No. 24-297

IN THE

Supreme Court of the United States

TAMER MAHMOUD, *et al.*,

Petitioners,

v.

THOMAS W. TAYLOR, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF THE FREEDOM FROM RELIGION FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

SAMUEL T. GROVER
Counsel of Record
HIRSH M. JOSHI
NANCY A. NOET
FREEDOM FROM RELIGION FOUNDATION
P.O. Box 750
Madison, WI 53701
(608) 256-8900
sgrover@ffrf.org

Counsel for Amicus Curiae

379612

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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INTEREST OF AMICUS CURIAE[1]

The Freedom From Religion Foundation is the largest national association of freethinkers, representing atheists, agnostics, and others who form their opinions about religion based on reason rather than faith, tradition, or authority. Founded in 1978 as a 501(c)(3) nonprofit, FFRF has more than 42,000 members, including members in every state and the District of Columbia. FFRF's primary purposes are to educate about nontheism and to preserve the cherished constitutional principle of separation between religion and government.

FFRF works to protect the right to a secular public education and to make sure that schools, by virtue of observing the separation between state and church, stay welcoming to all students regardless of their religious or nonreligious viewpoints on social issues. Twelve percent of FFRF members identify as LGBTQIA+. FFRF seeks to ensure that the religion of some parents cannot be weaponized against our pluralistic public schools to ostracize or to erase all mention of LGBTQIA+ students.

SUMMARY OF ARGUMENT

In the United States today, more people openly identify as LGBTQIA+ than ever before. The reality is that gay and transgender people exist, both as adults and

1. No party's counsel in this case authored this brief in whole or in part. No party or party's counsel contributed any money intended to fund preparing or submitting this brief. No person, other than amicus, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

as students in public school classrooms. Regardless of any personal religious or moral objections to other people's identities, navigating our pluralistic society necessitates having the ability to interact with basic civility.

Recognizing these facts, Respondent Montgomery County Public Schools (MCPS) created a reading program to foster such basic civility, and prepare its students to competently navigate the world in which they live. MCPS ultimately declined to provide program exemptions—religious or secular.

Petitioners seek to shelter their children from lessons in tolerance with a Free Exercise-Due Process "hybrid rights" claim. But Petitioners, as the Fourth Circuit correctly concluded, fail to establish a violation of any right. Hoping for a narrower ruling, Petitioners then argue that MCPS's lack of exemptions to its curriculum amounts to impermissible hostility toward religion. That too was rejected below. For their last gasp, Petitioners ask this Court to overrule *Employment Division v. Smith*, 494 U.S. 872 (1990), which their Petition for Certiorari did not even argue. *Cf. Dobbs v. Jackson Whole Women's Health*, 597 U.S. 215, 352 (2022) (Roberts, C.J., concurring) (noting that Mississippi "changed course" between the certiorari and merits stages on overruling *Roe*, which was "a gambit").

Petitioners' arguments should be rejected. *First*, Petitioners' hostility argument overreads this Court's narrow decisions. *Second*, mere exposure to objectionable material does not interfere with Free Exercise or Due Process rights of either students or parents. *Third*, the threadbare record below does not necessitate a preliminary injunction. This Court should affirm.

ARGUMENT

Generally applicable and neutral laws that burden religious practices are subject to rational basis review. *See Smith*, 494 U.S. 872; *Hamilton v. Regents of the Univ. of Cal.*, 293 U.S. 245 (1934); *Regina v. Wagstaffe*, 10 Cox Crim. 530 (Eng. 1868); *Stansbury v. Marks*, 2 Dall. 213 (Pa. 1793). Notwithstanding that long-accepted rule, Petitioners ask this Court to circumvent *Smith* based on a series of narrow, fact-intensive decisions that either do not relate to Petitioners' claims or simply apply *Smith*. They primarily advance two arguments: a "religious hostility" claim and a "hybrid rights" argument that marries the Free Exercise Clause with Due Process rights. Both arguments should be rejected.

First, Petitioners' religious hostility claim overreads this Court's religious neutrality precedent. Petitioners fail to point to a single case that overturns a facially neutral policy, solely based on allegations of a legislative motive hostile to religion. The Free Exercise Clause requires a stronger showing than Petitioners' "motive-only" argument.

Second, as to their hybrid rights claim, Petitioners have failed to establish a burden on either constitutional right they marry together. This Court, the Circuit courts, and state courts, are clear: Parents do not have a Free Exercise or Due Process right (or hybrid right) to block students from being exposed to objectionable classroom material. Accepting Petitioners' unprecedented claim would leave schools in an untenable position.

Third, a preliminary injunction is inappropriate as the record is underdeveloped, and will be better

developed after affirmance. Petitioners have also not alleged enough, on this undeveloped record, to warrant a preliminary injunction. The Fourth Circuit's decision should be affirmed.

I. Petitioners Overread This Court's Precedent to Allege a Never-Before-Recognized "Motive-Only" Religious Hostility Claim

Petitioners argue that MCPS's retraction of a previously offered opt-out exhibits "religious hostility," citing *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 548 U.S. 617 (2018), and *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993). But MCPS acted as a legislative body when creating its curriculum—as opposed to an adjudicative one—and the curriculum is facially-neutral to religion. Unable to point to the kind of evidence on which *Masterpiece Cakeshop* and *Lukumi* relied, Petitioners instead settle for alleging an impermissibly hostile *motive*. But no case supports Petitioners' "motive-only" religious hostility claim.

Masterpiece Cakeshop involved religious hostility in *adjudication*, not legislation or policy-making. *See* 548 U.S. 617. There, Colorado's Civil Rights Commission ordered Masterpiece Cakeshop to comply with Colorado's Anti-Discrimination Act, after a hearing where one commissioner allegedly equated Jack Phillips's religious beliefs to "slavery" and "the Holocaust." *Id.* at 635. Hence, the Court determined that the hearing was tainted with impermissible religious hostility and this Court "set aside" the Commission's order. *Id.* at 639.

The Court's *Masterpiece Cakeshop* opinion constrains itself to adjudications. *Id.* at 636 ("[T]he Court cannot

avoid the conclusion that these statements cast doubt on the fairness and impartiality of the Commission's *adjudication* . . . [i]n this case . . . the remarks were made in a very different context—by *an adjudicatory body deciding a particular case*.") (emphasis added). In setting forth his claims before the Commission, "Phillips was entitled to the neutral and respectful consideration of his claims in all the circumstances of the case," but that "was compromised." *Id*. at 634.

Numerous Circuit courts have distinguished *Masterpiece Cakeshop* as necessarily confined to the adjudicatory process. *See, e.g.*, *Adorers of the Blood of Christ v. Fed. Energy Regul. Comm'n*, 897 F.3d 187 fn. 10 (3d. Cir. 2018), *cert. denied*, 586 U.S. 1184 (2019); *Meriwether v. Hartop*, 992 F.3d 492, 512 (6th Cir. 2021); *Tingley v. Ferguson*, 47 F.4th 1055, 1086–87 (9th Cir. 2022), *en banc reh'g denied*, 57 F.4th 1072 (2023), *cert. denied*, 144 S.Ct. 33 (2023); *Does 1–11 v. Bd. of Regents of the Univ. of Colo.*, 100 F.4th 1251, 1269–70 (10th Cir. 2024). Because this case does not involve an adjudication, Petitioners' reliance on *Masterpiece Cakeshop* is misplaced.

Lukumi, on the other hand, dealt with the legislative process. *See* 508 U.S. 520. However, *Lukumi*'s facts were specific and this Court's decision was narrow. There, Hialeah explicitly banned "animal sacrifices" during "rituals." *Lukumi*, 508 U.S. at 527. The term "sacrifice" exclusively meant "to unnecessarily" harm "an animal in a public or private ritual or ceremony." *Id*. at 527. "Killings for religious reasons [we]re deemed unnecessary, whereas most other killings f[e]ll outside the prohibition." *Id*. at 537.

This Court reasoned that those ordinances, coupled with Hialeah council members' statements, targeted the

Santeria religion, *and Santeria only*. *Id.* at 535 ("It is a necessary conclusion that almost the only conduct subject to [Hialeah's anti-sacrifice ordinances] is the religious exercise of Santeria church members."). Thus, Hialeah's ordinances were not neutral *on their face* and "religious practice [wa]s being singled out for discriminatory treatment." *Id.* at 538.

Justice Scalia's *Lukumi* concurrence illustrates two things. First, his loyalty to *Smith*, and second, that he reached the same result in *Lukumi* without analyzing the ordinance drafters' motives. *See id.* at 557 (Scalia, J., concurring). Because those ordinances facially discriminated against religion, they automatically failed *Smith*'s neutrality requirement. *Id.* at 559 (Scalia, J., concurring) ("Had the ordinances [ ] been passed with no motive on the part of any councilman except the ardent desire to prevent cruelty to animals . . . they would nonetheless be invalid.").

The exhibited facial discrimination was sufficient to strike down Hialeah's offending ordinances—no motive-based inquiry necessary. Indeed, the portion of *Lukumi* discussing Hialeah's motive was a plurality opinion, not a majority one. *Id.* at 521. For this reason, Petitioners' reliance on *Lukumi* is suspect.

Petitioners don't argue that MCPS's policy is facially discriminatory, or that MCPS has denied them some benefit that comparable secular parents and children receive. *Compare* Pet.Br.44–45 *with Carson v. Makin*, 596 U.S. 767, 778–81 (2022) (finding a free exercise violation where Maine "pa[id] tuition for certain students at private schools—so long as the schools are not religious"); *Trinity*

Lutheran Church of Columbia, Mo. v. Comer, 582 U.S. 449, 458–59 (2017) (finding free exercise violation where Missouri "expressly discriminated against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character.").[2] Nor do Petitioners allege unfair and non-neutral adjudication or that their religious practice was targeted like Santeria was in *Lukumi*. They concede as much by focusing on MCPS's alleged motives, while paying only lip service to the curriculum's potential impact. *See* Pet.Br.41–42.

Petitioners argue the *contrapositive* of *Lukumi* and Justice Scalia's concurrence: that "motive-only" allegations are enough to constitute non-neutrality free exercise violations. They allege that having their children learn in school about the diverse types of people who they may encounter out in the world—and in their own classroom—somehow substantially interferes with Petitioners' ability to teach their children multiple religions.

Petitioners' argument flips *Lukumi* on its head. Motive-only religious claims aren't cognizable free exercise claims as far as legislative and executive functions are concerned. This Court has declined to recognize motive-only discrimination claims in other contexts,

2. Petitioners' reliance on *Tandon v. Newsom*, 593 U.S. 61 (2021) and *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021) fares no better. *See* Pet.Br.38–40. The challenged policy has no exemptions at all, so Petitioners cannot claim that MCPS "treat[s] *any* comparable secular activity more favorably than religious exercise," *Tandon*, 593 U.S. at 62, or that there is a "mechanism for individualized exemptions." *Fulton*, 593 U.S. at 533 (quoting *Smith*). Instead, Petitioners are left pointing to a *separate* policy that does allow for opt-outs. *See* Pet.Br.38–39.

such as the Equal Protection Clause, *see, e.g.*, *U.S. v. Armstrong*, 517 U.S. 456 (1996); *U.S. v. O'Brien*, 391 U.S. 367, 383 (1968) ("[T]his Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive."), and the Due Process Clause. *See, e.g.*, *McCray v. U.S.*, 195 U.S. 27, 56 (1905) ("The decisions of this court [ ] lend no support [ ] to the assumption that the judiciary may restrain the exercise of lawful power on the assumption that a wrongful purpose or motive has caused the power to be exerted."). And this Court recently abandoned the *Lemon* test, which recognized an analogous "purpose-only" claim in the Establishment Clause context. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022).

Petitioners' reliance on *Masterpiece Cakeshop* and *Lukumi* overreads both. As the Court has previously recognized, "[w]e would do a grave disservice . . . were we to require that every decision of [ ] governments . . . be subject[ ] to [ ] microscopic scrutiny for forbidden motives rendering the decision unconstitutional." *Palmer v. Thompson*, 403 U.S. 217, 228 (1971). Petitioners are not simply asking this Court to extend *Lukumi*, as they claim, but are instead asking for a broad and novel expansion to free exercise rights that this Court has repeatedly rejected in other contexts. This Court should decline Petitioners' invitation.

II. Disapproval of School Curricula Does Not Establish a Constitutional Rights Violation—Nor Should it

For the bulk of their argument Petitioners allege a "hybrid rights" claim, marrying the Free Exercise Clause with the Due Process Clause's unenumerated guarantee to "direct the upbringing and education of [ ]

children." *Troxell v. Granville*, 530 U. S. 57, 70 (2000) (plurality opinion); *Pierce v. Soc'y of the Sisters*, 268 U.S. 510 (1925). The latter stems from this Court's substantive Due Process jurisprudence. *See Littlejohn v. Sch. Bd. of Leon Cnty., Fla.*, No. 23-10385, 2025 WL 785143 (11th Cir. Mar. 12, 2025). This Court has dealt with these "hybrid rights" claims in three prior cases. *See Hamilton v. Regents of the Univ. of Cal.*, 293 U.S. 245; *W. Va. St. Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Wisconsin v. Yoder*, 406 U.S. 205 (1972). All three decisions cut against Petitioners' argument, as do decisions from the Circuit and state courts.

Moreover, were this Court to accept Petitioners' argument, it would place public schools in an untenable position. Parents should not have the constitutional right to micromanage their children's education to ensure that all secular education materials conform with their personal religious beliefs. Such a rule would have boundless scope; almost any book or idea—however commonplace or innocent—likely contradicts *some* religious ideals.

A. "Hybrid Rights" Do Not Give Exemptions to School Curricula

This Court has considered hybrid rights claims challenging school policies three times since first finding a constitutional right to direct the religious upbringing of children. But that theory only prevailed in the most extreme case—*Yoder*. Otherwise, this Court has rejected this theory for curricular exemptions.

A few years after *Pierce* and *Meyer v. Nebraska*, 262 U.S. 390 (1923), this Court decided *Hamilton*. There,

minors challenged mandatory "military science and tactics" classes, seeking to "be excluded from the [ ] course [ ] upon grounds of their religious beliefs" and "due process . . . as a safeguard of 'liberty.'" 293 U.S. at 262. This Court unanimously found "no ground [ ] that the regents' order . . . transgresses any constitutional right." *Id.* at 265. A majority of the Justices on the *Hamilton* Court were also on the unanimous *Pierce* Court.

Justice Cardozo's *Hamilton* concurrence noted that "[i]nstruction in military science . . . is not an interference by the state with the free exercise of religion," finding that for over "a century and a half of history" "conscientious objectors have been exempted as an act of grace from military service." *Id.* at 266 (Cardozo, J., concurring). Justice Cardozo then expounded what would later be the *Smith* rule: "The right of private judgment has never [ ] been so exalted above the powers . . . of government. One who is a martyr to a principle – which may turn out . . . to be a delusion or an error – does not prove by his martyrdom that he has kept within the law." *Id.* at 268 (Cardozo, J., concurring). This Court rejected the first hybrid rights challenge.

Nine years later, West Virginia required students to stand while saluting the flag and to recite the Pledge of Allegiance. This Court struck down both under the Free Speech Clause, but disagreed with plaintiffs' Free Exercise-Due Process Clause claims. *Barnette*, 319 U.S. at 634 ("Nor does the issue . . . turn on one's possession of particular religious views or the sincerity with which they are held."). In concurrence, Justice Black wrote that "[r]eligious faiths, honestly held, do not free individuals from responsibility to conduct themselves obediently to

laws." *Id.* at 643 (Black, J., concurring). Once again, this Court *rejected* a hybrid rights theory, despite Petitioners' suggestions otherwise. *Compare* Pet.Br.25–26 *with Barnette*, 319 U.S. at 634.

In 1972, this Court decided *Yoder*, sustaining—for the first and only time—a hybrid Free Exercise-Due Process claim against Wisconsin's compulsory school attendance law. *See* 406 U.S. 205. But unlike the instant Petitioners, the Old Order Amish did not challenge one lesson within a comprehensive curriculum; they sought exemption from compelled participation in the state's post-eighth grade education system *in its totality*—just like in *Pierce*. *Yoder*'s respondents established, through expert testimony, that following Wisconsin's law would "result in the destruction of the Old Order Amish church community," *id.* at 212, and, crucially, that Wisconsin disregarded the Amish's "alternative mode of . . . vocational education," running headfirst into *Pierce*. *Id.* at 235. Even while finding a hybrid-rights violation on these extreme facts, this Court cautioned, "[o]ur disposition of this case, however, in no way alters our recognition of 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." *Id.* at 234–35 (emphasis added).

The potential "destruction" of a religion coupled with prohibiting an "alternative mode" of education was a showing "that probably few other religious groups or sects could make." *Id.* at 235–36. The instant Petitioners do not allege harm of a similar magnitude and the record, at this early stage of litigation, does not demonstrate potential harm that comes close to this standard. *See* Sec. III, *infra*.

The Circuit courts agree: Hybrid rights claims do not give rise to exemptions from discrete aspects of a school curriculum. That's been the case for LGBTQIA+ inclusive material, *see Parker v. Hurley*, 514 F.3d 87 (1st. Cir. 2008), *cert. denied*, 555 U.S. 815 (2008), and for sexual health classes. *See Brown v. Hot, Sexy & Safer Prods., Inc.*, 68 F.3d 525 (1st Cir. 1995), *cert. denied*, 516 U.S. 1159 (1996); *Leebaert v. Harrington*, 332 F.3d 134 (2nd Cir. 2003); *Parents United for Better Schs. v. Sch. Dist. of Phila. Bd. of Educ.*, 148 F.3d 260 (3rd Cir. 1998); *Cornwell v. Conn. St. Bd. of Educ.*, 428 F.2d 471 (4th Cir. 1970), *cert. denied*, 400 U.S. 942 (1970); *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197 (9th Cir. 2005), *cert. denied*, 549 U.S. 1089 (2006). Circuit courts have similarly rejected parents' attempts to exempt students from social studies classes mentioning religion. *See Mozert v. Hawkins Cnty. Bd. of Educ.*, 827 F.2d 1058 (6th Cir. 1987) (world religion class); *Cal. Parents for the Equalization of Educ. Materials v. Torlakson*, 973 F.3d 1010 (9th Cir. 2020), *cert. denied*, 141 S.Ct. 2583 (2021) (social studies textbook); *Smith v. Bd. of Sch. Comm'rs of Mobile Cnty.*, 827 F.2d 684 (11th Cir. 1987) (history class).

The State courts agree, as far as they interpret the federal constitution: Parents do not have a right to exempt students from discrete secular material within a school curriculum. *See, e.g.*, *Curtis v. Sch. Comm. of Falmouth*, 420 Mass. 749 (1995), *cert. denied*, 516 U.S. 1067 (1996); *Smith v. Ricci*, 89 N.J. 514 (1982); *Citizens for Parental Rights v. San Mateo Cnty. Bd. of Educ.*, 51 Cal.App.3d 1 (Cal.App. 1975), *cert. denied*, 425 U.S. 908 (1975); *Decker v. Carroll Acad.*, 1999 WL 332705 (Tenn Ct. App.); *Medeiros v. Kiyosaki*, 52 Haw. 436 (1970); *Hopkins v. Hamden Bd. of Educ.*, 29 Conn. Supp. 914 (1971), *aff'd*, 165 Conn. 793 (1973).

B. The Constitution Should Not Confer a Right to Exempt Students From Secular Materials

Petitioners' urge this Court to entertain a drastic expansion of *Yoder* that would grant parents a constitutional right to exempt their students from discrete aspects of a school curriculum. But public schools could not function under Petitioners' proposed rule and all students would ultimately suffer for lack of a comprehensive education. No public school curriculum could ever satisfy this novel hybrid constitutional right, as existing case law aptly demonstrates.

Parents' ideologies around education vary drastically and many are willing to couch their objections in religious terms. For instance, one parent asserted the unenumerated "constitutional right to homework-free summers," arguing that math homework infringed their child's hybrid rights. *See Larson v. Burmaster*, 295 Wis.2d 333, 359 (Wis. Ct. App. 2006), *pet. for rev. denied*, 297 Wis.2d 320 (Wis. 2006). That theory lost. Another set of plaintiffs alleged that *The Learning Tree*, with a "central theme of [ ] life, especially racism, from the perspective of a teenage boy in a working class black family," was "offensive to [their] religious beliefs." *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1534 (9th Cir. 1985), *cert. denied*, 474 U.S. 826 (1985). Fortunately, this hybrid rights claim was likewise rejected.

Plaintiffs have alleged that school testing and course loads violate their hybrid rights, when their "religious belief [is] that the load [i]s unfair and more than what God would want [them] to bear." *Vandiver v. Hardin Cnty. Bd. of Educ.*, 925 F.2d 927 (6th Cir. 1991). This theory

was rightly rejected. And plaintiffs have also objected to "wizards, sorcerers, giants and unspecified creatures with supernatural powers" in a reading program. *Fleischfresser v. Dirs. of Sch. Bd. No. 200*, 15 F.3d 680, 683 (7th Cir. 1994). This claim also lost.

Under Petitioners' rule, students would be deprived of countless classic literary works and movies. *To Kill a Mockingbird* portrays Southern Baptists in a less-than-favorable light, which may draw objections from some parents; others may find the biblical themes in *Lord of the Flies* or *The Grapes of Wrath* objectionable. Content in *Catcher in the Rye* or *Les Miserables* could offend religious sensitivities, but then again, so could the subject matter in more or less any of Shakespeare's classics. *Macbeth*, for example, mentions witches and Caeserian section birth, both of which contradict certain religious ideals, while parents who object to miscegenation could seek exemptions from their children reading *Othello*. Finally, *The Iliad*, *The Odyssey,* and numerous other works written before Christianity portray ancient Greek deities that contradict monotheistic sentiments.

Many children's books also would not be safe under Petitioners' exacting rule. *Charlotte's Web* depicts talking animals that some may find blasphemous. *Alexander and the Terrible, Horrible, No Good, Very Bad Day* mentions an objectionable "kissing scene." Shel Silverstein's *Falling Up* contains a poem that ends: "No teacher, preacher, parent, friend. Or wise man can decide. What's right for you – just listen to. The voice that speaks inside," a sentiment at odds with some religious teachings. And some parents may object to the *Percy Jackson* series's polytheistic details.

While the above examples are speculative, the point is that few if any books are guaranteed to be safe from Petitioners' purported rule. Nearly any book that teachers may read would face *strict scrutiny* when measured against religious objections. Public schools and individual teachers would be forced to speculate about potential religious objections and would necessarily adjust their lesson plans based on anticipated objections from parents. And actual objections from parents would vary class-to-class, based on each family's personal religious sensibilities. The result would be unworkable for public school teachers and would also be unfair to students, who would miss out on a vast range of compelling subject matter as a result. It's no wonder the Circuits have rejected such a rule.[3]

III. The Threadbare Record Below Does Not Necessitate a Preliminary Injunction

Petitioners are ultimately asking this Court to issue an opinion that would take a wrecking ball to how schools educate children across the country. But Petitioners are seeking this result on an incomplete record, after lower courts denied a preliminary injunction partially on that basis. The record below is insubstantial in two ways.

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3. Petitioners' argument that the Circuits are split 5–1 is wrong. *See* Pet.Cert. 19–23. First, that tally does not count the Third, Ninth, or Eleventh Circuit cases above, which puts the total Circuits that have rejected Petitioners' argument at eight. Second, the lone case Petitioners cite as having "the advantage of being right," *see* Pet. Cert.22–23, also cuts *against* them, as it ultimately declares, "public schools are not required to delete from the curriculum all materials that may offend any religious sensibility." *Florey v. Sioux Falls Sch. Dist.*, 619 F.2d 1311, 1318 (8th Cir. 1980). Any suggested split is manufactured. Br.Opp.10–18.

First, it lacks depth. This Court has little to consider when analyzing a preliminary injunction. Second, the record below does not meet *Yoder*'s high watermark. *See* 406 U.S. 205. Petitioners simply do not allege the same level of burden that *Yoder*'s respondents proved. A preliminary injunction is thus unwarranted.

In reviewing the district court's denial of a preliminary injunction, the Fourth Circuit described the record as "scant," "sparse," "threadbare," and "very limited." *Mahmoud v. McKnight*, 102 F.4th 191, 197, 208–09 (4th Cir. 2024). Petitioners' complaint is still defective and begs more questions than it answers.

Petitioners would have this Court write its decision without the benefit of knowing "how the Storybooks are [ ] being used in . . . [Petitioners'] children's classrooms." *Id.* at 213. Moreover, this Court "do[es] not know [if] the[ ] [offensive] conversations stick to Language Arts purposes," if "conversations about the Storybooks' characters and themes simply expose students to viewpoints [Petitioners] find objectionable," or "if discussions have diverted into [ ] indoctrination that pressures students to act or believe contrary to their religious upbringing." *Id.* at 213. And notably, the record below is absent of any claim "that [Petitioners] or their children have . . . been asked to affirm views contrary to their own views on gender or sexuality, to disavow views on these matters that their religion espouses, or otherwise affirmatively act in violation of their religious beliefs." *Id.* at 209. The record doesn't even "provide examples of any *required* discussion points or actual conversations that have occurred related to their use." *Id.* at 213.

This barebones record contrasts starkly to the showings made by the Amish respondents in *Yoder*. The *Yoder* Court set a high watermark for granting future religious exemptions—one the instant Petitioners do not meet. The *Yoder* respondents "believed that, by sending their children to high school, they would not only expose themselves to the danger of the censure of the church community, but, as found by the county court, also endanger their own salvation and that of their children." *Yoder*, 406 U.S. at 209. In support of their claims, the Amish proffered two experts at their criminal trial; one "testified that compulsory high school attendance [would] . . . ultimately result in the destruction of the Old Order Amish church community as it exists in the United States [ ]." *Id.* at 212. That testimony was further supported by testimony from Jonas Yoder's daughter, *see id.* at fn. 21, and the record stood up to the scrutiny of three lower courts prior to Supreme Court review. Simply put, the *Yoder* record was far more developed than the instant one.

This Court lacks the benefit of any expert testimony or the adverse examination of Petitioners' factual claims. Notably, the *Yoder* Court left open the question of how to proceed when a student and parent disagree about their own religious convictions. *See* 406 U.S. at 231–32. Petitioners have not even alleged that their children share the same religious views as them, which further complicates any decision resting on the sparse record before this Court. Petitioners could, of course, fix these weak spots with either "[a] more developed record or tailored argument," which could "shift the analysis." 102 F.4th at 213. But this Court works with what it has. The Fourth Circuit affirmed on this record. This Court should too.

* * *

Petitioners' religious hostility claims are misplaced, their hybrid rights theory contradicts nearly a century of precedent, and this record doesn't flesh out Petitioners' allegations in a way that could hold up to *Yoder*'s exacting standards. A preliminary injunction is entirely unwarranted.

CONCLUSION

The decision below should be affirmed.

Respectfully submitted,

Samuel T. Grover
Counsel of Record
Hirsh M. Joshi
Nancy A. Noet
Freedom from
Religion Foundation
P.O. Box 750
Madison, WI 53701
(608) 256-8900
sgrover@ffrf.org

Counsel for Amicus Curiae

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