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Declined to Extend by Chambers v. Sanders, 6th Cir.(Mich.), April 3, 2023

120 S.Ct. 2054
Supreme Court of the United States

Jenifer TROXEL, et vir., Petitioners,
v.
Tommie GRANVILLE.

No. 99–138.
|
Argued Jan. 12, 2000.
|
Decided June 5, 2000.

Synopsis

Paternal grandparents petitioned for visitation with children born out-of-wedlock. The Superior Court, Skagit County, Michael Rickert, J., awarded visitation, and mother appealed. The Court of Appeals, 87 Wash.App. 131, 940 P.2d 698,reversed, and grandparents appealed. The Washington Supreme Court, Madsen, J., affirmed. Certiorari was granted. The Supreme Court, Justice O'Connor, held that Washington statute providing that any person may petition court for visitation at any time, and that court may order visitation rights for any person when visitation may serve best interest of child, violated substantive due process rights of mother, as applied to permit paternal grandparents, following death of children's father, to obtain increased court-ordered visitation, in excess of what mother had thought appropriate, based solely on state trial judge's disagreement with mother as to whether children would benefit from such increased visitation.

Affirmed.

Justice Souter concurred in judgment and filed opinion.

Justice Thomas concurred in judgment and filed opinion.

Justice Stevens dissented and filed opinion.

Justice Scalia dissented and filed opinion.

Justice Kennedy dissented and filed opinion.

Procedural Posture(s): On Appeal.

West Headnotes (8)

[1] **Constitutional Law** Levels of scrutiny; strict or heightened scrutiny

Due Process Clause of the Fourteenth Amendment, like its Fifth Amendment counterpart, guarantees more than fair process; it also includes substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests. U.S.C.A. Const.Amends. 5, 14.

627 Cases that cite this headnote

[2] **Child Custody** Persons entitled in general

Custody, care and nurture of child reside first with parents, whose primary function and freedom include preparing for obligations the state can neither supply nor hinder. (Per Justice O'Connor, with the Chief Justice and two Justices concurring, and with two Justices concurring in result.)

126 Cases that cite this headnote

[3] **Constitutional Law** Parent and Child Relationship

Due Process Clause of the Fourteenth Amendment protects fundamental right of parents to make decisions as to care, custody, and control of their children. U.S.C.A. Const.Amend. 14.

3811 Cases that cite this headnote

[4] **Child Custody** Grandparents
Constitutional Law Child custody, visitation, and support

Washington statute providing that any person may petition court for visitation at any time,

and that court may order visitation rights for any person when visitation may serve best interest of child, violated substantive due process rights of mother, as applied to permit paternal grandparents, following death of children's father, to obtain increased court-ordered visitation, in excess of what mother had thought appropriate, based solely on state trial judge's disagreement with mother as to whether children would benefit from such increased visitation; at minimum, trial judge had to accord special weight to mother's own determination of her children's best interests. U.S.C.A. Const.Amend. 14; West's RCWA 26.10.160(3). (Per Justice O'Connor, with the Chief Justice and two Justices concurring, and with two Justices concurring in result.)

895 Cases that cite this headnote

[5] **Child Custody** Fitness

There is presumption that fit parents act in best interests of their children. (Per Justice O'Connor, with the Chief Justice and two Justices concurring, and with two Justices concurring in result.)

361 Cases that cite this headnote

[6] **Parent and Child** Care, Custody, and Control of Child; Child Raising

As long as parent adequately cares for his or her children, i.e., is fit, there will normally be no reason for state to inject itself into private realm of the family, in order to further question ability of that parent to make best decisions as to rearing of that parent's children. (Per Justice O'Connor, with the Chief Justice and two Justices concurring, and with two Justices concurring in result.)

526 Cases that cite this headnote

[7] **Child Custody** Objections of parent

Whether it will be beneficial to child to have relationship with grandparent is, in any specific case, a decision for parent to make in first instance, and if a fit parent's decision becomes subject to judicial review, court must accord at least some special weight to parent's own determination. (Per Justice O'Connor, with the Chief Justice and two Justices concurring, and with two Justices concurring in result.)

909 Cases that cite this headnote

[8] **Constitutional Law** Parent and Child Relationship

Due Process Clause does not permit state to infringe on fundamental right of parents to make child-rearing decisions simply because state judge believes a "better" decision could be made. U.S.C.A. Const.Amend. 14. (Per Justice O'Connor, with the Chief Justice and two Justices concurring, and with two Justices concurring in result.)

763 Cases that cite this headnote

West Codenotes

Unconstitutional as Applied
West's RCWA 26.10.160(3).

***57 **2055** *Syllabus* [*]

Washington Rev.Code § 26.10.160(3) permits "[a]ny person" to petition for visitation rights "at any time" and authorizes state superior courts to grant such rights whenever visitation may serve a child's best interest. Petitioners Troxel petitioned for the right to visit their deceased son's daughters. Respondent Granville, the girls' mother, did not oppose all visitation, but objected to the amount sought by the Troxels. The Superior Court ordered more visitation than Granville desired, and she appealed. The State Court of Appeals reversed and dismissed the Troxels' petition. In affirming, the State Supreme Court held, *inter alia,* that § 26.10.160(3) unconstitutionally infringes on parents' fundamental right to

rear their children. Reasoning that the Federal Constitution permits a State to interfere with this right only to prevent harm or potential harm to **2056 the child, it found that § 26.10.160(3) does not require a threshold showing of harm and sweeps too broadly by permitting any person to petition at any time with the only requirement being that the visitation serve the best interest of the child.

Held: The judgment is affirmed.

137 Wash.2d 1, 137 Wash.2d 1, 969 P.2d 21, affirmed.

Justice O'CONNOR, joined by THE CHIEF JUSTICE, Justice GINSBURG, and Justice BREYER, concluded that § 26.10.160(3), as applied to Granville and her family, violates her due process right to make decisions concerning the care, custody, and control of her daughters. Pp. 2059–2065.

(a) The Fourteenth Amendment's Due Process Clause has 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, 117 S.Ct. 2258, 138 L.Ed.2d 772, including parents' fundamental right to make decisions concerning the care, custody, and control of their children, see, *e.g., Stanley v. Illinois,* 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551. Pp. 2059–2060.

(b) Washington's breathtakingly broad statute effectively permits a court to disregard and overturn *any* decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge's determination of the child's best interest. A parent's estimation of the child's best interest is accorded no deference. The State Supreme Court had the opportunity, *58 but declined, to give § 26.10.160(3) a narrower reading. A combination of several factors compels the conclusion that § 26.10.160(3), as applied here, exceeded the bounds of the Due Process Clause. First, the Troxels did not allege, and no court has found, that Granville was an unfit parent. There is a presumption that fit parents act in their children's best interests, *Parham v. J. R.,* 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101; there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children, see, *e.g., Reno v. Flores,* 507 U.S. 292, 304, 113 S.Ct. 1439, 123 L.Ed.2d 1. The problem here is not that the Superior Court intervened, but that when it did so, it gave no special weight to Granville's determination of her daughters' best interests. More importantly, that court appears to have applied the opposite presumption, favoring grandparent visitation. In effect, it placed on Granville the burden of *disproving* that visitation would be in her daughters' best interest and thus failed to provide any protection for her fundamental right. The court also gave no weight to Granville's having assented to visitation even before the filing of the petition or subsequent court intervention. These factors, when considered with the Superior Court's slender findings, show that this case involves nothing more than a simple disagreement between the court and Granville concerning her children's best interests, and that the visitation order was an unconstitutional infringement on Granville's right to make decisions regarding the rearing of her children. Pp. 2060–2064.

(c) Because the instant decision rests on § 26.10.160(3)'s sweeping breadth and its application here, there is no need to consider the question whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation or to decide the precise scope of the parental due process right in the visitation context. There is also no reason to remand this case for further proceedings. The visitation order clearly violated the Constitution, and the parties should not be forced into additional litigation that would further burden Granville's parental right. Pp. 2064–2065.

**2057 Justice SOUTER concluded that the Washington Supreme Court's second reason for invalidating its own state statute—that it sweeps too broadly in authorizing any person at any time to request (and a judge to award) visitation rights, subject only to the State's particular best-interests standard—is consistent with this Court's prior cases. This ends the case, and there is no need to decide whether harm is required or to consider the precise scope of a parent's right or its necessary protections. Pp. 2065–2067.

*59 Justice THOMAS agreed that this Court's recognition of a fundamental right of parents to direct their children's upbringing resolves this case, but concluded that strict scrutiny is the appropriate standard of review to apply to infringements of fundamental rights. Here, the State lacks a

compelling interest in second-guessing a fit parent's decision regarding visitation with third parties. Pp. 2067–2068.

O'CONNOR, J., announced the judgment of the Court and delivered an opinion, in which REHNQUIST, C.J., and GINSBURG and BREYER, JJ., joined. SOUTER, J., *post,* p. 2065, and THOMAS, J., *post,* p. 2067, filed opinions concurring in the judgment. STEVENS, J., *post,* p. 2068, SCALIA, J., *post,* p. 2074, and KENNEDY, J., *post,* p. 2075, filed dissenting opinions.

Attorneys and Law Firms

Mark D. Olson, for petitioners.

Catherine W. Smith, Howard Goodfriend, for respondent.

Opinion

***60** Justice O'CONNOR announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, Justice GINSBURG, and Justice BREYER join.

Section 26.10.160(3) of the Revised Code of Washington permits "[a]ny person" to petition a superior court for visitation rights "at any time," and authorizes that court to grant such visitation rights whenever "visitation may serve the best interest of the child." Petitioners Jenifer and Gary Troxel petitioned a Washington Superior Court for the right to visit their grandchildren, Isabelle and Natalie Troxel. Respondent Tommie Granville, the mother of Isabelle and Natalie, opposed the petition. The case ultimately reached the Washington Supreme Court, which held that § 26.10.160(3) unconstitutionally interferes with the fundamental right of parents to rear their children.

I

Tommie Granville and Brad Troxel shared a relationship that ended in June 1991. The two never married, but they had two daughters, Isabelle and Natalie. Jenifer and Gary Troxel are Brad's parents, and thus the paternal grandparents of Isabelle and Natalie. After Tommie and Brad separated in 1991, Brad lived with his parents and regularly brought his daughters to his parents' home for weekend visitation. Brad committed suicide in May 1993. Although the Troxels at first continued to see Isabelle and Natalie on a regular basis after their son's death, Tommie Granville informed ***61** the Troxels in October 1993 that she wished to limit their visitation with her daughters to one short visit per month. *In re Smith,* 137 Wash.2d 1, 6, 969 P.2d 21, 23–24 (1998); *In re Troxel,* 87 Wash.App. 131, 133, 940 P.2d 698, 698–699 (1997).

In December 1993, the Troxels commenced the present action by filing, in the Washington Superior Court for Skagit County, a petition to obtain visitation rights with Isabelle and Natalie. The Troxels filed their petition under two Washington statutes, Wash. Rev.Code §§ 26.09.240 and 26.10.160(3) (1994). Only the latter statute is at issue in this case. Section 26.10.160(3) provides: "Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The ****2058** court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances." At trial, the Troxels requested two weekends of overnight visitation per month and two weeks of visitation each summer. Granville did not oppose visitation altogether, but instead asked the court to order one day of visitation per month with no overnight stay. 87 Wash.App., at 133–134, 940 P.2d, at 699. In 1995, the Superior Court issued an oral ruling and entered a visitation decree ordering visitation one weekend per month, one week during the summer, and four hours on both of the petitioning grandparents' birthdays. 137 Wash.2d, at 6, 969 P.2d, at 23; App. to Pet. for Cert. 76a–78a.

Granville appealed, during which time she married Kelly Wynn. Before addressing the merits of Granville's appeal, the Washington Court of Appeals remanded the case to the Superior Court for entry of written findings of fact and conclusions of law. 137 Wash.2d, at 6, 969 P.2d, at 23. On remand, the Superior Court found that visitation was in Isabelle's and Natalie's best interests:

> "The Petitioners [the Troxels] are part of a large, central, loving family, all located in this area, and the Petitioners ***62** can provide opportunities for the children in the areas of cousins and music.
>
> "... The court took into consideration all factors regarding the best interest of the children and considered all the testimony before it. The children would be benefitted from spending quality time with the Petitioners, provided that

that time is balanced with time with the childrens' *[sic]* nuclear family. The court finds that the childrens' *[sic]* best interests are served by spending time with their mother and stepfather's other six children." App. 70a.

Approximately nine months after the Superior Court entered its order on remand, Granville's husband formally adopted Isabelle and Natalie. *Id.,* at 60a–67a.

The Washington Court of Appeals reversed the lower court's visitation order and dismissed the Troxels' petition for visitation, holding that nonparents lack standing to seek visitation under § 26.10.160(3) unless a custody action is pending. In the Court of Appeals' view, that limitation on nonparental visitation actions was "consistent with the constitutional restrictions on state interference with parents' fundamental liberty interest in the care, custody, and management of their children." 87 Wash.App., at 135, 940 P.2d, at 700 (internal quotation marks omitted). Having resolved the case on the statutory ground, however, the Court of Appeals did not expressly pass on Granville's constitutional challenge to the visitation statute. *Id.,* at 138, 940 P.2d, at 701.

The Washington Supreme Court granted the Troxels' petition for review and, after consolidating their case with two other visitation cases, affirmed. The court disagreed with the Court of Appeals' decision on the statutory issue and found that the plain language of § 26.10.160(3) gave the Troxels standing to seek visitation, irrespective of whether a custody action was pending. ***63** 137 Wash.2d, at 12, 969 P.2d, at 26–27. The Washington Supreme Court nevertheless agreed with the Court of Appeals' ultimate conclusion that the Troxels could not obtain visitation of Isabelle and Natalie pursuant to § 26.10.160(3). The court rested its decision on the Federal Constitution, holding that § 26.10.160(3) unconstitutionally infringes on the fundamental right of parents to rear their children. In the court's view, there were at least two problems with the nonparental visitation statute. First, according to the Washington Supreme Court, the Constitution permits a State to interfere with the right of parents to rear their children only to prevent harm or potential harm to a child. Section 26.10.160(3) fails that standard because it requires no threshold showing of harm. *Id.,* at 15–20, 969 P.2d, at 28–30. Second, ****2059** by allowing " 'any person' to petition for forced visitation of a child at 'any time' with the only requirement being that the visitation serve the best interest of the child," the Washington visitation statute sweeps too broadly. *Id.,* at 20, 969 P.2d, at 30. "It is not within the province of the state to make significant decisions concerning the custody of children merely because it could make a 'better' decision." *Ibid.,* 969 P.2d, at 31. The Washington Supreme Court held that "[p]arents have a right to limit visitation of their children with third persons," and that between parents and judges, "the parents should be the ones to choose whether to expose their children to certain people or ideas." *Id.,* at 21, 969 P.2d, at 31. Four justices dissented from the Washington Supreme Court's holding on the constitutionality of the statute. *Id.,* at 23–43, 969 P.2d 21, 969 P.2d, at 32–42.

We granted certiorari, 527 U.S. 1069, 120 S.Ct. 11, 144 L.Ed.2d 842 (1999), and now affirm the judgment.

II

The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household. While many children may have two married parents and ***64** grandparents who visit regularly, many other children are raised in single-parent households. In 1996, children living with only one parent accounted for 28 percent of all children under age 18 in the United States. U.S. Dept. of Commerce, Bureau of Census, Current Population Reports, 1997 Population Profile of the United States 27 (1998). Understandably, in these single-parent households, persons outside the nuclear family are called upon with increasing frequency to assist in the everyday tasks of child rearing. In many cases, grandparents play an important role. For example, in 1998, approximately 4 million children—or 5.6 percent of all children under age 18—lived in the household of their grandparents. U.S. Dept. of Commerce, Bureau of Census, Current Population Reports, Marital Status and Living Arrangements: March 1998 (Update), p. *i* (1998).

The nationwide enactment of nonparental visitation statutes is assuredly due, in some part, to the States' recognition of these changing realities of the American family. Because grandparents and other relatives undertake duties of a parental nature in many households, States have sought to ensure the welfare of the children therein by protecting the relationships those children form with such third parties. The States' nonparental visitation statutes are further supported

by a recognition, which varies from State to State, that children should have the opportunity to benefit from relationships with statutorily specified persons—for example, their grandparents. The extension of statutory rights in this area to persons other than a child's parents, however, comes with an obvious cost. For example, the State's recognition of an independent third-party interest in a child can place a substantial burden on the traditional parent-child relationship. Contrary to Justice STEVENS' accusation, our description of state nonparental visitation statutes in these terms, of course, is not meant to suggest that "children are so much chattel." *Post,* at 2072 (dissenting opinion). Rather, our terminology is intended to highlight the fact that these ***65** statutes can present questions of constitutional import. In this case, we are presented with just such a question. Specifically, we are asked to decide whether § 26.10.160(3), as applied to Tommie Granville and her family, violates the Federal Constitution.

[1] The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." ****2060** *Washington v. Glucksberg,* 521 U.S. 702, 719, 117 S.Ct. 2258 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.,* at 720, 117 S.Ct. 2258; see also *Reno v. Flores,* 507 U.S. 292, 301–302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993).

[2] The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska,* 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce v. Society of Sisters,* 268 U.S. 510, 534–535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in *Pierce* that "[t]he 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." *Id.,* at 535, 45 S.Ct. 571. We returned to the subject in *Prince v. Massachusetts,* 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary ***66** function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.,* at 166, 64 S.Ct. 438.

[3] In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, *e.g., Stanley v. Illinois,* 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' " (citation omitted)); *Wisconsin v. Yoder,* 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); *Quilloin v. Walcott,* 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham v. J. R.,* 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky v. Kramer,* 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Glucksberg, supra,* at 720, 117 S.Ct. 2258 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the righ [t] ... to direct the education and upbringing of one's children" (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.

***67** Section 26.10.160(3), as applied to Granville and her family in this case, unconstitutionally infringes on that fundamental ****2061** parental right. The Washington nonparental visitation statute is breathtakingly broad. According to the statute's text, "*[a]ny person* may petition the court for visitation rights *at any time,*" and the court may grant such visitation rights whenever "visitation may serve *the best interest of the child.*" § 26.10.160(3) (emphases added). That language effectively permits any third party seeking visitation to subject any decision by a parent concerning visitation of the parent's children to state-court review. Once the visitation petition has been filed in court and the matter is placed before a judge, a parent's decision that visitation would not be in the child's best interest is accorded no deference. Section 26.10.160(3) contains no requirement that a court accord the parent's decision any presumption of validity or any weight whatsoever. Instead, the Washington statute places the best-interest determination solely in the hands of the judge. Should the judge disagree with the parent's estimation of the child's best interests, the judge's view necessarily prevails. Thus, in practical effect, in the State of Washington a court can disregard and overturn *any* decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge's determination of the child's best interests. The Washington Supreme Court had the opportunity to give § 26.10.160(3) a narrower reading, but it declined to do so. See, *e.g.,* 137 Wash.2d, at 5, 969 P.2d, at 23 ("[The statute] allow[s] any person, at any time, to petition for visitation without regard to relationship to the child, without regard to changed circumstances, and without regard to harm"); *id.,* at 20, 969 P.2d, at 30 ("[The statute] allow[s] 'any person' to petition for forced visitation of a child at 'any time' with the only requirement being that the visitation serve the best interest of the child").

[4] ***68** Turning to the facts of this case, the record reveals that the Superior Court's order was based on precisely the type of mere disagreement we have just described and nothing more. The Superior Court's order was not founded on any special factors that might justify the State's interference with Granville's fundamental right to make decisions concerning the rearing of her two daughters. To be sure, this case involves a visitation petition filed by grandparents soon after the death of their son—the father of Isabelle and Natalie—but the combination of several factors here compels our conclusion that § 26.10.160(3), as applied, exceeded the bounds of the Due Process Clause.

[5] **[6]** First, the Troxels did not allege, and no court has found, that Granville was an unfit parent. That aspect of the case is important, for there is a presumption that fit parents act in the best interests of their children. As this Court explained in *Parham:*

> "[O]ur constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations. ... The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children." 442 U.S., at 602, 99 S.Ct. 2493 (alteration in original) (internal quotation marks and citations omitted).

Accordingly, so long as a parent adequately cares for his or her children (*i.e.,* is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the ***69** best decisions concerning the rearing of that parent's children. See, *e.g., Flores,* 507 U.S., at 304, 113 S.Ct. 1439.

****2062** The problem here is not that the Washington Superior Court intervened, but that when it did so, it gave no special weight at all to Granville's determination of her daughters' best interests. More importantly, it appears that the Superior Court applied exactly the opposite presumption. In reciting its oral ruling after the conclusion of closing arguments, the Superior Court judge explained:

> "The burden is to show that it is in the best interest of the children to have some visitation and some quality time with their grandparents. I think in most situations a commonsensical approach [is that] it is normally in the best interest of the children to spend quality time with the grandparent, unless the grandparent, *[sic]* there are some issues or problems involved wherein the grandparents, their lifestyles are going to impact adversely upon the children. That certainly isn't the case here from what I can tell." Verbatim Report of Proceedings in *In re Troxel,* No. 93–

3–00650–7 (Wash.Super.Ct., Dec. 14, 19, 1994), p. 213 (hereinafter Verbatim Report).

The judge's comments suggest that he presumed the grandparents' request should be granted unless the children would be "impact[ed] adversely." In effect, the judge placed on Granville, the fit custodial parent, the burden of *disproving* that visitation would be in the best interest of her daughters. The judge reiterated moments later: "I think [visitation with the Troxels] would be in the best interest of the children and I haven't been shown it is not in [the] best interest of the children." *Id.,* at 214, 113 S.Ct. 1439.

[7] The decisional framework employed by the Superior Court directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child. See *Parham, supra,* at 602, 99 S.Ct. 2493. In that respect, the court's presumption ***70** failed to provide any protection for Granville's fundamental constitutional right to make decisions concerning the rearing of her own daughters. Cf., *e.g.,* Cal. Fam.Code Ann. § 3104(e) (West 1994) (rebuttable presumption that grandparent visitation is not in child's best interest if parents agree that visitation rights should not be granted); Me.Rev.Stat. Ann., Tit. 19A, § 1803(3) (1998) (court may award grandparent visitation if in best interest of child and "would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the child"); Minn.Stat. § 257.022(2)(a)(2) (1998) (court may award grandparent visitation if in best interest of child and "such visitation would not interfere with the parent-child relationship"); Neb.Rev.Stat. § 43–1802(2) (1998) (court must find "by clear and convincing evidence" that grandparent visitation "will not adversely interfere with the parent-child relationship"); R.I. Gen. Laws § 15–5–24.3(a)(2)(v) (Supp.1999) (grandparent must rebut, by clear and convincing evidence, presumption that parent's decision to refuse grandparent visitation was reasonable); Utah Code Ann. § 30–5–2(2)(e) (1998) (same); *Hoff v. Berg,* 595 N.W.2d 285, 291–292 (N.D.1999) (holding North Dakota grandparent visitation statute unconstitutional because State has no "compelling interest in presuming visitation rights of grandparents to an unmarried minor are in the child's best interests and forcing parents to accede to court-ordered grandparental visitation unless the parents are first able to prove such visitation is not in the best interests of their minor child"). In an ideal world, parents might always seek to cultivate the bonds between grandparents and their grandchildren. Needless to say, however, our world is far from perfect, and in it the decision whether such an intergenerational relationship would be beneficial in any specific case is for the parent to make in the first instance. And, if a fit parent's decision of the kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination.

***71** Finally, we note that there is no allegation that Granville ever sought to cut off ****2063** visitation entirely. Rather, the present dispute originated when Granville informed the Troxels that she would prefer to restrict their visitation with Isabelle and Natalie to one short visit per month and special holidays. See 87 Wash.App., at 133, 940 P.2d, at 699; Verbatim Report 12. In the Superior Court proceedings Granville did not oppose visitation but instead asked that the duration of any visitation order be shorter than that requested by the Troxels. While the Troxels requested two weekends per month and two full weeks in the summer, Granville asked the Superior Court to order only one day of visitation per month (with no overnight stay) and participation in the Granville family's holiday celebrations. See 87 Wash.App., at 133, 940 P.2d, at 699; Verbatim Report 9 ("Right off the bat we'd like to say that our position is that grandparent visitation is in the best interest of the children. It is a matter of how much and how it is going to be structured") (opening statement by Granville's attorney). The Superior Court gave no weight to Granville's having assented to visitation even before the filing of any visitation petition or subsequent court intervention. The court instead rejected Granville's proposal and settled on a middle ground, ordering one weekend of visitation per month, one week in the summer, and time on both of the petitioning grandparents' birthdays. See 87 Wash.App., at 133–134, 940 P.2d, at 699; Verbatim Report 216–221. Significantly, many other States expressly provide by statute that courts may not award visitation unless a parent has denied (or unreasonably denied) visitation to the concerned third party. See, *e.g.,* Miss.Code Ann. § 93–16–3(2)(a) (1994) (court must find that "the parent or custodian of the child unreasonably denied the grandparent visitation rights with the child"); Ore.Rev.Stat. § 109.121(1)(a)(B) (1997) (court may award visitation if the "custodian of the child has denied the grandparent reasonable opportunity to visit the child"); R.I. Gen. Laws §§ 15–5–24.3(a)(2)(iii)–(iv) ***72** Supp.1999) (court must find that parents prevented grandparent from visiting grandchild and that "there is no other way the petitioner is able to visit his or her grandchild without court intervention").

[8] Considered together with the Superior Court's reasons for awarding visitation to the Troxels, the combination of these factors demonstrates that the visitation order in this case was an unconstitutional infringement on Granville's fundamental right to make decisions concerning the care, custody, and control of her two daughters. The Washington Superior Court failed to accord the determination of Granville, a fit custodial parent, any material weight. In fact, the Superior Court made only two formal findings in support of its visitation order. First, the Troxels "are part of a large, central, loving family, all located in this area, and the [Troxels] can provide opportunities for the children in the areas of cousins and music." App. 70a. Second, "[t]he children would be benefitted from spending quality time with the [Troxels], provided that that time is balanced with time with the childrens' *[sic]* nuclear family." *Ibid.* These slender findings, in combination with the court's announced presumption in favor of grandparent visitation and its failure to accord significant weight to Granville's already having offered meaningful visitation to the Troxels, show that this case involves nothing more than a simple disagreement between the Washington Superior Court and Granville concerning her children's best interests. The Superior Court's announced reason for ordering one week of visitation in the summer demonstrates our conclusion well: "I look back on some personal experiences .... We always spen[t] as kids a week with one set of grandparents and another set of grandparents, [and] it happened to work out in our family that [it] turned out to be an enjoyable experience. Maybe that can, in this family, if that is how it works out." Verbatim Report 220–221. As we have explained, ****2064** the Due Process Clause does not permit a State to infringe on the fundamental right ***73** of parents to make child rearing decisions simply because a state judge believes a "better" decision could be made. Neither the Washington nonparental visitation statute generally—which places no limits on either the persons who may petition for visitation or the circumstances in which such a petition may be granted—nor the Superior Court in this specific case required anything more. Accordingly, we hold that § 26.10.160(3), as applied in this case, is unconstitutional.

Because we rest our decision on the sweeping breadth of § 26.10.160(3) and the application of that broad, unlimited power in this case, we do not consider the primary constitutional question passed on by the Washington Supreme Court—whether the Due Process Clause requires all nonparental visitation statutes to include a showing of harm or potential harm to the child as a condition precedent to granting visitation. We do not, and need not, define today the precise scope of the parental due process right in the visitation context. In this respect, we agree with Justice KENNEDY that the constitutionality of any standard for awarding visitation turns on the specific manner in which that standard is applied and that the constitutional protections in this area are best "elaborated with care." *Post,* at 2079 (dissenting opinion). Because much state-court adjudication in this context occurs on a case-by-case basis, we would be hesitant to hold that specific nonparental visitation statutes violate the Due Process Clause as a *per se* matter.[*] See, *e.g., Fairbanks* ***74** *v. McCarter,* 330 Md. 39, 49–50, 622 A.2d 121, 126–127 (1993) (interpreting best-interest standard in grandparent visitation statute normally to require court's consideration of certain factors); *Williams v. Williams,* 256 Va. 19, 501 S.E.2d 417, 418 (1998) (interpreting Virginia nonparental visitation statute to require finding of harm as condition precedent to awarding visitation).

Justice STEVENS criticizes our reliance on what he characterizes as merely "a guess" about the Washington courts' interpretation of § 26.10.160(3). *Post,* at 2068 (dissenting opinion). Justice KENNEDY likewise states that "[m]ore specific guidance should await a case in which a State's highest court has considered all of the facts in the course of elaborating the protection afforded to parents by the laws of the State and by the Constitution itself." *Post,* at 2079 (dissenting opinion). ****2065** We respectfully disagree. There is no need to hypothesize about how the Washington courts *might* apply § 26.10.160(3) because the Washington Superior Court *did* apply the statute in this very case. Like the Washington Supreme Court, then, we are presented with an actual visitation order and the reasons why the Superior Court believed ***75** entry of the order was appropriate in this case. Faced with the Superior Court's application of § 26.10.160(3) to Granville and her family, the Washington Supreme Court chose not to give the statute a narrower construction. Rather, that court gave § 26.10.160(3) a literal and expansive interpretation. As we have explained, that broad construction plainly encompassed the Superior Court's application of the statute. See *supra,* at 2060–2061.

There is thus no reason to remand the case for further proceedings in the Washington Supreme Court. As Justice KENNEDY recognizes, the burden of litigating a domestic

relations proceeding can itself be "so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated." *Post,* at 2079. In this case, the litigation costs incurred by Granville on her trip through the Washington court system and to this Court are without a doubt already substantial. As we have explained, it is apparent that the entry of the visitation order in this case violated the Constitution. We should say so now, without forcing the parties into additional litigation that would further burden Granville's parental right. We therefore hold that the application of § 26.10.160(3) to Granville and her family violated her due process right to make decisions concerning the care, custody, and control of her daughters.

Accordingly, the judgment of the Washington Supreme Court is affirmed.

It is so ordered.

Justice SOUTER, concurring in the judgment.

I concur in the judgment affirming the decision of the Supreme Court of Washington, whose facial invalidation of its own state statute is consistent with this Court's prior cases addressing the substantive interests at stake. I would say no more. The issues that might well be presented by reviewing a decision addressing the specific application of the ***76** state statute by the trial court, *ante,* at 2061–2064, are not before us and do not call for turning any fresh furrows in the "treacherous field" of substantive due process. *Moore v. East Cleveland,* 431 U.S. 494, 502, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977) (opinion of Powell, J.).

The Supreme Court of Washington invalidated its state statute based on the text of the statute alone, not its application to any particular case.[1] Its ruling rested on two independently sufficient grounds: the ****2066** failure of the statute to require harm to the child to justify a disputed visitation order, *In re Smith,* 137 Wash.2d 1, 17, 969 P.2d 21, 29 (1998), and the statute's authorization of "any person" at "any time" to petition for and to receive visitation rights subject only to a free-ranging best-interests-of-the-child standard, *id.,* at 20–21, 969 P.2d, at 30–31. *Ante,* at 2058–2059, 969 P.2d 21. I see no error in the second reason, that because the state statute authorizes any person at any time to request (and a judge to award) visitation rights, subject only to the State's particular best-interests ***77** standard, the state statute sweeps too broadly and is unconstitutional on its face. Consequently, there is no need to decide whether harm is required or to consider the precise scope of the parent's right or its necessary protections.

We have long recognized that a parent's interests in the nurture, upbringing, companionship, care, and custody of children are generally protected by the Due Process Clause of the Fourteenth Amendment. See, *e.g., Meyer v. Nebraska,* 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923); *Pierce v. Society of Sisters,* 268 U.S. 510, 535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); *Stanley v. Illinois,* 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *Wisconsin v. Yoder,* 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); *Quilloin v. Walcott,* 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978); *Parham v. J. R.,* 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979); *Santosky v. Kramer,* 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *Washington v. Glucksberg,* 521 U.S. 702, 720, 117 S.Ct. 2258 (1997). As we first acknowledged in *Meyer,* the right of parents to "bring up children," 262 U.S., at 399, 43 S.Ct. 625, and "to control the education of their own" is protected by the Constitution, *id.,* at 401, 43 S.Ct. 625. See also *Glucksberg, supra,* at 761 (SOUTER, J., concurring in judgment).

On the basis of this settled principle, the Supreme Court of Washington invalidated its statute because it authorized a contested visitation order at the intrusive behest of any person at any time subject only to a best-interests-of-the-child standard. In construing the statute, the state court explained that the "any person" at "any time" language was to be read literally, 137 Wash.2d, at 10–11, 969 P.2d, at 25–27, and that "[m]ost notably the statut[e] do[es] not require the petitioner to establish that he or she has a substantial relationship with the child," *id.,* at 20–21, 969 P.2d, at 31. Although the statute speaks of granting visitation rights whenever "visitation may serve the best interest of the child," Wash. Rev.Code § 26.10.160(3) (1994), the state court authoritatively read this provision as placing hardly any limit on a court's discretion to award visitation rights. As the court understood it, the specific best-interests provision in the ***78** statute would allow a court to award visitation whenever it thought it could make a better decision than a child's parent had done. See 137 Wash.2d, at 20, 969 P.2d, at 31 ("It is not within the province of the state to make significant decisions concerning the custody of children merely because it could make a

'better' decision").[2] On that basis in part, the Supreme Court of Washington invalidated the State's own statute: "Parents have a right to limit visitation of their children with third persons." *Id.,* at 21, 969 P.2d, at 31.

Our cases, it is true, have not set out exact metes and bounds to the protected interest of a parent in the relationship with his child, but *Meyer*'s repeatedly recognized right of upbringing would be a sham if it failed to encompass the right to be free of judicially compelled visitation by "any party" at "any time" a judge believed **2067 he "could make a 'better' decision"[3] than the objecting parent had done. The strength of a parent's interest in controlling a child's associates is as obvious as the influence of personal associations on the development of the child's social and moral character. Whether for good or for ill, adults not only influence but may indoctrinate children, and a choice about a child's social companions is not essentially different from the designation of the adults who will influence the child in school. Even a State's considered judgment about the preferable political and religious character of schoolteachers is not entitled *79 to prevail over a parent's choice of private school. *Pierce, supra,* at 535, 45 S.Ct. 571 ("The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. 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"). It would be anomalous, then, to subject a parent to any individual judge's choice of a child's associates from out of the general population merely because the judge might think himself more enlightened than the child's parent.[4] To say the least (and as the Court implied in *Pierce*), parental choice in such matters is not merely a default rule in the absence of either governmental choice or the government's designation of an official with the power to choose for whatever reason and in whatever circumstances.

Since I do not question the power of a State's highest court to construe its domestic statute and to apply a demanding standard when ruling on its facial constitutionality,[5] see *Chicago v. Morales,* 527 U.S. 41, 55, n. 22, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999) (opinion of STEVENS, J.), this for me is the end of the case. I would simply affirm the decision of the Supreme Court of Washington that its statute, authorizing courts to grant visitation rights to any person at any time, is unconstitutional. I therefore respectfully concur in the judgment.

*80 Justice THOMAS, concurring in the judgment.

I write separately to note that neither party has argued that our substantive due process cases were wrongly decided and that the original understanding of the Due Process Clause precludes judicial enforcement of unenumerated rights under that constitutional provision. As a result, I express no view on the merits of this matter, and I understand the plurality as well to leave the resolution of that issue for another day.[*]

**2068 Consequently, I agree with the plurality that this Court's recognition of a fundamental right of parents to direct the upbringing of their children resolves this case. Our decision in *Pierce v. Society of Sisters,* 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), holds that parents have a fundamental constitutional right to rear their children, including the right to determine who shall educate and socialize them. The opinions of the plurality, Justice KENNEDY, and Justice SOUTER recognize such a right, but curiously none of them articulates the appropriate standard of review. I would apply strict scrutiny to infringements of fundamental rights. Here, the State of Washington lacks even a legitimate governmental interest—to say nothing of a compelling one—in second-guessing a fit parent's decision regarding visitation with third parties. On this basis, I would affirm the judgment below.

Justice STEVENS, dissenting.

The Court today wisely declines to endorse either the holding or the reasoning of the Supreme Court of Washington. In my opinion, the Court would have been even wiser to deny certiorari. Given the problematic character of the trial court's decision and the uniqueness of the Washington statute, there was no pressing need to review a State Supreme *81 Court decision that merely requires the state legislature to draft a better statute.

Having decided to address the merits, however, the Court should begin by recognizing that the State Supreme Court rendered a federal constitutional judgment holding a state law invalid on its face. In light of that judgment, I believe that we should confront the federal questions presented directly.

For the Washington statute is not made facially invalid either because it may be invoked by too many hypothetical plaintiffs, or because it leaves open the possibility that someone may be permitted to sustain a relationship with a child without having to prove that serious harm to the child would otherwise result.

I

In response to Tommie Granville's federal constitutional challenge, the State Supreme Court broadly held that Wash. Rev.Code § 26.10.160(3) (Supp.1996) was invalid on its face under the Federal Constitution.[1] Despite the nature of this judgment, Justice O'CONNOR would hold that the Washington visitation statute violated the Due Process Clause of the Fourteenth Amendment only as applied. *Ante,* at 2059–2060, 2060–2061, 2064 (plurality opinion). I agree with Justice SOUTER, *ante,* at 2065–2066, and n. 1 (opinion concurring in judgment), that this approach is untenable.

The task of reviewing a trial court's application of a state statute to the particular facts of a case is one that should be performed in the first instance by the state appellate courts. In this case, because of their views of the Federal Constitution, the Washington state appeals courts have yet to decide whether the trial court's findings were adequate under the ***82** statute.[2] Any as-applied critique of the trial court's judgment that this Court might offer could only be based upon a guess about the state courts' application of that State's statute, ****2069** and an independent assessment of the facts in this case—both judgments that we are ill-suited and ill-advised to make.[3]

***83** While I thus agree with Justice SOUTER in this respect, I do not agree with his conclusion that the State Supreme Court made a definitive construction of the visitation statute that necessitates the constitutional conclusion he would draw.[4] As I read the State Supreme Court's opinion, *In re Smith,* 137 Wash.2d 1, 19–20, 969 P.2d 21, 30–31 (1998), its interpretation of the Federal Constitution made it unnecessary to adopt a definitive construction of the statutory text, or, critically, to decide whether the statute had been correctly applied in this case. In particular, the state court gave no content to the phrase, "best interest of the child," Wash. Rev.Code § 26.10.160(3) (Supp.1996)—content that might well be gleaned from that State's own statutes or decisional law employing the same phrase in different contexts, ***84** and from the myriad other state statutes and court decisions at least nominally applying the same standard.[5] Thus, ****2070** I believe that Justice SOUTER'S conclusion that the statute unconstitutionally imbues state trial court judges with " 'too much discretion in *every* case,' " *ante,* at 2067, n. 3 (opinion concurring in judgment) (quoting *Chicago v. Morales,* 527 U.S. 41, 71, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999) (BREYER, J., concurring)), is premature.

We are thus presented with the unconstrued terms of a state statute and a State Supreme Court opinion that, in my view, significantly misstates the effect of the Federal Constitution upon any construction of that statute. Given that posture, I believe the Court should identify and correct the two flaws in the reasoning of the state court's majority opinion, ***85** and remand for further review of the trial court's disposition of this specific case.

II

In my view, the State Supreme Court erred in its federal constitutional analysis because neither the provision granting "any person" the right to petition the court for visitation, 137 Wash.2d, at 20, 969 P.2d, at 30, nor the absence of a provision requiring a "threshold ... finding of harm to the child," *ibid.,* provides a sufficient basis for holding that the statute is invalid in all its applications. I believe that a facial challenge should fail whenever a statute has "a 'plainly legitimate sweep,' " *Washington v. Glucksberg,* 521 U.S. 702, 739–740, and n. 7, 117 S.Ct. 2258 (1997) (STEVENS, J., concurring in judgment).[6] Under the Washington statute, there are plainly any number of cases—indeed, one suspects, the most common to arise—in which the "person" among "any" seeking visitation is a once-custodial caregiver, an intimate relation, or even a genetic parent. Even the Court would seem to agree that in many circumstances, it would be constitutionally permissible for a court to award some visitation of a child to a parent or previous caregiver in cases of parental separation or divorce, cases of disputed custody, cases involving temporary foster care or guardianship, and so forth. As the statute plainly sweeps in a great deal of the permissible, the State Supreme Court majority incorrectly

concluded that a statute authorizing "any person" to file a petition seeking visitation privileges would invariably run afoul of the Fourteenth Amendment.

The second key aspect of the Washington Supreme Court's holding—that the Federal Constitution requires a showing of actual or potential "harm" to the child before a court may ***86** order visitation continued over a parent's objections—finds no support in this Court's case law. While, as ****2071** the Court recognizes, the Federal Constitution certainly protects the parent-child relationship from arbitrary impairment by the State, see *infra* this page and 2072, we have never held that the parent's liberty interest in this relationship is so inflexible as to establish a rigid constitutional shield, protecting every arbitrary parental decision from any challenge absent a threshold finding of harm.[7] The presumption that parental decisions generally serve the best interests of their children is sound, and clearly in the normal case the parent's interest is paramount. But even a fit parent is capable of treating a child like a mere possession.

Cases like this do not present a bipolar struggle between the parents and the State over who has final authority to determine what is in a child's best interests. There is at a minimum a third individual, whose interests are implicated in every case to which the statute applies—the child.

It has become standard practice in our substantive due process jurisprudence to begin our analysis with an identification of the "fundamental" liberty interests implicated by the challenged state action. See, *e.g., ante,* at 2059–2060 (opinion of O'CONNOR, J.); *Washington v. Glucksberg,* 521 U.S. 702, 117 S.Ct. 2258 (1997); *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). My colleagues are of course correct to recognize that the right of a parent to maintain a relationship with his or her child is among the interests included ***87** most often in the constellation of liberties protected through the Fourteenth Amendment. *Ante,* at 2059–2060 (opinion of O'CONNOR, J.). Our cases leave no doubt that parents have a fundamental liberty interest in caring for and guiding their children, and a corresponding privacy interest—absent exceptional circumstances—in doing so without the undue interference of strangers to them and to their child. Moreover, and critical in this case, our cases applying this principle have explained that with this constitutional liberty comes a presumption (albeit a rebuttable one) that "natural bonds of affection lead parents to act in the best interests of their children." *Parham v. J. R.,* 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979); see also *Casey,* 505 U.S., at 895, 112 S.Ct. 2791; *Santosky v. Kramer,* 455 U.S. 745, 759, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (State may not presume, at factfinding stage of parental rights termination proceeding, that interests of parent and child diverge); see also *ante,* at 2061–2062 (opinion of O'CONNOR, J.).

Despite this Court's repeated recognition of these significant parental liberty interests, these interests have never been seen to be without limits. In *Lehr v. Robertson,* 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983), for example, this Court held that a putative biological father who had never established an actual relationship with his child did not have a constitutional right to notice of his child's adoption by the man who had married the child's mother. As this Court had recognized in an earlier case, a parent's liberty interests " 'do not spring full-blown from the biological connection between parent and child. They require relationships more enduring.' " *Id.,* at 260, 103 S.Ct. 2985 (quoting *Caban v. Mohammed,* 441 U.S. 380, 397, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979)).

****2072** Conversely, in *Michael H. v. Gerald D.,* 491 U.S. 110, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989), this Court concluded that despite both biological parenthood and an established relationship with a young child, a father's due process liberty interest in maintaining some connection with that child was not sufficiently powerful to overcome a state statutory presumption that the husband of the child's mother was the child's parent. As a result of the ***88** presumption, the biological father could be denied even visitation with the child because, as a matter of state law, he was not a "parent." A plurality of this Court there recognized that the parental liberty interest was a function, not simply of "isolated factors" such as biology and intimate connection, but of the broader and apparently independent interest in family. See, *e.g., id.,* at 123, 109 S.Ct. 2333; see also *Lehr,* 463 U.S., at 261, 103 S.Ct. 2985; *Smith v. Organization of Foster Families For Equality & Reform,* 431 U.S. 816, 842–847, 97 S.Ct. 2094, 53 L.Ed.2d 14 (1977); *Moore v. East Cleveland,* 431 U.S. 494, 498–504, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977).

A parent's rights with respect to her child have thus never been regarded as absolute, but rather are limited by the existence of an actual, developed relationship with a child, and are tied

to the presence or absence of some embodiment of family. These limitations have arisen, not simply out of the definition of parenthood itself, but because of this Court's assumption that a parent's interests in a child must be balanced against the State's long-recognized interests as *parens patriae,* see, *e.g., Reno v. Flores,* 507 U.S. 292, 303–304, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993); *Santosky v. Kramer,* 455 U.S., at 766, 102 S.Ct. 1388; *Parham,* 442 U.S., at 605, 99 S.Ct. 2493; *Prince v. Massachusetts,* 321 U.S. 158, 166, 64 S.Ct. 438, 88 L.Ed. 645 (1944), and, critically, the child's own complementary interest in preserving relationships that serve her welfare and protection, *Santosky,* 455 U.S., at 760, 102 S.Ct. 1388.

While this Court has not yet had occasion to elucidate the nature of a child's liberty interests in preserving established familial or family-like bonds, 491 U.S., at 130, 109 S.Ct. 2333 (reserving the question), it seems to me extremely likely that, to the extent parents and families have fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so, too, must their interests be balanced in the equation.[8] At a minimum, our prior cases recognizing ***89** that children are, generally speaking, constitutionally protected actors require that this Court reject any suggestion that when it comes to parental rights, children are so much chattel. See *ante,* at 2059–2060 (opinion of O'CONNOR, J.) (describing States' recognition of "an independent third-party interest in a child"). The constitutional protection against arbitrary state interference with parental rights should not be extended to prevent the States from protecting children against the arbitrary exercise of parental authority that is not in fact motivated by an interest in the welfare of the child.[9]

****2073** This is not, of course, to suggest that a child's liberty interest in maintaining contact with a particular individual is to be treated invariably as on a par with that child's parents' contrary interests. Because our substantive due process case law includes a strong presumption that a parent will act ***90** in the best interest of her child, it would be necessary, were the state appellate courts actually to confront a challenge to the statute as applied, to consider whether the trial court's assessment of the "best interest of the child" incorporated that presumption. Neither would I decide whether the trial court applied Washington's statute in a constitutional way in this case, although, as I have explained, n. 3, *supra,* I think the outcome of this determination is far from clear. For the purpose of a facial challenge like this, I think it safe to assume that trial judges usually give great deference to parents' wishes, and I am not persuaded otherwise here.

But presumptions notwithstanding, we should recognize that there may be circumstances in which a child has a stronger interest at stake than mere protection from serious harm caused by the termination of visitation by a "person" other than a parent. The almost infinite variety of family relationships that pervade our ever-changing society strongly counsel against the creation by this Court of a constitutional rule that treats a biological parent's liberty interest in the care and supervision of her child as an isolated right that may be exercised arbitrarily. It is indisputably the business of the States, rather than a federal court employing a national standard, to assess in the first instance the relative importance of the conflicting interests that give rise to disputes such as this.[10] Far from guaranteeing that ***91** parents' interests will be trammeled in the sweep of cases arising under the statute, the Washington law merely gives an individual—with whom a child may have an established relationship—the procedural right to ask the State to act as arbiter, through the entirely well-known best-interests standard, between the parent's protected interests and the child's. ****2074** It seems clear to me that the Due Process Clause of the Fourteenth Amendment leaves room for States to consider the impact on a child of possibly arbitrary parental decisions that neither serve nor are motivated by the best interests of the child.

Accordingly, I respectfully dissent.

Justice SCALIA, dissenting.

In my view, a right of parents to direct the upbringing of their children is among the "unalienable Rights" with which the Declaration of Independence proclaims "all men ... are endowed by their Creator." And in my view that right is also among the "othe[r] [rights] retained by the people" which the Ninth Amendment says the Constitution's enumeration of rights "shall not be construed to deny or disparage." The Declaration of Independence, however, is not a legal prescription conferring powers upon the courts; and the Constitution's refusal to "deny or disparage" other rights is far removed from affirming any one of them, and even further removed from authorizing judges to identify what they might be, and to enforce the judges' list against laws duly enacted by the people. Consequently, while I would think it

entirely compatible with the commitment to representative ***92** democracy set forth in the founding documents to argue, in legislative chambers or in electoral campaigns, that the State has *no power* to interfere with parents' authority over the rearing of their children, I do not believe that the power which the Constitution confers upon me *as a judge* entitles me to deny legal effect to laws that (in my view) infringe upon what is (in my view) that unenumerated right.

Only three holdings of this Court rest in whole or in part upon a substantive constitutional right of parents to direct the upbringing of their children[1]—two of them from an era rich in substantive due process holdings that have since been repudiated. See *Meyer v. Nebraska,* 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923); *Pierce v. Society of Sisters,* 268 U.S. 510, 534–535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); *Wisconsin v. Yoder,* 406 U.S. 205, 232–233, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). Cf. *West Coast Hotel Co. v. Parrish,* 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937) (overruling *Adkins v. Children's Hospital of D. C.,* 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785 (1923)). The sheer diversity of today's opinions persuades me that the theory of unenumerated parental rights underlying these three cases has small claim to *stare decisis* protection. A legal principle that can be thought to produce such diverse outcomes in the relatively simple case before us here is not a legal principle that has induced substantial reliance. While I would not now overrule those earlier cases (that has not been urged), neither would I extend the theory upon which they rested to this new context.

Judicial vindication of "parental rights" under a Constitution that does not even mention them requires (as Justice KENNEDY'S opinion rightly points out) not only a judicially crafted definition of parents, but also—unless, as no one believes, ***93** the parental rights are to be absolute—judicially approved assessments of "harm to the child" and judicially defined gradations of other persons (grandparents, extended family, adoptive family in an adoption later found to be invalid, long-term guardians, etc.) who may have some claim against the wishes of the parents. If we ****2075** embrace this unenumerated right, I think it obvious—whether we affirm or reverse the judgment here, or remand as Justice STEVENS or Justice KENNEDY would do—that we will be ushering in a new regime of judicially prescribed, and federally prescribed, family law. I have no reason to believe that federal judges will be better at this than state legislatures; and state legislatures have the great advantages of doing harm in a more circumscribed area, of being able to correct their mistakes in a flash, and of being removable by the people.[2]

For these reasons, I would reverse the judgment below.

Justice KENNEDY, dissenting.

The Supreme Court of Washington has determined that petitioners Jenifer and Gary Troxel have standing under state law to seek court-ordered visitation with their grandchildren, notwithstanding the objections of the children's parent, respondent Tommie Granville. The statute relied upon provides:

> "Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances." Wash. Rev.Code § 26.10.160(3) (1994).

***94** After acknowledging this statutory right to sue for visitation, the State Supreme Court invalidated the statute as violative of the United States Constitution, because it interfered with a parent's right to raise his or her child free from unwarranted interference. *In re Smith,* 137 Wash.2d 1, 969 P.2d 21 (1998). Although parts of the court's decision may be open to differing interpretations, it seems to be agreed that the court invalidated the statute on its face, ruling it a nullity.

The first flaw the State Supreme Court found in the statute is that it allows an award of visitation to a nonparent without a finding that harm to the child would result if visitation were withheld; and the second is that the statute allows any person to seek visitation at any time. In my view the first theory is too broad to be correct, as it appears to contemplate that the best interests of the child standard may not be applied in any visitation case. I acknowledge the distinct possibility that visitation cases may arise where, considering the absence of other protection for the parent under state laws and procedures, the best interests of the child standard would give insufficient protection to the parent's constitutional right to raise the child without undue intervention by the State; but it is quite a different matter to say, as I understand the Supreme Court of Washington to have said, that a harm to the child standard is required in every instance.

Given the error I see in the State Supreme Court's central conclusion that the best interests of the child standard is never appropriate in third-party visitation cases, that court should have the first opportunity to reconsider this case. I would remand the case to the state court for further proceedings. If it then found the statute has been applied in an unconstitutional manner because the best interests of the child standard gives insufficient protection to a parent under the circumstances of this case, or if it again declared the statute a nullity because the statute seems to allow any person ***95** at all to seek visitation at any time, the decision would present other issues which may or may not warrant further review in this Court. These include not only the protection the ****2076** Constitution gives parents against state-ordered visitation but also the extent to which federal rules for facial challenges to statutes control in state courts. These matters, however, should await some further case. The judgment now under review should be vacated and remanded on the sole ground that the harm ruling that was so central to the Supreme Court of Washington's decision was error, given its broad formulation.

Turning to the question whether harm to the child must be the controlling standard in every visitation proceeding, there is a beginning point that commands general, perhaps unanimous, agreement in our separate opinions: As our case law has developed, the custodial parent has a constitutional right to determine, without undue interference by the state, how best to raise, nurture, and educate the child. The parental right stems from the liberty protected by the Due Process Clause of the Fourteenth Amendment. See, *e.g., Meyer v. Nebraska,* 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923); *Pierce v. Society of Sisters,* 268 U.S. 510, 534–535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925); *Prince v. Massachusetts,* 321 U.S. 158, 166, 64 S.Ct. 438, 88 L.Ed. 645 (1944); *Stanley v. Illinois,* 405 U.S. 645, 651–652, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *Wisconsin v. Yoder,* 406 U.S. 205, 232–233, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); *Santosky v. Kramer,* 455 U.S. 745, 753–754, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). *Pierce* and *Meyer,* had they been decided in recent times, may well have been grounded upon First Amendment principles protecting freedom of speech, belief, and religion. Their formulation and subsequent interpretation have been quite different, of course; and they long have been interpreted to have found in Fourteenth Amendment concepts of liberty an independent right of the parent in the "custody, care and nurture of the child," free from state intervention. *Prince, supra,* at 166, 64 S.Ct. 438. The principle exists, then, in broad formulation; yet courts must use considerable restraint, including careful adherence to the incremental instruction ***96** given by the precise facts of particular cases, as they seek to give further and more precise definition to the right.

The State Supreme Court sought to give content to the parent's right by announcing a categorical rule that third parties who seek visitation must always prove the denial of visitation would harm the child. After reviewing some of the relevant precedents, the Supreme Court of Washington concluded " '[t]he requirement of harm is the sole protection that parents have against pervasive state interference in the parenting process.' " 137 Wash.2d, at 19–20, 969 P.2d, at 30 (quoting *Hawk v. Hawk,* 855 S.W.2d 573, 580 (Tenn.1993)). For that reason, "[s]hort of preventing harm to the child," the court considered the best interests of the child to be "insufficient to serve as a compelling state interest overruling a parent's fundamental rights." 137 Wash.2d, at 20, 969 P.2d, at 30.

While it might be argued as an abstract matter that in some sense the child is always harmed if his or her best interests are not considered, the law of domestic relations, as it has evolved to this point, treats as distinct the two standards, one harm to the child and the other the best interests of the child. The judgment of the Supreme Court of Washington rests on that assumption, and I, too, shall assume that there are real and consequential differences between the two standards.

On the question whether one standard must always take precedence over the other in order to protect the right of the parent or parents, "[o]ur Nation's history, legal traditions, and practices" do not give us clear or definitive answers. *Washington v. Glucksberg,* 521 U.S. 702, 721, 117 S.Ct. 2258 (1997). The consensus among courts and commentators is that at least through the 19th century there was no legal right of visitation; court-ordered visitation appears to be a 20th-century phenomenon. ****2077** See, *e.g.,* 1 D. Kramer, Legal Rights of Children 124, 136 (2d ed.1994); 2 J. Atkinson, Modern ***97** Child Custody Practice § 8.10 (1986). A case often cited as one of the earliest visitation decisions, *Succession of Reiss,* 46 La. Ann. 347, 353, 15 So. 151, 152 (1894), explained that "the obligation ordinarily to visit grandparents is moral and not legal"—a conclusion which appears consistent with that of American common-law jurisdictions of the time. Early 20th-century exceptions did occur, often in cases where a relative had acted in a

parental capacity, or where one of a child's parents had died. See *Douglass v. Merriman,* 163 S.C. 210, 161 S.E. 452 (1931) (maternal grandparent awarded visitation with child when custody was awarded to father; mother had died); *Solomon v. Solomon,* 319 Ill.App. 618, 49 N.E.2d 807 (1943) (paternal grandparents could be given visitation with child in custody of his mother when their son was stationed abroad; case remanded for fitness hearing); *Consaul v. Consaul,* 63 N.Y.S.2d 688 (Sup.Ct. Jefferson Cty.1946) (paternal grandparents awarded visitation with child in custody of his mother; father had become incompetent). As a general matter, however, contemporary state-court decisions acknowledge that "[h]istorically, grandparents had no legal right of visitation," *Campbell v. Campbell,* 896 P.2d 635, 642, n. 15 (Utah App.1995), and it is safe to assume other third parties would have fared no better in court.

To say that third parties have had no historical right to petition for visitation does not necessarily imply, as the Supreme Court of Washington concluded, that a parent has a constitutional right to prevent visitation in all cases not involving harm. True, this Court has acknowledged that States have the authority to intervene to prevent harm to children, see, *e.g., Prince, supra,* at 168–169, 64 S.Ct. 438; *Yoder, supra,* at 233–234, 92 S.Ct. 1526, but that is not the same as saying that a heightened harm to the child standard must be satisfied in every case in which a third party seeks a visitation order. It is also true that the law's traditional presumption has been "that natural bonds of affection lead parents to act in the ***98** best interests of their children," *Parham v. J. R.,* 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979); and "[s]imply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state," *id.,* at 603, 99 S.Ct. 2493. The State Supreme Court's conclusion that the Constitution forbids the application of the best interests of the child standard in any visitation proceeding, however, appears to rest upon assumptions the Constitution does not require.

My principal concern is that the holding seems to proceed from the assumption that the parent or parents who resist visitation have always been the child's primary caregivers and that the third parties who seek visitation have no legitimate and established relationship with the child. That idea, in turn, appears influenced by the concept that the conventional nuclear family ought to establish the visitation standard for every domestic relations case. As we all know, this is simply not the structure or prevailing condition in many households. See, *e.g., Moore v. East Cleveland,* 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977). For many boys and girls a traditional family with two or even one permanent and caring parent is simply not the reality of their childhood. This may be so whether their childhood has been marked by tragedy or filled with considerable happiness and fulfillment.

Cases are sure to arise—perhaps a substantial number of cases —in which a third party, by acting in a caregiving role over a significant period of time, has developed a relationship with a child which is not necessarily subject to absolute parental veto. See *Michael H. v. Gerald D.,* 491 U.S. 110, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989) (putative natural father not entitled to rebut state-law presumption that child born in a ****2078** marriage is a child of the marriage); *Quilloin v. Walcott,* 434 U.S. 246, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978) (best interests standard sufficient in adoption proceeding to protect interests of natural father who had not legitimated the child); see also *Lehr v. Robertson,* 463 U.S. 248, 261, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983) (" '[T]he importance of the familial relationship, to the individuals involved ***99** and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in "promot[ing] a way of life" through the instruction of children ... as well as from the fact of blood relationship' " (quoting *Smith v. Organization of Foster Families For Equality & Reform,* 431 U.S. 816, 844, 97 S.Ct. 2094, 53 L.Ed.2d 14 (1977), in turn quoting *Yoder,* 406 U.S., at 231–233, 92 S.Ct. 1526)). Some pre-existing relationships, then, serve to identify persons who have a strong attachment to the child with the concomitant motivation to act in a responsible way to ensure the child's welfare. As the State Supreme Court was correct to acknowledge, those relationships can be so enduring that "in certain circumstances where a child has enjoyed a substantial relationship with a third person, arbitrarily depriving the child of the relationship could cause severe psychological harm to the child," 137 Wash.2d, at 20, 969 P.2d, at 30; and harm to the adult may also ensue. In the design and elaboration of their visitation laws, States may be entitled to consider that certain relationships are such that to avoid the risk of harm, a best interests standard can be employed by their domestic relations courts in some circumstances.

Indeed, contemporary practice should give us some pause before rejecting the best interests of the child standard in all third-party visitation cases, as the Washington court has done. The standard has been recognized for many years as a basic tool of domestic relations law in visitation proceedings. Since 1965 all 50 States have enacted a third-party visitation statute of some sort. See *ante,* at 2064, 969 P.2d 21, n. (plurality opinion). Each of these statutes, save one, permits a court order to issue in certain cases if visitation is found to be in the best interests of the child. While it is unnecessary for us to consider the constitutionality of any particular provision in the case now before us, it can be noted that the statutes also include a variety of methods for limiting parents' exposure to third-party visitation petitions and for ensuring parental decisions are given respect. Many States ***100** limit the identity of permissible petitioners by restricting visitation petitions to grandparents, or by requiring petitioners to show a substantial relationship with a child, or both. See, *e.g.,* Kan. Stat. Ann. § 38–129 (1993 and Supp.1998) (grandparent visitation authorized under certain circumstances if a substantial relationship exists); N.C. Gen.Stat. §§ 50–13.2, 50–13.2A, 50–13.5 (1999) (same); Iowa Code § 598.35 (Supp.1999) (same; visitation also authorized for great-grandparents); Wis. Stat. § 767.245 (Supp.1999) (visitation authorized under certain circumstances for "a grandparent, greatgrandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship with the child"). The statutes vary in other respects—for instance, some permit visitation petitions when there has been a change in circumstances such as divorce or death of a parent, see, *e.g.,* N.H.Rev.Stat. Ann. § 458:17–d (1992), and some apply a presumption that parental decisions should control, see, *e.g.,* Cal. Fam.Code Ann. §§ 3104(e)–(f) (West 1994); R.I. Gen. Laws § 15–5–24.3(a)(2)(v) (Supp.1999). Georgia's is the sole state legislature to have adopted a general harm to the child standard, see Ga.Code Ann. § 19–7–3(c) (1999), and it did so only after the Georgia Supreme Court held the State's prior visitation statute invalid under the Federal and Georgia Constitutions, see *Brooks v. Parkerson,* 265 Ga. 189, 454 S.E.2d 769, cert. denied, 516 U.S. 942, 116 S.Ct. 377, 133 L.Ed.2d 301 (1995).

****2079** In light of the inconclusive historical record and case law, as well as the almost universal adoption of the best interests standard for visitation disputes, I would be hard pressed to conclude the right to be free of such review in all cases is itself " 'implicit in the concept of ordered liberty.' " *Glucksberg,* 521 U.S., at 721, 117 S.Ct. 2258 (quoting *Palko v. Connecticut,* 302 U.S. 319, 325, 58 S.Ct. 149, 82 L.Ed. 288 (1937)). In my view, it would be more appropriate to conclude that the constitutionality of the application of the best interests standard depends on more specific factors. In short, a fit parent's right vis-a-vis a complete ***101** stranger is one thing; her right vis-a-vis another parent or a *de facto* parent may be another. The protection the Constitution requires, then, must be elaborated with care, using the discipline and instruction of the case law system. We must keep in mind that family courts in the 50 States confront these factual variations each day, and are best situated to consider the unpredictable, yet inevitable, issues that arise. Cf. *Ankenbrandt v. Richards,* 504 U.S. 689, 703–704, 112 S.Ct. 2206, 119 L.Ed.2d 468 (1992).

It must be recognized, of course, that a domestic relations proceeding in and of itself can constitute state intervention that is so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated. The best interests of the child standard has at times been criticized as indeterminate, leading to unpredictable results. See, *e.g.,* American Law Institute, Principles of the Law of Family Dissolution 2, and n. 2 (Tent. Draft No. 3, Mar. 20, 1998). If a single parent who is struggling to raise a child is faced with visitation demands from a third party, the attorney's fees alone might destroy her hopes and plans for the child's future. Our system must confront more often the reality that litigation can itself be so disruptive that constitutional protection may be required; and I do not discount the possibility that in some instances the best interests of the child standard may provide insufficient protection to the parent-child relationship. We owe it to the Nation's domestic relations legal structure, however, to proceed with caution.

It should suffice in this case to reverse the holding of the State Supreme Court that the application of the best interests of the child standard is always unconstitutional in third-party visitation cases. Whether, under the circumstances of this case, the order requiring visitation over the objection of this fit parent violated the Constitution ought to be reserved for further proceedings. Because of its sweeping ruling requiring ***102** the harm to the child standard, the Supreme Court of Washington did not have the occasion to address the specific visitation order the Troxels obtained. More specific guidance should await a case in which a State's highest court has considered all of the facts in the course of elaborating the

protection afforded to parents by the laws of the State and by the Constitution itself. Furthermore, in my view, we need not address whether, under the correct constitutional standards, the Washington statute can be invalidated on its face. This question, too, ought to be addressed by the state court in the first instance.

In my view the judgment under review should be vacated and the case remanded for further proceedings.

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Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

* All 50 States have statutes that provide for grandparent visitation in some form. See Ala.Code § 30–3–4.1 (1989); Alaska Stat. Ann. § 25.20.065 (1998); Ariz.Rev.Stat. Ann. § 25–409 (1994); Ark.Code Ann. § 9–13–103 (1998); Cal. Fam.Code Ann. § 3104 (West 1994); Colo.Rev.Stat. § 19–1–117 (1999); Conn. Gen.Stat. § 46b–59 (1995); Del.Code Ann., Tit. 10, § 1031(7) (1999); Fla. Stat. § 752.01 (1997); Ga.Code Ann. § 19–7–3 (1991); Haw.Rev.Stat. § 571–46.3 (1999); Idaho Code § 32–719 (1999); Ill. Comp. Stat., ch. 750, § $^{5}/_{607}$ (1998); Ind.Code § 31–17–5–1 (1999); Iowa Code § 598.35 (1999); Kan. Stat. Ann. § 38–129 (1993); Ky.Rev.Stat. Ann. § 405.021 (Baldwin 1990); La.Rev.Stat. Ann. § 9:344 (West Supp.2000); La. Civ.Code Ann., Art. 136 (West Supp.2000); Me.Rev.Stat. Ann., Tit. 19A, § 1803 (1998); Md. Fam. Law Code Ann. § 9–102 (1999); Mass. Gen. Laws § 119:39D (1996); Mich. Comp. Laws Ann. § 722.27b (West Supp.1999); Minn.Stat. § 257.022 (1998); Miss.Code Ann. § 93–16–3 (1994); Mo.Rev.Stat. § 452.402 (Supp.1999); Mont.Code Ann. § 40–9–102 (1997); Neb.Rev.Stat. § 43–1802 (1998); Nev.Rev.Stat. § 125C.050 (Supp.1999); N.H.Rev.Stat. Ann. § 458:17–d (1992); N.J. Stat. Ann. § 9:2–7.1 (West Supp.1999–2000); N.M. Stat. Ann. § 40–9–2 (1999); N.Y. Dom. Rel. Law § 72 (McKinney 1999); N.C. Gen.Stat. §§ 50–13.2, 50–13.2A (1999); N.D. Cent.Code § 14–09–05.1 (1997); Ohio Rev.Code Ann. §§ 3109.051, 3109.11 (Supp.1999); Okla. Stat., Tit. 10, § 5 (Supp.1999); Ore.Rev.Stat. § 109.121 (1997); 23 Pa. Cons.Stat. §§ 5311–5313 (1991); R.I. Gen. Laws §§ 15–5–24 to 15–5–24.3 (Supp.1999); S.C.Code Ann. § 20–7–420(33) (Supp.1999); S.D. Codified Laws § 25–4–52 (1999); Tenn.Code Ann. §§ 36–6–306, 36–6–307 (Supp.1999); Tex. Fam.Code Ann. § 153.433 (Supp.2000); Utah Code Ann. § 30–5–2 (1998); Vt. Stat. Ann., Tit. 15, §§ 1011–1013 (1989); Va.Code Ann. § 20–124.2 (1995); W. Va.Code §§ 48–2B–1 to 48–2B–7 (1999); Wis. Stat. §§ 767.245, 880.155 (1993–1994); Wyo. Stat. Ann. § 20–7–101 (1999).

1 The Supreme Court of Washington made its ruling in an action where three separate cases, including the Troxels', had been consolidated. *In re Smith,* 137 Wash.2d 1, 6–7, 969 P.2d 21, 23–24 (1998). The court also addressed two statutes, Wash. Rev.Code § 26.10.160(3) (Supp.1996) and former Wash. Rev.Code § 26.09.240 (1994), 137 Wash.2d, at 7, 969 P.2d, at 24, the latter of which is not even at issue in this case. See Brief for Petitioners 6, n. 9; see also *ante,* at 2057–2058, 969 P.2d 21. Its constitutional analysis discussed only the statutory language and neither mentioned the facts of any of the three cases nor reviewed the records of their trial court proceedings below. 137 Wash.2d, at 13–21, 969 P.2d, at 27–31. The decision invalidated both statutes without addressing their application to particular facts: "We conclude petitioners have standing but, *as written,* the statutes violate the parents' constitutionally protected interests. These statutes allow any person, at any time, to petition for visitation without regard to relationship to the child, without regard to changed circumstances, and without regard to harm." *Id.,* at 5, 969 P.2d, at 23 (emphasis added); see also *id.,* at 21, 969 P.2d, at 31 ("RCW 26.10.160(3) and former RCW 26.09.240 impermissibly interfere with a parent's fundamental interest in the care, custody and companionship of the child" (citations and internal quotation marks omitted)).

2 As Justice O'CONNOR points out, the best-interests provision "contains no requirement that a court accord the parent's decision any presumption of validity or any weight whatsoever. Instead, the Washington statute places the best-interest determination solely in the hands of the judge." *Ante,* at 2061, 969 P.2d 21.

3 Cf. *Chicago v. Morales,* 527 U.S. 41, 71, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999) (BREYER, J., concurring in part and concurring in judgment) ("The ordinance is unconstitutional, not because a policeman applied this discretion wisely or poorly in a particular case, but rather because the policeman enjoys too much discretion in *every* case. And if every application of the ordinance represents an exercise of unlimited discretion, then the ordinance is invalid in all its applications").

4 The Supreme Court of Washington invalidated the broadly sweeping statute at issue on similarly limited reasoning: "Some parents and judges will not care if their child is physically disciplined by a third person; some parents and judges will not care if a third person teaches the child a religion inconsistent with the parents' religion; and some judges and parents will not care if the child is exposed to or taught racist or sexist beliefs. But many parents and judges will care, and, between the two, the parents should be the ones to choose whether to expose their children to certain people or ideas." 137 Wash.2d, at 21, 969 P.2d, at 31 (citation omitted).

5 This is the pivot between Justice KENNEDY'S approach and mine.

* This case also does not involve a challenge based upon the Privileges and Immunities Clause and thus does not present an opportunity to reevaluate the meaning of that Clause. See *Saenz v. Roe,* 526 U.S. 489, 527–528, 119 S.Ct. 1518, 143 L.Ed.2d 689 (1999) (THOMAS, J., dissenting).

1 The State Supreme Court held that, "as written, the statutes violate the parents' constitutionally protected interests." *In re Smith,* 137 Wash.2d 1, 5, 969 P.2d 21, 23 (1998).

2 As the dissenting judge on the state appeals court noted, "[t]he trial court here was not presented with any guidance as to the proper test to be applied in a case such as this." *In re Troxel,* 87 Wash.App. 131, 143, 940 P.2d 698, 703 (1997) (opinion of Ellington, J.). While disagreeing with the appeals court majority's conclusion that the state statute was constitutionally infirm, Judge Ellington recognized that despite this disagreement, the appropriate result would not be simply to affirm. Rather, because there had been no definitive guidance as to the proper construction of the statute, "[t]he findings necessary to order visitation over the objections of a parent are thus not in the record, and I would remand for further proceedings." *Ibid.*

3 Unlike Justice O'CONNOR, *ante,* at 2061–2062, I find no suggestion in the trial court's decision in this case that the court was applying any presumptions at all in its analysis, much less one in favor of the grandparents. The first excerpt Justice O'CONNOR quotes from the trial court's ruling, *ante,* at 2062, says nothing one way or another about *who* bears the burden under the statute of demonstrating "best interests." There is certainly no indication of a presumption *against* the parents' judgment, only a " 'commonsensical' " estimation that, usually but not always, visiting with grandparents can be good for children. *Ibid.* The second quotation, " 'I think [visitation] would be in the best interest of the children and I haven't been shown it is not in [the] best interest of the children,' " *ibid.,* sounds as though the judge has simply concluded, based on the evidence before him, that visitation in this case would be in the best interests of both girls. Verbatim Report of Proceedings in *In re Troxel,* No. 93–3–00650–7 (Wash.Super.Ct., Dec. 14, 1994), p. 214. These statements do not provide us with a definitive assessment of the law the court applied regarding a "presumption" either way. Indeed, a different impression is conveyed by the judge's very next comment: "That has to be balanced, of course, with Mr. and Mrs. Wynn [a.k.a. Tommie Granville], who are trying to put together a family that includes eight children, ... trying to get all those children together at the same time and put together some sort of functional unit wherein the children can be raised as brothers and sisters and spend lots of quality time together." *Ibid.* The judge then went on to reject the Troxels' efforts to attain the same level of visitation that their son, the girls' biological father, would have had, had he been alive. "[T]he fact that Mr. Troxel is deceased and he was the natural parent and as much as the grandparents would maybe like to step into the shoes of Brad, under our law that is not what we can do. The grandparents cannot step into the shoes of a deceased parent, per say *[sic],* as far as whole gamut of visitation rights are concerned." *Id.,* at 215. Rather, as the

judge put it, "I understand your desire to do that as loving grandparents. Unfortunately that would impact too dramatically on the children and their ability to be integrated into the nuclear unit with the mother." *Id.,* at 222–223.

However one understands the trial court's decision—and my point is merely to demonstrate that it is surely open to interpretation—its validity under the state statute as written is a judgment for the state appellate courts to make in the first instance.

4 Justice SOUTER would conclude from the state court's statement that the statute "do[es] not require the petitioner to establish that he or she has a substantial relationship with the child," 137 Wash.2d, at 21, 969 P.2d, at 31, that the state court has "authoritatively read [the 'best interests'] provision as placing hardly any limit on a court's discretion to award visitation rights," *ante,* at 2066 (opinion concurring in judgment). Apart from the question whether one can deem this description of the statute an "authoritative" construction, it seems to me exceedingly unlikely that the state court held the statute unconstitutional because it believed that the "best interests" standard imposes "hardly any limit" on courts' discretion. See n. 5, *infra.*

5 The phrase "best interests of the child" appears in no less than 10 current Washington state statutory provisions governing determinations from guardianship to termination to custody to adoption. See, *e.g.,* Wash. Rev.Code § 26.09.240(6) (Supp.1996) (amended version of visitation statute enumerating eight factors courts may consider in evaluating a child's best interests); § 26.09.002 (in cases of parental separation or divorce "best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care"; "best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm"); § 26.10.100 ("The court shall determine custody in accordance with the best interests of the child"). Indeed, the Washington state courts have invoked the standard on numerous occasions in applying these statutory provisions—just as if the phrase had quite specific and apparent meaning. See, *e.g., In re McDole,* 122 Wash.2d 604, 859 P.2d 1239 (1993) (upholding trial court "best interest" assessment in custody dispute); *McDaniels v. Carlson,* 108 Wash.2d 299, 310, 738 P.2d 254, 261 (1987) (elucidating "best interests" standard in paternity suit context). More broadly, a search of current state custody and visitation laws reveals fully 698 separate references to the "best interest of the child" standard, a number that, at a minimum, should give the Court some pause before it upholds a decision implying that those words, on their face, may be too boundless to pass muster under the Federal Constitution.

6 It necessarily follows that under the far more stringent demands suggested by the majority in *United States v. Salerno,* 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987) (plaintiff seeking facial invalidation "must establish that no set of circumstances exists under which the Act would be valid"), respondent's facial challenge must fail.

7 The suggestion by Justice THOMAS that this case may be resolved solely with reference to our decision in *Pierce v. Society of Sisters,* 268 U.S. 510, 535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), is unpersuasive. *Pierce* involved a parent's choice whether to send a child to public or private school. While that case is a source of broad language about the scope of parents' due process rights with respect to their children, the constitutional principles and interests involved in the schooling context do not necessarily have parallel implications in this family law visitation context, in which multiple overlapping and competing prerogatives of various plausibly interested parties are at stake.

8 This Court has on numerous occasions acknowledged that children are in many circumstances possessed of constitutionally protected rights and liberties. See *Parham v. J. R.,* 442 U.S. 584, 600, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) (liberty interest in avoiding involuntary confinement); *Planned Parenthood of Central Mo. v. Danforth,* 428 U.S. 52, 74, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976) ("Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights"); *Tinker v. Des Moines Independent Community School Dist.,* 393 U.S. 503, 506–507, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969) (First Amendment right to political speech); *In re Gault,* 387 U.S. 1, 13, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967) (due process rights in criminal proceedings).

9 Cf., *e.g., Wisconsin v. Yoder,* 406 U.S. 205, 244–246, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) (Douglas, J., dissenting) ("While the parents, absent dissent, normally speak for the entire family, the education of the child is a matter on which the child will often have decided views. He may want to be a pianist or an astronaut or an oceanographer. To do so he will have to break from the Amish tradition. It is the future of the student, not the future of the parents, that is imperiled by today's decision. If a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that we have today .... It is the student's judgment, not his parents', that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny"). The majority's disagreement with Justice Douglas in that case turned not on any contrary view of children's interest in their own education, but on the impact of the Free Exercise Clause of the First Amendment on its analysis of school-related decisions by the Amish community.

10 See *Palmore v. Sidoti,* 466 U.S. 429, 431, 104 S.Ct. 1879, 80 L.Ed.2d 421 (1984) ("The judgment of a state court determining or reviewing a child custody decision is not ordinarily a likely candidate for review by this Court"); cf. *Collins v. City of Harker Heights,* 503 U.S. 115, 128, 112 S.Ct. 1061, 117 L.Ed.2d 261 (1992) (matters involving competing and multifaceted social and policy decisions best left to local decisionmaking); *Regents of Univ. of Mich. v. Ewing,* 474 U.S. 214, 226, 106 S.Ct. 507, 88 L.Ed.2d 523 (1985) (emphasizing our "reluctance to trench on the prerogatives of state and local educational institutions" as federal courts are ill-suited to "evaluate the substance of the multitude of academic decisions that are made daily by" experts in the field evaluating cumulative information). That caution is never more essential than in the realm of family and intimate relations. In part, this principle is based on long-established, if somewhat arbitrary, tradition in allocating responsibility for resolving disputes of various kinds in our federal system. *Ankenbrandt v. Richards,* 504 U.S. 689, 112 S.Ct. 2206, 119 L.Ed.2d 468 (1992). But the instinct against overregularizing decisions about personal relations is sustained on firmer ground than mere tradition. It flows in equal part from the premise that people and their intimate associations are complex and particular, and imposing a rigid template upon them all risks severing bonds our society would do well to preserve.

1 Whether parental rights constitute a "liberty" interest for purposes of procedural due process is a somewhat different question not implicated here. *Stanley v. Illinois,* 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972), purports to rest in part upon that proposition, see *id.,* at 651–652, 92 S.Ct. 1208; but see *Michael H. v. Gerald D.,* 491 U.S. 110, 120–121, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989) (plurality opinion), though the holding is independently supported on equal protection grounds, see *Stanley, supra,* at 658, 92 S.Ct. 1208.

2 I note that respondent is asserting only, *on her own behalf,* a substantive due process right to direct the upbringing of her own children, and is not asserting, *on behalf of her children,* their First Amendment rights of association or free exercise. I therefore do not have occasion to consider whether, and under what circumstances, the parent could assert the latter enumerated rights.

Presidential Documents

Executive Order 14190 of January 29, 2025

Ending Radical Indoctrination in K–12 Schooling

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Purpose and Policy.* Parents trust America's schools to provide their children with a rigorous education and to instill a patriotic admiration for our incredible Nation and the values for which we stand.

In recent years, however, parents have witnessed schools indoctrinate their children in radical, anti-American ideologies while deliberately blocking parental oversight. Such an environment operates as an echo chamber, in which students are forced to accept these ideologies without question or critical examination. In many cases, innocent children are compelled to adopt identities as either victims or oppressors solely based on their skin color and other immutable characteristics. In other instances, young men and women are made to question whether they were born in the wrong body and whether to view their parents and their reality as enemies to be blamed. These practices not only erode critical thinking but also sow division, confusion, and distrust, which undermine the very foundations of personal identity and family unity.

Imprinting anti-American, subversive, harmful, and false ideologies on our Nation's children not only violates longstanding anti-discrimination civil rights law in many cases, but usurps basic parental authority. For example, steering students toward surgical and chemical mutilation without parental consent or involvement or allowing males access to private spaces designated for females may contravene Federal laws that protect parental rights, including the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA), and sex-based equality and opportunity, including Title IX of the Education Amendments of 1972 (Title IX). Similarly, demanding acquiescence to ''White Privilege'' or ''unconscious bias,'' actually promotes racial discrimination and undermines national unity.

My Administration will enforce the law to ensure that recipients of Federal funds providing K–12 education comply with all applicable laws prohibiting discrimination in various contexts and protecting parental rights, including Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d *et seq.;* Title IX, 20 U.S.C. 1681 *et seq.;* FERPA, 20 U.S.C. 1232g; and the PPRA, 20 U.S.C. 1232h.

Sec. 2. *Definitions.* As used herein:

(a) The definitions in the Executive Order ''Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government'' (January 20, 2025) shall apply to this order.

(b) ''Discriminatory equity ideology'' means an ideology that treats individuals as members of preferred or disfavored groups, rather than as individuals, and minimizes agency, merit, and capability in favor of immoral generalizations, including that:

(i) Members of one race, color, sex, or national origin are morally or inherently superior to members of another race, color, sex, or national origin;

(ii) An individual, by virtue of the individual's race, color, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;

(iii) An individual's moral character or status as privileged, oppressing, or oppressed is primarily determined by the individual's race, color, sex, or national origin;

(iv) Members of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to their race, color, sex, or national origin;

(v) An individual, by virtue of the individual's race, color, sex, or national origin, bears responsibility for, should feel guilt, anguish, or other forms of psychological distress because of, should be discriminated against, blamed, or stereotyped for, or should receive adverse treatment because of actions committed in the past by other members of the same race, color, sex, or national origin, in which the individual played no part;

(vi) An individual, by virtue of the individual's race, color, sex, or national origin, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion;

(vii) Virtues such as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist or were created by members of a particular race, color, sex, or national origin to oppress members of another race, color, sex, or national origin; or

(viii) the United States is fundamentally racist, sexist, or otherwise discriminatory.

(c) ''Educational service agency'' (ESA) has the meaning given in 20 U.S.C. 1401(5), and the terms ''elementary school,'' ''local educational agency'' (LEA), ''secondary school,'' and ''state educational agency'' (SEA) have the meanings given in 34 CFR 77.1(c).

(d) ''Patriotic education'' means a presentation of the history of America grounded in:

(i) an accurate, honest, unifying, inspiring, and ennobling characterization of America's founding and foundational principles;

(ii) a clear examination of how the United States has admirably grown closer to its noble principles throughout its history;

(iii) the concept that commitment to America's aspirations is beneficial and justified; and

(iv) the concept that celebration of America's greatness and history is proper.

(e) ''Social transition'' means the process of adopting a ''gender identity'' or ''gender marker'' that differs from a person's sex. This process can include psychological or psychiatric counseling or treatment by a school counselor or other provider; modifying a person's name (e.g., ''Jane'' to ''James'') or pronouns (e.g., ''him'' to ''her''); calling a child ''nonbinary''; use of intimate facilities and accommodations such as bathrooms or locker rooms specifically designated for persons of the opposite sex; and participating in school athletic competitions or other extracurricular activities specifically designated for persons of the opposite sex. ''Social transition'' does not include chemical or surgical mutilation.

Sec. 3. *Ending Indoctrination Strategy.* (a) Within 90 days of the date of this order, to advise the President in formulating future policy, the Secretary of Education, the Secretary of Defense, and the Secretary of Health and Human Services, in consultation with the Attorney General, shall provide an Ending Indoctrination Strategy to the President, through the Assistant to the President for Domestic Policy, containing recommendations and a plan for:

(i) eliminating Federal funding or support for illegal and discriminatory treatment and indoctrination in K–12 schools, including based on gender ideology and discriminatory equity ideology; and

(ii) protecting parental rights, pursuant to FERPA, 20 U.S.C. 1232g, and the PPRA, 20 U.S.C. 1232h, with respect to any K–12 policies or conduct implicated by the purpose and policy of this order.

(b) The Ending Indoctrination Strategy submitted under subsection (a) of this section shall contain a summary and analysis of the following:

(i) All Federal funding sources and streams, including grants or contracts, that directly or indirectly support or subsidize the instruction, advancement, or promotion of gender ideology or discriminatory equity ideology:

(A) in K–12 curriculum, instruction, programs, or activities; or

(B) in K–12 teacher education, certification, licensing, employment, or training;

(ii) Each agency's process to prevent or rescind Federal funds, to the maximum extent consistent with applicable law, from being used by an ESA, SEA, LEA, elementary school, or secondary school to directly or indirectly support or subsidize the instruction, advancement, or promotion of gender ideology or discriminatory equity ideology in:

(A) K–12 curriculum, instruction, programs, or activities; or

(B) K–12 teacher certification, licensing, employment, or training;

(iii) Each agency's process to prevent or rescind Federal funds, to the maximum extent consistent with applicable law, from being used by an ESA, SEA, LEA, elementary school, or secondary school to directly or indirectly support or subsidize the social transition of a minor student, including through school staff or teachers or through deliberately concealing the minor's social transition from the minor's parents.

(iv) Each agency's process to prevent or rescind Federal funds, to the maximum extent consistent with applicable law, from being used by an ESA, SEA, LEA, elementary school, or secondary school to directly or indirectly support or subsidize:

(A) interference with a parent's Federal statutory right to information regarding school curriculum, records, physical examinations, surveys, and other matters under the PPRA or FERPA; or

(B) a violation of Title VI or Title IX; and

(v) A summary and analysis of all relevant agency enforcement tools to advance the policies of this order.

(c) The Attorney General shall coordinate with State attorneys general and local district attorneys in their efforts to enforce the law and file appropriate actions against K–12 teachers and school officials who violate the law by:

(i) sexually exploiting minors;

(ii) unlawfully practicing medicine by offering diagnoses and treatment without the requisite license; or

(iii) otherwise unlawfully facilitating the social transition of a minor student.

(d) The Assistant to the President for Domestic Policy shall regularly convene the heads of the agencies tasked with submitting the Ending Indoctrination Strategy under subsection (a) of this section to confer regarding their findings, areas for additional investigation, the modification or implementation of their respective recommendations, and such other policy initiatives or matters as the President may direct.

Sec. 4. *Reestablishing the President's Advisory 1776 Commission and Promoting Patriotic Education.* (a) The President's Advisory 1776 Commission (''1776 Commission''), which was created by Executive Order 13958 of November 2, 2020, to promote patriotic education, but was terminated by President Biden in Executive Order 13985 of January 20, 2021, is hereby reestablished. The purpose of the 1776 Commission is to promote patriotic education and advance the purposes stated in section 1 of Executive Order 13958, as well as to advise and promote the work of the White House Task Force on Celebrating America's 250th Birthday (''Task Force 250'') and the United States Semiquincentennial Commission in their efforts to

provide a grand celebration worthy of the momentous occasion of the 250th anniversary of American Independence on July 4, 2026.

(b) Within 120 days of the date of this order, the Secretary of Education shall establish the 1776 Commission in the Department of Education.

(c) The 1776 Commission shall be composed of not more than 20 members, who shall be appointed by the President for a term of 2 years. The 1776 Commission shall be made up of individuals from outside the Federal Government with relevant experience or subject-matter expertise.

(d) The 1776 Commission shall have a Chair or Co-Chairs, at the President's discretion, and a Vice Chair, who shall be designated by the President from among the Commission's members. An Executive Director, designated by the Secretary of Education in consultation with the Assistant to the President for Domestic Policy, shall coordinate the work of the 1776 Commission. The Chair (or Co-Chairs) and Vice Chair shall work with the Executive Director to convene regular meetings of the 1776 Commission, determine its agenda, and direct its work, consistent with this order.

(e) The 1776 Commission shall:

(i) facilitate the development and implementation of a ''Presidential 1776 Award'' to recognize student knowledge of the American founding, including knowledge about the Founders, the Declaration of Independence, the Constitutional Convention, and the great soldiers and battles of the American Revolutionary War;

(ii) in coordination with the White House Office of Public Liaison, coordinate bi-weekly lectures regarding the 250th anniversary of American Independence that are grounded in patriotic education principles, which shall be broadcast to the Nation throughout calendar year 2026;

(iii) upon request, advise executive departments and agencies regarding their efforts to ensure patriotic education is appropriately provided to the public at national parks, battlefields, monuments, museums, installations, landmarks, cemeteries, and other places important to the American founding and American history, as appropriate and consistent with applicable law;

(iv) upon request, offer advice and recommendations to, and support the work of Task Force 250 and the United States Semiquincentennial Commission regarding their plans to celebrate the 250th anniversary of American Independence; and

(v) facilitate, advise upon, and promote private and civic activities nationwide to increase public knowledge of and support patriotic education surrounding the 250th anniversary of American Independence, as appropriate and consistent with applicable law.

(f) The Department of Education shall provide funding and administrative support for the 1776 Commission, to the extent permitted by law and subject to the availability of appropriations.

(g) Members of the 1776 Commission shall serve without compensation but, as approved by the Department of Education, shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(h) Insofar as chapter 10 of title 5, United States Code (commonly known as the Federal Advisory Committee Act), may apply to the 1776 Commission, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Secretary of Education, in accordance with the guidelines issued by the Administrator of General Services.

(i) The 1776 Commission shall terminate 2 years from the date of this order, unless extended by the President.

Sec. 5. *Additional Patriotic Education Measures.* (a) All relevant agencies shall monitor compliance with section 111(b) of title I of Division J of

Public Law 108–447, which provides that ''[e]ach educational institution that receives Federal funds for a fiscal year shall hold an educational program on the United States Constitution on September 17 of such year for the students served by the educational institution,'' including by verifying compliance with each educational institution that receives Federal funds. All relevant agencies shall take action, as appropriate, to enhance compliance with that law.

(b) All relevant agencies shall prioritize Federal resources, consistent with applicable law, to promote patriotic education, including through the following programs:

(i) the Department of Education's American History and Civics Academies and American History and Civics Education-National Activities programs;

(ii) the Department of Defense's National Defense Education Program and Pilot Program on Enhanced Civics Education; and

(iii) the Department of State's Bureau of Educational and Cultural Affairs and Fulbright, U.S. Speaker, and International Visitor Leadership programs, as well as the American Spaces network.

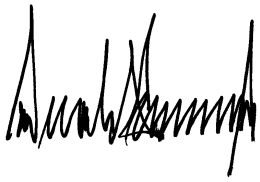
Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,

January 29, 2025.

[FR Doc. 2025–02232

Filed 1–31–25; 11:15 am]

Billing code 3395–F4–P

Tamer MAHMOUD, et al., Petitioners

v.

Thomas W. TAYLOR, et al.

No. 24-297

Supreme Court of the United States.

Argued April 22, 2025

Decided June 27, 2025

Background: Parents of public elementary school students and an unincorporated association of parents and teachers brought action against public school board alleging the board's refusal to provide notice when "LGBTQ+-inclusive" storybooks would be taught and an opportunity to opt out of such instruction infringed their First Amendment right to the free exercise of their religion. The United States District Court for the District of Maryland, Deborah L. Boardman, J., 688 F.Supp.3d 265, denied parents' motion for a preliminary injunction permitting their children to opt out of the challenged instruction pending the completion of their lawsuit. Parents appealed. The United States Court of Appeals for the Fourth Circuit, Agee, Circuit Judge, 102 F.4th 191, affirmed. Certiorari was granted.

Holdings: The Supreme Court, Justice Alito, held that:

(1) board's introduction of the storybooks, combined with its decision to withhold notice and not to allow opt outs, burdened parents' First Amendment free exercise rights by substantially interfering with religious development of their children;

(2) parents could pursue pre-enforcement action even in absence of specific allegations describing how storybooks were actually being used in classrooms;

(3) availability to parents of placing their children in private school or educating them at home was no answer to their First Amendment objections;

(4) board's policy of not allowing students to opt out when "LGBTQ+-inclusive" storybooks would be taught was not necessary to serve compelling interest in having undisrupted school session conducive to learning;

(5) the unconstitutional burden the board's policies placed on parents' First Amendment rights was an irreparable injury that supported preliminary injunction; and

(6) it was both equitable and in public interest to grant preliminary injunction requiring notice and opportunity to opt out of instruction on the storybooks, pending completion of parents' lawsuit.

Reversed and remanded.

Chief Justice Roberts, and Justices Thomas, Gorsuch, Kavanaugh, and Barrett joined.

Justice Thomas filed a concurring opinion.

Justice Sotomayor filed a dissenting opinion, in which Justices Kagan and Jackson joined.

1. Constitutional Law ⚿1354(1)

A government burdens the religious exercise of parents under the First Amendment when its schools require them to submit their children to instruction that poses a very real threat of undermining the religious beliefs and practices that the parents wish to instill. U.S. Const. Amend. 1.

2. Constitutional Law ⚿1354(1)

Under the First Amendment, a government cannot condition the benefit of free public education on parents' acceptance of instruction that poses a very real threat of undermining the religious beliefs

and practices that the parents wish to instill. U.S. Const. Amend. 1.

3. Constitutional Law ⚿3851

The Free Exercise Clause of the First Amendment applies equally to the States by way of the Fourteenth Amendment. U.S. Const. Amends. 1, 14.

4. Constitutional Law ⚿1342

The right to free exercise, like other First Amendment rights, is not shed at the schoolhouse gate. U.S. Const. Amend. 1.

5. Constitutional Law ⚿1342

Government schools, like all government institutions, may not, consistent with the First Amendment, place unconstitutional burdens on religious exercise. U.S. Const. Amend. 1.

6. Injunction ⚿1092

To obtain a preliminary injunction, plaintiffs must show that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction would be in the public interest.

7. Constitutional Law ⚿1303

At its heart, the Free Exercise Clause of the First Amendment protects the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of religious acts. U.S. Const. Amend. 1.

8. Constitutional Law ⚿1408

The practice of educating one's children in one's religious beliefs, like all religious acts and practices, receives a generous measure of protection from the Constitution under the First Amendment. U.S. Const. Amend. 1.

9. Constitutional Law ⚿1408

The rights of parents under the First Amendment to direct the religious upbringing of their children is not merely a right to teach religion in the confines of one's own home; rather, it extends to the choices that parents wish to make for their children outside the home. U.S. Const. Amend. 1.

10. Constitutional Law ⚿1363

The right of parents under the First Amendment to direct the religious upbringing of their children protects, for example, a parent's decision to send his or her child to a private religious school instead of a public school. U.S. Const. Amend. 1.

11. Constitutional Law ⚿1343

The First Amendment right of parents to direct the religious upbringing of their children would be an empty promise if it did not follow those children into the public school classroom, and thus, there are limits on the government's ability to interfere with a student's religious upbringing in a public school setting. U.S. Const. Amend. 1.

12. Constitutional Law ⚿1343

As applied to students, the protections of the First Amendment do not extend only to policies that compel children to depart from the religious practices of their parents. U.S. Const. Amend. 1.

13. Constitutional Law ⚿1343, 1354(1)

The question whether a law substantially interferes with the religious development of a child, in violation of the child's parents' free exercise rights under the First Amendment, will always be fact-intensive and will depend on the specific religious beliefs and practices asserted, as well as the specific nature of the educational requirement or curricular feature at issue. U.S. Const. Amend. 1.

14. Constitutional Law ⚿1354(1)

In determining whether a law substantially interferes with the religious development of a child, in violation of the child's parents' free exercise rights under the First Amendment, a court must consider the specific context in which the instruction or materials at issue are presented, asking whether they are presented in a neutral manner, or whether they are presented in a manner that is hostile to religious viewpoints and designed to impose upon students a pressure to conform. U.S. Const. Amend. 1.

15. Constitutional Law ⚿1354(4)
Education ⚿727

School board's introduction of "LGBTQ+-inclusive" storybooks in elementary schools, combined with its decision to withhold notice to parents of when the storybooks would be taught and its policy of not allowing opportunity to opt out of such instruction, burdened First Amendment right of parents of students to the free exercise of religion by substantially interfering with the religious development of their children; board required teachers to instruct young, impressionable children using storybooks that explicitly contradicted their parents' religious views on same-sex marriage, sex, and gender, storybooks were unmistakably normative and designed to present certain values and beliefs as things to be celebrated and contrary values and beliefs as things to be rejected, and board encouraged teachers to reprimand children who disagreed with viewpoints expressed in the storybooks. U.S. Const. Amend. 1.

16. Constitutional Law ⚿1343, 1354(1)

The question in cases in which parents allege school practices violate their First Amendment right to direct the religious upbringing of their children is whether the educational requirement or curriculum at issue would substantially interfere with the religious development of the child or pose a very real threat of undermining the religious beliefs and practices the parent wishes to instill in the child; whether or not a requirement or curriculum could be characterized as "exposure" to a message is not the touchstone for determining whether that line is crossed. U.S. Const. Amend. 1.

17. Constitutional Law ⚿967

Parents of public elementary school students could pursue their action against school board, which asserted pre-enforcement challenge alleging the board's refusal to provide notice when "LGBTQ+-inclusive" storybooks would be taught and an opportunity to opt out of such instruction infringed their First Amendment right to free exercise of their religion, even in the absence of specific allegations describing how the books were actually being used in classrooms; the board did not dispute that it was introducing the storybooks into classrooms, that it was requiring teachers to use them as part of instruction, and that it had encouraged teachers to approach classroom discussions in a certain way, and it had clearly stated how it intended to proceed, namely that it would not notify parents when the books were being read. U.S. Const. Amend. 1.

18. Constitutional Law ⚿795

When a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit. U.S. Const. Amend. 1.

19. Constitutional Law ⚿795

To pursue a pre-enforcement challenge alleging a deprivation of First Amendment rights, a plaintiff must show that the threatened injury is certainly impending, or there is a substantial risk that the harm will occur. U.S. Const. Amend. 1.

20. Constitutional Law ⚿1354(4)
Education ⚿727

The availability to parents of public elementary school students of either placing their children in private school or educating them at home was no answer to parents' First Amendment objections to school board's refusal to provide notice when "LGBTQ+-inclusive" storybooks would be taught and an opportunity to opt out of such instruction, which parents alleged infringed their right to the free exercise of their religion; education was compulsory in Maryland, where parents resided, and it was both insulting and legally unsound to tell them that they had to abstain from public education in order to raise their children in their religious faiths, when alternatives could be prohibitively expensive and they already contributed to financing the public schools. U.S. Const. Amend. 1; Md. Code Ann., Educ. §§ 7-301(a)(3), 7-301(a-1)(1), 7-301(e).

21. Constitutional Law ⚿1306

When the government chooses to provide public benefits, then under the First Amendment Free Exercise Clause it may not condition the availability of those benefits upon a recipient's willingness to surrender his religiously impelled status. U.S. Const. Amend. 1.

22. Constitutional Law ⚿1342
Education ⚿650

Public education is a public benefit, and the government cannot condition its availability on parents' willingness to accept a burden on their religious exercise protected by the First Amendment. U.S. Const. Amend. 1.

23. Constitutional Law ⚿1354(1)

The First Amendment's Free Exercise Clause, which protects the right of parents to raise their children in accordance with their faith, is not so feeble as to require parents who send their children to public school to endure any instruction that falls short of direct compulsion or coercion and then to try to counteract that teaching at home. U.S. Const. Amend. 1.

24. Administrative Law and Procedure ⚿1603
Constitutional Law ⚿1067

The Bill of Rights and the doctrine of judicial review protect individuals who cannot obtain legislative change.

25. Constitutional Law ⚿1307

Under the First Amendment, the government is generally free to place incidental burdens on religious exercise so long as it does so pursuant to a neutral policy that is generally applicable. U.S. Const. Amend. 1.

26. Constitutional Law ⚿1307, 1308

In most circumstances, two questions remain after a burden on the First Amendment right to religious exercise is found: first, a court must ask if the burdensome policy is neutral and generally applicable; and, second, if the first question can be answered in the negative, a court will proceed to ask whether the policy can survive strict scrutiny. U.S. Const. Amend. 1.

27. Constitutional Law ⚿1053

Under strict scrutiny, the government must demonstrate that its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest.

28. Constitutional Law ⚿1354(1)

When a law imposes a burden on First Amendment rights of the same character as that in *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15, in that it burdens the religious exercise of parents by requiring them to submit their children to instruction that poses a very

real threat of undermining the religious beliefs and practices that the parents wish to instill, strict scrutiny is appropriate regardless of whether the law is neutral or generally applicable. U.S. Const. Amend. 1.

29. Constitutional Law ⚿1354(4)
Education ⚿727

Public school board's policy of not allowing elementary school students opportunity to opt out when "LGBTQ+-inclusive" storybooks would be taught was not necessary to serve board's compelling interest in having undisrupted school session conducive to students' learning, and thus, policy did not survive strict scrutiny and placed unconstitutional burden on students' parents' right under First Amendment's Free Exercise Clause to direct religious upbringing of their children; board had robust system of exceptions permitting opt outs in variety of other circumstances, including for noncurricular activities and family life and human sexuality unit of instruction, for which opt outs were required under Maryland law, and board went to great lengths to provide independent, parallel programming for many other students. U.S. Const. Amend. 1; Md. Code Regs. 04.18.01(D)(2).

30. Constitutional Law ⚿1053

To survive strict scrutiny, a government must demonstrate that its policy advances interests of the highest order and is narrowly tailored to achieve those interests.

31. Constitutional Law ⚿1354(1)

When it comes to instruction that would burden the religious exercise of parents, a public school board cannot escape its obligations under the First Amendment's Free Exercise Clause by crafting a curriculum that is so burdensome that a substantial number of parents elect to opt out; there is no de maximis exception to the Free Exercise Clause. U.S. Const. Amend. 1.

32. Constitutional Law ⚿2508
Education ⚿687

Courts are not school boards or legislatures, and are ill-equipped to determine the necessity of discrete aspects of a State's program of compulsory education.

33. Civil Rights ⚿1457(3)

The unconstitutional burden on parents' First Amendment rights to free exercise of their religion from public school board's introduction of "LGBTQ+-inclusive" storybooks into elementary school curriculum, along with its decision not to allow students an opportunity to opt out of such instruction, was an irreparable injury that supported preliminary injunction requiring board to notify parents in advance when a storybook was to be used in any way and to allow them to have their children excused from that instruction, pending completion of parents' lawsuit against the board; in absence of an injunction, parents would continue to be put to choice of either risking their child's exposure to burdensome instruction, or pay substantial sums for alternative educational services. U.S. Const. Amend. 1.

34. Civil Rights ⚿1457(1)

The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury, as would support preliminary injunctive relief. U.S. Const. Amend. 1.

35. Civil Rights ⚿1457(3)

It was both equitable and in the public interest to grant preliminary injunction requiring public school board to notify parents of elementary students in advance when an "LGBTQ+-inclusive" storybook was to be used and to allow parents to have their children excused from that in-

struction, pending completion of parents' lawsuit against the board, in light of both the strong showing made by the parents that the board's introduction of the storybooks into elementary school curriculum without allowing students an opportunity to opt out of such instruction placed an unconstitutional burden on parents' rights under First Amendment's Free Exercise Clause to direct religious upbringing of their children, as well as the lack of compelling interest supporting the board's policies. U.S. Const. Amend. 1.

Syllabus *

During the 2022–2023 school year, the Montgomery County Board of Education (Board) introduced a variety of "LGBTQ+-inclusive" texts into the public school curriculum. Those texts included five "LGBTQ+-inclusive" storybooks approved for students in kindergarten through fifth grade, which have story lines focused on sexuality and gender. When parents in Montgomery County sought to have their children excused from instruction involving those books, the Board initially compromised with the parents by notifying them when the "LGBTQ+-inclusive" storybooks would be taught and permitting their children to be excused from the instruction. That compromise was consistent with the Board's "Guidelines for Respecting Religious Diversity," which professed a commitment to making "reasonable accommodations" for the religious "beliefs and practices" of students. Less than a year after the Board introduced the books, however, it rescinded the parental opt out policy. Among other things, the Board said that it "could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom environment." App. to Pet. for Cert. 607a.

The petitioners here are a group of individual parents and an unincorporated association of other interested parties. The individual parents come from diverse religious backgrounds and hold sincere views on sexuality and gender which they wish to pass on to their children. Faced with the Board's decision to rescind opt outs, petitioners filed a lawsuit in the United States District Court for the District of Maryland. Among other things, they asserted that the Board's no-opt-out policy infringed on parents' right to the free exercise of their religion. See *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 524, 142 S.Ct. 2407, 213 L.Ed.2d 755. They relied heavily on *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15, in which the Court recognized that parents have a right "to direct the religious upbringing of their children" and that this right can be infringed by laws that pose "a very real threat of undermining" the religious beliefs and practices that parents wish to instill in their children. *Id.*, at 218, 233, 92 S.Ct. 1526. Petitioners sought a preliminary and permanent injunction "prohibiting the School Board from forcing [their] children and other students—over the objection of their parents—to read, listen to, or discuss" the storybooks. App. to Pet. for Cert. 206a. The District Court denied relief, and a divided panel of the Fourth Circuit affirmed.

Held: Parents challenging the Board's introduction of the "LGBTQ+-inclusive" storybooks, along with its decision to withhold opt outs, are entitled to a preliminary injunction. Pp. 2349 – 2364.

(a) The parents assert that the Board's introduction of the "LGBTQ+-in-

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

clusive" storybooks—combined with its decision to withhold notice and opt outs—unconstitutionally burdens their religious exercise. At this stage, the parents seek a preliminary injunction that would permit them to have their children excused from instruction related to the storybooks while this lawsuit proceeds. To obtain that form of preliminary relief, the parents must show that: they are likely to succeed on the merits; they are likely to suffer irreparable harm in the absence of preliminary relief; the balance of equities tips in their favor; and an injunction would be in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249. The parents have made such a showing. Pp. 2349 – 2351.

(b) The parents are likely to succeed on their claim that the Board's policies unconstitutionally burden their religious exercise. The Court has "long recognized the rights of parents to direct 'the religious upbringing' of their children." *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464, 486, 140 S.Ct. 2246, 207 L.Ed.2d 679 (quoting *Yoder*, 406 U.S. at 213–214, 92 S.Ct. 1526). Those rights are violated by government policies that "substantially interfer[e] with the religious development" of children. *Yoder*, 406 U.S. at 218, 92 S.Ct. 1526. Pp. 2350 – 2356.

(1) For many people of faith, there are few religious acts more important than the religious education of their children. See *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 754, 140 S.Ct. 2049, 207 L.Ed.2d 870. And the practice of educating one's children in one's religious beliefs, like all religious acts and practices, receives a generous measure of constitutional protection. The Constitution protects, for example, a parent's decision to send his or her child to a private religious school instead of a public school. *Pierce v. Society of Sisters*, 268 U.S. 510, 532–535, 45 S.Ct. 571, 69 L.Ed. 1070. And the Court has recognized limits on the government's ability to interfere with a student's religious upbringing in a public school setting. In *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628, for example, the Court held that a policy requiring public school students to salute the flag could not be enforced against Jehovah's Witnesses—who consider the flag a "graven image"—consistent with the First Amendment.

Barnette involved an egregious kind of direct coercion: a requirement that students make an affirmation contrary to their parents' religious beliefs. In *Yoder*, the Court held that the Free Exercise Clause also protects against policies that impose more subtle forms of interference with the religious upbringing of children. There, the Court considered a compulsory-education law that would place Amish children into "an environment hostile to Amish beliefs," where they would face "pressure to conform" to contrary viewpoints and lifestyles. 406 U.S. at 211, 92 S.Ct. 1526. The Court concluded that such a law "substantially interfer[ed] with the religious development of the Amish child" and therefore "carrie[d] with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent." *Id.*, at 218, 92 S.Ct. 1526. Pp. 2351 – 2353.

(2) The Board's introduction of the "LGBTQ+-inclusive" storybooks, combined with its decision to withhold notice to parents and to forbid opt outs, substantially interferes with the religious development of petitioners' children and imposes the kind of burden on religious exercise that *Yoder* found unacceptable. The books are unmistakably normative. They are designed to present certain values and beliefs as things to be celebrated, and certain

contrary values and beliefs as things to be rejected.

Take, for example, the message sent by the books concerning same-sex marriage. Many Americans "advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned." *Obergefell v. Hodges*, 576 U.S. 644, 679, 135 S.Ct. 2584, 192 L.Ed.2d 609. That group includes each of the parents in this case. The storybooks, however, are designed to present the opposite viewpoint to young, impressionable children who are likely to accept without question any moral messages conveyed by their teacher's instruction. The storybooks present same-sex weddings as occasions for great celebration and suggest that the only rubric for determining whether a marriage is acceptable is whether the individuals concerned "love each other."

The storybooks similarly convey a normative message on the subjects of sex and gender. Many Americans, like the parents in this case, believe that biological sex reflects divine creation, that sex and gender are inseparable, and that children should be encouraged to accept their sex and to live accordingly. The storybooks, however, suggest that it is hurtful, and perhaps even hateful, to hold the view that gender is inextricably bound with biological sex.

Like the compulsory high school education considered in *Yoder*, these books impose upon children a set of values and beliefs that are "hostile" to their parents' religious beliefs. *Id.*, at 211, 92 S.Ct. 1526. And the books exert upon children a psychological "pressure to conform" to their specific viewpoints. *Ibid.* The books therefore present the same kind of "objective danger to the free exercise of religion" that the Court identified in *Yoder*. *Id.*, at 218, 92 S.Ct. 1526. Pp. 2352 – 2356.

(c) None of the counterarguments raised by the Board, the courts below, or the Board's *amici* give us any reason to doubt the existence of a burden on religious exercise here. Pp. 2356 – 2361.

(1) The Court does not accept the Board's characterizations of the "LGBTQ+-inclusive" instruction as mere "exposure to objectionable ideas" or as lessons in "mutual respect." The storybooks unmistakably convey a particular viewpoint about same-sex marriage and gender. And the Board has specifically encouraged teachers to reinforce this viewpoint and to reprimand any children who disagree. That goes beyond mere "exposure." Regardless, the question in cases of this kind is whether the educational requirement or curriculum at issue would "substantially interfer[e] with the religious development" of the child, or pose "a very real threat of undermining" the religious beliefs and practices the parent wishes to instill in the child. *Yoder*, 406 U.S. at 218, 92 S.Ct. 1526. Whether or not a requirement or curriculum could be characterized as "exposure" is not the touchstone for determining whether that line is crossed. Pp. 2356 – 2357.

(2) The Board's reliance on the Court's decisions in *Bowen v. Roy*, 476 U.S. 693, 106 S.Ct. 2147, 90 L.Ed.2d 735, and *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 108 S.Ct. 1319, 99 L.Ed.2d 534, is likewise unpersuasive. In those cases, the Court held that "[t]he Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens," *Bowen*, 476 U.S. at 699, 106 S.Ct. 2147, even when the conduct of such internal affairs might result in "incidental interference with an individual's spiritual activities," *Lyng*, 485 U.S. at 450, 108 S.Ct. 1319. That principle has no application here. The government's opera-

tion of public schools is not a matter of "internal affairs" akin to the administration of Social Security or the selection of "filing cabinets." *Bowen*, 476 U.S. at 700, 106 S.Ct. 2147. It implicates direct, coercive interactions between the State and its young residents. Pp. 2356 – 2357.

(3) The courts below erred by dismissing this Court's decision in *Yoder*. The Court has never confined *Yoder* to its facts, and there is no reason to conclude that the decision is "*sui generis*" or "tailored to [its] specific evidence," as the courts below reasoned. While the Court noted in *Yoder* that the Amish made a showing "that probably few other religious groups or sects could make," that language must be read in the context of the specific claims raised by the Amish respondents, *i.e.*, the right to withdraw their children from all conventional schooling after a certain age. 406 U.S. at 235–236, 92 S.Ct. 1526. Contrary to the suggestions of the courts below, *Yoder* embodies a robust principle of general applicability. Pp. 2357 – 2358.

(4) The Fourth Circuit's view that the record in this case is too "threadbare" to demonstrate a burden on religious exercise is also unconvincing. 102 F.4th 191, 209. That court faulted the parents for failing to make specific allegations describing how the books "are actually being used in classrooms." *Id.*, at 213. But when a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S.Ct. 2334, 189 L.Ed.2d 246. To evaluate the plaintiffs' claims, the Court need only decide whether—if teachers act according to the clear and undisputed instructions of the Board—a burden on religious exercise will occur. Pp. 2358 – 2359.

(5) It is no answer that parents remain free to place their children in private school or to educate them at home. Public education is a public benefit, and the government cannot "condition" its "availability" on parents' willingness to accept a burden on their religious exercise. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462, 137 S.Ct. 2012, 198 L.Ed.2d 551. Moreover, given that education is compulsory in Maryland, the parents are not being asked simply to forgo a public benefit. They have an obligation—enforceable by fine or imprisonment—to send their children to public school unless they find an adequate substitute they can afford. §§ 7–301(a)(3), (e).

Nor is it of any comfort to suggest that parents can educate their children at home after school. The parents in *Barnette* and *Yoder* were similarly capable of teaching their religious values "at home," but that made no difference in the First Amendment analysis in those cases. It is similarly unconvincing to suggest that the parents could have challenged the educational requirements via the democratic process. The parents tried and failed to obtain legislative change, and had every right to resort to judicial review to protect their rights. Pp. 2358 – 2361.

(d) Having concluded that the Board's policy burdens the parents' right to the free exercise of religion, the Court turns to the question whether that burden is constitutionally permitted. Pp. 2360 – 2363.

(1) In most circumstances, the government is generally free to place incidental burdens on religious exercise so long as it does so pursuant to a neutral policy that is generally applicable. *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 878–879, 110 S.Ct. 1595, 108 L.Ed.2d 876. But when a law imposes a burden of the same character as that in *Yoder*, as does the challenged Board policy here, strict scrutiny is appropriate regardless of whether the law is

neutral or generally applicable. *Smith*, 494 U.S. at 881, 110 S.Ct. 1595. Pp. 2360 – 2362.

(2) To survive strict scrutiny, a government must demonstrate that its policy "advances 'interests of the highest order' and is narrowly tailored to achieve those interests." *Fulton v. Philadelphia*, 593 U.S. 522, 541, 141 S.Ct. 1868, 210 L.Ed.2d 137 (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546, 113 S.Ct. 2217, 124 L.Ed.2d 472). The Board asserts that its curriculum and no-opt-out policy serve its compelling interest in maintaining a school environment that is safe and conducive to learning for all students. As a general matter, schools have a "compelling interest in having an undisrupted school session conducive to the students' learning." *Grayned v. City of Rockford*, 408 U.S. 104, 119, 92 S.Ct. 2294, 33 L.Ed.2d 222. But the Board's conduct in continuing to permit opt outs in a variety of other circumstances undermines its assertion that its no-opt-out policy is necessary to serve that interest. Pp. 2361 – 2363.

(e) Without an injunction, the parents will continue to suffer an unconstitutional burden on their religious exercise, and such a burden unquestionably constitutes irreparable injury. See *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19, 141 S.Ct. 63, 208 L.Ed.2d 206 (*per curiam*). And an injunction here would be both equitable and in the public interest. Thus, the petitioners have shown that they are entitled to a preliminary injunction. Specifically, until all appellate review in this case is completed, the Board should be ordered to notify the petitioners in advance whenever one of the books in question or any other similar book is to be used in any way and to allow them to have their children excused from that instruction. Pp. 2363 – 2364.

102 F.4th 191, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. THOMAS, J., filed a concurring opinion. SOTOMAYOR, J., filed a dissenting opinion, in which KAGAN and JACKSON, JJ., joined.

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Sarah M. Harris, Principal Deputy Solicitor General, for the United States, as amicus curiae, supporting petitioners.

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For U.S. Supreme Court briefs, see:

2025 WL 1125680 (Reply.Brief)

2025 WL 761865 (Pet.Brief)

2025 WL 1032103 (Resp.Brief)

Justice ALITO delivered the opinion of the Court.

The Board of Education of Montgomery County, Maryland (Board), has introduced a variety of "LGBTQ+-inclusive" storybooks into the elementary school curriculum. These books—and associated educational instructions provided to teach-

ers—are designed to "disrupt" children's thinking about sexuality and gender. The Board has told parents that it will not give them notice when the books are going to be used and that their children's attendance during those periods is mandatory. A group of parents from diverse religious backgrounds sued to enjoin those policies. They assert that the new curriculum, combined with the Board's decision to deny opt outs, impermissibly burdens their religious exercise.

[1, 2] Today, we hold that the parents have shown that they are entitled to a preliminary injunction. A government burdens the religious exercise of parents when it requires them to submit their children to instruction that poses "a very real threat of undermining" the religious beliefs and practices that the parents wish to instill. *Wisconsin v. Yoder*, 406 U.S. 205, 218, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). And a government cannot condition the benefit of free public education on parents' acceptance of such instruction. Based on these principles, we conclude that the parents are likely to succeed in their challenge to the Board's policies.

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With just over one million residents, Montgomery County is Maryland's most populous county. According to a recent survey, it is also the "most religiously diverse county" in the Nation.[1] In addition to hosting a diverse mix of Christian denominations, the county ranks in the top five in the Nation in per-capita population of Jews, Muslims, Hindus, and Buddhists.[2] The county's religious diversity is accompanied by strong cultural diversity as well. The county is home to several notable ethnic communities. For example, the Ethiopian community in Silver Spring is one of the largest in the country.[3] And according to one survey, "[o]nly 56.8% of county residents speak English at home." N. 1, *supra*.

Most Montgomery County residents with school age children, by choice or necessity, send them to public school. As a general matter, Maryland law requires that resident children ages 5 to 18 "attend a public school regularly during the entire school year." Md. Educ. Code Ann. § 7–301(a–1)(1) (2025). As an exception to this general rule, the State permits parents to send their children to private school or to educate them at home if certain requirements can be met. § 7–301(a)(3). Parents who cause their children to be absent unlawfully from school can face fines, mandatory community service, and even imprisonment. § 7–301(e).

Public education in Montgomery County is provided by Montgomery County Public Schools (MCPS), one of the largest school districts in the Nation. In the 2022–2023 school year, MCPS enrolled 160,554 students in its 210 schools and had an operating budget of nearly $3 billion. App. to Pet.

1. See A. Hertzler-McCain, Montgomery County, Maryland, Was Most Religiously Diverse US County in 2023, Religion News Service (Aug. 30, 2024), https://religionnews.com/2024/08/30/montgomery-county-maryland-was-most-religiously-diverse-u-s-county-in-2023/.

2. Public Religion Research Institute, 2023 PRRI Census of American Religion: County-Level Data on Religious Identity and Diversity 19, 28, 42–49 (Aug. 29, 2024).

3. See, *e.g.*, R. Skirble, Silver Spring Is the Epicenter of a Thriving Ethiopian Diaspora, Montgomery Magazine (Oct. 19, 2022), https://www.montgomerymag.com/silver-spring-is-the-epicenter-of-a-thriving-ethiopian-diaspora/.

for Cert. 597a–598a; MCPS, FY2024 Operating Budget, p. vi–1 (2023). The district is overseen and managed by the Montgomery County Board of Education, a policymaking body consisting of seven elected county residents and one student. See Md. Educ. Code Ann. § 3–901(b).

In recognition of the county's religious diversity, the Board's "Guidelines for Respecting Religious Diversity" profess a commitment to making "reasonable accommodations" for the religious "beliefs and practices" of MCPS students. App. to Pet. for Cert. 210a, 212a.[4] These accommodations take various forms. For example, according to one MCPS official, the Board "advises principals that schools should avoid scheduling tests or other major events on dozens of . . . 'days of commemoration,' during which MCPS expects that many students may be absent . . . or engaged in religious or cultural observances." *Id.*, at 602a.

This case, however, arises from the Board's abject refusal to heed widespread and impassioned pleas for accommodation. In the years leading up to 2022, the Board apparently "determined that the books used in its existing [English & Language Arts] curriculum were not representative of many students and families in Montgomery County because they did not include LGBTQ characters." *Id.*, at 603a. The Board therefore decided to introduce into the curriculum what it described as " 'LGBTQ+-inclusive texts.' "[5] *Id.*, at 174a. As one email sent by MCPS principals reflects, the Board selected the books according to a "Critical Selection Repertoire" that required selectors to review potential texts and ask questions such as: "Is heteronormativity reinforced or disrupted?"; "Is cisnormativity reinforced or disrupted?"; and "Are power hierarchies that uphold the dominant culture reinforced or disrupted?" *Id.*, at 622a.

In accordance with this "[r]epertoire" and other criteria, the Board eventually selected 13 "LGBTQ+-inclusive" texts for use in the English and Language Arts curriculum from pre-K through 12th grade. *Id.*, at 603a–604a, 622a. At issue in this lawsuit are the five "LGBTQ+-inclusive" storybooks that are approved for students in Kindergarten through fifth grade—in other words, for children who are generally between 5 and 11 years old.[6]

A few short descriptions will serve to illustrate the general tenor of the storybooks. Intersection Allies tells the stories of several children from different backgrounds, including Kate, who is apparently a transgender child. One page shows Kate in a sex-neutral or sex-ambiguous bathroom, and Kate proclaims: "My friends

4. The Board has modified its religious diversity guidelines since the 2022–2023 school year, when many of the events in this lawsuit took place. The most recent version of the Board's guidelines, available online, continues to state that "MCPS is committed to making reasonable accommodations" for the religious "beliefs and practices" of its students. MCPS, Religious Diversity Guidelines in Montgomery County Public Schools 1 (2024–2025).

5. Some sources in the record use different variations of "LGBTQ+-inclusive" when referring to the books at issue in this case (*e.g.*, "LGBTQ-Inclusive"). App. to Pet. for Cert. 603a. For consistency, we use "LGBTQ+-inclusive" throughout the opinion, except in instances where the designation appears in the middle of other quoted language, in which case we retain the formulation that appears in the source.

6. This lawsuit initially concerned seven books: one approved for pre-K and Head Start students, and six approved for grades K through 5. However, the one book approved for pre-K students was removed from the curriculum due to content concerns, and one of the books approved for grades K through 5 was removed for similar reasons. Brief for Petitioners 11, n. 10; Brief for Respondents 6, n. 4.

defend my choices and place. A bathroom, like all rooms, should be a safe space." *Id.*, at 323a. Intersection Allies includes a "Page-By-Page Book Discussion Guide" that asserts: "When we are born, our gender is often decided for us based on our sex .... But at any point in our lives, we can choose to identify with one gender, multiple genders, or neither gender." *Id.*, at 349a–350a. The discussion guide explains that "Kate prefers the pronouns they/their/them" and asks "**What pronouns fit you best?**" *Id.*, at 350a (boldface in original).

Prince & Knight tells the story of a coming-of-age prince whose parents wish to match him with "a kind and worthy bride." *Id.*, at 397a. After meeting with "many ladies," the prince tells his parents that he is " 'looking for something different in a partner by [his] side.' " *Id.*, at 398a, 400a. Later in the book, the prince falls into the "embrace" of a knight after the two finish battling a fearsome dragon. *Id.*, at 415a. After the knight takes off his helmet, the prince and knight "gaz[e] into each other's eyes, [and] their hearts beg[in] to race." *Id.*, at 418a–419a. The whole kingdom later applauds "on the two men's wedding day." *Id.*, at 424a.

Love Violet follows a young girl named Violet who has a crush on her female classmate, Mira. Mira makes Violet's "heart skip" and "thunde[r] like a hundred galloping horses." *Id.*, at 431a, 436a. Although Violet is initially too afraid to interact with Mira, the two end up exchanging gifts on Valentine's Day. Afterwards, the two girls are seen holding hands and "galloping over snowy drifts to see what they might find. Together." *Id.*, at 446a.

Born Ready: The True Story of a Boy Named Penelope tells the story of Penelope, a child who is initially treated as a girl. The story is told from the perspective of Penelope, who at one point says "If they'd all stop and listen, I'd tell them about me. Inside I'm a boy." *Id.*, at 454a. When Penelope's mother later assures her that " 'If you feel like a boy, that's okay,' " Penelope responds: " 'No, Mama, I don't *feel* like a boy. I AM a boy.' " *Id.*, at 458a. Penelope tells her mother:

> " 'I love you, Mama, but I don't want to *be* you. I want to be Papa. I don't want tomorrow to come because tomorrow I'll look like you. Please help me, Mama. Help me to be a boy.' " *Id.*, at 459a.

Penelope's mother then agrees that she is a boy, and Penelope says: "For the first time, my insides don't feel like fire. They feel like warm, golden love." *Id.*, at 462a. Later, after the family starts treating Penelope as a boy, Penelope's brother complains that " 'You can't *become* a boy. You have to be born one.' " *Id.*, at 465a. This comment draws a rebuke from Penelope's mother: " 'Not everything *needs* to make sense. *This is about love.*' " *Ibid.*

Finally, Uncle Bobby's Wedding tells the story of a young girl named Chloe who is informed that her favorite uncle, Bobby, will be getting married to his boyfriend, Jamie. When Bobby and Jamie announce their engagement, everyone is jubilant "except ... Chloe." *Id.*, at 287a. Chloe says that she does not " 'understand' " why her uncle is getting married, but her mother responds by explaining: " 'When grown-up people love each other that much, sometimes they get married.' " *Id.*, at 288a.

The Board suggested "that teachers incorporate the new texts into the curriculum in the same way that other books are used, namely, to put them on a shelf for students to find on their own; to recommend a book to a student who would enjoy it; to offer the books as an option for literature circles, book clubs, or paired reading groups; or to use them as a read aloud." *Id.*, at 604a–605a. And "[a]s with all curriculum resources," the Board voiced

its "expectation that teachers use the LGBTQ-Inclusive Books as part of instruction." *Id.*, at 605a. An MCPS official has made clear that "[t]eachers cannot . . . elect not to use the LGBTQ-Inclusive Books at all." *Ibid.*

The Board also contemplated that instruction involving the "LGBTQ+-inclusive" storybooks would include classroom discussion. See *id.*, at 642a (Board's lawyer: "there will be discussion that ensues. In fact, I think everyone would hope that discussion ensues"). In anticipation of such discussion, the Board hosted a "professional development workshop" in the summer of 2022, where it provided teachers with a guidance document suggesting how they might respond to student inquiries regarding the themes presented in the books. *Id.*, at 273a–276a, 604a, 628a–635a. For example, if a student asserts that two men cannot get married, the guidance document encouraged teachers to respond by saying: "When people are adults they can get married. Two men who love each other can decide they want to get married." *Id.*, at 628a. If a student claims that a character "can't be a boy if he was born a girl," teachers were encouraged to respond: "That comment is hurtful." *Id.*, at 630a. And if a student asks "[w]hat's transgender?", it was recommended that teachers explain: "When we're born, people make a guess about our gender and label us 'boy' or 'girl' based on our body parts. Sometimes they're right and sometimes they're wrong." *Ibid.* The guidance document encouraged teachers to "[d]isrupt the either/or thinking" of their students. *Id.*, at 629a, 633a.

At the same workshop, the Board also provided teachers with a guidance document that suggested particular responses to inquiries by parents. For example, if a parent were to ask whether the school was attempting to teach a child to "reject" the values taught at home, teachers were encouraged to respond that "[t]eaching about LGBTQ+ is not about making students think a certain way; it is to show that there is no one 'right' or 'normal' way to be." *Id.*, at 638a. The guidance also urged teachers to assure parents that there would not be "explicit instruction" about gender and sexual identity, but that "there may be a need to define words that are new and unfamiliar to students," and that "questions and conversations might organically happen." *Id.*, at 640a. If parents were not comforted by that information, teachers could tell them that "[p]arents always have the choice to keep their student(s) home while using these texts; however, it will not be an excused absence." *Ibid.*

2

The Board officially launched the "LGBTQ+-inclusive" texts into MCPS schools in the 2022–2023 school year. Shortly thereafter, parents "began contacting individual teachers, principals, or MCPS staff " about the storybooks and asking that their children be excused from classroom instruction related to them. *Id.*, at 606a. Some parents showed up at the Board's public business meetings to express their concerns about the storybooks' content. In an early 2023 meeting, for example, one parent represented herself as "a voice for parents in [her] community, many of [whom] are actually working today and unable to attend." See MCPS, Jan. 12, 2023, Business Meeting, at 27:15–27:20, https://mcpsmd.new.swagit.com/videos/196679. She said that MCPS parents were "frustrated" because, in their view, "educators and administrators are going behind what [parents] are teaching their kids at home, and pushing ideas of gender ideology on their kids." *Id.*, at 27:21–27:30. The parent felt that the Board was "implying to [children] that their religion, their belief system, and their family

tradition is actually wrong." *Id.*, at 28:25–28:30.

At the same Board meeting, one Board member responded by saying that "some of the testimony today was disturbing to me personally. Transgender, LGBTQ individuals are not an ideology, they are a reality. . . . [T]here are religions out there that teach that women should only achieve certain subservient roles in life, and MCPS would never think of not having a book in a classroom that showed a woman" in a professional role. *Id.*, at 38:35–39:00. The Board's student member agreed with the sentiment and proclaimed that "ignorance and hate does exist within our community, but please know that every student—each of our 160,000 students in our large county—has a place in the school system." *Id.*, at 40:25–40:36.

Initially, the Board compromised with objecting parents by notifying them when the "LGBTQ+-inclusive" storybooks would be taught and permitting their children to be excused from instruction involving the books. That policy was consistent with the Board's general "Guidelines for Respecting Religious Diversity," which at the time provided that "[w]hen possible, schools should try to make reasonable and feasible adjustments to the instructional program to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs." App. to Pet. for Cert. 220a–221a.

This compromise, however, did not last long. In March 2023, less than a year after the "LGBTQ+-inclusive" texts were introduced, the Board issued a statement declaring that "[s]tudents and families may not choose to opt out of engaging" with the storybooks and that "teachers will not send home letters to inform families when inclusive books are read in the future." *Id.*, at 657a. According to one MCPS official, the Board decided to change its policy because, among other things, "individual principals and teachers could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom environment." *Id.*, at 607a. The official also stated that permitting some students to exit the classroom while the storybooks were being taught would expose other students "to social stigma and isolation." *Id.*, at 608a. It was therefore announced that any existing accommodations would expire at the end of the 2022–2023 school year.

Shortly after the Board rescinded parental opt outs, more than 1,000 parents signed a petition asking the Board to restore opt out rights. See Brief for Petitioners 14. And hundreds of displeased parents, including many Muslim and Ethiopian Orthodox parents, appeared at the Board's public meetings and implored the Board to allow opt outs. *Id.*, at 14–15. At a May 2023 meeting, one community member testified that "thousands" of parents felt "deeply dismayed and betrayed" by the rescission of opt outs from "content that conflict[s] with their sincerely held religious beliefs." MCPS, May 25, 2023, Business Meeting, at 35:33–35:44, https://mcpsmd.new.swagit.com/videos/232766. At the same meeting, an MCPS student testified and asked the Board "to allow students like me to opt out of content and books that contain sensitive and mature topics that go against my religious beliefs." *Id.*, at 40:47–40:56.

The Board was unmoved. After the testimony, several Board members and another MCPS official spoke up to "clarify" that the storybooks would not be used for explicit instruction on sexuality and gender, but rather as part of the "literacy curricu-

lum." *Id.*, at 1:11:14–1:16:22. According to a later news article, one Board member recalled that "she felt 'kind of sorry' " for the student who testified in favor of opt outs, "and wondered to what extent she may have been 'parroting dogma' learned from her parents."[7] The Board member also expressed her view that " '[i]f [parents] want their child to receive an education that strictly adheres to their religious dogma, they can send their kid to a private religious school.' " N. 7, *supra*. The Board member went on to suggest that the objecting parents were comparable to " 'white supremacists' " who want to prevent their children from learning about civil rights and " 'xenophobes' " who object to " 'stories about immigrant families.' " *Ibid.*

The Board continues to permit children to opt out of other school activities, including the "family life and human sexuality" unit of instruction, for which opt outs are required under Maryland law. Code of Md. Regs., tit. 13a, § 04.18.01(D)(2)(e)(i) (2025); see App. to Pet. for Cert. 657a. And although the Board has amended its "Guidelines for Respecting Religious Diversity" to narrow the circumstances in which opt outs are permissible, those guidelines still allow opt outs from "noncurricular activities, such as classroom parties or free-time events that involve materials or practices in conflict with a family's religious, and/or other, practices." *Id.*, at 672a.

B

1

At the time when this lawsuit was filed, petitioners Tamer Mahmoud and Enas Barakat had three children enrolled in MCPS, including one who was still in elementary school. Mahmoud and Barakat are Muslims who believe "that mankind has been divinely created as male and female" and "that 'gender' cannot be unwoven from biological 'sex'—to the extent the two are even distinct—without rejecting the dignity and direction God bestowed on humanity from the start." *Id.*, at 165a–166a. Mahmoud and Barakat believe that it would be "immoral" to expose their "young, impressionable, elementary-aged son" to a curriculum that "undermine[s] Islamic teaching." *Id.*, at 532a. And, in their view, "[t]he storybooks at issue in this lawsuit ... directly undermine [their] efforts to raise" their son in the Islamic faith "because they encourage young children to question their sexuality and gender ... and to dismiss parental and religious guidance on these issues." *Ibid.*

After the "LGBTQ+-inclusive" storybooks were introduced, Mahmoud and Barakat asked to have their son excused from the classroom when Prince & Knight was read. Their son's principal initially permitted the boy to sit outside the classroom during that time. But, soon after, the Board announced that opt outs would no longer be available. Mahmoud and Barakat then felt "religiously compelled to send their son to private school at significant financial sacrifice." Brief for Petitioners 16.

Petitioners Jeff and Svitlana Roman also had a son enrolled in an MCPS elementary school when this lawsuit was filed. Jeff Roman is Catholic, and Svitlana Roman is Ukrainian Orthodox. They believe that "sexuality is expressed only in marriage between a man and a woman for creating

7. E. Espey, Parents, Students, Doctors React to MCPS Lawsuit Targeting LGBTQ+ Storybooks, Bethesda Magazine (June 2, 2023), https://bethesdamagazine.com/2023/06/02/parents-students-doctors-react-to-mcps-lawsuit-targeting-lgbtq-storybooks; see also *Mahmoud v. McKnight*, 688 F.Supp.3d 265, 285 (D.Md. 2023) (recounting the Board member's statements).

life and strengthening the marital union." App. to Pet. for Cert. 166a. The Romans further believe "that gender and biological sex are intertwined and inseparable" and that "the young need to be helped to accept their own body as it was created." *Id.*, at 537a (internal quotation marks omitted). The Romans understand that their son "loves his teachers and implicitly trusts them," and so they fear that allowing those teachers to "teach principles about sexuality or gender identity that conflict with [their] religious beliefs" would "significantly interfer[e] with [their] ability to form [their son's] religious faith and religious outlook on life." *Id.*, at 541a.

After the "LGBTQ+-inclusive" storybooks were introduced, the Romans asked the principal of their son's elementary school to notify them when the books were being read and to excuse their son from that instruction. The Romans were initially told that it was their "right" to ask that their son not be present when the books are read, *id.*, at 496a, but they were later informed that notice and opt outs would no longer be provided. Thus, the Romans, like Mahmoud and Barakat, were "religiously compelled to send their son to private school, at significant expense." Brief for Petitioners 18.

Petitioners Chris and Melissa Persak have two elementary-age daughters who attend public school in Montgomery County. The Persaks are Catholics who believe "that all humans are created as male or female, and that a person's biological sex is a gift bestowed by God that is both unchanging and integral to that person's being." App. to Pet. for Cert. 543a. The Persaks believe "that children—particularly those in elementary school—are highly impressionable to ideological instruction presented in children's books or by schoolteachers." *Id.*, at 544a. They are concerned that the Board's "LGBTQ+-inclusive" storybooks "are being used to impose an ideological view of family life and sexuality that characterizes any divergent beliefs as 'hurtful.'" *Ibid.* They think that such instruction will "undermine [their] efforts to raise [their] children in accordance with" their religious faith. *Ibid.* The Persaks' daughters were initially permitted to opt out of instruction related to the storybooks, but they no longer have that option.

The final petitioner, Kids First, is an unincorporated association of parents and teachers that was "formed to advocate for the return of parental notice and opt-out rights in the Montgomery County Public Schools." *Id.*, at 624a. One of Kids First's board members—Grace Morrison—has a daughter who previously attended an MCPS elementary school. Morrison's daughter has Down syndrome and attention deficit disorder. She previously required special accommodations from her public school, including a "full time, one-on-one paraeducator." *Id.*, at 624a–625a. Morrison's daughter also received special services from the school, such as speech and occupational therapy. Morrison and her husband are Catholics who believe that "marriage is the lifelong union of one man and one woman" and that gender is "interwoven" with sex. *Id.*, at 625a. Due to their daughter's learning challenges, they fear that she "doesn't understand or differentiate instructions from her teachers and parents" and that they "won't be able to contradict what she hears from teachers." *Id.*, at 626a.

Because of the services provided to her disabled daughter in public school, Morrison faced enormous "pressure" to keep her daughter enrolled. *Ibid.* She asked that her daughter be excused from "LGBTQ+-inclusive" instruction, even after the Board's decision to rescind opt outs. She was told, however, that opt outs would not be possible. As a result, the Morrisons felt

"religiously compelled" to remove their daughter from public school. Brief for Petitioners 19. They anticipate that it will cost at least $25,000 per year to replace the academic and other services that their daughter formerly received from the public school system.

2

Faced with the Board's decision to rescind opt outs, petitioners filed this lawsuit in the United States District Court for the District of Maryland. Among other things, they asserted that the Board's no-opt-out policy infringed their right to the free exercise of their religion. See *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 524, 142 S.Ct. 2407, 213 L.Ed.2d 755 (2022). They sought a preliminary and permanent injunction "prohibiting the School Board from forcing [their] children and other students—over the objection of their parents—to read, listen to, or discuss" the storybooks. App. to Pet. for Cert. 206a.

In support of their request, the parents relied heavily on this Court's decision in *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15. That case concerned Amish parents who wished to withdraw their children from conventional schooling after the eighth grade, in direct contravention of a Wisconsin law requiring children to attend school until the age of 16. In *Yoder*, we recognized that parents have a right "to direct the religious upbringing of their children," and that this right can be infringed by laws that pose "a very real threat of undermining" the religious beliefs and practices that parents wish to instill in their children. *Id.*, at 218, 233, 92 S.Ct. 1526. Given the substantial burdens that Wisconsin's compulsory-attendance law placed on the religious practices of the Amish, we held that it "carrie[d] with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent." *Id.*, at 218, 92 S.Ct. 1526.

In the present case, the parents asserted that *Yoder*'s principle applies to their situation, and they therefore asked for a preliminary injunction permitting their children to opt out of the challenged instruction pending the completion of their lawsuit. The District Court denied that relief. It characterized the petitioners' primary argument as an objection to school "indoctrination" and asserted that the petitioners had not "identified any case recognizing a free exercise violation based on indoctrination." *Mahmoud v. McKnight*, 688 F.Supp.3d 265, 295 (D.Md. 2023). It dismissed *Yoder* as "*sui generis*" and "inexorably linked to the Amish community's unique religious beliefs and practices." 688 F.Supp.3d at 294, 301. And although the District Court acknowledged that the "LGBTQ+-inclusive" curriculum might result in petitioners' being "less likely to succeed" in raising their children in their religious faiths, *id.*, at 300, it nonetheless held that the curriculum was likely consistent with the Free Exercise Clause.

A divided panel of the Fourth Circuit affirmed. The majority did not expressly endorse the District Court's view regarding the constitutionality of "indoctrination," but it suggested that petitioners could succeed on their free exercise claim only if they could "show direct or indirect coercion arising out of the exposure" to the storybooks. *Mahmoud v. McKnight*, 102 F.4th 191, 212 (2024). And the majority found that the evidence in the record was insufficient to make that showing. The majority expressed concern that "[t]he record does not show how the Storybooks are actually being used in classrooms." *Id.*, at 213. And without such evidence, the majority held, petitioners could not obtain a preliminary injunction because it could not simply be assumed that any past lessons

had or that any future lessons would "cross the line and pressure students to change their views or act contrary to their faith." *Ibid.* As for petitioners' reliance on *Yoder*, the majority quickly dismissed that argument, describing the decision as "markedly circumscribed" and "tailored to the specific evidence in [its] record." 102 F.4th at 210–211.

Judge Quattlebaum dissented. He accepted the parents' representation that "their faith compels that they teach their children about sex, human sexuality, gender and family life." *Id.*, at 222. And he acknowledged their claim that "the messages from the books conflict with and undermine the sincerely held religious beliefs they hold and seek to convey to their children." *Ibid.* Judge Quattlebaum therefore concluded that the Board had "force[d] the parents to make a choice—either adhere to their faith or receive a free public education for their children." *Ibid.* Forcing parents to make such a choice was, in his view, a burden on their religion exercise.

After the Fourth Circuit ruled, the parents asked this Court to review the decision, and we granted their petition for a writ of certiorari. 604 U. S. ——, 145 S.Ct. 1123, 220 L.Ed.2d 420 (2025). We now hold that the parents have shown that they are entitled to a preliminary injunction and reverse the judgment below.

II

[3–5] Our Constitution proclaims that "Congress shall make no law . . . prohibiting the free exercise" of religion. Amdt. 1. That restriction applies equally to the States by way of the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). And the right to free exercise, like other First Amendment rights, is not "shed . . . at the schoolhouse gate." *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506–507, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969). Government schools, like all government institutions, may not place unconstitutional burdens on religious exercise.

[6] The parents assert that the Board's introduction of the "LGBTQ+-inclusive" storybooks—combined with its decision to withhold notice and opt outs—unconstitutionally burdens their religious exercise. At this stage, the parents seek a preliminary injunction that would permit them to have their children excused from instruction related to the storybooks while this lawsuit proceeds. To obtain that form of preliminary relief, the parents must show that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction would be in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008). The parents have made that showing.

III

To begin, we hold that the parents are likely to succeed on their claim that the Board's policies unconstitutionally burden their religious exercise. "[W]e have long recognized the rights of parents to direct 'the religious upbringing' of their children." *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464, 486, 140 S.Ct. 2246, 207 L.Ed.2d 679 (2020) (quoting *Yoder*, 406 U.S. at 213–214, 92 S.Ct. 1526). And we have held that those rights are violated by government policies that "substantially interfer[e] with the religious development" of children. *Id.*, at 218, 92 S.Ct. 1526. Such interference, we have observed, "carries with it precisely the kind of objective danger to the free exercise of religion that the

First Amendment was designed to prevent." *Ibid.* For the reasons explained below, we conclude that such an "objective danger" is present here.

A

We start by describing the nature of the religious practice at issue here and explaining why it is burdened by the Board's policies.

1

[7] At its heart, the Free Exercise Clause of the First Amendment protects "the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of " religious acts. *Kennedy*, 597 U.S. at 524, 142 S.Ct. 2407 (internal quotation marks omitted). And for many people of faith across the country, there are few religious acts more important than the religious education of their children. See *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 754, 140 S.Ct. 2049, 207 L.Ed.2d 870 (2020) ("Religious education is vital to many faiths practiced in the United States"). Indeed, for many Christians, Jews, Muslims, and others, the religious education of children is not merely a preferred practice but rather a religious obligation. See *id.*, at 754–756, 140 S.Ct. 2049. The parent petitioners in this case reflect this reality: they all believe they have a "sacred obligation" or "God-given responsibility" to raise their children in a way that is consistent with their religious beliefs and practices. App. to Pet. for Cert. 531a, 538a, 543a, 625a.

[8–10] The practice of educating one's children in one's religious beliefs, like all religious acts and practices, receives a generous measure of protection from our Constitution. "Drawing on 'enduring American tradition,' we have long recognized the rights of parents to direct 'the religious upbringing' of their children." *Espinoza*, 591 U.S. at 486, 140 S.Ct. 2246 (quoting *Yoder*, 406 U.S. at 213–214, 232, 92 S.Ct. 1526). And this is not merely a right to teach religion in the confines of one's own home. Rather, it extends to the choices that parents wish to make for their children outside the home. It protects, for example, a parent's decision to send his or her child to a private religious school instead of a public school. *Pierce v. Society of Sisters*, 268 U.S. 510, 532–535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925).

[11] Due to financial and other constraints, however, many parents "have no choice but to send their children to a public school." *Morse v. Frederick*, 551 U.S. 393, 424, 127 S.Ct. 2618, 168 L.Ed.2d 290 (2007) (ALITO, J., concurring). As a result, the right of parents "to direct the religious upbringing of their" children would be an empty promise if it did not follow those children into the public school classroom. We have thus recognized limits on the government's ability to interfere with a student's religious upbringing in a public school setting.

An early example comes from our decision in *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943). In that case, we considered a resolution adopted by the West Virginia State Board of Education that required students "to participate in the salute honoring the Nation represented by the flag." *Id.*, at 626, 63 S.Ct. 1178 (internal quotation marks omitted). If students failed to comply, they faced expulsion and could not be readmitted until they yielded to the State's command. *Id.*, at 629, 63 S.Ct. 1178. A group of plaintiffs sued to prevent the enforcement of this policy against Jehovah's Witnesses who considered the flag to be a "graven image" and refused to salute it. *Ibid.* (internal quotation marks omitted). The challengers asserted that the policy

was, among other things, "an unconstitutional denial of religious freedom." *Id.*, at 630, 63 S.Ct. 1178.

We agreed that the policy could not be squared with the First Amendment. The effect of the State's policy, we observed, was to "condition access to public education on making a prescribed sign and profession and at the same time to coerce attendance by punishing both parent and child." *Id.*, at 630–631, 63 S.Ct. 1178. Although the policy did not clearly require students to "forego any contrary convictions of their own and become unwilling converts," it nonetheless required a particular "affirmation of a belief and an attitude of mind." *Id.*, at 633, 63 S.Ct. 1178. For a public school to require students to make such an affirmation, in contravention of their beliefs and those of their parents, was to go further than the First Amendment would allow.

[12] *Barnette* dealt with an especially egregious kind of direct coercion: a requirement that students make an affirmation contrary to their parents' religious beliefs. But that does not mean that the protections of the First Amendment extend only to policies that *compel* children to depart from the religious practices of their parents. To the contrary, in *Yoder*, we held that the Free Exercise Clause protects against policies that impose more subtle forms of interference with the religious upbringing of children.

Yoder concerned a Wisconsin law that required parents to send their children to public or private school until the age of 16. Respondents Jonas Yoder, Wallace Miller, and Adin Yutzy were members of Wisconsin's Amish community who refused to send their children to public school after the completion of the eighth grade. In their view, the values taught in high school were "in marked variance with Amish values and the Amish way of life," and would result in an "impermissible exposure of their children to a 'worldly' influence in conflict with their beliefs." 406 U.S. at 211, 92 S.Ct. 1526. In response, this Court observed that formal high school education would "plac[e] Amish children in an environment hostile to Amish beliefs ... with pressure to conform to the styles, manners, and ways of the peer group" and that it would "tak[e] them away from their community, physically and emotionally, during the crucial and formative adolescent period of life." *Ibid.* "In short," the Court concluded, "high school attendance ... interposes a serious barrier to the integration of the Amish child into the Amish religious community." *Id.*, at 211–212, 92 S.Ct. 1526.

In *Yoder*, unlike in *Barnette*, there was no suggestion that the compulsory-attendance law would *compel* Amish children to make an affirmation that was contrary to their parents' or their own religious beliefs. Nor was there a suggestion that Amish children would be compelled to commit some specific practice forbidden by their religion. Rather, the threat to religious exercise was premised on the fact that high school education would "expos[e] Amish children to worldly influences in terms of attitudes, goals, and values contrary to [their] beliefs" and would "substantially interfer[e] with the religious development of the Amish child." 406 U.S. at 218, 92 S.Ct. 1526.

That interference, the Court held, violated the parents' free exercise rights. The compulsory-education law "carrie[d] with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent" because it placed Amish children into "an environment hostile to Amish beliefs," where they would face "pressure to conform" to contrary viewpoints and lifestyles. *Id.*, at 211, 218, 92 S.Ct. 1526.

[13, 14] As our decision in *Yoder* reflects, the question whether a law "substantially interfer[es] with the religious development" of a child will always be fact-intensive. *Id.*, at 218, 92 S.Ct. 1526. It will depend on the specific religious beliefs and practices asserted, as well as the specific nature of the educational requirement or curricular feature at issue. Educational requirements targeted toward very young children, for example, may be analyzed differently from educational requirements for high school students. A court must also consider the specific context in which the instruction or materials at issue are presented. Are they presented in a neutral manner, or are they presented in a manner that is "hostile" to religious viewpoints and designed to impose upon students a "pressure to conform"? *Id.*, at 211, 92 S.Ct. 1526.

We now turn to the application of these principles to this case.

2

[15] In light of the record before us, we hold that the Board's introduction of the "LGBTQ+-inclusive" storybooks—combined with its decision to withhold notice to parents and to forbid opt outs—substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that *Yoder* found unacceptable.

To understand why, start with the storybooks themselves. Like many books targeted at young children, the books are unmistakably normative. They are clearly designed to present certain values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected.

Take, for example, the message sent by the books concerning same-sex marriage. Many Americans "advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned." *Obergefell v. Hodges*, 576 U.S. 644, 679, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015). That group includes each of the parents in this case. App. to Pet. for Cert. 530a, 537a, 543a, 625a. The storybooks, however, are designed to present the opposite viewpoint to young, impressionable children who are likely to accept without question any moral messages conveyed by their teachers' instruction.

For example, the book Prince & Knight clearly conveys the message that same-sex marriage should be accepted by all as a cause for celebration. The young reader is guided to feel distressed at the prince's failure to find a princess, and then to celebrate when the prince meets his male partner. See *id.*, at 397a–401a, 419a–423a. The book relates that "on the two men's wedding day, the air filled with cheer and laughter, for the prince and his shining knight would live happily ever after." *Id.*, at 424a. Those celebrating the same-sex wedding are not just family members and close friends, but the entire kingdom. For young children, to whom this and the other storybooks are targeted, such celebration is liable to be processed as having moral connotations. If this same-sex marriage makes everyone happy and leads to joyous celebration by all, doesn't that mean it is in every respect a good thing? High school students may understand that widespread approval of a practice does not necessarily mean that everyone should accept it, but very young children are most unlikely to appreciate that fine point.

Uncle Bobby's Wedding, the only book that the dissent is willing to discuss in any detail, conveys the same message more subtly. The atmosphere is jubilant after Uncle Bobby and his boyfriend announce their engagement. *Id.*, at 286a ("*Everyone* was smiling and talking and crying and laughing" (emphasis added)). The book's

main character, Chloe, does not share this excitement. " 'I don't understand!' " she exclaims, " 'Why is Uncle Bobby getting married?' " *Id.*, at 288a. The book is coy about the precise reason for Chloe's question, but the question is used to tee up a direct message to young readers: " 'Bobby and Jamie love each other,' said Mummy. 'When grown-up people love each other that much, sometimes they get married.' " *Ibid.* The book therefore presents a specific, if subtle, message about marriage. It asserts that two people can get married, regardless of whether they are of the same or the opposite sex, so long as they " 'love each other.' " *Ibid.* That view is now accepted by a great many Americans, but it is directly contrary to the religious principles that the parents in this case wish to instill in their children.

It is significant that this book does not simply refer to same-sex marriage as an existing practice. Instead, it presents acceptance of same-sex marriage as a perspective that should be celebrated. The book's narrative arc reaches its peak with the actual event of Uncle Bobby's wedding, which is presented as a joyous event that is met with universal approval. See *id.*, at 300a–305a. And again, there are many Americans who would view the event that way, and it goes without saying that they have every right to do so. But other Americans wish to present a different moral message to their children. And their ability to present that message is undermined when the exact opposite message is positively reinforced in the public school classroom at a very young age.

Next, consider the messages sent by the storybooks on the subject of sex and gender. Many Americans, like the parents in this case, believe that biological sex reflects divine creation, that sex and gender are inseparable, and that children should be encouraged to accept their sex and to live accordingly. *Id.*, at 530a–531a, 538a–540a, 543a, 625a. But the challenged storybooks encourage children to adopt a contrary viewpoint. Intersection Allies presents a transgender child in a sex-ambiguous bathroom and proclaims that "[a] bathroom, like all rooms, should be a safe space." *Id.*, at 323a. The book also includes a discussion guide that asserts that "at any point in our lives, we can choose to identify with one gender, multiple genders, or neither gender" and asks children "**What pronouns fit you best?**" *Id.*, at 350a (boldface in original). The book and the accompanying discussion guidance present as a settled matter a hotly contested view of sex and gender that sharply conflicts with the religious beliefs that the parents wish to instill in their children.

The book Born Ready presents similar ideas in an even less veiled manner. The book follows the story of Penelope, an apparently biological female who asserts " 'I AM a boy.' " *Id.*, at 458a. Not only does the story convey the message that Penelope is a boy simply because that is what she chooses to be, but it slyly conveys a positive message about transgender medical procedures. Penelope says the following to her mother:

> " 'I love you, Mama, but I don't want to *be* you. I want to be Papa. I don't want tomorrow to come because tomorrow I'll look like you. Please help me, Mama. Help me to be a boy.' " *Id.*, at 459a.

Penelope's mother then agrees that Penelope is a boy, and Penelope exclaims: "For the first time, my insides don't feel like fire. They feel like warm, golden love." *Id.*, at 462a. To young children, the moral implication of the story is that it is seriously harmful to deny a gender transition and that transitioning is a highly positive experience. The book goes so far as to present a contrary view as something to be repri-

manded. When the main character's brother says "'You can't *become* a boy. You have to be born one,'" his mother corrects him by saying: "'Not everything *needs* to make sense. *This is about love.*'" *Id.*, at 465a (emphasis in original). The upshot is that it is hurtful, perhaps even hateful, to hold the view that gender is inextricably bound with biological sex.

These books carry with them "a very real threat of undermining" the religious beliefs that the parents wish to instill in their children. *Yoder*, 406 U.S. at 218, 92 S.Ct. 1526. Like the compulsory high school education considered in *Yoder*, these books impose upon children a set of values and beliefs that are "hostile" to their parents' religious beliefs. *Id.*, at 211, 92 S.Ct. 1526. And the books exert upon children a psychological "pressure to conform" to their specific viewpoints. *Ibid.* The books therefore present the same kind of "objective danger to the free exercise of religion" that we identified in *Yoder*. *Id.*, at 218, 92 S.Ct. 1526.

That "objective danger" is only exacerbated by the fact that the books will be presented to young children by authority figures in elementary school classrooms. As representatives of the Board have admitted, "there is an expectation that teachers use the LGBTQ-Inclusive Books as part of instruction," and "there will be discussion that ensues." App. to Pet. for Cert. 605a, 642a.

The Board has left little mystery as to what that discussion might look like. The Board provided teachers with suggested responses to student questions related to the books, and the responses make it clear that instruction related to the storybooks will "substantially interfer[e]" with the parents' ability to direct the "religious development" of their children. *Yoder*, 406 U.S. at 218, 92 S.Ct. 1526. In response to a child who states that two men "can't get married," teachers are encouraged to respond "[t]wo men who love each other can decide they want to get married .... There are so many different kinds of families and ways to be a family." App. to Pet. for Cert. 628a–629a. If a child says "[h]e can't be a boy if he was born a girl," the teacher is urged to respond "that comment is hurtful." *Id.*, at 630a. If a child asks "What's transgender?", it is suggested that the teacher answer: "When we're born, people make a guess about our gender .... Sometimes they're right and sometimes they're wrong." *Ibid.*

In other contexts, we have recognized the potentially coercive nature of classroom instruction of this kind. "The State exerts great authority and coercive power through" public schools "because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Edwards v. Aguillard*, 482 U.S. 578, 584, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987); see also *Lee v. Weisman*, 505 U.S. 577, 592, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992) ("[T]here are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools"). Young children, like those of petitioners, are often "impressionable" and "implicitly trus[t]" their teachers. App. to Pet. for Cert. 532a, 541a.[8] Here, the Board

8. The dissent tries to divert attention from the ages of the children subject to the instruction at issue here. It sees no difference between petitioners' young children and the high school students in *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 142 S.Ct. 2407, 213 L.Ed.2d 755 (2022). See *post*, at 2386–2387 (opinion of SOTOMAYOR, J.). And it criticizes our decision for taking the age of students into account. *Post*, at 2391. It goes without saying, however, that the age of the children involved is highly relevant in any assessment of the likely effect of instruction on the subjects in question.

requires teachers to instruct young children using storybooks that explicitly contradict their parents' religious views, and it encourages the teachers to correct the children and accuse them of being "hurtful" when they express a degree of religious confusion. *Id.*, at 630a. Such instruction "carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent." *Yoder*, 406 U.S. at 218, 92 S.Ct. 1526.

3

None of the counterarguments raised by the dissent, the Board, the courts below, or the Board's *amici* give us any reason to doubt the existence of a burden here.

a

To start, we cannot accept the Board's characterization of the "LGBTQ+-inclusive" instruction as mere "exposure to objectionable ideas" or as lessons in "mutual respect." Brief for Respondents 27–28; Tr. of Oral Arg. 101, 169. As we have explained, the storybooks unmistakably convey a particular viewpoint about same-sex marriage and gender. And the Board has specifically encouraged teachers to reinforce this viewpoint and to reprimand any children who disagree. That goes far beyond mere "exposure."

We similarly disagree with the dissent's deliberately blinkered view that these storybooks and related instruction merely "expos[e] students to the 'message' that LGBTQ people exist" and teach them to treat others with kindness. See *post*, at 2381, 2397 (opinion of SOTOMAYOR, J.). In making this argument, the dissent ignores what anyone who reads these books can readily see. It ignores the messages that the authors plainly intended to convey. And, what is perhaps most telling, it ignores the Board's stated reasons for inserting these books into the curriculum and much of the instructions it gave to teachers. See *supra*, at 2342 – 2343, 2344 – 2346. Only by air-brushing the record can the dissent claim that the books and instruction are just about exposure and kindness.

[16] In any event, the Board and the dissent are mistaken when they rely extensively on the concept of "exposure." The question in cases of this kind is whether the educational requirement or curriculum at issue would "substantially interfer[e] with the religious development" of the child or pose "a very real threat of undermining" the religious beliefs and practices the parent wishes to instill in the child. *Yoder*, 406 U.S. at 218, 92 S.Ct. 1526. Whether or not a requirement or curriculum could be characterized as "exposure" is not the touchstone for determining whether that line is crossed.

b

We are also unpersuaded by the Board's reliance—echoed by the dissent—on our decisions in *Bowen v. Roy*, 476 U.S. 693, 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986), and *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988). See *post*, at 2389 – 2391 (opinion of SOTOMAYOR, J.). In *Bowen*, a father mounted a free exercise challenge to the Government's use of a Social Security number associated with his daughter. 476 U.S. at 695–698, 106 S.Ct. 2147. And in *Lyng*, Native Americans and other plaintiffs raised a free exercise challenge to the construction of a paved road on federal land. 485 U.S. at 442–443, 108 S.Ct. 1319. In those cases, we held that "[t]he Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens," *Bowen*, 476 U.S. at 699, 106 S.Ct. 2147, even when the conduct

of such internal affairs might result in "incidental interference with an individual's spiritual activities," *Lyng*, 485 U.S. at 450, 108 S.Ct. 1319. And, we emphasized, that conclusion was appropriate because the government actions at issue did not "discriminate" against religion or "coerce individuals into acting contrary to their religious beliefs." *Id.*, at 450, 453, 108 S.Ct. 1319; see also *Bowen*, 476 U.S. at 703, 106 S.Ct. 2147 (plurality opinion).

These cases have no application here. The government's operation of the public schools is not a matter of "internal affairs" akin to the administration of Social Security or the selection of "filing cabinets." *Id.*, at 700, 106 S.Ct. 2147 (majority opinion). It implicates direct, coercive interactions between the State and its young residents. The public school imposes rules and standards of conduct on its students and holds a limited power to discipline them for misconduct. See, *e.g.*, *Mahanoy Area School Dist. v. B. L.*, 594 U.S. 180, 187–188, 141 S.Ct. 2038, 210 L.Ed.2d 403 (2021). If questions of public school curriculum were purely a matter of internal affairs, one could imagine that other First Amendment protections—such as the right to free speech or the right to be free from established religion—would also be inapplicable in the public school context. But our precedents plainly provide otherwise. See *Tinker*, 393 U.S. at 506, 89 S.Ct. 733; *Weisman*, 505 U.S. at 587, 112 S.Ct. 2649.

c

Next, we cannot agree with the decision of the lower courts to dismiss our holding in *Yoder* out of hand. Although the decision turned on a close analysis of the facts in the record, there is no reason to conclude that the decision is "*sui generis*" or uniquely "tailored to [its] specific evidence," as the courts below reasoned. See 688 F.Supp.3d at 301; 102 F.4th at 211. We have never confined *Yoder* to its facts. To the contrary, we have treated it like any other precedent. We have at times relied on it as a statement of general principles. See, *e.g.*, *Espinoza*, 591 U.S. at 486, 140 S.Ct. 2246; *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 881, and n. 1, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990). And we have distinguished it when appropriate. See, *e.g.*, *Lyng*, 485 U.S. at 456–457, 108 S.Ct. 1319.

True, we noted in *Yoder* that the Amish had made a "convincing showing, one that probably few other religious groups or sects could make." 406 U.S. at 235–236, 92 S.Ct. 1526; see *post*, at 2392 (SOTOMAYOR, J., dissenting). But that language must be read in the context of the specific claims raised by the Amish respondents. They did not challenge a discrete educational requirement or element of the curriculum, like the plaintiffs in *Barnette*. Instead, they asserted a right to withdraw their children from all conventional schooling after a certain age. Such a claim required them to show that the practice of formal education after the eighth grade would substantially and systemically interfere with the religious development of their children. It was on that point that they had made a "convincing showing" that others might struggle to make. But that says nothing at all about whether other parents could make the same convincing showing with respect to more specific educational requirements. *Yoder* is an important precedent of this Court, and it cannot be breezily dismissed as a special exception granted to one particular religious minority.

It instead embodies a principle of general applicability, and that principle provides more robust protection for religious liberty than the alarmingly narrow rule that the dissent propounds. The dissent sees the Free Exercise Clause's guarantee as nothing more than protection against compul-

sion or coercion to renounce or abandon one's religion. See *post*, at 2386 (opinion of SOTOMAYOR, J.) ("the Clause prohibits the government from compelling individuals, whether directly or indirectly, to give up or violate their religious beliefs"); *ibid.* (the "Free Exercise Clause forbids affirmatively compelling individuals to perform acts undeniably at odds with fundamental tenets of their religious beliefs" (internal quotation marks and alterations omitted)); *ibid.* (the "Free Exercise Clause prohibits laws that have a tendency to coerce individuals into acting contrary to their religious beliefs" (internal quotation marks omitted)). Under this test, even instruction that denigrates or ridicules students' religious beliefs would apparently be allowed.[9]

We reject this chilling vision of the power of the state to strip away the critical right of parents to guide the religious development of their children. *Yoder* and *Barnette* embody a very different view of religious liberty, one that comports with the fundamental values of the American people.

d

[17–19] We also disagree with the Fourth Circuit's view that the record before us is too "threadbare" to demonstrate a burden on religious exercise. 102 F.4th at 209. That court faulted the parents for failing to make specific allegations describing how the books "are actually being used in classrooms." *Id.*, at 213. But when a deprivation of First Amendment rights is at stake, a plaintiff need not wait for the damage to occur before filing suit. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S.Ct. 2334, 189 L.Ed.2d 246 (2014) (citing *Steffel v. Thompson*, 415 U.S. 452, 459, 94 S.Ct. 1209, 39 L.Ed.2d 505 (1974)). Instead, to pursue a pre-enforcement challenge, a plaintiff must show that "the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." 573 U.S. at 158, 134 S.Ct. 2334 (internal quotation marks omitted). Here, the parents have undoubtedly made that showing. The Board does not dispute that it is introducing the storybooks into classrooms, that it is requiring teachers to use them as part of instruction, and that it has encouraged teachers to approach classroom discussions in a certain way. See, *e.g.*, Brief for Respondents 9–10. We do not need to "wait and see" how a particular book is used in a particular classroom on a particular day before evaluating the parents' First Amendment claims. We need only decide whether—if teachers act according to the clear and undisputed instructions of the Board—a burden on religious exercise will occur.

Besides, it is not clear how the Fourth Circuit expects the parents to obtain specific information about how a particular book was used or is planned for use at a particular time. The Board has stated that it will not notify parents when the books are being read. And it is not realistic to expect parents to rely on after-the-fact reports by their young children to determine whether the parents' free exercise rights have been burdened. In circum-

9. In a footnote, the dissent retreats and suggests that denigration and ridicule could amount to prohibited ''coercion.'' See *post*, at 2387, n. 5 (opinion of SOTOMAYOR, J.). But this concession is either meaningless or undermines the dissent's entire argument. The primary definition of ''coercion'' is little different from compulsion. See Webster's Third New International Dictionary 439 (1971) (''use of physical or moral force to compel to act or assent''); Random House Webster's Unabridged Dictionary 398 (2d ed. 2001) (''use of force or intimidation to obtain compliance''). If that is what the dissent means by ''coercion,'' then it is unclear why ridicule or denigration would qualify as coercion under its test. By contrast, if the dissent defines ''coercion'' to require less, then it has failed to explain why our understanding of what the Clause protects is flawed.

stances like these, where the Board has clearly stated how it intends to proceed, the parents may base their First Amendment claim on the Board's representations.

e

[20–22] Finally, we reject the alternatives offered to parents by those who would defend the judgment below. The first of those proposed alternatives is the suggestion that any parents who are unhappy about the instruction in question can simply "place their children in private school or . . . educate them at home." Brief for Religious and Civil-Rights Organizations as *Amici Curiae* 14; accord, Brief for National Education Association et al. as *Amici Curiae* 15; Brief for American Civil Liberties Union et al. as *Amici Curiae* 10; Tr. of Oral Arg. 61–62. The availability of this option is no answer to the parents' First Amendment objections. As we have previously held, when the government chooses to provide public benefits, it may not "condition the availability of [those] benefits upon a recipient's willingness to surrender his religiously impelled status." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462, 137 S.Ct. 2012, 198 L.Ed.2d 551 (2017) (internal quotations marks and alterations omitted). That is what the Board has done here. Public education is a public benefit, and the government cannot "condition" its "availability" on parents' willingness to accept a burden on their religious exercise. *Ibid.* Moreover, since education is compulsory in Maryland, see Md. Educ. Code Ann. § 7–301(a–1)(1), the parents are not being asked simply to forgo a public benefit. They have an obligation—enforceable by fine or imprisonment—to send their children to public school unless they find an adequate substitute. §§ 7–301(a)(3), (e).[10] And many parents cannot afford such a substitute.

The provision of education is an expensive endeavor. In Montgomery County, as in many other jurisdictions, public education is the most significant expenditure in the county budget by a wide margin.[11] In the 2025–2026 school year, the county expects to spend $3.6 billion on public schools, amounting to roughly $22,644 per student. See M. Elrich, County Executive, FY26 Recommended Operating Budget and FY26–FY31 Public Services Program, pp. 16 (message), 10–11 (Mar. 2025). To help finance that budget, Montgomery County will levy property taxes and income taxes on all residents, regardless of whether they send their children to a public school. *Id.*, at 5–10 to 5–11. Private elementary schools in Montgomery County are expensive; many cost $10,000 or more

10. In light of this obligation, *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972), cannot be distinguished, as the dissent claims, see *post*, at 2388 – 2389 (opinion of SOTOMAYOR, J.), on the ground that it involved compulsory school attendance. Here, the parents are being "affirmatively compel[led]" to do the same thing as the parents in *Yoder*: submit their children to instruction that would "substantially interfer[e] with the[ir] religious development." 406 U.S. at 218, 92 S.Ct. 1526. The dissent claims that the parents in *Yoder*, unlike petitioners, "were prohibited by the challenged law from engaging in religious teaching at home," *post*, at 2389, n. 6, but that is plainly untrue. All that the Wisconsin law required was that the children attend school until they reached the age of 16. *Yoder*, 406 U.S. at 207, 92 S.Ct. 1526. The State made no effort to prevent religious training when students were not in school.

11. In fiscal year 2026, the county expects to spend 47.3% of its budget on public schools. See Montgomery County MD, Operating Budget by the Numbers (2025), https://apps.montgomerycountymd.gov/BASISOPERATING/Common/Index.aspx. By comparison, the next greatest expenditure (public safety) is expected to account for just 10.6% of the budget. *Ibid.*

per year prior to financial aid.[12] And homeschooling comes with a hefty price as well; it requires at least one parent to stay at home during the normal workday to educate children, thereby forgoing additional income opportunities. It is both insulting and legally unsound to tell parents that they must abstain from public education in order to raise their children in their religious faiths, when alternatives can be prohibitively expensive and they already contribute to financing the public schools.

[23] Although the dissent does not follow suit in proposing that the objecting parents send their children to private school, it offers two other alternatives that are no better. First, it suggests that the parents in this case have no legitimate cause for concern because enforcement of the Board's policy would not prevent them from "teach[ing] their religious beliefs and practices to their children at home." *Post*, at 2389, n. 6 (opinion of SOTOMAYOR, J.). This suggestion complements the dissent's narrow view of the right of parents to raise their children in accordance with their faith. According to the dissent, parents who send their children to public school must endure any instruction that falls short of direct compulsion or coercion and must try to counteract that teaching at home. The Free Exercise Clause is not so feeble. The parents in *Barnette* and *Yoder* were similarly capable of teaching their religious values "at home," but that made no difference to the First Amendment analysis in those cases.

12. See, *e.g.*, Melvin J. Berman Hebrew Academy, Tuition and Financial Aid, https://www.bermanhebrewacademy.org/admissions/financial-aid; St. Bartholomew Catholic School, Tuition, https://www.school.stbartholomew.org/tuition-and-support; St. Bernadette Catholic School, 2025–2026 Tuition, https://saintbernadetteschool.org/tuition; Alim Academy, Tuition 2025–2026, https://alimacademy.org/tuition-2025-2026/.

[24] Mustering one last alternative, the dissent asserts that, under its approach, the parents would "remain free to raise objections to specific material through the" democratic process. *Post*, at 2396. In making this argument, the dissent seems to confuse our country with those in which laws enacted by a parliament or another legislative body cannot be challenged in court. In this country, that is not so. Here, the Bill of Rights and the doctrine of judicial review protect individuals who cannot obtain legislative change. The First Amendment protects the parents' religious liberty, and they had every right to file suit to protect that right.[13]

B

For these reasons, we conclude that the Board's introduction of the "LGBTQ+-inclusive" storybooks, combined with its no-opt-out policy, burdens the parents' right to the free exercise of religion. We now turn to the question whether that burden is constitutionally permitted.

1

[25–27] Under our precedents, the government is generally free to place incidental burdens on religious exercise so long as it does so pursuant to a neutral policy that is generally applicable. *Smith*, 494 U.S. at 878–879, 110 S.Ct. 1595. Thus, in most circumstances, two questions remain after a burden on religious exercise is found. First, a court must ask if the burdensome policy is neutral and generally applicable. Second, if the first question can

13. In any event, the dissent's argument ignores the extensive efforts already made by parents in Montgomery County. Indeed, hundreds of parents beseeched the Board to allow opt outs, but those pleas fell largely on deaf ears. *Supra*, at 2345 – 2347.

be answered in the negative, a court will proceed to ask whether the policy can survive strict scrutiny. Under that standard, the government must demonstrate that "its course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Kennedy*, 597 U.S. at 525, 142 S.Ct. 2407.

Here, the character of the burden requires us to proceed differently. When the burden imposed is of the same character as that imposed in *Yoder*, we need not ask whether the law at issue is neutral or generally applicable before proceeding to strict scrutiny. That much is clear from our decisions in *Yoder* and *Smith*.

In *Yoder*, the Court rejected the contention that the case could be "disposed of on the grounds that Wisconsin's requirement . . . applies uniformly to all citizens of the State and does not, on its face, discriminate against religions or a particular religion." 406 U.S. at 220, 92 S.Ct. 1526. Instead, the Court bypassed those issues and proceeded to subject the law to close judicial scrutiny, asking whether the State's interest "in its system of compulsory education [was] so compelling that even the established religious practices of the Amish must give way." *Id.*, at 221, 92 S.Ct. 1526.

[28] Then, in *Smith*, we recognized *Yoder* as an exception to the general rule that governments may burden religious exercise pursuant to neutral and generally applicable laws. Specifically, we described *Yoder* as a case "in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action." *Smith*, 494 U.S. at 881, 110 S.Ct. 1595. And we explained that the general rule did not apply in *Yoder* because of the special character of the burden in that case. 494 U.S. at 881, 110 S.Ct. 1595. Thus, when a law imposes a burden of the same character as that in *Yoder*, strict scrutiny is appropriate regardless of whether the law is neutral or generally applicable.[14]

As we have explained, the burden in this case is of the exact same character as the burden in *Yoder*. The Board's policies, like the compulsory-attendance requirement in *Yoder*, "substantially interfer[e] with the religious development" of the parents' children. 406 U.S. at 218, 92 S.Ct. 1526. And those policies pose "a very real threat of undermining" the religious beliefs and practices that the parents wish to instill in their children. *Ibid.* We therefore proceed to consider whether the policies can survive strict scrutiny.

2

[29, 30] To survive strict scrutiny, a government must demonstrate that its policy "advances 'interests of the highest order' and is narrowly tailored to achieve those interests." *Fulton v. Philadelphia*, 593 U.S. 522, 541, 141 S.Ct. 1868, 210 L.Ed.2d 137 (2021) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508

14. In *Smith,* the Court speculated that the general rule was not applied in *Yoder* because it "involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections." 494 U.S. at 881, 110 S.Ct. 1595. We need not consider whether the case before us qualifies as such a "hybrid rights" case. Contra, *post,* at 2400 (SOTOMAYOR, J., dissenting). Rather, it is sufficient to note that the burden imposed here is of the exact same character as that in *Yoder*. That is enough to conclude that here, as in *Yoder,* strict scrutiny is appropriate regardless of whether the policy is neutral and generally applicable.

We acknowledge the many arguments pressed by the parents that the Board's policies are not neutral and generally applicable. See Brief for Petitioners 35–44. But we need not consider those arguments further given that strict scrutiny is appropriate under *Yoder*.

U.S. 520, 546, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993)). In its filings before us, the Board asserts that its curriculum and no-opt-out policy serve its compelling interest in "maintaining a school environment that is safe and conducive to learning for all students." Brief for Respondents 49 (internal quotation marks omitted). It relies on the statements of an MCPS official who testified that permitting opt outs would result in "significant disruptions to the classroom environment" and would expose certain students to "social stigma and isolation." App. to Pet. for Cert. 607a–608a.

We do not doubt that, as a general matter, schools have a "compelling interest in having an undisrupted school session conducive to the students' learning." *Grayned v. City of Rockford*, 408 U.S. 104, 119, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). But the Board's conduct undermines its assertion that its no-opt-out policy is necessary to serve that interest. As we have noted, the Board continues to permit opt outs in a variety of other circumstances, including for "noncurricular" activities and the "Family Life and Human Sexuality" unit of instruction, for which opt outs are required under Maryland law. App. to Pet. for Cert. 672a; Brief for Respondents 10–11 (citing Code of Md. Regs., tit. 13a, § 04.18.01(D)(2)). And the Board goes to great lengths to provide independent, parallel programming for many other students, such as those who qualify as emergent multilingual learners (EMLs) or who qualify for an individualized educational program.[15]

This robust "system of exceptions" undermines the Board's contention that the provision of opt outs to religious parents would be infeasible or unworkable. *Fulton*, 593 U.S. at 542, 141 S.Ct. 1868.

The Board's attempt to distinguish the other programs for which it provides opt outs is unconvincing. The Board asserts that the "Family Life and Human Sexuality" unit of instruction is meaningfully different because it is "discrete" and "predictably timed," and therefore schools can accommodate opt outs without producing the same "absenteeism and administrability concerns." Brief for Respondents 46. But this assertion only tends to show that the Board's concerns about "administrability" are a product of its own design. If the Board can structure the "Family Life and Human Sexuality" curriculum to more easily accommodate opt outs, it could structure instruction concerning the "LGBTQ+-inclusive" storybooks similarly. The Board cannot escape its obligation to honor parents' free exercise rights by deliberately designing its curriculum to make parental opt outs more cumbersome.

[31] The Board also suggests that permitting opt outs from the "LGBTQ+-inclusive" storybooks would be especially unworkable because, when it permitted such opt outs in the past, they resulted in "unsustainably high numbers of absent students." *Id.*, at 12. But again, the Board's

15. As of September 30, 2023, 24.6% of Montgomery County elementary school students qualified as EMLs. See MCPS, School Profiles, MCPS Elementary Summary Dashboard, at Slide 1, https://www.montgomeryschoolsmd.org/school-profiles/. Many MCPS schools provide EML students with independent parallel programming pursuant to a "[p]ullout" model, "in which ... teachers work with EML students outside of regular content classrooms." M. McKnight, MCPS Superintendent, English Language Development Program Evaluation Report, pt. 2, pp. 2–4 to 2–5 (Dec. 15, 2022) (prepared by Center for Applied Linguistics). In the 2022–2023 school year, "approximately one out of every eight students" in MCPS schools received "special education services" pursuant to an "'Individualized Educational Program.'" Brief for 66 Members of Congress as *Amici Curiae* 18–19 (internal quotation marks omitted).

concern is self-inflicted. The Board is doubtless aware of the presence in Montgomery County of substantial religious communities whose members hold traditional views on marriage, sex, and gender. When it comes to instruction that would burden the religious exercise of parents, the Board cannot escape its obligations under the Free Exercise Clause by crafting a curriculum that is so burdensome that a substantial number of parents elect to opt out. There is no *de maximis* exception to the Free Exercise Clause.

Nor can the Board's policies be justified by its asserted interest in protecting students from "social stigma and isolation." App. to Pet. for Cert. 608a. In Maryland, the "Family Life and Human Sexuality" unit of instruction includes discussions about sexuality and gender. See Maryland State Dept. of Ed., Maryland Comprehensive Health Education Framework 33 (June 2021). Yet the Board has not suggested that the legally-required provision of opt outs from that curriculum has resulted in stigma or isolation. Even if it did, the Board cannot purport to rescue one group of students from stigma and isolation by stigmatizing and isolating another. A classroom environment that is welcoming to all students is something to be commended, but such an environment cannot be achieved through hostility toward the religious beliefs of students and their parents.

[32] We acknowledge that "courts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education." *Yoder*, 406 U.S. at 235, 92 S.Ct. 1526. It must be emphasized that what the parents seek here is not the right to micromanage the public school curriculum, but rather to have their children opt out of a particular educational requirement that burdens their well-established right "to direct 'the religious upbringing' of their children." *Espinoza*, 591 U.S. at 486, 140 S.Ct. 2246 (quoting *Yoder*, 406 U.S. at 213–214, 92 S.Ct. 1526). We express no view on the educational value of the Board's proposed curriculum, other than to state that it places an unconstitutional burden on the parents' religious exercise if it is imposed with no opportunity for opt outs. Providing such an opportunity would give the parents no substantive control over the curriculum itself.

Several States across the country permit broad opt outs from discrete aspects of the public school curriculum without widespread consequences. See, *e.g.*, 22 Pa. Code § 4.4(d)(3) (2025); Minn. Stat. § 120B.20 (2024); Ariz. Rev. Stat. Ann. §§ 15–102(A)(4), (8)(c) (2024). And prior to the introduction of the "LGBTQ+-inclusive" storybooks, the Board's own "Guidelines for Respecting Religious Diversity" gave parents a broad right to have their children excused from specific aspects of the school curriculum. These facts belie any suggestion that the provision of parental opt outs in circumstances like these "will impose impossible administrative burdens on schools." *Post*, at 2394 (SOTOMAYOR, J., dissenting).

IV

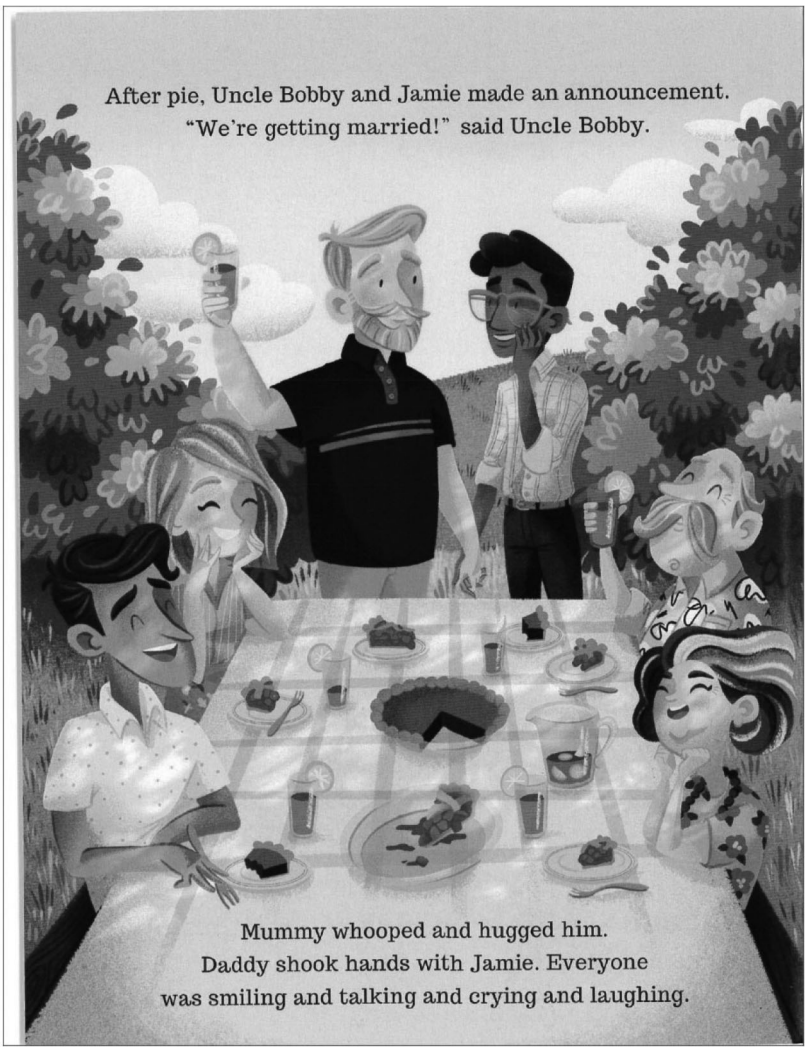
[33–35] The Board's introduction of the "LGBTQ+-inclusive" storybooks, along with its decision to withhold opt outs, places an unconstitutional burden on the parents' rights to the free exercise of their religion. The parents have therefore shown that they are likely to succeed in their free exercise claims. They have likewise shown entitlement to a preliminary injunction pending the completion of this lawsuit. In the absence of an injunction, the parents will continue to be put to a choice: either risk their child's exposure to burdensome instruction, or pay substantial

sums for alternative educational services. As we have explained, that choice unconstitutionally burdens the parents' religious exercise, and " '[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.' " *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19, 141 S.Ct. 63, 208 L.Ed.2d 206 (2020) (*per curiam*) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) (plurality opinion)). Furthermore, in light of the strong showing made by the parents here, and the lack of a compelling interest supporting the Board's policies, an injunction is both equitable and in the public interest. The petitioners should receive preliminary relief while this lawsuit proceeds. See *Winter*, 555 U.S. at 20, 129 S.Ct. 365. Specifically, until all appellate review in this case is completed, the Board should be ordered to notify them in advance whenever one of the books in question or any other similar book is to be used in any way and to allow them to have their children excused from that instruction.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

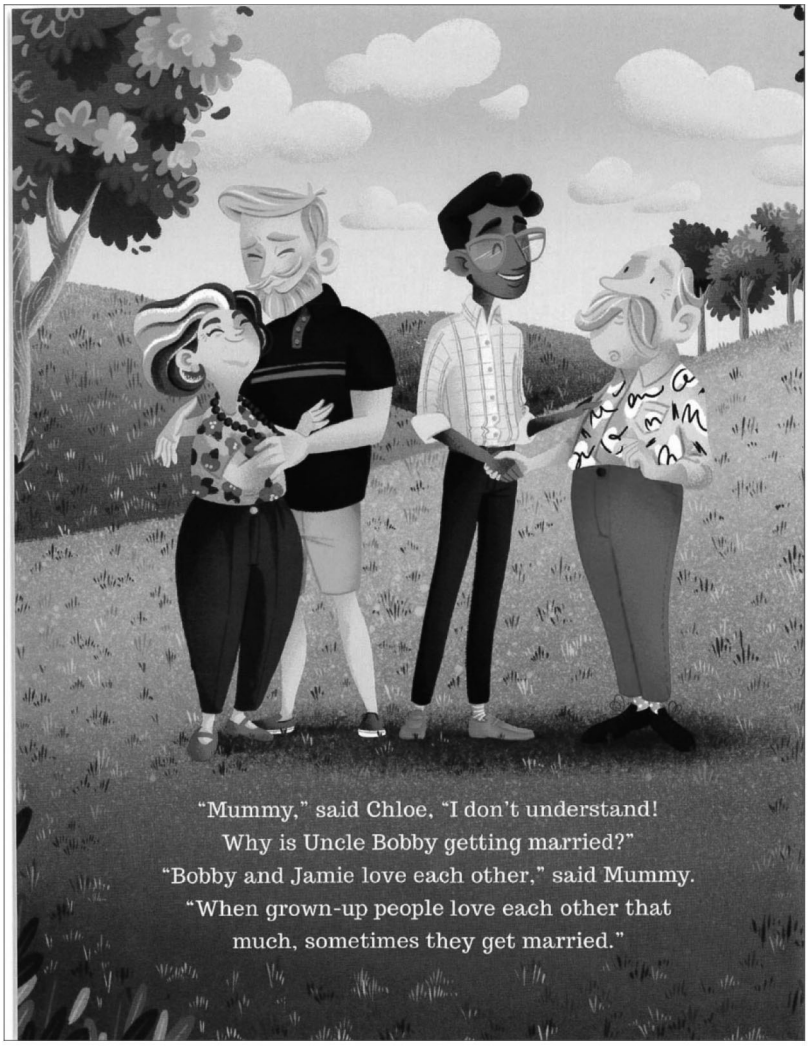
It is so ordered.

APPENDIX



App. to Pet. for Cert. 286a

App. to Pet. for Cert. 287a



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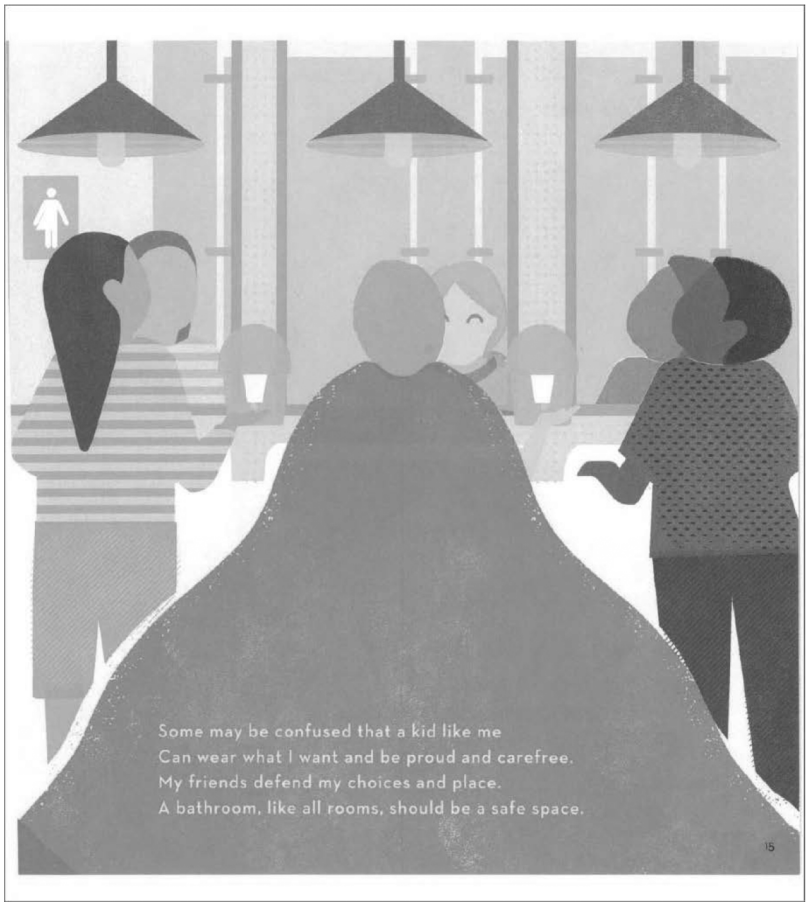

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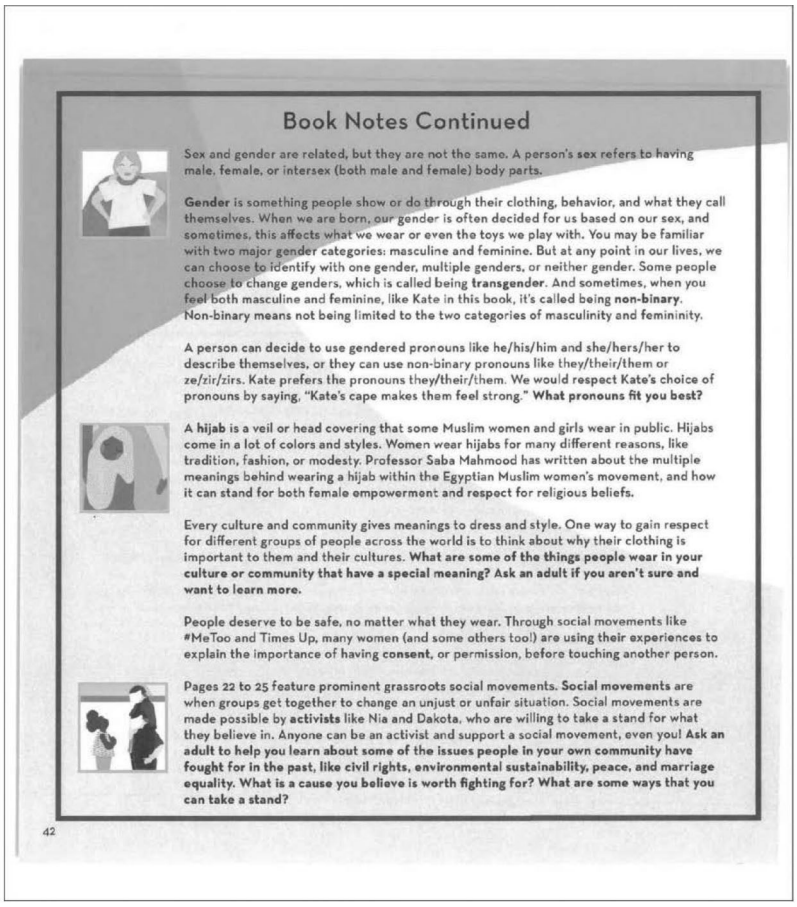


Book Notes Continued

Sex and gender are related, but they are not the same. A person's **sex** refers to having male, female, or intersex (both male and female) body parts.

Gender is something people show or do through their clothing, behavior, and what they call themselves. When we are born, our gender is often decided for us based on our sex, and sometimes, this affects what we wear or even the toys we play with. You may be familiar with two major gender categories: masculine and feminine. But at any point in our lives, we can choose to identify with one gender, multiple genders, or neither gender. Some people choose to change genders, which is called being **transgender**. And sometimes, when you feel both masculine and feminine, like Kate in this book, it's called being **non-binary**. Non-binary means not being limited to the two categories of masculinity and femininity.

A person can decide to use gendered pronouns like he/his/him and she/hers/her to describe themselves, or they can use non-binary pronouns like they/their/them or ze/zir/zirs. Kate prefers the pronouns they/their/them. We would respect Kate's choice of pronouns by saying, "Kate's cape makes them feel strong." **What pronouns fit you best?**

A **hijab** is a veil or head covering that some Muslim women and girls wear in public. Hijabs come in a lot of colors and styles. Women wear hijabs for many different reasons, like tradition, fashion, or modesty. Professor Saba Mahmood has written about the multiple meanings behind wearing a hijab within the Egyptian Muslim women's movement, and how it can stand for both female empowerment and respect for religious beliefs.

Every culture and community gives meanings to dress and style. One way to gain respect for different groups of people across the world is to think about why their clothing is important to them and their cultures. **What are some of the things people wear in your culture or community that have a special meaning? Ask an adult if you aren't sure and want to learn more.**

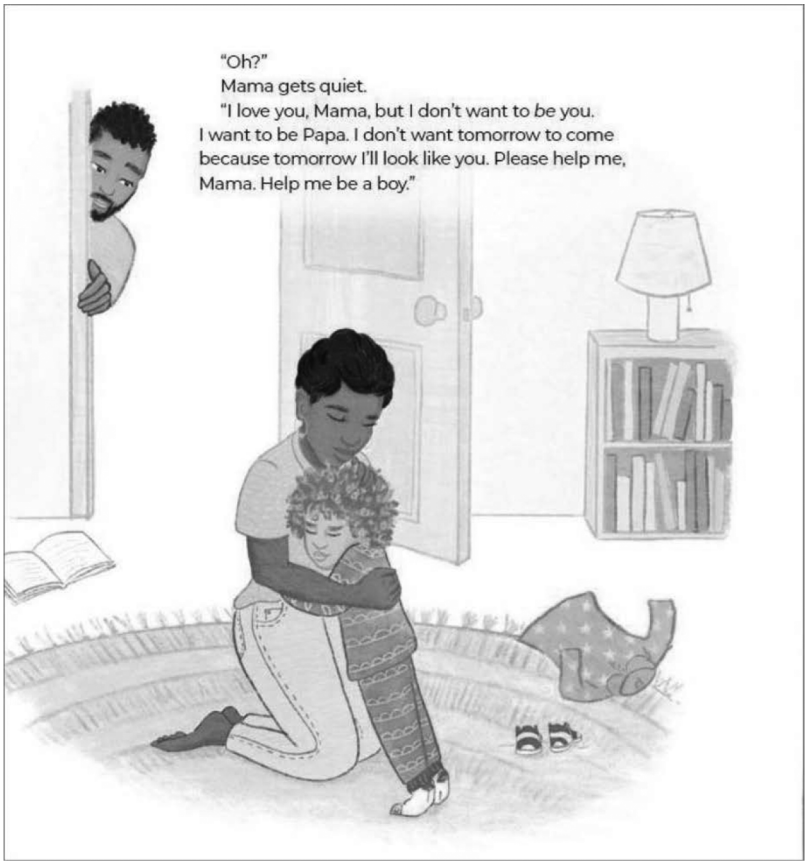
People deserve to be safe, no matter what they wear. Through social movements like #MeToo and Times Up, many women (and some others too!) are using their experiences to explain the importance of having **consent**, or permission, before touching another person.

Pages 22 to 25 feature prominent grassroots social movements. **Social movements** are when groups get together to change an unjust or unfair situation. Social movements are made possible by **activists** like Nia and Dakota, who are willing to take a stand for what they believe in. Anyone can be an activist and support a social movement, even you! **Ask an adult to help you learn about some of the issues people in your own community have fought for in the past, like civil rights, environmental sustainability, peace, and marriage equality. What is a cause you believe is worth fighting for? What are some ways that you can take a stand?**

42

App. to Pet. for Cert. 350a

App. to Pet. for Cert. 424a



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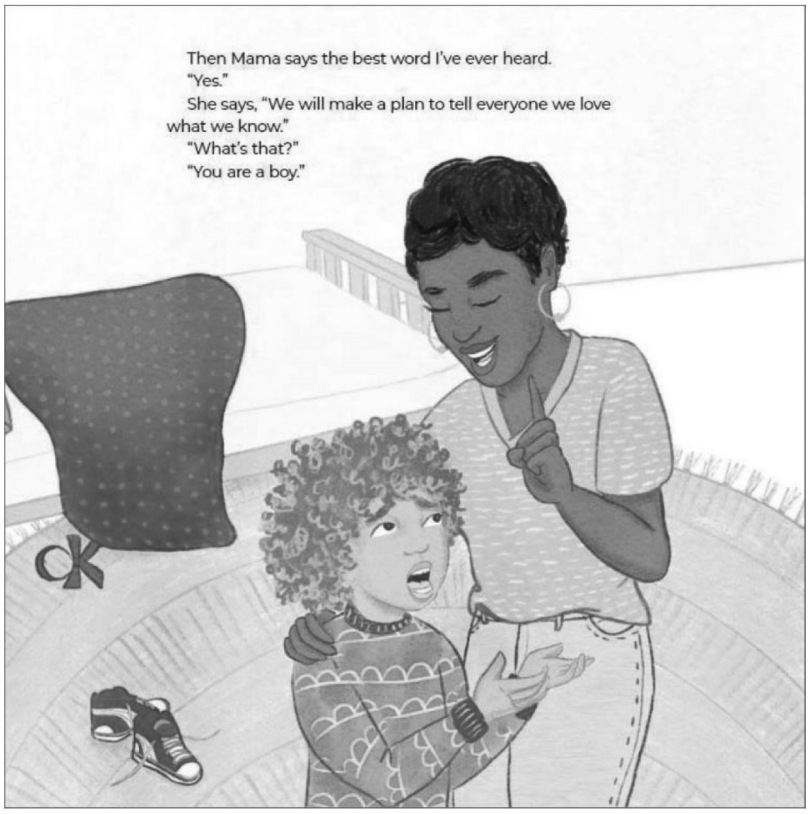

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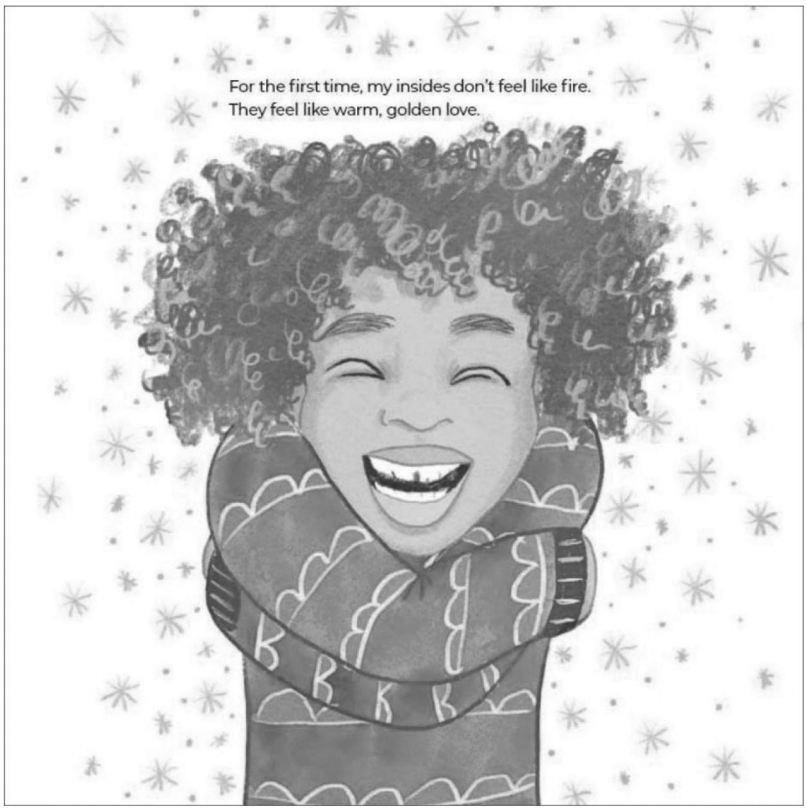

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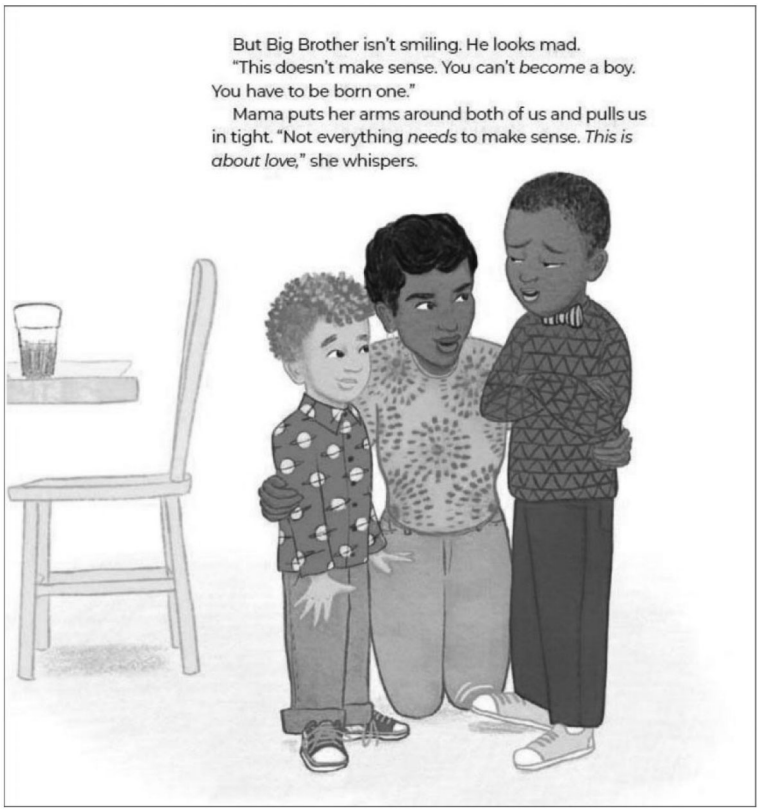


App. to Pet. for Cert. 465a

Justice THOMAS, concurring.

The Board of Education of Montgomery County (Board) adopted a series of controversial "LGBTQ+-inclusive" storybooks for use in its prekindergarten through fifth-grade English Language Arts (ELA) curriculum. Hundreds of parents raised religious objections and sought to use the Board's then-existing opt-out policy to exclude their children from lessons involving these books. The Board responded by removing the opt-out option, and even refused to provide parents with notice of when schools would use the materials. Parents sued, arguing that the Board's new no-opt-out policy violates their First Amendment rights. The Court correctly holds that the policy contravenes the parents' free exercise right to direct the religious upbringing of their children, see *ante,* at 2350 – 2351, and I join its opinion in full. I write separately to highlight additional reasons why the Board's policy cannot survive constitutional scrutiny, as well as to emphasize an important implication of this decision for schools across the country.

I

As the Court today holds, the Board's policy is incompatible with this Court's decision in *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). *Ante*, at 2350 – 2356. *Yoder* addressed whether a Wisconsin law requiring children to attend school past the eighth grade violated the free exercise rights of Amish parents who objected on the ground that the law interfered with their ability to direct their children's religious upbringing. 406 U.S. at 207–209, 92 S.Ct. 1526. In holding that the law violated the parents'

First Amendment rights, the Court made clear that only "interests of the highest order" that are "not otherwise served can overbalance legitimate claims to the free exercise of religion." *Id.*, at 215, 92 S.Ct. 1526.

The Court understood history and tradition to inform the inquiry whether Wisconsin had established "interests of the highest order," and it explicitly examined the historical pedigree of the State's alleged interest in education past the eighth grade. The Court explained that one key reason why Wisconsin's interests could not justify its law as applied to the Amish was that "compulsory education beyond the eighth grade [was] a relatively recent development" that emerged "[l]ess than 60 years ago," yet the Amish had a track record of "successful social functioning . . . approaching almost three centuries." *Id.*, at 226–227, 92 S.Ct. 1526. In a similar vein, the Court observed that the Amish were not "a group claiming to have recently discovered some 'progressive' or more enlightened process for rearing children," but instead had a centuries-long history "as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society." *Id.*, at 235, 92 S.Ct. 1526. Thus, for the Amish, education past the eighth grade was demonstrably inessential to "meeting the duties of citizenship." *Id.*, at 227, 92 S.Ct. 1526.

That analysis is instructive here. As with compulsory education past the eighth grade at the time the Court decided *Yoder*, sex education is also a "relatively recent development"—and the practice of teaching sexuality- and gender-related lessons to young children even more so. And, as in *Yoder*, there is little to suggest that these lessons are critical to the students' civic development.

What is now labeled "sex education" is a 20th-century innovation. Early in the Nation's history, "schooling seldom extended beyond the elementary subjects." M. Katz, A History of Compulsory Education Laws 14 (1976). It was not until the 1970s that public schools began implementing what we might today recognize as sex education, with lessons focused on cautioning students about how to avoid "unintended pregnancy and sexually transmitted diseases." K. Rufo, Note, Public Policy vs. Parent Policy: States Battle Over Whether Public Schools Can Provide Condoms to Minors Without Parental Consent, 13 N. Y. L. S. J. Hum. Rights 589, 591–592, and n. 15 (1997). Sex education has shifted in recent decades toward the even more controversial "[c]omprehensive [a]pproach," though the curriculum generally still "begin[s] with 'basic facts' " and emphasizes "contraceptive use" to avoid pregnancy and disease. *Id.*, at 592–593; see Brief for Petitioners 32.

The practice of teaching sexuality and gender identity to very young children at school appears to be significantly more recent than typical sex education. Although the plaintiffs placed the storybook curriculum's recency and lack of historical pedigree in issue, see *id.*, at 47, the Board failed to identify any tradition of teaching sexuality and gender identity to young children—much less a tradition of preventing parents from opting their children out of such instruction. The Board's "LGBTQ+-inclusive" storybook curriculum appears to be as novel as the storybooks themselves, all of which were published within the last decade.[1] See App. to Pet. for Cert. 603a (storybook curriculum

1. See S. Brannen, Uncle Bobby's Wedding (2020); C. Johnson, L. Council, & C. Choi, Intersection Allies (2019); D. Haack, Prince & Knight (2020); C. Wild, Love, Violet (2021); J. Patterson, Born Ready (2021).

was adopted because "[i]n recent years" ELA curriculum had not been sufficiently representative of Montgomery County community).

The storybook curriculum is also different in kind from traditional sex education. See Brief for Respondents 1–2 ("[T]he storybooks are not sex-education materials"). Instead of incorporating materials focused on health and reproduction, for example, the Board chose the storybooks based on factors such as whether they "reinforced or disrupted" "heteronormativity," "cisnormativity," and "power hierarchies that uphold the dominant culture." App. to Pet. for Cert. 622a; see also *ante*, at 2342 – 2343. The Board further provided teachers with guidance about how to conduct "LGBTQ+-inclusive" instruction, which, among other things, suggested that teachers should "[d]isrupt" their students' "either/or thinking" about sexuality and gender. App. to Pet. for Cert. 629a, 633a. In the Board's view, these instructional directives helped advance its objective of "educational equity"—that is, viewing each student's "[g]ender identity and expression," "[s]exual orientation," and other specified "individual characteristics as valuable." Code of Md. Regs., tit. 13a, §§ 01.06.01(B), 01.06.03(B) (2025).[2]

Yoder's historical analysis applies with full force in this case. Until very recently, young children have gone without sexual- and gender-identity education in school. Nothing suggests that the countless generations who did not receive such education failed to "mee[t] the duties of citizenship," 406 U.S. at 227, 92 S.Ct. 1526—or that, if they did, their failure was due to a lack of exposure to sexual- and gender-identity instruction during early adolescence. Further, as in *Yoder*, the parents seeking to protect their children's religious upbringings do not belong to a group pushing some "recently discovered ... 'progressive' or more enlightened process for rearing children for modern life." *Id.*, at 235, 92 S.Ct. 1526. They are devout Christians and Muslims. See *ante*, at 2347 – 2348. Given the novelty of its "LGBTQ+-inclusive" curriculum and no-opt-out policy, if any party is pressing a progressive child-rearing process in this litigation, clearly it is the Board. Such an unprecedented curriculum cannot "overbalance" the parents' "legitimate claims to the free exercise of religion." 406 U.S. at 215, 92 S.Ct. 1526.[3]

2. The majority discusses five books currently incorporated in the Board's "LGBTQ+-inclusive" curriculum. *Ante*, at 2343 – 2345. The Board had also approved another book, Pride Puppy, but, after more than a year of using the book in classroom instruction, the Board removed it due to content concerns during the course of this litigation. See N. Asbury, Montgomery Schools Stopped Using Two LGBTQ-Inclusive Books Amid Legal Battle, Washington *Post*, Oct. 23, 2024, https://www.washingtonpost.com/education/2024/10/23/montgomery-schools-opt-out-storybooks/; see also *ante*, at 2343, n. 6. Pride Puppy tells the story of a young child "celebrating Pride Day" and losing her dog in the parade. See App. to Pet. for Cert. 234a. The book, which the Board intended for teachers to read to 3- and 4-year-olds, see *ibid.*, invites readers to search for items depicted in the book's illustrations, including "underwear," a "[drag] king," and a "[drag] queen," *id.*, at 270a.

3. According to Justice SOTOMAYOR, the recency inquiry outlined in *Yoder* could inhibit schools' ability to teach "computer literacy, robotics, and film studies," and thus "fails to appreciate the constantly evolving nature of education." *Post*, at 2401, n. 16 (dissenting opinion). But, Justice SOTOMAYOR fails to appreciate the enduring nature of religion—and the Constitution's respect for it. As the Court explained in *Yoder*, a compelled curriculum focused on "contemporary worldly society"—no matter how practically useful—may still impermissibly "contraven[e] ... basic religious tenets and practice ..., both as to the parent and the child." 406 U.S. at 211, 218, 92 S.Ct. 1526.

II

Perhaps recognizing that its ban on parental opt-outs lacks historical support, the Board seeks to defend its policy by claiming that it promotes "equity" and "inclusi[on]" and diminishes classroom disruption. Decl. of N. Hazel in *Mahmoud* v. *McKnight*, No. 8:23–cv–01380 (D Md.), ECF Doc. 42–1, pp. 2, 6; Brief for Respondents 49. But, these assertions do not amount to "interests of the highest order" sufficient to justify the policy's interference with parents' First Amendment rights. *Yoder*, 406 U.S. at 215, 92 S.Ct. 1526. And, much of the alleged potential for classroom disruption stems from choices that the Board itself made.

A

The record in this case suggests that the Board's "LGBTQ+-inclusive" curriculum and no-opt-out policy rest on the sort of conformity-driven rationales that this Court rejected in *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925).

In *Yoder*, the Court observed that if a State were "empowered, as *parens patriae*, to 'save' a child" from the supposed "ignorance" of his religious upbringing, then "the State will in large measure influence, if not determine, the religious future of the child." 406 U.S. at 222, 232, 92 S.Ct. 1526. Such an arrangement would upend the "enduring American tradition" of parents occupying the "primary role . . . in the upbringing of their children"—a role that includes the "inculcation of . . . religious beliefs." *Id.*, at 232–233, 92 S.Ct. 1526.

In reaching this conclusion, the Court relied heavily on its earlier decision in *Pierce*, which articulated "perhaps the most significant statements of the Court in this area." *Yoder*, 406 U.S. at 232, 92 S.Ct. 1526. The Court held in *Pierce* that Oregon's Compulsory Education Act, 1922 Ore. Laws p. 9, § 1, as amending § 5259, which mandated public schooling for children between 8 and 16 years old and thus forbade them from attending religious schools, "unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control." *Pierce*, 268 U.S. at 530, 534–535, 45 S.Ct. 571. "The fundamental theory of liberty upon which all governments in this Union repose," the Court explained, "excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only." *Id.*, at 535, 45 S.Ct. 571. The Court rejected the premise that the child was merely a "creature of the State"; rather, "those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Ibid.*

While the Court did not decide *Pierce*on free exercise grounds,[4] the context in which *Pierce* arose confirms that it "stands as a charter of the rights of parents to direct the religious upbringing of their children." *Yoder*, 406 U.S. at 233, 92 S.Ct. 1526. The case came to the Court during "a time of broad and relentless hostility to the European immigrants whose labor the nation needed but whose religions were seen as alien and un-American." S. Carter, Parents, Religion and Schools: Reflections on *Pierce*, 70 Years Later, 27 Seton Hall L. Rev. 1194, 1196 (1997) (Carter). "Roman Catholicism and, to a lesser extent, Judaism, were widely

4. The Court decided *Pierce* 15 years before it recognized that the First Amendment's free-exercise guarantee applies against the States. See *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S.Ct. 900, 84 L.Ed. 1213 (1940).

viewed as threats to America, which was self-consciously a Protestant country." *Id.*, at 1197. Public schooling was perceived as a solution that could "Protestantize the immigrant children" and thus diminish the threats these foreign beliefs posed. *Id.*, at 1199; see also *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464, 499–504, 140 S.Ct. 2246, 207 L.Ed.2d 679 (2020) (ALITO, J., concurring) (describing popular anti-Catholic sentiment and attempts to "'Americanize' the incoming Catholic immigrants"). Unsurprisingly, parents who adhered to the disfavored faiths sought alternative educational options. "[B]y the end of the nineteenth century, there were Catholic schools everywhere there were Catholics." Carter 1200.

The arguments that Oregon pressed in defense of its compulsory-education law make clear that the State sought ideological conformity among its citizens, and viewed immigrants and their religious schools as standing in the way. It would be "both unjust and unreasonable," Oregon argued, "to prevent [the States] from taking the steps which each may deem necessary and proper for Americanizing its new immigrants and developing them into patriotic and law-abiding citizens." *Pierce*, 268 U.S. at 526, 45 S.Ct. 571 (arguments of counsel). Absent such power, there would be no way to "prevent the entire education of a considerable portion of [a State's] future citizens being controlled and conducted by bolshevists, syndicalists and communists." *Ibid.* The State even asserted an interest in "a greater equality" to justify its attempt at state-enforced uniformity. *Id.*, at 527, 45 S.Ct. 571. Though these sentiments were "comfortably consonant with the smart-set views of the day," R. Garnett, Taking *Pierce* Seriously: The Family, Religious Education, and Harm to Children, 76 Notre Dame L. Rev. 109, 124 (2000) (Garnett),[5] the Court rejected them as antithetical to our Nation's "fundamental theory of liberty," 268 U.S. at 535, 45 S.Ct. 571.

The Board's "LGBTQ+-inclusive" curriculum and no-opt-out policy pursue the kind of ideological conformity that *Pierce* and *Yoder* prohibit. To be sure, the Board frames its policy in more veiled terms. It has maintained throughout this litigation that the storybooks serve broad interests in "promot[ing] equity, respect, and civility among [its] diverse community"; "normaliz[ing] a fully inclusive environment"; "encourag[ing] respect for all"; and creating a "safe educational environment." Defendants' Memorandum of Law in Opposition, ECF Doc. 42, p. 32; ECF Doc. 42–1, at 2, 6 (internal quotation marks omitted). It further determined that allowing opt-outs might "expos[e]" students "who believe that the books represent them or their

5. The anti-Catholic views animating Oregon's law were both popular and prestigious. Harper's Weekly warned that "every good citizen should strenuously oppose" Catholics' plans for "extension of the Roman sect." The "Parochial" Schools, Harpers Weekly, Apr. 10, 1875, p. 294; see also *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464, 500, 140 S.Ct. 2246, 207 L.Ed.2d 679 (2020) (ALITO, J., concurring) (picturing 1871 Harper's Weekly cartoon "depict[ing] Catholic [bishops] as crocodiles slithering hungrily toward American children"). "Books full of anti-Catholic sentiment, and stern nativist warnings, were best-sellers" at the time. Carter 1197. Ellwood Cubberley of Stanford University—the "preeminent education scholar" of the era—"identified the assimilation of immigrants as the dominant schooling challenge of the time." J. Driver, The Schoolhouse Gate: Public Education, the Supreme Court, and the Battle for the American Mind 44 (2018). And, John Dewey, one of the 20th century's most prominent educational reformers, "insisted that parents should not be permitted to 'inoculate' their children with the outdated and useless religious beliefs that they 'happen[ed] to have found serviceable to themselves.'" Garnett 124, n. 69.

families" to "social stigma and isolation." App. to Pet. for Cert. 607a–608a; see also *ante,* at 2346 – 2347. As the acting principal of one Montgomery County public school euphemistically explained, "being accepting is the goal." App. to Pet. for Cert. 498a.

But, the Board's response to parents' unsuccessful attempts to opt their children out of the storybook curriculum conveys that parents' religious views are not welcome in the "fully inclusive environment" that the Board purports to foster. ECF Doc. 42–1, at 6. As the majority recounts, the Board ignored that " 'thousands' of parents felt 'deeply dismayed and betrayed' by the rescission of opt outs from 'content that conflict[s] with their sincerely held religious beliefs.' " *Ante,* at 2346. After parents attempted to opt their children out of the Board's new curriculum on religious grounds, at least one Board member suggested that students were " '"parroting"' " their parents' " '"dogma"' " *Ibid.* The Board member further analogized the parents to " '"white supremacists"' " and " '"xenophobes."' " *Ante,* at 2347. And, a different Board member suggested that any objection to the "LGBTQ+-inclusive" curriculum stemmed from " 'ignorance and hate.' " *Ante,* at 2346. In the Board's view, for parents to suggest that the storybooks were inappropriate would be "a dehumanizing form of erasure." App. to Pet. for Cert. 514a. At a minimum, these statements suggest that "being accepting" has limits—and that parents' sincerely held religious beliefs fall beyond them. *Id.*, at 498a.

The curriculum itself also betrays an attempt to impose ideological conformity with specific views on sexuality and gender. The storybooks are, "[l]ike many books targeted at young children, . . . unmistakably normative." *Ante,* at 2353. They present views that run contrary to traditional religious teachings as "correct and worthy of acclaim," asserting, for example, that "sex is irrelevant to whether two people can get married," that students should question their genders, and that gender transitions are unequivocally positive. See *ante,* at 2353 – 2355. Beyond the materials themselves, the Board instructed teachers to reprimand certain traditional religious views about sex and gender as " 'hurtful,' " and to respond to students' questions with answers that, among other things, endorse same-sex marriage and transgender ideology. See *ante,* at 2354 – 2356.

The Board's exclusion of traditional religious views, coupled with a curriculum that "pressure[s students] to conform," *Yoder*, 406 U.S. at 211, 92 S.Ct. 1526, constitute an impermissible attempt to "standardize" the views of students, *Pierce*, 268 U.S. at 535, 45 S.Ct. 571. Just as Oregon claimed that it would use its education system to promote "equality" and generate "patriotic and law-abiding citizens," *id.*, at 526–527, 45 S.Ct. 571 (arguments of counsel), the Board purports to use the same means to promote " 'equity' " and create " 'civi[l]' " students. ECF Doc. 42, at 8, 9. But, in both instances, the government's vision is irreconcilable with "the rights of parents to direct the religious upbringing of their children," *Yoder*, 406 U.S. at 233, 92 S.Ct. 1526, even if it aligns with "the smart-set views of the day," Garnett 124; see, *e.g.*, H. Alvaré, Families, Schools, and Religious Freedom, 54 Loyola U. Chi. L. J. 579, 631–632 (2022) (observing that "the most visible corporations and websites . . . celebrate beliefs and conduct about the family that directly contradict Christian norms").

At bottom, the parents in this case are "member[s] of the community too." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463, 137 S.Ct. 2012, 198 L.Ed.2d 551 (2017). Their objections to the Board's curriculum follow "decent and

honorable religious . . . premises." *Obergefell v. Hodges*, 576 U.S. 644, 672, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015). Far from promoting "inclusi[on]" and "respect for all," ECF Doc. 42–1, at 6, the Board's no-opt-out policy imposes conformity with a view that undermines parents' religious beliefs, and thus interferes with the parents' right to "direct the religious upbringing of their children," *Yoder*, 406 U.S. at 232–233, 92 S.Ct. 1526.[6]

B

The Board's alleged interest in efficient administration does not help it, either. In the Board's view, if it can show that it "'could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom and undermining [its] educational mission,'" then it can vindicate its policy. Brief for Respondents 49. But, as the majority notes, the significant disruptions that the Board complains about are "a product of its own design." *Ante*, at 2362. If the Court were to accept the Board's argument, we would effectively give schools a playbook for evading the First Amendment.

Teaching young children about sexual and gender identity in ways that contradict parents' religious teachings undermines those parents' right to "direct the religious upbringing of their children," *Yoder*, 406 U.S. at 233, 92 S.Ct. 1526,[7] and the Board may undermine that right only if it has no other way to advance a compelling interest. Here, not only do the Board's interests in its curriculum and policy fall below the "highest order" of importance, see *supra*, at 2376 – 2377, 2378 – 2380, but these alleged logistical challenges are attributable to the Board's deliberate decision to "weave" the storybooks into its broader curriculum. Brief for Respondents 13; see also *ante*, at 2362 – 2363.

The Board easily could avoid sowing tension between its curriculum and parents' First Amendment rights. Most straightforwardly, rather than attempt to "weave the storybooks seamlessly into ELA lessons," the Board could cabin its sexual- and gender-identity instruction to specific units. Brief for Respondents 13; see *ante*, at 2362 – 2363. The Board's formal sex-education curriculum, for example, is a "discrete" "[u]nit of [i]nstruction" from which parents may opt out their children

6. Justice SOTOMAYOR responds that, "[i]f there is any conformity that the Board seeks to instill, it is universal acceptance of kindness and civility." *Post*, at 2398, n. 14. I recognize that the Board *purports* to instill such a principle. See *supra*, at 2378 – 2379. But, as discussed above, in this case Board members' treatment of parents has been neither "kin[d]" nor "civi[l]" nor "universal[ly] accept[ing]." *Post*, at 2398, n. 14 (opinion of SOTOMAYOR, J.). The Board's decision to disregard—or, in some cases, to denigrate—parents' sincerely held religious beliefs is anathema to its declared objectives.

7. Not only are "sexual orientation and gender identity" "sensitive political topics," *Janus v. State, County, and Municipal Employees*, 585 U.S. 878, 913–914, 138 S.Ct. 2448, 201 L.Ed.2d 924 (2018), but education about these subjects is uniquely likely to "interfer[e]" with children's "religious development," *Yoder*, 406 U.S. at 218, 92 S.Ct. 1526. These subjects relate to "the very architecture" of many faiths. H. Alvaré, Families, Schools, and Religious Freedom, 54 Loyola U. Chi. L. J. 579, 629 (2022). Thus, when schools "offe[r] normative answers to moral questions" about these "familial matters," their moral statements inevitably address "religious matter[s]," leaving the instruction "inseparable from what *Pierce* and *Yoder* firmly agreed belongs to parents' constitutional authority respecting their children." *Id.*, at 617. The interference with parents' right to direct their children's religious upbringing is especially pronounced here, given the Board's concession that the storybook curriculum may provide children with "a new perspective not easily contravened by their parents." App. 46.

"for any reason." Brief for Respondents 11; see also Tr. of Oral Arg. 131 (noting that sex education is "something where you're able to predict precisely when the curriculum is going to be deployed"). Had the Board confined its "LGBTQ-inclusive" curriculum to a "discrete" "[u]nit" as well, Brief for Respondents 11, parental opt outs would pose no greater administrative burden on schools than those that the schools already confront. The Board instead chose to incorporate these controversial concepts into broader instruction.

The Board may not insulate itself from First Amendment liability by "weav[ing]" religiously offensive material throughout its curriculum and thereby significantly increase the difficulty and complexity of remedying parents' constitutional injuries. *Id.*, at 13. Were it otherwise, the State could nullify parents' First Amendment rights simply by saturating public schools' core curricula with material that undermines "family decisions in the area of religious training." *Yoder*, 406 U.S. at 231, 92 S.Ct. 1526. The "Framers intended" for "free exercise of religion to flourish." *Espinoza*, 591 U.S. at 497, 140 S.Ct. 2246 (THOMAS, J., concurring). Insofar as schools or boards attempt to employ their curricula to interfere with religious exercise, courts should carefully police such "ingenious defiance of the Constitution" no less than they do in other contexts. *South Carolina v. Katzenbach*, 383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966).

Justice SOTOMAYOR, with whom Justice KAGAN and Justice JACKSON join, dissenting.

Public schools, this Court has said, are " 'at once the symbol of our democracy and the most pervasive means for promoting our common destiny.' " *Edwards v. Aguillard*, 482 U.S. 578, 584, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987). They offer to children of all faiths and backgrounds an education and an opportunity to practice living in our multicultural society. That experience is critical to our Nation's civic vitality. Yet it will become a mere memory if children must be insulated from exposure to ideas and concepts that may conflict with their parents' religious beliefs.

Today's ruling ushers in that new reality. Casting aside longstanding precedent, the Court invents a constitutional right to avoid exposure to "subtle" themes "contrary to the religious principles" that parents wish to instill in their children. *Ante*, at 2354. Exposing students to the "message" that LGBTQ people exist, and that their loved ones may celebrate their marriages and life events, the majority says, is enough to trigger the most demanding form of judicial scrutiny. *Ibid.* That novel rule is squarely foreclosed by our precedent and offers no limiting principle. Given the great diversity of religious beliefs in this country, countless interactions that occur every day in public schools might expose children to messages that conflict with a parent's religious beliefs. If that is sufficient to trigger strict scrutiny, then little is not.

The result will be chaos for this Nation's public schools. Requiring schools to provide advance notice and the chance to opt out of every lesson plan or story time that might implicate a parent's religious beliefs will impose impossible administrative burdens on schools. The harm will not be borne by educators alone: Children will suffer too. Classroom disruptions and absences may well inflict long-lasting harm on students' learning and development.

Worse yet, the majority closes its eyes to the inevitable chilling effects of its ruling. Many school districts, and particularly the most resource strapped, cannot afford to engage in costly litigation over opt-out rights or to divert resources to tracking

and managing student absences. Schools may instead censor their curricula, stripping material that risks generating religious objections. The Court's ruling, in effect, thus hands a subset of parents the right to veto curricular choices long left to locally elected school boards. Because I cannot countenance the Court's contortion of our precedent and the untold harms that will follow, I dissent.

I

By the majority's telling, the Montgomery County Public School Board (Board) has undertaken an intentional campaign to "impose upon children a set of values and beliefs that are 'hostile' to their parents' religious" principles. *Ante,* at 2355; see *ante*, at 2342 – 2347. The Court draws on excerpts from Board documents and statements, shorn from context, see *infra*, at 2397 – 2399, and n. 16, that it claims reflect that intent. The full record reveals a starkly different reality.

A

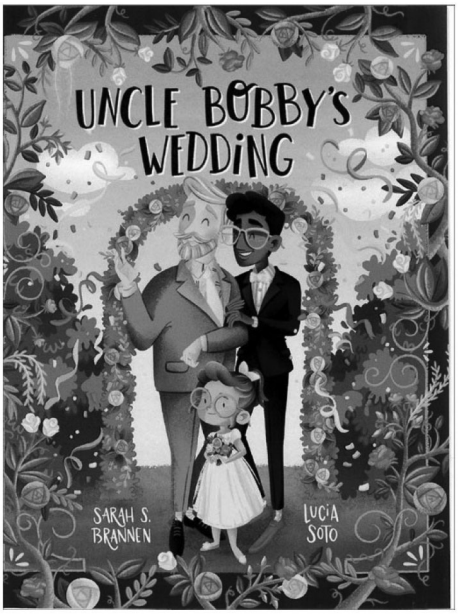
In the years leading up to the present dispute, the Board determined that the books in its English language curriculum failed to represent many students and families in the county. The Board has long been committed to promoting a "fully inclusive environment for all students" by using instructional materials that "reflect [the] diversity of the global community," including "persons with disabilities, persons from diverse racial, ethnic, and cultural backgrounds, as well as persons of diverse gender identity, gender expression, or sexual orientation." App. to Pet. for Cert. 589a–590a, 603a. Yet certain perspectives, the Board concluded, were absent from its English language curriculum. The Board, for instance, determined that some "races and cultures" were not adequately reflected. *Id.*, at 602a. In response, it added books like The Leavers, which tells the story of an Asian-American immigrant family, and the March trilogy, which recounts the life of civil rights leader John Lewis.

The Board found that LGBTQ children and families were similarly underrepresented in its English language curriculum. The books taught in English classes simply "did not include LGBTQ characters." *Id.*, at 603a. To fill that gap, the Board worked with a committee of specialists to identify LGBTQ-inclusive books that it could incorporate into the existing curriculum. After a years-long process, the Board announced in October 2022 that it would add several new books into the elementary school English language curriculum, five of which are at issue in this case (collectively, the Storybooks).[1]

Uncle Bobby's Wedding tells the story of a young girl named Chloe and her "favourite uncle." *Id.*, at 282a. Chloe loves spending time with her Uncle Bobby, and the two often go on adventures, like boating trips and stargazing outings. One day, during a family picnic, Uncle Bobby announces that he is engaged to his friend, Jamie. The announcement is met with much excitement, and the whole family is "smiling and talking and crying and laughing." *Id.*, at 286a. Chloe, however, is apprehensive. She tells her uncle she "do[esn't] think [he] should get married" because she "want[s them] to keep having fun together like always." *Id.*, at 292a. Uncle Bobby promises that they will "'still have fun together,'" *ibid.*, and he and Jamie take Chloe on trips to the ballet, to the beach, and out camping. Chloe's excitement for the wedding grows, and on the day of the

1. The complaint identified seven books to which petitioners object, but two are no longer approved for instructional use. See Brief for Respondents 8.

ceremony, she "was so happy, she felt like doing a cartwheel" down the aisle. *Id.*, at 302a. The story ends with everyone dancing happily at the wedding under the light of the moon.



Id., at 279a.

Because the majority selectively excerpts the book in order to rewrite its story, readers are encouraged to go directly to the source, reproduced below. See Appendix, *infra*; see also *infra*, at 2391 – 2392, and n. 8.[2]

The remaining books play on similar themes. Prince & Knight tells the story of a prince who falls in love with a young knight after the knight helps him defeat a fearsome dragon. Love, Violet describes a shy girl who has a crush on her classmate, Mira and eventually gives her a Valentine's Day card that says "For Mira, Love, Violet." *Id.*, at 434a.

Other books introduce readers to children from different backgrounds and identities. Intersection Allies features eight different characters, each with their own unique attributes. Alejandra, for instance, uses a wheelchair that allows her to "zzzip glide and play," *id.*, at 316a, while Kate prefers "superhero cape[s]" over "[s]kirts and frills" and is pictured in a gender-neutral bathroom, *id.*, at 322a–323a. Born Ready: The True Story of a Boy Named Penelope tells the story of a child who likes skateboarding, "baggy blue jeans, button-front shirts, math, science, and getting straight A's," and "most of all" wants a "Mohawk haircut." *Id.*, at 452a. When Penelope tells his mother that he is a boy, she accepts him: " 'However you feel is fine, baby,' " she says. *Id.*, at 458a. When Penelope's brother expresses skepticism, his mother says, " 'Not everything *needs* to make sense. *This is about love.*' " *Id.*, at 465a (emphasis in original).

The five Storybooks introduce readers to LGBTQ characters, but they draw on many of the themes common to children's books. Indeed, Montgomery County Public Schools (MCPS) libraries are replete with children's books that tell similar stories about overcoming differences, fairytale romances, and celebrating big milestones like weddings. See MCPS Library Portal, https://mcpsmd.follettdestiny.com /portal (online catalogue of MCPS elementary school books).

The Board directed the schools to use the new books in the same manner as all other books in the English language program, namely, to "assist students with mastering reading concepts like answering questions about characters, retelling key events about characters in a story, and drawing inferences about story characters

2. The majority buries this book at the end of its discussion of the challenged materials, see *ante,* at 2344 – 2345, and understandably so. The Court's conclusion that even mere exposure to Uncle Bobby's Wedding poses an intolerable "threat" to religious views illustrates the untenable breadth of its position. *Ante,* at 2354 – 2355; see *infra,* at 2391 – 2392, and n. 8.

based on their actions." *Id.*, at 605a. The Board made clear to individual schools that "there is no planned explicit instruction on gender identity and sexual orientation in elementary school," using the Storybooks or otherwise. *Ibid.* The Board's policies, moreover, mandate that "no student or adult [will be] asked to change how they feel about" issues of "gender identity and sexual orientation," *ibid.*, and that, "[i]f a child does not agree with or understand another student's gender identity or expression or their sexuality . . ., they do not have to change how they feel about it," *id.*, at 638a; see also *id.*, at 520a.

Before MCPS introduced the books into classrooms, the Board provided guidance to teachers on how to respond to student questions and commentary regarding the books. The guidance focuses on encouraging mutual tolerance and "respect" for all those in the community. *Id.*, at 628a. To take one example, if a child says that "[b]eing . . . gay, lesbian, queer, etc[.] is wrong and not allowed in [her] religion," the guidance suggests that a teacher could respond by saying:

> "I understand that is what you believe, but not everyone believes that. We don't have to understand or support a person's identity to treat them with respect and kindness. School is a place where we learn to work together regardless of our differences. In any community, we'll always find people with beliefs different from our own and that is okay—we can still show them respect." *Ibid.*

The guidance also directs teachers to discourage the use of language that could be hurtful to students in the class. If a student says, "That's so gay," for instance, the guidance suggests a teacher may respond by saying: "Regardless of how it's intended, using gay to describe something negative reflects a long history of prejudice against LGBTQ+ people, so please don't use it in that way." *Id.*, at 634a.

During the first year of the Storybooks' inclusion in the English language program, MCPS permitted parents, through agreements with individual schools, to opt their children out of lessons that featured the books. Parents began making individualized opt-out requests. Although some of the requests were religious in nature, many were not.

In March 2023, the Board met with a "small group of principals" and learned that teachers could not accommodate the opt-out requests "without causing significant disruptions to the classroom environment and undermining MCPS's educational mission." *Id.*, at 607a. The Board also worried that permitting some students to leave the classroom whenever a teacher brought out books featuring LGBTQ characters could expose LGBTQ students (and those with LGBTQ parents) to social stigma and isolation. MCPS therefore announced it would no longer permit parents to opt out of instruction using the Storybooks.

B

MCPS regulations establish a multilevel appeal process for parents to challenge the "appropriateness of instructional materials or library books." App. 25. Parents can first raise objections at the school level. If that proves unsuccessful, parents can appeal to the head of the district's evaluation and selection unit, who must "[a]ppoint an ad hoc committee" of library media specialists, teachers, principals, and other staff "to reevaluate the material." *Ibid.* The committee makes a recommendation to the associate superintendent for instruction and program development, who herself considers the appropriateness of the relevant instructional material and renders a decision. If the parents are still unsatis-

fied, they may appeal to the superintendent of schools, and then the board itself, pursuant to extensive county regulations governing appeal and hearing procedures.

C

Rather than avail themselves of the district's established process for challenging objectionable instructional material, petitioners sued the MCPS Board in federal court.[3] Using the Storybooks in English class "without parental notice or opt-out rights," the parents argued, violates the Free Exercise Clause of the Constitution by "expos[ing]" their children to content that conflicts with the parents' religious views. App. to Pet. for Cert. 190a, 194a. More specifically, petitioners Tamer Mahmoud and Enas Barakat object to "exposing" their son "to activities and curriculum on sex, sexuality, and gender that undermine Islamic teaching on these subjects." *Id.*, at 532a. They worry that "reading th[e] [Story]books and engaging in related discussions would confuse [their son's] religious upbringing" and "undermine [their] efforts to raise" their son "in accordance with [their] faith." *Id.*, at 532a–533a. Chris and Melissa Persak likewise object to "exposing" their children to "viewpoints on sex, sexuality, and gender that contradict Catholic teaching on these subjects." *Id.*, at 544a. Jeff and Svitlana Roman similarly believe that their son's teachers should not "teach principles about sexuality or gender identity that conflict with [their] religious beliefs." *Id.*, at 541a.

Petitioners asked the district court to enjoin MCPS from "denying [them] notice and opportunity to opt their children out of reading, listening to, or discussing the . . . Storybooks," and "any other instruction related to family life or human sexuality that violates the Parents' or their children's religious beliefs." Motion for Preliminary Injunction in No. 23–cv–01380 (D Md., June 12, 2023), ECF Doc. 23, p. 1. After an evidentiary hearing, the district court denied petitioners' preliminary injunction motion. See *Mahmoud v. McKnight*, 688 F.Supp.3d 265, 272 (D.Md. 2023). The Fourth Circuit affirmed. 102 F.4th 191 (2024). It held that petitioners had failed to establish that the Board "direct[ly] or indirect[ly] pressure[d]" them or their children to "abandon [their] religious beliefs or affirmatively act contrary to those beliefs" in the way this Court's precedents require. *Id.*, at 210 (citing *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 450, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988)).

II

A

The Free Exercise Clause commands that the government "shall make no law . . . prohibiting the free exercise" of religion. U. S. Const., Amdt. 1. "The crucial word in the constitutional text is 'prohibit,' " for it makes clear " 'the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government.' " *Lyng*, 485 U.S. at 451, 108 S.Ct. 1319.

It follows from the text that the Free Exercise Clause does not "require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development or that of his or her family." *Bowen v. Roy*, 476 U.S. 693,

3. There are three sets of parent-plaintiffs: Tamer Mahmoud and Enas Bakarat, Jeff and Svitlana Roman, and Chris and Melissa Persak. Although the majority discusses evidence in the record related to the associational plaintiff, Kids First, see *ante*, at 2348 – 2349, that association did not join in the parent-plaintiffs' motion for a preliminary injunction. See *Mahmoud v. McKnight*, 102 F.4th 191, 201, n. 4 (CA4 2024).

699, 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986) (emphasis in original). Instead, the Clause prohibits the government from compelling individuals, whether directly or indirectly, to give up or violate their religious beliefs. See, *e.g.*, *Wisconsin v. Yoder*, 406 U.S. 205, 218, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) (Free Exercise Clause forbids "affirmatively compel[ling]" individuals "to perform acts undeniably at odds with fundamental tenets of their religious beliefs"); *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 223, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963) ("[I]t is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion"); *Bowen*, 476 U.S. at 700, 106 S.Ct. 2147 ("The Free Exercise Clause affords an individual protection from certain forms of governmental compulsion . . . "); *Lyng*, 485 U.S. at 451, 108 S.Ct. 1319 (Free Exercise Clause prohibits laws that have a "tendency to coerce individuals into acting contrary to their religious beliefs"); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463, 137 S.Ct. 2012, 198 L.Ed.2d 551 (2017) ("[T]he Free Exercise Clause protects against 'indirect coercion . . . ' "); *Carson v. Makin*, 596 U.S. 767, 778, 142 S.Ct. 1987, 213 L.Ed.2d 286 (2022) (same).

Consistent with these longstanding principles, this Court has made clear that mere exposure to objectionable ideas does not give rise to a free exercise claim. That makes sense: Simply being exposed to beliefs contrary to your own does not "prohibi[t]" the "free exercise" of your religion. Amdt. 1. Nor does mere " '[o]ffense . . . equate to coercion.' " *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 539, 142 S.Ct. 2407, 213 L.Ed.2d 755 (2022) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 589, 134 S.Ct. 1811, 188 L.Ed.2d 835 (2014) (plurality opinion) (alteration in original). The Constitution thus does not " 'guarantee citizens a right entirely to avoid ideas with which they disagree.' " *Id.*, at 589, 134 S.Ct. 1811. Indeed, "[i]t would betray its own principles if it did," for "no robust democracy insulates its citizens from views that they might find novel or even inflammatory." *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1, 44, 124 S.Ct. 2301, 159 L.Ed.2d 98 (2004) (O'Connor, J., concurring in judgment).

There is no public school exception to these principles. This Court's decision in *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943), is instructive. There, the Court held that "compelling" students who adhere to the Jehovah's Witnesses faith to salute the flag, in contravention of their religious beliefs, violated the First Amendment. *Id.*, at 642, 63 S.Ct. 1178. Yet the Court distinguished the "compulsion of students to declare a belief " from simply exposing students to ideas that might conflict with their religious tenets. *Id.*, at 631, 63 S.Ct. 1178. For instance, the Court recognized that schools could "acquain[t students] with the flag salute so that they may be informed as to what it is or even what it means." *Ibid.* No problem arose, either, the Court observed, from having objecting students "remai[n] passive during a flag salute ritual," while watching the rest of the class engage in it. *Id.*, at 634, 63 S.Ct. 1178. What the State could not do, however, is "compe[l] the flag salute and pledge," when those actions required students to "declare a belief " contrary to their own religious views. *Id.*, at 631, 642, 63 S.Ct. 1178.

So too, in *Kennedy* v. *Bremerton School Dist.*, the Court recognized that seeing objectionable conduct alone is not actionable under the First Amendment. There, the Court rejected the argument that the exposure of children to a school coach's religious prayer violated the Establish-

ment Clause. See 597 U.S. at 538–539, 142 S.Ct. 2407. Even though hearing and watching an authority figure engage in a denominational prayer with classmates at a school-sponsored event could, of course, undermine parents' efforts to instill different religious beliefs in their children, a majority of this Court concluded that no cognizable "coercion" had occurred, and so no Establishment Clause violation inhered in the coach's conduct. See *id.*, at 539, 142 S.Ct. 2407.[4]

In sum, never, in the context of public schools or elsewhere, has this Court held that mere exposure to concepts inconsistent with one's religious beliefs could give rise to a First Amendment claim.[5]

B

These well-established principles, previously recognized and respected by this Court, resolve this case. As recounted earlier, each of the three sets of parent-plaintiffs premised their objections on, in essence, "expos[ure]" to material that conflicts with their religious beliefs. App. to Pet. for Cert. 532a; see *supra*, at 2345 – 2346; see also App. to Pet. for Cert. 194a (challenging "exposure to the Pride Storybooks" and having "children . . . read the Pride Storybooks"). Yet for the reasons just explained, the effects of mere exposure to material with which one disagrees does not and should not give rise to a free exercise claim.

Nor have petitioners shown that MCPS's policies coerced them to give up or violate their religious beliefs. See *Barnette*, 319 U.S. at 633, 63 S.Ct. 1178. To the contrary, MCPS explicitly prohibits teachers from asking students to give up or change their views regarding gender and sexuality, whether religious or not. See *supra*, at 2384 – 2385; see also App. to Pet. for Cert. 520a, 605a, 638a. The parents have proffered no evidence of teachers acting contrary to that policy.

Recall, too, that MCPS exclusively uses the challenged Storybooks to teach students literacy in English language class. Like all other books in the English language curriculum, the Storybooks will be used to "assist students with mastering reading concepts like answering questions about characters, retelling key events about characters in a story, and drawing inferences about story characters based on

4. The Court misconstrued the record in that case, and thus erred in deciding that the coach's prayer ritual was not coercive. See *Kennedy*, 597 U.S. at 547–556, 561–562, 142 S.Ct. 2407 (SOTOMAYOR, J., dissenting). Taking the majority's recitation of the facts at face value, however, the Court plainly viewed exposure to the aforementioned activities as insufficient to raise First Amendment concerns, notwithstanding their apparent potential to undermine a parent's religious upbringing of their child. See *id.*, at 538–539, 142 S.Ct. 2407.

5. The majority claims that this Court's precedent, as set forth above, establishes an "alarmingly narrow rule" that would permit "even instruction that denigrates or ridicules students' religious beliefs." *Ante*, at 2358. That the majority sees exposure to books featuring LGBTQ characters as comparable to "denigrat[ion] or ridicul[e]" of religion is telling. *Ante*, at 2358. In any event, the majority is wrong: Denigration and ridicule can easily amount to coercion. Such conduct bears no resemblance to merely exposing children to concepts or ideas that incidentally conflict with a parent's religious beliefs. (The majority, for its part, cannot comprehend that coercion may cover denigration without reaching exposure, and so mistakes this point for a concession. See *ante*, at 2359 n. 10.) Additionally, this Court's precedent forbids government action motivated by "hostility to a religion or religious viewpoint." *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. 617, 638, 138 S.Ct. 1719, 201 L.Ed.2d 35 (2018). Existing precedent thus addresses the majority's hypotheticals without resort to its unbounded test. See *infra*, at 2392 – 2394.

their actions." *Id.*, at 605a. As for integrating the books into classes, teachers may opt "to put them on a shelf for students to find on their own; to recommend a book to a student who would enjoy it; to offer the books as an option for literature circles, book clubs, or paired reading groups; or to use them as a read aloud." *Id.*, at 604a–605a. It is possible, of course, that such instruction may introduce students to concepts or views objectionable to their faiths. Being "merely made acquainted with" these themes, however, does not give rise to a cognizable free exercise burden. *Barnette*, 319 U.S. at 631, 63 S.Ct. 1178.

III

Rather than follow this Court's unambiguous precedent, the majority rescues petitioners' exposure theory by simply renaming it. Petitioners' free exercise rights are burdened by the Storybooks, the majority claims, because they "carry with them 'a very real threat of undermining' the religious beliefs that the parents wish to instill in their children." *Ante,* at 2355. In other words, reading books like Uncle Bobby's Wedding is sufficient, in the majority's view, because of the " 'threat' " those books pose to the religious upbringing of petitioners' children. *Ibid.*; see *ante,* at 2361 – 2362. That is simply exposure by another name.

From where does the majority derive its novel "threat" test? *Yoder*, 406 U.S. 205, 92 S.Ct. 1526, the majority claims, established it over half a century ago, unbeknownst to any court of appeals in the Nation (and until today, this Court as well).

The flaws in the majority's reasoning are legion. The Court's reading of *Yoder* is not simply incorrect; it is definitively foreclosed by precedent. The majority's novel test, moreover, imposes no meaningful limits on the types of school decisions subject to strict scrutiny, as the Court's own application of its test confirms. Today's ruling thus promises to wreak havoc on our Nation's public schools and the courts tasked with resolving this new font of litigation.

A

1

Start with the majority's misreading of *Yoder*. According to the Court, *Yoder* held that the government violates the " 'rights of parents to direct "the religious upbringing" of their children' " whenever a government policy "poses 'a very real threat of undermining' the religious beliefs and practices that the parents wish to instill." *Ante,* at 2342, 2350 – 2351. That is incorrect.

Yoder addressed a First Amendment challenge to Wisconsin's "compulsory-attendance law" for high school students. 406 U.S. at 207, 92 S.Ct. 1526. The law compelled parents to send their children to public school or an equivalent until age 16, and imposed criminal penalties on violators. See *ibid.* A group of Amish parents punished under the law argued that their convictions violated the Free Exercise Clause because "their children's attendance at high school, public or private, was contrary to the Amish religion and way of life." *Id.*, at 209, 92 S.Ct. 1526.

This Court agreed. See *id.*, at 234–236, 92 S.Ct. 1526. Wisconsin's law violated the Free Exercise Clause because it "affirmatively compel[led]" the parents, "under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs." *Id.*, at 218, 92 S.Ct. 1526. "Formal high school education beyond eighth grade," the Court explained, foreclosed Amish religious practice by "tak[ing children] away from their community" at a time when they "must acquire ... the specific skills needed to perform the adult role of an Amish farmer or housewife." *Id.*, at 211, 92 S.Ct. 1526.

Sending their children to school during that "crucial" time would accordingly require the Amish parents to "abandon" their faith. *Id.*, at 218, 92 S.Ct. 1526.

Yoder thus does not support the proposition that any government policy that poses a " 'very real threat' " to a parent's religious development of their child triggers strict scrutiny. *Ante,* at 2342, 2355. The problem in *Yoder* was not that the law exposed children to material that would incidentally "undermine" religious beliefs, but that it compelled Amish parents to do what their religion forbade: send their children away rather than integrate them into the Amish community at home. Contra, *ante,* at 2341 – 2342, 2352 – 2353, 2359, n. 11.[6]

If there were any doubt, this Court already rejected the majority's flawed reading of *Yoder* in *Lyng*, 485 U.S. 439, 108 S.Ct. 1319. There, a group of Native Americans brought a free exercise challenge to the construction of a federal road through an area that the group used "to conduct a wide variety of specific rituals." *Id.*, at 451, 108 S.Ct. 1319. This Court rejected the plaintiffs' claim. *Id.*, at 449–451, 108 S.Ct. 1319. Although "the challenged Government action would interfere significantly with private persons' ability to pursue spiritual fulfillment according to their own religious beliefs," the Court reasoned, the affected individuals would not be "coerced by the Government's action into violating their religious beliefs." *Id.*, at 449, 108 S.Ct. 1319. Accordingly, the Court held that the plaintiffs had failed to make out a cognizable free exercise claim. See *id.*, at 451–452, 108 S.Ct. 1319.

The dissent in *Lyng* argued that the Court's ruling conflicted with *Yoder*, which it described as "str[iking] down a state compulsory school attendance law on free exercise grounds not so much because of the affirmative coercion the law exerted on individual religious practitioners, but because of 'the impact' " that the law would have on Amish communities. 485 U.S. at 466, 108 S.Ct. 1319 (opinion of Brennan, J.) (emphasis deleted). Wisconsin's law implicated the Free Exercise Clause, the dissent claimed, because the school environment "posed 'a very real threat of undermining the Amish community and religious practice.' " *Id.*, at 467, 108 S.Ct. 1319 (quoting *Yoder*, 406 U.S. at 218, 92 S.Ct. 1526). The majority today uses that same refrain as the foundation of its analysis. See, *e.g.*, *ante,* at 2341 – 2342, 2349, 2354 – 2355, 2356 – 2357, 2361 – 2362.

The Court in *Lyng*, however, could not have been clearer: "The dissent ... misreads *Wisconsin* v. *Yoder*." 485 U.S. at 456, 108 S.Ct. 1319. "The statute directly compelled the Amish to send their children to public high schools 'contrary to the Am-

6. The majority sets up a strawman in response, claiming that the preceding analysis distinguishes *Yoder* because it "involved compulsory school attendance." *Ante,* at 2359, n. 11. That misses the point entirely: *Yoder* is distinguishable because the challenged law "affirmatively compel[led]" the parents *"to perform acts undeniably at odds with fundamental tenets of their religious beliefs."* 406 U.S. at 218, 92 S.Ct. 1526 (emphasis added). That is not true here. See *supra,* at 2387 – 2388. It also bears emphasis that the parents in this case remain free to teach their religious beliefs and practices to their children at home, as petitioners acknowledge. See Reply Brief 8. The parents in *Yoder,* by contrast, were prohibited by the challenged law from engaging in religious teaching at home that was critical to "integrat[ing] ... Amish child[ren] into the Amish religious community" because the law required them to send their children away to school during that same time. 406 U.S. at 211–212, 92 S.Ct. 1526; see *id.,* at 218, 92 S.Ct. 1526. It was thus impossible to both comply with the law and engage in the religious teaching at home deemed necessary by the Amish parents. So they were not "similarly capable of teaching their religious values 'at home.' " Contra, *ante,* at 2360.

ish religion and way of life,' " the Court explained. *Id.*, at 457, 108 S.Ct. 1319. "The dissent's out-of-context quotations notwithstanding, there is nothing whatsoever in the *Yoder* opinion to support the proposition that the 'impact' on the Amish religion would have been constitutionally problematic if the statute at issue had not been coercive in nature." *Ibid.* So the mere "threat of undermining" Amish beliefs and practices was not, on its own, what gave rise to a cognizable free exercise burden in *Yoder*. Contra, *ante,* at 2341 – 2342, 2349, 2354 – 2355, 2356 – 2357, 2361 – 2362. "Whatever may be the exact line between unconstitutional prohibitions on the free exercise of religion and the legitimate conduct by government of its own affairs," *Lyng* explained, "the location of the line cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development." 485 U.S. at 451, 108 S.Ct. 1319.

The majority's novel test directly contravenes not only *Lyng*, but also *Bowen*, 476 U.S. 693, 106 S.Ct. 2147. There, the Court addressed a father's free exercise challenge to the Government's use of a Social Security number associated with his daughter as a condition of receiving certain Government benefits. See *id.*, at 695–696, 106 S.Ct. 2147. According to the father's sincerely held religious beliefs, use of the Social Security number would " 'rob the spirit' of his daughter and prevent her from attaining greater spiritual power," thereby interfering with his ability to direct the religious development of his child. *Id.*, at 696, 106 S.Ct. 2147. This Court rejected the father's claim. "Never . . . has the Court interpreted the First Amendment to require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development or that of his or her family," the Court explained. *Id.*, at 699, 106 S.Ct. 2147 (emphasis in original).

The majority's "very real threat" test is irreconcilable with *Bowen*. There can be no question that the Government's challenged policy in *Bowen* gravely threatened the father's ability to direct his child's religious development; the Government's "us[e]" of his daughter's Social Security number would (in the father's sincerely held view) " 'rob the spirit' of his daughter." *Id.*, at 696, 106 S.Ct. 2147. So if the test for identifying a cognizable free exercise burden is, as the majority today claims, whether the law poses " 'a very real threat of undermining' " a parent's religious development of their child, *ante,* at 2355, then *Bowen* was wrongly decided.

2

The majority relegates its discussion of *Bowen* and *Lyng* to a few sentences, claiming that those cases involved "internal affairs" of Government. *Ante*, at 2356 – 2357. The majority, however, articulates no coherent line between the "internal affairs" that the Court deemed nonactionable in those two cases and the external effects of government decisions that the majority announces are actionable here.

In *Bowen*, the entire premise of the father's claim was that the Government's internal choices about how to operate its program would have external effects on his right to direct the religious development of his child: The father averred that the Government's use of his child's Social Security number would irrevocably destroy his child's "spirit," and thus his ability to protect her spiritual development. 476 U.S. at 696, 106 S.Ct. 2147. Here, by the majority's own telling, the parents make the same type of claim. They argue that the schools' use of the Storybooks will harm their ability to direct their children's religious development. See *ante,* at 2341 – 2342, 2347 – 2348, 2354 – 2355. The underlying theories are indistinguishable.

The incoherence of the majority's "internal affairs" theory comes into even sharper focus as applied to the Court's decision in *Lyng*. There, the Court acknowledged that the Government's construction of the road would " 'physically destro[y] the environmental conditions and the privacy without which the [religious] practices cannot be conducted.' " 485 U.S. at 449, 108 S.Ct. 1319 (alterations in original). Yet the majority today recasts the decision to build a road through sacred land as a purely "internal affai[r]" of the Government, thereby rendering *Lyng* inapposite. *Ante,* at 2356 – 2357. Implausible as that assertion may be, it is the majority's only maneuver around *Bowen* and *Lyng*. In short, the Court's novel "threat" test flouts settled precedent, and the majority's contrary claim is illogical.

B

That is only the beginning of the majority's errors. Turn, next, to the Court's articulation of what, exactly, the "very real threat" is that triggers the most demanding level of judicial review. The majority declares the inquiry will turn on several context clues: the "specific religious beliefs and practices asserted," the "specific nature of the educational requirement or curricular feature at issue," the age of the children, and the context and manner in which the relevant materials "are presented." *Ante,* at 2352 – 2353. On that last point, the majority adds, courts should ask whether the materials are "presented in a neutral manner" or "in a manner that is 'hostile' to religious viewpoints and designed to impose upon students a 'pressure to conform.' " *Ibid.* (quoting *Yoder*, 406 U.S. at 211, 92 S.Ct. 1526).

That test lacks any meaningful limit. Consider what the majority deems intolerably "hostile" to religious views. Uncle Bobby's Wedding, the Court asserts, contains a "subtle" "normative" message about marriage that is "contrary to the religious principles that the parents in this case wish to instill in their children": that "two people can get married, regardless of whether they are of the same or the opposite sex, so long as they ' "love each other." ' " *Ante*, at 2353 – 2354. According to the Court, that message is apparent in the "jubilant" reactions of Uncle Bobby's family to his engagement announcement and a statement by the protagonist's mother that, " ' "[w]hen grown-up people love each other that much, sometimes they get married." ' " *Ibid.*; see App. to Pet. for Cert. 288a.[7]

With those snippets in hand, the majority concludes that Uncle Bobby's Wedding is akin to "the compulsory high school education law considered in *Yoder*." *Ante*, at 2355. Reading the book aloud in elementary class, the majority claims, "impose[s] upon children a set of values and beliefs that are 'hostile' to their parents' religious [views]" and "exert[s] upon children a psychological 'pressure to conform' " to the view that families can be happy about same-sex weddings. *Ibid.* (quoting *Yoder*, 406 U.S. at 211, 92 S.Ct. 1526). That is apparently enough, in the majority's view,

7. The majority strains to cast the book as a story about a child who is apprehensive that her uncle is marrying a man. See *ante,* at 2344 – 2345, 2353 – 2354. The book is "coy," the majority claims, about the reason the protagonist, Chloe, asks her mother, " ' "Why is Uncle Bobby getting married?" ' " *Ante,* at 2354. With respect, the reason is plainly stated in the book and has nothing to do with the gender of anyone involved: "Bobby was Chloe's favourite uncle," the book explains, and Chloe " 'do[esn't] think [Uncle Bobby] should get married' " because she " 'wants [them] to keep having fun together like always.' " App. to Pet. for Cert. 282a, 292a. Perhaps conscious of its creative reading, the majority admits the message it identifies is "subtle." *Ante,* at 2353 – 2354. The right word, instead, might be "imagined."

to create a cognizable free exercise burden, for the Court ultimately prohibits use of the Storybooks "or any other similar book" "in any way" absent an opt-out right. *Ante*, at 2364.

Even if *Yoder* had established some form of "threat" test, the majority's application of it in this case would expand it beyond recognition. The Court in *Yoder* detailed, at length, the record evidence that compulsory high school attendance would "result in the destruction of the Old Order Amish church community as it exist[ed] in the United States." 406 U.S. at 212, 92 S.Ct. 1526; see *id.*, at 209–213, 92 S.Ct. 1526. Compelled attendance effectively barred "integration of the Amish child into the Amish religious community," *id.*, at 211–212, 92 S.Ct. 1526, such that, under Wisconsin's law, the petitioners in *Yoder* were forced "either [to] abandon belief and be assimilated into society at large, or . . . to migrate to some other and more tolerant region," *id.*, at 218, 92 S.Ct. 1526. *Yoder* thus set an exceedingly high bar for future plaintiffs to clear. Indeed, the Court in *Yoder* explicitly predicted that "few other religious groups" could make the showing that the Amish parents in that case had. *Id.*, at 236, 92 S.Ct. 1526.

Yet, in the majority's eyes, reading aloud Uncle Bobby's Wedding is just "[l]ike the compulsory high school education considered in *Yoder*." *Ante*, at 2355. That assertion is remarkable. Reading a storybook that portrays a family as happy at the news of their gay son's engagement, the majority claims, is equivalent to a law that threatened the very "survival of [the] Amish communit[y]" in the United States. 406 U.S. at 209, 92 S.Ct. 1526; see *ante,* at 2354 – 2355. To read that sentence is to refute it.[8]

The majority's myopic attempt to resolve a major constitutional question through close textual analysis of Uncle Bobby's Wedding also reveals its failure to accept and account for a fundamental truth: LGBTQ people exist. They are part of virtually every community and workplace of any appreciable size. Eliminating books depicting LGBTQ individuals as happily accepted by their families will not eliminate student exposure to that concept. Nor does the Free Exercise Clause require the government to alter its programs to insulate students from that "message." *Ante,* at 2353 – 2354.

In distorting *Yoder* to say otherwise, the majority leaves its test without any discernible limits. How are courts objectively to evaluate what amounts to a "very real threat" to a parent's religious development of their child? Should they try to measure the intensity of the parent's protestations, or must they simply accept the parent's assertion that exposure to any particular book threatens their child's religious upbringing? Or will judges simply know it when they see it and call their analysis "fact-intensive"? *Ante,* at 2352 – 2353. Perhaps cognizant of this problem, the majority insists repeatedly that its test looks for an " 'objective danger to the free exercise of religion.' " *Ante,* at 2349, 2350, 2352, 2355, 2356. That incantation, however, will be cold comfort to courts attempting to apply this peculiarly subjective test.

8. The majority's discussion of Prince & Knight is no less eye opening. See *ante,* at 2353 – 2354. The Court zeroes in on the book's classic fairytale ending, in which the protagonists' marriage is celebrated by their family and others in the kingdom. See *ante,* at 2353; App. to Pet. for Cert. 424a (''[T]he air filled with cheer and laughter, for the prince and his shining knight would live happily ever after''). According to the majority, that makes reading Prince & Knight equivalent to a law that risked ''destruction of the Old Order Amish church community.'' *Yoder,* 406 U.S. at 212, 92 S.Ct. 1526. The absurdity of that claim, once again, requires no explanation.

What is more, if even potentially imagined "coy" messages hidden in a picture book are sufficient to trigger strict scrutiny when they conflict with a parent's religious beliefs, *ante,* at 2353 – 2354, then it is hard to say what will not. Indeed, as the majority admits, "many books targeted at young children" contain a "normative" message, *ante,* at 2353, about, say, the virtues of helping your community or the joys of getting married. (How many children's books, after all, end with a joyous wedding and the couple living happily ever after?) The same is true for books and textbooks throughout any public school curriculum.

Given the multiplicity of religious beliefs in this country, innumerable themes may be "contrary to the religious principles" that parents "wish to instill in their children." *Ante,* at 2354. Books expressing implicit support for patriotism, women's rights, interfaith marriage, consumption of meat, immodest dress, and countless other topics may conflict with sincerely held religious beliefs and thus trigger stringent judicial review under the majority's test. Imagine a children's picture book that celebrates the achievements of women in history, including female scientists, politicians, astronauts, and authors. Perhaps the book even features a page that states, "Girls can do it all!" That message may be "directly contrary to the religious principles that" a parent "wish[es] to instill in their chil[d]." *Ibid.* In the majority's view, it appears, that is sufficient to trigger strict scrutiny of any school policy not providing notice and opt out to objecting parents.

These types of challenges are not mere hypotheticals, either. Lower courts have long fielded religious objections of this nature. See, *e.g.*, *Mozert v. Hawkins Cty. Bd. of Ed.*, 827 F.2d 1058, 1062 (CA6 1987) (religious objections to "biographical material about women who have been recognized for achievements outside their homes," lessons on "evolution," and teaching "children to use imagination beyond the limitation of scriptural authority"); *Fleischfresser v. Directors of School Dist. 200*, 15 F.3d 680, 683 (CA7 1994) (religious objections to materials containing " 'wizards, sorcerers, giants and other unspecified creatures with supernatural powers' "); *Altman v. Bedford Central School Dist.*, 245 F.3d 49, 56, 60–63 (CA2 2001) (religious objections to activities involving, among other things, yoga, meditation exercises, and the Drug Abuse Resistance Education (DARE) program); *Moody v. Cronin*, 484 F.Supp. 270, 272 (CD Ill. 1979) (religious objections to "mandatory coeducational physical education" that requires children to "view and interact with members of the opposite sex who are wearing 'immodest attire' ").

Nor is the Court's reasoning seemingly limited to reading material. Interactions with teachers and students could presumably involve implicit "normative" messages that parents may find "contrary to the religious principles" they wish to impart to their children and therefore "hostile" to their religious beliefs. *Ante*, at 2353 – 2354, 2354 – 2355. A female teacher displaying a wedding photo with her wife; a student's presentation on her family tree featuring LGBTQ parents or siblings; or an art display with the phrase "Love Is Love" all could "positively reinforc[e]" messages that parents disapprove on religious grounds. *Ante,* at 2354. Would that be sufficient to trigger strict scrutiny if a school fails to provide advance notice and the opportunity to opt out of any such exposure? The majority offers no principled basis easily to distinguish those cases from this one.

Hard questions might arise, too, from a school's efforts to encourage mutual respect or to prevent bullying. If a student

calls a classmate a "sinner" for not wearing a headcovering or coming out as gay, how can a teacher respond without "undermining" that child's religious beliefs? Can parents litigate the content of teacher responses and impose scripts or opt-out policies for everyday interactions designed to foster tolerance and civility? Again, the majority gives no guidance.

C

One thing is clear, however: The damage to America's public education system will be profound. Over 47 million students attend K–12 public schools in the United States, with nearly 17 million in elementary school. See Dept. of Commerce, J. Fabina, E. Hernandez, & K. McElrath, U. S. Census Bureau (Census Bureau), School Enrollment in the United States: 2021, p. 2 (2023). These students and their parents adhere to a wide range of religious beliefs, and the range of curricular topics, from science to literature to music and theater, covered in public schools is similarly vast. Against that backdrop, requiring schools to provide advance notice and the opportunity to opt out of every book, presentation, or field trip where students might encounter materials that conflict with their parents' religious beliefs will impose impossible administrative burdens on schools.

Consider, first, the difficulties of providing adequate advance notice. There are more than 370 distinct religious groups in this country,[9] and as the majority points out, Montgomery County is the " 'most religiously diverse county' " in the Nation. *Ante,* at 2342. Under the majority's test, school administrators will have to become experts in a wide range of religious doctrines in order to predict, in advance, whether a parent may object to a particular text, lesson plan, or school activity as contrary to their religious beliefs. The scale of the problem is only compounded by the majority's conclusion that even "subtle" and implicit messages contained in children's books can trigger notice and opt-out obligations. *Ante*, at 2353 – 2354. If a parent objects to all material and interactions that support "nontraditional gender roles," for instance, how are schools workably to deduce what books might cross the line? Or take the parents' request in this very case: How should a school go about identifying "any other instruction related to family life or human sexuality that violates the [p]arents' or their children's religious beliefs" in addition to the five Storybooks at issue here? ECF Doc. 23, at 1. Those in the majority will apparently "know it when [they] see it." *Jacobellis v. Ohio*, 378 U.S. 184, 197, 84 S.Ct. 1676, 12 L.Ed.2d 793 (1964) (Stewart, J., concurring) (referring to pornography).

Of course, school districts are currently free to publish information about their curricula. As one group of *amici* representing over 10,000 school district leaders and advocates and an association of 25 state school board associations attests, however, "it would be an extreme and overly broad burden to force all school districts in the country" to provide the extensive notification regime that the majority's test would require. Brief for School Superintendents Association et al. as *Amici Curiae* 15 (Brief for AASA); see also Brief for National Education Association et al. as *Amici Curiae* 21–29 (explaining that "endless administrative confusion" would result from petitioners' requested notice mandate). Such a regime, *amici* warn, would force school administrators and teachers "to divert their already limited resources

9. See Census Bureau, C. Grammich et al., 2020 U. S. Religion Census: Religious Congregations & Adherents Study 7 (2023).

and time to ensure full compliance" with these new "parental notification rights." Brief for AASA 15.

Managing opt outs will impose even greater administrative burdens. At present, the vast majority of States that allow parents to opt students out of instruction limit that right to a specific course or single curricular unit, rather than permitting opt outs for certain themes or particular materials. See *id.*, at 10–14, and n. 10 (collecting state statutes). That approach ensures that opt outs can be "administered centrally" in a way that "reduce[s] the burden on teachers and principals" and "minimizes interruption o[f] classroom instruction for other students." *Id.*, at 14.

Establishing a new constitutional right to opt out of any instruction that involves themes contrary to anyone's religious beliefs will create a nightmare for school administrators tasked with fielding, tracking, and operationalizing highly individualized and vaguely defined requests for particular students, as this Board learned. See App. to Pet. for Cert. 606a–607a.

Opt outs will not just affect classroom instruction, either. Teachers will need to adjust homework assignments to exclude objectionable material and develop bespoke exams for students subject to different opt-out preferences. See Brief for Justin Driver et al. as *Amici Curiae*. Schools will have to divert resources and staff to supervising students during opt-out periods, too, which could become a significant drain on funding and staffing that is already stretched thin. See Brief for AASA 15–16.

Worse yet, the majority's new rule will have serious chilling effects on public school curricula. Few school districts will be able to afford costly litigation over opt-out rights or to divert resources to administering impracticable notice and opt-out systems for individual students. The foreseeable result is that some school districts may strip their curricula of content that risks generating religious objections. See Brief for Justin Driver et al. as *Amici Curiae* 22. In the current moment, that means material representing LGBTQ students and families, like the Storybooks here, will be among the first to go, with grave consequences for LGBTQ students and our society. See Brief for State of Maryland et al. as *Amici Curiae* (discussing the importance of efforts like MCPS's in combating harassment against LGBTQ youth). Next to go could be teaching on evolution, the work of female scientist Marie Curie, or the history of vaccines.

In effect, then, the majority's new rule will hand a subset of parents a veto power over countless curricular and administrative decisions. Yet that authority has long been left to democratically elected state and local decisionmakers, not individual parents and courts. This Court has repeatedly recognized the wisdom of that regime, including in *Yoder* itself. See 406 U.S. at 235, 92 S.Ct. 1526 (underscoring the "obvious fact that courts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education"); *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 42, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973) (recognizing that "educational policy" is an "area in which this Court's lack of specialized knowledge and experience counsels against premature interference with the informed judgments made at the state and local levels"); *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968) ("By and large, public education in our Nation is committed to the control of state and local authorities").

At present, States and localities across the Nation have adopted a patchwork of different policies governing school material

related to gender and sexuality and parental opt-out rights. For instance, some States mandate, while others forbid, instruction on sexual orientation. See Brief for AASA 5–6, and nn.4–8 (collecting state statutes). Statutes governing opt-out policies are equally diverse. See *id.*, at 10–14, and nn. 10–22. Tellingly, however, only a handful of States have permitted opt-out rights for all material that a parent finds objectionable, see *id.*, at 13–14, and nn. 20–21, and even some of those States have required that the parents and school agree upon an alternative lesson plan that the parent will fund, *id.*, at 13, and n. 20. Today's decision will thus usher in a sea change in the law, shifting the primary locus of decisionmaking on these difficult and often contested policy issues from democratically elected officials to judges.

There is also real reason to think that the democratic process and local mechanisms for parental advocacy were working here. Three of the seven MCPS Board members were voted out during the most recent election, see ABC 7 News, K. Lynn, Montgomery County Voters Elect New School Board Members in Significant Shift (Nov. 12, 2024), https://wjla.com/news/local/montgomery-county-voters-elect-new-school-board-members-education-association-president-david-stein-leadership-rita-montoya-laura-stewart-natalie-zimmerman-accountability-maryland-dmv, and two of the seven books to which the parents originally objected are no longer in use, see Brief for Respondents 8. Parents, additionally, remain free to raise objections to specific material through the multilevel appeal system established by Board and state policies in Maryland, see *supra*, at 2384 – 2385, which the parents in this case apparently never tried to pursue.

The Court today subverts Maryland's functioning democratic process, whistling past decades of precedent that recognizes the primacy and importance of local decisionmaking in this area of law. Members of this Court have oft and recently called for deference to the democratic process in other contexts. See, *e.g.*, *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 269, 142 S.Ct. 2228, 213 L.Ed.2d 545 (2022) (decrying decisions that "wrongly remov[e] an issue from the people and the democratic process"); *United States* v. *Skrmetti*, 605 U. S. ——, ——, 145 S.Ct. 1816, 1828, 222 L.Ed.2d 136 (2025) (" '[T]he Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes' " (quoting *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985))); *Grants Pass v. Johnson*, 603 U.S. 520, 556, 144 S.Ct. 2202, 219 L.Ed.2d 941 (2024) (objecting that "[i]nstead of encouraging 'productive dialogue' and 'experimentation' through our democratic institutions, courts have frozen in place their own 'formulas' by 'fiat' " and "interfered with 'essential considerations of federalism,' taking from the people and their elected leaders difficult questions traditionally 'thought to be the[ir] province' "). Yet today, it seems, those principles do not apply to the Government when it designs curricula for a free public education.[10]

D

Unwilling to acknowledge the implications of its ruling, the majority insists that

10. Having refused to apply "the Bill of Rights and the doctrine of judicial review [to] protect individuals who cannot obtain legislative change," *ante,* at 2360, in several recent decisions, see, *e.g.*, *Dobbs*, 597 U.S. at 231, 269, 142 S.Ct. 2228; *Skrmetti*, 605 U. S., at ——, ——, 145 S.Ct., at 1828–1829, 1837, the Court now asserts it has no choice but to play school board here. Of course, our precedent requires just the opposite result. See *supra*, at 2387 – 2391.

it has not announced a new " 'exposure' " theory of free exercise violations. *Ante,* at 2356. The record in this case goes "far beyond mere 'exposure,' " the majority claims, because "the storybooks unmistakably convey a particular viewpoint about same-sex marriage and gender," and because the "Board has specifically encouraged teachers to reinforce this viewpoint and to reprimand any children who disagree." *Ibid.*

The majority, however, makes clear that reading aloud the books is sufficient under its test. The Court mandates that the schools "notify [petitioners] in advance whenever one of the books in question or any other similar book is to be used *in any way* and to permit [petitioners] to have their children excused from that instruction." *Ante,* at 2364 (emphasis added). The Court could only issue such a directive if *any* instructional use of the books in class, including merely reading them aloud, would prove intolerably " 'hostile' " to religious beliefs under the majority's test. *Ante,* at 2354 – 2355.[11] Indeed, if the problem arose from the teacher guidance, rather than exposure to the books themselves, the Court could (and should) simply issue an injunction mandating the opportunity to opt out of the specific teacher statements deemed objectionable. See *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 765, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994) ("[An] injunction [should be] no broader than necessary to achieve its desired goals").

As a result, what it comes down to under the majority's test is that students will hear or read the text of books that "convey a particular viewpoint" that is "contrary to the religious principles" that a parent wishes to instill in their child. *Ante,* at 2354, 2356. That is mere exposure to objectionable ideas in its clearest form.[12]

The majority, in any event, badly misreads the Board's teacher guidance. Far from directing teachers to "accuse [students] of being 'hurtful' when they express a degree of religious confusion," *ante,* at 2356; see also *ante,* at 2379 (THOMAS, J., concurring), the guidance is plainly designed to foster mutual civility and "respect." App. to Pet. for Cert. 628a.

That purpose is clear throughout the materials. For instance, the guidance suggests that, in response to a child's statement that, "[b]eing . . . gay, lesbian, queer, etc[.] is wrong and not allowed in my religion," a teacher could respond: "I understand that is what you believe, but not everyone believes that. We don't have to understand or support a person's identity to treat them with respect and kindness . . . In any community, we'll always find people with beliefs different from our own and that is okay—we can still show them respect." *Ibid.*

That recommended response is careful to respect the religious views of students, while still encouraging civility and "kindness" towards others. *Ibid.* Those values, moreover, are precisely what the parents

11. Petitioners conceded that they have no objection "to the books being on the shelf or available in the library." Tr. of Oral Arg. 48. The Court's injunctive relief can thus only cover use of the books as part of "instruction" in the classroom. *Ante,* at 2363 – 2364. The injunction therefore should not be read to prohibit schools from placing the books on shelves or in libraries.

12. Despite stating that the age of the child matters to its "threat" analysis earlier in the opinion, see *ante,* at 2352 – 2353, the majority declines to limit the injunctive relief that it orders based on the age of the students involved. The majority thus fails to put its age-based test into practice, treating 5-year-old kindergarteners and 11-year-old fifth graders identically when it comes to reading Uncle Bobby's Wedding.

in this case say they endorse. See, *e.g.*, *id.*, at 529a ("We ... believe that all humans ... must be respected, regardless of the person's faith, race, ethnic origin, sex, gender identity, sexual orientation, or social status"); *id.*, at 536a ("We firmly reject that any student should be bullied or harassed for any reason, and we teach our son to treat all others with kindness and respect"); *id.*, at 543a ("We believe that all persons should be treated with respect and dignity regardless of religion, race, sex, ethnicity, gender identity, sexual orientation, or other characteristics").

To the extent students make comments that may be hurtful to classmates in the room, the guidance recommends teachers discourage such behavior. If a student says, "*That's so gay*," the guidance suggests a teacher may respond: "Regardless of how it's intended, using gay to describe something negative reflects a long history of prejudice against LGBTQ+ people, so please don't use it in that way.... You may not have meant to be hurtful: but when you use the word 'gay' in any way outside of its definition, it's disrespectful." *Id.*, at 634a (emphasis added). Similarly, if a child says, "*That's weird. He can't be a boy if he was born a girl*," the guidance encourages teachers to respond: "That comment is hurtful; we shouldn't use negative words to talk about peoples' identities." *Id.*, at 630a (emphasis added).

The majority reads these portions of the guidance to direct teachers to "accuse [students] of being 'hurtful' when they express" "confusion" based on their religious views. *Ante,* at 2356 (quoting App. to Pet. for Cert. 630a). The majority only reaches that conclusion, however, by omitting portions of the student commentary to which the teachers are responding in the guidance. See *id.*, at 630a (omitting "[t]hat's so gay" and "that's weird"). Those excised statements, the majority should presumably agree, could be hurtful to students in the classroom and thus warrant discouragement. *Id.*, at 630a, 634a.

Comments like that, moreover, are sadly not uncommon in the Nation's school system today. In a recent study, "the overwhelming majority" of LGBTQ students reported hearing homophobic language used by their peers, including "that's so gay," "dyke," "faggot," and "tranny." J. G. Kosciw, C. Clark, & L. Menard, GLSEN, The 2021 National School Climate Survey: The Experiences of LGBTQ+ Youth in Our Nation's Schools xv–xvi (2022). Over two-thirds of LGBTQ students, moreover, reported feeling unsafe at school because of their sexual orientation or gender identity. *Ibid.* Numerous other studies have found similar trends. See Brief for State of Maryland et al. as *Amici Curiae* 7–8, and nn. 7–17 (collecting additional studies).

The Board's guidance to teachers thus simply seeks to anticipate the kinds of difficult interactions that might arise in response to greater inclusivity toward LGBTQ students.[13] If that is sufficient to render classroom instruction "coercive," *ante,* at 2355 – 2356, then mutual tolerance and respect may no longer have a place in public schools.[14]

13. The majority apparently misses the foregoing in claiming that the dissent "ignores" the Board's teacher guidance. *Ante,* at 2356.

14. Justice THOMAS views the Board's LGBTQ-inclusive program as designed to enforce "ideological conformity." *Ante,* at 2378 (concurring opinion). If there is any conformity that the Board seeks to instill, it is universal acceptance of kindness and civility. Justice THOMAS can claim otherwise only by attributing to the Board a few selectively excerpted statements of individual Board members. See *infra,* at 2399, and n. 16. That approach is inconsistent with the views Justice THOMAS has taken elsewhere. See *infra,* at 2399, and n. 16.

The majority and concurrence also draw on news articles about comments that a Board member apparently made to reporters. See *ante,* at 2346 – 2347 (majority opinion); *ante,* at 2378 – 2379 (opinion of THOMAS, J.). All Members of the majority have recognized before, however, that "statements by individual legislators" and members of similar decisionmaking entities are not appropriately attributed to the entire body. *NLRB v. SW General, Inc.*, 580 U.S. 288, 307, 137 S.Ct. 929, 197 L.Ed.2d 263 (2017); see also *Trump v. Hawaii*, 585 U.S. 667, 692, 138 S.Ct. 2392, 201 L.Ed.2d 775 (2018); *Dobbs*, 597 U.S. at 253–254, 142 S.Ct. 2228 ("Even when an argument about legislative motive is backed by statements made by legislators who voted for a law, we have been reluctant to attribute those motives to the legislative body as a whole. 'What motivates one legislator to make a speech about a statute is not necessarily what motivates . . . others to enact it' "). The statement by this individual Board member, apparently made outside any official proceeding, should not be treated differently, particularly in light of the Board's consistent commitment to fostering mutual respect and civility, reflected in its official policies and guidance. See, *e.g.*, App. to Pet. for Cert. 581a–589a, 669a–675a.[15]

Lastly, the majority is, of course, right to observe that not all parents can afford to send their children to private religious schools or to provide for homeschooling. See *ante,* at 2358 – 2359. Yet for public schools to function, it is inescapable that some students will be exposed to ideas and concepts that their parents may find objectionable on religious grounds. Indeed, this Court has long recognized that reality. See *Lee v. Weisman*, 505 U.S. 577, 591, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992) (observing students may be "expos[ed]" or "subjected during the course of their educations to ideas deemed offensive and irreligious"). To presume that public schools must be free of all such exposure is to presume public schools out of existence.

IV

Not content to invent a new standard for free exercise burdens, the majority goes on to consider an issue beyond the question presented and unaddressed by the Fourth Circuit below: whether the alleged burden in this case is "constitutionally permitted." *Ante,* at 2360 – 2361.

That decision runs roughshod over the Court's procedural practices. "As a general rule," this Court "do[es] not decide issues outside the questions presented by the petition for certiorari," *Glover v. United States*, 531 U.S. 198, 205, 121 S.Ct. 696, 148 L.Ed.2d 604 (2001), and it is fundamental to this Court's role in our Nation's judicial system that "we are a court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718, n. 7, 125 S.Ct. 2113, 161 L.Ed.2d 1020 (2005).

15. The majority and concurrence describe the Board member as "suggest[ing] that the objecting parents were comparable" to "'"white supremacists"'" and "'"xenophobes."'" *Ante,* at 2347 (majority opinion); *ante,* at 2378 – 2379 (opinion of THOMAS, J.). The full quote, however, indicates the member intended to express concern about the potential administrative implications of having to accommodate opt out requests from other hypothetical parents. See E. Espey, Parents, Students, Doctors React to MCPS Lawsuit Targeting LGBTQ+ Storybooks, Bethesda Magazine, June 2, 2023, https://bethesdamagazine.com/2023/06/02/parents-students-doctors-react-to-mcps-lawsuit-targeting-lgbtq-storybooks ("Do [the petitioners] realize it would be an impossible disruption to the school system if teachers had to screen the content they plan to teach every day and send out notices so white supremacists could opt out of civil rights content and xenophobes could opt out of stories about immigrant families").

The majority's exercise in judicial maximalism is not without cost to our precedent, either. The majority recognizes, as it must, that "the government is generally free to place incidental burdens on religious exercise so long as it does so pursuant to a neutral policy that is generally applicable." *Ante,* at 2360. That bedrock principle of free exercise doctrine ensures that " 'professed doctrines of religious belief ' " are not " 'superior to the law of the land,' " for an "individual's religious beliefs [may not] excuse him from compliance with an otherwise valid law" or policy (in this case, the Board's generally applicable rule against opt outs based on any reason). *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U.S. 872, 878–879, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990)). The majority nevertheless proceeds to announce that "the character of the burden" in this case "requires [it] to proceed differently." *Ante*, at 2361. *Smith*, the Court claims, "recognized *Yoder* as an exception to the general rule," and "the burden in this case is of the exact same character as the burden in *Yoder*." *Ante*, at 2361.

The problem for the majority is that this is not what *Smith* said. *Smith* recognized that "[t]he only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections." 494 U.S. at 881, 110 S.Ct. 1595. Only in such "hybrid situation[s]" does the Court set aside its neutral and generally applicable inquiry. *Id.*, at 882, 110 S.Ct. 1595. *Yoder*, the *Smith* Court explained, was such a hybrid rights case because the parents relied on both their substantive due process rights to "direct the education of their children" and the Free Exercise Clause. 494 U.S. at 881, and n. 1, 110 S.Ct. 1595 (discussing *Yoder*). Here, however, the Court's analysis makes no mention of substantive due process rights or the Fourteenth Amendment Due Process Clause. It instead asserts, simply, that "the burden in this case is of the exact same character as the burden in *Yoder*." *Ante,* at 2361. But saying so does not make it so. To the contrary, as detailed above, the burden asserted in this case is vastly different from that identified in *Yoder*. See *supra*, at 2388 – 2390.

Finally, the Court's application of strict scrutiny itself only underscores the folly of its new approach. Under strict scrutiny, the government bears the burden of demonstrating that its policy "advances 'interests of the highest order' and is narrowly tailored to achieve those interests." *Fulton v. Philadelphia*, 593 U.S. 522, 541, 141 S.Ct. 1868, 210 L.Ed.2d 137 (2021) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993)). The Court acknowledges that schools "have a 'compelling interest in having an undisrupted school session conducive to the students' learning.' " *Ante,* at 2362 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 119, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)). It concludes the Board's policy permitting no opt outs, however, is not narrowly tailored to that interest. *Ante*, at 2362 – 2363. The Court notes that the Board permits opt outs from the "Family Life and Human Sexuality" program, a discrete health-education unit that MCPS offers in accordance with Maryland law. See *ante,* at 2362 – 2363; Code of Md. Regs., tit. 13a §§ 04.18.01(C)(1)(c), (D)(2) (2019). "If the Board can structure the 'Family Life and Human Sexuality' curriculum to more easily accommodate opt outs, it could structure instruction concerning the 'LGBTQ+-inclusive' storybooks similarly," the Court asserts. *Ante,* at 2362.

That misguided assessment illustrates perfectly why judges should not be tasked with second-guessing questions of school administration. The Court assumes, with no "specialized knowledge and experience" in the field of "educational policy," *Rodriguez*, 411 U.S. at 42, 93 S.Ct. 1278, that MCPS can simply create a new unit of instruction on these particular Storybooks and thereby resolve any undue administrative burdens from managing opt outs. *Ante,* at 2362 – 2363; see also *ante,* at 2380 – 2381 (THOMAS, J., concurring) (making this same point). What the majority elides, however, is that its ruling is not limited to a set of five storybooks. It applies, expressly, to "any other similar book," *ante*, at 2364, an amorphous category the Court declines to define, but which will presumably include all other books that contain "subtle" messages on gender and sexuality, even not involving LGBTQ characters, that the parents here (and others in the future) might find objectionable, *ante,* at 2353 – 2354.

The logic of the Court's ruling will also apply to countless other topics, interactions, and activities that may conflict with a parent's religious preferences. What of the parent who wants his child's curriculum stripped of any mention of women working outside the home, sincerely averring that such activity conflicts with the family's religious beliefs? It blinks reality to suggest that the simple solution for schools is to create new discrete units of instruction to cover any set of material to which a parent objects. The Court's analysis thus reflects, all too well, the "obvious fact that courts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education." *Yoder*, 406 U.S. at 235, 92 S.Ct. 1526.[16]

What is more, the point of the Board's program is to ensure that diverse groups of students are represented in reading materials across the curriculum. The Board cannot accomplish that purpose simply by consolidating all books involving LGBTQ characters into a single inclusivity hour and allowing opt outs, as the majority appears to believe. *Ante,* at 2362 – 2363. That approach would emphasize difference rather than sameness and foster exclusion rather than inclusion. The point of inclusivity is to use books representing a diversity of identities and viewpoints the same way one might use any other book, communicating that one's LGBTQ classmates should be treated in the same manner as anyone else.

* * *

Today's ruling threatens the very essence of public education. The Court, in effect, constitutionalizes a parental veto power over curricular choices long left to the democratic process and local adminis-

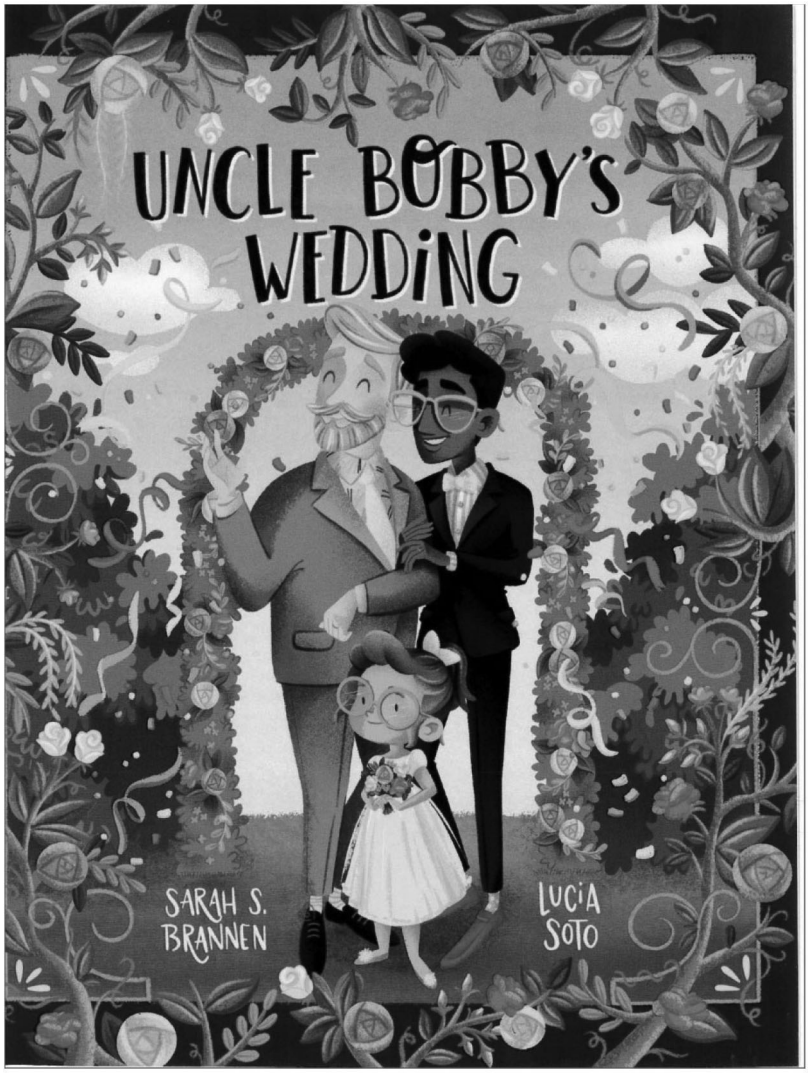
16. Justice THOMAS goes yet further. He argues that the strict scrutiny analysis should require schools to identify a "history and tradition" of teaching the relevant subject or material. *Ante,* at 2375 (concurring opinion); see *ante,* at 2342 – 2344 (faulting the Board for failing to demonstrate a history and tradition of "LGBTQ+-inclusive" teaching). That approach fails to appreciate the constantly evolving nature of education. Classes on computer literacy, robotics, and film studies, to take just a few examples, are modern developments. In the early 19th century, moreover, "the common curriculum usually included a handful of elementary subjects," such as "reading, writing, and arithmetic." W. Reese, America's Public Schools 28 (2005). Under Justice THOMAS's test, it appears, schools may have no compelling interest in teaching anything beyond those topics. It is not clear, either, how far back Justice THOMAS would have courts look. Should courts limit their inquiry to the founding era or the 19th century for guidance on which topics schools have a sufficiently compelling interest in teaching for purposes of this "history and tradition" test? It is inconceivable that learning should be shackled to a moment in time.

trators. That decision guts our free exercise precedent and strikes at the core premise of public schools: that children may come together to learn not the teachings of a particular faith, but a range of concepts and views that reflect our entire society. Exposure to new ideas has always been a vital part of that project, until now.

The reverberations of the Court's error will be felt, I fear, for generations. Unable to condone that grave misjudgment, I dissent.

APPENDIX

App. to Pet. for Cert. 279a, 281a–305a.



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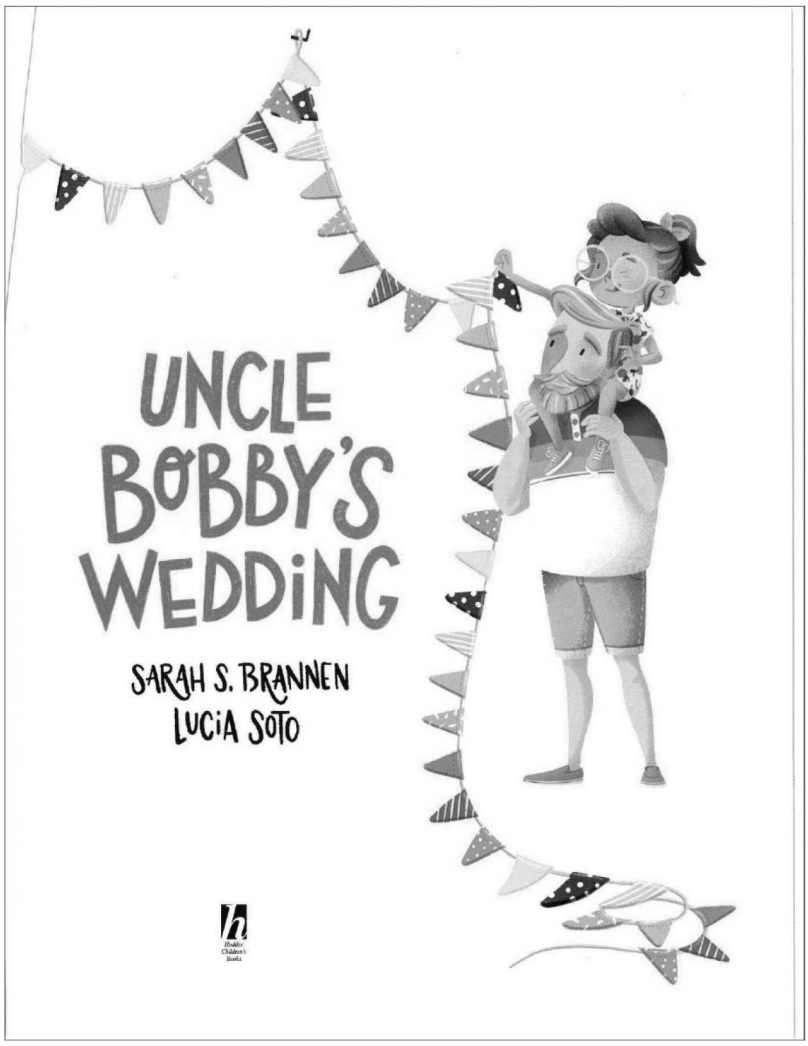

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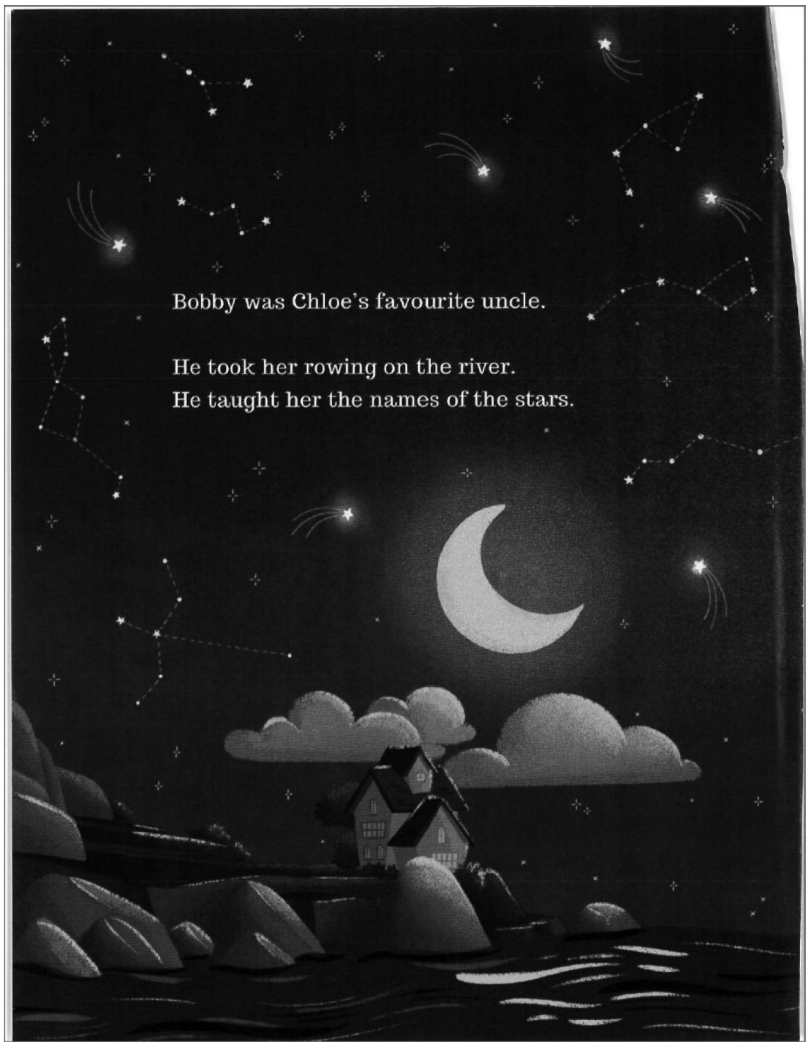

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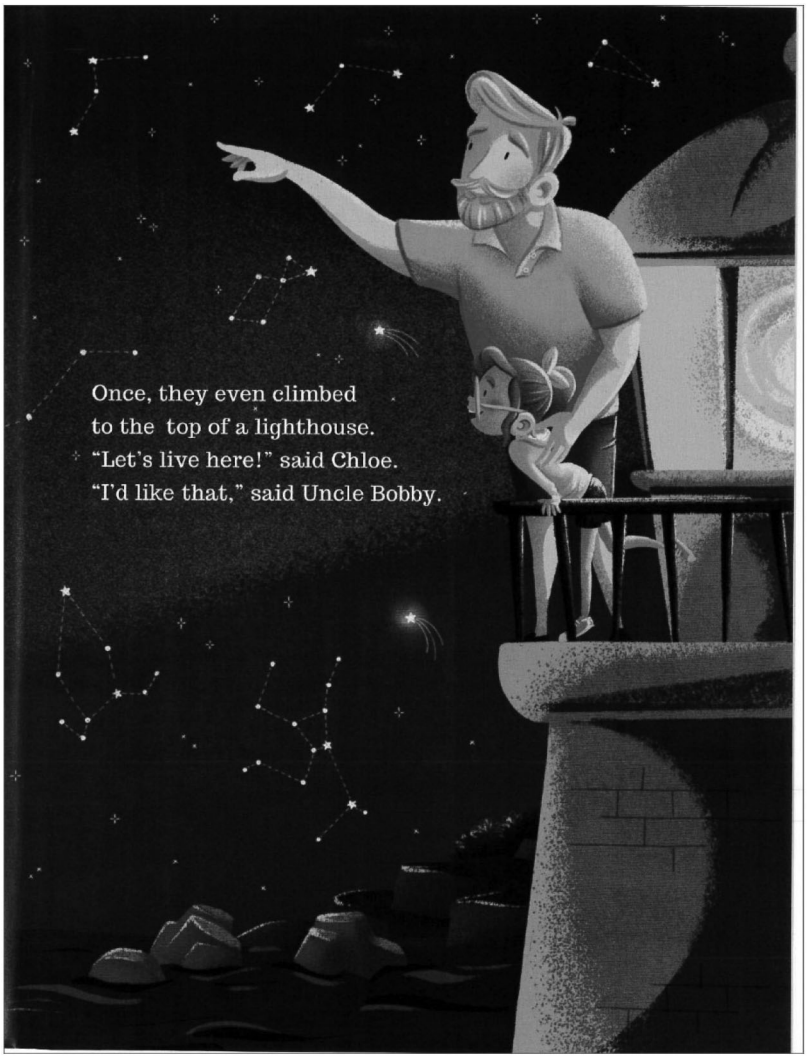

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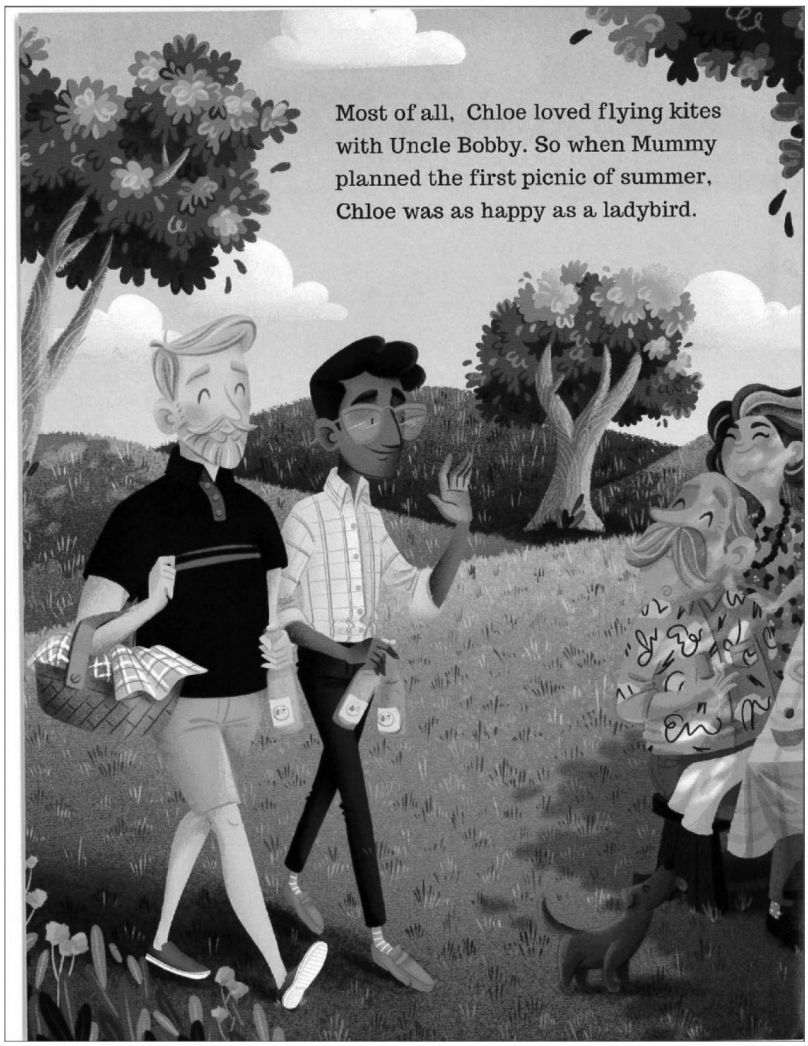

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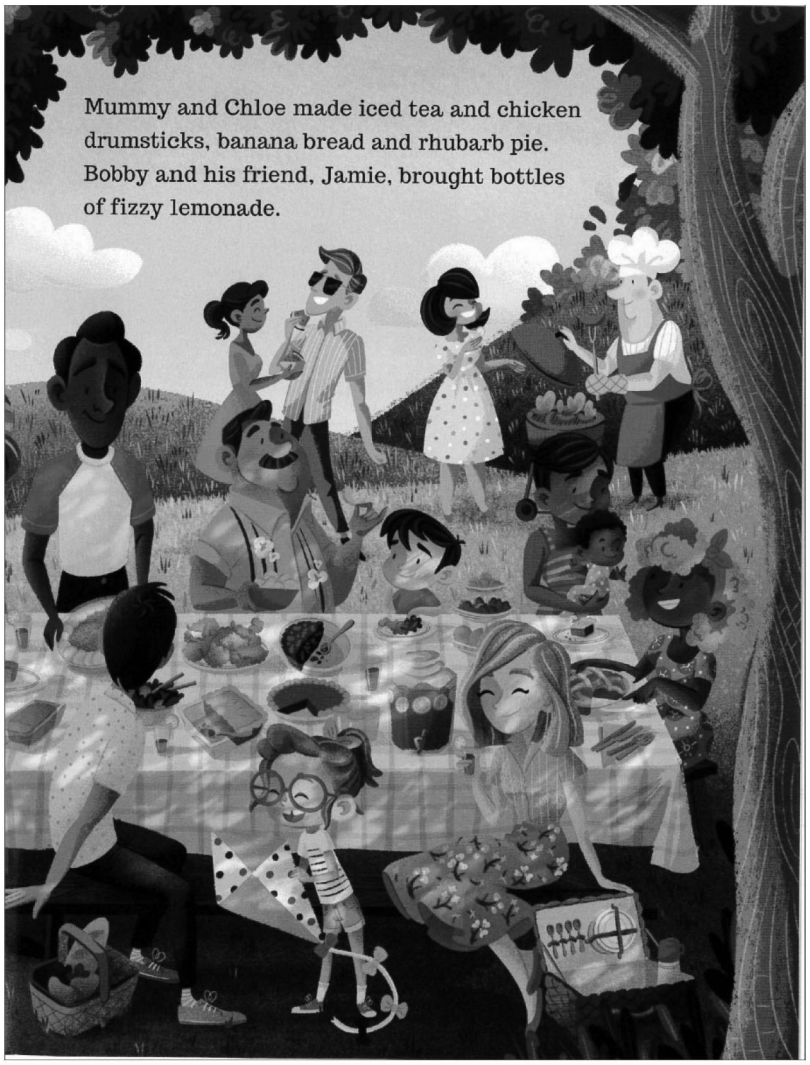

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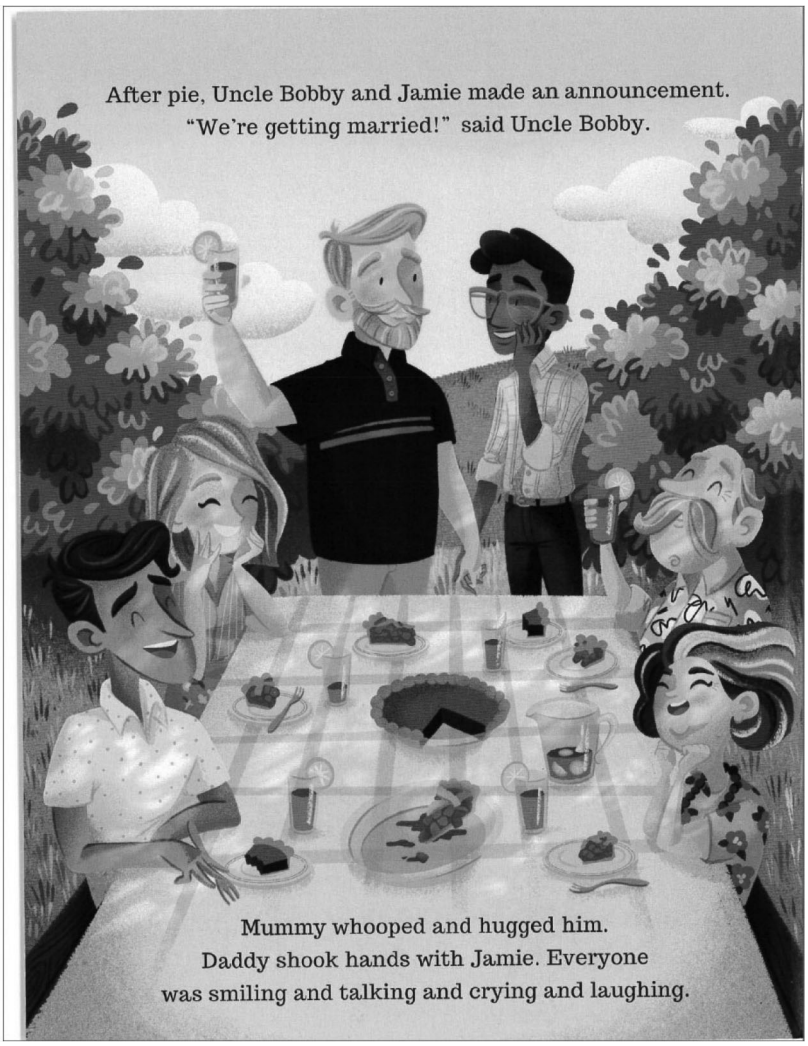
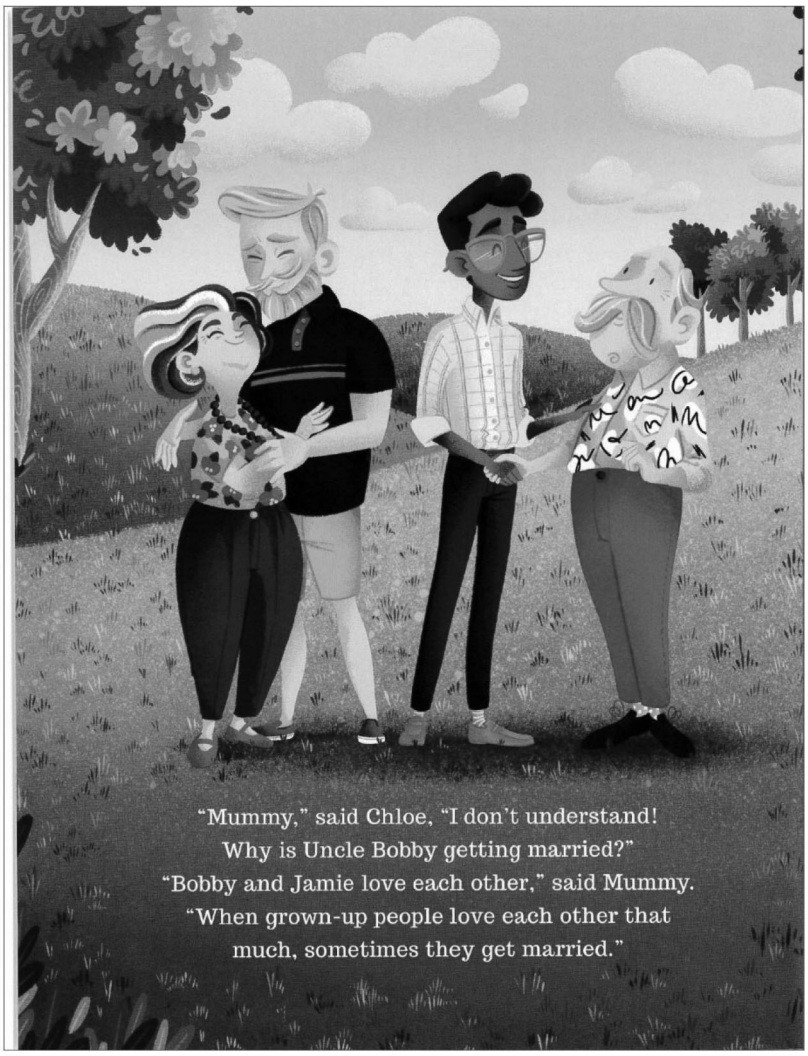


APPENDIX—Continued

Everyone except . . . Chloe.

APPENDIX—Continued



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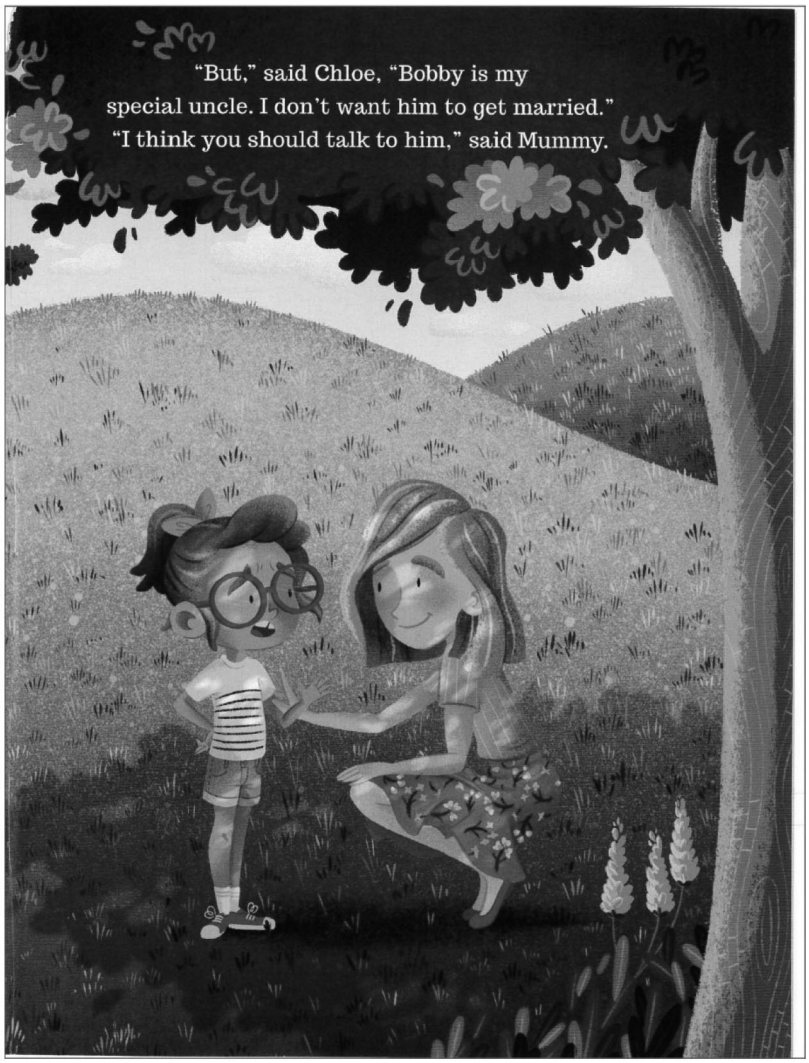

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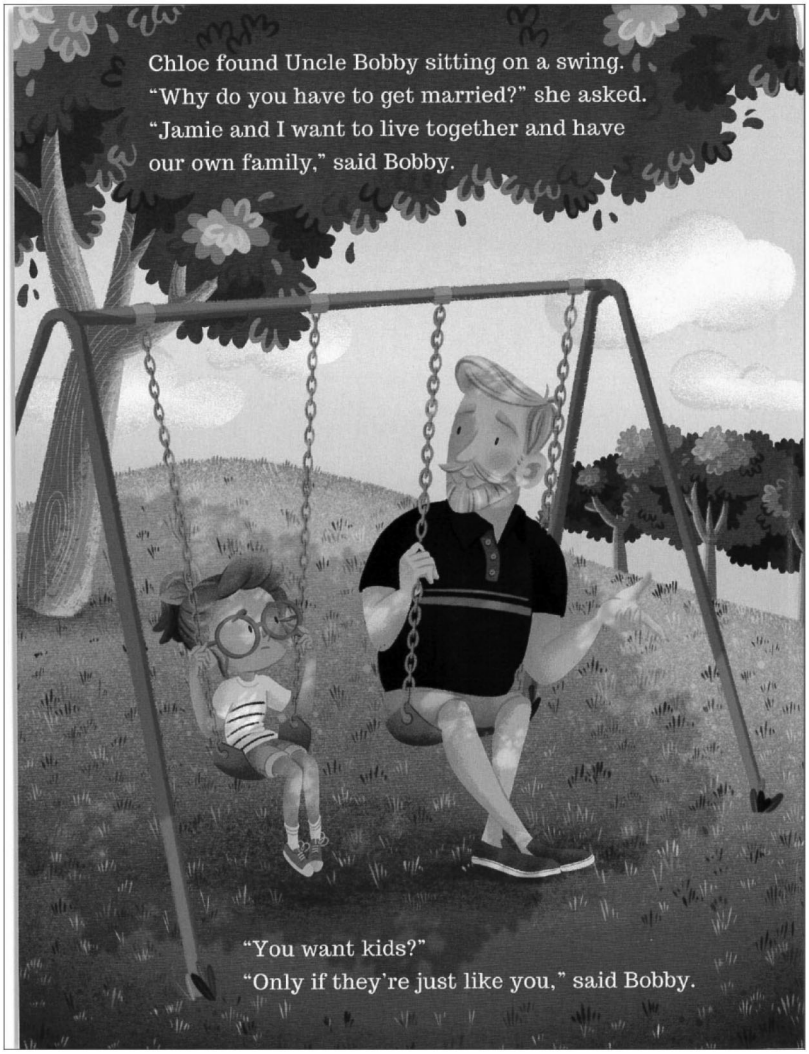

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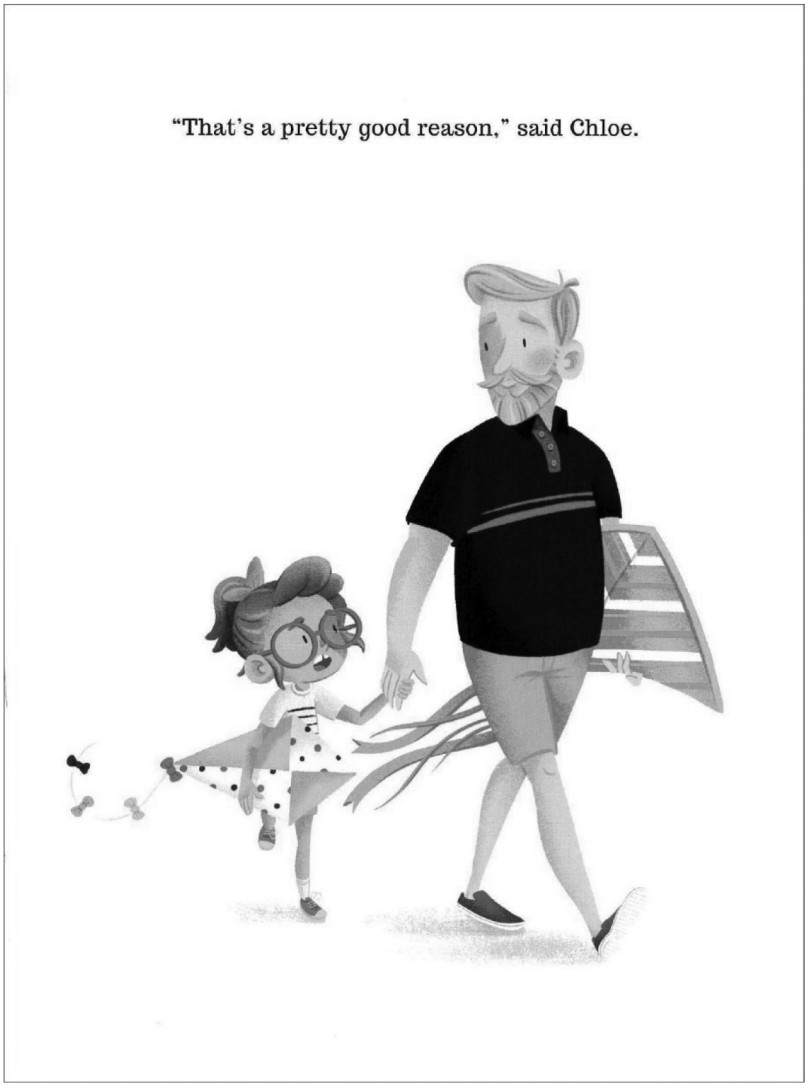


APPENDIX—Continued

"But—" said Chloe.
"But what?" asked Uncle Bobby.
"But I still don't think you should get married.
I want us to keep having fun together like always."

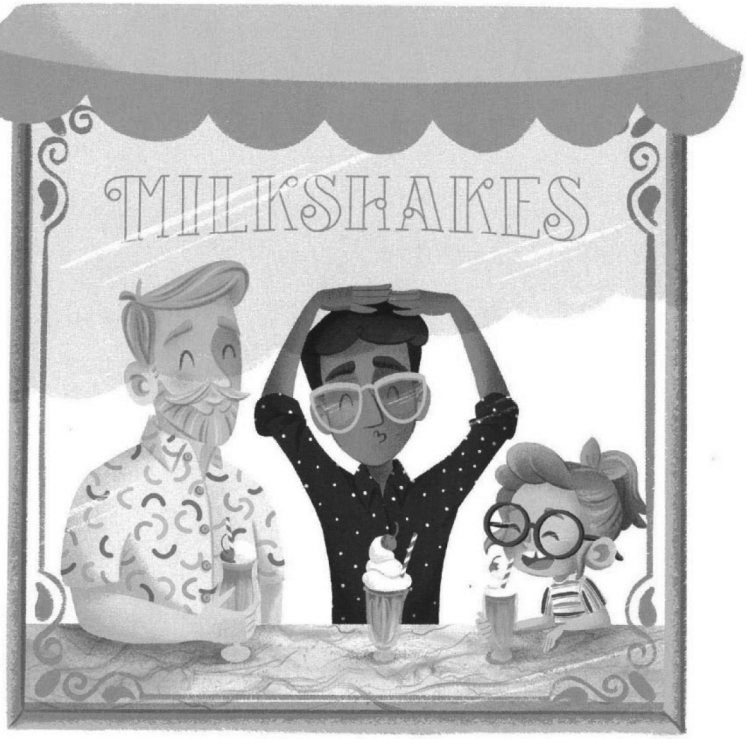
"I promise we'll still have fun together," said Bobby.
"You'll always be my sweet pea."

APPENDIX—Continued

APPENDIX—Continued

APPENDIX—Continued

Afterwards, they had milkshakes.



Jamie imitated the ballet dancers and Chloe laughed so hard, her milkshake went up her nose.

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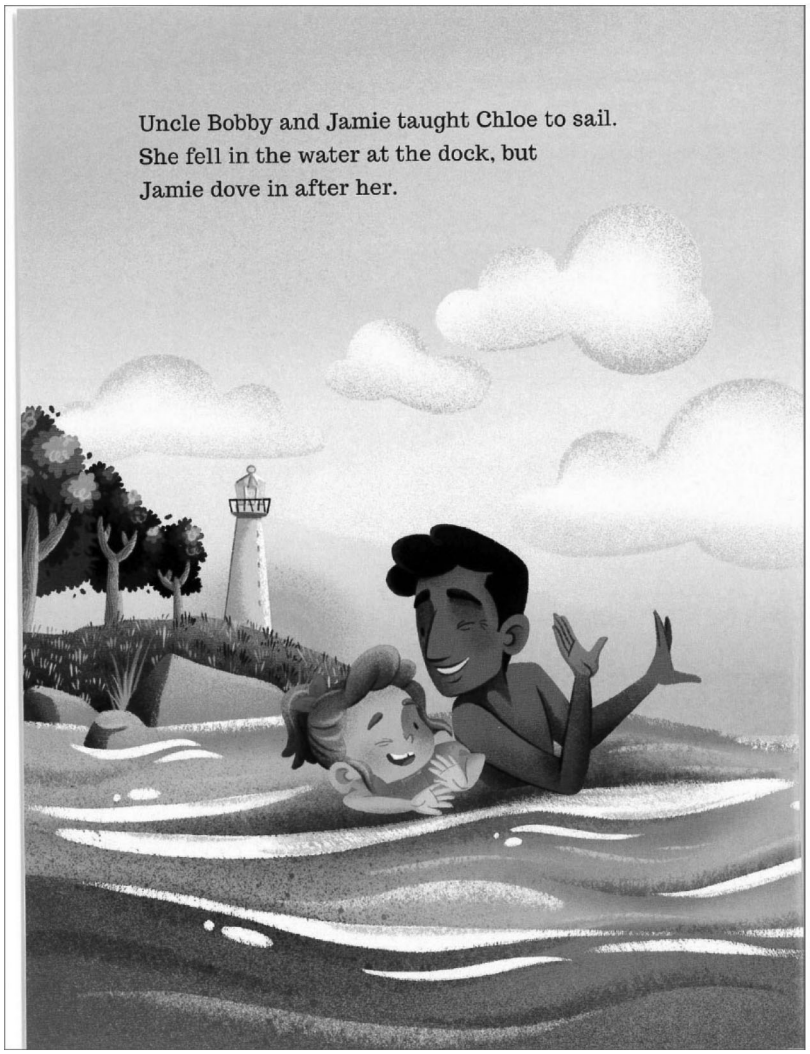

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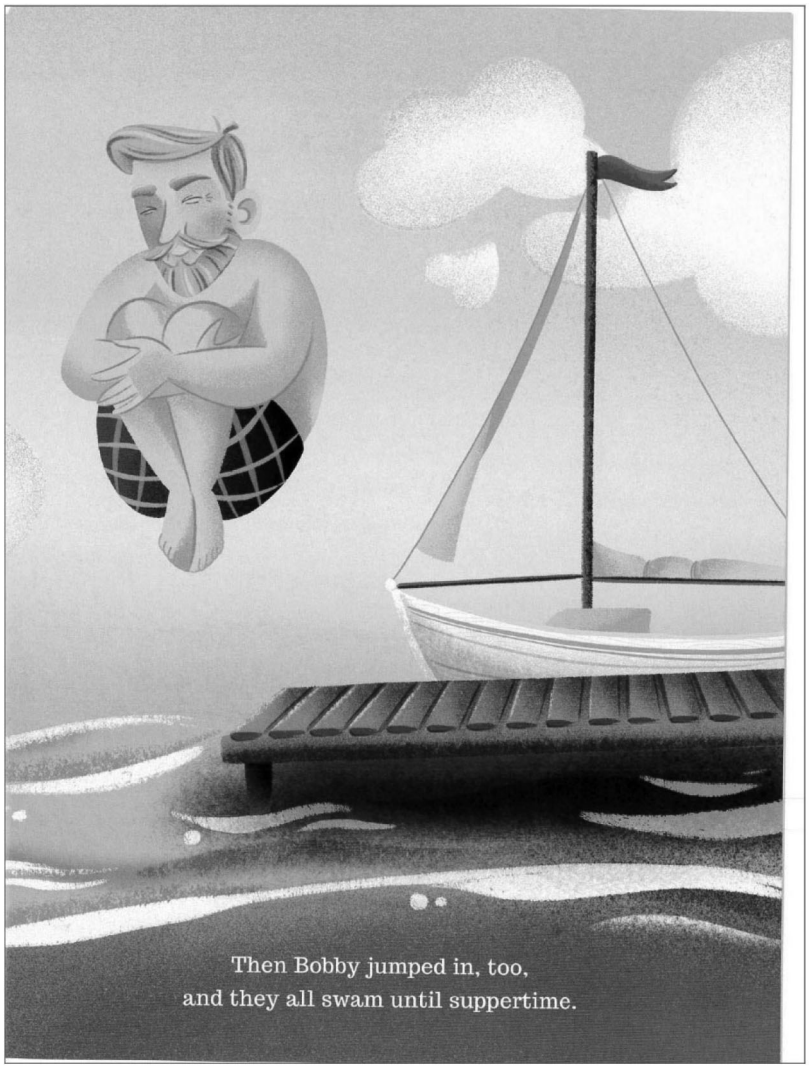

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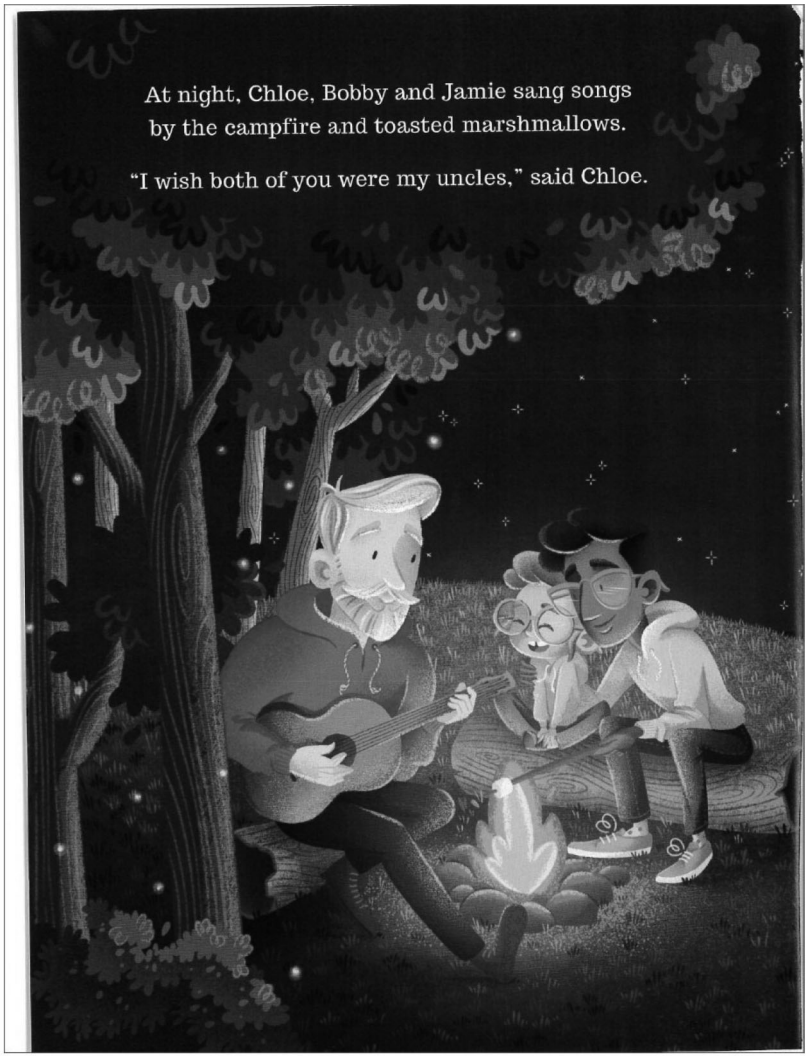

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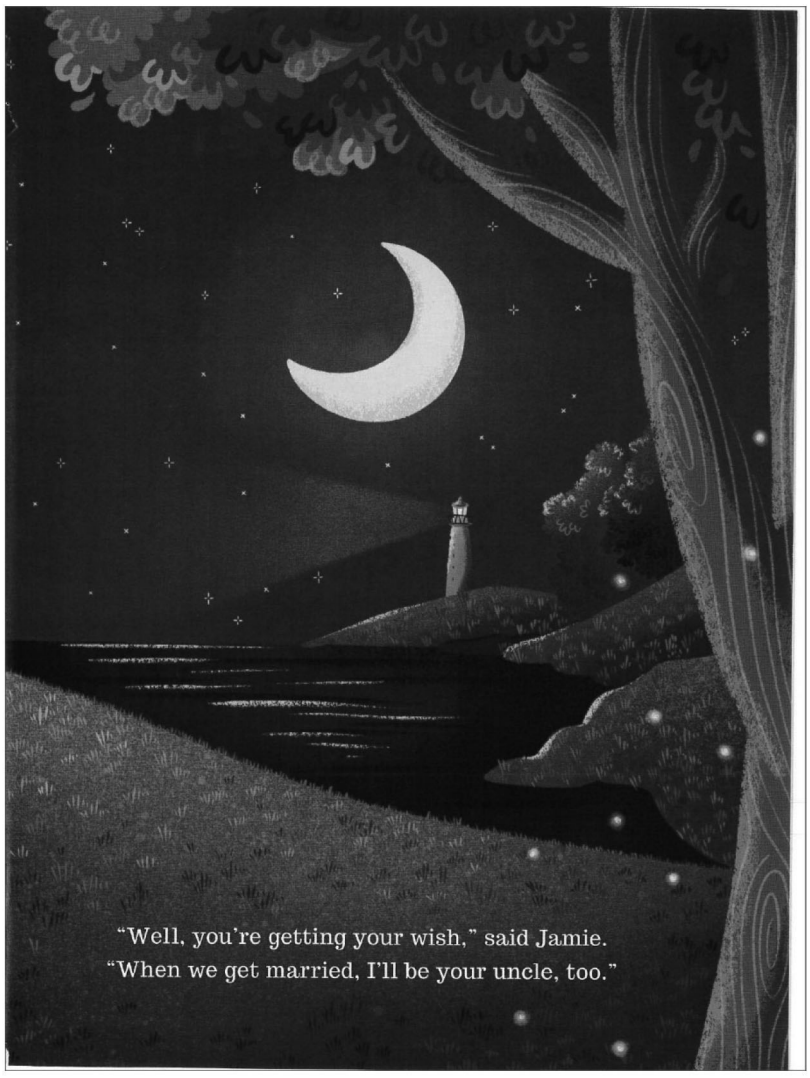


APPENDIX—Continued

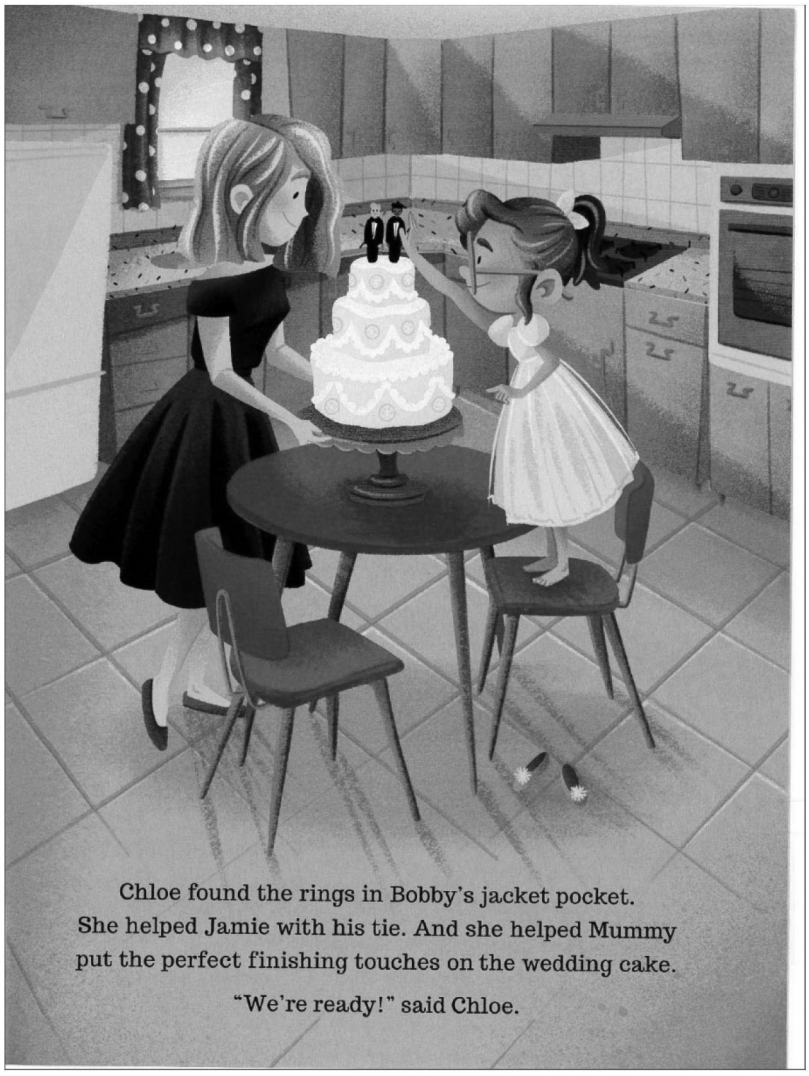
On the day of the wedding,
Chloe put on her new dress.

Everyone was excited and busy.

Uncle Bobby lost the rings.

Jamie couldn't tie his bow tie.

APPENDIX—Continued



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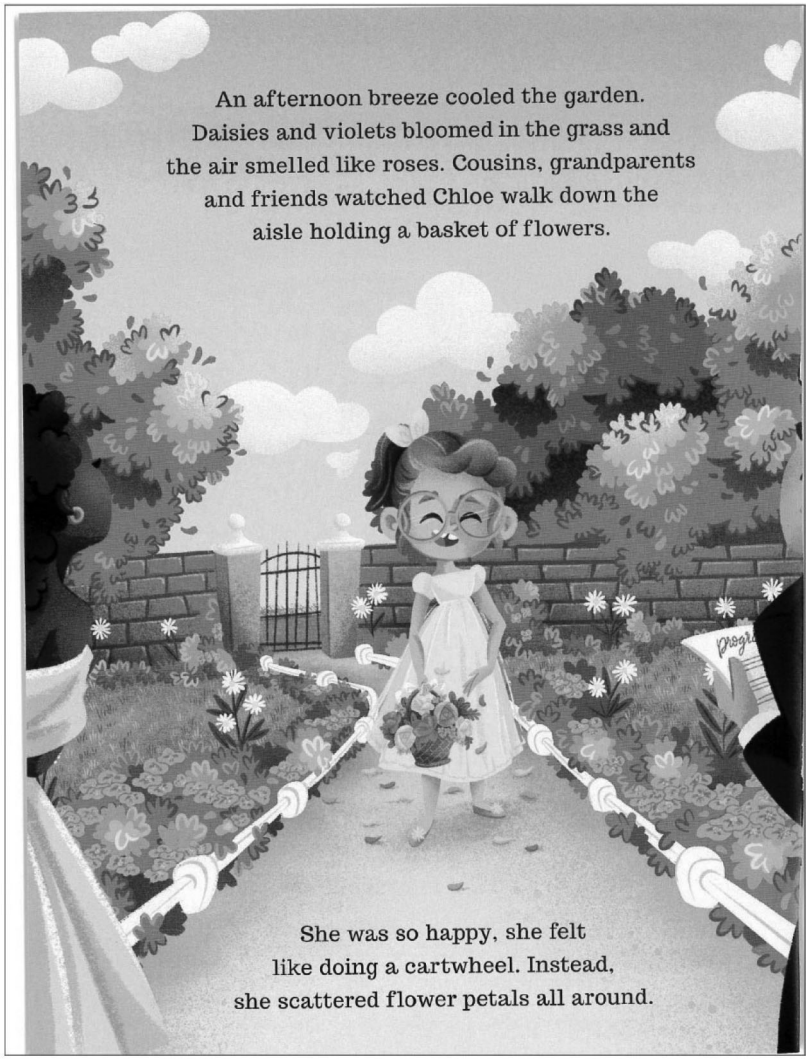

APPENDIX—Continued

APPENDIX—Continued

"That was the best wedding ever!" said Chloe.
"I think so, too," said Uncle Jamie.

Robert F. KENNEDY, Jr., Secretary of Health and Human Services, et al., Petitioners

v.

BRAIDWOOD MANAGEMENT, INC., et al.

No. 24-316

Supreme Court of the United States.

Argued April 21, 2025

Decided June 27, 2025

Background: Employer and other small businesses and individuals brought action