventh-grade child out of all health education classes).
- Under Third Circuit law, there is no fundamental parental right to receive notice and opportunity to opt a child out of taking a survey that discusses sensitive topics. *See C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 184-85 (3d Cir. 2005) (regarding parents that objected to their children being surveyed about drug use, sexual activity, and suicide, inter alia).
- In the Ninth Circuit, parents do not have a right "to prevent a school from providing any kind of information–sexual or otherwise–to its students." *See Fields v. Palmdale School Dist.*, 427 F.3d 1197, 1206 (9th Cir. 2005) (addressing parents that objected to a school surveying their seven- to ten-year-old children about sexual activity). Rather, parental rights to direct the education and upbringing of children "do[] not extend beyond the threshold of the school door." *Id.* at 1207.

With these decisions, the Board's Policy simply does not "strike at the heart of parental decision-making authority" to the degree of constitutional infringement. *See C.N.*, 430 F.3d at 184. While exposure to the Storybooks may be offensive, Parents still retain absolute authority to discuss them with their children. In no way are the students compelled to believe the LGBTQ+ ideas expressed, in contradiction with the ideologies instilled in them by their parents. Rather, the Parents possess the full ability to ingrain into their children the values they find most important. *See supra* at 14-15. Exposure to the Storybooks is but a minor shred taken from the broad scope of parental authority.

A careful analysis of the asserted right, however, reveals the major dangers of recognizing it as fundamental. This Court in *Yoder* warned that "the power of the parent, even when linked to a free exercise claim, may be subject to limitation . . . if it appears that parental decisions . . . have a potential for significant social burdens." 406 U.S. at 233-34. The Circuit Court below recognized this potential: "[Y]ielding to every individualized request for opt-outs from everything that is objectionable to each of these diverse components of [the] population would 'leave public education in shreds.'" J.A. at 21 (quoting *McCollum*, 333 U.S. at 235).

"[I]n shreds" is no exaggeration. The harm starts well before the child gets out of his seat to leave class. Here, the Parents want to be notified whenever "objectionable" material will be shown. J.A. at 8. To meet that demand, schools either have to (1) conduct comprehensive surveys to keep extensive, individualized lists of parents and what offends them, keep track of precisely when teachers will

use certain materials, and then notify the parents when "objectionable" ideas may arise, or (2) be able to divine when a parent will be offended and contact them. Only the former prevents future lawsuits.

This hefty administrative burden is exacerbated with all that comes after the opted-out children are sequestered from regular learning. Teachers, in addition to all their routine obligations, have to know which students must be excused when certain material is utilized. When those children leave, precious class time is spent getting them moving, and as discussed *infra* at 31, other students' learning experiences can be affected.

Once excused, students cannot just roam free. Schools act *in loco parentis*; a duty is owed to the students to ensure their safety and to educate them. That duty necessarily requires the school to provide additional manpower and space to both supervise the students and ensure their time is used productively. Different subjects are discussed throughout the day, so depending on what is "objectionable," a student could be excused at any time. Thus, the school would need someone available to supervise the student(s) at all hours of the school day. Additionally, each child may have different educational needs (hinging on what is offensive), requiring individual curricula to be devised. Further, the development of different grading systems is necessary because granting opt-outs eliminates standardization by individualizing the curriculum. All of this cost money, but more importantly, it demands unnecessary time and work. With a student body of 160,000, the logistics of complying with such a system are daunting and intricate.

In addition to the administrative costs of recognizing the asserted right, students could be subject to cognitive or emotional burdens. Students who remain in class after others opt-out might wonder what is wrong with their books, and other self-conscious questions or thoughts may arise. These distractions could very well decrease the efficacy of class instruction. Moreover, particularly relevant to the Storybooks, students may have parents of the same sex or siblings who identify as a gender different from their sex. Students may be LGBTQ+ themselves. If so, children may feel inferior or unwelcome when others abruptly excuse themselves from class when LGBTQ+ inclusive material appears in the curriculum.

Therefore, considering the above reasoning, the asserted right is not, and should not be, fundamental.

B. By virtue of the fact that the asserted right is not fundamental, neither strict scrutiny nor "heightened scrutiny" applies—rational basis review governs.

Generally, where *fundamental* rights are endangered, "the Government can act only by narrowly tailored means that serve a compelling state interest." *Dept. of State v. Munoz*, 602 U.S. 899, 910 (2024). Conversely, where those rights *are not* at risk, government action is invalid *only* if it is "*arbitrary* or without *reasonable relation* to some purpose within the competency of the state to effect." *Meyer*, 262 U.S. at 399-400 (1923) (emphasis added).

However, as the Eighteenth Circuit noted and the District Court's analysis revealed, this Court has not made explicit what the governing standard of review is

for claims involving the fundamental parental right to direct the education of children. *See* J.A. at 12-13, 20; *Troxel*, 530 U.S. at 80 (2000) (Thomas, J., concurring) (noting the Court's failure to articulate a standard of review for infringements of the right). Nonetheless, an examination of this Court's decisions reveals the standard applicable to this case: rational basis review.

First, the proclaimed right is not fundamental, so strict scrutiny does not apply. Even if it is fundamental, this Court has never applied the standard to a fundamental parental rights claim under the Due Process Clause. Rather, where those rights have been threatened, this Court has applied a kind of weighing test, or "heightened scrutiny," as the District Court referred to it. *See Troxel*, 530 U.S. at 68-72 (balancing the parties' interests and scrutinizing the facts, concluding that "the combination of . . . factors" confirmed an unconstitutional infringement); *Yoder*, 406 U.S. at 214 (utilizing a "balancing process" where the state could validly interfere with fundamental parental rights if its interests were "of sufficient magnitude" to outweigh those of the parents).

Second, heightened scrutiny does not apply here, either, because no fundamental right is at stake, and the facts of *Troxel* and *Yoder* were much graver than the facts of this case. In *Troxel*, Washington law allowed "any person, at any time, to petition for [forced] visitation without regard to relationship to the child, without regard to changed circumstances, and without regard to harm." *Troxel*, 530 U.S. at 67 (quoting the Washington S. Ct.) (quotation marks omitted). The Court found that, effectively, the law allowed Washington courts to "disregard and

overturn *any* decision by a fit custodial parent concerning visitation whenever a third party . . . file[d] a visitation petition." *Id.* (emphasis original).

Additionally, in *Yoder*, the objecting parents presented multiple expert witnesses who testified that Wisconsin's law compelling high school attendance threatened the "continued survival of Amish communities as they exist." *Yoder*, 406 U.S. at 209. Further, one expert testified that "compulsory high school attendance could . . . ultimately result in the destruction" of the Amish community. *Id.* at 212. This was so because the Amish sought to "insulate themselves from the modern world," and "high school attendance . . . interpose[d] a serious barrier to the integration of the Amish child into" the community. *Id.* at 210, 211-12.

If the barriers interposed between the parents and their rights in *Yoder* and *Troxel* were embodied as mountains, they would be towering over the facts of this case like Mount McKinley over a foothill. The Policy, which mandates the introduction of LGBTQ+ inclusive topics to students, comes nowhere close to threatening the *survival* of a religion or *forcing* the Parents to relinquish control of their children to a third party. Therefore, the facts of this case do not justify the application of heightened scrutiny as the facts in *Yoder* and *Troxel* did.

Finally, due to the foregoing reasoning, rational basis review *is* the appropriate standard to apply in this case. This Court has applied the rational basis standard before in cases involving parental rights. *See Meyer*, 262 U.S. at 397, 403 (finding Nebraska law that prohibited the instruction of languages other than English to be "arbitrary and without reasonable relation to any end within the

competency of the state"); *Pierce*, 268 U.S. at 530, 534-35 (finding that Oregon law mandating public school attendance had "no reasonable relation to some purpose within the competency of the state").

Additionally, many circuit courts have applied the standard to laws alleged to conflict with fundamental parental rights. *See Leebaert*, 332 F.3d at 136, 142-43 (applying rational basis review to mandatory health education curriculum); *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 279, 289 (5th Cir. 2001) (applying the standard to mandatory school uniform policy); *Combs v. Homer-Center Sch. Dist.*, 540 F.3d 231, 238-39, 252 (3d Cir. 2008) (applying rational basis to homeschool reporting requirement).

Therefore, considering this precedent and the non-fundamental status of the asserted right, rational basis review is the applicable standard in this case.

C. Even if strict scrutiny were applied, the Policy would withstand because of the reasons specified above.

For the same reasons detailed in Sections I(C) and II(A), *supra* at 21-24, 29-31, and because the asserted parental right is more expansive than the Free Exercise one (thereby increasing potential opt-outs and further compromising the Board's goals), the Policy satisfies the stringent standard of strict scrutiny, and the lesser standard of rational basis.

CONCLUSION

For the foregoing reasons, this Court should affirm the Eighteenth Circuit's decision to deny the Parents' motion for judgment on the pleadings for both the Free Exercise and Due Process claims. This Court should find that the Free Exercise claim fails because (1) the Board's Policy does not substantially burden the Parents' and children's religious beliefs; (2) the Policy is neutral and generally applicable, rendering rational basis review applicable; and (3) even under strict scrutiny, the Policy would prevail. Further, this Court should find that the Due Process claim fails because (1) the specific right asserted by the Parents is not fundamental; (2) rational basis is the applicable standard of review; and (3) even if strict scrutiny is applied, the Policy would prevail.

Dated March 2, 2025

Respectfully submitted,

Team **16**

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/s/ Team 16