

No. \_\_\_\_\_

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**In the  
Supreme Court of the United States**

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LIBBY HILSEN RATH, on behalf of her minor child,  
C.H.,  
*Petitioner,*

v.

SCHOOL DISTRICT OF THE CHATHAMS, et al.,  
*Respondents.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

In *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 587 (2022), this Court expressly rejected *Lemon*'s "ambitious[] attempt[] to find a grand unified theory of the Establishment Clause." *American Legion v. American Humanist Ass'n*, 588 U.S. 29, 60 (2019). The majority in *Hilsenrath v. Sch. Dist. of Chathams*, 136 F.4th 484 (3d Cir. 2025) replaced that unified test with one of its own—a "hallmarks" test—that the concurrence, the Fifth Circuit, and two district courts have rejected.

Moreover, the majority's newly minted hallmarks test is inconsistent with *Lee v. Weisman* and *Edwards v. Aguillard*, which recognize that the Establishment Clause provides much broader protection in the public school context, including protection from even "subtle coercive pressure" that violates the government's "duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people." *Lee v. Weisman*, 505 U.S. 577, 592 (1992). And *Mahmoud v. Taylor* confirms that the principle identified in *Lee* and *Edwards*—that a parent has the right to direct the upbringing of her child—"receives a generous measure of protection from our Constitution." 145 S.Ct. 2332, 2351 (2025); *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987) (explaining that "the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student or his or her family").

The questions presented are:

Whether a public school violates the Establishment Clause by assigning content that proselytizes for, extols, and gives favored treatment

to Islam (or any other religion) that conflicts with the religious beliefs of parents and their children.

Whether, given the “complementary purposes” of the Religion Clauses, the protection that the Establishment Clause provides to parents and their children in public schools under *Edwards* and *Lee* is coextensive with the protection the Free Exercise Clause provides them under *Mahmoud* and, therefore, prohibits public schools from assigning, without notice, content that conflicts with their religious beliefs.

**PARTIES TO THE PROCEEDING**

Petitioner is Libby Hilsenrath, the parent of C.H., who was a student enrolled in the course at issue in this case.

Respondent is the Board of Education of the School District of the Chathams.

**CORPORATE DISCLOSURE STATEMENT**

Petitioner Libby Hilsenrath is an individual person.

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## **DECISIONS BELOW**

The opinion of the Court of Appeals is reported at 136 F.4th 484, No. 23-3030 (May 5, 2025) and reprinted in Pet. App. A1-A26. The opinion of the district court granting summary judgment to the defendants is reported at 698 F. Supp. 3d 752 (D.N.J. 2023) and reprinted in Pet. App. 27a-55a. The initial decision of the district court granting summary judgment to the defendants is reported at 500 F. Supp. 3d 272 (D.N.J. 2020) and reprinted in Pet. App. 62a-102a because it is referenced in the district court's later decision.

## **STATEMENT OF JURISDICTION**

The Court of Appeals issued its opinion on May 5, 2025, and entered an order denying the Appellant's Petition for Panel and for En Banc Rehearing on June 3, 2025. App. 58a-59a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## **PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES**

The First Amendment to the United States Constitution provides in pertinent part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech....

U.S. CONST. AMEND. I.

## STATEMENT OF THE CASE

### I. Factual Background

Petitioner, Libby Hilsenrath, is the mother of C.H., her minor child. App. 73a. During the 2016-17 school year, C.H. was twelve years old and attended Seventh Grade at Chatham Middle School in the School District of the Chathams, Chatham, N.J. (“District”). App. 64a. As a seventh grader, C.H. was required to take and successfully complete a course in World Cultures and Geography. App. 64a-65a. The World Cultures and Geography Course included a unit that discussed the Middle East and North Africa (the “MENA unit”). App. 65a.

In January of 2017, C.H. and his mother reviewed his assignments for the MENA unit. App. 66a. She discovered that the District directed students to watch an “Intro to Islam Video.” App. 69a. Upon review, Hilsenrath learned that the video stated the articles of Islamic faith as if Islam were the one, true, faith, including assertions that “Allah is the one God....,” “Allah has no equal and is all powerful...,” “Muhammad ... is the last and final Messenger of God...,” “God gave [Muhammad] the Noble Quran...,” “Islam [is a] shining beacon against the darkness of repression, segregation, intolerance and racism...,” and Islam is “perfected” religion and the only religion for mankind. App. 4a-5a. This video ended with the prayer “May God help us all find the true faith, Islam. Ameen.” App. 6a. Hilsenrath also learned that her son was required to complete a worksheet which included a fill-in-the-blank written profession of the Shahada, “There is no god but \_\_ and \_\_ is his messenger.” App. 7a.

Troubled that Islamic doctrine was being promoted and taught in a tone suggesting that Islam was the one true faith, Hilsenrath, a Christian, probed further and discovered that C.H. had also been assigned a video about the pillars of Islam (“Islamic Pillars”), which they viewed together. App. 7a. The Islamic Pillars video featured a discussion between two adolescents, Alex (a non-Muslim) and Yusuf (a Muslim), with Yusuf explaining Islamic doctrine to Alex and inviting him to prayer. App. 6a-7a; App. 36a-37a.<sup>1</sup>

Hilsenrath brought her concern—that her son was being exposed to materials that featured Islamic proselytizing while ignoring Judaism and Christianity in the Middle East—to the attention of the District. App. 37a, 70a-72a. The District

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<sup>1</sup> The descriptions of the video by the courts below do not adequately convey the basis for Hilsenrath’s objection. The video is described adequately in the Complaint, App. 118a-120a, and was part of the Joint Appendix filed below (Jt. App.). It features two young children, Alex (a non-Muslim) and Yusuf (a Muslim) who stop their soccer game to discuss Islam when the Muslim call for prayer sounds. Yusuf instructs Alex in the Shahada, the Islamic credal prayer, which appears in bright letters (“there is no God except Allah and Prophet Muhammad is his messenger”) and discusses the second pillar of Islam which requires Muslims to pray to Allah five times a day. When Alex asks Yusuf if it is hard to pray that often, Yusuf responds, “No.... We are praying to god. And when I remember that it is god that keeps me healthy and my heart beating it make me want to pray.” Alex then looks down, sees his own heart beating, and smiles, signaling that he understands why he should pray to Allah. The video ends with Yusuf explaining to Alex that he must leave for midday prayer causing Alex to look down in sadness, but then Yusuf returns and invites Alex to come pray with him, and Alex happily goes off to pray to Allah with Yusuf. App. 118a-120a (Complaint at ¶¶63-72).

decided that no change to the curriculum was necessary. App. 39a.

## II. Procedural Background

Hilsenrath filed suit on behalf of C.H., alleging that the District had violated the Establishment Clause by assigning her son materials that extolled Islamic doctrine and proselytizing in the context of an overall presentation that portrayed Islamic faith favorably while ignoring the importance of Judaism and Christianity in the Middle East. App. 73a. At the close of discovery, the parties filed cross-motions for summary judgment. App. 62a. Hilsenrath relied upon this Court's decision in *Lemon v. Kurtzman*, 411 U.S. 192 (1973), and relevant precedent applying the *Lemon* test in the public school setting, *Edwards v. Aguillard*, 482 U.S. 578 (1987), *Agostini v. Felton*, 521 U.S. 203 (1997), and *Lee v. Weisman*, 505 U.S. 577 (1992). See United States District Court District of New Jersey Case #2:18-cv-00966-KM-MAH at Doc. 63. The district court ruled that the District's curriculum passed muster under *Lemon*, granted the District's motion for summary judgment, and entered a final judgment. App. at 62a-102a.

Hilsenrath appealed to the Third Circuit. App. 8a-9a. After hearing oral argument, the Third Circuit vacated the decision below and remanded with instructions for the district court to consider the case in light of this Court's decision in *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022). App. 9a.

Upon remand, the district court observed that “[l]urking behind the Supreme Court’s analysis [in

*Kennedy*] is the well-recognized trade-off between the First Amendment Establishment Clause and the Free Exercise Clause in particular cases.” App. at 48a. The court reasoned that “[i]n a very general sense, *Kennedy* may be seen as restricting the scope of the Establishment Clause and, in the name of Free Exercise, granting a bit more leeway for the presence of religion in the setting of public education.” App. 48a. The court proceeded to “analyze whether the challenged materials ... bear any of the historical ‘hallmarks of religious establishments.’” App. 49a.

Believing its charge on remand was to “revisit the case in light of the largely coercion-based standard adopted by the majority in *Kennedy*,” App. 54a, the court noted that the curriculum did “not present any of the ‘hallmarks’ associated with establishment of religion to which *Kennedy* alluded.” App. 54a. After listing those “hallmarks,” it observed that “[t]hese sole guides that *Kennedy* has furnished the lower courts for the assessment of ‘coercion’ for the purposes of the Establishment Clause challenge in the context of public education, do not fit the facts of this case.” App. 55a. It granted the District’s motion for summary judgment because “the curriculum and materials ... were not coercive and do not otherwise bear or resemble the hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment.” App. 55a.

Hilsenrath appealed to the Third Circuit, which affirmed the decision below in a divided opinion. The majority opinion took this Court’s decision in *Kennedy* to have “instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings,” App. 13a, and used

Justice Gorsuch's concurrence in *Shurtleff v. City of Bos.*, 596 U.S. 243 (2022), as the basis for its conclusion that "to prevail on her Establishment Clause claim, Hilsenrath must show that the Board's MENA curriculum resembles one of the[] hallmarks of religious establishment." App. at 13a-14a. Employing this approach, the majority concluded that "[b]ecause the Intro to Islam" and "5 Pillars" videos were presented in an academic rather than devotional context, they did not come close to crossing any line separating permissible curricular materials from impermissible proselytization." App. 18a. The majority also rejected Hilsenrath's argument (that the MENA lesson favored Islam because of its proselytizing content and because it extolled Islam over other faiths and encouraged conversion) on the grounds that the curriculum included coverage of many religions, the videos referred to Muslims in the third person, and there was no evidence that the teacher ever tried to convert her students to Islam. App. 19a-20a.

Writing separately, Judge Phipps observed that "the Majority Opinion uses a 'hallmarks' test: whether the challenged action bears any characteristic historically associated with an established church ...[,] but I posit that history and tradition are more effective as exegetical tools ... than as freestanding constitutional norms." App. 22a. In his view, "a hallmarks test ... is not needed to conclude the materials about Islam assigned to seventh-grade students at Chatham ... do not establish a religion. Instead, all that is needed is a recognition that teaching on matters of religion or even encouraging religious belief or practice in public

school does not constitute a law respecting an establishment of religion.” App. 23a-24a. The Third Circuit denied Hilsenrath’s petition for rehearing. App. 58a-59a.

Hilsenrath now petitions this Court because she believes that the courts below erred by taking *Kennedy* to overrule *Edwards* and *Lee*, *sub silentio*, and by invoking *Kennedy* to reject her claim based on reasoning that creates conflict with the Religion Clause principles articulated in *Edwards*, *Lee*, and *Mahmoud*.

### REASONS FOR GRANTING THE WRIT

Review is warranted in this case for at least three reasons. First, five courts have reached at least four different conclusions about the proper Establishment Clause test to apply in the wake of *Lemon*’s possible demise. The majority in *Hilsenrath*, drawing on *Kennedy* and *Shurtleff*, adopted a new “hallmarks” test. The concurrence and Fifth Circuit rejected that grand unification project in favor of a “recognition” test and a “‘fits within’ or is ‘consistent with a broader tradition’ at the time of the Founding or incorporation” test, respectively. *Roake v. Brumley*, 141 F.4th 614, 646 (5th Cir. 2025). The Ninth Circuit has concluded that “*Kennedy* ‘has called into doubt much of our Establishment Clause case law,’” without hazarding a guess as to the actual test. *Loffman v. California Dep’t of Educ.*, 119 F.4th 1147, 1171 (9th Cir. 2024) (citation omitted). And two district courts have denied that *Kennedy* has the dramatic impact that the Ninth Circuit suggested. *Stinson v. Fayetteville Sch. Dist. No. 1*, 2025 WL

2231053, at \*7 (W.D. Ark. Aug. 4, 2025); *Williams v. Bd. of Educ. of City of Chicago*, 673 F. Supp. 3d 910, 921 (N.D. Ill. 2023).

Second, the majority’s new test is inconsistent with *Edwards* and *Lee* and the broad protection that the Establishment Clause affords parents and students in the school setting from subtle coercive pressures. Whereas *Kennedy* and *Shurtleff* limit the government’s ability to invoke the Establishment Clause to justify restricting the expression of private speakers, *Lee* and *Edwards* teach a different lesson. In the public-school setting, the Establishment Clause provides parents and students with broad protection, ensuring that “the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards*, 482 U.S. at 584. While *Hilsenrath* reads *Kennedy* as effectively overruling these opinions (such that its new hallmarks test governs), this Court cites both cases favorably throughout the majority opinion in *Kennedy*. And this Court has explained that, “if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving this Court the prerogative of overruling its own decisions.” *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (cleaned up).

Third, the Third Circuit’s narrow view of the forms of coercion that count under the Religion Clauses contradicts *Mahmoud*, which safeguards “the right of parents ‘to direct the religious upbringing of their’ children.” *Mahmoud*, 145 S.Ct. at 2351. Given the “complementary purposes” of the Religion

Clauses, *Kennedy*, 597 U.S. at 533, it is not surprising that the rights of parents and their children are safeguarded by the Free Exercise and Establishment Clauses. But instead of affording Hilsenrath and her minor son the “generous measure of protection” given parents and their children in the school setting, the Third Circuit read *Kennedy* and Justice Gorsuch’s concurrence in *Shurtleff* as narrowing the protection parents and children enjoy under the Establishment Clause. *Hilsenrath*, therefore, presents important questions about the proper Establishment Clause test to apply in the public-school context post-*Kennedy* and the type of coercive pressure that infringes the Religion Clauses in that setting. Only this Court can resolve the lower court confusion and confirm the ongoing vitality of *Lee* and *Edwards*, thereby preventing conflict between the Clauses and impermissible limiting of the scope of their protection.

**I. Certiorari should be granted because in the wake of *Kennedy* lower courts have adopted conflicting tests to determine the level of coercion necessary to support an Establishment Clause claim in the context of public schools and because the *Hilsenrath* majority’s hallmarks test conflicts with *Lee* and *Edwards*.**

Now that this Court has expressly “abandoned *Lemon* and its endorsement test offshoot,” *Kennedy*, 597 U.S. at 534, lower courts have struggled to determine whether *Kennedy* articulated a new Establishment Clause test, what that test is, and what impact that test has on longstanding Establishment Clause precedents, like *Lee* and

*Edwards*, which safeguard parents and their students against coercion in the public schools. In *Hilsenrath*, the majority and concurrence disagree as to the answers to these questions. The majority contends that *Kennedy* created a “hallmarks” test, replacing *Lemon*’s “ambitious[] attempt[] to find a grand unified theory of the Establishment Clause” with its own test. *American Legion*, 588 U.S. at 60. The concurrence rejects the grand unification project in favor of “a recognition that teaching on matters of religion or even encouraging religious belief or practice in public school does not constitute a ‘law respecting an establishment of religion.’” *Hilsenrath*, 136 F.4th at 495 (Phipps, J., concurring in the judgment) (citation omitted).

The Fifth Circuit disagrees with both Third Circuit opinions and advances its own post-*Kennedy* analysis. The Ninth Circuit is confident that *Kennedy* had a dramatic impact on Establishment Clause cases but has not entered the fray of picking a specific new test. And all four of these interpretations are at odds with two district courts that do not think the post-*Kennedy* Establishment Clause landscape has changed all that much. Of course, at most one (and perhaps none) of these conflicting views is correct. And deciding the appropriate test is critically important given the Establishment Clause right at stake—freedom from even “subtle coercive pressure” that undermines a parent’s right to direct the religious upbringing of her child. *Lee*, 505 U.S. at 592; *Edwards*, 482 U.S. at 584 (“Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict

with the private beliefs of the student and his or her family.”).

Moreover, despite recognizing that “[c]ontext is key,” the majority never considers the fundamental differences between the government’s use of the Establishment Clause in *Kennedy* and *Shurtleff* (as justification for restricting speech by private speakers) and a parent’s invocation of that Clause to shield her child from materials that are proselytizing in nature and inconsistent with their religious beliefs. In the former situation, this Court has narrowed the government’s ability to invoke the Establishment Clause; in the latter, this Court “has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools.” *Id.* at 583-84. Review is necessary, therefore, because the Third Circuit majority disregards the teachings of *Edwards* and *Lee*, allowing the District to ignore its “duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people.” *Lee*, 505 U.S. at 592.

**A. In the wake of *Kennedy*’s rejection of *Lemon*, lower courts have proffered at least four different Establishment Clause analyses when determining whether a school has impermissibly coerced parents and students in public schools.**

Having abandoned *Lemon*, *Kennedy* explained “that the Establishment Clause must be interpreted by ‘reference to historical practices and understandings.’” 597 U.S. at 535 (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). What

*Kennedy* requires going forward has been anything but clear, fostering broad-based confusion among lower courts as to the appropriate approach and *Kennedy*'s impact on Establishment Clause precedents that previously applied *Lemon*: “[w]hile clearly rejecting the *Lemon* test, the majority in *Kennedy* was less clear about what would replace it—*i.e.*, what would constitute a proper ‘historical analysis’ of a party’s Establishment Clause claim in all cases.” App. 44a.

For its part, the *Hilsenrath* majority concluded that *Kennedy* replaced *Lemon* with a different unified Establishment Clause test, one grounded in the six “‘telling traits’” of “‘established churches’” that Justice Gorsuch articulated in *Shurtleff*. App. 14a (quoting *Shurtleff*, 596 U.S. at 286 (Gorsuch, J., concurring)). To “prevail on [an] Establishment Clause claim,” *Hilsenrath* “*must* show that the Board’s MENA curriculum resembles one of these hallmarks of religious establishment.” App. 14a. (emphasis added). Yet as *Lee* and *Edwards* demonstrate, not all establishments of religion involve the government’s establishing a church. And the majority never considered that a test developed outside the public-school context may not apply to parents and students who are in that setting given the “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.” *Lee*, 505 U.S. at 592.

Consequently, even if coercion is a “hallmark” of an Establishment Clause violation, no post-*Kennedy* opinion of this Court has specified what constitutes “impermissible coercion” in the public school context. *Kennedy*, 597 U.S. at 537 (“Members of this Court

have sometimes disagreed on what exactly qualifies as impermissible coercion in light of the original meaning of the Establishment Clause.”) (citing the majority opinion in *Lee* and Justice Scalia’s dissent). *Kennedy* did not attempt to undertake that project, and the majority never explains how its new unified theory is consistent with *Lee* and *Edwards*. Furthermore, given that *American Legion* sought to replace *Lemon* with “a more modest approach that focuses on the particular issue at hand and looks to history for guidance,” the majority’s new unified theory seems anything but “modest.” 588 U.S. at 60; *Kennedy*, 579 U.S. at 535-36 (citing *American Legion* favorably).

The majority’s approach creates additional uncertainty. Despite recognizing that this type of “historical inquiry ‘requires serious work’”—“work [that] is especially challenging” in the public-school setting, App. 13a—the majority never directly engages that challenge. Yet important questions remain unanswered. How does the majority’s historical test mesh with *Edwards*, which disclaims such an approach in the public school context: “Such a historical approach is not useful in determining the proper roles of church and state in public schools, since free public education was virtually nonexistent at the time the Constitution was adopted”? 482 U.S. at 583 n.4. The majority does not say. Instead of engaging in a meaningful analysis of this Court’s public-school precedents, the majority devotes one short paragraph to a cursory review of “decisions addressing proselytization in public schools.” App. 17a. *Lee* and *Edwards*, however, go beyond proselytization, recognizing that the Establishment

Clause ensures “that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards*, 482 U.S. at 584.

The concurrence rejects the majority’s novel “hallmarks” test positing that: “history and tradition are more effective as exegetical tools for construing the text and structure of the Constitution than as freestanding constitutional norms.” App. 22a (Phipps, J., concurring in the judgment). But it ignores *Edwards* and *Lee* entirely, contending that “all that is needed is a recognition that teaching on matters of religion or even encouraging religious belief or practice in public school does not constitute a ‘law respecting an establishment of religion.’” App. 22a (Phipps, J., concurring) (citation omitted). Unless it does. After all, *Lee* and *Edwards* recognize that the “transmission of religious beliefs ... is a responsibility and a choice committed to the private sphere,” which is why the schools have a “duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people.” *Lee*, 505 U.S. at 589, 592. Judge Phipps’s “recognition” test provides no objective way to distinguish the constitutional use of religious lessons and the unconstitutional, and threatens to devolve into a form of Justice Stewart’s “I know it when I see it” approach to obscenity. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

As it turns out, the Fifth Circuit has rejected both views, creating a circuit split and furthering the need for Supreme Court review. According to the Fifth Circuit, “*Kennedy* did not adopt these ‘hallmarks’ as the exclusive Establishment Clause test and the

*Shurtleff* concurrence is nonbinding.” *Roake*, 141 F.4th at 645-46. In its place, the Fifth Circuit “formulated the following standard to evaluate historical record evidence: Whether the challenged practice ‘fits within’ or is ‘consistent with a broader tradition’ at the time of the Founding or incorporation.” *Id.* at 646. But the court acknowledged that the Establishment Clause test might differ in the school setting: “neither we nor the Supreme Court have decided an Establishment Clause case involving the public school context since *Kennedy*.” *Id.* at 646 n.24. As a result, the Fifth Circuit panel “assume[d] without deciding that the historical framework ... is applicable here.” *Id.*

While the Ninth Circuit has not adopted a specific test, it has indicated that *Kennedy* has had a significant impact on this Court’s Establishment Clause jurisprudence: “in light of its methodological mandate, *Kennedy* ‘has called into doubt much of our Establishment Clause case law.’” *Loffman*, 119 F.4th at 1171 (citation omitted). At the same time, two federal district courts have claimed that *Kennedy*’s impact is not as broad or deep as the Ninth Circuit suggests:

Despite the *Kennedy* Court’s rather sweeping announcement that the *Lemon* test had been ‘abandoned,’ there is no cause to believe that all Supreme Court precedent that relied on the *Lemon* test has been—or will be—overruled. The *Kennedy* opinion itself makes that crystal clear. *Kennedy* cited two public-school Establishment Clause cases, *Lee v. Weisman* and *Santa Fe Independent School District v. Doe*—both of which applied the

*Lemon* test—and treated them as still-binding precedent.

*Stinson v. Fayetteville Sch. Dist. No. 1*, 2025 WL 2231053, at \*7; *id.* at \*11 (“But *Kennedy* did not overrule any public-school Establishment Clause cases involving a state’s or school district’s imposition of religious doctrine or practices on public-school children.”); *Williams v. Bd. of Educ. of City of Chicago*, 673 F.Supp.3d 910, 921 (N.D. Ill. 2023) (“The Court stated in *Kennedy* that it did not overrule prior decisions in which ‘[the Supreme Court] has found prayer involving public school students to be problematically coercive.’”) (citation omitted).

Yet even if *Kennedy* does advance a single test, unanswered questions abound. The concurrence in *Hilsenrath* highlighted two: whether the government must violate one or all the majority’s six traits for an Establishment Clause violation and whether, if one or more traits are present, the government can defend by showing that its offending action comports with history and tradition. While noting that *Kennedy* “provided some clarity,” such that courts should “[i]dentify the relevant tradition, then determine whether the challenged practice is in or out,” the Fourth Circuit stressed that “many questions remain,” like “What kinds of evidence are relevant? What kinds of evidence are the most useful? Which periods of history are relevant—the era of the Bill of Rights, 1791, or the era of the incorporation of the Bill of Rights, 1868—and which period is most important?” *Firewalker-Fields v. Lee*, 58 F.4th 104, 121, 122 n.6 and n.8 (4th Cir. 2023) (citations omitted). The facts of this case—involving instruction in a public school that was required without any

warning about or notice of the religious content of the assigned videos—implicates all of these unanswered questions.

If *Kennedy* espoused a test, courts need to know what that test is. If *Kennedy* overturned certain Establishment Clause precedents, then courts need guidance as to which cases still apply in the public-school setting. Only this Court can answer these important questions.

**B. The Third Circuit’s decision disregards binding precedent, does not account for the “special context” of public schools, and, as a result, improperly limits the scope of protection from coercion that the Establishment Clause provides parents and students in the public school setting.**

Although the majority acknowledges the importance of context, it never considers how the Establishment Clause differs depending on who is invoking that Clause and for what purpose. The majority seems to take *Kennedy* to overrule *Lee* and *Edwards*, two of the leading Establishment Clause cases dealing with coercion in the public schools, and, therefore, reaches a result that is inconsistent with both opinions. As this Court explained in *Agostini v. Felton*, however, “if a precedent of this Court has direct application in a case [*Lee* and *Edwards*], yet appears to rest on reasons rejected in some other line of decisions [*Kennedy*’s rejection of *Lemon*], the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.” 521 U.S. at 237. The

Third Circuit ignores this directive, fashioning its own test based on cases (*Kennedy* and *Shurtleff*) that dealt with strikingly different factual situations and, in the process, impermissibly narrowing the Establishment Clause protection given parents and their students in the special context of public schools.

The confusion started with the district court, which interpreted *Kennedy* as limiting the scope of the Establishment Clause despite the “vigilant ... monitoring,” *Edwards*, 482 U.S. at 583, that *Lee* and *Edwards* call for in public schools: “[i]n a very general sense, *Kennedy* may be seen as restricting the scope of the Establishment Clause and, in the name of Free Exercise, granting a bit more leeway for the presence of religion in the setting of public education.” App. 48a. In *Kennedy*, the government invoked the Establishment Clause to justify its suppression of private religious speech. The school district argued “its suspension of Mr. Kennedy was essential to avoid a violation of the Establishment Clause.” *Kennedy*, 597 U.S. at 532. Even though his post-game prayers at midfield “might have been protected by the Free Exercise and Free Speech Clauses[, ...] his rights were in ‘direct tension’ with the competing demands of the Establishment Clause.” *Id.* And “[t]o resolve that clash, the District reasoned, Mr. Kennedy’s rights had to ‘yield’” to the Establishment Clause. *Id.*

This Court expressly rejected the school’s reasoning. Given that Kennedy’s post-game prayers were private expression that the school never endorsed, the school could not invoke the Establishment Clause to justify restricting Kennedy’s “otherwise protected First Amendment activities.” *Id.* at 533. Having prohibited Kennedy’s private

religious expression, the school could not, when challenged, claim that it had done so to comply with the strictures of the Establishment Clause: “In this way, the District effectively created its own ‘vise between the Establishment Clause on one side and the Free Speech and Free Exercise Clauses on the other,’ placed itself in the middle, and then chose its preferred way out of its self-imposed trap.” *Id.*

Similarly, in *Trinity Lutheran, Espinoza*, and *Carson*, this Court rejected the government’s “the Establishment Clause made me do it” defense. In each of these cases, the government sought to exclude religious groups from receiving otherwise generally available public benefits. In *Trinity Lutheran*, this Court rejected the Department’s attempt to hide behind “Missouri’s policy preference for skating as far as possible from religious establishment concerns.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 462 (2012). In *Espinoza*, this Court denied that Montana could exclude religious schools from “a scholarship program for students attending private schools” by “assert[ing] that the no-aid provision serves Montana’s interest in separating church and State ‘more fiercely’ than the Federal Constitution.” *Espinoza v. Montana Dept. of Rev.*, 591 U.S. 464, 468, 484 (2020). And in *Carson v. Makin*, this Court held that Maine’s “antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise.” 596 U.S. 767, 781 (2022).

The lesson is clear yet unheeded by the courts below. By rejecting *Lemon* and the endorsement test, the Court has made it harder for the government to

invoke the Establishment Clause to justify “discriminat[ion] against disfavored religious speakers,” *Shurtleff*, 596 U.S. at 285 (Gorsuch, J., concurring in the judgment), because the government can no longer argue that the Establishment “Clause ‘compel[s] the government to purge from the public sphere’ anything an objective observer could reasonably infer endorses or ‘partakes of the religious.’” *Kennedy*, 597 U.S. at 535 (citation omitted). This is so because “no historically sensitive understanding of the Establishment Clause can be reconciled with a rule requiring governments to ‘roa[m] the land, tearing down monuments [or other forms of expression] with religious symbolism and scrubbing away any reference to the divine.” *Shurtleff*, 596 U.S. at 288 (Gorsuch, J, concurring in judgment) (quoting *American Legion*, 588 U.S. at 84-85).

Yet this case is critically different from *Kennedy*. Here, a parent acting on behalf of her child is invoking the Establishment Clause in the “special context” of a public school to stop the District’s use of “the classroom ... to advance religious views that may conflict with [Hilsenrath’s] private beliefs.” *Edwards*, 482 U.S. at 584. In this setting, “there are heightened concerns with protecting freedom of conscience from subtle coercive pressure,” *Lee*, 505 U.S. at 592, and the District’s educational “discretion must be exercised in a manner that comports with the transcendent imperatives of the First Amendment.” *Edwards*, 482 U.S. at 583. As a result, this Court has afforded parents and their children broad Establishment Clause protection from the coercive pressures within public schools. *Wallace v. Jaffree*,

472 U.S. 38, 61 (1985) (explaining the need for courts to “[k]eep[] in mind ... ‘both the fundamental place held by the Establishment Clause in our constitutional scheme and the myriad, subtle ways in which Establishment Clause values can be eroded’”) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 694 (1984) (O’Connor, J., concurring)); *W.V. Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943) (“That [Boards of Education] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual.”).

The majority’s narrow view of Establishment Clause protection—limited only to overt proselytization and forced participation in religious exercises—is inconsistent with the “generous measure of protection” the Religion Clauses provide parents and students in the public school context. *Mahmoud*, 145 S.Ct. at 2351. The Establishment Clause not only protects students from overt coercion, but also helps “to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people.” *Lee*, 505 U.S. at 592; *McGowan v. Maryland*, 366 U.S. 420, 441-42 (1961) (“Thus, this Court has given the [establishment of religion] a ‘broad interpretation ... in the light of its history and the evils it was designed forever to suppress.’”) (citation omitted); *Sch. Dist. of Abington Tp., PA v. Schempp*, 374 U.S. 203, 227 (1963) (Douglas, J., concurring) (noting that the “Establishment Clause, serv[es] the same goal of individual religious freedom,” as “the Free Exercise Clause”).

The threats to “conscience and belief” are “heightened” in the school context given the “subtle coercive pressure” that comes from the age of the

students and the government's control over public schools. *Lee*, 505 U.S. at 592. In "the classroom setting, ... the risk of compulsion is especially high," *id.* at 596, because "[s]tudents in such institutions are impressionable and their attendance is involuntary." *Edwards*, 482 U.S. at 584. Through its schools, a State "exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Id.* at 584; *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986) ("Consciously or otherwise, teachers [are] ... [i]nescapably, like parents, ... role models.").

The majority apparently ignores the special nature of the classroom and downplays the threat the lessons on Islam posed to Hilsenrath's and C.H.'s religious beliefs. While the lessons on Islam "may seem nothing more than a reasonable request that [a student] respect [and learn about Muslims'] religious practices, in a school context may appear to [the student or parent] to be an attempt to employ the machinery of the State to [favor] a religious orthodoxy." *Lee*, 505 U.S. at 592. Yet the majority repeatedly minimizes the intrusion and impact of the religious content in the assignments, emphasizing that the lessons on Islam covered only "two class periods," included a "five-minute video" that had only two minutes of "quotations from the Quran and a series of questions and answers about Islam" with background chanting that Hilsenrath and her son "did not understand," did not show the videos in class, and did not "explicitly instruct the students to view the[ videos]." App. 17a. "C.H. nonetheless watched [the two] videos at home

with his mother,” *id.* at 7a, but did so “‘as part of a secular program of education.’” App. 17a (quoting *Schempp*, 374 U.S. at 225).

*Lee* instructs, however, that “the intrusion of the religious [lessons] cannot be refuted by arguing that these [videos] ... are of a *de minimis* character” because “the intrusion is greater than the two minutes or so of time consumed [watching videos] like these.” *Lee*, 505 U.S. at 594. As in *Lee*, courts must “[a]ssum[e] ... that the [proselytizing content and] prayers were offensive to the student and the parent who now object.” App. 7a-8a (“Concerned about the MENA curriculum, Hilsenrath emailed administrators and aired her complaints at a school board meeting in February 2017.”). Accordingly, there is no doubt that “the intrusion was ... real” and that the Third Circuit should have focused on whether the lessons on Islam were, “in the context of a [middle] school, a violation of the objectors’ rights.” *Lee*, 505 U.S. at 578.

To borrow from *Lee* once again, the majority’s claim that the teacher did not require students to watch the videos “is formalistic in the extreme.” *Lee*, 505 U.S. at 595. Students were assigned the PowerPoint slides discussing Islam and knew they would be tested on the course materials. The PowerPoints included links to the two videos, and the “Intro To Islam” slide directed students to “Watch this video;” it was a directive, not a suggestion. Jt. App. at 416. And as part of the assignment, students were instructed: “As you watch this video clip, write down words that describe Islam as presented by this video.” *Id.* The class was mandatory, and the teacher assigned—and tested students on—the PowerPoint

slides, which included links to the challenged videos on Islam. In fact, the superintendent acknowledged that C.H. watched the videos because they were assigned class materials. Jt. App. 343-44.

The majority also suggests that the fact the instruction about Islam was part of a larger curriculum somehow makes a constitutional difference. It does not. The secular storybooks mandated in *Mahmoud* were also one part of a broader reading program, but this Court focused on the subtle pressure that the storybooks—not the larger educational program—imposed on students: “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?” 145 S.Ct. at 2353. And the Third Circuit should have done the same thing here—analyze the subtle coercive pressures exerted on students and parents to watch, study, and affirm (through testing and discussion) the positive views about Islam that the videos conveyed.<sup>2</sup>

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<sup>2</sup> The majority dismisses the religious nature of the Arabic chants that played during the “Intro to Islam” video, suggesting that such religious music has no bearing on the Establishment Clause analysis because “neither [Hilsenrath] nor C.H. speaks Arabic, so they did not understand the meaning of the chants when they first watched the video.” App. 4a n.7. But such music reinforces the religious nature of the lessons just as recordings of monks chanting the “Pater Noster” during a class on Christianity could impact how students experienced the lessons even if they do not speak Latin and, consequently, do not understand the specific words.

When younger students, like C.H., are taught that a particular religion is widely followed, is the foundation for “a tradition of unsurpassable splendor, scientific thought and timeless art,” and has made many “contributions to society,” art, and architecture, they are apt to take Islam to be a good thing or perhaps to be as good as their own religious traditions. App. 5a; *Mahmoud*, 145 S.Ct. at 2353 (“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.”). While many Americans might agree with that view, “and it goes without saying that they have every right to do so,” “other Americans wish to present a different moral message to their children [about different faith traditions]. 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.” 145 S.Ct. at 2354.

What is critical here is that the videos are coercive because they “carry with them ‘a very real threat of undermining’ the religious beliefs that the parents wish to instill in their children.” *Id.* at 2355 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972)). The videos “impose upon children a set of values and beliefs that are ‘hostile’ to their parents’ religious beliefs” and “exert upon children a psychological ‘pressure to conform’ to their specific viewpoints.” *Id.* (quoting *Yoder*, 406 U.S. at 211). And the Third Circuit panel’s differing tests did not consider, let alone discuss, these “heightened concerns” or how *Lee* and *Edwards* affected the Establishment Clause analysis.

**II. By recognizing that content in public schools can conflict with a parent’s religious beliefs, *Mahmoud v. Taylor* further undermines the Third Circuit’s unduly narrow view of the types of coercion that violate a parent’s right to direct the religious upbringing of her child under the Establishment Clause.**

Although *Mahmoud* was decided after *Hilsenrath*, *Mahmoud*’s discussion of the Religion Clauses and the broad protection accorded parents and students in school settings bears directly on this case. First, *Mahmoud* confirms that neither parents nor students “shed” their First Amendment rights “at the schoolhouse gate.” *Tinker v. De Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (1969). Second, *Mahmoud* explains that Free Exercise Clause safeguards parents and their children from instruction that undermines religious beliefs. *Mahmoud*, 145 S.Ct. at 2349 (discussing parents’ “right ‘to direct the religious upbringing of their children.’”) (quoting *Yoder*, 406 U.S. at 218). If this sounds familiar, it should. As discussed above, *Lee* and *Edwards* make clear that subtle pressures interfering with this right in public school instruction violate the Establishment Clause. *Edwards*, 482 U.S. at 584; *Lee*, 505 U.S. at 592.

Given the “complementary purposes” of the Religion Clauses, *Kennedy*, 597 U.S. at 533, this overlap is not surprising. After all, the Religion Clauses work together to prevent the government from coercing both religious beliefs and participation

in religious exercises, ensuring that “the preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere, which itself is promised freedom to pursue that mission.” *Lee*, 505 U.S. at 589; *Schempp*, 374 U.S. at 217 (describing “[t]he interrelationship of the Establishment and the Free Exercise Clauses”). Accordingly, the Free Exercise and Establishment Clauses prevent even subtle forms of coercion that interfere with a parent’s right to direct the religious training of her son. *Mahmoud*, 145 S.Ct. at 2350.

*Mahmoud* makes this connection express. While “*Barnette* dealt with an especially egregious kind of direct coercion ...[,] 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.” *Id.* at 2352. The Free Exercise Clause also “protects against policies that impose more subtle forms of interference with the religious upbringing of children.” *Id.* And *Lee* said the same thing in the Establishment Clause context—that the State’s “duty to guard and respect that sphere of inviolable conscience and belief” includes “protecting freedom of conscience from subtle coercive pressure.” 505 U.S. at 592.

Just as the parents in *Mahmoud* were not required to “‘show direct or indirect coercion arising out of the exposure’ to the storybooks,” 145 S.Ct. at 2349. Hilsenrath should not have been required to do so in relation to the lessons on Islam. Yet the district court and majority did just that. The district court demanded “evidence of significant coercion,” imposing a robust requirement on plaintiffs based on Justice Scalia’s dissent in *Lee*: “Even through an objective lens,

however, the materials cannot be viewed as tending to compel a student ‘by force of law and threat of penalty,’ to adhere to a particular religious belief or participate in a particular religious practice.” App. 50a (quoting *Lee*, 505 U.S. at 640-42 (Scalia, J., dissenting)). The majority required *Hilsenrath* to demonstrate that the District “force[d her son] to engage in a formal religious exercise” or engaged in “impermissible proselytization.” App. 16a, 18a. (cleaned up).

But *Mahmoud* confirms what *Lee* first indicated—that this is a false dichotomy. To establish a First Amendment claim, parents are not required to show that a school’s policy “would *compel* [their] children to make an affirmation that was contrary to their parents’ or their own religious beliefs” or that their “children would be compelled to commit some specific practice forbidden by their religion.” *Id.* at 2352; *id.* at 2349 (rejecting the Fourth Circuit’s claim that parents could succeed on their free exercise claim only if they “show[ed] direct or indirect coercion arising out of the exposure” to the storybooks). Given the age of the students and the nature of the school context, impermissible coercion includes “more subtle forms of interference with the religious upbringing of children.” *Id.*

Because *Mahmoud* was decided after *Hilsenrath*, the Third Circuit did not have the benefit of *Mahmoud*’s analysis. Because the Free Exercise and Establishment Clauses both protect *Hilsenrath*’s right to direct her son’s religious upbringing, the panel should be given that opportunity. *Edwards*, 482 U.S. at 584 (explaining how the Establishment Clause ensures “that the classroom will not purposely

be used to advance religious views that may conflict with the private beliefs of the student and his or her family”); *Lee*, 505 U.S. at 589 (“The design of the [Religion Clauses] is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.”); *Mahmoud*, 145 S.Ct. at 2351 (“The practice of educating one’s children in one’s religious beliefs ... receives a generous measure of protection from our Constitution.”).

This is especially important given the significant similarities between the storybooks in *Mahmoud* and the Islam lessons here. The District assigned videos about Islam that “present certain values and beliefs as things to be celebrated.” *Id.* at 2353. These videos were created to support and promote Islam. Not surprisingly, then, the videos, like the storybooks in *Mahmoud*, “are unmistakably normative.” *Id.* at 2353. They celebrate Islam as well as “Muslim contributions to society.” App. 6a. The second video concludes “by providing an email address,” so viewers can obtain more information, and “a website through which viewers can ‘organise a mosque tour, or order an information pack.’” App. 7a.

No matter how well-intentioned they might be, the videos and lessons “carry with them ‘a very real threat of undermining’ the religious beliefs that the parents wish to instill in their children,” because of the content of the videos coupled with “the potentially coercive nature of classroom instruction of this kind.” 145 S.Ct. at 2355. Given “the students’ emulation of teachers as role models and the children’s susceptibility to peer pressure,” the District “exerts great authority and coercive power through” its

curriculum. *Edwards*, 482 U.S. at 584; *Lee*, 505 U.S. at 592. As *Mahmoud* instructs, “[y]oung children, like [petitioner’s son], are often ‘impressionable’ and ‘implicitly trus[t]’ their teachers.” 145 S.Ct. at 2355.

Consider what is apt to happen if a student disagreed with the positive views about Islam that were presented in the videos and PowerPoint slides. The lessons on Islam were part of a larger lesson on “Critical Thinking[:] Making Generalizations with Content.” App. 17a. And the slides provided examples of, what the school (apparently) viewed as, true generalizations about Muslims, teaching students that the media (and possibly the students’ parents) have an improperly negative or dismissive view of Muslims and Islam. Jt. App. at 414 (requiring students to determine whether “There’s rarely a mention of Muslims in the media that doesn’t have to do with violence” and “In day-to-day coverage, Muslims are largely absent: Muslim festivals like Ramadan often come and go with little note” are true generalizations).

Suppose a student said that “The Qur’an preaches violence” or “Many Muslims want to destroy America, the Great Satan”? Based on the positive nature of all the materials presented on Islam, a teacher might (understandably) tell the student that such claims are faulty generalizations and, in so doing, might (unknowingly) challenge the religious beliefs of the student or his parents. The problem is that normative lessons on Islam “advance religious views that may conflict with the private beliefs of the student and his or her family,” *Edwards*, 482 U.S. at 584, thereby violating the principles articulated in *Mahmoud* and *Lee*.

Moreover, in *Mahmoud* it did not matter that the LGBTQ+-inclusive books were required “‘as part of a secular program of education’” or that the lessons on gender identity were “‘integrated into the school curriculum’ as part of ‘an appropriate study of’ children’s literature. App. 17a (quoting *Schempp*, 374 U.S. at 225 and *Stone v. Graham*, 449 U.S. 39, 42 (1980)). The constitutional problem stemmed from the storybooks’ “pos[ing] ‘a very real threat of undermining’ the religious beliefs and practices that the parents wish to instill.” 145 S.Ct. at 2342 (quoting *Yoder*, 406 U.S. at 218). Like the storybooks in *Mahmoud*, the District’s lessons on Islam undermined the religious beliefs and practices that Hilsenrath sought to instill in her son by teaching the tenets of that faith, promoting the virtues of Islam, and requiring students to watch a video that encouraged a non-Muslim to join in Muslim prayer after learning about the Five Pillars of that faith. App. 6a. The videos also extolled the virtues of Islam, discussing how “Muslims created a tradition of unsurpassable splendor, scientific thought and timeless art” and concluding with “May God help us all find the true faith, Islam ... Ameen.” App. 5a; *Mahmoud*, 145 S.Ct. at 2345-46 (“The parent felt that the Board was ‘implying to [children] that their religion, their belief system, and their family tradition is actually wrong.’”).

The Establishment Clause ensures, among other things, “that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family.” *Edwards*, 482 U.S. at 584. This protection stems directly from “the lesson of history that was and is the

inspiration for the Establishment Clause, the lesson that in the hands of government what might begin as a tolerant expression of religious views may end in a policy to indoctrinate and coerce.” *Lee*, 505 U.S. at 591-92. While learning that there are different religious holidays or about “the doctrinal disputes ... that fueled the Protestant Revolution” may not conflict with the private beliefs of parents or students, being taught that Islam is the “true faith” or normalizing prayer in other faith traditions might—and did in this case. Contrary to the majority’s suggestion, class materials that “advance religious views” that conflict with parents’ religious beliefs—even views that a school district may agree with or think should be encouraged (such as the LGBTQ+-inclusive books in *Mahmoud*) can cross the line between permissible class instruction and impermissible infringement on parental rights under the Establishment Clause.

Whereas *Kennedy* completed the shift away from *Lemon*, *Mahmoud* reinvigorated *Yoder*, explaining that it “is an important precedent of this Court, and it cannot be breezily dismissed as a special exception granted to one particular religious minority.” 145 S.Ct. at 2357. As a result, lower courts can no longer ignore that *Yoder* “embodies a principle of general applicability” and that its underlying “principle provides more robust protection for religious liberty than the alarmingly narrow rule that” the Fourth and Third Circuits applied in *Mahmoud* and *Hilsenrath*, respectively. *Id.* In sum, *Mahmoud* confirms that the decisions in *Edwards* and *Lee*, not the decision in *Kennedy*, identify the coercion that counts under the

Establishment Clause when parents or students object to religious content.

As *Hilsenrath* demonstrates, the lower courts did not know to—and therefore did not—heed the lessons of *Mahmoud* and *Yoder*. As a result, they adopted a narrow view of coercion that afforded no protection for a parent’s right to direct the religious upbringing of her child. *Mahmoud* rejected “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.” 145 S.Ct. at 2358. In its place, this Court reaffirmed *Yoder* and *Barnette*, which “embody a very different view of religious liberty, one that comports with the fundamental values of the American people.” *Id.*

This Court, therefore, should grant this petition, vacate the Third Circuit opinion, and remand the case to the Third Circuit, giving the panel the opportunity to determine in the first instance how this Court’s reasoning in *Mahmoud* affects Establishment Clause claims in the public school context.

## CONCLUSION

For the reasons given above, this Court should grant the petition for certiorari or, in the alternative, remand the case for reconsideration in light of *Mahmoud*.

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