

No. 23-1890

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

TAMER MAHMOUD, ET AL.,
PLAINTIFFS-APPELLANTS,

V.

MONIFA B. MCKNIGHT, *IN HER OFFICIAL
CAPACITY AS SUPERINTENDENT OF THE MONTGOMERY
COUNTY BOARD OF EDUCATION, ET AL.*,
DEFENDANTS-APPELLEES.

On Appeal from the United States District Court
for the District of Maryland

Case No. 8:23-CV-01380-DLB

**BRIEF OF *AMICUS CURIAE*
ETHICS AND PUBLIC POLICY CENTER
SUPPORTING PLAINTIFFS-APPELLANTS' MOTION
FOR INJUNCTION PENDING APPEAL**

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STATEMENT OF INTEREST OF *AMICUS CURIAE*¹

The Ethics and Public Policy Center (“EPPC”) is a nonprofit research institution dedicated to applying the Judeo-Christian moral tradition to critical issues of public policy, law, culture, and politics. EPPC has a strong interest in promoting the Judeo-Christian vision of the human person, protecting religious liberty, and responding to the challenges of gender ideology.

Gender ideology has permeated culture with stunning speed, influencing medicine, business, media, entertainment, government, and education. Because gender ideology is sowing confusion and undermining personal well-being, its rise has created an urgent need for clarity, education, and compassionate guidance.

To meet this need, EPPC launched the Person & Identity Project, led by Director Mary Rice Hasson, which “assists the Catholic Church in promoting the Catholic vision of the human person and responding to the

¹ All parties received timely notice to the filing of this brief. Plaintiffs-Appellants have given their consent; Defendants-Appellees have refused their consent. No party’s counsel authored any part of this brief and no person other than amicus made a monetary contribution to fund its preparation or submission.

challenges of gender ideology.”² Many other EPPC Fellows have also written on gender ideology, including President Ryan Anderson.³

This brief was written by Mary Hasson, JD, the Kate O’Beirne Senior Fellow at EPPC and the Director of EPPC’s Person and Identity Project, and Eric Kniffin, JD, a Fellow with EPPC’s HHS Accountability Project.

² EPPC, Person & Identity Project, <https://personandidentity.com/>.

³ Relevant publications from EPPC Fellows include:

- Ryan T. Anderson, *WHEN HARRY BECAME SALLY* (Encounter Books 2018);
- Andrew T. Walker, *GOD AND THE TRANSGENDER DEBATE* (Good Book 2017);
- Carl R. Trueman, *STRANGE NEW WORLD: HOW THINKERS AND ACTIVISTS REDEFINED IDENTITY AND SPARKED THE SEXUAL REVOLUTION* (Crossway 2022);
- Theresa Farnan, *Our world has lost the Catholic understanding of human anthropology*, *Our Sunday Visitor*, June 2, 2023, <https://www.oursundayvisitor.com/our-world-has-lost-the-catholic-understanding-of-human-anthropology>;
- Rachel N. Morrison, *Gender Identity Policy Under the Biden Administration*, 23 *FED. SOC. REV.* 85 (2022), available at SSRN: <https://ssrn.com/abstract=4104566>;
- Amicus briefs on gender identity authored by EPPC fellows are available at EPPC, *Amicus Briefs: “Gender Transition” Interventions*, <https://eppc.org/amicus-briefs/#16-%E2%80%9Cgender-transition%E2%80%9D-interventions->.

INTRODUCTION AND SUMMARY OF ARGUMENT

Central to the decision below is the district court's inference that the Plaintiffs-Appellants ("Parents") are overstating their case. The court's opinion *understates* the messages Defendants-Appellees' ("School Board" or "Board") curriculum teaches as moral and true, and thus *underestimates* how the Board's refusal to permit an opt-out interferes with Parents' religious exercise and constitutional rights.

Though Amicus is confident that the Board's actions substantially burden each of the Parents' constitutional rights, this brief draws on its Person & Identity Project and focuses on the conflict between the Board's curriculum and Catholic teaching.

Part I shows that the Board's curriculum does more than just "focus on tolerance, empathy, and respect for different views." Part II demonstrates that the Board's curriculum fits squarely within "gender ideology," a radical worldview that has moved from the academy to the broader culture. Part III shows that gender ideology is fundamentally incompatible with Christian anthropology and Catholic teaching.

ARGUMENT

I. The Board’s curriculum does more than “encourage respect” for others: it teaches radical claims as true and good.

A common theme in the district court’s opinion below is that *the School Board’s sexuality and gender curriculum really isn’t all that bad*. As the court sees it, the Board is merely “striv[ing] to ‘provide a culturally responsive . . . curriculum that promotes equity, respect, and civility’ and prepare[] students to ‘[c]onfront and eliminate stereotypes related to individuals’ actual or perceived characteristics,’ including gender identity and sexual orientation.” *Mahmoud v. McKnight*, No. 23-CV-1380-DLB, 2023 WL 5487218, at *1 (D. Md. Aug. 24, 2023) (quoting ECF 43 ¶6). Its curriculum merely “creates and normalizes a fully inclusive environment for all students,” helping them “empathize, connect, and collaborate with diverse peers and encourag[ing] respect for all.” *Id.* (quoting ECF 43 ¶22). When summarizing “How Teachers Will Use the Storybooks,” the court says, “Generally, the [Board’s] suggested responses [to student questions] focus on tolerance, empathy, and respect for different views.” *Id.* at 7.

But the storybooks themselves, the Board’s instructions to teachers, and Board members’ comments tell a different story.

*My Rainbow*⁴ tells the story of Trinity, an elementary school-aged autistic boy who identifies as a transgender girl. The book states that “Trinity’s gender was part of what made her a masterpiece, just like her autism and her Black skin.” The family affirms Trinity’s transgender identity by using female pronouns, letting Trinity wear dresses, and making Trinity a rainbow-colored wig.

*Born Ready: The True Story of a Boy Named Penelope*⁵ is about a five-year-old girl who declares, “inside I’m a boy.” Penelope is angry “[b]ecause everybody thinks I’m a girl.” Penelope asks her mom, “Help me be a boy.” Penelope’s mom responds, “We will make a plan to tell everyone we love what we know. . . . You are a boy.”

Penelope’s “Big Brother” objects to Mom’s announcement: “This doesn’t make sense. You can’t become a boy. You have to be born one.” But Mom corrects Big Brother: “Not everything *needs* to make sense. *This is about love.*”

⁴ Book reproduced at ECF 1-8, available at <https://becketnewsite.s3.amazonaws.com/20230524194648/2023-05-24-1-08-Cmplt-Ex-G.pdf>.

⁵ Book reproduced at ECF 1-11, available at <https://becketnewsite.s3.amazonaws.com/20230524194640/2023-05-24-1-10-Cmplt-Ex-I.pdf>.

The Board’s “Sample Student Call-Ins” document prescribes how teachers should respond to a student, like Penelope’s “Big Brother,” who says, “You can’t become a boy. You have to be born one.” Teachers should say this is a “hurtful” observation that “shouldn’t” be made in class.⁶ “Our bodies do not decide our gender.”⁷ “We cannot know someone’s gender by looking at them.”⁸

Teaching that a biological male can “be” a female and that subjective beliefs or wishes should take precedence over biological reality is not merely advancing “diversity” and “inclusion”; it is teaching that “gender ideology” is true and that refusing to acquiesce is hurtful and wrong.

II. The challenged curriculum aligns with “gender ideology.”

The Board’s curriculum reflects “gender ideology,” a set of radical ideas about sexuality, gender, and the human person. Gender ideology teaches that a person’s identity is self-determined based on feelings or self-perception, regardless of the person’s sex (male or female).

⁶ Montgomery Cty. School Bd., *Sample Student Call-Ins* at 2, ECF 55-3, available at <https://becketnewsite.s3.amazonaws.com/20230817172657/2023-08-16-55-3-Ex.-3.pdf>.

⁷ *Id.* at 3.

⁸ *Id.*

Gender ideology developed over the latter half of the twentieth century. In 1949, French existentialist philosopher Simone de Beauvoir wrote, “One is not born, but rather becomes, woman,” foreshadowing second-wave feminism and the coming gender revolution.⁹ Psychologist John Money, who worked with transsexuals in the 1950s and 60s, was the first to use “gender” to denote behavioral (as opposed to biological) differences between males and females.¹⁰ Money “believed that if you were a biological male and believed yourself to be a female that it was an *idée fixe*—it was so important to you as a person that it could not be contradicted.”¹¹

The Board’s curriculum reflects gender ideology’s advance from academic literature to school classrooms.¹² The Board’s “LGBTQ+

⁹ Simone de Beauvoir, *THE SECOND SEX* 283 (Constance Border and Sheila Malovany-Chevallier, trans., Vintage 2011).

¹⁰ Terry Goldie, *THE MAN WHO INVENTED GENDER: ENGAGING THE IDEAS OF JOHN MONEY* (UBC Press 2014).

¹¹ Rachel Giese and Chris Wodskou, *The Story of John Money: Controversial Sexologist Grappled with the Concept of Gender*, CBC NEWS, July 5, 2015, <https://www.cbc.ca/news/canada/the-story-of-john-money-controversial-sexologist-grappled-with-the-concept-of-gender-1.3137670>.

¹² G.K. Marinov, *In Humans, Sex Is Binary and Immutable*, 33 ACADEMIC QUESTIONS 279 (2020), <https://www.nas.org/academic-questions/33/2/in-humans-sex-is-binary-and-immutable>.

Information” webpage¹³ links to a “Gender Inclusive Schools Toolkit” produced by Gender Spectrum, an organization that promotes “gender-inclusive puberty education.” Gender Spectrum teaches sex ed not by telling kids about males and females but by referring to “bodies with a penis and testicles or bodies with a vulva and ovaries.”¹⁴

No longer content with merely persuading others, some gender ideologues now claim that the biologically-based definition of sex is *not only incorrect but oppressive*. The online “Trans Language Primer” defines “sex” as:

A binary system (wo/man) set by the medical establishment to reinforce white supremacy and gender oppression, usually based on genitals and sometimes chromosomes.¹⁵

The Board matches the radical “Trans Language Primer” step-for-step: its “Sample Student Call-Ins” states that students “shouldn’t” be “hurtful” by saying that sex is biologically determined;¹⁶ one Board

¹³ Montgomery County Public School, LGBTQ+ Information (For Students and Staff), <https://www2.montgomeryschoolsmd.org/LGBTQ/>.

¹⁴ Gender Spectrum, *Principles of Gender-Inclusive Puberty and Health Education* 12 (2019), available at <https://bit.ly/45NP9i2>.

¹⁵ The Trans Language Primer, <https://web.archive.org/web/20210304155343/https://www.translanguagprimer.org/primer/#sex>.

¹⁶ *Supra* at 7 n.6.

Member likened the Parents to “white supremacists” and “xenophobes.”

Mahmoud, 2023 WL 5487218 at *12.

Gender ideology is a radical construct with profound implications for society and religious liberty, as David Crawford and Michael Hanby, professors at the Pontifical John Paul II Institute for Studies on Marriage & Family at the Catholic University of America, have noted:

The unstated premise [of gender ideology] is that the relationship between our embodiment as male and female and our personal subjectivity (as expressed in “identity”) is essentially arbitrary. . . . These assumptions further imply that . . . to be a woman is a mental state, that we really are Cartesian “ghosts in the machine.” . . .

These are metaphysical judgments . . . highly questionable philosophical propositions with [profound] implications for society [because] [i]t is impossible to redefine human nature for only one person. When a fourth-grade girl is required to affirm in thought, word and deed that a boy in her class is now a girl, this does not simply affirm the classmate’s right to self-expression. It calls into question the meaning of “boy” and “girl” as such. . . . If each of us is defined by a “gender identity” only arbitrarily related to our male and female bodies . . . then there is no longer any such thing as man or woman. . . .

What we are dealing with is nothing less than a war on reality itself. . . . There is no totalitarianism so total as that which claims authority over the meaning of nature.¹⁷

¹⁷ David Crawford and Michael Hanby, *The Abolition of Man and Woman*, WSJ, June 24, 2020, <https://www.wsj.com/articles/the-abolition-of-man-and-woman-11593017500>.

In sum, gender ideology “has become a government-promoted anthropology, an alternative belief system that proposes its own (false) ‘truth’ about the human person.”¹⁸

III. Gender ideology is radically at odds with Christian teaching on the human person.

On five separate occasions, the district court credits the Board’s claim that its curriculum “make[s] sure every student sees themselves [sic] in the curriculum.”¹⁹ Yet the Board’s curriculum excludes and maligns the Parents and their students, who believe what their religious traditions teaches about the nature of the human person. According to the Board, allowing an opt-out “is just telling that kid, ‘here’s another reason to hate another person.’” *Mahmoud*, 2023 WL 5487218 at *10. Parents with religious objections to gender ideology deserve to be treated like “white supremacists” and “xenophobes.” *Id.* at *12.

Through these shocking comments, the Board tacitly concedes that—at least on this point—it and the Parents see eye-to-eye: its curriculum is

¹⁸ Mary Rice Hasson, *Erasing Females in Language and Law*, 11 J. OF CHRISTIAN LEGAL THOUGHT 44, 46 (Oct. 2011), available at <https://eppc.org/publication/erasing-females-in-language-and-law/>.

¹⁹ *Mahmoud*, 2023 WL 5487218 at *9; see also *id.* at *10 (twice) and *11 (twice).

fundamentally incompatible with their religious convictions about human nature and human flourishing. As one Christian leader explained:

[O]ne need not agree with Christians or Muslims or Orthodox Jews or others on marriage and sexuality to see that such views are not incidental to their belief systems. They did not emerge out of a political debate, and they won't be undone by political power. . . . One cannot simply uproot them and expect these people to adjust their consciences to fit the new cultural expectation.²⁰

The remainder of this section, however, will draw upon the EPPC's Person & Identity Project to explain in detail why the Board's refusal to allow Catholic Parents to opt-out substantially burdens their religious exercise and parental rights.

Affirming the importance and goodness of the human body has always been central to the Christian faith. In the second century A.D., bishops condemned "Gnosticism," a philosophy that taught people to seek happiness and salvation through transcending their material bodies.²¹ In

²⁰ Russell Moore, *Just How Secular Should America Be?*, N.Y. TIMES, June 18, 2020, <https://www.nytimes.com/2020/06/18/opinion/supreme-court-religious-freedom.html>.

²¹ See Jarislav Pelikan, *THE CHRISTIAN TRADITION, VOL. 1: THE EMERGENCE OF THE CATHOLIC TRADITION* (100-600) 81-97 (Chicago Press 1975).

response, the early Christian Church affirmed that Jesus Christ was both truly God and truly man, and that implicit in the Incarnation is the good news that our bodies are *good* and an *essential* part of what it means to be a human person.²²

This teaching on the dignity of the human person remains foundational to Christian anthropology.²³ Christianity embraces each person's sexual identity, male or female, as a gift from God: "Male and female he created them."²⁴ "Equal in dignity" but complementary, Christianity teaches that man and woman exist in a "reciprocal relationship," a gift to one another, "entrusted [with] not only the work of procreation and family life, but the creation of history itself."²⁵

Throughout its history, the Catholic Church has refined its doctrine to address the challenges that each age brings. Today, the Church sees the

²² See John B. Buescher, *Gnosticism vs. The Incarnation: The Ancient Battle Renewed*, Cath. World Report, June 8, 2015, <https://www.catholicworldreport.com/2015/06/08/gnosticism-vs-the-incarnation-the-ancient-battle-renewed/>.

²³ See Pontifical Council of Justice and Peace, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH ¶ 144 (Burns & Oates 2006) ("*Compendium*").

²⁴ *Genesis* 5:2.

²⁵ *Compendium* ¶¶ 146, 147.

. . . world “is undergoing a profound anthropological crisis, a crisis of meaning.”²⁶ As such, Pope Francis, the United States Catholic Conference of Bishops (USCCB), and dozens of American bishops have expounded on the Christian view of the human person and why it is incompatible with gender ideology—the belief system endorsed and promoted by the Board.

Pope Francis calls gender ideology “one of the most dangerous ideological colonizations” today.²⁷ He sees this “anthropology of gender” as “extremely dangerous because it eliminates differences, and that erases humanity, the richness of humanity, both personal, cultural, and social.”²⁸ Attempts to erase biological differences are part of “a Gnostic

²⁶ Junno Arocho Esteves, *World in ‘profound anthropological crisis,’ pope says*, Catholic News Service, May 19, 2022, <https://cruxnow.com/vatican/2022/05/world-in-profound-anthropological-crisis-pope-says>.

²⁷ Courtney Mares, *Pope Francis: Gender ideology is ‘one of the most dangerous ideological colonizations’ today*, Catholic News Agency, March 11, 2023, <https://www.catholicnewsagency.com/news/253845/pope-francis-gender-ideology-is-one-of-the-most-dangerous-ideological-colonizations-today>.

²⁸ *Id.*

heresy.”²⁹ Pope Francis’ encyclical letter *Laudato Si* compares gender ideology with human failures to respect the environment, the natural order.³⁰

The USCCB has likewise warned Christians that gender ideology conflicts with God’s design for creation. In 2017, the USCCB led an interreligious coalition that published “Created Male and Female: An Open Letter from Religious Leaders.”³¹ In 2019, the USCCB released a collection of “Select Teaching Resources” from popes and other authorities to help educators and pastors deal with gender ideology.³² Finally, in March 2023, the USCCB’s Committee on Doctrine published a document “On the Moral Limits to Technological Manipulation of the

²⁹ *Pope Francis: ‘I prayed for peace in Fatima without publicity,’* Vatican News, Aug. 2023, <https://www.vaticannews.va/en/pope/news/2023-08/pope-francis-portugal-wyd-inflight-press-conference.html>.

³⁰ Pope Francis, “*Laudato Si*” ¶155 (Holy See, May 24, 2015), https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html.

³¹ *Created Male and Female: An Open Letter from Religious Leaders*, Dec. 15, 2017, <https://www.usccb.org/topics/promotion-defense-marriage/created-male-and-female>.

³² USCCB, “*Gender theory*”/“*Gender ideology*” – *Select Teaching Resources*, https://www.usccb.org/resources/Gender-Ideology-Select-Teaching-Resources_0.pdf

Human Body,” which addresses so-called “gender affirmation” surgeries.³³

Individual Catholic Bishops have developed their own pastoral documents and policies related to gender ideology. The Person & Identity Project’s website hosts statements from at least 26 U.S. dioceses alongside related statements from the Vatican, the USCCB, and bishops around the world.³⁴

These materials show that the gender ideology advanced by the School Board is radically at odds with Christian anthropology. That is why the Board’s refusal to let Parents opt out substantially burdens their religious exercise and constitutional rights.

CONCLUSION

The Court should enter an injunction pending an appeal.

³³ USCCB, Committee on Doctrine, *Doctrinal Note on the Moral Limits to Technological Manipulation of the Human Body*, March 20, 2023, <https://www.usccb.org/resources/Doctrinal%20Note%202023-03-20.pdf> .

³⁴ EPPC, Person & Identity Project, *Catholic Teaching, Church Documents, and Diocesan Policies*, <https://personandidentity.com/resources/church-documents/>.

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Microsoft Word Version 2304 using a proportionally spaced typeface, 14-point Century Schoolbook.

This document complies with the type-volume limit of Fed. R. App. P. 29(a)(5) (suggesting a limit of “one-half the maximum length authorized by these rules for a party’s principal brief”) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this brief contains 2,589 words.

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CERTIFICATE OF SERVICE

I, Eric Kniffin, an attorney, certify that the foregoing Brief was served electronically on all parties via CM/ECF.

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