NO. 25-952

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JENNIFER VITSAXAKI,

Plaintiff–Appellant,

v.

SKANEATELES CENTRAL SCHOOL DISTRICT, *et al.*,

Defendants–Appellees.

On Appeal from the United States District Court
for the Northern District of New York
Case No. 5:24-CV-00155

BRIEF OF RELIGIOUS FREEDOM INSTITUTE AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT AND URGING REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Religious Freedom Institute does not have a parent company, it is not a publicly traded company, and no publicly held corporation owns 10% or more of its stock.

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INTEREST OF AMICUS CURIAE

Religious Freedom Institute is a nonprofit that supports religious freedom for all faith traditions and is committed to achieving broad acceptance of religious liberty as a fundamental human right. RFI partners in advocacy through its action teams, which work to build coalitions and advance religious freedom as a priority for governments, civil society, religious communities, businesses, and the general public. RFI has a strong interest in this case because weakening the right of parents to direct the upbringing of their children on matters of religion and theology endangers religious freedom.[1]

[1] Amicus certifies that (1) this brief was authored solely by amici and their counsel, and not by counsel for any party, in whole or in part; (2) no party and no counsel for any party contributed money intended to fund preparing or submitting the brief; and (3) apart from amici and their counsel, no other person contributed money intended to fund preparing or submitting the brief, in compliance with Federal Rule of Appellate Procedure 29(a)(4)(E).

SUMMARY OF ARGUMENT

Since the founding of this nation, a fundamental aspect of parental rights has been the ability to guide the moral and spiritual upbringing of one's children, including beliefs about human nature and teachings from holy texts. Such practice of religion within the family unit is, independently, a core right protected by the Free Exercise Clause. And history shows that a government act that usurps parental authority, like secretly indoctrinating a child about gender, sexuality, and how God created her, is an assault on what the Founders and Framers recognized as sacred rights protected by the Constitution that are essential to a free society. It is a double offense when the government's action impedes the parent's particular religious beliefs, as the school district's did here. The school district's policy not only burdens a right "implicit in the concept of ordered liberty," *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (citation omitted)—child rearing—it also assaults religious freedom with oppression, coercion, and discrimination.

U.S. Supreme Court precedent, applied correctly, affirms that the deeply rooted constitutional rights in question are subject to the highest level of scrutiny, not a rational-basis standard. The district court's order dismissing the complaint adopts a watered-down approach that would debilitate tens of millions of American parents of Jewish, Christian, Muslim, and Hindu faith when it comes to their religious right and duty to parent their children according to their religious beliefs. It should be reversed.

ARGUMENT

I. Parental rights are deeply rooted in our nation's history and tradition.

Courts are required to consider our nation's history and tradition when evaluating government policies that abridge unenumerated constitutional rights like parental rights. *See Dep't of State v. Munoz*, 602 U.S. 899, 911 (2024). When the right is deeply rooted, strict scrutiny applies. *Id.* at 910. From before the formation of our country, parents' natural rights were well recognized, and the district court erred in discounting the historical grounding of those rights here.

A. At common law, parental authority was sweeping and assumed.

As the Supreme Court has explained, "[t]he history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). Parental rights emanate from natural law and from "the most universal relation in nature." 1 William Blackstone, *Commentaries*, *434 (1770).

The right that parents possess to make decisions for their children arises from the duties parents owe to their children. As early as the seventeenth century, a common-law system existed in which parents had "a God-given duty to nourish, protect and educate their young, and to have a corresponding right" to "fulfill those duties." Eric A. DeGroff, *Parental Rights and Public School Curricula: Revisiting* Mozert *after 20 Years*, 38 J.L. & Educ. 83, 117 (2009). "The duty of parents . . . is a principle

of natural law; an obligation . . . laid on them not only by nature herself, but by their own proper act, in bringing them into the world." Blackstone, *supra*, at *435.

The law has long protected parental rights—primarily for the child's sake. At common law, parents had "both the responsibility and the authority to guide their children's development and make important decisions on their behalf." DeGroff, *supra*, at 108. These duties fall to parents because "[t]he wants and weaknesses of children render it necessary that some person maintain them, and the voice of nature has pointed out the parent as the most fit and proper person." 2 James Kent, *Commentaries on American Law* 159, 159 (1827). Accordingly, safeguarding parental authority in relation to directing a child's education is essential for personal character and welfare due to the parent's superior vantage point. *See State ex rel. Sheibley v. Sch. Dist. No. 1, Dixon Cnty., et al.*, 48 N.W. 393, 395 (Neb. 1891) (a parent "certainly possesses superior opportunities of knowing the physical and mental capabilities of his child").

Parental authority is also essential for the maintenance of a free society and stable government. "Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding." *Bellotti v. Baird*, 443 U.S. 622, 638-39 (1979). The "strength of a [s]tate" thus depends in large part on the development of children into "a well-ordered, intelligent, and honorable population." James Schouler, *Treatise on the Law of the Domestic Relations*, 316 (1870).

And the common-law protection of parental authority served to "intimately tie[] together the duty and freedom of interdependent human beings, for the advantage of parents, the political community, and, most importantly, children." Joseph K. Griffith II, *"Long Recognized at Common Law":* Meyer *and* Pierce's *Nineteenth- and Twentieth-Century Precedent on Parental Educational Rights and Civic Education,* 53 Persp. on Pol. Sci. 1, 5 (2024).

Ultimately, laws granting parental authority were designed to aid and assist parents in fulfilling their duties to their children. "Because parents' rights flow from their duties, parents do not have the authority to violate their duty to care for, maintain, or educate their children." *Id.* at 3. Thus, the state is justified in interfering "with the ordinary rights of parents, as guardians by nature, or by nurture, in regard to the custody and care of their children" only in exceptional cases in which the "natural presumption . . . that the children will be properly taken care of" is overridden by proof of "gross ill treatment" by the parent. 2 Joseph Story, *Commentaries on Equity Jurisprudence* § 1341 (2d. ed. 1839). Otherwise, the centuries-old understanding is that "parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." *Parham v. J.R.,* 442 U.S. 584, 602 (1979).

B. Looking to the original understanding of the Fourteenth Amendment, parental rights meet the history-and-tradition standard.

American history and tradition presume the parent's right to make decisions about their children's upbringing and education. This presumption stems from a

child's lack of "maturity, experience, and capacity for judgment required," and the "natural bonds of affection [that] lead parents to act in the best interests of their children." *Parham*, 442 U.S. at 602 (1979). And so the Fourteenth Amendment codified these common-law traditions: rights-affirming documents, such as the Bill of Rights, were "not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors." *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897).

The Supreme Court has held that parents have a "fundamental liberty interest" under the Fourteenth Amendment in the "care, custody, and management of their child." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *see also Moore v. City of E. Cleveland*, 431 U.S. 494, 503-04 (1977) ("[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition."); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) ("The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, . . ., the Equal Protection Clause of the Fourteenth Amendment, . . . and the Ninth Amendment.") (citation omitted). And "the 'liberty' specially protected by the Due Process Clause includes [this parental] right . . . to direct the education and upbringing of one's children." *Glucksberg*, 521 U.S. at 720 (1997).

Courts in the mid-nineteenth century (coinciding with the ratification of the Fourteenth Amendment) routinely constrained school authority in favor of parents, recognizing parents' rights to hold their children out of classwork or school activities

conflicting with their values. *See Morrow v. Wood*, 35 Wis. 59, 64 (Wis. 1874) (parent has "the right to direct what studies, included in the prescribed course, his child shall take"); *State v. Ferguson*, 144 N.W. 1039, 1043 (Neb. 1914) (ruling for the school would "destroy both the God-given and constitutional right of a parent to have some voice in the bringing up and education of his children"); *Hardwick v. Bd. of Sch. Trs.*, 205 P. 49, 50 (Cal. Ct. App. 1921) (school's power could not deny parents "their natural as well as their constitutional right to govern or control" their children). These decisions affirm the right of parents to direct the moral upbringing of their children.

C. Cases from more than a century ago reaffirm those principles.

Over a century ago, the Supreme Court articulated a parent's fundamental right to direct the upbringing of their children, in response to trends diminishing parental rights that originated from the establishment of compulsory-education laws. *Meyer* and *Pierce* declared parental rights, as understood by the common-law tradition, to be within the liberty protected by the Fourteenth Amendment. In *Meyer v. Nebraska*, the Court stated the "liberty guaranteed . . . by the Fourteenth Amendment" includes, "[w]ithout doubt," the right "to marry, establish a home and bring up children." 262 U.S. 390, 399 (1923). And in doing so, the Court affirmed the reach of the parent's right "to give his children education suitable to their station in life," a right "long recognized at common law as essential to the orderly pursuit of happiness by free men." *Id.* at 399. Regarding "the liberty of parents and guardians to direct the upbringing and education of children," the Supreme Court in *Pierce v. Society of Sisters*,

explained "[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." 268 U.S. 510, 535 (1925). *Meyer* and *Pierce* reaffirmed the primary authority of parents in matters concerning their children's education under the Fourteenth Amendment.

* * *

The district court disregarded this time-honored right and the constitutional scrutiny it necessitates. If parents have a right to opt-out their child from being taught "geography, book-keeping, grammar, singing lessons, domestic science, and dancing exercises," Joseph K. Griffith II, *Is the Right of Parents to Direct Their Children's Education "Deeply Rooted" in Our "History and Tradition?"*, 28 Tex. Rev. L. & Pol. 795, 806 (2024), then surely, they have a right to *know* that school administrators are privately meeting with their child to encourage a "gender transition" plan.

II. Directing the upbringing of one's children on matters of religion and theology is at the core intersection of parental rights and free exercise.

The Skaneateles Central School District surreptitiously undermined both the parent–child relationship itself and sincere religious beliefs that Mrs. Vitsaxaki, like many American parents, is doctrinally obliged to instill in her child. These distinct but intertwined rights of childrearing and religious liberty are universal and time-honored.

The Framers were deeply concerned with freedom of conscience and religious liberties. By 1789, all states but one had constitutional guarantees for religious

freedom. Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1455 (1990). At the time of the Constitution's framing, free exercise of religion "was universally said to be an unalienable right." *Fulton v. City of Philadelphia*, 593 U.S. 522, 574 (2021) (Alito, J., concurring) (quoting McConnell, *supra*, at 1465). This enumerated sacred right is why, invoking the " 'enduring American tradition,' " the Supreme Court has "long recognized the rights of parents to direct 'the religious upbringing' of their children." *Espinoza v. Montana Dep't of Rev.*, 591 U.S. 464, 486 (2020) (quoting *Yoder*, 406 U.S. at 213-14, 232).

"[D]uring the Founding Era and around the time of the Fourteenth Amendment's ratification, parents' jurisdiction over their children was understood to be prior to and independent of the state's." Melissa Moschella, *Strict Scrutiny as the Appropriate Standard of Review for Parental Rights Cases: A Historical Argument*, 28 Tex. Rev. L. & Pol. 771, 772 (2024). And "historical evidence shows that the founding generation believed parents had absolute authority . . . to direct the proper development of their children." *Brown v. Ent. Merch. Ass'n*, 564 U.S. 786, 822 (2011) (Thomas, J., dissenting). Permeating these practices was the concern for children's moral and spiritual formation—whether viewing children as "innately sinful," as in the Puritan colonial tradition, or "more as blank slates requiring careful and deliberate development," as around the time of the Revolution. *Id.* at 824. Indeed, scholars have noted the "strong historical tradition of parental rights, including for religious reasons." Stephanie H. Barclay, *Replacing* Smith, 133 Yale L.J.F. 436, 427 (2023).

Many faith traditions, historically and today, likewise hold a belief that parents are responsible for the moral upbringing of their children. Issues like sexual identity and the human person are fundamentally theological and moral. *See Masterpiece Cakeshop v. Colo. C.R. Comm'n*, 584 U.S. 617, 626, 633 (2018) (for "a devout Christian," questions of sexuality "implicate[] his deep and sincere religious beliefs"); *303 Creative LLC v. Elenis*, 600 U.S. 570, 582 (2023) (biblical beliefs on sexual orientation are "a sincerely held religious conviction"). While Mrs. Vitsaxaki and her family are faithful Greek Orthodox (Christians), numerous other religions also address these issues in their doctrines and sacred texts too—and adherents instill the teachings in their children.

This history of recognized religious traditions makes the school district's action here a double burden, striking at the core of both child-rearing and religious freedom. On its face the policy offends numerous sects of religious believers and infringes their inviolable rights.

A. Judaism

A crucial tenet for Jewish Americans is the Torah's command that parents are to teach their children in principles of faith: "[T]hese words that I command you today shall be on your heart. You shall teach them diligently to your children . . . ." *Deuteronomy* 6:6-7. A rabbinic commandment called *chinuch* also directs parents to educate their children in following the Torah's precepts. *Jewish Education 101*, Chadbad.org, https://www.chabad.org/library/article_cdo/aid/1230127/jewish/Jewi

sh-Education-101.htm (last visited Apr. 28, 2025).

The Torah is clear that humans were divinely created distinctly male and female. *Genesis* 5:2. Differences between the biological sexes are integral to Jewish religious worship, which separate men and women during synagogue prayer. Aron Moss, *Separation in the Synagogue*, Chadbad.org, https://www.chabad.org/library/article_cdo/aid/160962/jewish/Separation-in-the-Synagogue.htm (last visited May 29, 2025). As one scholar observed, it is "axiomatic" that "a strict division between the genders is constitutive of the world of halakhah." Ronit Irshai, *Cross-Dressing in Jewish Law and the Construction of Gender Identity*, 38 Nashim: J. of Jewish Women's Stud. & Gender Issues 46, 47 (2021). Many observant Jews understand the Torah to prohibit homosexuality and transgenderism. The Torah states that men "shall not lie with a male as with a woman." *Leviticus* 18:22. It also commands that "[a] woman shall not wear a man's garment, nor shall a man put on a woman's cloak." *Deuteronomy* 22:5. Together these mitzvot, dating back several millennia, reflect Judaism's expectation that parents will inculcate the Torah's values in their children, including core faith teachings on sexuality.

B. Christianity

Consistent with their Judaic roots, Orthodox, Catholic, and Protestant traditions adhere to the biblical commands to raise children according to biblical beliefs. *Proverbs* 22:6 ("Train up a child in the way he should go; even when he is old he will not depart from it."); *Ephesians* 6:4 ("[B]ring [your children] up in the discipline

and instruction of the Lord."); *1 Thessalonians* 2:11-12 ("…as a father deals with his own children, encouraging, comforting, and urging [them] to live lives worthy of God"). Christianity teaches mothers and fathers that their children are to be trained in the Lord's ways for important reasons: both because those children are gifts from God, *Psalm* 127:3 ("Children are a heritage from the Lord, offspring a reward from Him."), and because those children, in turn, influence the world for good, *Psalm* 127:4 ("Like arrows in the hand of a warrior, so are the children of one's youth.").

In Catholicism in particular, the family is considered the Ecclesia domestica, the Domestic Church. Catechism of the Catholic Church 413 ¶ 1656 (2d ed. 2019). Through the sacrament of marriage, parents are given the duty to be the "first heralds" for their children's education. *Id.* at 537 ¶ 2225. The parents bear the "first responsibility" of education and their role "is of such importance that it is almost impossible to provide an adequate substitute." *Id.* at 536-37 ¶¶ 2221, 2223. Thus, "the right and the duty of parents to educate their children are primordial and inalienable" and "precedes, accompanies, and enriches other forms of instruction in the faith." *Id.* at 536-37 ¶¶ 2221, 2226.

For tens of millions of Christians in the United States, these imperative generational teachings include doctrine on sexuality and gender. The Vitsaxakis' church, the Orthodox Church of America, teaches that "[o]ur sexuality begins with our creation," and "[t]he Bible says 'Male and female He created them'." *Session 2: "In the Beginning…" Healing our Misconceptions*, (quoting *Genesis* 1:27) Orthodox Church of

America, (Dec. 12, 2023), https://perma.cc/BU2X-BQ87. The Catholic Church's doctrine similarly instructs that "[e]veryone, man and woman, should acknowledge and accept his sexual *identity*" and that "[p]hysical, moral, and spiritual *difference* and *complementarity* are oriented toward the goods of marriage and the flourishing of family life." Catechism, 560 ¶ 2333. And a majority of Protestant denominations—Assemblies of God, Church of God in Christ, Presbyterian Church in America, Anglican Church in North America, Southern Baptist, and more—accept the Bible's teaching that God created humankind male and female, and established marriage as between man and woman.

These sincere beliefs preclude the concept of a child's "gender transition." For example, the largest Protestant denomination in the U.S., the Southern Baptist Convention attests that "God's design was the creation of two distinct and complementary sexes, male and female (*Genesis* 1:27; *Matthew* 19:4; *Mark* 10:6) which designate the fundamental distinction that God has embedded in the very biology of the human race." Southern Baptist Convention, *On Transgender Identity*, (June 1, 2014), https://www.sbc.net/resource-library/resolutions/on-transgender-identity/. Accordingly, they believe that "gender identity is determined by biological sex and not by one's self-perception—a perception which is often influenced by fallen human nature in ways contrary to God's design." *Id.* (citing *Ephesians* 4:17-18). Thus, like millions of Bible-believing Christians, Southern Baptists "oppose efforts to alter one's bodily identity . . . to refashion it to conform with one's perceived gender

identity." *Id.*

C. Islam

The Quran likewise teaches that parents are responsible for educating their children in divine moral law. It commands: "O believers! Protect yourselves and your families from a Fire whose fuel is people and stones . . . ." *Qur'an*, *At-Tahrim* 66:6. Ancient esteemed Muslim scholars have interpreted this passage as "an obligation for the Muslim to teach his near family members . . . what God has made obligatory for them and what God has forbidden for them." Ibn Kathir, Tafsir *At-Tahrim* 66:6-66:8.

These generational teachings extend to Islam's prohibition on acting on same-sex sexual desires and transexual behavior. As devout Muslims recognize, the Quran condemns men who "lust after men instead of women." *Qur'an, Al-A'raf* 7:80-81. Both Shi'ah and Sunni Muslims hold to the Quran's teaching: "O Mankind! We created you all from a male and a female," *id., Al-Hujurat* 49:13—"all human beings, whether male or female." *Id., Surah An-Nisa* 4:1. And the Hadith—collected revelations of the prophet Muhammad—relay that "[t]he Messenger of God cursed the women who imitate men and the men who imitate women," Jami` at-Tirmidhi, 43 ch. 34, and "[t]he Prophet cursed effeminate men (those men who … assume the manners of women) and those women who assume the manners of men." Sahih al-Bukhari, 77 ch. 62. Sharia law does not recognize sex change as possible. *Male, Female, or Other: Ruling of a Transgender Post Sex Change Procedures*, Am. Fiqh Acad., https://cdn.prod.website-files.com/67b8776cd35acd677425668e/67bf3ffd639d244c

ac1eb6a5_AFA_Resolution_on_Sex_Change_Procedures.pdf.

Collectively, Islamic teachings give Muslims a duty to impart their religions moral teachings, such as gender binary, to their children.

D. Hinduism

For Hindus, *Dharma* is the natural universal law of religious or moral duties. Child-rearing is a parent's highest righteous duty: "Parents are indeed the first guru[, and] [t]he child's deepest impressions come from what the parents do and say." Satguru Bodhinatha Veylanswami, *Raising Children as Good Hindus*, Hinduism Today (Apr. 1, 2005), https://www.hinduismtoday.com/magazine/april-may-june-2005/2005-04-raising-children-as-good-hindus/. In Hinduism, parents have the preeminent right and obligation of parents to impart education to their children and help them understand their sacred duties in life. *Brihadaranyaka Upanishad*, 1.5.17, https://vivekavani.com/bru1c5v17/.

Ancient Hindu legal treatises, *Dharmasastra*, teach that marriage is divinely sanctioned—and heterosexual. *Dharma Sastra*, vol. 6 Manu Sanskrit, ch. III, 80-93, https://archive.org/details/dharmasastra-with-english-translation-mn-dutt-6-vols-20-smritis/Dharma%20Sastra%20Vol%206%20Manu%20Sanskrit/page/80/mode/2up. It instructs that righteous behavior can only occur when sexual behavior is within heterosexual marriage, and when males and females align with their distinct roles and identities. *Gender and Sexuality*, Patheos, https://www.patheos.com/library/hinduism/%20ethics-morality-community/gender-and-sexuality (last visited May 29, 2025). To

allow one's child to be taught gender fluidity or practice transgenderism would violate *Dharma*.

* * *

Mrs. Vitsaxaki's religious beliefs about sexuality and gender identity—and her religious duty to instill those tenets in her daughter—are common to millions of American parents of varied faith traditions. But even if they weren't, Mrs. Vitsaxaki is entitled to strict scrutiny for the deeply rooted constitutional rights that she plausibly alleged the school district violated when it manipulated and concealed her child's thoughts and personal decisions about sexuality.

CONCLUSION

The district court erred in applying rational-basis review to the school district's violation of Mrs. Vitsaxaki's fundamental right of religious freedom in parenting her child—and then concluding, at the motion-to-dismiss stage, that, functionally *on the merits*, the policy satisfies rational basis. The Court should reverse.

Dated: June 12, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limit of Fed. R. App. P. 29(a)(5) and Local Rule 29.1(c) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this brief contains 3,744 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. 32(a)(6) because this brief was prepared in a proportionally spaced typeface using Microsoft Word 2021 in 14-point Garamond font.

Dated: June 12, 2025

/s/ Denise M. Harle
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I hereby certify that on June 12, 2025, I electronically filed the foregoing brief with the United States Court of Appeals for the Second Circuit using the CM/ECF system. I certify that counsel for all parties in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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