No. 23-1890

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

TAMER MAHMOUD; ENAS BARAKAT; JEFF ROMAN; SVITLANA ROMAN; CHRIS PERSAK, IN THEIR INDIVIDUAL CAPACITIES AND EX REL. THEIR MINOR CHILDREN; MELISSA PERSAK, IN THEIR INDIVIDUAL CAPACITIES AND EX REL. THEIR MINOR CHILDREN; KIDS FIRST, AN UNINCORPORATED ASSOCIATION,

Plaintiffs-Appellants,

v.

MONIFA B. MCKNIGHT; SHEBRA EVANS; LYNNE HARRIS; GRACE RIVERA-OVEN; KARLA SILVESTRE; REBECCA SMONDROWSKI; BRENDA WOLFF; JULIE YANG; MONTGOMERY COUNTY BOARD OF EDUCATION,

Defendants-Appellees.

Appeal from the United States District Court for the
District of Maryland, Southern Division
Case No. 8:23-cv-1380 – Judge Deborah L. Boardman

JOINT APPENDIX
VOLUME 1 OF 2

Alan E. Schoenfeld
Emily Barnet
Cassandra A. Mitchell
Wilmer Cutler Pickering
Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800
alan.schoenfeld@wilmerhale.com
Counsel for Defendants-Appellees

Eric S. Baxter
William J. Haun
Michael J. O'Brien*
The Becket Fund for
Religious Liberty
1919 Pennsylvania Ave. N.W.
Ste. 400
Washington, DC 20006
(202) 955-0095
ebaxter@becketlaw.org
Counsel for Plaintiffs-Appellants

Counsel continued on inside cover

Bruce M. Berman
Jeremy W. Brinster
Wilmer Cutler Pickering
Hale and Dorr LLP
2100 Pennsylvania Avenue NW
Washington, DC 20037

*Not a member of the DC Bar; admitted in Louisiana. Practice limited to cases in federal court.

Counsel for Defendants-Appellees

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APPEAL,STAYED

U.S. District Court
District of Maryland (Greenbelt)
CIVIL DOCKET FOR CASE #: 8:23−cv−01380−DLB

Mahmoud et al v. McKnight et al
Assigned to: Judge Deborah L. Boardman
Case in other court: USCA, 23−01890
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 05/23/2023
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Date Filed	#	Docket Text
05/24/2023	1	COMPLAINT against All Defendants (Filing fee $ 402 receipt number AMDDC−10616964.), filed by M. P., Enas Barakat, Tamer Mahmoud, Melissa Persak, Jeff Roman, E. P., Svitlana Roman, Chris Persak. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit J, # 10 Exhibit H, # 11 Exhibit I, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Summons)(Mehigan, James) Modified on 6/9/2023 (bas, Deputy Clerk). (Entered: 05/24/2023)
05/24/2023	2	UNREDACTED DOCUMENT (Attachments: # 1 Civil Cover Sheet)(Mehigan, James) (Entered: 05/24/2023)
05/24/2023	3	MOTION to Omit Home Addresses from Complaint by Enas Barakat, Tamer Mahmoud, E. P., M. P., Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order)(Mehigan, James) (Entered: 05/24/2023)
05/24/2023	4	MOTION to Appear Pro Hac Vice for William J. Haun (Filing fee $100, receipt number AMDDC−10617237.) by Enas Barakat, Tamer Mahmoud, E. P., M. P., Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman(Mehigan, James) (Entered: 05/24/2023)
05/24/2023	5	MOTION to Appear Pro Hac Vice for Brandon L. Winchel (Filing fee $100, receipt number AMDDC−10617309.) by Enas Barakat, Tamer Mahmoud, E. P., M. P., Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman(Mehigan, James) (Entered: 05/24/2023)
05/24/2023	6	MOTION to Appear Pro Hac Vice for Michael J. O'Brien (Filing fee $100, receipt number AMDDC−10617334.) by Enas Barakat, Tamer Mahmoud, E. P., M. P., Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman(Mehigan, James) (Entered: 05/24/2023)
05/24/2023	7	QC NOTICE: 4 Motion to Appear Pro Hac Vice filed by Melissa Persak, Chris Persak, Enas Barakat, Tamer Mahmoud, Jeff Roman, Svitlana Roman needs to be modified. See attachment for details and corrective actions needed regarding the signature(s) on the motion. (mh4s, Deputy Clerk) (Entered: 05/24/2023)
05/24/2023	8	QC NOTICE: 5 Motion to Appear Pro Hac Vice filed by Melissa Persak, Chris Persak, Enas Barakat, Tamer Mahmoud, Jeff Roman, Svitlana Roman needs to be modified. See attachment for details and corrective actions needed regarding the signature(s) on the motion. (mh4s, Deputy Clerk) (Entered: 05/24/2023)
05/24/2023	9	QC NOTICE: 6 Motion to Appear Pro Hac Vice filed by Melissa Persak, Chris Persak, Enas Barakat, Tamer Mahmoud, Jeff Roman, Svitlana Roman needs to be modified. See attachment for details and corrective actions needed regarding the signature(s) on the motion. (mh4s, Deputy Clerk) (Entered: 05/24/2023)
05/24/2023	10	NOTICE of Case Assignment. This case has been assigned to Magistrate Judge Gina L. Simms. Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman or counsel for Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman are required to review and comply with the Magistrate Judge Pilot Project Procedures which can be downloaded here. Pursuant to Standing Order 2019−07, which can be downloaded here, counsel has 14 days from the date of this notice to file their consent, or decline to consent to proceed before a

		U.S. Magistrate Judge which can be downloaded here. To file your consent, go to *Civil > Other Filings > Other Documents > 25 Pct Mag − Consent to Proceed Before a Magistrate Judge*. To file your declination, go to *Civil > Other Filings > Other Documents > 25 Pct Mag − Decline to Proceed Before a Magistrate Judge*. Failure to file a consent or declination will result in issuance of an Order to Show Cause. Please review the case management order that has been issued in this case. Magistrate Election Form due by 6/7/2023. (bas, Deputy Clerk) (Entered: 05/25/2023)
05/24/2023	11	Case Management Order. Signed by Magistrate Judge Gina L Simms on 5/24/2023. (bas, Deputy Clerk) (Entered: 05/25/2023)
05/25/2023		Case Reassigned to Magistrate Judge Gina L Simms. Magistrate Judge Timothy J. Sullivan no longer assigned to the case. (kos, Deputy Clerk) (Entered: 05/25/2023)
05/25/2023	12	Summons Issued 21 days as to Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang.(bas, Deputy Clerk) (Entered: 05/25/2023)
05/26/2023		Case Reassigned to Judge Deborah L. Boardman. Magistrate Judge Gina L Simms no longer assigned to the case. (chs, Deputy Clerk) (Entered: 05/26/2023)
05/31/2023	14	CORRECTED MOTION to Appear Pro Hac Vice for William J. Haun by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman. The fee has already been paid.(Mehigan, James) (Entered: 05/31/2023)
05/31/2023	15	CORRECTED MOTION to Appear Pro Hac Vice for Michael J. O'Brien by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman. The fee has already been paid.(Mehigan, James) (Entered: 05/31/2023)
05/31/2023	16	CORRECTED MOTION to Appear Pro Hac Vice for Brandon L. Winchel by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman. The fee has already been paid.(Mehigan, James) (Entered: 05/31/2023)
05/31/2023	17	QC NOTICE: 14 Corrected Motion to Appear Pro Hac Vice filed by Melissa Persak, Chris Persak, Enas Barakat, Tamer Mahmoud, Jeff Roman, Svitlana Roman needs to be modified. See attachment for details and corrective actions needed regarding missing or incomplete information. (mh4s, Deputy Clerk) (Entered: 05/31/2023)
05/31/2023	18	PAPERLESS ORDER granting 15 Corrected Motion to Appear Pro Hac Vice on behalf of Michael J. O'Brien. Directing attorney Michael J. O'Brien to register for pro hac vice filing in the District of Maryland through PACER at https://pacer.uscourts.gov/ if attorney has not already done so. The *Pro Hac Vice* option must be selected when registering. Signed by Clerk on 5/31/2023. (mh4s, Deputy Clerk) (Entered: 05/31/2023)
05/31/2023	19	PAPERLESS ORDER granting 16 Corrected Motion to Appear Pro Hac Vice on behalf of Brandon L. Winchel. Directing attorney Brandon L. Winchel to register for pro hac vice filing in the District of Maryland through PACER at https://pacer.uscourts.gov/ if attorney has not already done so. The *Pro Hac Vice* option must be selected when registering. Signed by Clerk on 5/31/2023. (mh4s, Deputy Clerk) (Entered: 05/31/2023)
05/31/2023	20	CORRECTED MOTION to Appear Pro Hac Vice for William J. Haun by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman. The fee has already been paid.(Mehigan, James) (Entered: 05/31/2023)
05/31/2023	21	PAPERLESS ORDER granting 20 Corrected Motion to Appear Pro Hac Vice on behalf of William J. Haun. Directing attorney William J. Haun to register for pro hac vice filing in the District of Maryland through PACER at https://pacer.uscourts.gov/ if attorney has not already done so. The *Pro Hac Vice* option must be selected when registering. Signed by Clerk on 5/31/2023. (mh4s, Deputy Clerk) (Entered: 05/31/2023)
06/06/2023	22	WAIVER OF SERVICE Returned Executed by Melissa Persak, Jeff Roman, Enas Barakat, Tamer Mahmoud, Svitlana Roman, Chris Persak. All Defendants.(Haun, William) (Entered: 06/06/2023)

06/12/2023	23	MOTION for Preliminary Injunction by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman (Attachments: # 1 Memorandum in Support, # 2 Attachment Declaration (Mahmoud & Barakat), # 3 Attachment Declaration (Roman), # 4 Attachment Declaration (Persak), # 5 Attachment Declaration (Baxter), # 6 Text of Proposed Order)(Haun, William) (Entered: 06/12/2023)
06/16/2023	24	NOTICE of Appearance by Thomas Bredar on behalf of Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang (Bredar, Thomas) (Entered: 06/16/2023)
06/16/2023	25	MOTION to Appear Pro Hac Vice for Bruce M. Berman (Filing fee $100, receipt number AMDDC−10658939.) by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang(Bredar, Thomas) (Entered: 06/16/2023)
06/16/2023	26	MOTION to Appear Pro Hac Vice for Alan E. Schoenfeld (Filing fee $100, receipt number AMDDC−10658947.) by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang(Bredar, Thomas) (Entered: 06/16/2023)
06/16/2023	27	Local Rule 103.3 Disclosure Statement by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang (Bredar, Thomas) (Entered: 06/16/2023)
06/16/2023	28	Joint MOTION for Extension of Time *Regarding Briefing Schedule for Preliminary Injunction Motion* by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang(Bredar, Thomas) (Entered: 06/16/2023)
06/16/2023	29	PAPERLESS ORDER granting 28 Motion for Extension of Time. Defendants shall respond to Plaintiffs' Motion for Preliminary Injunction 23 by July 12, 2023, and Plaintiffs shall file a reply in support of their Motion for Preliminary Injunction by July 26, 2023. Signed by Judge Deborah L. Boardman on 6/16/2023. (lmys, Chambers) (Entered: 06/16/2023)
06/20/2023	30	PAPERLESS ORDER scheduling a preliminary injunction hearing regarding ECF 23 for August 9, 2023 at 10 a.m. in Courtroom 4A. Signed by Judge Deborah L. Boardman on 6/20/2023. (lmys, Chambers) (Entered: 06/20/2023)
06/21/2023	31	PAPERLESS ORDER granting 25 Motion to Appear Pro Hac Vice on behalf of Bruce M Berman. Directing attorney Bruce M Berman to register for pro hac vice filing in the District of Maryland through PACER at https://pacer.uscourts.gov/ if attorney has not already done so. The *Pro Hac Vice* option must be selected when registering. Signed by Clerk on 6/21/2023. (mh4s, Deputy Clerk) (Entered: 06/21/2023)
06/22/2023	32	PAPERLESS ORDER granting 26 Motion to Appear Pro Hac Vice on behalf of Alan E Schoenfeld. Directing attorney Alan E Schoenfeld to register for pro hac vice filing in the District of Maryland through PACER at https://pacer.uscourts.gov/ if attorney has not already done so. The *Pro Hac Vice* option must be selected when registering. Signed by Clerk on 6/22/2023. (mh4s, Deputy Clerk) (Entered: 06/22/2023)
06/30/2023	33	NOTICE of Appearance by Eric S Baxter on behalf of All Plaintiffs (Baxter, Eric) (Entered: 06/30/2023)
06/30/2023	34	MOTION to Withdraw as Attorney by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman (Attachments: # 1 Text of Proposed Order Proposed Order)(Mehigan, James) (Entered: 06/30/2023)
07/06/2023	35	ORDER Granting 34 Motion to Withdraw as Attorney. Attorney James Charles Mehigan terminated. Signed by Judge Deborah L. Boardman on 7/6/2023. (bas, Deputy Clerk) (Entered: 07/06/2023)

07/06/2023	36	AMENDED COMPLAINT against All Defendants, filed by Melissa Persak, Jeff Roman, Enas Barakat, Tamer Mahmoud, Svitlana Roman, Chris Persak. (Attachments: # 1 Attachment Amended Complaint Redline)(Baxter, Eric) (Entered: 07/06/2023)
07/06/2023	37	Joint MOTION and Proposed Order Regarding Briefing Schedule for Defendants' Motion to Dismiss by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang(Bredar, Thomas) (Entered: 07/06/2023)
07/11/2023	38	PAPERLESS ORDER granting 37 consent motion to extend briefing schedule. Defendants' motion to dismiss is due 14 days after the Court issues a decision on Plaintiffs' Motion for Preliminary Injunction. Signed by Judge Deborah L. Boardman on 7/11/2023. (lmys, Chambers) (Entered: 07/11/2023)
07/12/2023	39	MOTION to Appear Pro Hac Vice for Emily Barnet (Filing fee $100, receipt number AMDDC−10704159.) by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang(Bredar, Thomas) (Entered: 07/12/2023)
07/12/2023	40	MOTION to Appear Pro Hac Vice for Cassandra A. Mitchell (Filing fee $100, receipt number AMDDC−10704160.) by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang(Bredar, Thomas) (Entered: 07/12/2023)
07/12/2023	41	MOTION to Appear Pro Hac Vice for Jeremy W. Brinster (Filing fee $100, receipt number AMDDC−10704161.) by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang(Bredar, Thomas) (Entered: 07/12/2023)
07/12/2023	42	RESPONSE in Opposition re 23 MOTION for Preliminary Injunction filed by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang. (Attachments: # 1 Declaration of Niki T. Hazel, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Text of Proposed Order)(Bredar, Thomas) (Entered: 07/12/2023)
07/13/2023	43	NOTICE by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang re 42 Response in Opposition to Motion, *Corrected Declaration of Niki T. Hazel* (Bredar, Thomas) (Entered: 07/13/2023)
07/13/2023	44	PAPERLESS ORDER granting 39 Motion to Appear Pro Hac Vice on behalf of Emily Barnet. Directing attorney Emily Barnet to register for pro hac vice filing in the District of Maryland through PACER at https://pacer.uscourts.gov/ if attorney has not already done so. The *Pro Hac Vice* option must be selected when registering. Signed by Clerk on 7/13/2023. (mh4s, Deputy Clerk) (Entered: 07/13/2023)
07/13/2023	45	PAPERLESS ORDER granting 40 Motion to Appear Pro Hac Vice on behalf of Cassandra A. Mitchell. Directing attorney Cassandra A. Mitchell to register for pro hac vice filing in the District of Maryland through PACER at https://pacer.uscourts.gov/ if attorney has not already done so. The *Pro Hac Vice* option must be selected when registering. Signed by Clerk on 7/13/2023. (mh4s, Deputy Clerk) (Entered: 07/13/2023)
07/13/2023	46	PAPERLESS ORDER granting 41 Motion to Appear Pro Hac Vice on behalf of Jeremy W. Brinster. Directing attorney Jeremy W. Brinster to register for pro hac vice filing in the District of Maryland through PACER at https://pacer.uscourts.gov/ if attorney has not already done so. The *Pro Hac Vice* option must be selected when registering. Signed by Clerk on 7/13/2023. (mh4s, Deputy Clerk) (Entered: 07/13/2023)
07/26/2023	47	REPLY to Response to Motion re 23 MOTION for Preliminary Injunction filed by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman. (Attachments: # 1 McCaw Declaration, # 2 Garti Declaration)(Baxter, Eric) (Entered: 07/26/2023)

08/07/2023	48	NOTICE by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang *of Supplemental Authority in Support of Defendants' Opposition to Motion for Preliminary Injunction* 42 (Schoenfeld, Alan) (Entered: 08/07/2023)
08/08/2023	49	AFFIDAVIT re 47 Reply to Response to Motion, *of Eric Baxter* by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman (Attachments: # 1 Exhibit 1)(Baxter, Eric) (Entered: 08/08/2023)
08/09/2023	50	Motion Hearing held on 8/9/2023 re 23 MOTION for Preliminary Injunction filed by Plaintiffs − Argued − TAKEN UNDER ADVISEMENT; Oral Motion of Plaintiffs to Grant a Stay Pending Appeal under F.R.App.P. Rule 8, if the Court denies the Motion − also TAKEN UNDER ADVISEMENT, all for the reasons stated on the record by Judge Deborah L. Boardman. (Court to enter written opinion/order) (Court Reporter: Patricia Klepp) (tds, Deputy Clerk) (Entered: 08/09/2023)
08/10/2023	51	NOTICE by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman *of Supplemental Authority in Support of Motion for Preliminary Injunction* (Baxter, Eric) (Entered: 08/10/2023)
08/11/2023	52	AFFIDAVIT re 47 Reply to Response to Motion, *of Grace Morrison* by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman(Baxter, Eric) (Entered: 08/11/2023)
08/14/2023	53	PAPERLESS ORDER allowing the defendants to respond to the plaintiffs' Notice of Supplemental Authority 51 and the Declaration of Grace Morrison 52 by Tuesday, August 15, 2023. Signed by Judge Deborah L. Boardman on 8/14/2023. (rhs, Chambers) (Entered: 08/14/2023)
08/15/2023	54	RESPONSE re 52 Affidavit, 51 Notice (Other) filed by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang.(Schoenfeld, Alan) (Entered: 08/15/2023)
08/16/2023	55	AFFIDAVIT re 47 Reply to Response to Motion, *of Eric Baxter* by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4)(Baxter, Eric) (Entered: 08/16/2023)
08/16/2023	56	−[FILED IN ERROR, per Atty's Request]− RESPONSE re 54 Response, *to Plaintiffs' Notice of Supplemental Authority* filed by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman.(Baxter, Eric) Modified on 8/17/2023 (bas, Deputy Clerk). (Entered: 08/16/2023)
08/16/2023	57	RESPONSE re 54 Response, *to Plaintiffs' Notice of Supplemental Authority* filed by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman.(Baxter, Eric) (Entered: 08/16/2023)
08/24/2023	58	MOTION to Withdraw as Attorney by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman(Winchel, Brandon) (Entered: 08/24/2023)
08/24/2023	59	MEMORANDUM OPINION. Signed by Judge Deborah L. Boardman on 8/24/2023. (kb3s, Deputy Clerk) (Entered: 08/24/2023)
08/24/2023	60	ORDER denying 23 Motion for Preliminary Injunction. Signed by Judge Deborah L. Boardman on 8/24/2023. (kb3s, Deputy Clerk) (Entered: 08/24/2023)
08/25/2023	61	Marginal ORDER APPROVING 58 Motion to Withdraw as Attorney. Attorney Brandon L. Winchel terminated. Signed by Judge Deborah L. Boardman on 8/25/2023. (hmls, Deputy Clerk) (Entered: 08/25/2023)
08/25/2023	62	NOTICE OF APPEAL as to 59 Memorandum Opinion by Enas Barakat, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman. Filing fee $ 505, receipt number AMDDC−10784480.(Baxter, Eric) (Entered: 08/25/2023)
08/28/2023	63	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 62 Notice of Appeal. IMPORTANT NOTICE: To access forms which you are required to

		file with the United States Court of Appeals for the Fourth Circuit please go to http://www.ca4.uscourts.gov and click on Forms & Notices.(kos, Deputy Clerk) (Entered: 08/28/2023)
08/28/2023	64	USCA Case Number 23−1890 for 62 Notice of Appeal filed by Melissa Persak, Chris Persak, Enas Barakat, Tamer Mahmoud, Jeff Roman, Svitlana Roman. Case Manager − Rickie Edwards (kos, Deputy Clerk) (Entered: 08/28/2023)
08/28/2023	65	TRANSCRIPT ORDER ACKNOWLEDGMENT by Enas Barakat, Kids First, Tamer Mahmoud, Chris Persak, Melissa Persak, Jeff Roman, Svitlana Roman for proceedings held on 8/9/23 before Judge Deborah L. Boardman, Transcript due by 11/3/2023. (Court Reporter: Patricia Klepp)(kos, Deputy Clerk) (Entered: 08/28/2023)
09/04/2023	66	NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of 8/9/23, Preliminary Injunction Hearing, before Judge Deborah L. Boardman, re 62 Notice of Appeal Court Reporter/Transcriber Patricia Klepp, Telephone number 3013443228. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained from the Court Reporter or through PACER. Does this satisfy all appellate orders for this reporter? − Y. Redaction Request due 9/25/2023. Redacted Transcript Deadline set for 10/5/2023. Release of Transcript Restriction set for 12/4/2023.(pk4, Court Reporter) (Entered: 09/04/2023)
09/05/2023	67	Joint MOTION to Stay *Proceedings Pending Interlocutory Appeal* by Shebra Evans, Lynne Harris, Monifa B. McKnight, Grace Rivera−Oven, Karla Silvestre, Rebecca Smondrowski, The Montgomery County Board of Education, Brenda Wolff, Julie Yang(Bredar, Thomas) (Entered: 09/05/2023)
09/05/2023	68	PAPERLESS ORDER granting 67 Motion to Stay. This order stays all proceedings in this Court, including but not limited to the defendants' deadline tomove to dismiss the Complaint, until the Court of Appeals issues its mandate resolving the plaintiffs' appeal from this Court's memorandum opinion and order denying the plaintiffs' Motion for Preliminary Injunction. Signed by Judge Deborah L. Boardman on 9/5/2023. (lmys, Chambers) (Entered: 09/05/2023)
09/29/2023	69	ORDER of USCA "DENYING" Motion for injunctive relief pending appeal as to 62 Notice of Appeal filed by Melissa Persak, Chris Persak, Enas Barakat, Tamer Mahmoud, Jeff Roman, Svitlana Roman (av4s, Deputy Clerk) (Entered: 10/02/2023)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD AND ENAS BARAKAT; JEFF AND SVITLANA ROMAN; CHRIS AND MELISSA PERSAK, *in their individual capacities and ex rel. their minor children,* [redacted], and KIDS FIRST, *an unincorporated association*,

Plaintiffs,*

v.

MONIFA B. MCKNIGHT, *in her official capacity as Superintendent of the Montgomery County Board of Education*; THE MONTGOMERY COUNTY BOARD OF EDUCATION; and SHEBRA EVANS, LYNNE HARRIS, GRACE RIVERA-OVEN, KARLA SILVESTRE, REBECCA SMONDROWSKI, BRENDA WOLFF, and JULIE YANG, *in their official capacities as members of the Board of Education*,

Defendants.

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

VERIFIED FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

* The individual Plaintiffs reside in Montgomery County, Maryland. In a concurrently filed motion, Plaintiffs have requested a waiver of the requirement under Local Rule 102.2(a) to provide their own and Defendants' home addresses in the caption of this complaint.

NATURE OF THE ACTION

1. This lawsuit against the Montgomery County Board of Education and its superintendent and board members (collectively, the "School Board") is about whether parents have the right to opt their children out of classroom instruction regarding family life and human sexuality.

2. Maryland law says "yes." COMAR 13A.04.18.01(D)(2)(e)(iv), (i)-(ii).

3. Pursuant to written policy, the School Board has always said "yes" too, including in an email to parents as recent as March 22, 2023.

4. But on March 23, 2023, the School Board flipped positions.

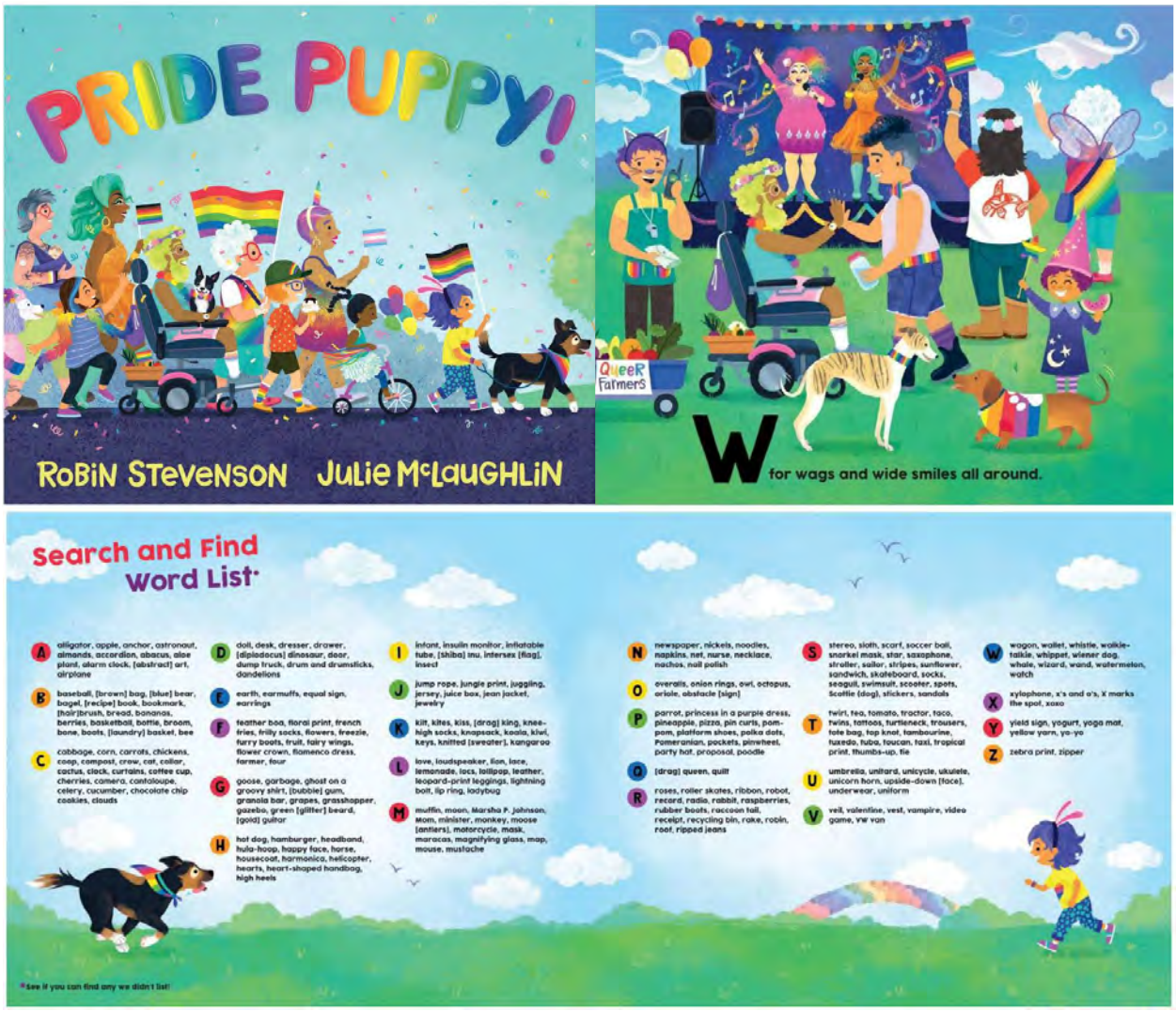
5. Now, it claims authority to introduce pre-K and elementary school kids to certain books (the "Pride Storybooks") that promote one-sided transgender ideology, encourage gender transitioning, and focus excessively on romantic infatuation—with no parental notification or opportunity to opt out.

6. The individual Plaintiff Parents and Kids First (collectively, "the Parents") have kids in the Montgomery County Public Schools ("MCPS").

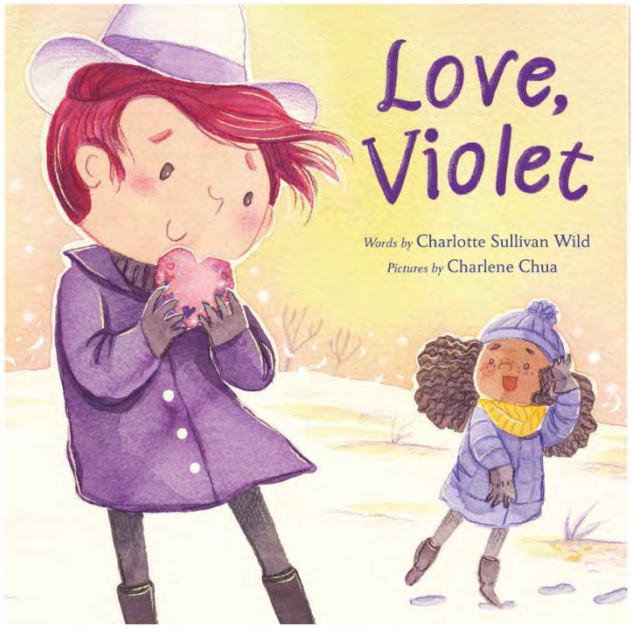
7. They come from many faith backgrounds, including diverse strands of Islam and Christianity. Their concerns reflect those of thousands of other Montgomery County parents from a variety of faiths and political persuasions.

8. They are united in the conviction that the Pride Storybooks are age-inappropriate and inconsistent with their religious beliefs and practices and their child-raising philosophies.

9. For example, one book invites three- and four-year-olds to look for images of things they might find at a pride parade, including an "intersex [flag]," a "[drag] king" and "[drag] queen," "leather," "underwear," and an image of a celebrated LGBTQ activist and sex worker, "Marsha P. Johnson."

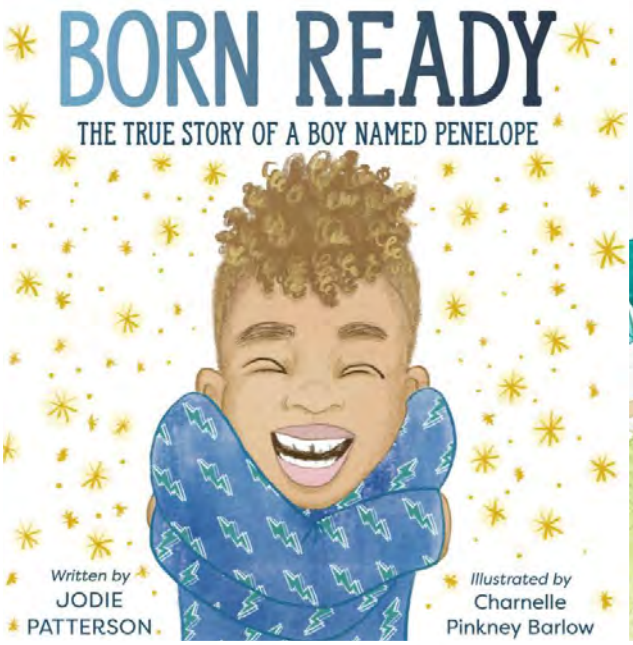


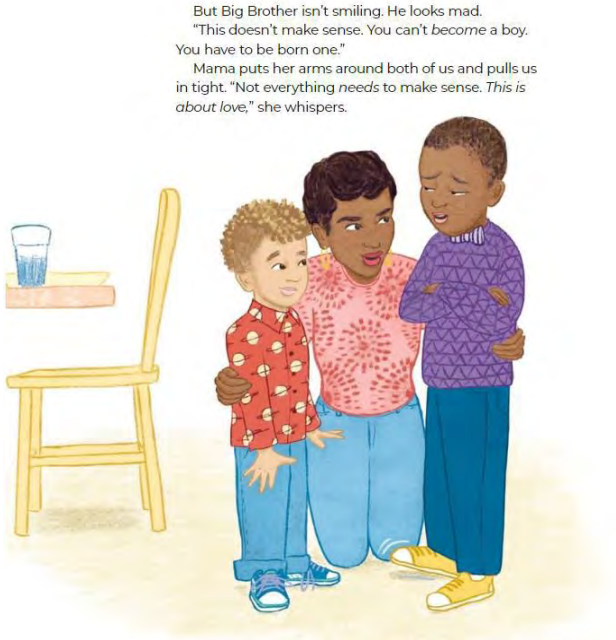
10. A book mandated for fourth graders describes a child "blush[ing] hot" as she daydreams about "galloping off" with a classmate who makes her "heart skip."



11. The teachers' guide invites students to "acknowledg[e] how uncomfortable we might [be] … when we feel our heart beating 'thumpity thump' & how hard it can be [to] talk about our feelings with someone that we don't just 'like' but we 'like like.'"

12. Another book, for fifth graders, advocates a child-knows-best approach to gender transitioning, telling students that a decision to transition doesn't have to "make sense" and that students are the best "teacher" on such matters, not parents or other adults.





13. If a student insists that you "can't be a boy if … born a girl" or that sex depends on "[w]hat body parts [you] have," teachers are told to correct the student:

> When we are born, people make a guess about our gender and label us "boy" or "girl" based on our body parts. Sometimes they're right, and sometimes they're wrong. Our body parts do not decide our gender. Our gender comes from inside—we might feel different than what people tell us we are. We know ourselves best.

14. This school year, after the Parents were told about the books, requests for their kids to opt out were honored.

15. Now the Parents have been told that, next year, no notice will be given and no opt-outs tolerated because their kids must learn to be more "LGBTQ-Inclusive."

16. Under long-standing precedent, government schools are not "empowered … to 'save' a child from himself or his [religious] parents" by imposing "compulsory" education to "influence … the religious future of the child." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

17. The Maryland law that lets parents opt their children out from instruction on "family life and human sexuality" reflects that principle. *See* COMAR 13A.04.18.01(D)(2)(e)(iv), (i)-(ii).

18. So do the School Board's own written policies on upholding religious diversity. *See, e.g.*, Ex. A at 3 (committing "to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs").

19. The School Board's recent about-face strips away this long-standing protection of parental rights. This violates not just Maryland law and Board policy and practice but also the United States Constitution.

20. Specifically, the First Amendment's Religion and Free Speech Clauses and the Fourteenth Amendment's Due Process Clause guarantee the parental right to opt

children out of classroom instruction on such sensitive religious and ideological issues.

21. The Parents bring this lawsuit to vindicate that long-recognized right.

JURISDICTION AND VENUE

22. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

23. Venue lies in this district under 28 U.S.C. § 1391(b).

THE PARTIES

The Mahmoud-Barakat Family

24. Plaintiffs Tamer Mahmoud and Enas Barakat are Muslims and residents of Montgomery County.

25. They currently have three children enrolled in MCPS—a son and daughter in tenth grade and a son in second grade.

The Roman Family

26. Plaintiffs Jeff and Svitlana Roman are also Montgomery County residents.

27. Jeff is Roman Catholic and an MCPS graduate of Sherwood High School; Svitlana is Ukrainian Orthodox.

28. The Romans currently have one son enrolled in MCPS in second grade.

The Persak Family

29. Plaintiffs Chris and Melissa Persak are Catholic and life-long residents of Montgomery County.

30. Melissa is an MCPS graduate of Sherwood High School.

31. The Persaks have two elementary school age daughters (the "Student Plaintiffs") enrolled in MCPS.

Kids First

32. Kids First is an unincorporated association of parents and teachers who prioritize the needs of children in the Montgomery County Public Schools and who believe that children deserve to be kids first.

33. The association was formed to advocate for the return of parental notice and opt-out rights with respect to any instruction related to family life and human sexuality in the Montgomery County Public Schools.

34. The Association includes Muslims, Catholics, Protestants, Latter-day Saints, and Jews, and is open to individuals of all faiths.

35. Many members of Kids First have children in the Montgomery County Public Schools or would have children in the Montgomery County Public Schools but for the removal of parental notice and opt-out rights with respect to instruction related to family life and human sexuality.

Defendants

36. Defendant Montgomery County Board of Education is a government entity authorized by the State of Maryland to administer MCPS. Md. Code, Educ. Art. §§ 3-103, 3-104(a).

37. It controls educational matters that affect Montgomery County, *id.* at § 4-101, and is authorized to adopt educational policies, rules, and regulations for MCPS, as long as they are consistent with State law, *id.* at § 4-108(3)-(4).

38. As of fall 2021, MCPS comprises 209 schools and approximately 160,000 students, including approximately 70,000 elementary school students.

39. It is the largest public school system in Maryland and routinely among the twenty largest public school systems in the United States. *See At a Glance*, Montgomery County Public Schools (Oct. 2019), https://perma.cc/U3AS-EMWT.

40. Its principal place of business is 850 Hungerford Drive, Rockville, Maryland.

41. Defendant Monifa B. McKnight, Ed.D., is the superintendent of MCPS.

42. In that role, Dr. McKnight is charged with implementing the policies at issue.

43. She regularly attends board meetings and participated in the decision to strip parents of their notice and opt-out rights with respect to the Pride Storybooks.

44. At all relevant times, Dr. McKnight was acting under color of state law.

45. She is sued in her official capacity only.

46. Defendants Karla Silvestre, Shebra Evans, Grace Rivera-Oven, Rebecca Smondrowski, Julie Yang, Brenda Wolff, and Lynne Harris are elected members of the Montgomery County Board of Education.

47. Each regularly attends board meetings and participated in the decision to strip parents of their notice and opt-out rights with respect to the Pride Storybooks.

48. At all relevant times, they were acting under color of state law.

49. They are sued in their official capacities only.

FACTUAL BACKGROUND

The Parents' religious beliefs

The Mahmoud/Barakat Family

50. As taught by the Qu'ran, Plaintiffs Tamer Mahmoud and Enas Barakat believe that all humans are God's creations with God-given dignity that must be respected, regardless of the person's faith, race, ethnic origin, sex, gender identity, sexual orientation, or social status. *Surah al-Israa* 17:70.

51. As also taught by the Qu'ran, they believe that mankind has been divinely created as male and female, *Surah al-Hujurat* 49:13, and that all people are connected through a common ancestor: the first male and the first female, *Surah an-Nisaa* 4:1.

52. Based on this teaching, Tamer and Enas believe that sex and sexuality are sacred gifts from God to be expressed through the forming of a spiritual, marital bond between spouses—one male and one female—for the shared promise of security, tranquility, compassion, contentment, and joy. *Surah al-A'raf* 7:189; *Surah ar-Rum* 30:21.

53. Tamer and Enas believe that this sacred bond between husbands and wives entails sexually distinct but mutual duties and affections: "They are clothing for you and you are clothing for them." *Surah al-Baqarah* 2:187.

54. Tamer and Enas believe that marriage, sex, and sexuality are also meant for creating children and teaching them virtue—not only to build a loving family but also to serve as an example of righteousness for society at large. *Surah al-Furqan* 25:74.

55. Inherent in this teaching, Tamer and Enas believe that "gender" cannot be unwoven from biological "sex"—to the extent the two are even distinct—without rejecting the dignity and direction God bestowed on humanity from the start.

56. Tamer and Enas believe that humans attain their fullest God-given potential by embracing their biological sex.

57. Tamer and Enas believe that they have a sacred obligation to teach these principles to their children.

The Roman Family

58. The Romans' Christian faith teaches that all humans are children of God created in God's image and likeness.

59. Based on this teaching, they believe God commands them to treat others as bearers of this intrinsic nature. They believe that what God has created by His design cannot be redefined or recreated by man.

60. Also based on this teaching, they believe that sexuality is a sacred gift from God, reflecting that men and women together are capable of cooperating with God in creating new life.

61. For this reason, the Romans believe sexuality is expressed only in marriage between a man and a woman for creating life and strengthening the marital union.

62. For the same reasons, the Romans believe that gender and biological sex are intertwined and inseparable and that encouraging children to unwind them will teach them that their bodies are "an object, a mere tool at the disposal of the soul, one that each person may dispose of according to his or her own will," rather than a "constitutive part of the human subject, a gift to be received, respected, and cared for as something intrinsic to the person." Committee on Doctrine United States

Conference of Catholic Bishops, *Doctrinal Note on the Moral Limits to Technological Manipulation of the Human Body* 4 (2023), https://perma.cc/T6Y6-NXAB.

63. The Romans believe that humans attain their fullest God-given potential by embracing their biological sex.

64. They believe they have a sacred obligation to teach these principles to their son.

The Persak Family

65. The Persaks believe that questions about sex and sexuality should be informed by sound science and common sense.

66. They believe that all persons should be treated with respect and dignity regardless of religion, race, sex, ethnicity, gender identity, sexual orientation, or other characteristics.

67. The Persak parents want their daughters to understand and appreciate the unique gifts and challenges of every individual.

68. The Persaks' understanding of what is best for their child is informed by their Roman Catholic faith.

69. The Persaks believe that matters regarding family life and human sexuality should be taught in a way that is consistent with their beliefs, sound science, and common sense.

70. They believe that children—particularly those, like their own, in elementary school—are highly impressionable to ideological instruction presented in children's books or by schoolteachers.

71. They believe this risk is even more serious when ideological instruction is imposed to the exclusion of other viewpoints.

Kids First

72. The members of Kids First come from diverse religious traditions, including Islam, Judaism, Christianity, and more. They believe in prioritizing the needs of

children and allowing elementary-age children to be kids first, without prematurely exposing them to issues regarding human sexuality, gender identity, and gender transitioning.

73. They agree that parents have the primary responsibility to decide how and when to introduce instruction on family life and human sexuality to their own children.

74. They have a religious obligation to ensure that their children are taught about family life and human sexuality in a manner that is consistent with their respective religious beliefs.

75. Aspects of some or all of the Pride Storybooks violate their religious understanding of human sexuality and contradict the religious teachings they seek to convey to their children.

* * *

76. The Parents believe that every individual has equal dignity before God and should be treated with love, kindness, and respect.

77. They want their children to understand and appreciate the unique gifts and challenges of every individual.

78. The Parents believe that matters regarding family life and human sexuality should be taught in a way that is consistent with their respective religious beliefs.

79. The Parents also believe that such matters should be taught to children in age-appropriate ways. This includes teaching children, at the proper time, to channel their romantic passions, rather than indulge them at first spark.

80. The Parents also believe that the Pride Storybooks go far beyond teaching kindness and respect (as a matter of manners or virtuous citizenship).

81. Rather, the Pride Storybooks are being used to impose an ideological view of family life and sexuality that characterizes any divergent beliefs as "hurtful."

82. The Pride Storybooks also promote political ideologies about family life and human sexuality that are inconsistent with sound science, common sense, and the well-being of children.

83. The Parents believe it is spiritually, mentally, and physically injurious to introduce children prematurely to many of the topics introduced by the Pride Storybooks.

Instruction on family life and human sexuality

84. By regulation, every "local school system" in Maryland is required to provide a "comprehensive health education" that includes "family life and human sexuality." COMAR 13A.04.18.01(A), (C)(1)(c), (D)(2).

85. Such instruction "will begin in or prior to the grade 5." *Id.* at 18.01(D)(2)(d).

86. Nothing in Maryland law requires that this instruction be reserved to a single class or a discrete section of the curriculum.

87. Rather, schools are required to teach "indicators and objectives" and "concepts and skills" related to "family life and human sexuality." *Id.* at 18.01(D)(2)(d), (g).

88. Such "indicators and objectives" and "concepts and skills" comprise a wide range of instruction.

89. This instruction must "represent all students regardless of ability, sexual orientation, gender identity, and gender expression." *Id.* at 18.01(D)(2)(a).

90. By grade 7, the instruction "shall emphasize that refraining from sexual activity is the best method to avoid sexually transmitted infections, including HIV, and unintended pregnancy." *Id.* at 18.01(D)(2)(b).

91. It must also include "medically accurate information about contraception and condoms." *Id.*

92. And "in every grade in which the curriculum is taught," there must be "age-appropriate instruction on the meaning of 'consent' and respect for personal boundaries." *Id.* at 18.01(D)(2)(f).

The national consensus on notice and opt-outs

93. Forty-three states and the District of Columbia require or permit some instruction in human sexuality.

94. In some states, that instruction is limited to reproductive health or HIV/AIDS, while other states—like Maryland—speak more broadly to "family life" and "human sexuality."

95. Thirty-two of those 44 jurisdictions allow for student opt-outs, including Maryland.[2]

96. Another four states require that human sexuality be taught to children only when parents opt *in*.[3]

97. One state doesn't require human sexuality instruction—but still requires opt-outs should any schools implement that instruction.[4]

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[2] *See* Ariz. Rev. Stat. Ann. § 15-716(E); Cal. Educ. Code § 51937; Conn. Gen. Stat. Ann. § 10-16e; Fla. Stat. Ann. § 1003.42(5); Ga. Code Ann. § 20-2-143(d); Idaho Code Ann. § 33-1611; 105 Ill. Comp. Stat. Ann. 5/27-9.1a(d); Iowa Code Ann. § 256.11(6)(a); La. Rev. Stat. Ann. § 17:281(D); Mass. Gen. Laws Ann. Ch. 71, § 32A; Me. Rev. Stat. Ann. tit. 22, § 1911; Mich. Comp. Laws. § 380.1507(4); Minn. Stat. Ann. § 120B.20; Mo. Ann. Stat. § 170.015(5)(2); N.J. Stat. Ann. § 18A:35-4.7; N.C. Gen. Stat. § 115C-81.30(b); Ohio Rev. Code Ann. § 3313.60(A)(5)(c); Okla. Stat. Ann. tit. 70, § 11-103.3(C); Or. Rev. Stat. § 336.465(1)(b); R.I. Gen. Laws § 16-22-17(c); S.C. Code. Ann. § 59-32-50; Tenn. Code Ann. §49-6-1305; Va. Code. Ann. § 22.1-207.2; Vt. Stat. Ann. tit. 16, § 134; Wash. Rev. Code. Ann. § 28A.230.070(4); W. Va. Code Ann. § 18-2-9(c); D.C. Mun. Regs. subtit. 5e, § 2305.5; Kan. Admin. Regs. § 91-31-35(a)(5)(b); N.M. Pub. Educ. Dep't, Health Education Standards with Benchmarks and Performance Standards § 6.29.6.11 (2009); N.M. Code R. § 6.29.6 (2018); N.Y. Comp. Codes R. & Regs. tit. 8, § 135.3 (Westlaw through Oct. 10, 2018); 22 Pa. Code § 4.29(c).

[3] *See* Colo. Rev. Stat. Ann. § 22-25-104(6)(d); Miss. Code Ann. § 37-13-173; Nev. Rev. Stat. Ann. § 389.036(4); Utah Code Ann. § 53E-9-203(3).

[4] *See* Tex. Educ. Code Ann. § 28.004(i).

Maryland law on notice and opt-outs

98. Within this broad consensus for ensuring opt-outs, Maryland is among the jurisdictions most protective of parental rights, broadly requiring both parental notice and the ability to opt out.

99. Maryland law provides, "The local school system shall provide an opportunity for parents/guardians to view instructional materials to be used in the teaching of family life and human sexuality objectives." COMAR 13A.04.18.01(D)(2)(e)(iv).

100. And there must be "policies, guidelines, and/or procedures for student opt-out regarding instruction related to family life and human sexuality objectives." *Id.* at 18.01(D)(2)(e)(i).

101. Students that opt out of this instruction must then be provided "with appropriate alternative learning activities and/or assessments in health education." *Id.* at 18.01(D)(2)(e)(ii).

102. The opt-out provision does not require a religious or moral objection.

The School Board's own rules on notice and opt-outs

103. Beyond the state regulations protecting opt-outs, the School Board's own guidelines reinforce this parental right.

104. In particular, the School Board's 2022-2023 "Guidelines for Respecting Religious Diversity" (the "Guidelines") "commit to making feasible and reasonable accommodations for [religious] beliefs and practices." *See* Ex. A at 1.

105. The School Board's Guidelines promise:

> a. "to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs," *id.* at 3;
>
> b. to allow students "to be excused from the classroom activity if the students, or their parents/guardians, believe the activity would invade student privacy by calling attention to the student's religion," *id.* at 3-4; and

c. to "accommodate objections from students or their parents/guardians to a particular reading assignment on religious grounds by providing an alternative selection that meets the same lesson objectives," *id.* at 4.

106. The Guidelines also ensure other religious accommodations for MCPS students.

107. They provide for excused absences for religious holidays—with a "case-by-case" approach to determining whether students must make up missed assignments. *Id.* at 2.

108. They also allow for "excus[ing] students who do not want to participate" in "activities" that "may be viewed by others as having religious overtones," including "birthdays or other occasions that many may consider to be secular, such as Halloween and Valentine's Day." *Id.* at 4.

109. Beyond religious accommodations, the Guidelines also "expect instructional activities to be fair, objective, and not demean any religious or nonreligious beliefs." *Id.* at 4.

110. They provide that "[r]especting students' differing beliefs is an essential element of a pluralistic society." *Id.*

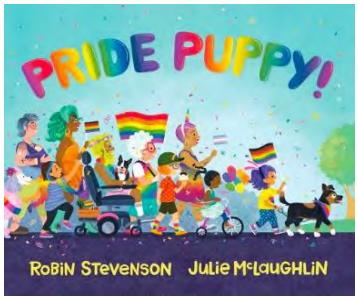
111. Accordingly, the Guidelines prohibit "teachers, students, and guest speakers" from "advocat[ing] particular religious viewpoints as superior to other religious or nonreligious viewpoints." *Id.*

112. Similarly, when guest speakers come to school or students are allowed to speak at assemblies, "[s]chools should make appropriate, neutral disclaimers to avoid conveying the perception to other students, their parents/guardians, or guests that the school endorses the student's or guest speaker's viewpoints (whether religious or not)." *Id.*

The Pride Storybooks

113. In October 2022, the School Board announced it had "approved a selection of over 22 LGBTQ+-inclusive texts for use in the classroom." *See Diverse and Inclusive*

Instructional Materials & Resources, Montgomery County Public Schools, https://perma.cc/B5B3-GCEU; *See* also Ex. B. This came in response to a comprehensive "Antiracist System Audit" that the School Board commissioned in 2021. *See* Dr. Monifa McKnight, *MCPS Antiracist Audit Implementation*, Montgomery County Public Schools (Feb. 2, 2022), https://perma.cc/ZT69-ZURR.



114. For children in pre-K and Head Start programs, the School Board approved *Pride Puppy*, a book relating the story of two women taking their children to a pride parade, where their puppy gets lost. Ex. C.

115. The story uses the letters of the alphabet to illustrate what a child might see at a pride parade.

116. The book's "Search and Find Word List" encourages children to search for images of, among other things, the "intersex [flag]," a "[drag] king," "leather," a "lip ring," a "[drag] queen," "underwear," and a celebrated sex worker.

117. The book's illustrations encourage unqualified support for pride parades, with illustrations ostensibly geared toward three- and four-year-olds, showing things such as a minister wearing pride apparel and students and teachers enthusiastically advocating for "Peers + Queers," "Pride Club," "Love Knows No Gender," and "Two Spirit Pride."

118. One illustration celebrates Marsha P. Johnson, a self-defined "transvestite" or "queen" who, again as self-described, built a life "around sex and gay liberation, being a drag queen" and sex work. *Stonewall 1979: The Drag of Politics*, The Village Voice, https://perma.cc/9NRA-JF2A.

119. Other illustrations similarly introduce concepts around transgenderism, "queer" ideology, same-sex marriage, intersectionality, gender transitioning, drag, and drag shows. Ex. C at 3-17.

120. Pre-K teachers assigned to read the book in their classrooms are provided a resource guide from the Human Rights Campaign (HRC) for "defining LGBTQ+ words for elementary students." Ex. D at 2.

121. HRC is an activist organization that advocates for ideological education on sexual orientation and gender identity starting in kindergarten. To that end, it publishes teaching guides using some of the books approved by the School Board. *See, e.g.,* Ex. D at 2.

122. Beyond laudable aims of promoting equality, fairness, and the end of bullying, HRC espouses a specific ideology on issues regarding family life and human sexuality.

123. For example, HRC advocates "sex positivity," *HRC Foundation Launches Gen Z Sexual Health Program: GENERATE*, Human Rights Campaign, https://perma.cc/P4S4-3VSN, which is generally understood as promoting "an attitude towards human sexuality that regards all consensual sexual activities as fundamentally healthy and pleasurable, encourages sexual pleasure and experimentation." Allena Gabosch, *A Sex Positive Renaissance* (Dec. 8, 2014), https://perma.cc/92WD-W94R.

124. "[S]ex positivity can be understood as an ideology that promotes, with respect to gender and sexuality, being open-minded, non-judgmental and respectful of personal sexual autonomy, when there is consent." Chantelle Ivanski & Taylor Kohut, *Exploring definitions of sex positivity through thematic analysis*, 26 Can. J. of Hum. Sexuality 3, 216-25 (2017), https://utpjournals.press/doi/10.3138/cjhs.2017-0017.

125. The HRC guide promotes discussion with students including vocabulary such as "cisgender," "gender binary," "transgender," "pansexual," and "queer." Ex. D at 2.

126. Many individuals who argue in favor of children attending pride parades do so for reasons that the Parents—and countless others—find ideological and objectionable.

127. For example, a recent article in *Fatherly* argues for kids "absolutely" participating in pride parades, opining that it is simply "necessary to talk to [them]" in advance "about new things they may see," like "public nudity and kink." Heather Tirado Gilligan, *Should You Take Your Kids To A Pride Parade?*, Fatherly (June 1, 2022), https://perma.cc/E22H-5DN4.

128. One parent quoted in the article contended that her kids "just had to learn to laugh and enjoy things. Like there were these Beanie Babies with giant penises on them. … For a fourth- and fifth-grade kid, that's super funny." *Id.*

129. A 2021 op-ed in the *Washington Post* argued in support of exposing children to "a few dozen kinksters who danced down the street, laughing together as they twirled their whips and batons, some leading companions by leashes." Lauren Rowello, *Yes, kink belongs at Pride. And I want my kids to see it*, Washington Post (June 29, 2021), https://perma.cc/RM3Q-9W6N.

130. This parent was happy to explain to her elementary-age child and toddler why a "bare-chested man in dark sunglasses whose black suspenders clipped into a leather thong … paused to be spanked playfully by a partner with a flog." *Id.*

131. The storybook *Pride Puppy* makes no mention of this broader context, instead promoting pride parades only as a laudable family experience, without acknowledging they often contain material that many parents find inappropriate for young children.

132. Other Pride Storybooks similarly promote an ideologically one-sided view of issues that are religiously, socially, and scientifically controverted.

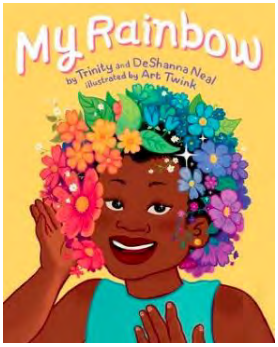
133. For example, books for first through fifth graders include *Uncle Bobby's Wedding*; *Intersection Allies*; *My Rainbow*; *Prince & Knight*; *Love, Violet*; and *Born Ready—The True Story of a Boy Named Penelope*.

134. *Uncle Bobby's Wedding* is a story meant, as its jacket states, to "validat[e]" same-sex marriage in the eyes of a small child. The book describes itself as a "celebration of love in all its forms." The story consists of a young girl upset that her uncle wants to marry, until her uncle's boyfriend befriends her and gains her trust. Ex. E.

135. The book *Intersection Allies* describes nine interconnected characters and what makes them unique. Ex. F. One character's story advocates that, to be "safe," bathrooms should be gender neutral. Ex. F at 15.

136. The text also defines the terms "sex," "gender," "transgender," and "non-binary," followed by a discussion of pronouns that asks elementary-aged children, "What pronouns fit you best?" Ex. F at 42.

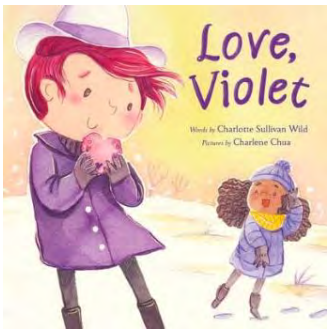
137. *My Rainbow* tells the story of an elementary-age, autistic, boy who believes that short hair keeps him from being a real girl. When the mother points to her own short hair, he responds "People don't care if cisgender girls like you have short hair. But it's different for transgender girls. I *need* long hair!" The mother concludes that her son knows best and sews him a rainbow-colored wig. Ex. G at 16.



138. The teacher's guide eschews analysis of the various other ways parents might appropriately help their children experiencing gender dysphoria, concluding simply that "[s]tudents will recognize unfairness on the individual level (e.g., biased speech) and injustice at the institutional or systemic level (e.g., discrimination)." Ex. D at 4.

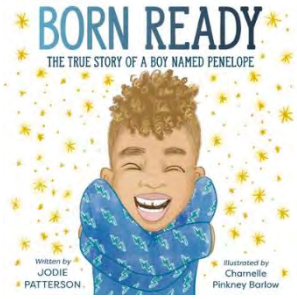
139. *Prince and Knight* is the story of a prince being arranged for marriage by his parents, the king and queen. After "[t]he prince met many ladies (and made the maidens swoon!)," he tells his parents "I'm looking for something different in a partner by my side." After "climb[ing] atop" an attacking dragon to "tie[] a rope around its head," he fell and was "caught" in the "embrace" of a knight. The knight "reveal[ed] his handsome face," "and as they gazed into each other's eyes, their hearts began to race." The story ends with the kingdom cheering on "the two men's wedding day," while the prince and the knight dance intimately. Ex. H.

140. The story, *Love, Violet*, is about an elementary school girl's crush on one of her classmates. "As far as Violet was concerned," it reads, "only one person in her class raced like the wind. Only one had a leaping laugh. Only one made Violet's heart skip." Ex. I at 4. The story details Violet's inhibition to express her romantic feelings until the end of the story when the two classmates exchange a valentine and a locket. Violet is described as "blush[ing] hot" when asked about her valentine. *Id.* at 8.



141. A school resource encourages a "think aloud" moment with the students so they can "acknowledg[e] how uncomfortable we might [be] in stuations when we feel our heart beating 'thumpity thump' & how hard it can be [to] talk about our feelings with someone that we don't just 'like' but we 'like like.'" Ex. D at 4.

142. *Born Ready* is based on the true story of a girl named Penelope who explains



to her mother, "I don't *feel* like a boy. I AM a boy." The mother agrees to tell their family "what we know. … You are a boy." Grandpa agrees that "gender isn't such a big deal." When Penelope's brother protests—"You can't *become* a boy. You have to be born one"—he's told that "[n]ot everything *needs* to make sense. *This is about love.*" Papa agrees that Penelope is a boy as long as Penelope will "tell me yourself." And when Penelope tells the principal "I think like a boy. I feel like a boy. … I'm sure I'm a boy," the teacher says, "today you're *my* teacher." Ex. J.

143. The resource guide for this book encourages children to notice "how happy Penelope is when his mom … commits to sharing with their loved ones that he is a boy" and to question why gender is "such a big deal [in the United States]." Ex. D at 5; Ex. J at 18.

144. If students question the story's narrative with comments like "[h]e can't be a boy if he was born a girl" or "[w]hat body parts do they have?," the School Board's guidance encourages teachers to impose an ideological response:

> When we are born, people make a guess about our gender and label us "boy" or "girl" based on our body parts. Sometimes they're right, and sometimes they're wrong. Our body parts do not decide our gender. Our gender comes from inside—we might feel different than what people tell us we are. We know ourselves best.

Ex. D at 5.

The science around transgenderism and sexual orientation

145. A significant body of scientific evidence indicates that most children who experience gender dysphoria will outgrow those feelings. *See, e.g.*, Devita Singh et al., *A Follow-Up Study of Boys With Gender Identity Disorder*, 12 Frontiers Psych., Mar. 2021, https://perma.cc/5CRN-3LXU (almost 88% of observed gender dysphoria resolved by puberty); World Pro. Ass'n for Transgender Health, *Standards of Care for*

the Health of Transsexual, Transgender, and Gender Nonconforming People 11 (7th ed. 2012), https://perma.cc/2DGD-AXFT (footnote omitted); *see also* Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. 31435 n.263 (May 18, 2016) ("Gender dysphoria … does not inevitably continue into adulthood," with "persistence rate[s]" in boys of "only 6-23%" and "12-27%" for girls).

146. This desistance data comes from an association that *supports* sex "reassignment" surgery—"one side in a sharply contested medical debate." *See Gibson v. Collier*, 920 F.3d 212, 221 (5th Cir. 2019) (agreeing with the First Circuit that "Standards of Care" from the World Professional Association for Transgender Health—"WPATH"—"reflect not consensus").

147. As the American College of Pediatrics put it in 2018, "[t]he debate over how to treat children with [gender dysphoria] is primarily an ethical dispute; one that concerns physician worldview as much as science. … Medicine also does not occur in a political vacuum and being on the wrong side of sexual politics can have severe consequences for individuals who hold the politically incorrect view." Am. Coll. of Pediatricians, *Gender Dysphoria in Children* (Nov. 2018), https://perma.cc/HY5B-C24Q; *see also* Jennifer Block, *Gender dysphoria in young people is rising—and so is professional disagreement*, BMJ (Feb. 23, 2023), https://perma.cc/DE8X-CZWT.

148. Many children also experience feelings of same-sex attraction or infatuation but do not identify as gay or lesbian in adulthood. *See* Miles Ott et al., *Stability and Change in Self-Reported Sexual Orientation Identity in Young People: Application of Mobility Metrics*, 40 Archives Sexual Behav. 519, 520 (2011), https://perma.cc/VY75-RVEC ("[I]t has been acknowledged that a person's sexual orientation may change not only during adolescence but also across the adult lifespan."); *see also* Bennett McIntosh, *There's (Still) No Gay Gene*, Harv. Mag. (Aug. 29, 2019), https://perma.cc/KJ8P-TFCE ("'It's effectively impossible to predict an individual's sexual behavior from their genome,' said Neale, director of genetics at the Stanley

Center for Psychiatric Research at the Broad and an associate professor in medicine at Harvard Medical School (HMS), during a Tuesday teleconference introducing the paper's findings.").

149. There is also significant evidence that an individual's well-being is not improved to a statistically significant degree by indulging that individual's subjective perception of his gender identity. *See, e.g.*, William Malone, *Puberty Blockers for Gender Dysphoria: The Science is Far from Settled*, 5 Lancet Child & Adolescent Health 33 (2021), https://perma.cc/5RCS-HHVH; Lisa Littman, *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners*, 50 Archives Sexual Behav. 3353 (2021), https://perma.cc/852N-6EHW; *see also Gibson*, 920 F.3d at 222 (quoting expert who "emphasized that 'large gaps' exist in the medical community's knowledge regarding the long-term effects of [sex "reassignment" surgery] and other [gender dysphoria] treatments in relation to its positive or negative correlation to suicidal ideation.'" (alterations in original)).

150. This scientific and experiential data is consistent with many parents' religious beliefs that a person's biological sex is a gift from God and that the greatest happiness comes from appreciating the body given as a free gift to the person.

151. Many religious believers also accept that sexual relations are intended by God to take place only within marriage between a man and a woman and encourage their children to live consistent with those religious teachings.

The School Board's decision to conceal information and reject opt-outs

152. Hundreds of parents in Montgomery County have expressed concern that the new Pride Storybooks introduce issues around family life and sexuality that are inappropriate for children in elementary school.

153. Indeed, a poll by the *Washington Post* and University of Maryland showed that, among registered voters, sixty-six percent of Marylanders disapproved of

schoolteachers discussing LGBTQ issues with students from kindergarten through third grade. Nicole Asbury and Emily Guskin, *Most Md. voters say elementary school discussion of LGBTQ acceptance 'inappropriate,'* The Washington Post (Oct. 12, 2022), https://perma.cc/6NED-E9RH.

154. Fifty-six percent disapproved for fourth and fifth graders. *Id.*

155. Even for middle schoolers, forty-two percent of voters disapproved. *Id.*

156. Only for high schoolers, did a strong majority support such conversations, with only twenty-seven percent of voters disapproving. *Id.*

157. One parent expressed concern at a School Board meeting that the book *My Rainbow* was pushing transgender ideology: "this is not instruction, it is indoctrination." Testimony at the Montgomery County Public Schools Business Meeting, at 27:11-29:09 (Jan. 12, 2023), https://perma.cc/T234-559Q.

158. Defendant Harris responded urging the School Board to adhere to the curriculum, and a colleague emphasized in reference to the parent's testimony that, "[y]es, ignorance and hate does exist in our community." *Id.* at 38:34-40:40.

159. Nevertheless, on March 22, 2023, consistent with its policies and past practices, the School Board issued a statement confirming parents' notification and opt-out rights:

> When a teacher selects a curriculum, a notification goes out to parents about the book. If a parent chooses to opt out, a teacher can find a substitute text for that student that supports these standards and aligns with curriculum.

See Stephanie Ramirez, *MCPS revises policy on LGBTQ-friendly books*, Fox 5 Washington DC (Mar. 22, 2023), https://perma.cc/8L5G-XQ9X.

160. But the next day, in a "Revised Message Regarding the Use of Inclusive Texts," the School Board reversed course:

> [T]here is as an expectation that teachers utilize these inclusive lessons and texts with all students. … Students and families may not choose to opt out of engaging with any instructional materials, other than "Family Life and

> Human Sexuality Unit of Instruction" which is specifically permitted by Maryland law. As such, teachers will not send home letters to inform families when inclusive books are read in the future.

See 5 Things to Know, Montgomery County Public Schools (March 23, 2023), https://perma.cc/6XVG-R3CF.

161. The School Board's attempt to segregate the Pride Storybooks from "family life and human sexuality" is inconsistent with the Maryland regulation requiring parental notice and opt-outs.

162. The regulation extends parental notice and opt-out rights to any teaching of "indicators and objectives" or "concepts and skills" regarding family life and human sexuality—not a single class or "[u]nit." *See* COMAR 13A.04.18.01(D)(2)(d)(g).

163. The next day in the Persak Plaintiffs' elementary school, teachers were instructed to introduce and read the books in their classrooms.

164. The principal informed the Persaks that, because they had requested an opt-out, their daughter was excused from the classroom when one of the Pride Storybooks was read.

165. The principal made clear, however, that no further notifications or opt-outs would be provided.

166. As the principal put it earlier, these opt-outs were made "[t]o accommodate [parents'] fears" and she "disagree[d] with th[em] unequivocally." Ex. K.

167. The Roman Plaintiffs corresponded with the principal of their elementary school, seeking both an opt-out for their son and guarantees that parents would continue to receive notice about the Pride Storybooks and that teaching them would be optional for teachers. *See* Ex. L.

168. On February 1, 2023, the principal told the Romans that "it is your right to ask that [your son] not be present when this book is read to the class and if any other parents reach out I will meet with them to have the same discussion we engaged in and they can make a decision for their family." *Id.* at 7.

169. Plaintiffs Tamer Mahmoud and Enas Barakat asked the acting principal of their elementary school to opt their son out of class reading of *Prince and Knight*, and to assign him an alternative activity. Ex. M.

170. The acting principal offered the parents an opportunity to read the book. *Id.*

171. The acting principal then followed up by stating that MCPS is not supporting parents opting out of the Pride Storybooks, and teachers are not required to provide alternative assignments. *Id.*

172. Tamer and Enas responded by saying that their decision to opt-out did not change after reading the book. *Id.*

173. They again asked for their son to receive an alternate assignment. *Id.*

174. The acting principal finally responded (on March 20) that he would allow their son to sit outside the classroom while the book was discussed. *Id.*

175. Nevertheless, on March 23, the School Board announced that the Pride Storybooks were being read to students and that parents would no longer receive advance notice or opportunity to opt their children out. *Id.*

176. On March 28, Defendant Harris addressed the issue at a School Board meeting, accusing parents who had just testified in support of opt outs that they were motivated by hate::

> Rogers and Hammerstein got it right seven years: "You have to be taught to hate." You know, no child is born other-izing, marginalizing, thinking somebody else is not as good as they are …. Saying that a kindergartener can't be present when you read a book about a rainbow unicorn because it offends your religious rights or your family values or your core beliefs is just telling that kid, "Here's another reason to hate another person."

Lynne Harris, Remarks at the MCPS Board Meeting at 1:48:00-1:48:15 (March 28, 2023), https://perma.cc/AW3T-DMJB; *see also* Ex. N at 16 (suggesting that parents seeking opt-outs are engaging in a "dehumanizing form of erasure").

CLAIMS FOR RELIEF

Count I

42 U.S.C. § 1983
Violation of the First Amendment to the U.S. Constitution
Free Exercise Clause
Religious Upbringing of Children

177. Plaintiffs incorporate by reference all preceding paragraphs.

178. Independent of the lack of general applicability or neutrality toward religion, the Pride Storybooks violate the Free Exercise Clause's guarantee of an "enduring American tradition": "the rights of parents to direct 'the religious upbringing' of their children." *Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020) (quoting *Yoder*, 406 U.S. at 213-14); *Emp. Div. v. Smith*, 494 U.S. 872, 881 (1990) (citing "the right of parents … to direct the education of their children" even against laws that are "neutral, generally applicable"); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2129-30 (2022) ("how we protect other constitutional rights" is to analyze whether a constitutional amendment's "plain text covers an individual's conduct," and if so, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition"); *see also Firewalker-Fields v. Lee*, 58 F.4th 104, 123 n.7 (4th Cir. 2023) (historical tradition analysis applies to "constitutional provisions where the Supreme Court has directed that historical tradition defines an exception, rather than the rule"); *Espinoza*, 140 S. Ct. at 2258-59 (analyzing whether Montana could identify a "comparable 'historic and substantial tradition'" to overcome protection of the Free Exercise Clause).

179. The long-standing American tradition protecting the right of parents to shape their children's religious education meant "courts tended to rely on a common law presumption of the soundness of parental judgment in making educational decisions pertaining to their children." Ralph D. Mawdsley & Daniel Drake,

Commentary, *Involving Parents in the Public Schools: Legal and Policy Issues*, 76 Educ. L. Rep. 299, 301 (1992).

180. The American tradition was a departure from the English religious establishment, where laws fined parents for instructing their children "in the popish religion." 1 William Blackstone, *Commentaries on the Laws of England* 451 (Edward Christian ed., 1793); *see also id.* at 450 ("Yet in one case, that of religion, [parents] are under peculiar restrictions.").

181. Under the American tradition, unless the parental decision would detrimentally "affect the government of the school or incommode the other students or the teachers," "it is for the parent, not the [school], to direct the branches of education [a child] shall pursue, so far as they are taught." *Trs. of Schs. v. People ex rel. Van Allen*, 87 Ill. 303, 309 (1877); *see also Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring) ("It is a dangerous fiction to pretend that parents simply delegate their authority—including their authority to determine what their children may say and hear—to public school authorities."); *Bell v. Itawamba Cty. Sch. Bd.*, 799 F.3d 379, 391 (5th Cir. 2015) (en banc) (explaining "Justice Alito's controlling concurrence").

182. Accordingly, unless public safety or the "special characteristics" of the school setting are at issue, a school's desired "educational mission" is insufficient to restrict First Amendment rights. *Morse*, 551 U.S. at 423 (Alito, J., concurring).

183. Here, the forced inculcation of the Pride Storybooks without parental notice or opt-out rights burdens the Parents' right to form their children on a matter of core religious exercise and parenting: how to understand who they are.

184. There is no analogous tradition of restricting this right.

185. To the contrary, as discussed above, a long-standing national consensus of broadly allowing opt-outs from instruction on family life and human sexuality instruction exists, including in Maryland. *Supra* ¶¶ 85-94.

186. And at least one court has already blocked an earlier effort by the Board to transgress the First Amendment rights of parents through related instruction. *Citizens for a Responsible Curriculum v. Montgomery County Public Schools*, No. CIV.A.AW-05-1194, 2005 WL 1075634, at *11 (D. Md. May 5, 2005) ("The Court is extremely troubled by the willingness of Defendants to venture—or perhaps more correctly bound—into the crossroads of controversy where religion, morality, and homosexuality converge.").

187. Unable to show a contrary tradition of restricting parental control over family life and human sexuality education by denying opt-outs, the School Board cannot overcome the Parents' free exercise right. *See Bruen*, 142 S. Ct. at 2126 (holding that the Constitution "presumptively protects that conduct" not rebutted by an analogous "historical tradition" of regulation).

188. The Parents have and will continue to suffer the irreparable injury of their First Amendment rights being denied by Defendants.

189. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the School Board's disregard for their constitutional rights.

190. To remedy their injuries, Plaintiffs are entitled to declaratory, injunctive, and monetary relief.

191. To the extent that the Court finds the Free Exercise Clause inapplicable to the Parents' rights, then *Employment Division v. Smith*, 494 U.S. 872 (1990) was wrongly decided.

Count II

42 U.S.C. § 1983
Violation of the First Amendment to the U.S. Constitution
Free Exercise Clause
General Applicability

192. Plaintiffs incorporate by reference all preceding paragraphs.

193. A government policy will fail the Free Exercise Clause's general applicability requirement if it prohibits any religious conduct while permitting similar conduct that "undermines the government's asserted interests in a similar way, or if it provides a mechanism for individualized exemptions." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 (2022) (cleaned up).

194. The mere existence of a mechanism for individualized exemptions means the policy at issue is not generally applicable, "regardless whether any exceptions have been given." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1879 (2021).

195. If a policy is not generally applicable for either of these reasons, that "is sufficient to trigger strict scrutiny." *Kennedy*, 142 S. Ct. at 2422 (citation omitted).

196. Here, both general applicability triggers are met by the School Board's refusal to accommodate Plaintiffs' notification and opt-out requests from the Pride Storybooks.

197. This failure burdens the Parents' freedom to form their children on a matter of core religious exercise and parenting: how to understand who they are.

198. It also burdens the Student Plaintiffs' rights to opt out of books that violate their religious beliefs and practices.

199. The first trigger—not accommodating some opt-out requests while permitting conduct that similarly undermines the supposed government interest—is demonstrated in multiple ways.

200. Maryland law requires parental notification and opt-out rights for instruction regarding family life and human sexuality for any reason, religious or not.

201. The School Board has traditionally extended parental notification and opt-out rights for instruction regarding family life and human sexuality.

202. For the 2022-23 school year, the School Board provided parental notification and allowed parental opt outs for the new Pride Storybooks.

203. This included honoring opt-out requests for the Persak children, acknowledging an opt-out for the Roman's son, and giving Tamar and Enas's son an opt-out.

204. The School Board has also traditionally allowed students to opt out of books that violate their religious beliefs and receive a different reading assignment instead.

205. But then, on March 23, the School Board suspended all opt-outs without explanation.

206. The second trigger for general applicability—a mechanism for individualized assessments—is also met by much of the same evidence.

207. The School Board has allowed administrators and teachers to provide parental notification and opt outs on a case-by-case basis.

208. Indeed, the School Board's written Guidelines provide that "each situation" of religious-based absence from school "must be addressed on a case-by-case basis." Ex. A at 2.

209. The School Board's decision to reverse itself and no longer honor opt-outs from the Pride Storybooks—when it had already allowed some, and continues to allow analogous opt-outs (as they must under Maryland law and their own Guidelines)—is not generally applicable.

210. Strict scrutiny therefore applies.

211. The School Board cannot meet its burden to prove that forced exposure to the Pride Storybooks pursues a compelling governmental interest or that it is narrowly tailored to achieve such an interest.

212. The School Board cannot "rely on broadly formulated interests" but must explain "the asserted harm of granting specific exemptions to particular religious claimants." *Fulton*, 141 S. Ct. at 1881 (cleaned up).

213. In other words, the School Board cannot explain why it must force *these* Parents to violate *their* religious freedom to form their children in their own religious

traditions. *See, e.g.*, *id.* ("[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so.").

214. The School Board cannot show forcing all children to read the Pride Storybooks is the only way to teach inclusion and civility toward all individuals.

215. Plaintiffs have and will continue to suffer the irreparable injury of their First Amendment rights being denied by Defendants.

216. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the Board's disregard for their constitutional rights.

217. To remedy their injuries, Plaintiffs are entitled to declaratory, injunctive, and monetary relief.

218. To the extent this Court finds the Board's Pride Storybooks policy generally applicable, then *Employment Division v. Smith*, 494 U.S. 872 (1990) was wrongly decided.

Count III

42 U.S.C. § 1983
Violation of the First Amendment to the U.S. Constitution
Free Exercise Clause
Neutrality

219. Plaintiffs incorporate by reference all preceding paragraphs.

220. The Free Exercise Clause requires that government policies be "neutral" toward religious exercise.

221. "A government policy will not qualify as neutral if it is specifically directed at religious practice"—detectable if the policy "discriminates on its face, or if a religious exercise is otherwise its object." *Kennedy*, 142 S. Ct. at 2422 (cleaned up).

222. "A plaintiff may also prove a free exercise violation by showing that 'official expressions of hostility' to religion accompany laws or policies burdening religious exercise; in cases like that [the Supreme Court] ha[s] 'set aside' such policies without

further inquiry." *Id.* at 2422 n.1 (citing *Masterpiece Cakeshop, Ltd. V. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1732 (2018)).

223. But even "[f]acial neutrality is not determinative." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993).

224. The Free Exercise Clause also "forbids subtle departures from neutrality," "protect[ing] against governmental hostility which is masked, as well as overt." *Id.*

225. The School Board's policy to mandate the Pride Storybooks to discourage a biological understanding of human sexuality is not neutral toward religion, in part because it assumes that traditional religious views regarding family life and sexuality as supported by sound science and common sense are hurtful, hateful, or bigoted.

226. This burdens the Parents' freedom to form their children on a matter of core religious exercise and parenting: how to understand who they are.

227. It also burdens the Student Plaintiff's freedom to receive an education in an environment free from religious discrimination.

228. The School Board's policy of forced participation in the Pride Storybooks is not neutral toward religious exercise and expressly encourages teachers to tell students that their religious and scientific perspectives are "hurtful."

229. A principal at one School made this explicit when saying that parents who voiced religious-based concerns over subjecting their children to Pride Storybooks are being "motivat[ed]" by "fear." "Fear is a powerful motivator," and the School Board only considered an opt out from the Pride Storybooks "[t]o accommodate these fears." Ex. K.

230. And Defendant Harris was even more explicit after the School Board decided to end opt-outs on the Pride Storybooks. She said that allowing such opt-outs for religious reasons "is just telling that kid, 'Here's another reason to hate another person.'"

231. To the contrary, the School Board's Guidelines permit opt-out requests on any subject, classroom discussion, or activity that violates parents' or students' religious beliefs or practices.

232. Maryland also requires opt-outs from instruction on "family life and human sexuality," which extends to issues of sexual orientation, gender identity, and gender expression, consent, and personal boundaries.

233. It is not neutral to exclude the Pride Storybooks from these otherwise general religious accommodations.

234. Moreover, non-neutrality toward religion is also demonstrated by teachers no longer notifying parents when the Pride Storybooks will be read to their children.

235. The School Board's Guidelines require that affirmative steps be taken by schools to ensure that "instructional activities" are "fair, objective, and [do] not demean any religious or nonreligious beliefs." *Supra* ¶ 101.

236. Those steps, when guest or student speakers are involved, can also include "disclaimers" issued to parents and guardians. *Supra* ¶ 104.

237. Now, however, the Parents will have no way of knowing when or how these books are foisted upon their children—despite their religious objections.

238. As with general applicability, the School Board's lack of neutrality toward religious concerns "is sufficient to trigger strict scrutiny." *Kennedy*, 142 S. Ct. at 2422 (citation omitted).

239. For the foregoing reasons, the School Board cannot meet its burden to establish that the Pride Storybooks achieve a compelling government interest, and that forcing Plaintiffs to violate their religious beliefs toward is narrowly tailored to achieve that interest.

240. Plaintiffs have and will continue to suffer the irreparable injury of their First Amendment rights being denied by Defendants.

241. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the School Board's disregard for their constitutional rights.

242. To remedy their injuries, Plaintiffs are entitled to declaratory, injunctive, and monetary relief.

243. To the extent this Court finds the Board's Pride Storybooks policy neutral, then *Employment Division v. Smith*, 494 U.S. 872 (1990) was wrongly decided.

Count IV

42 U.S.C. § 1983
Violation of the First Amendment to the U.S. Constitution
Free Speech Clause
Viewpoint Discrimination

244. Parents incorporate by reference all preceding paragraphs.

245. The School Board's policy to discourage a biological understanding of human sexuality through the Pride Storybooks is religious viewpoint discrimination and thereby violates the First Amendment's Free Speech Clause.

246. No matter the "forum" in which speech occurs, viewpoint discrimination is always prohibited. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

247. Accordingly, schools—like other fora for private speech—cannot exclude speech "on the basis of the religious nature of the speech." *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 105 (2001); *Rosenberger*, 515 U.S. at 831 ("Religion may be a vast area of inquiry, but it also provides, as it did here, a specific premise, a perspective, a standpoint from which a variety of subjects may be discussed and considered.").

248. Here, however, the School Board's Pride Storybooks are excluding religious perspectives on the topic of gender identity.

249. As early as pre-K, children will be introduced to what it means to be "cisgender," "gender binary," "transgender," "pansexual," and "queer." Ex. D.

250. First-graders will read a book discussing being "non-binary" and "what pronouns fit you best." *Id.*

251. In second grade, the Pride Storybooks will make children recognize "biased speech" and "discrimination." *Id.* Later in fifth grade, children will read about a mother committing to sharing with loved ones that her boy "is" a girl. *Id.*

252. The Pride Storybooks promote a single viewpoint on what it means to be "affirming" on matters of and human sexuality. Different viewpoints on what "affirming" means in this context are either not provided or outright discouraged.

253. Moreover, and despite the School Board's Guidelines on religious diversity, its "resource guide" on the Pride Storybooks prohibits divergent religious perspectives too.

254. For example, the resource guide suggests teachers tell students who question the premise of gender identity that the "comment is hurtful; we shouldn't use negative words to talk about peoples' identities." *Id.* at 5.

255. Were other students to state what their parents taught them—that gender is not "assigned" at birth but an observation of biological reality—the teacher is suggested to tell the student that "[w]hen we are born, people make a guess about our gender and label us 'boy' or 'girl' based on our body parts. Sometimes they're right, and sometimes they're wrong." *Id.*

256. Similarly, were a student to question why subjective feelings override objective biological reality, teachers are suggested to say that "[o]ur gender comes from inside – we might feel different than what people tell us we are. We know ourselves best." *Id.*

257. Far from guaranteeing a fair and objective discussion of religious perspectives, the School Board's Pride Storybooks and corresponding "resource guide"

preclude religious viewpoints on the topics of sexual orientation and gender identity—because of their viewpoint. That is unconstitutional.

258. As a "finding of viewpoint bias end[s] the matter," there is no subsequent analysis of strict scrutiny. *Iancu v. Brunetti*, 139 S. Ct. 2294, 2302 (2019) ("Once we have found that a law aims at the suppression of views, why would it matter that Congress could have captured some of the same speech through a viewpoint-neutral statute.") (cleaned up).

259. Plaintiffs have and will continue to suffer the irreparable injury of their First Amendment rights because of the School Board's viewpoint discrimination.

260. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the Board's disregard for their constitutional rights.

261. To remedy their injuries, Plaintiffs are entitled to declaratory, injunctive, and monetary relief.

Count V

42 U.S.C. § 1983
Violation of the Fourteenth Amendment to the U.S. Constitution
Substantive Due Process
Parental Right to Direct Children's Education and Upbringing

262. Plaintiffs incorporate by reference all preceding paragraphs.

263. "[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." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (quoting *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925)).

264. That right—that high duty—is not only deeply embedded in "[t]he history and culture of Western civilization," *Yoder*, 406 U.S. at 232; it also has "a constitutional dimension," *Troxel*, 530 U.S. at 65.

265. A century of Supreme Court decisions establish that "it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Id.* at 66.

266. Simply put, the "'liberty' specially protected by the Due Process Clause includes the right[] … to direct the education and upbringing of one's children." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

267. The School Board's policies regarding the Pride Storybooks violate the Parents' fundamental right to make key decisions regarding the upbringing, education, custody, care, and control of their children, including the right to opt their children out of instruction on family life and human sexuality that violates their religious beliefs and practices.

268. There is no compelling state interest in forcing elementary school children to participate in the Pride Storybooks that outweighs the Parents' constitutional right to direct the education, upbringing, care, custody, and control of their children.

269. The Parents have and will continue to suffer irreparable injury to their constitutional rights because of Defendants' actions.

270. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the Board's disregard for their constitutional rights.

271. At bottom, the School Board's actions violate the "cardinal" principle "that the custody, care and nurture of the child reside *first* in the *parents*, whose primary function and freedom include preparation for obligations the state can *neither supply nor hinder*." *Troxel*, 268 U.S. at 65-66 (emphases added) (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)).

272. Eyes wide open, the School Board has disavowed what "[p]ublic schools must not forget": "that '*in loco parentis*' does not mean 'displace parents.'" *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000).

273. The Parents have and will continue to suffer the irreparable injury of their Fourteenth Amendment rights being denied by Defendants.

274. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the Board's disregard for their constitutional rights.

275. To remedy their injuries, the Parents are entitled to declaratory, injunctive, and monetary relief.

Count VI

Violation of Maryland State Law

276. Plaintiffs incorporate by reference all preceding paragraphs.

277. Article 24 of the Declaration of Rights of the Maryland Constitution provides, "That no man ought to be … disseized of his … liberties or privileges … or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land." Md. Const. Declaration of Rights Art. § 24.

278. Article 5(a)(1) of the Declaration of Rights of the Maryland Constitution also provides, that "the Inhabitants of Maryland are entitled to the Common Law of England … and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six … subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State." Md. Const. Declaration of Rights Art. § 5(a)(1).

279. These provisions in Maryland's Constitution protect parents' fundamental rights to direct the care, custody, education, welfare, safety, and control of their minor children.

280. The State of Maryland by regulation has given explicit protection for these rights in the context of public school instruction regarding "family life and human sexuality."

281. State regulations require a local school system like MCPS to "provide an opportunity for parents/guardians to view instructional materials to be used in the teaching of family life and human sexuality objectives." COMAR 13A.04.18.01(D)(2)(e)(iv)

282. They further provide that the local school system "shall establish policies, guidelines, and/or procedures for student opt-out regarding instruction related to family life and human sexuality objectives." *Id.* at 18.01(D)(2)(e)(i).

283. The School Board's own policies reinforce these rights to notice and opportunity to opt out, committing "to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs". Ex. A at 3.

284. The School Board's policy of withholding notice and opt-outs violates Maryland's Constitution, state law, and the School Board's own regulations.

285. Plaintiffs have and will continue to suffer the irreparable injury of their state rights being denied by Defendants.

286. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the Board's disregard for their state rights.

287. To remedy their injuries, Plaintiffs are entitled to declaratory, injunctive, and monetary relief.

JURY DEMAND

Plaintiffs request a trial by jury on all issues so triable.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court:

a. Enter a declaration that the refusal to afford Plaintiffs a right to opt out from family life and human sexuality instruction, including the forced reading of the Board's Pride Storybooks, violates the Free Exercise Clause of the First Amendment;

b. Enter a declaration that forcing Plaintiffs to educate their children, read, and/or speak consistently with the perspectives contained in the Pride Storybooks and compelling the Student Plaintiffs to accept one viewpoint to the exclusion of all others violates their rights under the Free Speech Clause of the First Amendment;

c. Enter a declaration that forcing students, over their Parents' objection, to read or listen to the School Board's Pride Storybooks violates the Parents' rights under the Due Process Clause of the Fourteenth Amendment;

d. Enter a declaration that forcing students, over their Parents' objection, to read or listen to the School Board's Pride Storybooks violates the Parents' rights under Maryland law;

e. Enter preliminary and permanent injunctions prohibiting the School Board from forcing the Parents' children and other students—over the objection of their parents—to read, listen to, or discuss the School Board's Pride Storybooks, and also requiring the School Board to provide advance notice and an opportunity for opt-outs to any other instruction related to family life or human sexuality.

f. Award nominal damages to the Parents;

g. Award actual damages incurred by the Parents in being forced to pursue other educational opportunities for their children because of the School Board's disregard for their constitutional rights;

h. Award attorneys' fees and costs under 42 U.S.C. § 1988; and

i. Award such other relief as the Court may deem just and proper.

Respectfully submitted this 6th day of July, 2023.

/s/ *Eric S. Baxter*
Eric S. Baxter
(Bar #: 15640)
William J. Haun
(pro hac vice)
Michael O'Brien*
(pro hac vice)
Brandon L. Winchel**
(pro hac vice)
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave, N.W.
Suite 400
Washington, DC 20006
(202) 955-0095
ebaxter@becketlaw.org

Attorneys for Plaintiffs

*Not a member of the DC Bar; admitted in Louisiana. Practice limited to cases in federal court.
**Not a member of the DC Bar; admitted in California. Practice limited to cases in federal court.

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, Tamer Mahmoud, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

Tamer Mahmoud

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, Enas Barakat, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

Enas Barakat

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, Jeff Roman, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

Jeff Roman

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, Svitlana Roman, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

Svitlana Roman

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, Chris Persak, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

Chris Persak

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, Melissa Persak, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

Melissa Persak

Melissa Persak

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I, Blen Moges, on behalf of Kids First, declare under penalty of perjury that the foregoing allegations that pertain to Kids First are true and correct to the best of my knowledge.

Dated: 7/6/2023

Blen Moges, Director
Kids First

Exhibit A

English

2022–2023

Guidelines for Respecting

RELIGIOUS DIVERSITY

in Montgomery County Public Schools

www.montgomeryschoolsmd.org

Maryland's Largest School District

MONTGOMERY COUNTY PUBLIC SCHOOLS

VISION

We inspire learning by providing the greatest public education to each and every student.

MISSION

Every student will have the academic, creative problem solving, and social emotional skills to be successful in college and career.

CORE PURPOSE

Prepare all students to thrive in their future.

CORE VALUES

Learning
Relationships
Respect
Excellence
Equity

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Mrs. Rebecca K. Smondrowski

Mr. Arvin Kim
Student Member

Montgomery County Public Schools (MCPS) Administration

Monifa B. McKnight, Ed.D.
Superintendent of Schools

Mr. M. Brian Hull
Chief Operating Officer

Patrick K. Murphy, Ed.D.
Deputy Superintendent

Mr. Brian S. Stockton
Chief of Staff

Mrs. Stephanie P. Williams
General Counsel

Ms. Elba M. Garcia
Senior Community Advisor

Dr. Patricia E. Kapunan
School System Medical Officer

850 Hungerford Drive
Rockville, Maryland 20850
www.montgomeryschoolsmd.org

2022–2023

Guideline's for Respecting

RELIGIOUS DIVERSITY

in Montgomery County Public Schools

www.montgomeryschoolsmd.org

These *Guidelines for Respecting Religious Diversity in Montgomery County Public Schools* are available in English, Spanish, French, Chinese, Korean, Vietnamese, Amharic, and Portuguese on the MCPS web at *www.montgomeryschoolsmd.org/students/rights/*

Guideline's for Respecting Religious Diversity (English)

Maryland's Largest School District

MONTGOMERY COUNTY PUBLIC SCHOOLS

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Montgomery County Public Schools
Rockville, Maryland

Maryland's Largest School District
MONTGOMERY COUNTY PUBLIC SCHOOLS
Expanding Opportunity and Unleashing Potential

OFFICE OF THE SUPERINTENDENT OF SCHOOLS

September 2022

Dear Students, Parents/Guardians, and Colleagues,

Returning to school five days a week and in person during the 2021–2022 school year was rewarding, but not without challenges. As a community, we have adjusted to changing guidelines for in-school and out-of-school operations, necessitated by the ongoing pandemic, to keep all of us safe. As a community, it has become more important than ever before to collaborate and partner in every aspect of the work that must be done to ensure a high-quality education for all students.

We must continue to embrace the vibrant diversity of our Montgomery County community and ensure that all individuals, no matter their race, ethnicity, or religious identification, feel welcomed and valued in our school system. This is foundational so that everyone can successfully participate, teach, and learn at high levels, in a welcoming environment.

This commitment is codified in Montgomery County Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency,* and it is needed more than ever, given the rise in hate, bias, and racism against minoritized communities. Part of that commitment is making sure our students have the right to express their religious and nonreligious beliefs and practices, free from discrimination, bullying, and harassment. As a school district, we are committed to making feasible and reasonable accommodations for those beliefs and practices, as we strive to create safe, positive, and respectful learning environments for all of our students.

In partnership,

Monifa B. McKnight

850 Hungerford Drive Room 122 Rockville, Maryland 20850 240-740-3020 montgomeryschoolsmd.org

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QUICK REFERENCE GUIDE
RESOURCES FOR STUDENTS

MONTGOMERY COUNTY CRISIS HOTLINES
24-hour information, Referrals and Supportive Conversation

Maryland Crisis Hotline/EveryMind/ . . . .301-738-2255 and https://www.every-mind.org/
Provides a staffed hotline as well as as 24-hour chat box on their website.

Montgomery County Crisis Center 240-777-4000
The Crisis Center provides free crisis support services 24/7 for individuals who are experiencing a mental health crisis.

Youth Crisis Hotline of Montgomery County 301-738-9697
Provides confidential and anonymous support by trained counselors through a 24-hour telephone active listening and referral service.

TO REPORT SAFETY AND SECURITY CONCERNS

MCPS Department of Systemwide Emergency Management. 240-740-3066
The MCPS office responsible for ensuring the safety of MCPS schools and offices.

MCPS Student Welfare and Compliance: SWC@mcpsmd.org or TitleIX@mcpsmd.org 240-740-3215
The MCPS districtwide Title IX coordinator and districtwide child abuse and neglect contact. The Student Welfare and Compliance web page is at https://www.montgomeryschoolsmd.org/compliance/. SWC works collaboratively with schools, the Office of the General Counsel and other MCPS offices, and community agencies to ensure consistency and coherence with implementation of policies, regulations, and guidelines, such as issues related to human relations; bullying, harassment (including Title IX sexual harassment), and intimidation; recognizing and reporting child abuse and neglect; incidents of hate-bias, hazing, and student gender identity.

MCPS Cyber Safety dropbox: . CyberSafety@mcpsmd.org
Dropbox to report inappropriate online activity within MCPS.

The Cyber Tipline 1-800-843-5678
24/7 hotline to report suspected online enticement of children for sexual acts, extra-familial child sexual molestation, child pornography, child sex tourism, child sex trafficking, unsolicited obscene materials sent to a child, misleading domain names, and misleading words or digital images on the Internet.

Safe Schools Maryland Hotline 833-MD-B-Safe (833-632-7233)
A 24/7 anonymous and free reporting system available to students, teachers, school staff members, parents, and the general public to report any school or student safety concerns, including mental health concerns. Information about incidents is shared with the appropriate offices at Montgomery County Public Schools, respecting anonymity of caller.

Montgomery County Child Protective Services, Department of Health and Human Services (24 hours) . . . .240-777-4417 or 240-777-4815 TTY
24/7 reporting hotline to report suspected child abuse or neglect to Montgomery County Child Protective Services.

Montgomery County Adult Protective Services for Vulnerable Adults .240-777-3000, 240-777-4815 TTY
24/7 hotline to report suspected adult abuse and neglect

Montgomery County Police Department, Special Victims Investigation Division (24 hours) . . . 240-773-5400
24/7 hotline to report sex crimes against children and adults, physical child abuse, runaways, missing children, felony domestic violence, elder abuse/vulnerable adult abuse, and registration violations of sex offenders to Montgomery County Police Department.

Montgomery County Police:
Drug and Gang Tip Hotline. . . 240-773-GANG (4264) or 240-773-DRUG (3784)
24/7 hotline to leave an anonymous tip with information relating to illegal drug/gang activities in Montgomery County.

MCPS RESOURCES

Countywide Student Government
www.montgomeryschoolsmd.org/departments/student-leadership

Director, Student Leadership and Extracurricular Activities 240-740-4692

Student Member of the Board
www.montgomeryschoolsmd.org/boe/members/student.aspx

Office of the Board of Education. 240-740-3030

Area Associate Superintendents, School Support and Improvement . . . 240-740-3100

Associate Superintendent, Student and Family Support and Engagement . . . 240-740-5630

Section 504 Resolution and Compliance . 240-740-3230

MONTGOMERY NONEMERGENCY RESOURCES

Montgomery County Police Nonemergency Line. 301-279-8000

Montgomery County Health and Human Services Information Line
Contact the Department of Health and Human Services
General Information . . . . . **311, 301-251-4850 TTY**
Outside Montgomery County Residents . **.240-777-0311**

MCPS INFORMATION AND EMERGENCY ANNOUNCEMENTS

Stay Connected to MCPS www.montgomeryschoolsmd.org
For systemwide information and emergency announcements:

MCPS on Twitter . . . . . www.twitter.com/mcps
MCPS en Español. . . . . www.twitter.com/mcpsespanol

MCPS on Facebook . . . . . www.facebook.com/mcpsmd
MCPS en Español. . . . www.facebook.com/mcpsespanol

Alert MCPS . www.montgomeryschoolsmd.org/alertMCPS

MCPS INFORMATION AND EMERGENCY ANNOUNCEMENTS (CONTINUED)

MCPS QuickNotes Email Messages and Newsletter . . . . . .www.mcpsQuickNotes.org

Ask MCPS Information Service
Telephone. 240-740-3000
Spanish Hotline 240-740-2845
Email . . . . . AskMCPS@mcpsmd.org

MCPS Public Information Office 240-740-2837
MCPS Television . . . . . www.mcpsTV.org; Comcast 34, 998; RCN 89, 1058; Verizon 36

Recorded Emergency and Weather Information 301-279-3673

MCPS RESOURCES ON THE WEB
www.montgomeryschoolsmd.org

Search:

MCPS School Directory
MCPS Staff Directory
MCPS Strategic Plan
Athletics
Be Well 365
Board of Education
B The One
Bullying, Harassment, and Intimidation
Bus Routes
Child Abuse and Neglect
College and Career Center
Common Sense Education
Course Bulletin
Cybercivility and CyberSafety
Diploma Requirements
Gangs and Gang Activity

MCPS RESOURCES ON THE WEB (CONTINUED)
www.montgomeryschoolsmd.org

Grading and Reporting
Guidelines for Respecting Religious Diversity
Guidelines for Student Gender Identity
Lunch Menus
Maryland High School Assessments
myMCPS Classroom
Nondiscrimination
Online Pathway to Graduation
Physical Education
Policies and Regulations
Psychological Services
Pupil Personnel Services
Reporting Allegations of Child Abuse and Neglect
Restorative Justice
School Counseling Services
School Health Services
School Safety
Sexual Harassment
Social Media Digital Citizenship
Special Education
Special Programs
Strategic Planning
Student Code of Conduct
Student eLearning
Student Privacy
Student Service Learning
Suicide Prevention
Summer School

INTRODUCTION

Respecting Religious Diversity in Montgomery County Public Schools

Montgomery County Public Schools (MCPS) is committed to providing all students with opportunities to succeed and thrive. Part of that commitment is making sure our students have the right to express their religious or nonreligious beliefs and practices, free from discrimination, bullying, or harassment.

Our nation and the state of Maryland have a deep and long-standing commitment both to the protection of religious liberty and to the separation of church and state. The First Amendment to the U.S. Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…" This means that the government may not promote one religion over another, prefer religion over nonreligion, or express hostility or opposition to religion.

The U.S. Supreme Court has emphasized the importance of neutrality toward religion by public schools. Schools must protect the religious liberty rights of all students, while rejecting public endorsement of religion. Schools may neither inculcate nor inhibit religion, and students have a right to an academic environment where religious beliefs are not advocated in courses or in school-sponsored activities, such as commencements or assemblies. Equally important, students have the right to their religious or nonreligious beliefs and practices, free from discrimination, bullying, or harassment, and MCPS is committed to making feasible and reasonable accommodations for those beliefs and practices.

These guidelines are intended to provide a quick reference regarding several Montgomery County Board of Education policies and MCPS regulations, as well as state and federal laws, which guide the district on these topics. These guidelines put all of this information together in one place and answer frequently asked questions about religious guidelines for students, while in school and during school-sponsored activities, so that the expectations are clear to our staff, our students, our families, and our community. Please note that these legal requirements are subject to change between editions of this publication, and any changes supersede the statements and references contained in this publication.

MCPS created these guidelines in collaboration with the Montgomery County Executive's Faith Community Working Group and other stakeholders. This partnership and collaboration seek to promote respect and appreciation for the religions, beliefs, and customs of our diverse student population. They foster a culture where all families feel respected and deepen our commitment to our core values of Learning, Relationships, Respect, Excellence, and Equity. MCPS believes that diversity is one of our greatest strengths and should enrich our community as we learn together in our schools.

We hope you find these guidelines helpful. If you have questions about anything in this handbook, please first talk with your school administrators. If you have further questions, contact the MCPS Office of the Chief of Districtwide Services and Supports, Student Welfare and Compliance, at 240-740-3215, or SWC@mcpsmd.org. If your questions cannot be answered by MCPS staff, you also may contact the Board of Education chief of staff or the Board ombudsman at 240-740-3030, or boe@mcpsmd.org.

■ Frequently Asked Questions

Are students' absences excused for observances of religious holidays?

YES. Families must follow all of the regular procedures to report and document absences. Please see the *Absences for Religious Holidays* section of these guidelines for further information (page 2).

Can students make up work due to absences for religious holidays?

YES. Families should work with their child's school to arrange for making up work. Please see the *Absences for Religious Holidays* section of these guidelines for more detailed information (page 2).

Can students pray during the school day?

YES, under certain circumstances. Please see the *Prayer and Religious Dress* section of these guidelines for more specific information (page 3).

Can students wear clothing associated with their religion?

YES. Students may wear scarves, hijabs, yarmulkes, patkas, kufis, or other clothing associated with their religion in accordance with Board policies and MCPS regulations. Please see the *Prayer and Religious Dress* section of these guidelines for more specific information (page 3).

Can religious topics be discussed in school assignments?

YES. Students may express their religious beliefs or nonbelief in school assignments as long as their expressions meet the assignment's requirements, are relevant to the topic, and follow the other guidelines discussed in this *handbook*. In addition, objective and factual lessons about religion in literature, history, and the arts may be part of the MCPS curriculum. Please see the *Religion in the Instructional Program* section of these guidelines for further information (page 3).

Do schools accommodate students' religion-related dietary restrictions?

YES. Schools regularly work with students who may have religion-related dietary restrictions. Please see the *Food and Religious Observance* section of these guidelines for more information (page 5).

Can students distribute religious informational materials?

YES. Students may distribute religious materials on the same terms as they are permitted to distribute other informational material unrelated to school activities. Students must follow school rules about where, when, and how materials are distributed. Please see the *Distributing Religious Informational Materials* section of these guidelines for more information (page 5).

Are religious extracurricular clubs allowed in schools?

YES. Students have a right to organize religion-related extracurricular clubs or assemble and conduct religious meetings, prayer groups, or other observances of religious practices during noninstructional time, on the same basis as other extracurricular student groups that are not related directly to a subject taught in school. These religion-related extracurricular meetings or clubs must be student led. For more information and specific guidance, please see the *Extracurricular Student Religious Activities* section of these guidelines (page 6).

■ Absences for Religious Holidays

Attendance and Absences for Observance of Religious Holidays

Daily attendance at school is crucial to student achievement. Nevertheless, MCPS understands that students may occasionally miss school for a variety of reasons, including the observance of religious holidays. These are excused absences, and students will be allowed to make up missed assignments. If students miss school, they should bring a note from a parent/guardian providing a written explanation within three school days of returning to school.

MCPS will accommodate reasonable requests for late arrivals or early dismissals related to the observance of a religious holiday, but they must be authorized by a parent/guardian.

Although participation in any athletic event or practice generally requires athletes to attend all of their scheduled classes on the day of the event or practice, students who have prescheduled activities, such as the observance of a religious holiday, will be permitted to participate in athletic events or practices on the day of the absence, provided they receive advance approval from their school.

Because free exercise of religion is a constitutional right, MCPS schools that have perfect attendance awards may not withhold these awards from students whose only absences have been excused for the observance of religious holidays.

References:
MCPS Regulation JEA-RA, *Student Attendance*.

Making Up Work After an Absence for Observing Religious Holidays

Students have a responsibility and generally are expected to make up work they miss while absent from school. It is best for students and their parents/guardians to plan ahead to arrange extensions or other accommodations for work that students will miss when they are absent to observe a religious holiday. However, MCPS realizes that it is not always realistic or possible to do so. If the absence is excused, the student's teacher will help the student make up work, offer a retest, or grant an extension on classwork or homework that was due during the student's observance of a religious holiday. While each situation must be addressed on a case-by-case basis, students typically will be eligible for an extension of up to three school days to make up work after an excused absence for observance of a religious holiday.

In addition, when assigning homework, schools should be mindful of cultural, ethnic, religious, and other celebrations or events that are important to members of our community. Montgomery County has developed a listing of Days of Commemoration, including certain holidays relating to the religious, ethnic, and cultural heritage of county residents, available at *www.montgomerycountymd.gov/mcg/commemorations.html*.

The Equity Initiatives Unit has a document that provides staff with background information about the many commemorations/holidays, which staff and other members of the MCPS community may find helpful as well. The calendar on the MCPS website will display the Days of Commemoration as a reference for staff, students, parents/guardians, and community members, in addition to MCPS school closure information. The calendar is available at *www.montgomeryschoolsmd.org/info/calendars/*.

■ Prayer and Religious Dress

Prayer at School

Students are free to pray and discuss their religious views with other students, as long as these activities are voluntary, student initiated, and do not materially disrupt or infringe on classroom instruction, other school activities, or the rights of others. For example, a student may say a prayer or read religious texts before a meal or before a test in informal settings, such as cafeterias or hallways, to the same extent that students are permitted to engage in nonreligious activities; or a student athlete may pray before a competition or after scoring a touchdown or a goal as long as it does not unreasonably delay or disrupt the competition or interfere with the rights of other athletes or spectators. While students may exercise their right to pray during the school day or at school-related activities, they may not compel, harass, or pressure others at school to participate in or listen to a prayer, sermon, or other religious activity. For instance, student-led prayers broadcast to all classes over the school's public announcement system would not be permissable.

If a student requests a quiet place to pray, schools will make a reasonable effort to accommodate the request, provided that space is available, there is appropriate staff monitoring to ensure student safety, and the educational process is not disrupted. This could mean a quiet space in the media center, an empty classroom, or other room.

Students and their parents/guardians should expect that MCPS teachers, administrators, and other staff will not organize, lead, initiate, endorse, or actively participate in student prayers or other student religious activities during school hours or at school-sponsored events. MCPS staff may be present during student prayers or other student-led religious activities only for purposes of monitoring and providing oversight to ensure student and school safety.

Religious Dress

Students may not be disciplined for their style of dress unless it—

- causes a disruption to the educational environment;
- endangers or potentially threatens the health and/or safety of self or others;
- fails to meet a reasonable requirement of a course or activity;
- is associated with gangs;
- is lewd, vulgar, obscene, or revealing or of a sexual nature; or
- promotes tobacco, alcohol, drugs, or sexual activity.

As long as their style of dress is consistent with these guidelines, students should be permitted to wear scarves, hijabs, yarmulkes, patkas, or other clothing or jewelry associated with their religion or containing a religious message.

When possible, schools should provide reasonable accommodations to students if they (or their parents/guardians on their behalf) request permission to wear or not wear certain clothing during physical education class or school-sponsored activities that they perceive as immodest, based on religious beliefs. Such accommodations do not preclude a student's participation in an activity. For example, the Maryland Public Secondary Schools Athletics Association allows athletes participating in interscholastic competitions to "wear a head covering, wrap, or other required religious garment which is not abrasive, hard, or dangerous to any player/others, and is attached in such a way that it is unlikely to come off during play." For other questions regarding athletic accommodations, please consult your school athletic director or the MCPS Athletics Unit.

■ Religion in the Instructional Program

Religion in School Assignments

Students are free to express religious beliefs or nonbelief in school assignments as long as their expressions are relevant to the topic and meet the requirements of the assignment. In the evaluation of school assignments, teachers will not discriminate based on the religious content of students' submissions. Schoolwork will be judged by ordinary academic standards and other legitimate educational interests. For example, if an assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (such as a psalm or a piyyut) will be evaluated based on academic standards (such as literary quality) and neither penalized nor rewarded based on the poem's religious content.

Requests to be Excused from Instructional Programs for Religious Reasons

When possible, schools should try to make reasonable and feasible adjustments to the instructional program to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs. Students, or their parents/guardians on behalf of their students, also have the right to ask to be excused from the classroom activity if the students, or their parents/guardians, believe the activity would invade student privacy by

calling attention to the student's religion. When a student is excused from the classroom activity, the student will be provided with an alternative to the school activity or assignment.

Applying these principles, it may be feasible to accommodate objections from students or their parents/guardians to a particular reading assignment on religious grounds by providing an alternative selection that meets the same lesson objectives. However, if such requests become too frequent or too burdensome, the school may refuse to accommodate the requests. Schools are not required to alter fundamentally the educational program or create a separate educational program or a separate course to accommodate a student's religious practice or belief. For example, schools are not required to excuse students from all music instruction based on a religious concern, because music is an integral part of Maryland's arts curriculum; however, schools may seek to avoid, if possible, requiring a student with a religious objection to play an instrument or sing.

Teaching About Religion or Religious Holidays in Schools

MCPS believes that schools should develop a climate in which children can learn and appreciate cultures and heritages different from their own. To this end, the MCPS curriculum recognizes the role of religions in literature, history, the humanities, and the arts. Indeed, it would be difficult to teach about these subjects without considering religious influences. The MCPS curriculum also builds students' understanding of the relationship between government and religious freedom as a preparation for full citizenship in a multicultural society. Students may attend elective classes, when available, on the history or comparative study of religions in which aspects of religion are discussed.

When students are taught about religion, they should expect instructional activities to be fair, objective, and not demean any religious or nonreligious beliefs. Respecting students' differing beliefs is an essential element of a pluralistic society. Classroom presentations by teachers, students, and guest speakers should not proselytize or advocate particular religious viewpoints as superior to other religious or nonreligious viewpoints. Students may or may not choose to share their ideas about religious traditions. Students should expect that they will not be asked to be spokespersons or representatives for their religious traditions. Singling out students in this way may make them feel uncomfortable, and one student's religious experience should never be generalized to an entire group.

As a teaching aid or resource, schools may use religious symbols in the classroom as examples of religious or cultural heritage. But these teaching aids or resources may be displayed only on a short-term basis to accompany appropriate classroom instruction.

As part of the educational program, schools may teach about religious holidays in a factual manner. School activities may feature the secular aspects of a holiday, but holiday activities may not involve participation in a religious practice or event. Students of various faiths, or their parents/guardians, may ask for students to be excused from certain holiday activities. Teachers should work to honor these requests by planning an alternate activity for students who request one. Even birthdays or other occasions that many may consider to be secular, such as Halloween and Valentine's Day, may be viewed by others as having religious overtones. Schools are permitted to have activities around these events—as long as they are secular in nature—and may excuse students who do not want to participate.

Religion in School Assemblies and Concerts

Special school events, assemblies, concerts, and programs must be designed to further a secular and objective program of education and must not focus on any one religion or religious observance. For instance, religious music may be performed at a winter concert as long as the total effect of the program is nonreligious, and secular music is also included as part of a balanced and inclusive approach.

When assemblies or programs include student bands or other musical groups, participating students may request reasonable and feasible accommodations if they feel that performing religious music is inappropriate to their beliefs. In handling requests for accommodations, school staff should consult with the students and their parents/guardians and take care to avoid embarrassment to, or coercion of, students.

Student or guest speakers at assemblies should be selected based on neutral and even-handed criteria that neither favor nor disfavor religion. Schools should make appropriate, neutral disclaimers to avoid conveying the perception to other students, their parents/guardians, or guests that the school endorses the student's or guest speaker's viewpoints (whether religious or not). In addition, parents/guardians should expect that age will be a factor in schools' programming for assemblies and other school events involving religion-related topics or holidays. While high school students may understand that a school does not endorse the viewpoints of students or guests who are selected on an even-handed basis to speak, middle and elementary students are less likely to make this distinction, even if school staff provide appropriate disclaimers.

■ Food and Religious Observance

Religion-related Dietary Restrictions and Fasting

Students, or their parents/guardians, may request schools to make reasonable and feasible accommodations for a student's dietary needs, including religion-related dietary restrictions and fasting. The MCPS Division of Food and Nutrition Services helps students who have certain dietary restrictions by labeling foods and/or offering a variety of choices for breakfast, lunch, and snacks, such as pork-free options; but schools are not required to prepare special foods solely to fulfill a student's particular religious requirements. For more information, visit *www.montgomeryschoolsmd.org/departments/food-and-nutrition/*.

Similarly, students who are fasting for religious reasons may be permitted to go to the media center or another separate area, rather than the cafeteria, during lunchtime, provided there is appropriate staff supervision. In addition, students who are fasting for religious reasons and ask to be excused from strenuous activities during physical education class should be provided reasonable accommodations. Students should bring to school a note from a parent/guardian providing a written explanation identifying the requested fasting-related accommodation.

■ Distributing Religious Informational Materials

Student Requests to Distribute Religion-related Informational Materials

Students may distribute religion-related informational materials to their schoolmates on the same terms as they are permitted to distribute other informational material that is unrelated to school curriculum or activities. This means that schools can specify at what time the distribution may occur, where it may occur, and how it may occur, as long as these time, place, and manner restrictions are applied consistently to all non-school-related informational materials.

These time, place, and manner-of-distribution requirements are reflected in MCPS regulations and rules that students' distribution of religious informational materials, like political materials or any other non-school-related informational material, should occur only outside of class time and in a nondisruptive manner. For example, schools may permit students to distribute informational materials on sidewalks and in the cafeteria, designated hallways, or student government rooms or areas. However, students may not distribute non-school-related informational materials in classrooms, the media center, or other school rooms during the school day, except (a) when the room is being used as a voluntary meeting place or (b) when the informational material is being used in a class as part of the regular teaching program or a voluntary forum or seminar held by students. In addition, students may not distribute informational materials, whether religious or otherwise, that are obscene, defamatory, disruptive of the educational environment, or invade the rights of others in the school setting.

References:
MCPS Regulation JFA-RA, *Student Rights and Responsibilities*
MCPS Regulation CNA-RA, *Display and Distribution of Informational Materials and Announcements.*
MCPS Regulation KEA-RA, *Participation in Political Campaigns and Distribution of Campaign Materials*

■ Extracurricular Student Religious Activities

Religion-related Extracurricular Activities and Clubs

Students have a right to organize religion-related extracurricular clubs or assemble and conduct religious meetings, prayer groups, or other observances of religious practices during noninstructional time. These religion-related extracurricular meetings or clubs must be student led. MCPS staff provide appropriate monitoring and oversight to ensure student and school safety, but they must not organize, lead, initiate, endorse, or actively participate in prayers or any other religious activities undertaken in these extracurricular meetings or clubs.

Students should inform the MCPS administration about any student-led, religious extracurricular club or activity, and they should talk with school administrators in advance to find an adequate space within the school for these activities. Student religious groups may have access to school facilities, equipment, and services on the same basis as other extracurricular student groups that are not related directly to a subject that is taught in school. This could include access to bulletin boards, computers, and notices in the school newspaper, if such access is made available to other extracurricular student groups that are not related directly to a subject that is taught in school. These religion-related extracurricular groups also may be listed in the section of the school yearbook designated for extracurricular student groups that are not related directly to a subject that is taught in school.

Religion-related extracurricular student groups may invite outside adults or religious leaders to attend their meetings on an occasional basis. However, individuals who are not students at the school may not regularly attend or direct, conduct, control, or lead prayers or other religious activities in student-led extracurricular groups.

Student-led groups, whether religious or nonreligious, will not be permitted to meet in MCPS schools if they advocate violence or hate, engage in illegal activity, cause substantial disruption of the school, violate MCPS nondiscrimination policies, or invade the rights of others in the school setting. However, schools may not ban students from forming groups solely because they involve discussion of controversial and complex social and legal issues.

Students may participate in before- or after-school events with religious content on the same terms as they may participate in other non-curriculum-related activities on school premises.

MCPS Use of Facilities Owned by Religious Organizations

Students and their parents/guardians should expect that schools will not use space in facilities owned or operated by religious organizations for school-related activities or functions when a nonreligious alternative venue is viable and reasonably suitable for the activity or function. Schools will not select or reject the use of any private religious facility based on any facet of religious teachings with which any such facility is associated; instead, religion-neutral criteria will be employed to select these facilities, such as proximity to MCPS, suitability of the facility for the intended use, health and safety, comparative expense, and accessibility.

If a school-related activity or function is held in a facility owned or operated by a religious organization, students and their parents/guardians should expect that the school will clearly identify a secular purpose for using the facility and ensure, to the greatest extent possible, that religious symbols, messages, or artifacts are not displayed in the specific rooms utilized for the school-related activities during their use. Additionally, all reasonable steps will be taken to avoid or minimize exposure to conspicuous religious symbols, messages, or artifacts in areas where participants in the school-related activity or function pass through.

Partnerships Between Schools and Faith Communities

MCPS works to maintain and develop partnerships with the faith community, just as it does with businesses and other community and civic groups. Students and schools gain a great deal when every part of a community comes together to support education.

Any faith community partnership program must have a purely secular purpose and neither promote religion nor preclude it. Students will not be selected to participate based on membership in any religious group, or on acceptance or rejection of any religious belief, or on participation in, or refusal to participate in, any religious activity.

Volunteers from faith communities must recognize that the purpose of any partnership is educational and secular in nature, not religious, and that volunteers must respect the First Amendment rights of students. No volunteers or other participants in any faith community partnership program may proselytize about their faith to students or engage in any religious worship activity while conducting or participating in a school-sponsored activity. Volunteers and other participants in faith community partnership programs must follow the same MCPS rules for distribution of informational materials as apply to other community organizations.

■ Fostering a Culture of Respect for All

These guidelines have been developed to assist in fostering a culture of respect among everyone in the MCPS community. With great diversity in our community, there is much that we can learn from each other when there is a culture of respect, openness, and tolerance. Our schools work to create supportive and accepting learning environments, and parents/guardians are encouraged to work closely with teachers and administrators to understand their families' needs as they pertain to their religious beliefs and practices.

As part of our efforts to create positive and respectful schools, students have a right to a safe learning environment, free from bullying, harassment, and intimidation of any sort, including intimidation based on the student's actual or perceived personal characteristics, including religion. Further, the Board prohibits the use of language and/or the display of images and symbols that promote hate and can be reasonably expected to cause substantial disruption to school or district operations or activities. Students who are bullied, students who bully, and students who are bystanders to bullying are at risk of a range of negative health, safety, and educational outcomes. MCPS has implemented a systemwide approach designed to prevent bullying, harassment, or intimidation and effectively intervene when it occurs, as well as to deter reprisal and retaliation against individuals who report acts of bullying, harassment, or intimidation. To report any such actions, students or their parents/guardians should work with school administrators to resolve any issues and complete MCPS Form 230-35, *Bullying, Harassment, or Intimidation Reporting Form*, available via an online reporting form (preferred) and a paper reporting form. *www.montgomeryschoolsmd.org/departments/forms/detail.aspx?formNumber=230-35&catID=1&subCatId=44*

In alignment with Board Policy COA, S*tudent Well-being and School Safety*, MCPS has established and maintains a behavior threat assessment process, based on an appraisal of behaviors that provides appropriate preventive or corrective measures to maintain safe and secure school environments and workplaces. All children deserve a safe and nurturing school environment that supports their physical, social, and psychological well-being. Such safe and nurturing environments are essential prerequisites for promoting all students' opportunity to learn. In alignment with Board Policy ACA, *Nondiscrimination*, *Equity, and Cultural Proficiency*, school safety measures should not reinforce biases against, or rely on the profiling of, students based on their actual or perceived personal characteristics. Staff responsible for implementing behavior threat assessment procedures at the school level are trained to understand implicit bias and promote diversity awareness.

References:

Board Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*
Board Policy COA, *Student Well-being and School Safety*
Board Policy JHF, *Bullying, Harassment, or Intimidation*
MCPS Regulation COA-RA, *Behavior Threat Assessment*.
MCPS Regulation JHF-RA, *Student Bullying, Harassment, or Intimidation*.

MCPS NONDISCRIMINATION STATEMENT

Montgomery County Public Schools (MCPS) prohibits illegal discrimination based on race, ethnicity, color, ancestry, national origin, nationality, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family structure/parental status, marital status, age, ability (cognitive, social/emotional, and physical), poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations. Discrimination undermines our community's long-standing efforts to create, foster, and promote equity, inclusion, and acceptance for all. The Board prohibits the use of language and/or the display of images and symbols that promote hate and can be reasonably expected to cause substantial disruption to school or district operations or activities. For more information, please review Montgomery County Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*. This Policy affirms the Board's belief that each and every student matters, and in particular, that educational outcomes should never be predictable by any individual's actual or perceived personal characteristics. The Policy also recognizes that equity requires proactive steps to identify and redress implicit biases, practices that have an unjustified disparate impact, and structural and institutional barriers that impede equality of educational or employment opportunities. MCPS also provides equal access to the Boy/Girl Scouts and other designated youth groups.**

For inquiries or complaints about discrimination against MCPS students*	**For inquiries or complaints about discrimination against MCPS staff***
Director of Student Welfare and Compliance Office of District Operations Student Welfare and Compliance 850 Hungerford Drive, Room 55, Rockville, MD 20850 240-740-3215 SWC@mcpsmd.org	Human Resource Compliance Officer Office of Human Resources and Development Department of Compliance and Investigations 45 West Gude Drive, Suite 2100, Rockville, MD 20850 240-740-2888 DCI@mcpsmd.org
For student requests for accommodations under *Section 504 of the Rehabilitation Act of 1973*	**For staff requests for accommodations under the *Americans with Disabilities Act***
Section 504 Coordinator Office of Academic Officer Resolution and Compliance Unit 850 Hungerford Drive, Room 208, Rockville, MD 20850 240-740-3230 RACU@mcpsmd.org	ADA Compliance Coordinator Office of Human Resources and Development Department of Compliance and Investigations 45 West Gude Drive, Suite 2100, Rockville, MD 20850 240-740-2888 DCI@mcpsmd.org
For inquiries or complaints about sex discrimination under Title IX, including sexual harassment, against students or staff*	
Title IX Coordinator Office of District Operations Student Welfare and Compliance 850 Hungerford Drive, Room 55, Rockville, MD 20850 240-740-3215 TitleIX@mcpsmd.org	

**Discrimination complaints may be filed with other agencies, such as the following: U.S. Equal Employment Opportunity Commission (EEOC), Baltimore Field Office, GH Fallon Federal Building, 31 Hopkins Plaza, Suite 1432, Baltimore, MD 21201, 1-800-669-4000, 1-800-669-6820 (TTY); Maryland Commission on Civil Rights (MCCR), William Donald Schaefer Tower, 6 Saint Paul Street, Suite 900, Baltimore, MD 21202, 410-767-8600, 1-800-637-6247, mccr@maryland.gov; or U.S. Department of Education, Office for Civil Rights (OCR), The Wanamaker Building, 100 Penn Square East, Suite 515, Philadelphia, PA 19107, 1-800-421-3481, 1-800-877-8339 (TDD), OCR@ed.gov, or www2.ed.gov/about/offices/list/ocr/complaintintro.html.*

***This notification complies with the federal Elementary and Secondary Education Act, as amended.*

This document is available, upon request, in languages other than English and in an alternate format under the *Americans with Disabilities Act*, by contacting the MCPS Office of Communications at 240-740-2837, 1-800-735-2258 (Maryland Relay), or PIO@mcpsmd.org. Individuals who need sign language interpretation or cued speech transliteration may contact the MCPS Office of Interpreting Services at 240-740-1800, 301-637-2958 (VP) mcpsinterpretingservices@mcpsmd.org, or MCPSInterpretingServices@mcpsmd.org.

Maryland's Largest School District

MONTGOMERY COUNTY PUBLIC SCHOOLS

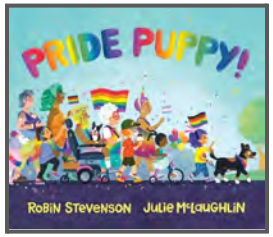
Published by the Department of Materials Management for the
Office of Strategic Initiatives

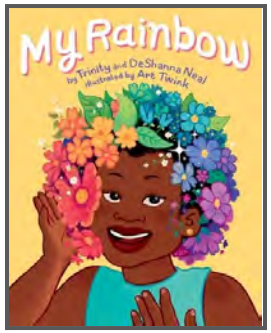
0854.22ct • Editorial, Graphics & Publishing Services • 9/22 • NP

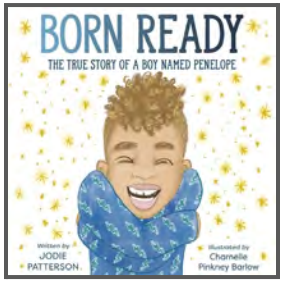
Exhibit B

Newly Approved LGBTQ-Inclusive Texts

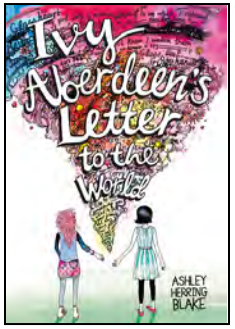
Texts by Grade Level

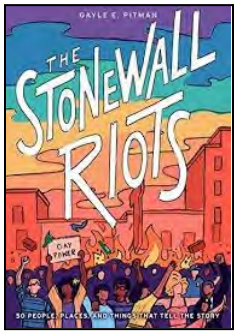
Grade Level	Title	Author	Text Summary
PreKindergarten and Head Start	*Pride Puppy* 	Robin Stevenson	A young child and their family are having a wonderful time together celebrating Pride Day—meeting up with Grandma, making new friends and eating ice cream. But then something terrible happens: their dog gets lost in the parade! Luckily, there are lots of people around to help reunite the pup with his family.
Kindergarten through Grade 5	*Uncle Bobby's Wedding*	Sarah Brannen	*Uncle Bobby's Wedding* is about a fun-loving girl named Chloe and her Uncle Bobby, whom she adores. But then she finds out Uncle Bobby is getting married, and meets Bobby's intended, Jamie, and worries that Uncle Bobby won't have time to spend with her anymore.
	Intersection Allies: We Make Room for All	Chelsea Johnson, LaToya Council & Carolyn Choi	In the story, *Intersection Allies: We Make Room for All*, the nine interconnected characters proudly describe themselves and their backgrounds, involving topics that range from a physical disability to language brokering, offering an opportunity to take pride in a personal story and

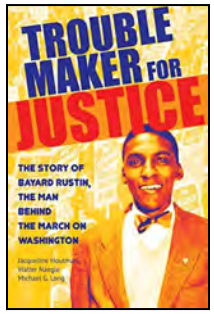
			connect to the collective struggle for justice.
	My Rainbow 	Trinity & DeShanna Neal	*My Rainbow* tells the story of a dedicated mom who puts love into action as she creates the perfect rainbow-colored wig for her transgender daughter, based on the real-life experience of mother-daughter advocate duo Trinity and DeShanna Neal. Warm morning sunlight and love fill the Neal home.
	Prince & Knight 	Daniel Haack	*Prince & Knight* is a children's picture book authored by Daniel Haack and illustrated by Stevie Lewis. Prince & Knight tells the story of a young prince who falls in love with a knight after the two work together to battle a dragon threatening the kingdom. At the conclusion of the book, the two wed.
	Love, Violet	Charlotte Sullivan Wild	Valentine's Day brings a shy child named Violet the chance to connect with her crush, Mira, in Sullivan Wild's uplifting wintry tale...a race through the snow—choreographically captured with dancelike

			grace in Chua's simple, light-filled watercolors—brings the duo together at last, making the holiday one of joyful acceptance.
	Born Ready: The True Story of a Boy Named Penelope 	Jodie Patterson	In this exuberant companion to Jodie Patterson's adult memoir, The Bold World, Patterson shares her son Penelope's frustrations and triumphs on his journey to share himself with the world. Penelope's experiences show children that it always makes you stronger when you are true to yourself and who you really are.
Grade 6	*Cattywampus*	Ash Van Otterloo	The magical story of a hex that goes haywire, and the power of friendship to set things right! In the town of Howler's Hollow, conjuring magic is strictly off-limits. Only nothing makes Delpha McGill's skin crawl more than rules. So when she finds her family's secret book of hexes, she's itching to use it to banish her mama's money troubles. She just has to keep it quieter than a church mouse -- not exactly Delpha's specialty.Trouble is, Katybird Hearn is hankering to

			get her hands on the spell book, too. The daughter of a rival witching family, Katy has reasons of her own for wanting to learn forbidden magic, and she's not going to let an age-old feud or Delpha's contrary ways stop her. But their quarrel accidentally unleashes a hex so heinous it resurrects a graveyard full of angry Hearn and McGill ancestors bent on total destruction. If Delpha and Katy want to reverse the spell in time to save everyone in the Hollow from rampaging zombies, they'll need to mend fences and work together.
Grade 6	*The Best at It*	Maulik Pancholy	Rahul Kapoor is heading into seventh grade in a small town in Indiana. The start of middle school is making him feel increasingly anxious, so his favorite person in the whole world, his grandfather, Bhai, gives him some well-meaning advice: Find one thing you're really good at and become the BEST at it. Those four little words sear themselves into Rahul's brain. While he's not quite sure what that special thing is, he is convinced that once he finds it, bullies like Brent Mason will stop torturing him at school. And he won't be worried about staring too long at his classmate Justin Emery. With his best friend, Chelsea, by his side, Rahul is ready to crush this challenge.... But what if he discovers he isn't the best at anything?

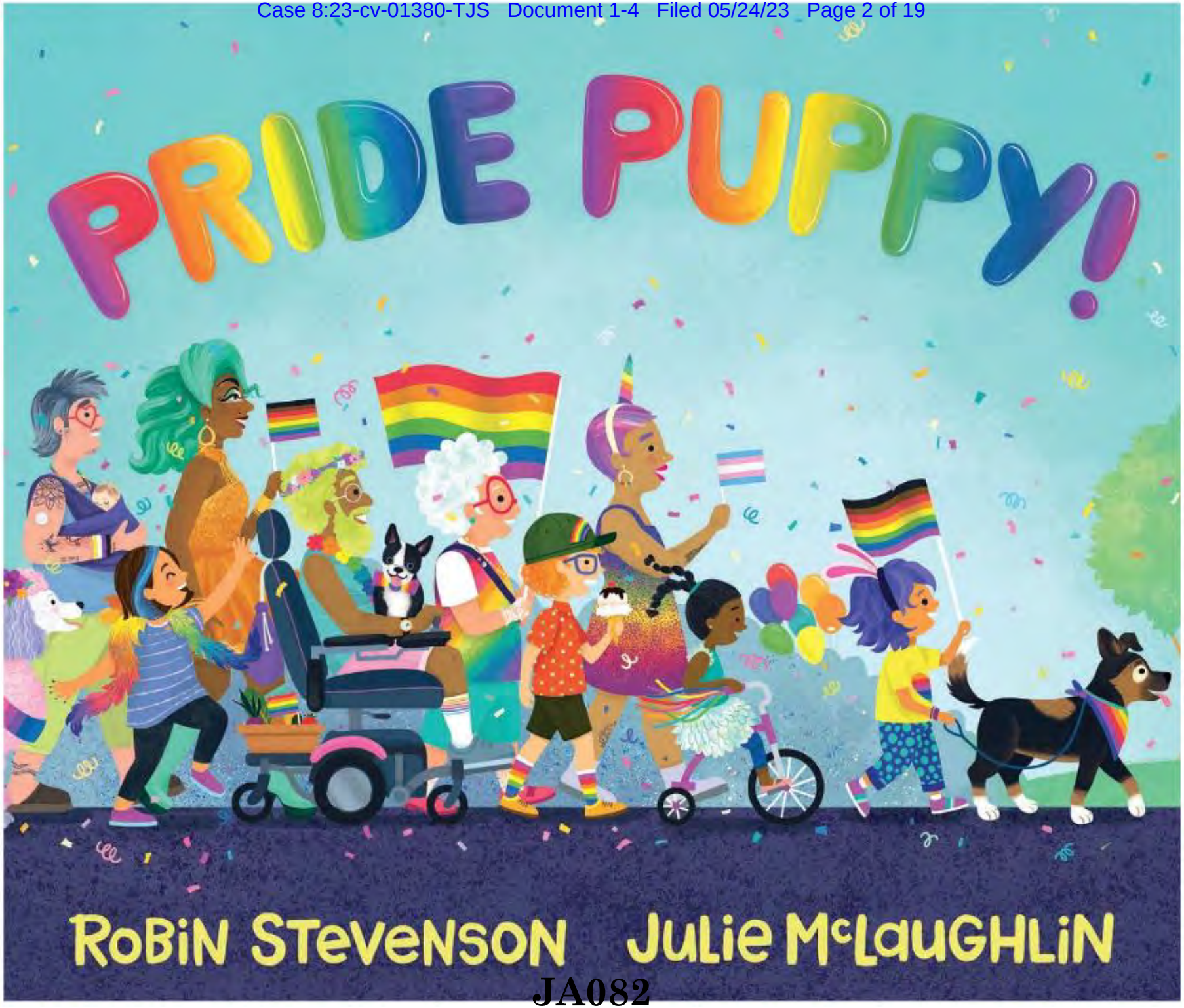
			Funny, charming, and incredibly touching, this is a story about friendship, family, and the courage it takes to live your truth.
Grade 7	*Ivy Aberdeen's Letter to the World* 	Ashley Herring Blake	When a tornado rips through town, 12-year-old Ivy Aberdeen's house is destroyed, and her family of five is displaced. Ivy feels invisible and ignored in the aftermath of the storm - and what's worse, her notebook filled with secret drawings of girls holding hands has gone missing. Mysteriously, Ivy's drawings begin to reappear in her locker with notes from someone telling her to open up about her identity. Ivy thinks - and hopes - that this someone might be her classmate, another girl for whom Ivy has begun to develop a crush. Will Ivy find the strength and courage to follow her true feelings? *Ivy Aberdeen's Letter to the World* exquisitely enriches the rare category of female middle-grade characters who like girls - and children's literature at large.
Grade 7	*Hurricane Child*	Kacen Callender	Caroline Murphy is a Hurricane Child.Being born during a hurricane is unlucky, and twelve-year-old Caroline has had her share of bad luck lately. She's hated and bullied by everyone in her small school on St. Thomas of the US Virgin Islands, a spirit only she can see won't stop following her, and -- worst of all -- Caroline's mother left home one day and

			never came back.But when a new student named Kalinda arrives, Caroline's luck begins to turn around. Kalinda, a solemn girl from Barbados with a special smile for everyone, becomes Caroline's first and only friend -- and the person for whom Caroline has begun to develop a crush.Now, Caroline must find the strength to confront her feelings for Kalinda, brave the spirit stalking her through the islands, and face the reason her mother abandoned her. Together, Caroline and Kalinda must set out in a hurricane to find Caroline's missing mother -- before Caroline loses her forever.
Grade 8	*The Stonewall Riots: Coming Out in the Streets* 	Gayle E. Pitman	This book is about the Stonewall Riots, a series of spontaneous, often violent demonstrations by members of the gay (LGBTQ+) community in reaction to a police raid that took place in the early morning hours of June 28, 1969, at the Stonewall Inn in the Greenwich Village neighborhood of Manhattan, New York City. The Riots are attributed as the spark that ignited the LGBTQ+ movement. The author describes American gay history leading up to the Riots, the Riots themselves, and the aftermath, and includes her interviews of people involved or witnesses, including a woman who was ten at the time. Profusely illustrated, the book includes contemporary photos, newspaper clippings, and other period objects. A timely and necessary read, *The Stonewall Riots* helps readers to understand the history and legacy of the

			LGBTQ+ movement.
Grade 8	*Troublemaker for Justice: The Story of Bayard Rustin, the Man Behind the March on Washington* 	Jacqueline Houtman, Walter Naegle, & Michael G. Long	Bayard Rustin was a major figure in the Civil Rights movement. He was arrested on a bus 13 years before Rosa Parks and he participated in integrated bus rides throughout the South 14 years before the Freedom Riders. He was a mentor to Dr. Martin Luther King, Jr., teaching him the techniques and philosophy of Gandhian nonviolent direct action. He organized the March on Washington in 1963, one of the most impactful mobilizations in American history. Despite these contributions, few Americans recognize his name, and he is absent from most history books, in large part because he was gay. This biography traces Rustin's life, from his childhood and his first arrest in high school for sitting in the "whites only" section of a theater, through a lifetime of nonviolent activism. "Authors Jacqueline Houtman, Walter Naegle, and Michael G. Long provide middle and high school students with a biography of Rustin that illustrates how the personal is political. Young readers will take away valuable lessons about identity, civics, and 20th-century history."—Rethinking Schools

Additional Texts for the high school level will be included in 2022-23.

Exhibit C


PRIDE PUPPY!
ROBIN STEVENSON
JULIE McLAUGHLIN

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PRIDE PUPPY!

ROBIN STEVENSON

JULIE McLAUGHLIN

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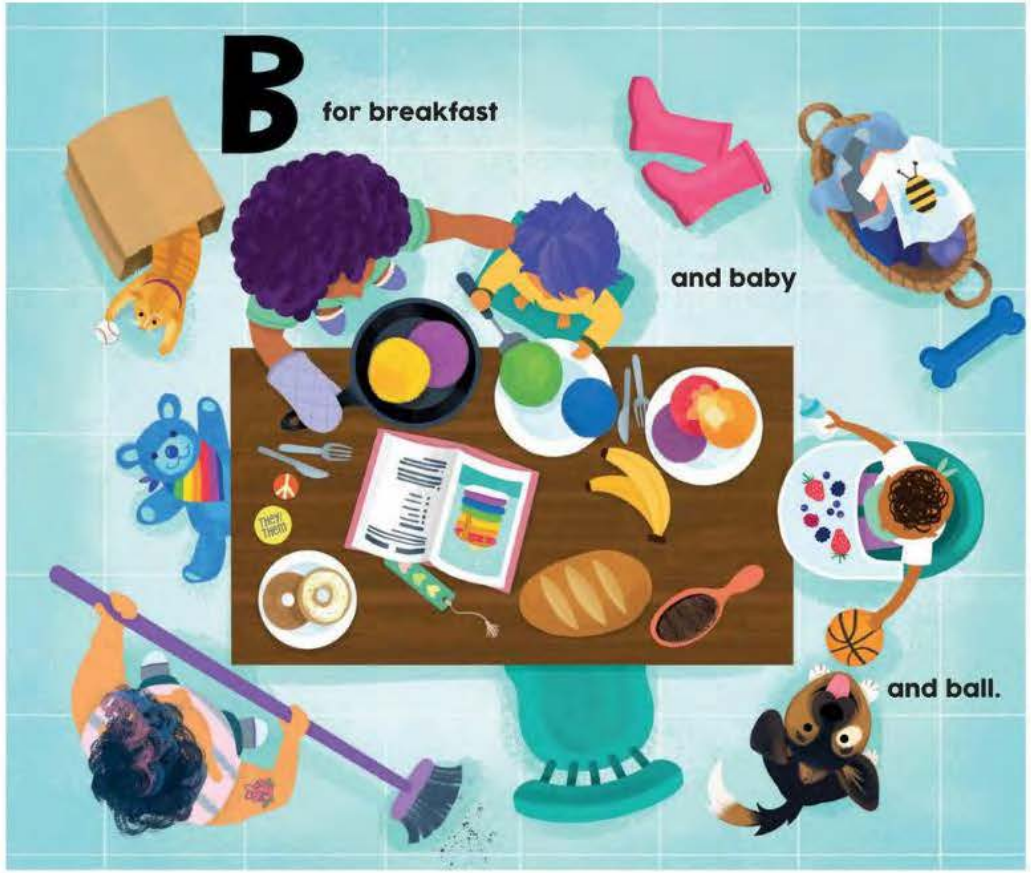
A
for awake, animals and all.


B
for breakfast
and baby
and ball.

C for car, our old Chevrolet.
D for dog, dressed up for the day.

E for everyone under the sun.
F for feathers, for flags and for fun.
BienVenue!
QueeR Farmers

G for Grandma, at our meeting spot.

H for hats
and hungry and hot.

I for ice cream, sticky and sweet.
J for joining the crowds on the street.
THE FUTURE is INTER-SECTIONAL
28

PFLAG
LOVE
K for kindness and friends that we're keeping.
L for leash
and for loose
and for leaping!

M for missing!
Marsha
Love Thy Neighbor
We search high and low.

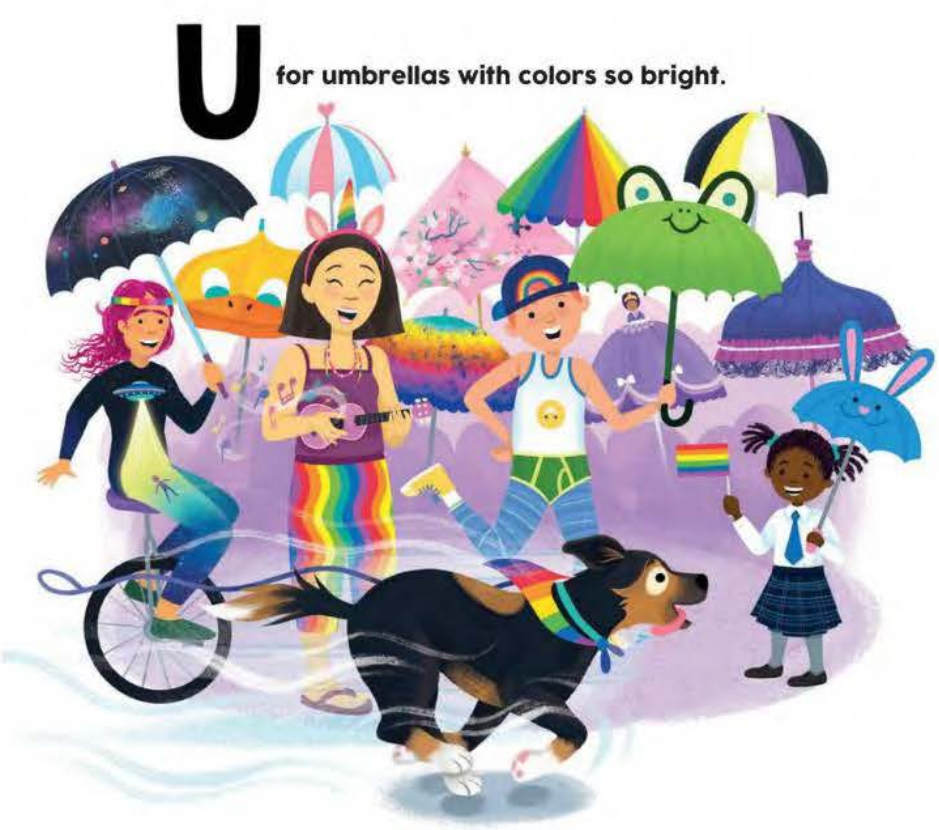
N for nearly...
and next time...
and NO!

O for oops.
OUT and PROUD
Our hopes are fading.

P
for puppy,
PRIDE
proudly parading!

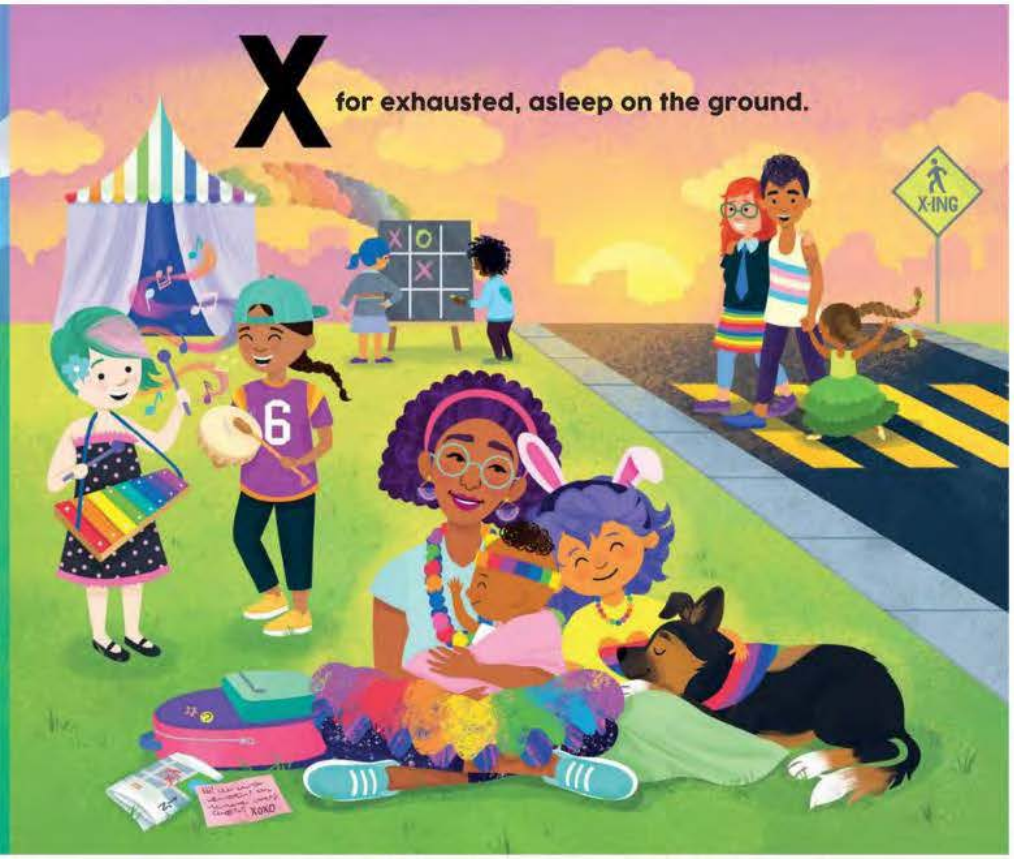
Q
for queen in a beautiful dress.
Queer Pride
R
for rainbows
Peace Love Respect
FOR RENT
and a really big mess!

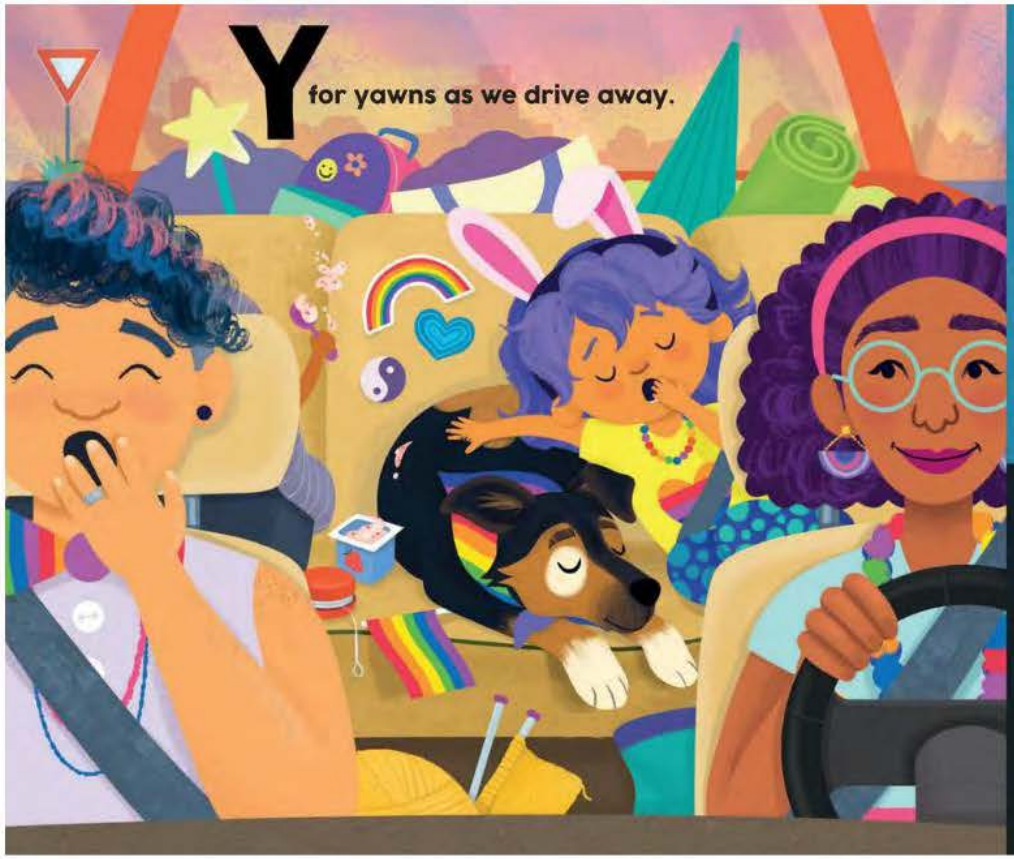
S for school bus and students with signs.
T for teachers and toddlers in lines.
love wins
PROUD TogeTHeR
PeeRS + QueeRS
PRIDE CLUB
LOVE KNOWS NO GENDER
You Matter
Be You
TWO SPIRIT PRIDE


U for umbrellas with colors so bright.

V for VICTORY
...and holding on tight!

QueeR
Farmers
W
for wags and wide smiles all around.


X
for exhausted, asleep on the ground.
X-ING
6
XOXO


Y for yawns as we drive away.

Z for ZZZs at the end of the day.

Search and Find Word List*

A alligator, apple, anchor, astronaut, almonds, accordion, abacus, aloe plant, alarm clock, [abstract] art, airplane

B baseball, [brown] bag, [blue] bear, bagel, [recipe] book, bookmark, [hair]brush, bread, bananas, berries, basketball, bottle, broom, bone, boots, [laundry] basket, bee

C cabbage, corn, carrots, chickens, coop, compost, crow, cat, collar, cactus, clock, curtains, coffee cup, cherries, camera, cantaloupe, celery, cucumber, chocolate chip cookies, clouds

D doll, desk, dresser, drawer, [diplodocus] dinosaur, door, dump truck, drum and drumsticks, dandelions

E earth, earmuffs, equal sign, earrings

F feather boa, floral print, french fries, frilly socks, flowers, freezie, furry boots, fruit, fairy wings, flower crown, flamenco dress, farmer, four

G goose, garbage, ghost on a groovy shirt, [bubble] gum, granola bar, grapes, grasshopper, gazebo, green [glitter] beard, [gold] guitar

H hot dog, hamburger, headband, hula-hoop, happy face, horse, housecoat, harmonica, helicopter, hearts, heart-shaped handbag, high heels

I infant, insulin monitor, inflatable tube, [Shiba] Inu, intersex [flag], insect

J jump rope, jungle print, juggling, jersey, juice box, jean jacket, jewelry

K kilt, kites, kiss, [drag] king, knee-high socks, knapsack, koala, kiwi, keys, knitted [sweater], kangaroo

L love, loudspeaker, lion, lace, lemonade, locs, lollipop, leather, leopard-print leggings, lightning bolt, lip ring, ladybug

M muffin, moon, Marsha P. Johnson, Mom, minister, monkey, moose [antlers], motorcycle, mask, maracas, magnifying glass, map, mouse, mustache

N newspaper, nickels, noodles, napkins, net, nurse, necklace, nachos, nail polish

O overalls, onion rings, owl, octopus, oriole, obstacle [sign]

P parrot, princess in a purple dress, pineapple, pizza, pin curls, pom-pom, platform shoes, polka dots, Pomeranian, pockets, pinwheel, party hat, proposal, poodle

Q [drag] queen, quilt

R roses, roller skates, ribbon, robot, record, radio, rabbit, raspberries, rubber boots, raccoon tail, receipt, recycling bin, rake, robin, roof, ripped jeans

S stereo, sloth, scarf, soccer ball, snorkel mask, star, saxophone, stroller, sailor, stripes, sunflower, sandwich, skateboard, socks, seagull, swimsuit, scooter, spots, Scottie (dog), stickers, sandals

T twirl, tea, tomato, tractor, taco, twins, tattoos, turtleneck, trousers, tote bag, top knot, tambourine, tuxedo, tuba, toucan, taxi, tropical print, thumbs-up, tie

U umbrella, unitard, unicycle, ukulele, unicorn horn, upside-down [face], underwear, uniform

V veil, valentine, vest, vampire, video game, VW van

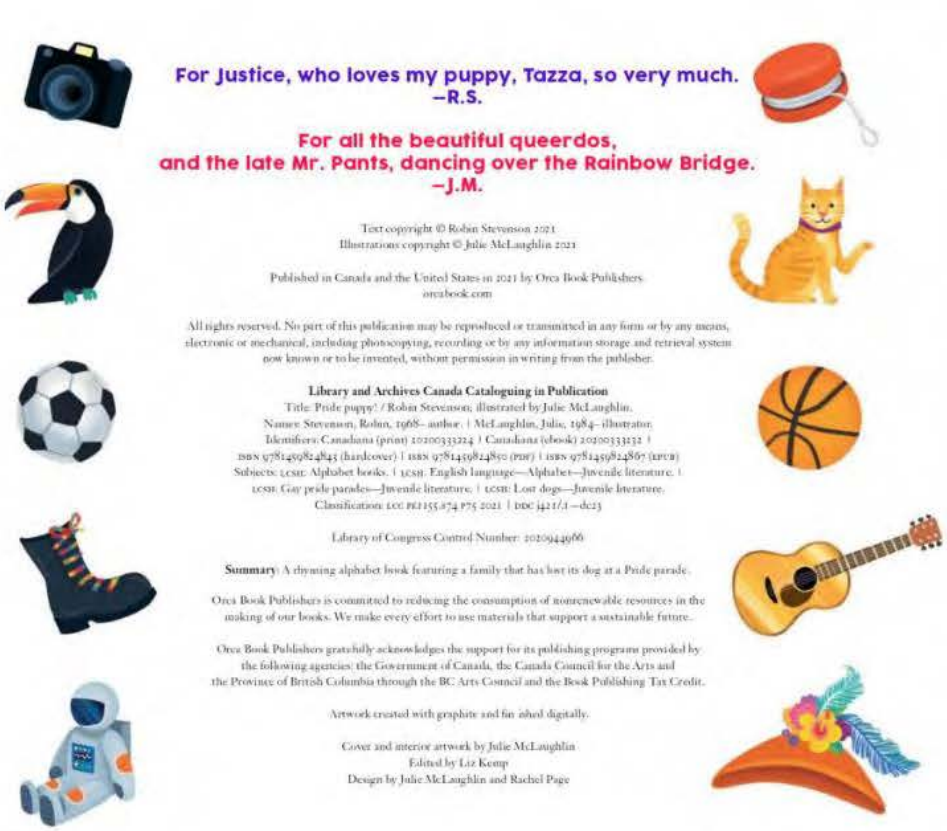
W wagon, wallet, whistle, walkie-talkie, whippet, wiener dog, whale, wizard, wand, watermelon, watch

X xylophone, x's and o's, X marks the spot, xoxo

Y yield sign, yogurt, yoga mat, yellow yarn, yo-yo

Z zebra print, zipper

*See if you can find any we didn't list!



For Justice, who loves my puppy, Tazza, so very much.
–R.S.

For all the beautiful queerdos,
and the late Mr. Pants, dancing over the Rainbow Bridge.
–J.M.

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Library and Archives Canada Cataloguing in Publication
Title: Pride puppy! / Robin Stevenson; illustrated by Julie McLaughlin.
Names: Stevenson, Robin, 1968– author. | McLaughlin, Julie, 1984– illustrator.
Identifiers: Canadiana (print) 20200333224 | Canadiana (ebook) 20200333232 |
ISBN 9781459824843 (hardcover) | ISBN 9781459824850 (PDF) | ISBN 9781459824867 (EPUB)
Subjects: LCSH: Alphabet books. | LCSH: English language—Alphabet—Juvenile literature. |
LCSH: Gay pride parades—Juvenile literature. | LCSH: Lost dogs—Juvenile literature.
Classification: LCC PE1155.S74 P75 2021 | DDC 421'.1—dc23

Library of Congress Control Number: 2020944966

Summary: A rhyming alphabet book featuring a family that has lost its dog at a Pride parade.

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Orca Book Publishers gratefully acknowledges the support for its publishing programs provided by the following agencies: the Government of Canada, the Canada Council for the Arts and the Province of British Columbia through the BC Arts Council and the Book Publishing Tax Credit.

Artwork created with graphite and fine tuned digitally.

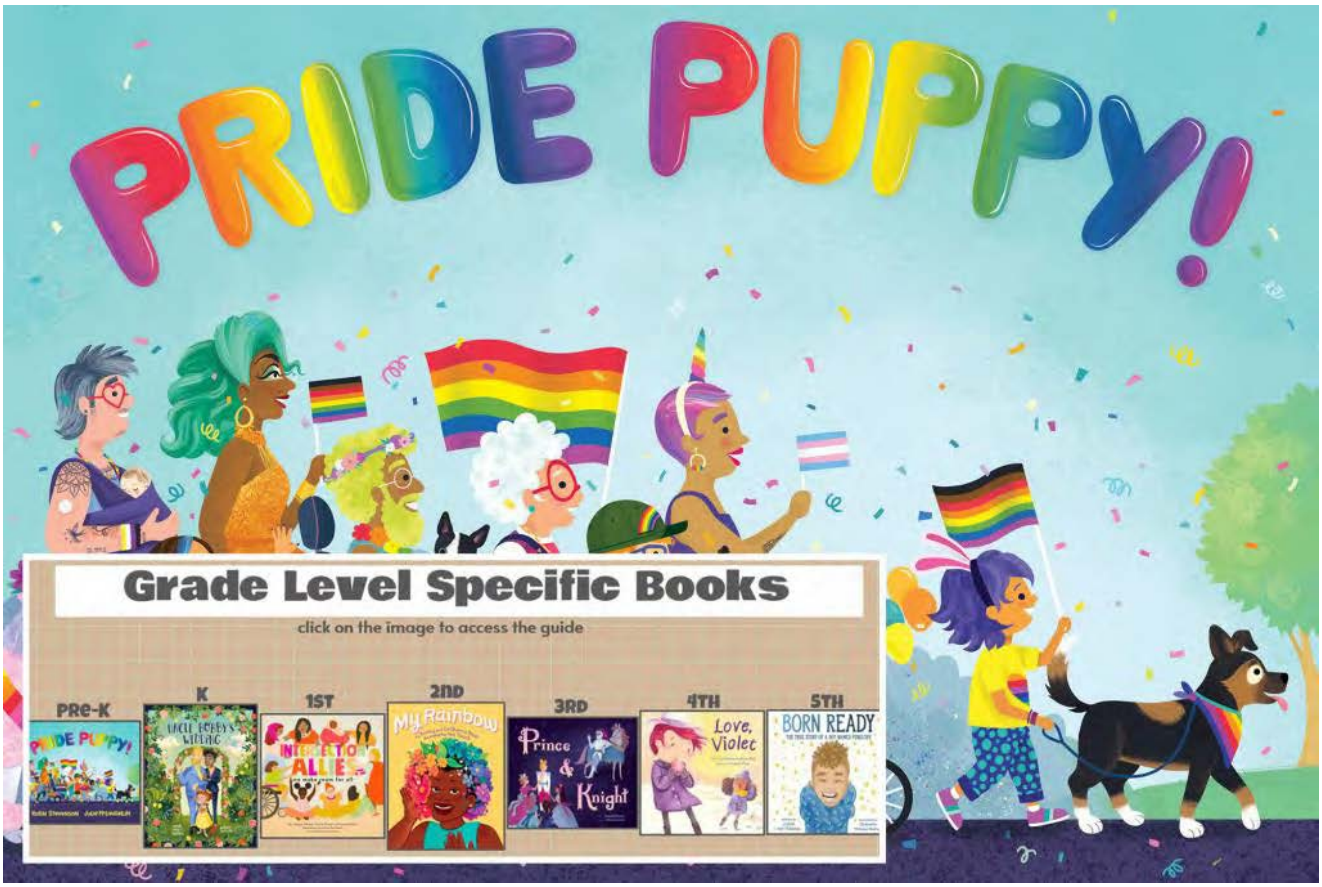
Cover and interior artwork by Julie McLaughlin
Edited by Liz Kemp
Design by Julie McLaughlin and Rachel Page

Exhibit D

Maryland school district unveils LGBTQ book list that teaches words ‘intersex,’ ‘drag queen’ to pre-K students

nypost.com/2022/11/15/maryland-school-district-unveils-lgbtq-library-for-pre-k-5th-grade

Fox News November 15, 2022



Maryland’s wealthiest school district has unveiled a new LGBTQ-inclusive book list for elementary schools that teaches words like “intersex” and “drag queen” to children as young as 4.

A PowerPoint presentation by Montgomery County Public Schools (MCPS) shows a list of LGBTQ+ books that will be provided for pre-K through fifth-grade classrooms this year. The presentation explains that the LGBTQ-inclusive reading list aims to “reduce stigmatization and marginalization of transgender and gender nonconforming students.”

“All students deserve to see themselves in their school and classroom, including students who identify as LGBTQ+ and come from LGBTQ+ headed families and have family members that are a part of the LGBTQ+ community,” the presentation states. “There are no planned explicit lessons related to gender and sexuality, but these books do mean that LGBTQ+ identities will be made visible. Inclusive curricula support a student’s ability to empathize, connect, and collaborate with a diverse group of peers, and encourage respect for all.”

"No child, or adult, who does not agree with or understand another student's gender identity or expression or their sexuality identity is asked to change how they feel about it," it adds.

A Maryland school district has unveiled a new LGBTQ inclusive library.
Pride Puppy

The presentation was apparently part of a professional development workshop for MCPS staff held in August about "Building Community with LGBTQ+ Affirming Picture Books." One of the slides stated, "Use five of the books by the end of December."

The book that MCPS has recommended for children in pre-kindergarten is "Pride Puppy," which teaches terms like "intersex," "drag king," "drag queen" and "Marsha P. Johnson," the late famed drag performer.

Pre-K teachers are also provided a resource guide about "defining LGBTQ+ words for elementary students" by the Human Rights Campaign, which includes vocabulary like "cisgender," "gender binary," "transgender," "pansexual" and "queer."

Possible Question: Can I keep my child home when you are learning about LGBTQ+ topics?

Possible Answer: As part of MCPSs commitment to equity, and our school's mission, we are working towards cultivating inclusive environments for all of our students and their families. Part of how we do this is through diversifying representation in the curriculum; expanding our representation shows our LGBTQ+ community members that this is a place where they are welcome and included. All students deserve to see themselves in their school and classroom, including students who identify as LGBTQ+ and come from LGBTQ+ headed families and have family members that are a part of the LGBTQ+ community. While there are no planned explicit lessons related to gender and sexuality, students will see these identities embedded throughout. For students for whom some of these identities are new, questions and conversations might organically happen. Inclusive curricula support a student's ability to empathize, connect, and collaborate with a diverse group of peers, and encourage respect for all. No child who does not agree with or understand another student's gender identity or expression or their sexuality identity is asked to change how they feel about it.

Students as young as 4 would be exposed to words like "intersex" and "drag queen."
Montgomery County Public Schools

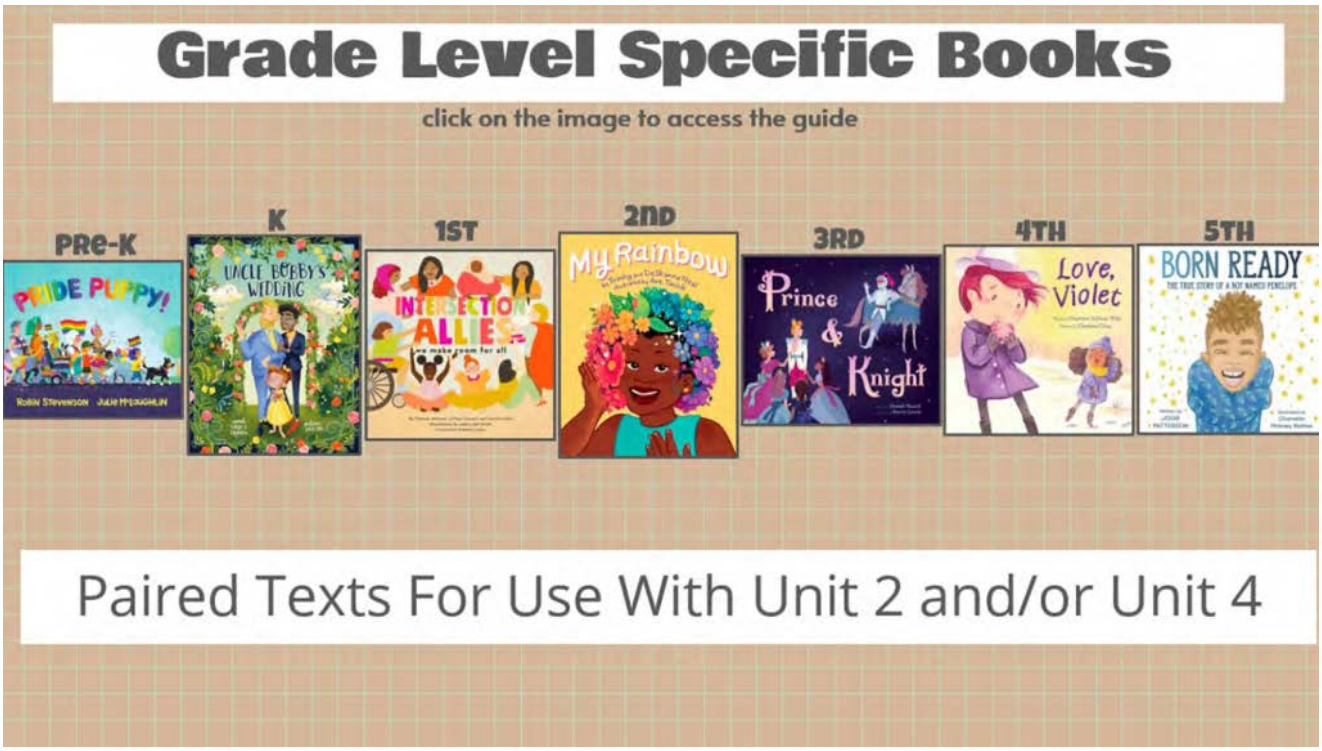
Students in kindergarten, ages 5 and 6, are advised to read the 2021 book, "Uncle Bobby's Wedding," which is about a wedding between two men.

"Students will recognize that people's multiple identities interact and create unique and complex individuals," the MCPS guide states.

Students in first grade are advised to read "IntersectionAllies: We Make Room for All," which includes LGBTQ+ topics on being "non-binary" and deciding "what pronouns fit you best."

"Students will recognize their own responsibility to stand up to exclusion, prejudice and injustice," the guide states.

Students in second grade, ages 7 and 8, are recommended to read "My Rainbow," a book about a Black transgender child that teaches the words "transgender" and "cisgender." A "think aloud" moment, according to MCPS, includes, "Appreciating that Trinity's identities are part of what make her a 'masterpiece.'"



Montgomery County Public Schools says the library is meant to reduce stigmatization.
Montgomery County Public Schools

"Students will recognize unfairness on the individual level (e.g., biased speech) and injustice at the institutional or systemic level (e.g., discrimination)," the guide states.

Third-graders, ages 8 and 9, are recommended to read the 2018 book "Prince & Knight," which tells the story of a prince who falls in love with a knight.

The objective of that book is for students to "be able to describe characters' traits, motivations and feelings in a story," MCPS states.

"Some think aloud moments" for the book, according to MCPS, include, "Noticing that the prince doesn't seem happy about all the princesses trying to get his attention," "wondering how he might feel about the pressure his parents are putting on him to find a princess" and "appreciating that when the prince is saved by the knight, we see him smile for the first time."

Fourth-graders are recommended to read the 2022 book "Love, Violet," which tells the story of a queer child who develops a crush on her friend, Mira.

A "think aloud" moment for that book is "acknowledging how uncomfortable we might [be] in situations when we feel our heart beating 'thumpity thump' & how hard it can be [to] talk about our feelings with someone that we don't just 'like' but we 'like like,'" according to MCPS.

"Students will develop language and knowledge to accurately and respectfully describe how people (including themselves) are both similar to and different from each other and others in their identity groups," the guide states.

Students in fifth-grade, ages 10 and 11, are advised to read "Born Ready," which tells the story of a Black transgender child.

"Some think aloud moments," for that book, according to MCPS, include, "noticing how happy Penelope is when his mom hears him and commits to sharing with their loved ones that he is a boy–say again that we know ourselves best" and "noticing that in Ghana they think about gender differently than we do in the US–wondering why is it such a big deal here?"

The presentation provides several examples of potential complaints from students, parents and community members and how MCPS staff should respond.

"That's weird," reads a sample comment from a student. "He can't be a boy if he was born a girl. What body parts do they have?"

The answer suggested by MCPS states: "That comment is hurtful; we shouldn't use negative words to talk about peoples' identities. Sometimes when we learn information that is different from what we always thought, it can be confusing and hard to process. When we are born, people make a guess about our gender and label us 'boy' or 'girl' based on our body parts. Sometimes they're right, and sometimes they're wrong. Our body parts do not decide our gender. Our gender comes from inside – we might feel different than what people tell us we are. We know ourselves best."

In a statement to Fox News Digital, MCPS insisted the readings are not mandatory and that they will not be scheduled for use until families are notified.

However, the original MCPS presentation includes a guide on "Responding to Caregivers/Community Questions," and two of the example questions include, "Why can't I opt out of this…" and "Can I keep my child home…," and neither of the example answers to those questions included saying that families can opt out.

In fact, if a parent asks why they "can't" opt their children out of the readings like they can with sexual health-related topics, MCPS staff are advised to explain that the readings are about "diversity" not anatomy.

"During Family Health & Life, we are learning about scientific topics like biology, anatomy, puberty and reproduction," the sample response states. "In these picture books and discussions, students are learning about the diversity of identities that exist in the world and in our classroom; we are not getting into any of the scientific specifics. This is similar to when

we're learning about different races, ethnicities and religions which are other social identities commonly talked about in school. All children and their families deserve to see themselves and their families positively represented in our school community."

If a parent asks whether they can keep their child home during the LGBTQ+ readings, MCPS faculty are advised to explain that no effort will be made to persuade a child from holding certain beliefs.

"While there are no planned, explicit lessons related to gender and sexuality, students will see these identities embedded throughout," the sample response states. "For students for whom some of these identities are new, questions and conversations might organically happen. Inclusive curricula support a student's ability to empathize, connect, and collaborate with a diverse group of peers, and encourage respect for all. No child who does not agree with or understand another student's, gender, identity or expression, or their sexuality identity is asked to change how they feel about it."

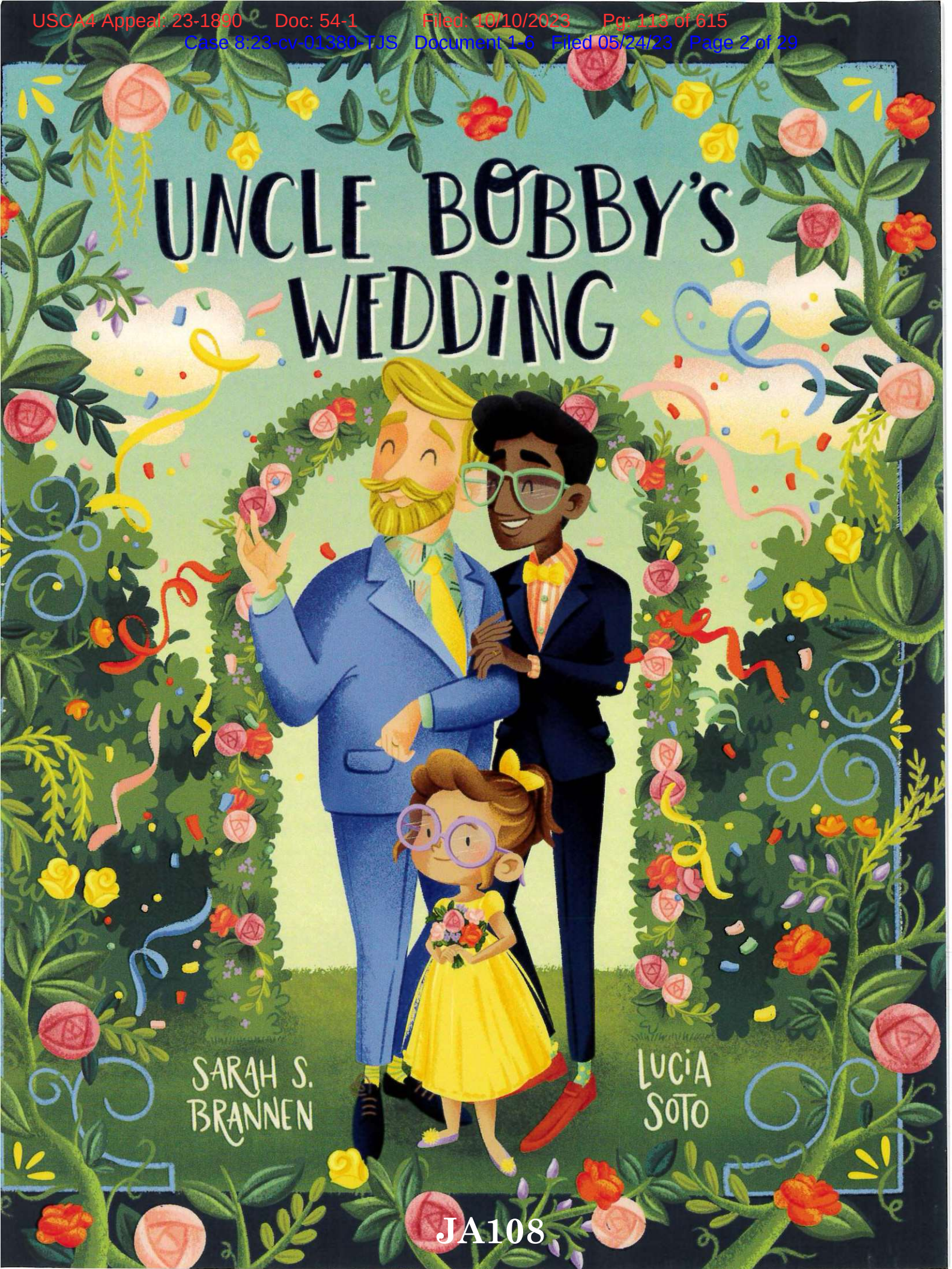
MCPS told Fox News Digital that "these books are a way to actualize the policy and guidelines and have undergone a rigorous evaluation process. All the content within them is age and developmentally appropriate."

What do you think? Post a comment.
"MCPS is committed to ensuring all students and their families see themselves in the curriculum to cultivate an inclusive and welcoming learning environment," the school district continued. "These books are not mandatory. These books are on the approved list of supplemental materials schools will have access to that align with our goal of providing more inclusive texts and resources in support of curriculum standards. As is our standard practice, these materials are not scheduled for use until system-wide communication has been sent to families."

"As part of MCPS' mission to equity, 'instructional materials are chosen to reflect the diversity of our global community, the aspirations, issues and achievements of women, persons with disabilities, persons from diverse, racial, ethnic, and cultural backgrounds, as well as persons of diverse gender identity, gender expression, or sexual orientation,'" it added.

Exhibit E

UNCLE BOBBY'S WEDDING



SARAH S. BRANNEN

LUCIA SOTO

to all the children
SARAH

to the ghost in the lift
LUCIA

HODDER CHILDREN'S BOOKS

First published in the United States by Little Bee Books in 2020
This edition published by Hodder and Stoughton in 2021

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A CIP catalogue record for this book is available from
the British Library.

HB ISBN: 9781444960938
10 9 8 7 6 5 4 3 2 1
PB ISBN: 9781444960945
10 9 8 7 6 5 4 3 2

Printed and bound in China

MIX
Paper from responsible sources
FSC® C104740

Hodder Children's Books
An imprint of Hachette Children's Group
Part of Hodder and Stoughton
Carmelite House
50 Victoria Embankment
London EC4Y 0DZ

An Hachette UK Company
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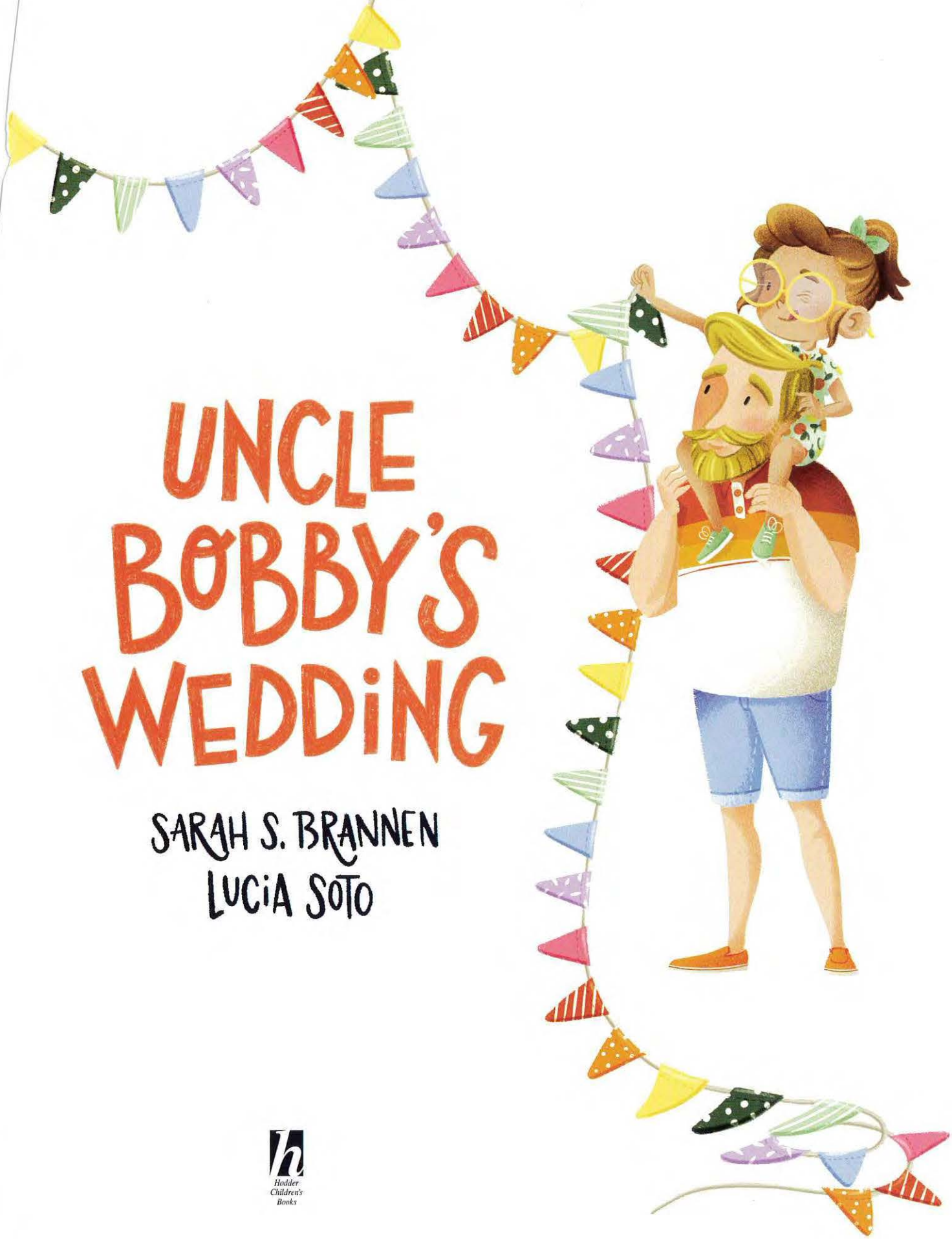
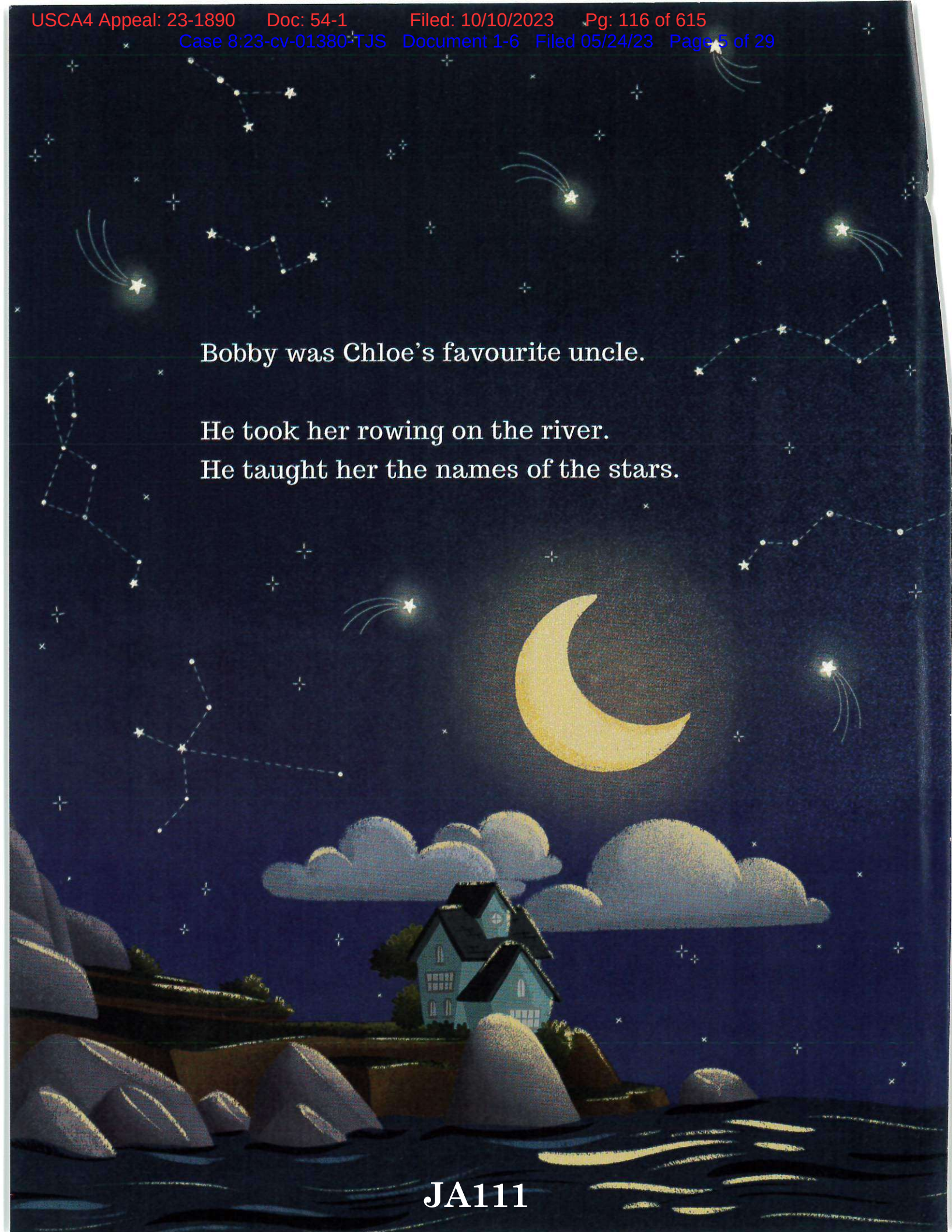


UNCLE BOBBY'S WEDDING

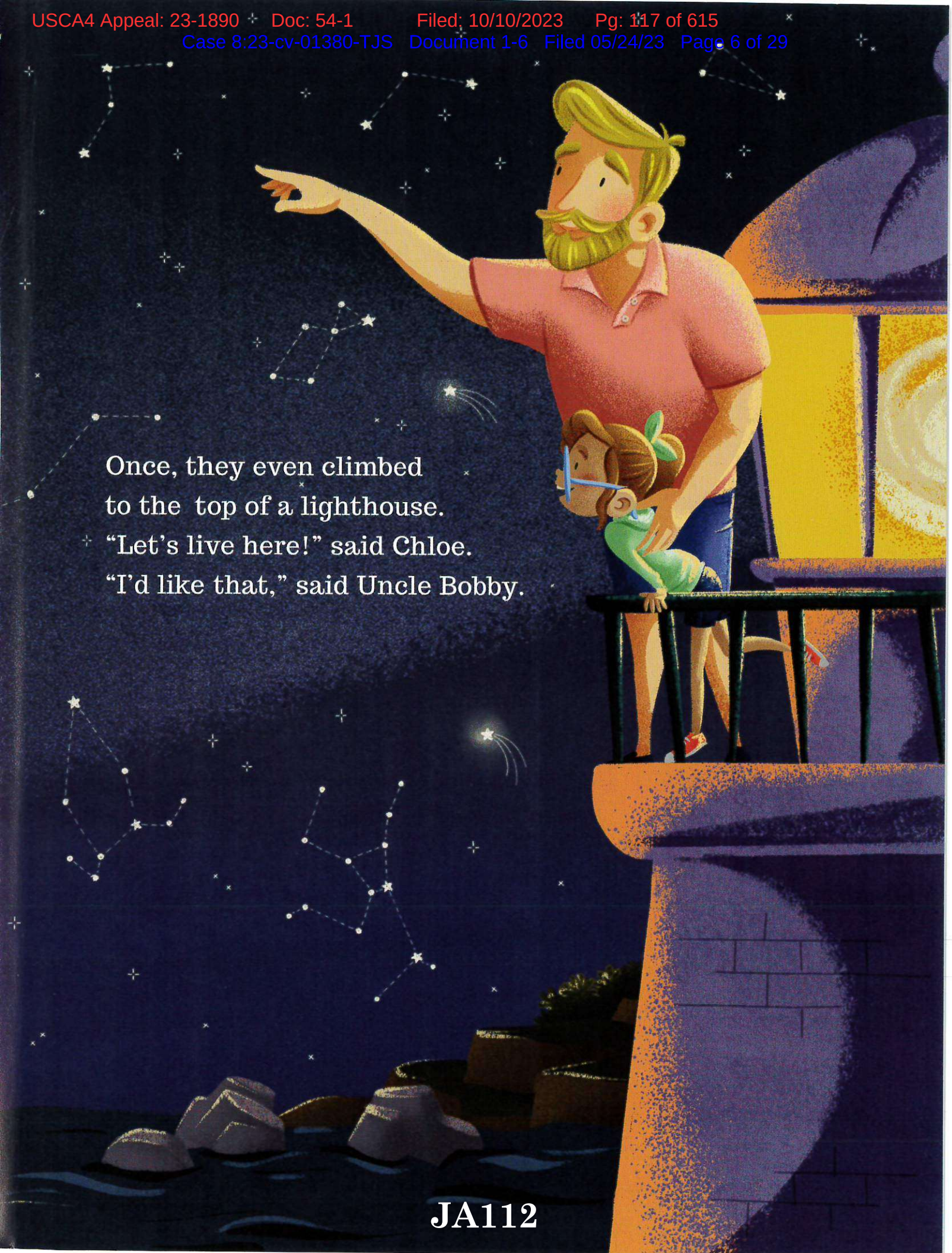
SARAH S. BRANNEN
LUCIA SOTO

Hodder Children's Books

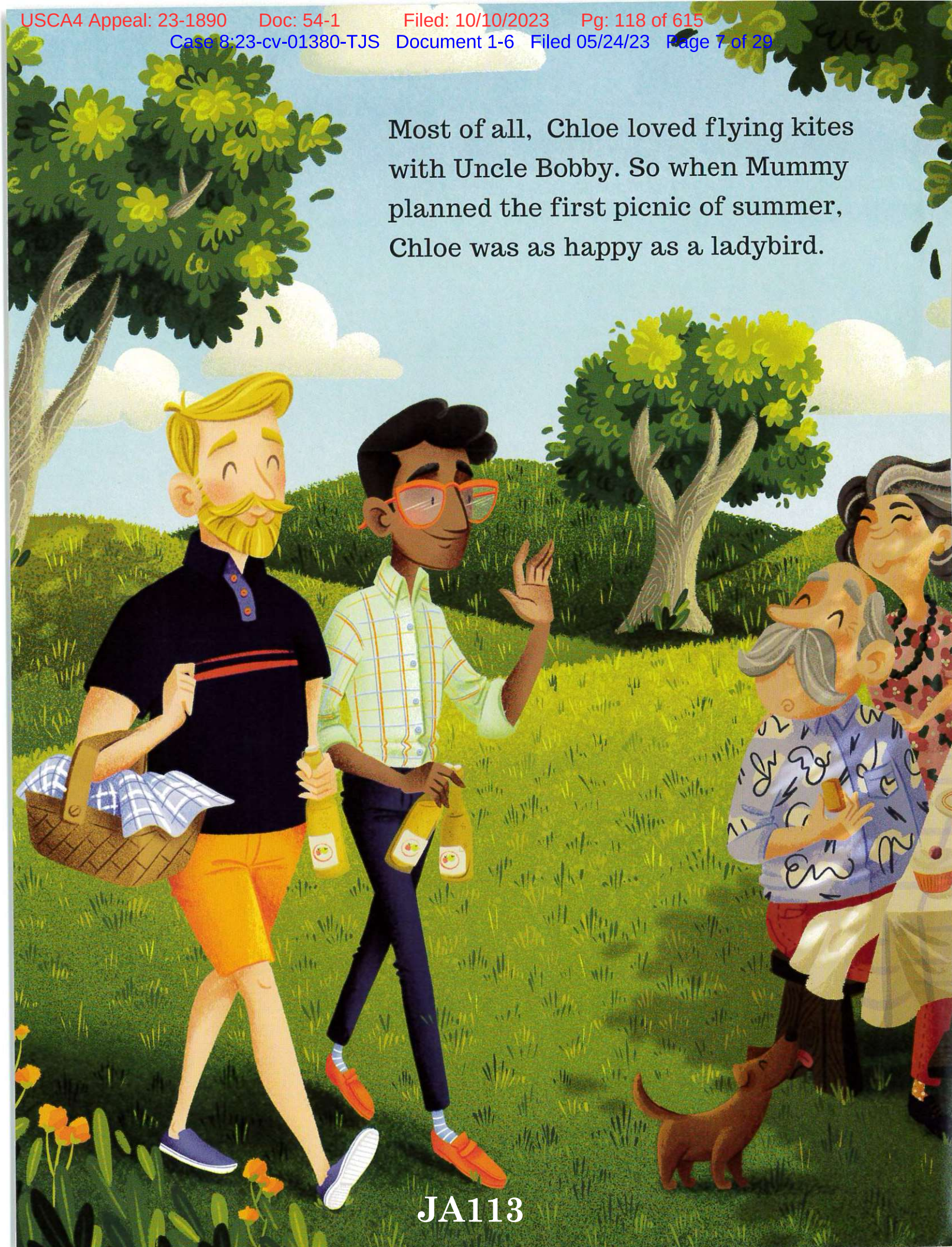


Bobby was Chloe's favourite uncle.

He took her rowing on the river.
He taught her the names of the stars.

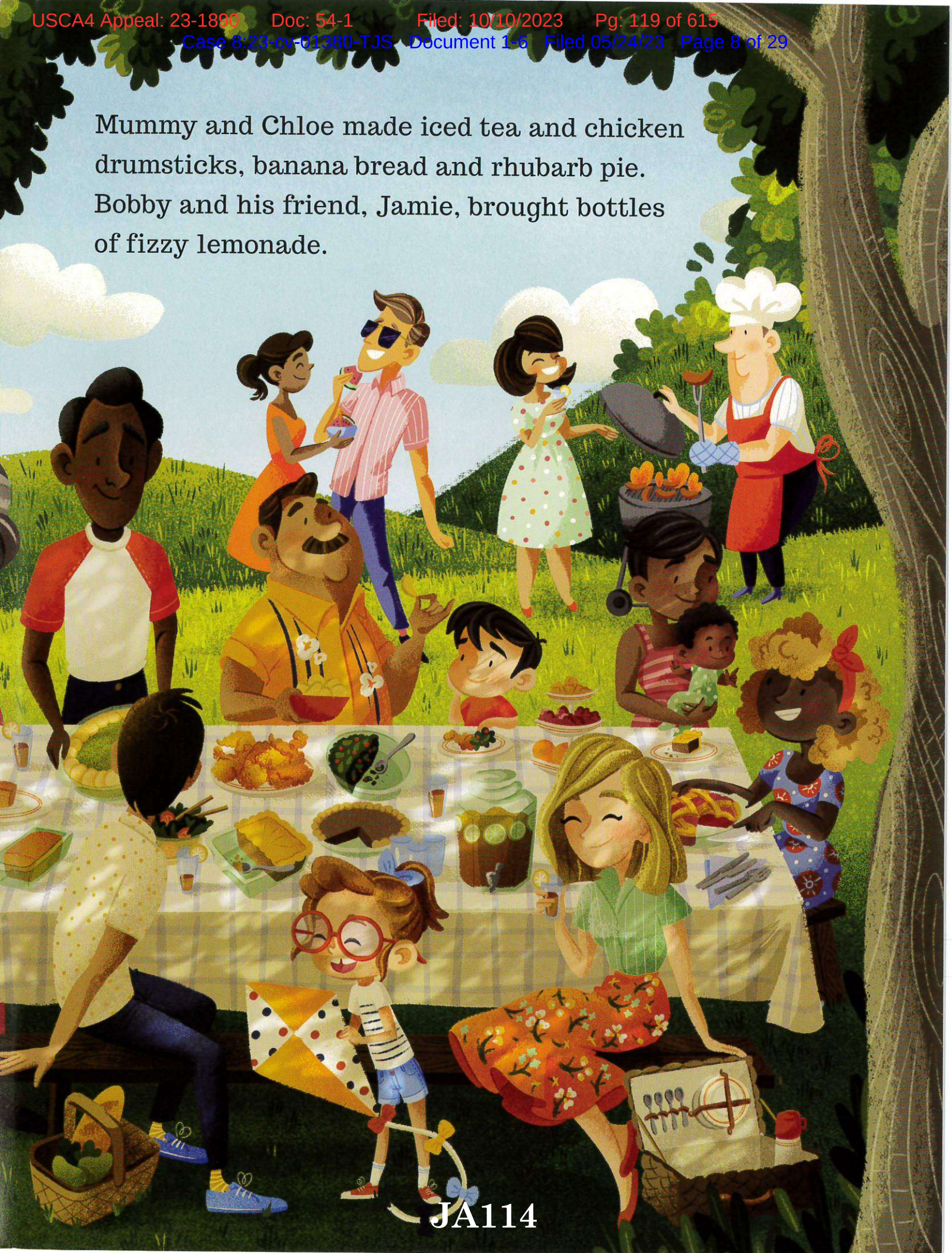


Once, they even climbed
to the top of a lighthouse.
"Let's live here!" said Chloe.
"I'd like that," said Uncle Bobby.



Most of all, Chloe loved flying kites with Uncle Bobby. So when Mummy planned the first picnic of summer, Chloe was as happy as a ladybird.

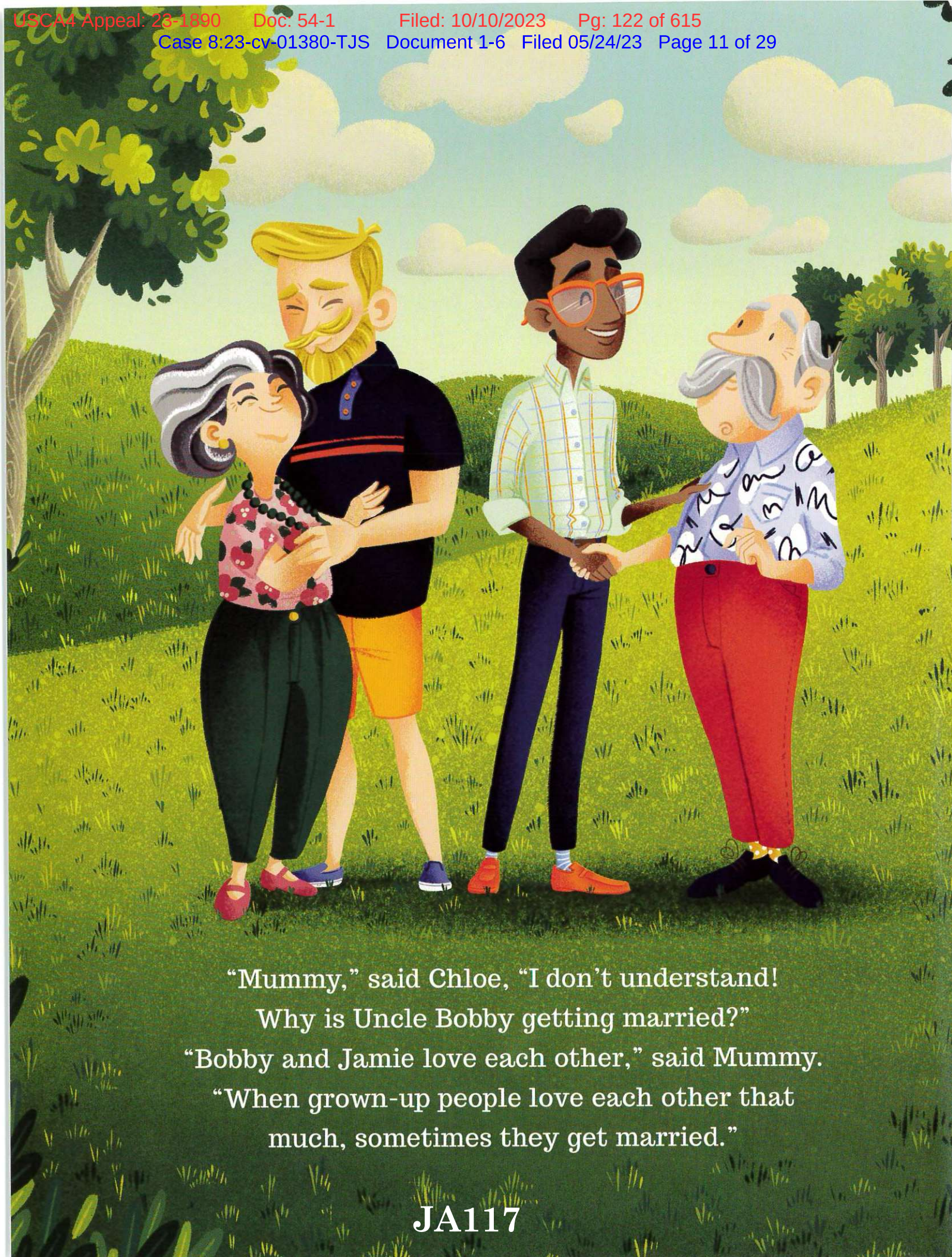
Mummy and Chloe made iced tea and chicken drumsticks, banana bread and rhubarb pie. Bobby and his friend, Jamie, brought bottles of fizzy lemonade.



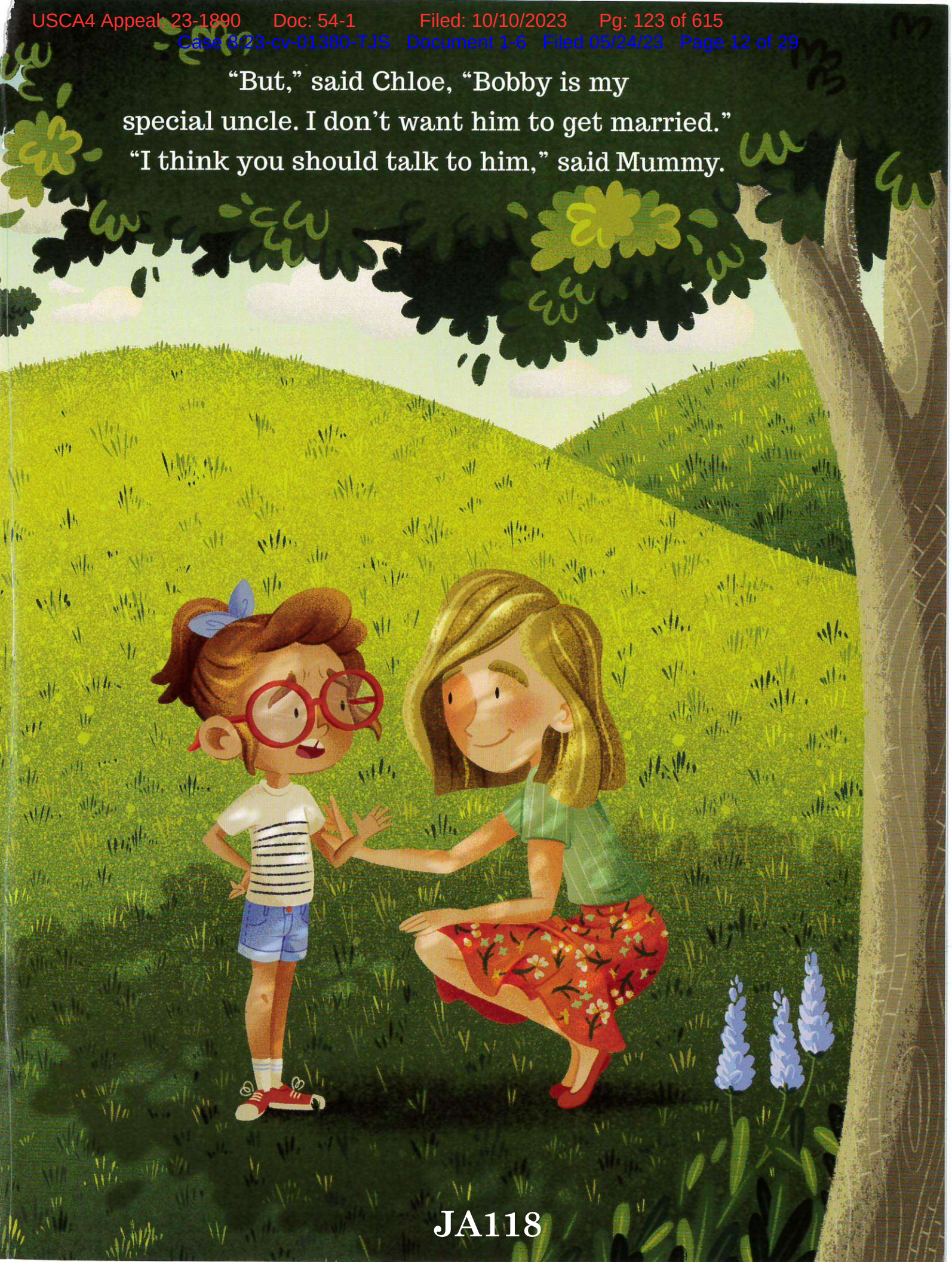
After pie, Uncle Bobby and Jamie made an announcement.
"We're getting married!" said Uncle Bobby.

Mummy whooped and hugged him.
Daddy shook hands with Jamie. Everyone
was smiling and talking and crying and laughing.

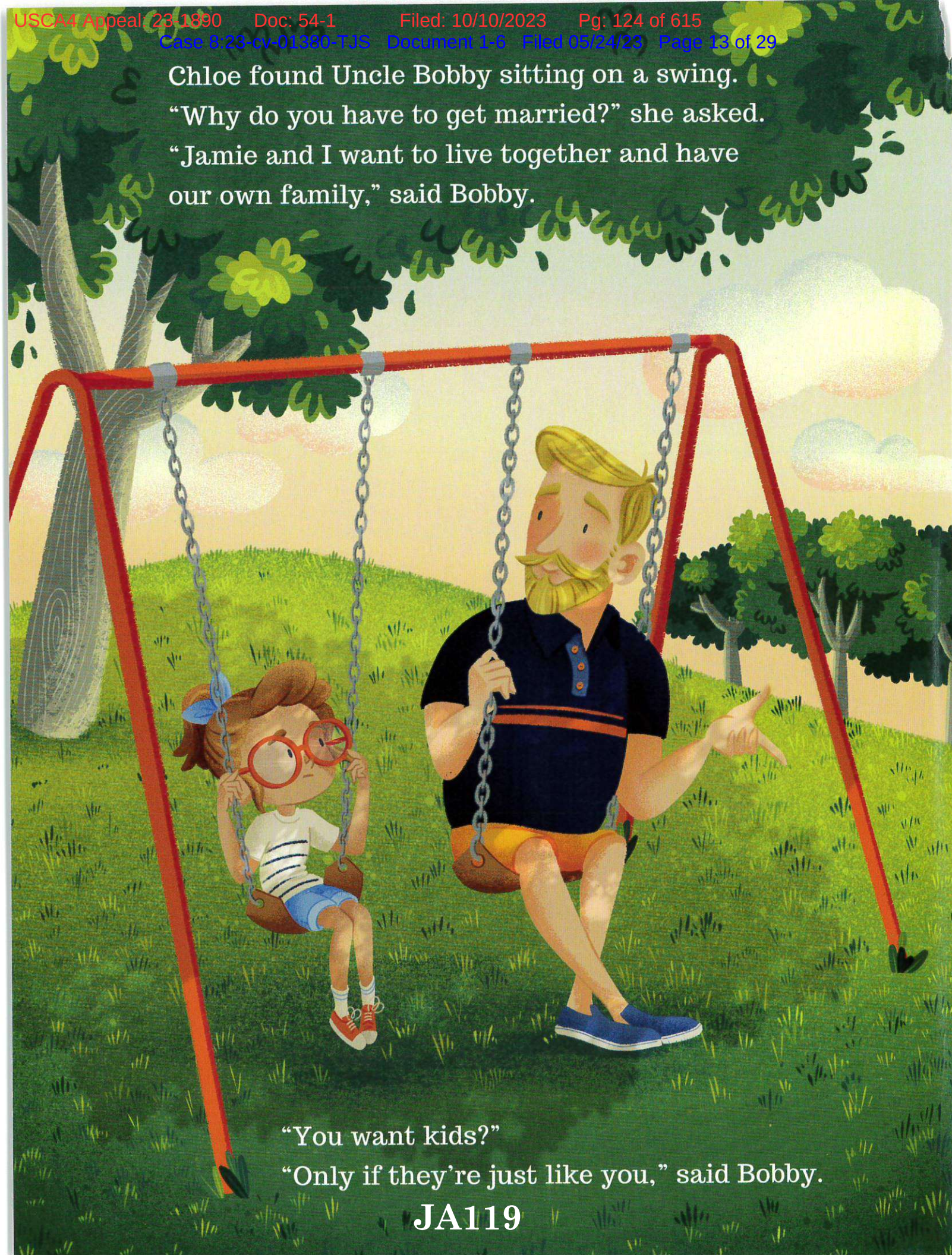
Everyone except . . . Chloe.



"Mummy," said Chloe, "I don't understand!
Why is Uncle Bobby getting married?"
"Bobby and Jamie love each other," said Mummy.
"When grown-up people love each other that
much, sometimes they get married."



"But," said Chloe, "Bobby is my special uncle. I don't want him to get married."
"I think you should talk to him," said Mummy.



Chloe found Uncle Bobby sitting on a swing.
"Why do you have to get married?" she asked.
"Jamie and I want to live together and have our own family," said Bobby.

"You want kids?"
"Only if they're just like you," said Bobby.

"That's a pretty good reason," said Chloe.

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

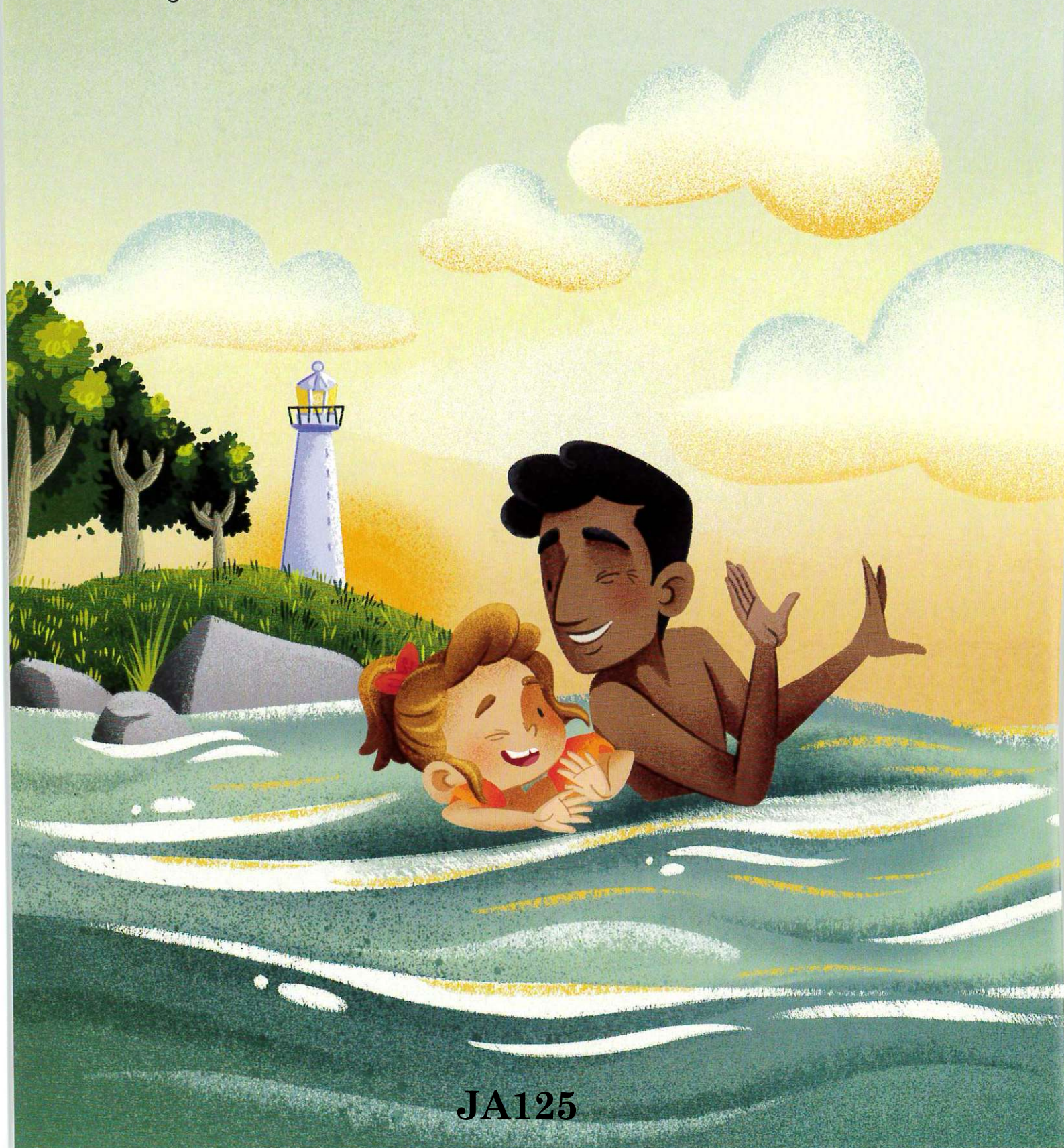
"I promise we'll still have fun together," said Bobby.
"You'll always be my sweet pea."

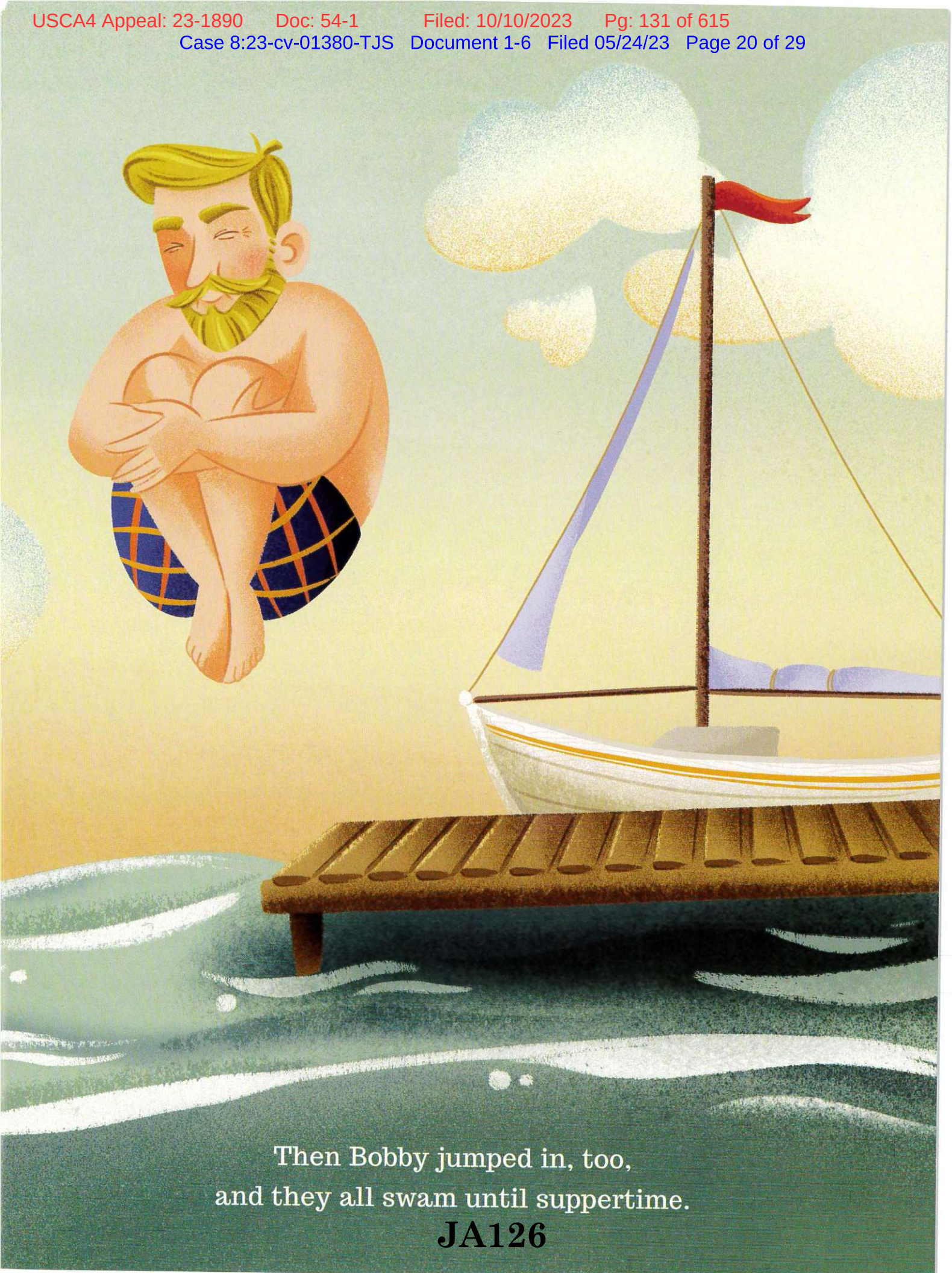
Bobby and Jamie asked Chloe to go to the ballet with them.

Afterwards, they had milkshakes.

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

Uncle Bobby and Jamie taught Chloe to sail.
She fell in the water at the dock, but
Jamie dove in after her.

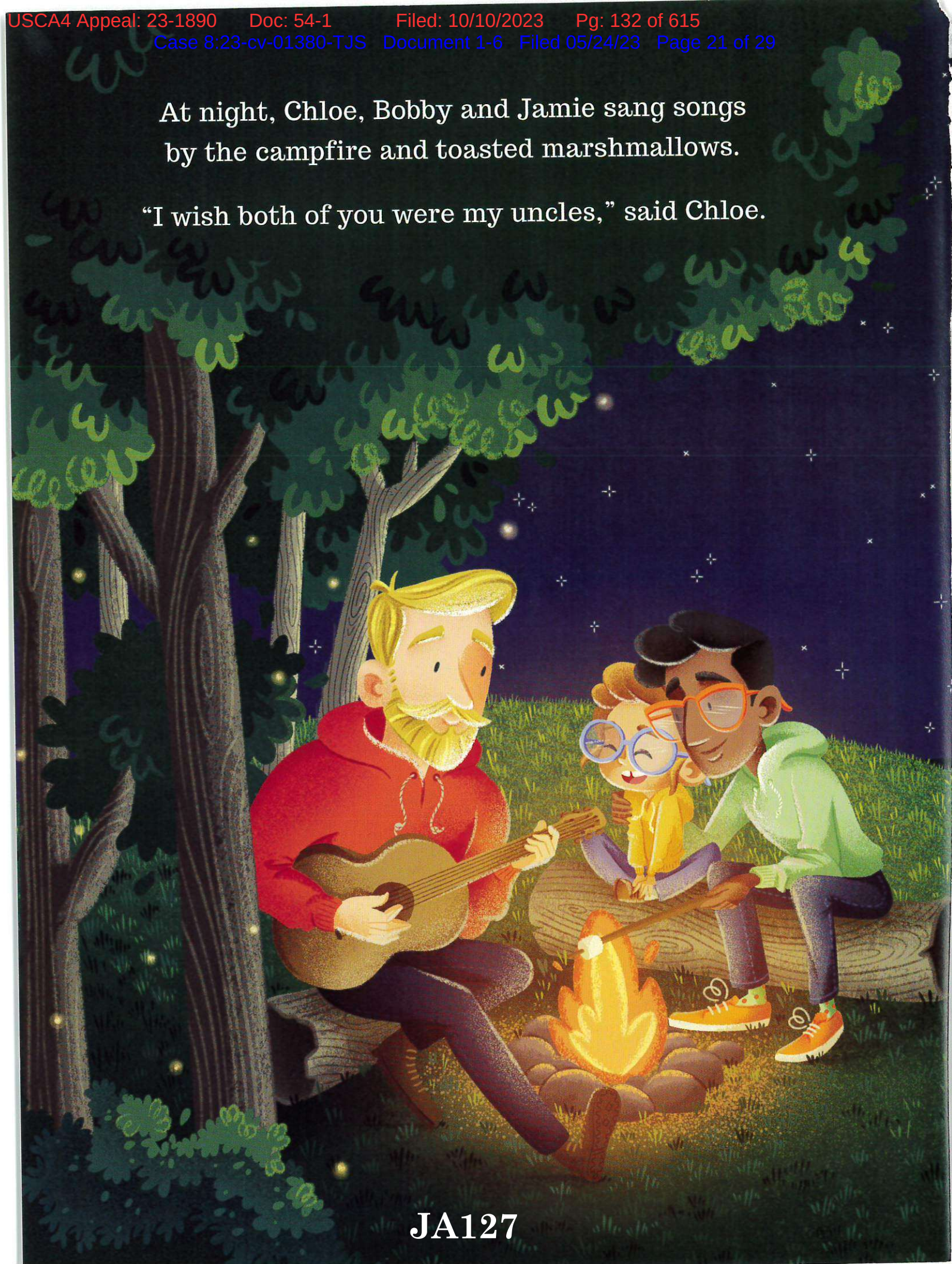


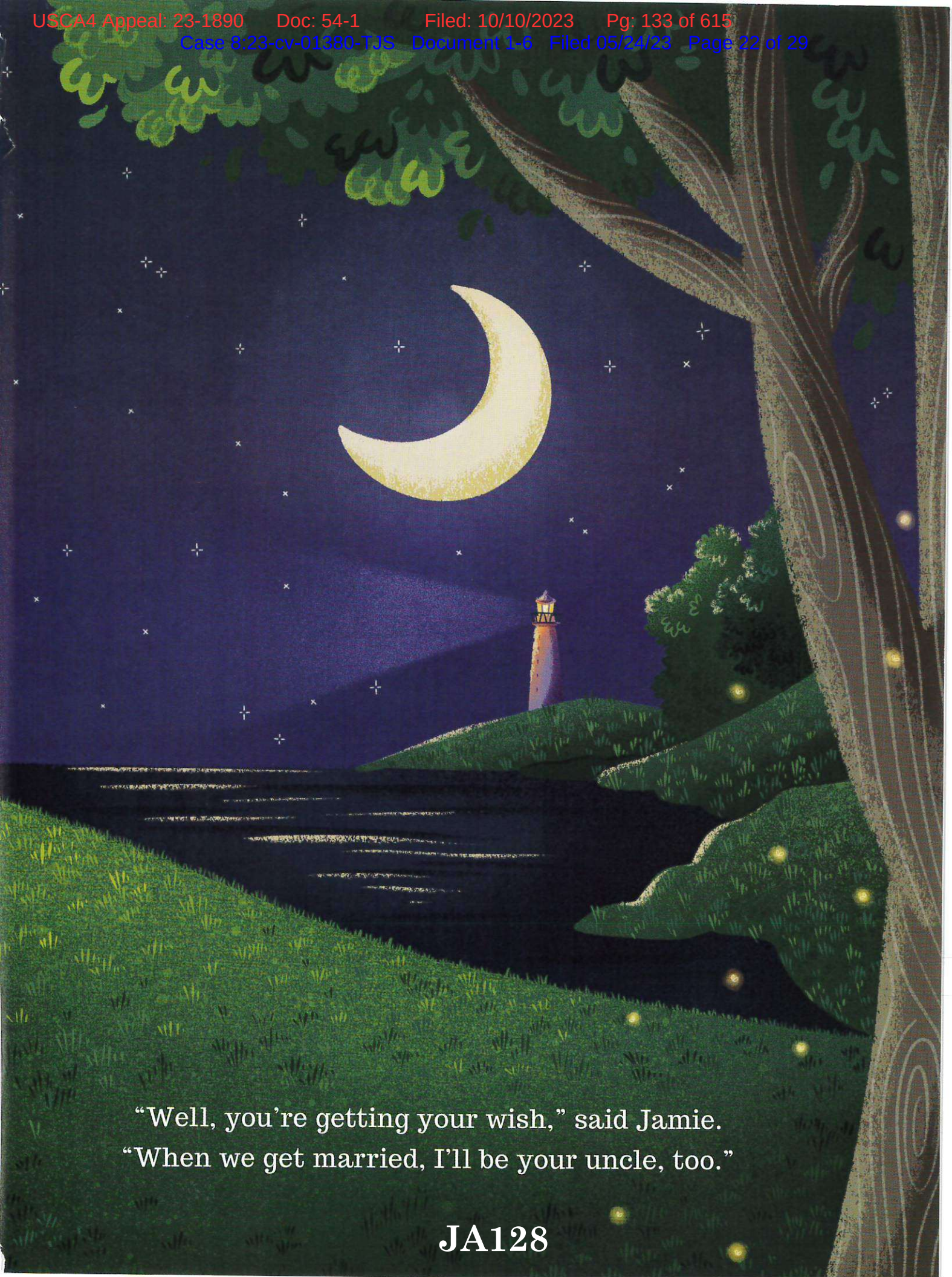


Then Bobby jumped in, too,
and they all swam until suppertime.

At night, Chloe, Bobby and Jamie sang songs by the campfire and toasted marshmallows.

"I wish both of you were my uncles," said Chloe.





"Well, you're getting your wish," said Jamie.
"When we get married, I'll be your uncle, too."

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

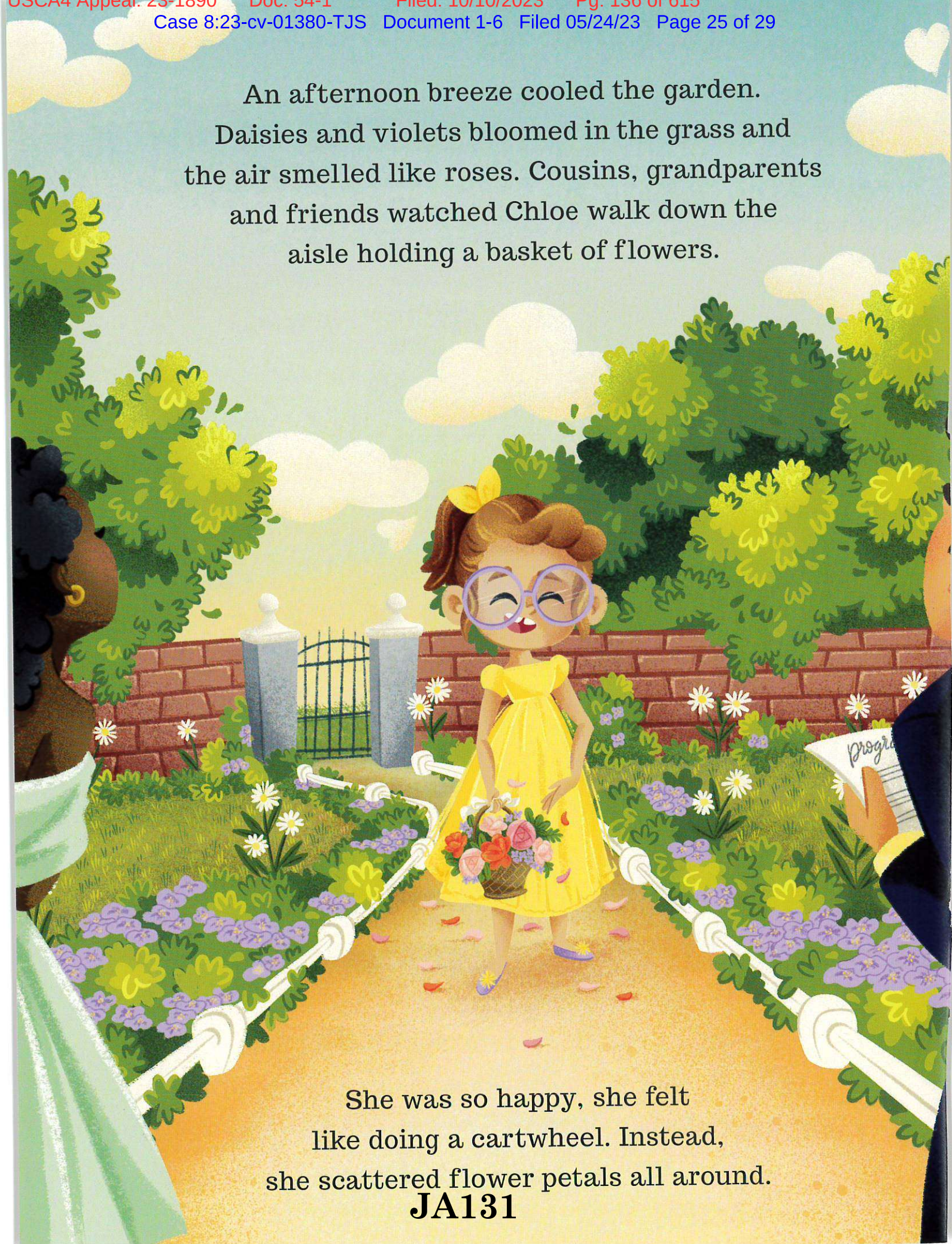
Everyone was excited and busy.

Uncle Bobby lost the rings.

Jamie couldn't tie his bow tie.

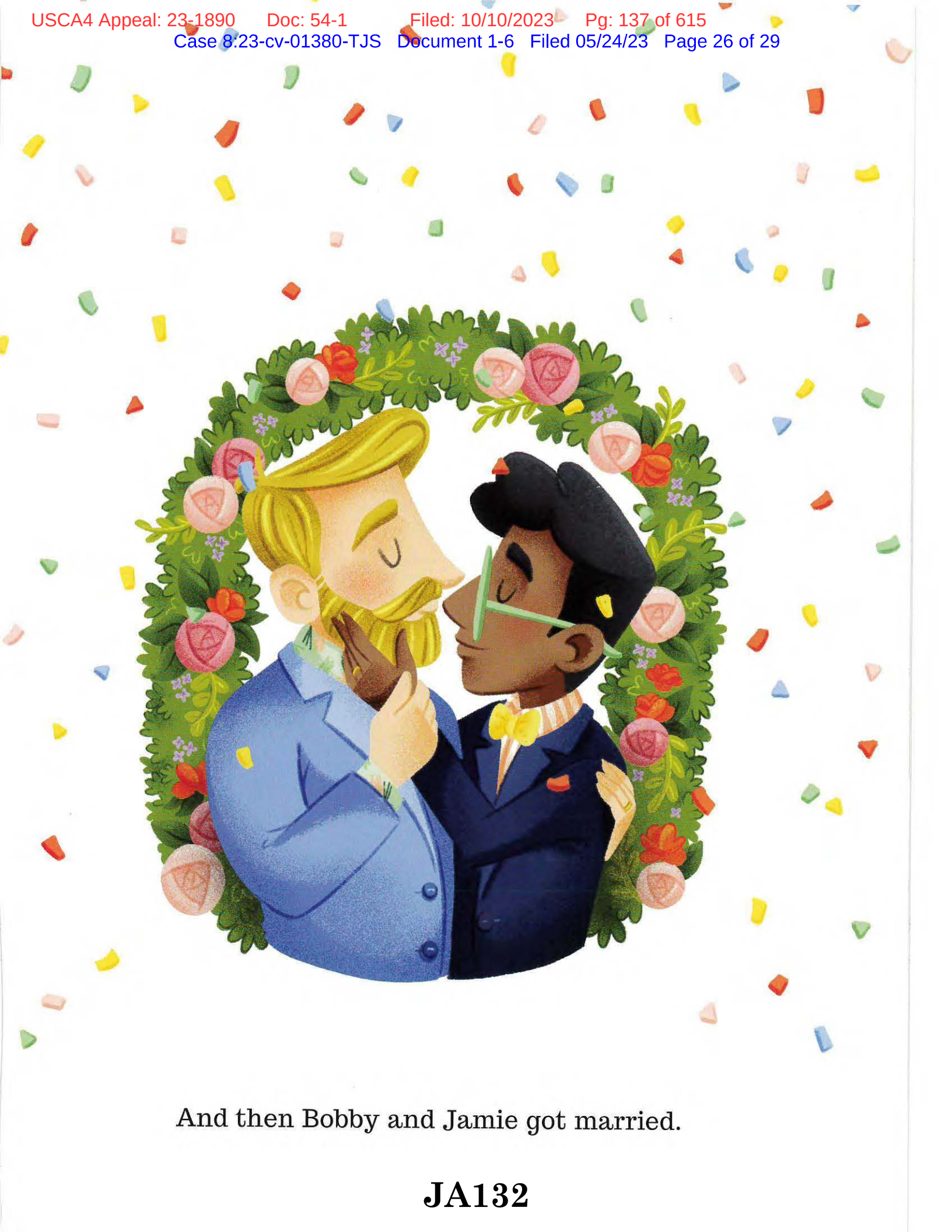
Chloe found the rings in Bobby's jacket pocket. She helped Jamie with his tie. And she helped Mummy put the perfect finishing touches on the wedding cake.

"We're ready!" said Chloe.



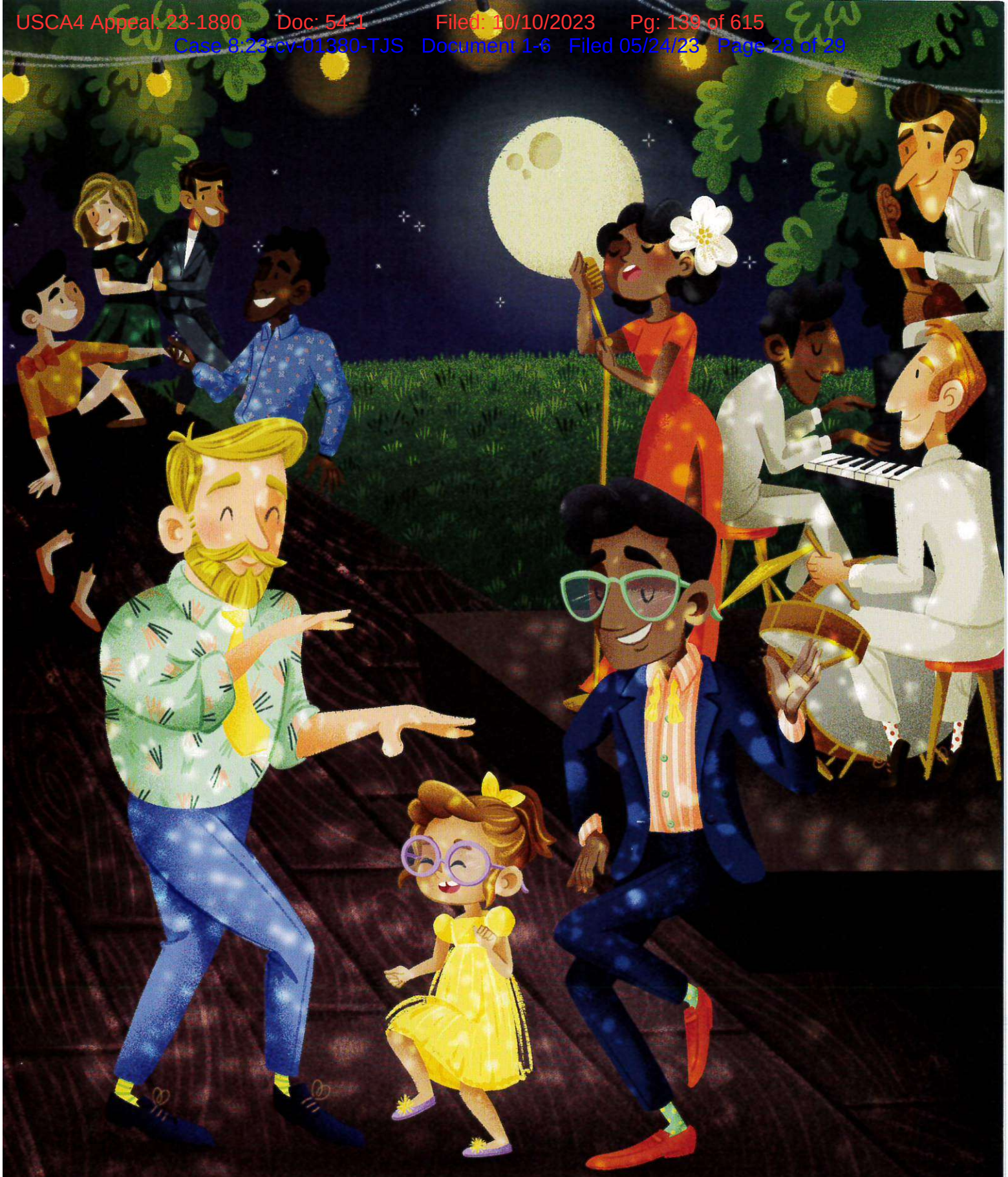
An afternoon breeze cooled the garden. Daisies and violets bloomed in the grass and the air smelled like roses. Cousins, grandparents and friends watched Chloe walk down the aisle holding a basket of flowers.

She was so happy, she felt like doing a cartwheel. Instead, she scattered flower petals all around.



And then Bobby and Jamie got married.

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

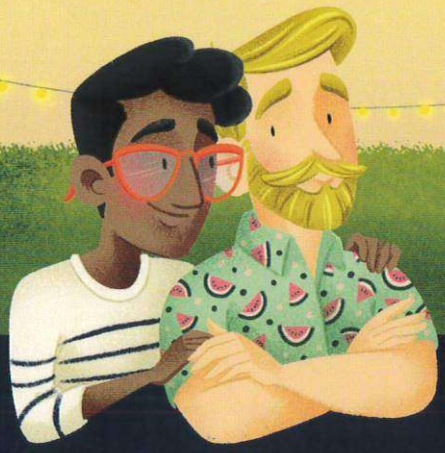


The band started to play. Chloe jumped up and grabbed Uncle Bobby's and Uncle Jamie's hands. They danced until the moon rose.

Chloe is not happy that her favourite uncle Bobby is going to get married to his boyfriend Jamie. But after spending a fun-filled day with Bobby and Jamie, Chloe realises she's not losing an uncle, but gaining a whole new one!

An uplifting celebration of love in all its forms.

"Valiant, valid, validating, valuable"
GREGORY MAGUIRE, AUTHOR OF WICKED



ISBN 978-1-444-96094-5
9 781444 960945
FSC
Hodder Children's Books
hachettechildrens.co.uk
£6.99

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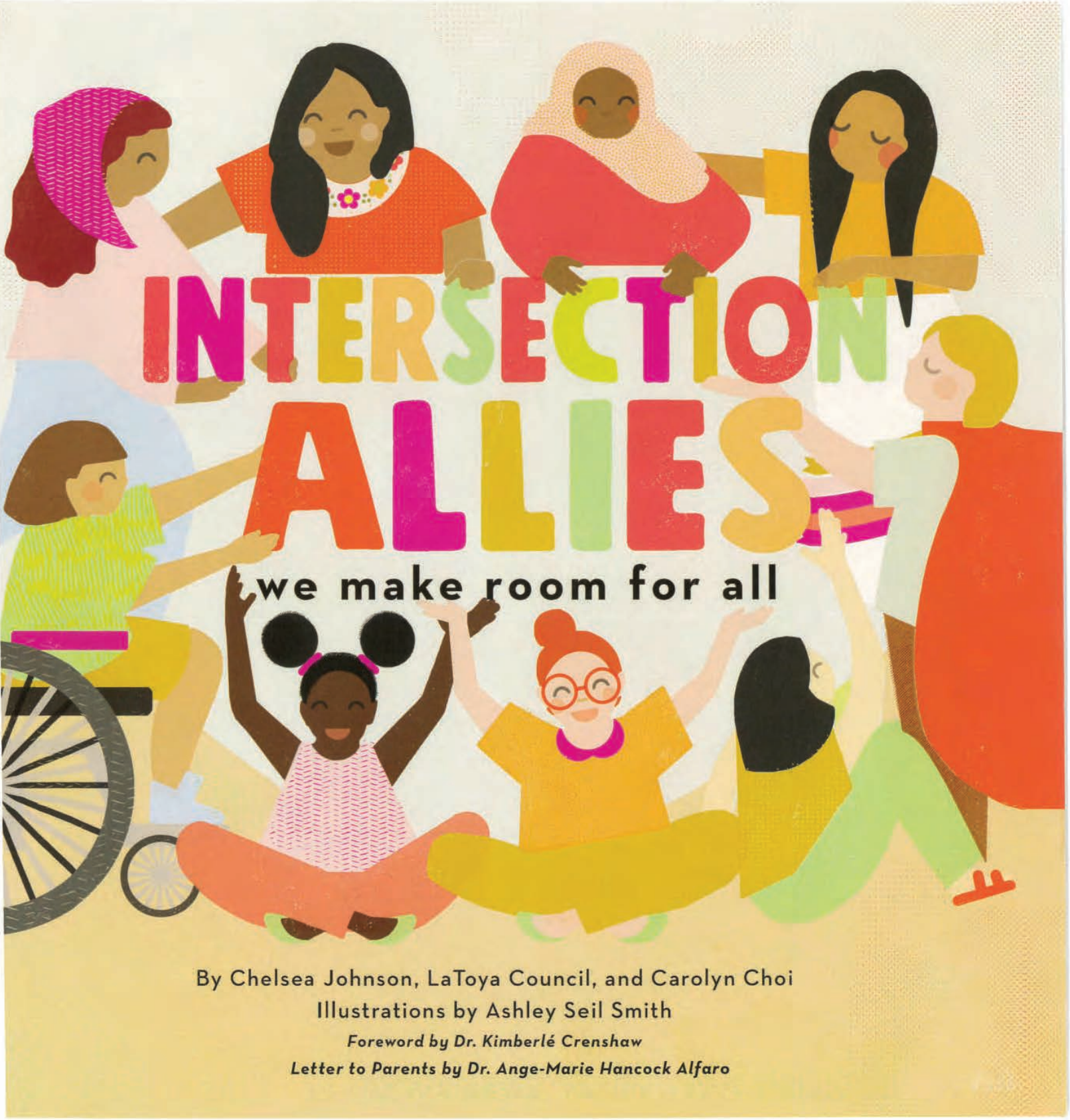
INTERSECTION
ALLIES
we make room for all
By Chelsea Johnson, LaToya Council, and Carolyn Choi
Illustrations by Ashley Seil Smith
Foreword by Dr. Kimberlé Crenshaw
Letter to Parents by Dr. Ange-Marie Hancock Alfaro

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dottir press
NEW YORK CITY

To each other—we're better together.

Published in 2019 by Dottir Press
33 Fifth Avenue
New York, NY 10003

Dottirpress.com

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First paperback edition
Second printing March 2022

Illustrations by Ashley Seil Smith
Production by Drew Stevens

Trade distribution by Consortium Book Sales and Distribution, www.cbsd.com. For inquiries about bulk sales, please contact jb@dottirpress.com.

Library of Congress Cataloging-in-Publication Data is available for this title.
ISBN 978-1-948340-57-1
PRINTED IN THE UNITED STATES OF AMERICA BY WORZALLA

FOREWORD

When we think of childhood and early education, we tend to remember learning things like numbers and letters, colors and shapes, timetables and table manners. What's less often considered is that youth is also an opportunity for planting the seeds of social conscience. The impressions of the world that we gather as children become the foundations for how we understand our places in it as adults. What might the future look like if all children were taught about justice, equity, and solidarity alongside the alphabet and arithmetic?

IntersectionAllies: We Make Room for All is an invaluable tool for bringing about such a future. This entertaining and informative book teaches young readers that despite all of the ways we are different from one another, we still have values and common interests that intersect. We can listen to and support each other in ways that unite us across differences.

Thirty years ago, I coined intersectionality as a framework for a social justice agenda that includes all oppressed people. It's humbling and energizing to see the many ways intersectionality continues to inspire and empower social justice advocates today. I'm delighted that *IntersectionAllies: We Make Room for All* will pass the torch to the next generation of youth activists. Like the powerful young people in this book, I believe we are strongest when we build communities that are founded on the understanding that we have a stake in each other.

—Dr. Kimberlé Crenshaw, African American Policy Forum
Co-Founder and Director of the Columbia Law School Center
for Intersectionality and Social Policy Studies

A Letter To Grown-Ups

Dear Grown-ups:

It is a classic parenting dilemma: How do we teach children how to treat each other in a world that promotes all the wrong lessons? How do we teach lessons that don't repeat the mistakes we have made ourselves?

IntersectionAllies: We Make Room for All answers these questions with empathy and clarity. This book provides an introduction to the concepts of allyship and intersectionality for elementary school-aged children and their families, using the simple idea of "making room." "Making room" goes beyond allowing somebody physical space. It means acknowledging our complex identities as sources of power within classrooms, communities, and cultures rather than treating difference as a threat, vulnerability, or a source of shame.

"Making room" is stronger than ideas like "respect" and "tolerance" because it asks for a positive action from us rather than a minimal response. In order for us to gain an ally, we must be an ally, and do so in a way that combines initiative, solidarity, cooperation, and trustworthiness. In other words, don't wait for someone else to do it! In this book, allies help Gloria and Heejung recognize the value of their translation capabilities rather than feel shame about their families.

Allie, Kate, and Nia show us that we need to make room over and over again. "Making room" is a habit of solidarity, like getting up every morning and brushing your teeth. It is something that is necessary to do over and over again to be healthy. When you first

learn solidarity you may make mistakes. But like brushing your teeth, you get better at it with practice. You will notice when you skipped over a tooth or ate too much candy, and how to adjust your actions in the future for better results. Solidarity is something anyone can learn and everyone needs to learn.

The children portrayed in this book have diverse identities, the combinations of which set each of them apart. Intersectionality recognizes that we cannot divide ourselves into parts. We can't be only our gender on Mondays and Wednesdays or only our race on Tuesdays and Thursdays. *IntersectionAllies* reminds us that we don't have to "choose" one primary identity. Instead, each of us is all of who we are every single day and in every single way.

This book also shows that some kids face challenges that are not simply personal—the issues they face often involve challenges from social, political, and economic powers. Drawing upon children's need for safety, Dakota, Yuri, and Nia each illustrate how governments are also places where room needs to be made. The authors, three young sociologists, demonstrate that while we are all a combination of identities, we are also people navigating social structures and institutions that aren't always set up to "make room" for us.

In choosing to introduce solidarity and intersectionality to children, the authors have opened up ideas about how we all might "make room" for people and groups who are not like us.

—Dr. Ange-Marie Hancock Alfaro,
Chair, Gender and Sexuality Studies Department,
University of Southern California

Witness the lives of a bold group of friends.
If one is in need, another defends.
Age is one trait that each of them share,
But kids' lives are unique, as you'll soon be aware.
Each child has a story and their own point of view
Filled with passion and power, just like you.

My name is Alejandra, but I go by Allie.
I use a chair, but it doesn't define me.
Instead, it allows me to

When I need to get through, friends help make a way.

where there's room
FOR SOME
we make room
FOR ALL

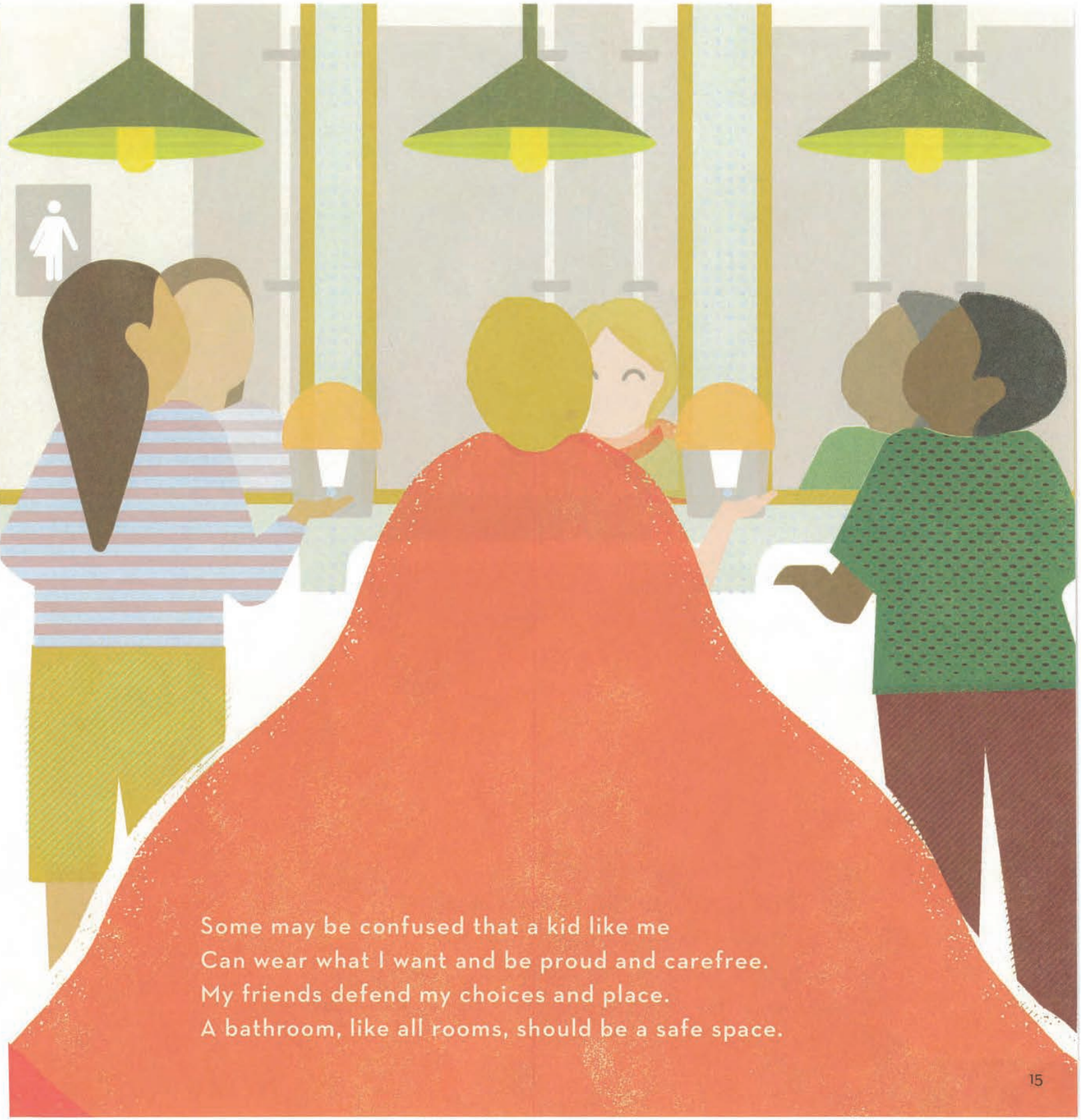
friends can be ALLIES no matter how small!

Hello, I'm Parker! After school every day,
Allie's family takes care of us both while we play.

My mom works hard to provide for me.
Her love's the source of our stability.

Not toys or money, nor treasures untold—
Community care is more precious than gold.

Skirts and frills are cute, I suppose,
But my superhero cape is more "Kate" than those bows.


Some may be confused that a kid like me
Can wear what I want and be proud and carefree.
My friends defend my choices and place.
A bathroom, like all rooms, should be a safe space.
15

My name is Adilah, and just like Kate,
What I wear inspires endless debate.
Some give, some chant, some sing, some pray,
My hijab is my choice—you can choose your own way.

The clothes that you wear never justify hatred.
Clothes can be playful, simple, or sacred.
Covered, adorned, or with casual flair,
My body's my own, I dress it with care!

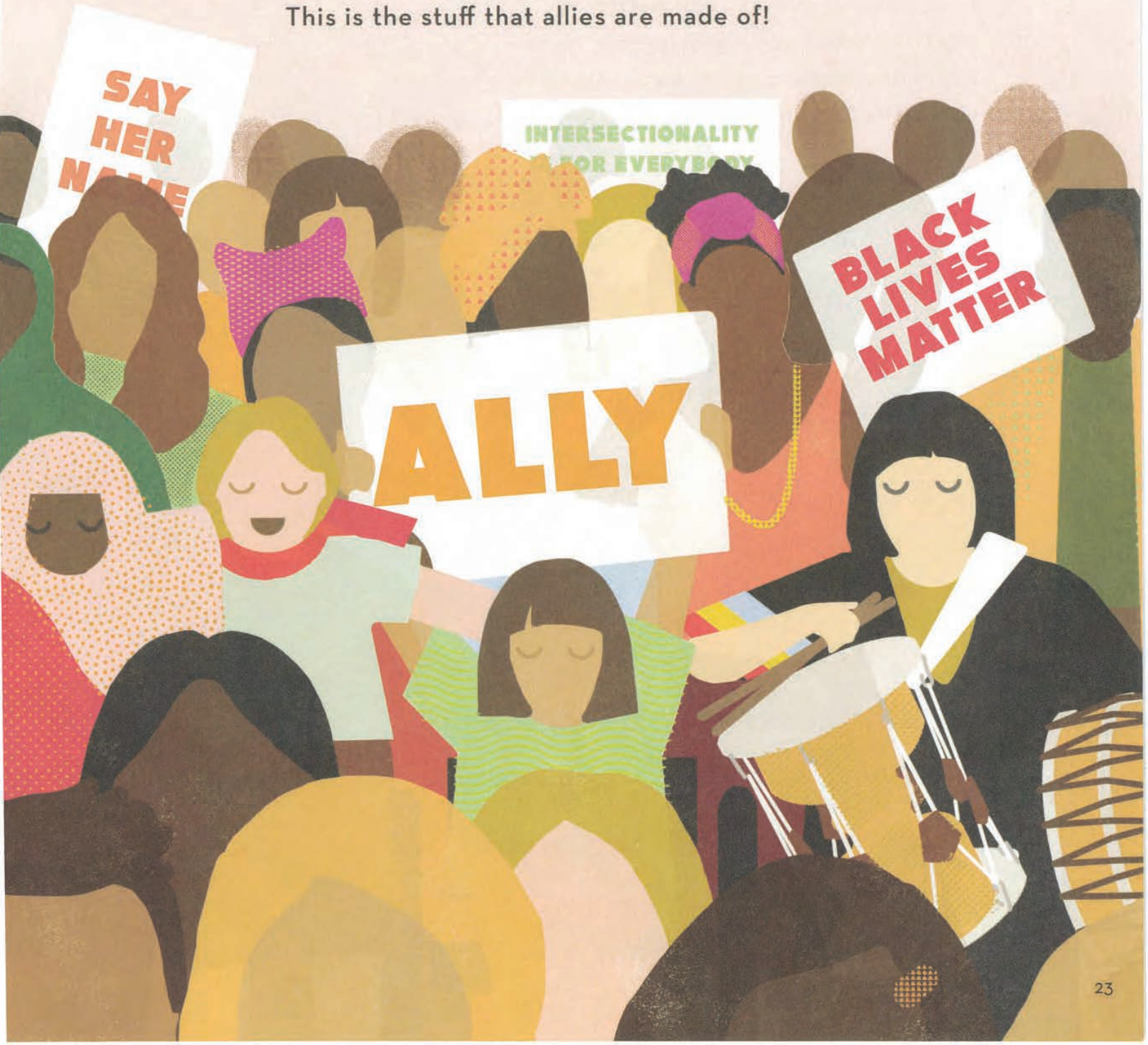
19

My name is Nia, and with what's on the news
It's easy to be frightened or sing the blues.

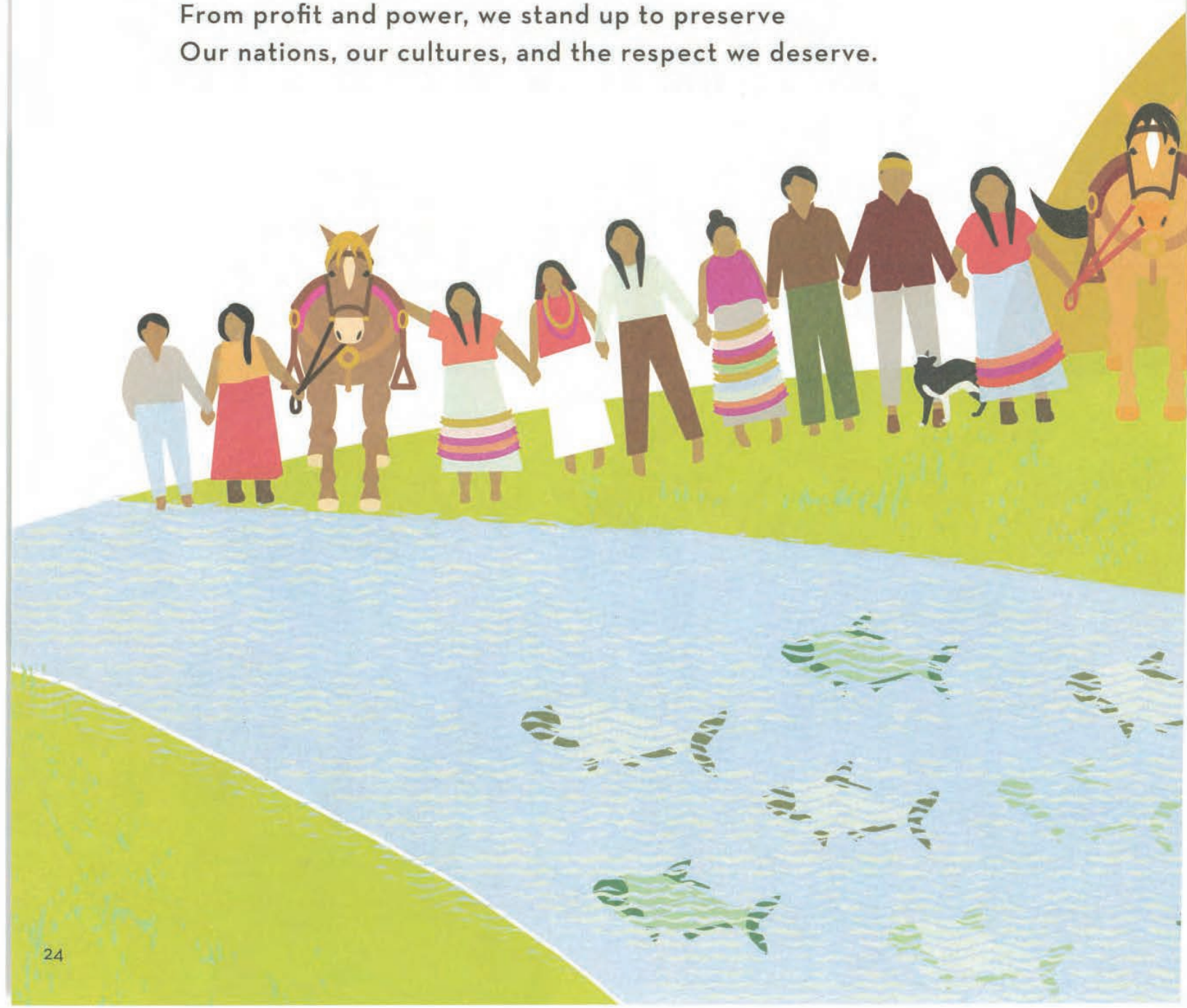
For her, for them, for him, and for me
We all deserve to breathe and be free.

The color of our skin is no reason to hide.
We protest for safety, equality, and pride.

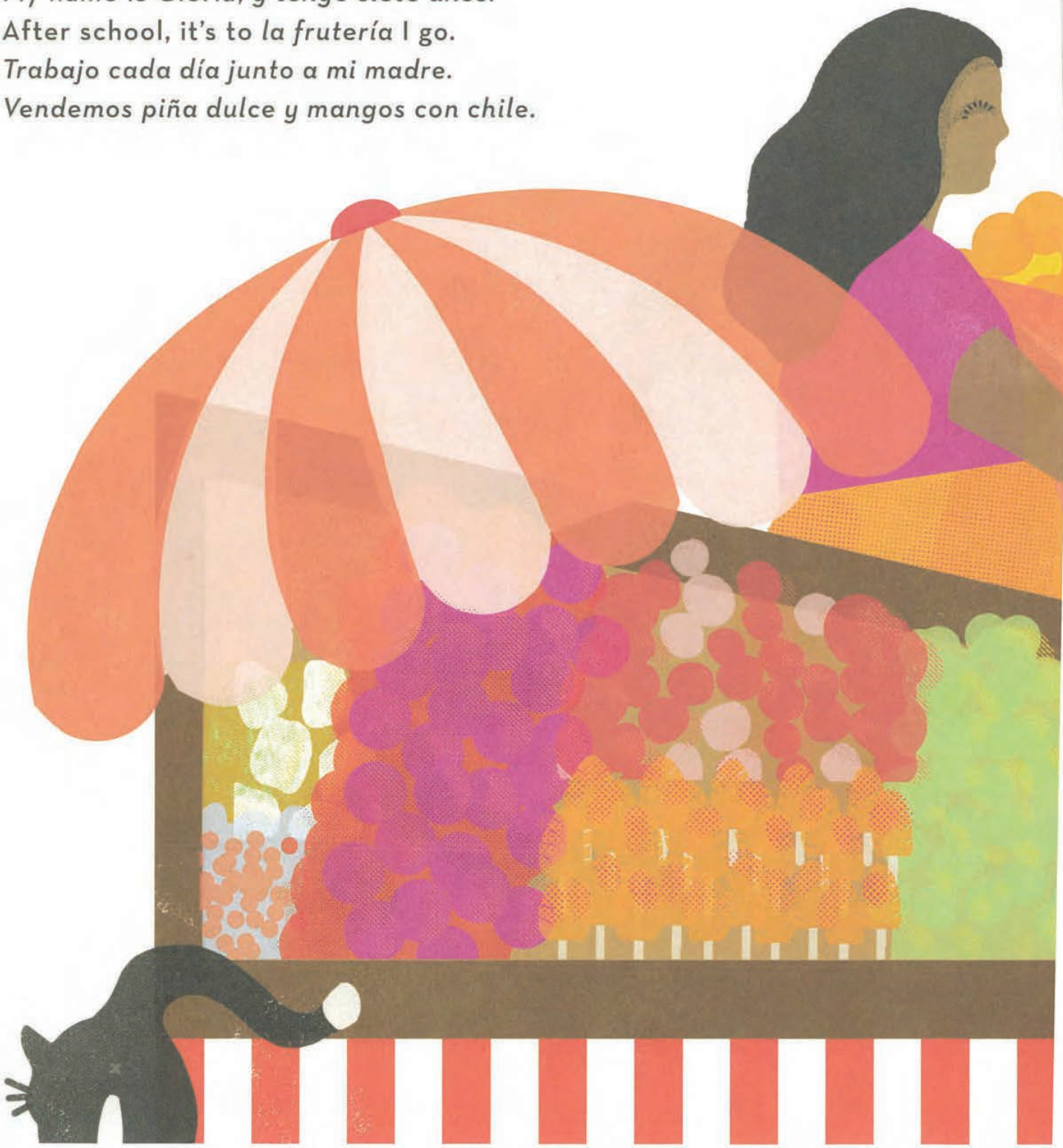
Our friends join along in solidarity and love.
This is the stuff that allies are made of!



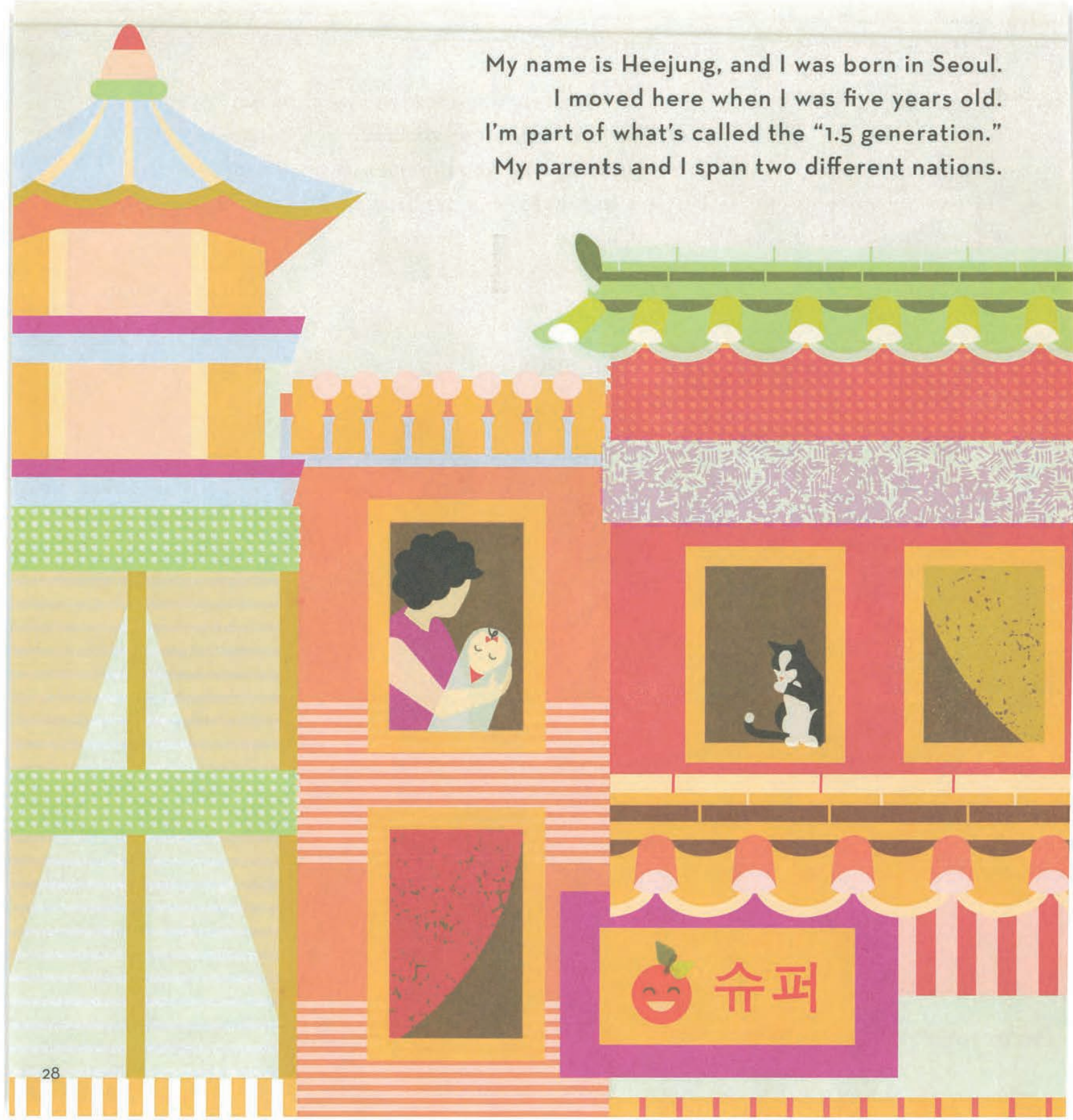
Safety also includes our trees and air,
The land we've called home, our places of prayer.
I am Dakota, and like my ancestors,
My tribe and I are water protectors.
From profit and power, we stand up to preserve
Our nations, our cultures, and the respect we deserve.



My name is Gloria, *y tengo siete años.*
After school, it's to *la frutería* I go.
Trabajo cada día junto a mi madre.
Vendemos piña dulce y mangos con chile.



My language and savvy allow us to thrive.
I've got hopes and dreams and skills and drive!
Working together makes us both more secure.
I'm a daughter, a partner, and an entrepreneur.


My name is Heejung, and I was born in Seoul.
I moved here when I was five years old.
I'm part of what's called the "1.5 generation."
My parents and I span two different nations.
슈퍼
28

Like Gloria, I am a help to my mother
By translating for her one word to another.
When the landlord tells mom, "You can pay me next Friday,"
I repeat in Korean: "*Omma renteu daeum ju geumyoire naedo doendae!*"
We navigate life in our new home together,
'Cause kids have the skills to make every day better!

My name is Yuri and I'm new to this place.
Heejung's family welcomed me with love and with grace.
Finding refuge meant traveling far from home.
I sailed, I flew, I rode, and I roamed.
Escaping violence, war, heartache, and intrusion,
We came to this nation seeking dreams and inclusion.

31

From near, from far, from here, from there—

We're more than our origins. We all deserve care.

Race, religion, citizenship, class, and ability:
Each of these intersects to form identity.
Age, gender, size, and skin color, too,
Can make living life different for a friend than for you.

35

Barriers and biases are often to blame.
We strive to be equal but not all the same.

Life's ups and downs can take many forms,
But standing together, we'll rewrite the norms.

where there's room
FOR SOME
we make room
FOR ALL

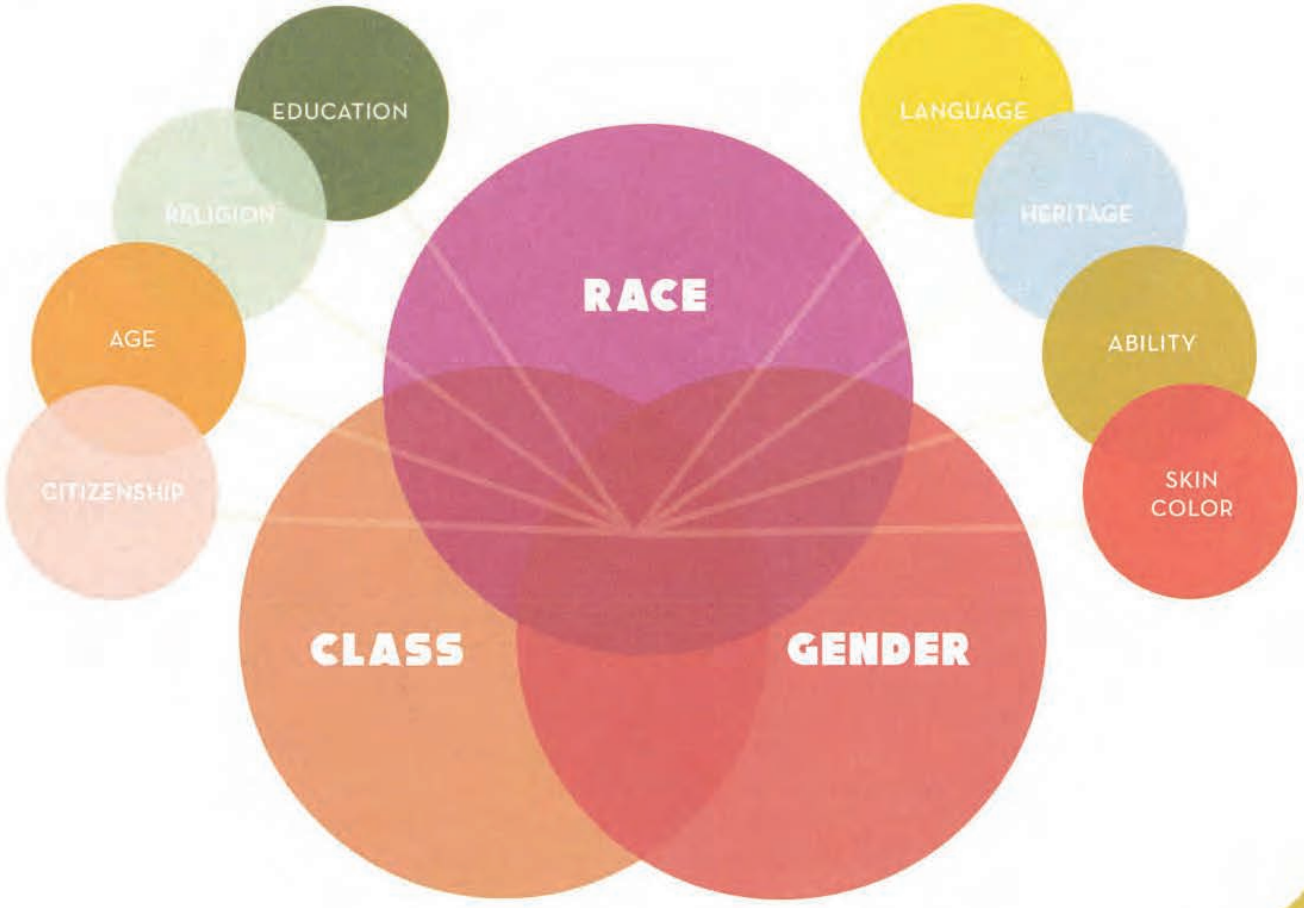
friends can be ALLIES no matter how small!

What Is Intersectionality?

Intersectionality is a word that explains how all of the different parts of a person combine to affect their life experiences and personal identity. Age, ability, skin color, religion, citizenship, body size, and culture all make up our personal identity and influence who we are and how we live.

There are things about each character in this book that shape their feelings and experiences. For example, Nia's worries about the criminal justice system (our courts, police, and jails) are shaped by her gender and race, while Adilah's clothing choices are shaped by her gender, culture, and religion. **Take a moment to think about your own experiences and identity. What are some things that make you, you?**

The idea of intersectionality not only helps us understand who we are; it can also help us think about how we relate to other people. Thinking about race, class, gender, citizenship, and other identities together (rather than separately) can help us notice more opportunities for solidarity with people who are different from us.



For instance, even though the legal system in the United States has often discriminated against African American women like Nia and her mother, as American citizens, they do have the right to vote, work, and go to school without special papers saying they can be in the country. Nia's mom can use her voting power to advocate for immigrant rights so that Yuri and Heejung's families can safely chase their dreams. This is what it means to use one's relative privilege (access to advantages) to make room for all. Every person has privileges that they can use to help make life easier, happier, or safer for others. **Think back to the parts of who you are that make you, you. Which of those identities come with privilege? How can you use your privileges to be an ally to a friend?**

Let's Learn Together!
Page-By-Page Book Discussion Guide

People have different abilities that affect the way they move, see, hear, speak, and learn new things. For example, Allie uses a wheelchair to move about her daily life. Her friends make sure that activities are **accessible** and **available** to people with different abilities and needs so that everyone who wants to join in, can!

On page 16, we see two kinds of work that parents do to make sure children are safe and happy: Allie's mom is cooking, which is care work inside the home, and Parker's mom is creating a computer program for her boss, which is work-for-hire outside the home. Care work and working outside of the home are two ways that parents show their love. **Community care** or **collective parenting** is when families share care work, like Allie and Parker's moms do on this page. Community care helps Parker's mom manage all the things she has to do at her office and at home after work.

Communities are made up of your friends, family, neighbors, classmates, teammates, and anyone else you spend time with. When you're a member of a community, you should do your part to make your community stronger, safer, and more inclusive. When a community is **inclusive**, it makes everyone feel welcome, no matter their skin color, ability, culture, gender, or citizenship. **Think about the people you see and spend time with. Who is part of your community? How do they make you feel stronger, safer, and included? What are some ways you can help make your community better for everyone who is a part of it?**

Book Notes Continued

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

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

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

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

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

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

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

Nia is participating in the **#BlackLivesMatter** movement, which was started by Alicia Garza, Patrisse Cullors, and Opal Tometi in 2013 to bring attention to the violence and racism that Black people face in the United States. This is not just a race issue; it's a gender one too. In fact, Kimberlé Crenshaw first made up the word **intersectionality** to describe how the criminal justice system treats Black women and girls like Nia and her mom differently than Black men and white women. That's why Dr. Crenshaw co-founded the African American Policy Forum (AAPF), a group that is working hard to make sure we protect and empower girls of color through initiatives like #SayHerName.

Dakota is participating in the **Dakota Access Pipeline protests**, also known as **#NoDAPL**, which began in 2016 to stop the construction of an oil pipeline that threatened the Standing Rock Lakota Sioux tribe's ancient burial grounds and water source. As community members, we have the right to disagree with anyone's decisions, even government decisions. Concerned groups make their opinions heard and known by contacting politicians, creating signs, chanting in unison, or simply standing together. The water protectors of #NoDAPL did just that, and the movement became the largest intertribal Native American gathering in modern history! **Are there any rules you think are unfair, or that do not represent the needs of your community? Can you think of ways to make the rule more fair for everybody? Figure out the person or group of people who is responsible for making the rule, and write them a letter explaining what you think should change and why. (Bonus activity: Find allies who agree with you and ask them if they will support your letter by signing their name next to yours.)**

Solidarity is when people with different identities and abilities come together to work towards the same goal. During the 2016 Dakota Access Pipeline (#NoDAPL) protests, another community was protesting their unclean water supply not too far away in the city of Flint, Michigan. In this book, we see Dakota and Nia come together as **allies** to fight for a need they both share—the right to drink clean water. We're always stronger together! **Think about a time when a friend stood up for you when you needed help. What did they do to support you? How did their act of solidarity make you feel? What are some ways you can be an ally in return by supporting them too? (Hint: It helps to ask them what they need first!)**

Pages 30 to 37 all focus on experiences of **migration**, or movement from one place to another. The "**1.5 generation**" describes people who move to a new country when they're children. They are in between the **first generation**, who emigrate as adults, and the second generation, who are born in a new country and have immigrant parents. In this book, Gloria is a second-generation immigrant, while Heejung and Yuri are both part of the 1.5 generation. **Ask your family members about your family's history. Were your parents, grandparents, or ancestors born in the same place as you? How and why did your family end up living where they do now?**

Book Notes Continued

Gloria's story features **generational resources**, which are special skills kids can use to help people who are older than them. Gloria's story is based on what Professor Emir Estrada learned when she talked to immigrant children who sell food and other things with their parents. She found out that these children use their savvy with technology like cell phones and computers to make work easier for their parents. When Gloria uses a smartphone in this book, it shows her generational resources in action.

Like many 1.5 generation immigrants, Heejung is **bilingual**. This means she can speak two languages. When Heejung translates conversations from English to Korean for her mother, she is being a **language broker**. Professor Hyeyoung Kwon talked to many language brokers for her research. She learned that translating for adults is a big responsibility for a kid, because it means knowing more about grown-up responsibilities like paying rent and healthcare than most other children do. Like Gloria and Heejung, we can show people that we care about them by helping them get through difficult situations. **Everybody has skills that can be used to help others. Think about a special talent or ability that you have. How can you use that skill to assist your parents, grandparents, or guardians?**

A **refugee** is a person who has had to leave their home country to be safe from violence, discrimination, or natural disaster. While this book was being written, millions of refugees from the Middle East, North Africa, and Central America were forced to leave their home countries. When so many refugees are forced to leave at the same time like that, families from different countries can help out by volunteering to host people like Yuri and her family in their homes, donating goods, or giving funds to organizations that help refugees. **Find out which organizations help people in need in your area. Can you volunteer your time or donate supplies to support one of these groups? If so, see if you can get some friends to join you!**

A **norm** is a situation that is usual or typical. Even though it can be easy to take what what you see every day for granted, what people think is normal may not always be what is best for everyone, or even most people. When norms are unfair or hurtful, we should do our best to help our communities make a positive change.

What Is a Feminist?

A feminist is a person who believes in equality for people of all genders, and that every person should be able to decide what's best for their own life and future.

What's in a Name?

Adilah is an Arabic name, meaning "justice." The name **Dakota** means "friend" or "ally," and it derives from the Lakota Sioux language. The name **Nia** means "purpose," and it comes from Swahili, which is a language spoken in Kenya. **Where does your name come from? What does your name say about you? If you could change your name, what would you change it to and why?**

Chelsea Johnson

As a kid, I was often the only Black girl in my classrooms. Growing up as an "outsider within" my mostly white schools piqued my interest in how race, class, and gender shape social life. I gained the tools to understand my experiences as an undergraduate at Spelman College, a Historically Black College for women in Atlanta, Georgia. It was at Spelman that I became a feminist. After graduating, I began a PhD in sociology at the University of Southern California. My dissertation explored how fashion, politics, and culture relate. I traveled around the world, interviewing women with African roots in South Africa, Brazil, the Netherlands, France, Spain, and the United States about their lives. I now use research to help companies design products with underrepresented groups in mind. When I'm not researching or writing, I enjoy watercolor painting, reading fiction, and eating my way through new cities.

LaToya Council

I was raised in a single-parent, mother-headed home. I would often stare at my mother in awe of her super-shero abilities to manage so many family demands while holding multiple jobs to make ends meet. These memories inspired my vision for a more inclusive world and drove me toward studying sociology at Spelman College, where I first learned about the concept of intersectionality. After graduating from Spelman, I studied the inequalities in love and how race, gender, and class intersect to inform relationship experiences for my master's at the University of Colorado - Colorado Springs. I am currently working on my dissertation at the University of Southern California, which examines time use and self-care among Black middle-class couples. Intersectionality and the power of love frame how I do allyship and research. When not researching, I enjoy practicing meditation, cooking, and hanging with my cat Mimi.

Carolyn Choi

The Los Angeles Riots were a defining moment in my childhood that shaped my identity as a second generation Korean American woman. My personal experiences with race, immigration, and gender led to me to study sociology and Korean literature at UCLA. After graduating from college, I began community-based organizing at a local non-profit civil rights organization in Los Angeles, which served as my first exposure to intersectional issues facing women in the immigrant community. After earning a master's degree from the London School of Economics and Political Science, I entered doctoral study in sociology at the University of Southern California, where I study the issues of migrant labor, human trafficking, and international education. My research has taken me across the United States, South Korea, the Philippines, and Australia. In my spare time, I enjoy spreading greater awareness about the Korean arts through performing pansori, a form of traditional folk music.

Ashley Seil Smith

I grew up one of five girls (and a twin!) in Southern California and Texas. My conservative roots prompted questions about privilege and feminism, which led me to study cultural anthropology as an undergraduate, including ethnographic research on women's health in South India. I eventually moved to New York City and helped launch The Period Store as a vehicle to educate women about all of their options for period management, while also earning my MFA from the School of Visual Arts. I now focus solely on art, exploring both figuration (drawings that represent things in the real world) and abstraction (drawings from imagination that don't look exactly like things from the real world) to express ideas and tell stories. I embrace all artistic tools and frequently use a variety of media. When I'm not drawing, painting, or print making, you can find me outside being active or caring for my menagerie of adopted senior animals with the help of my husband, Nate.

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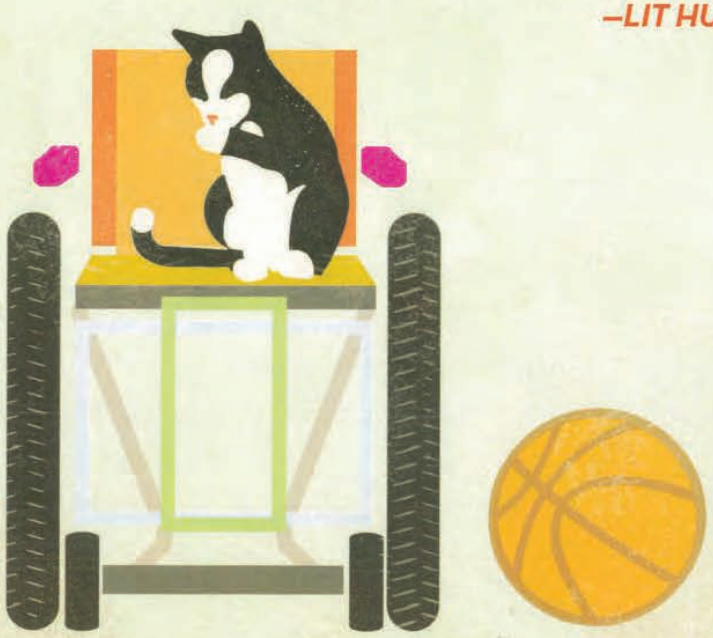

dottir press
dottirpress.com

ISBN 978-1-948340-57-1 $14.95 US
51495
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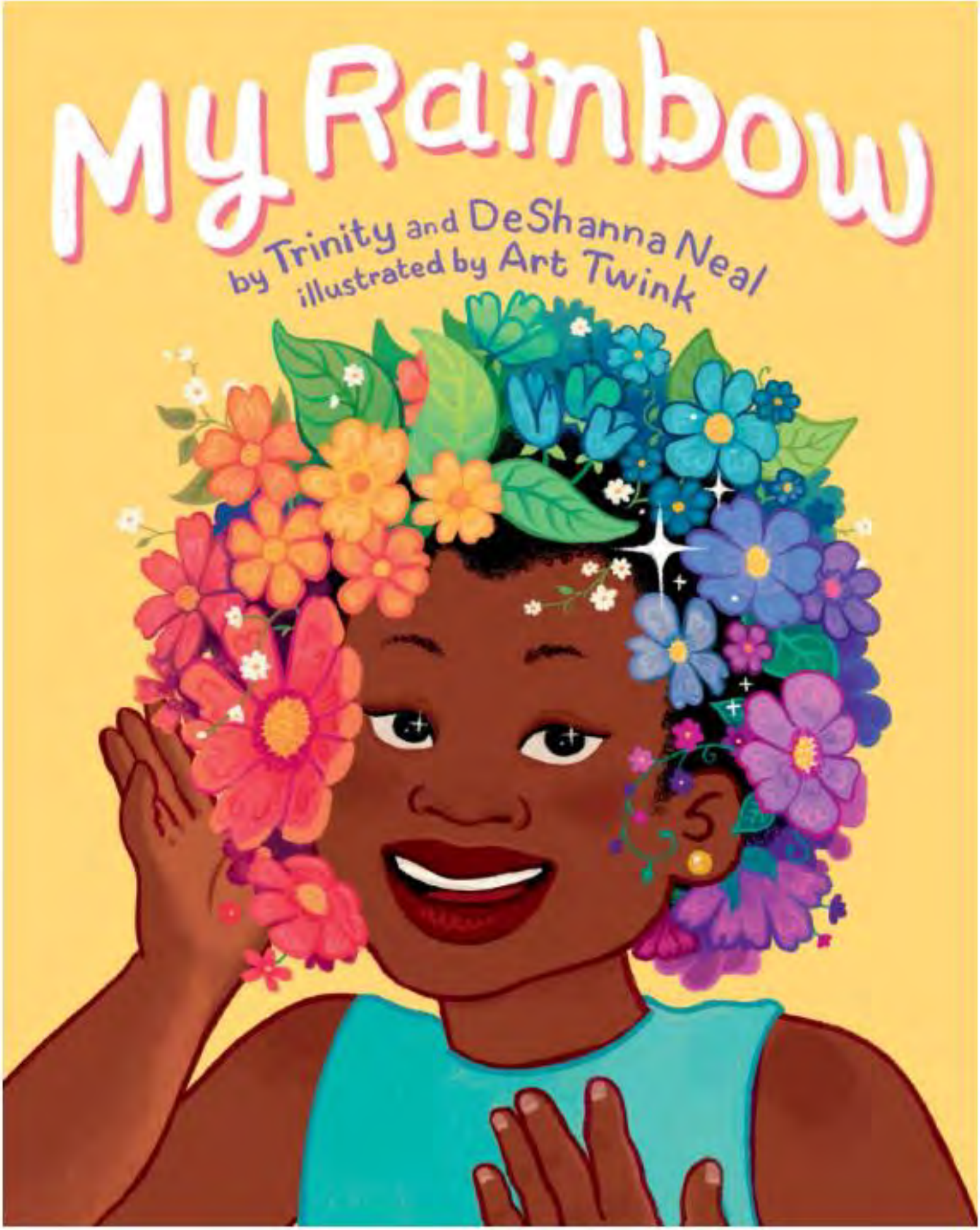
Exhibit G


My Rainbow
by Trinity and DeShanna Neal
illustrated by Art Twink

My Rainbow

by Trinity and DeShanna Neal
illustrated by Art Twink

Kokila

Kokila
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Library of Congress Cataloging-in-Publication Data is available.

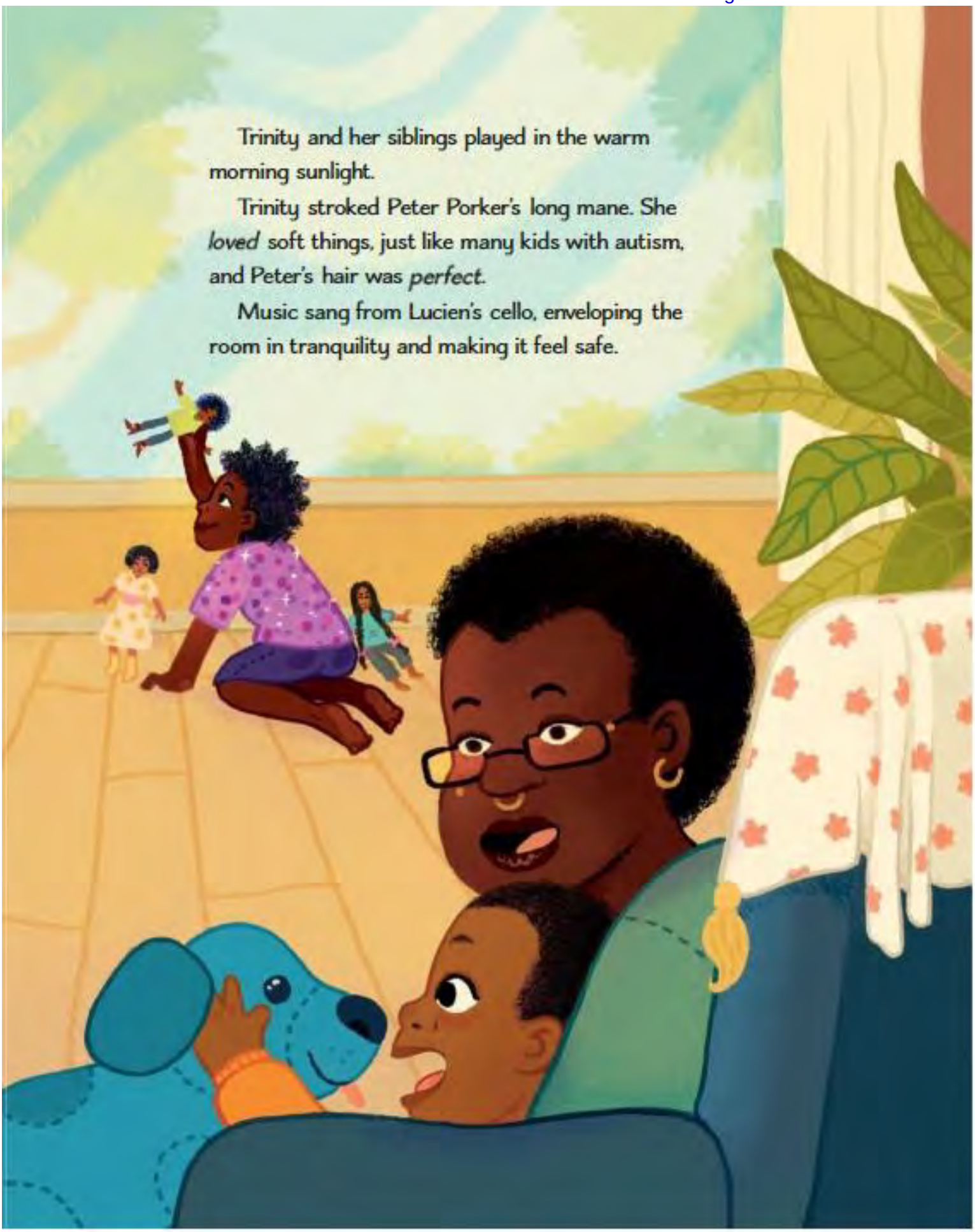
eISBN 9781984814623

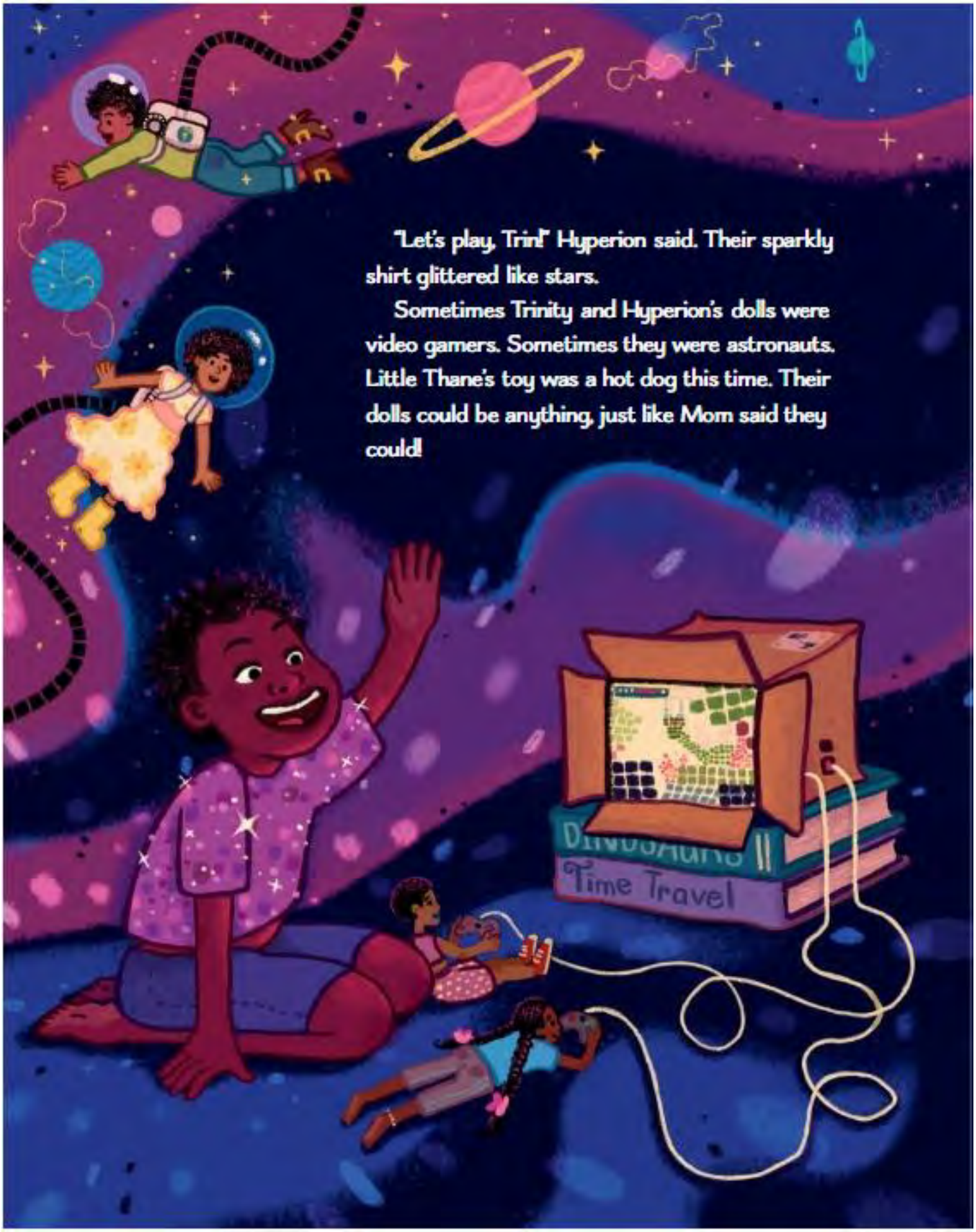
Design by Jasmin Rubero

The art for this book was created digitally.

To grandpop, the one who loved me and my rainbow.
I'll miss you.
–T. N. and D. N.

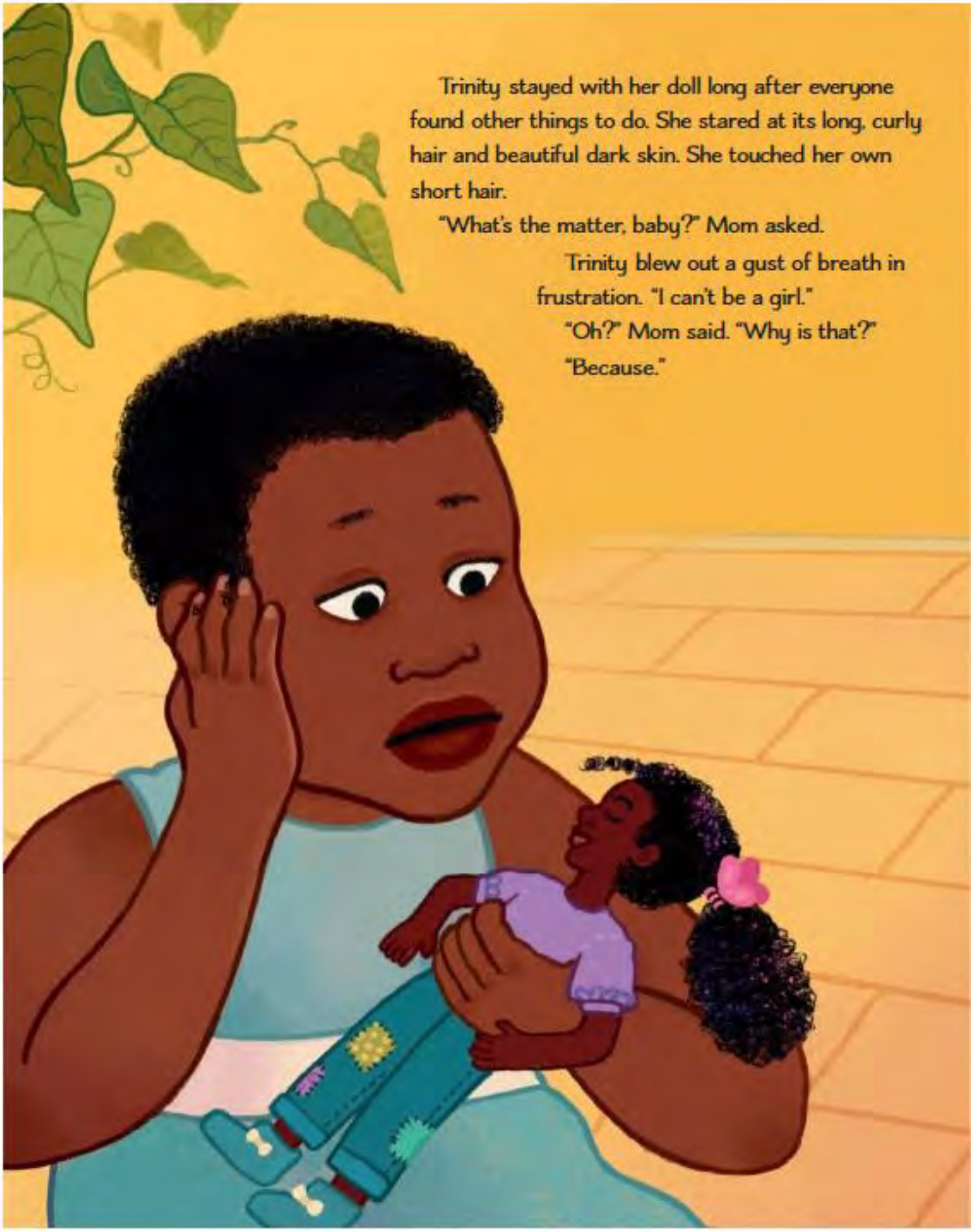
Thank you to all Black women, who make the world a more beautiful place to live.
–A. T.


Trinity and her siblings played in the warm morning sunlight.
Trinity stroked Peter Porker's long mane. She *loved* soft things, just like many kids with autism, and Peter's hair was *perfect*.
Music sang from Lucien's cello, enveloping the room in tranquility and making it feel safe.



"Let's play, Trin!" Hyperion said. Their sparkly shirt glittered like stars.

Sometimes Trinity and Hyperion's dolls were video gamers. Sometimes they were astronauts. Little Thane's toy was a hot dog this time. Their dolls could be anything, just like Mom said they could!



Trinity stayed with her doll long after everyone found other things to do. She stared at its long, curly hair and beautiful dark skin. She touched her own short hair.

"What's the matter, baby?" Mom asked.

Trinity blew out a gust of breath in frustration. "I can't be a girl."

"Oh?" Mom said. "Why is that?"

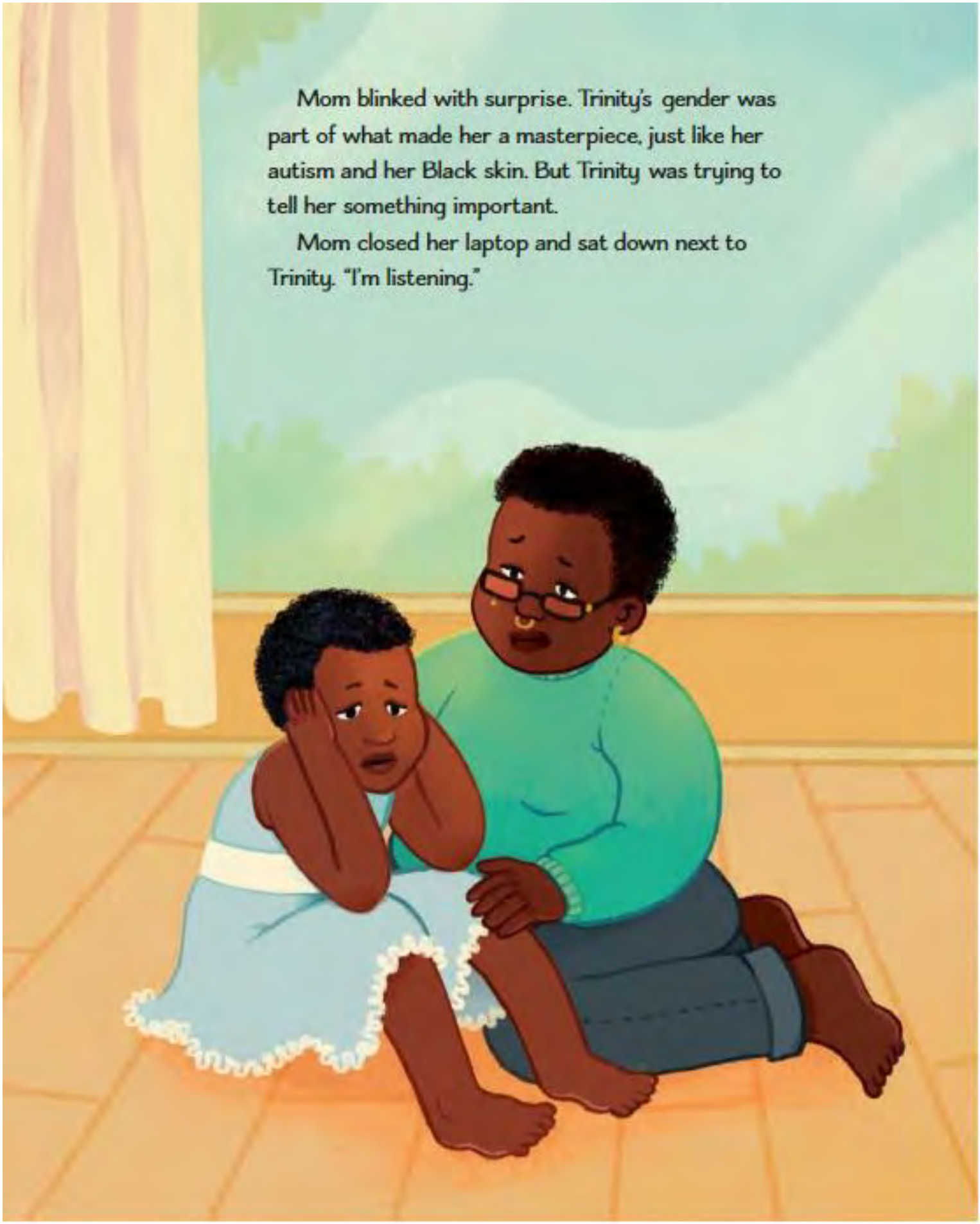
"Because."

"Because *why?*"

Trinity glanced up. "I need long hair."

"Girls can have short hair. See?" Mom ran a hand over her short black hair. "I'm a girl, too."

Trinity's frown only deepened. "I don't think you understand, Mom. I'm a transgender girl."


Mom blinked with surprise. Trinity's gender was part of what made her a masterpiece, just like her autism and her Black skin. But Trinity was trying to tell her something important.
Mom closed her laptop and sat down next to Trinity. "I'm listening."

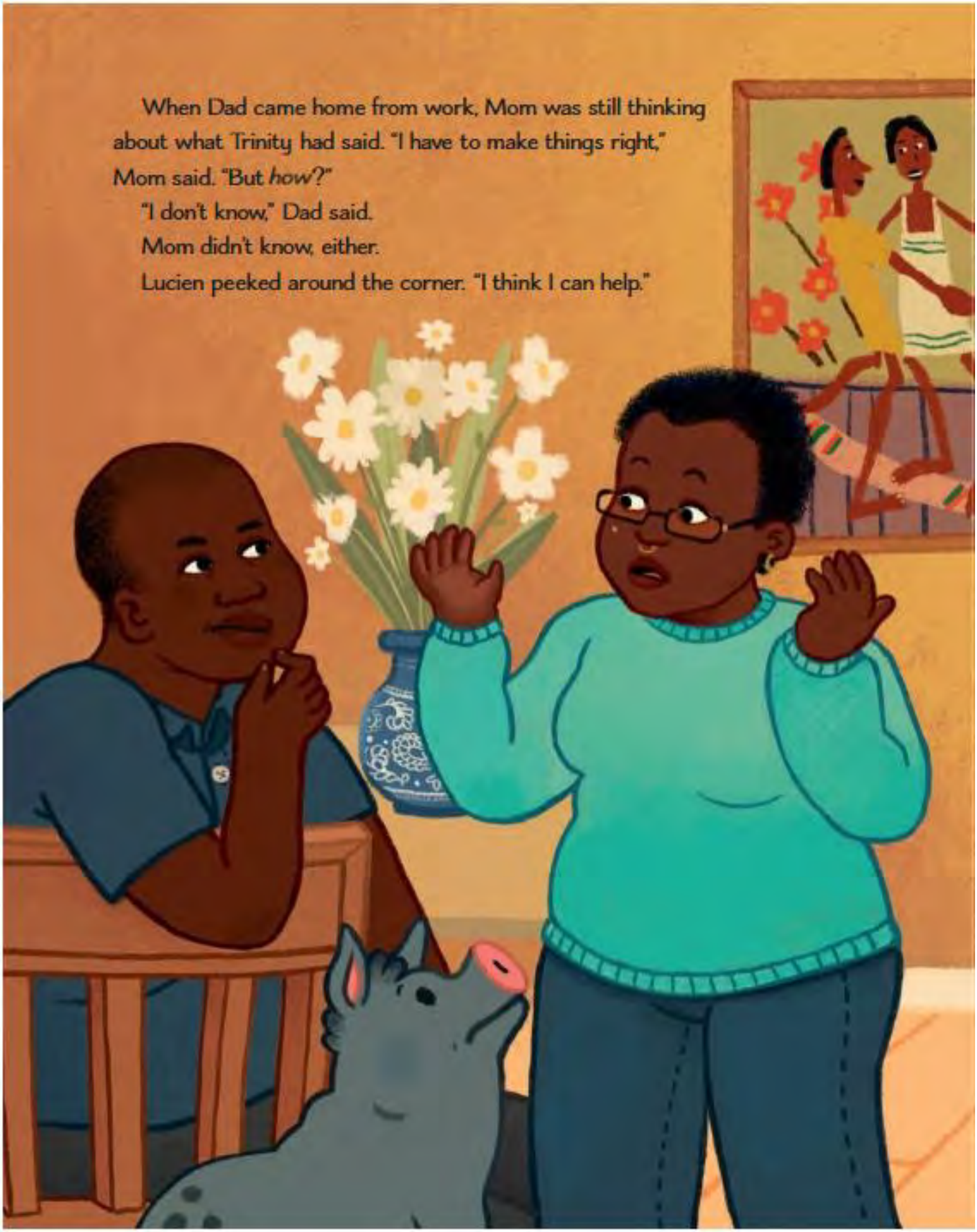
Trinity let out a *big* breath, as if she'd been holding it forever. "People don't care if cisgender girls like you have short hair. But it's different for transgender girls. I *need* long hair!"

Mom thought for a long moment. "You're right. It is different for me."

She peered at each of her children. "We are all a little different from one another. You're a beautiful rainbow, Trinity."

"I don't feel like a rainbow right now."

Mom knew Trinity struggled to grow her hair long. She hated how it made her itchy when it was growing out. But Trinity knew herself best of all. And if she said she needed long hair, she NEEDED long hair! With a sigh, Trinity picked up a pink comb and began smoothing her doll's hair.



When Dad came home from work, Mom was still thinking about what Trinity had said. "I have to make things right," Mom said. "But *how*?"

"I don't know," Dad said.

Mom didn't know, either.

Lucien peeked around the corner. "I think I can help."

EXIT

Mom grabbed her purse. Lucien led her across the street to the beauty store. There were *so many choices*!

"That one's too long," Lucien said. "Trinity doesn't like hair touching her neck."

"And that one's too straight," Mom said next. "She's a beautiful Black girl and her curly hair is *already* perfect. None of these feel right." She sighed.

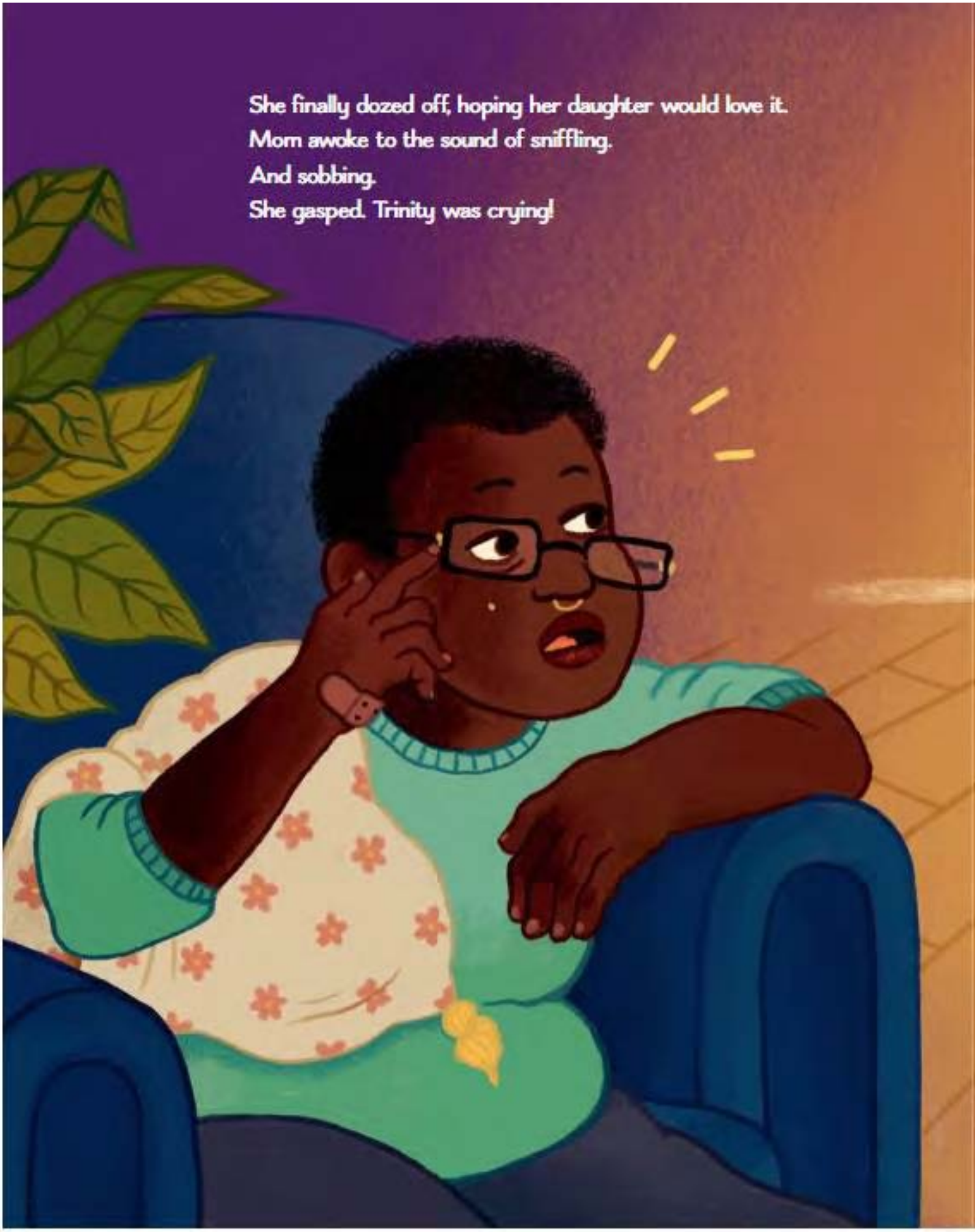
Lucien thought hard. "I know what we need."

"Trinity needs her very own rainbow!"
MAYA
THEY/THEM
TIPS

That night, as all her children slept, Mom sat down with her laptop, a hair needle, thread, and a wig cap. She had never made a wig before. She threaded the hair into the cap like the online videos showed. She sewed late into the night, weaving love into every row.

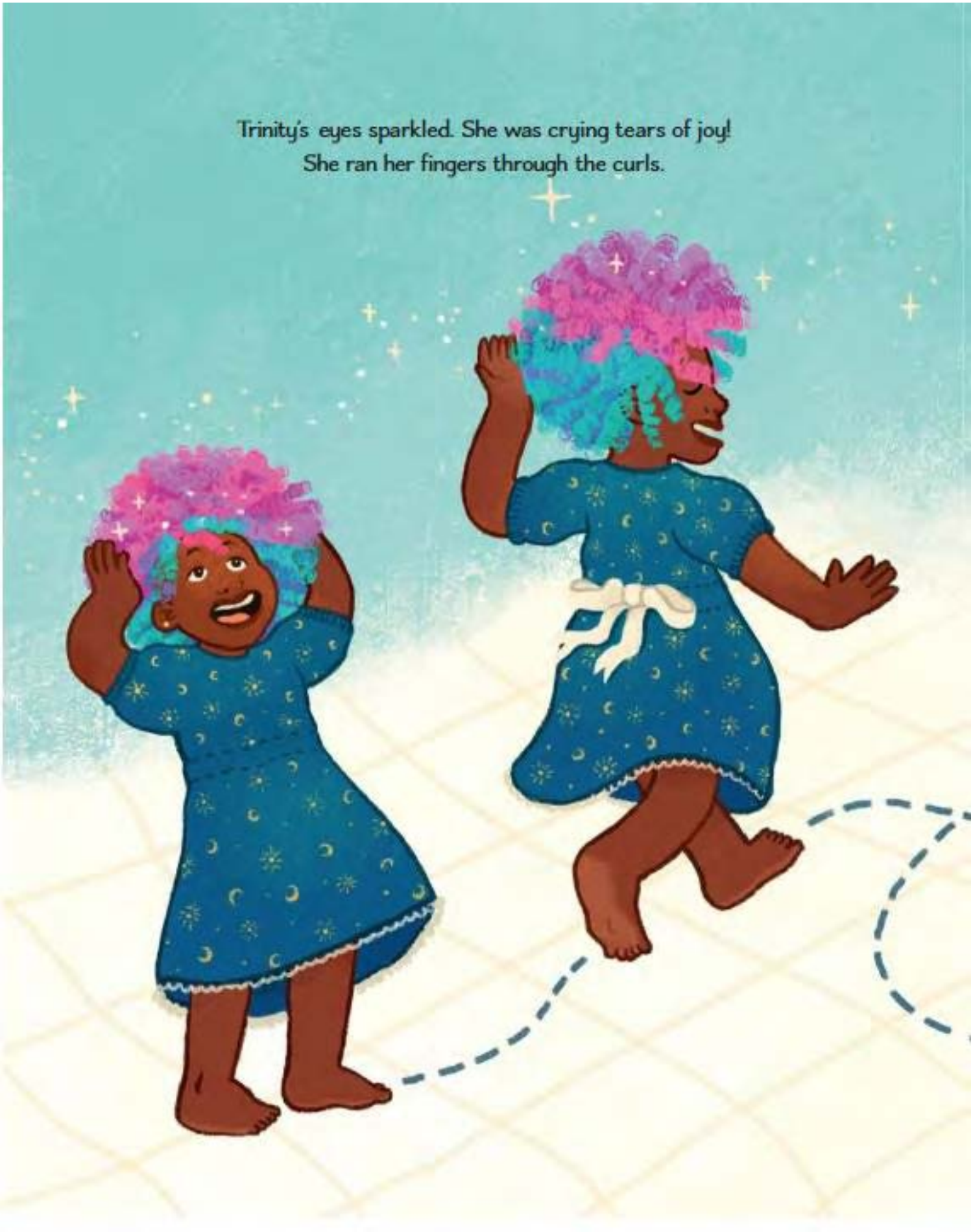
The wig had to be *just right* for Trinity. She poked herself with the needle a few times, got the thread tangled in the curls, and had to chase Peter when he snatched a strand of curly purple hair.

But she weaved and weaved until the clock struck three a.m.


She finally dozed off, hoping her daughter would love it.
Mom awoke to the sound of sniffling.
And sobbing.
She gasped. Trinity was crying!

Mom dashed to the bathroom. The wig was big and fluffy on Trinity's head. The springy, curly teal blue, dark pink, and purple hair that Lucien had chosen lit up the whole room.

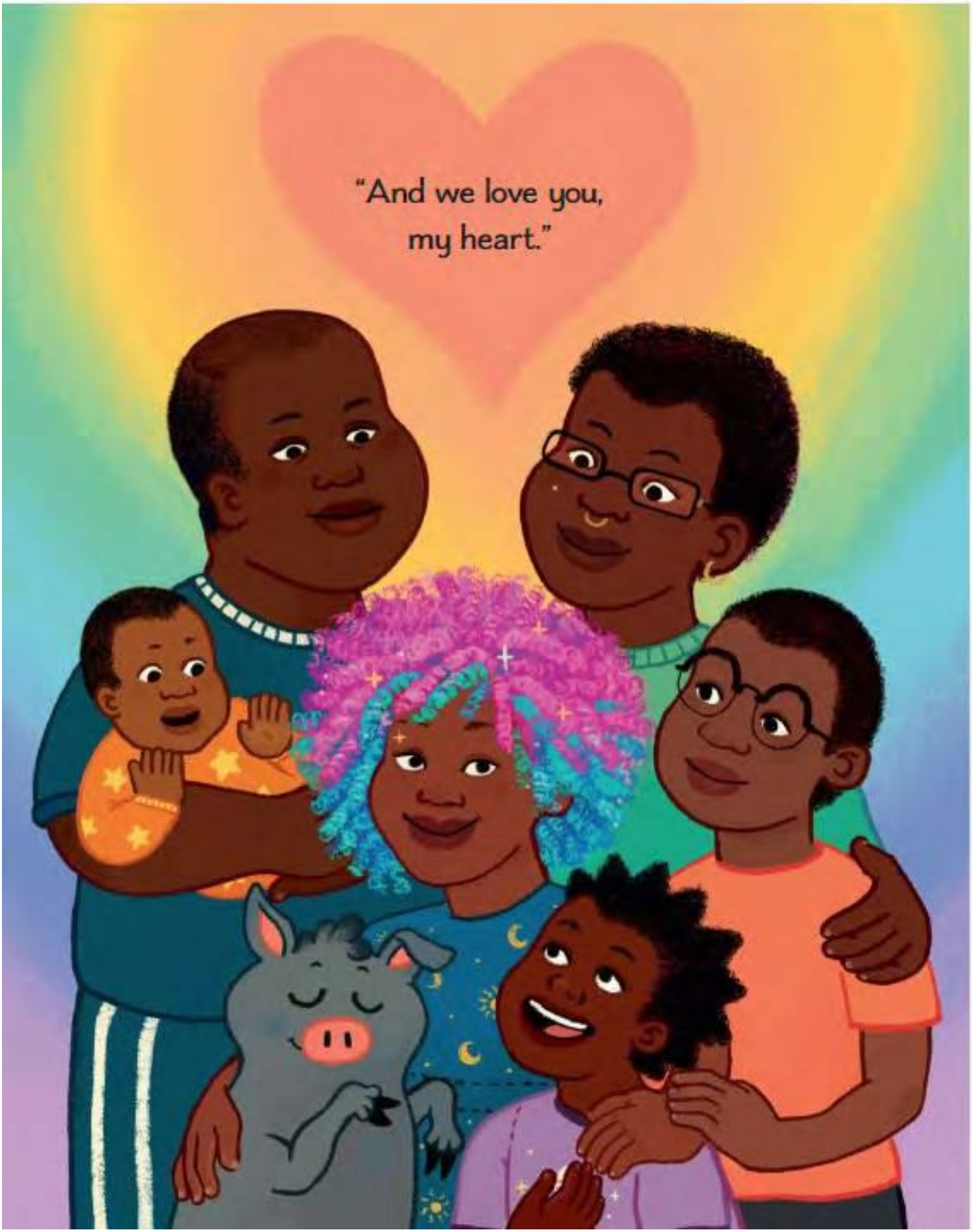
SOAP


Trinity's eyes sparkled. She was crying tears of joy!
She ran her fingers through the curls.

"It's me, Mom.
My hair has finally come!
It's *my* rainbow!"

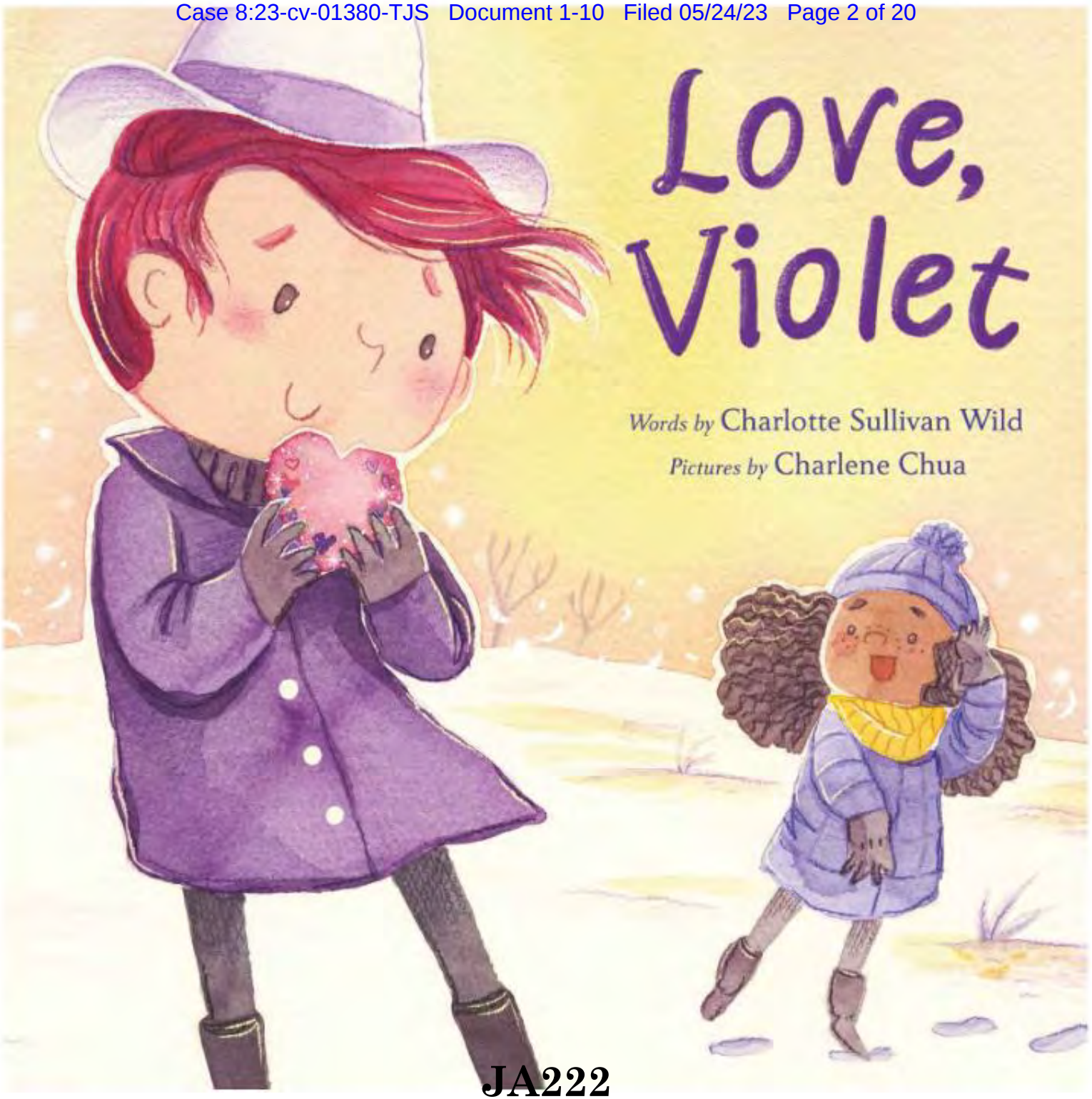
Lucien bounded into the bathroom,
with the rest of the family behind him,
to see Trinity's reaction.

"Thank you," Trinity said.
"I love my rainbow."


"And we love you,
my heart."

When each of your colors has space to shine,
you light up the whole sky.

Exhibit H


Love, Violet
Words by Charlotte Sullivan Wild
Pictures by Charlene Chua

For Tara, wearer of adorable hats, who wooed me with handmade valentines. Cara mia, I still have a crush on you!

Also for Melissa, Isabel, Benji and Brian, Jodi and Ro, David, Annie, Melody, Chelsea, Sandy, and everyone at Thrive Youth Center. For all of us who have longed for a story of our own. Love, Charlotte

For J. N. and H. Y., even though you'll never know —C. C.

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Love, Violet

Words by Charlotte Sullivan Wild *Pictures by* Charlene Chua

Farrar Straus Giroux
New York

As far as Violet was concerned,
only one person in her class raced like the wind.
Only one had a leaping laugh.
Only one made Violet's heart skip.
Mira.

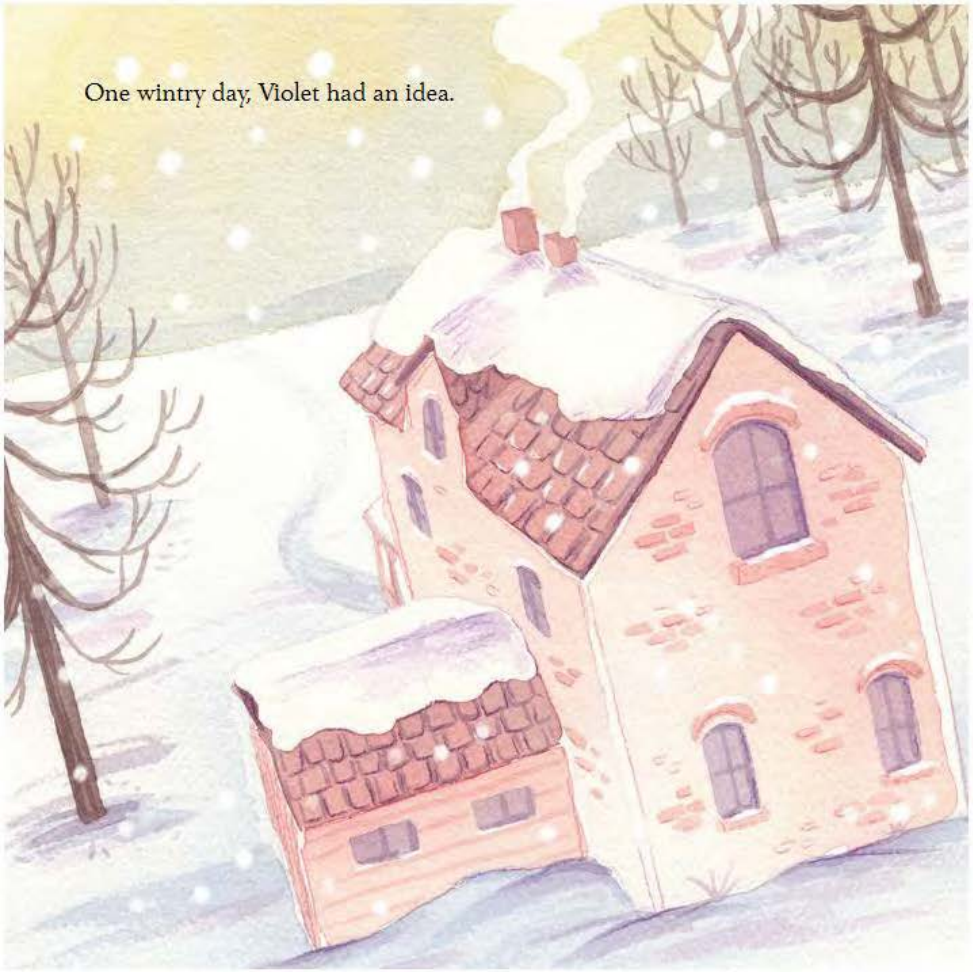
Every day, Violet dreamed
of astounding Mira with heroic feats
and bringing her treasures
and galloping off together on adventures!
But whenever Mira came near . . .

"What are you drawing, Violet?"

"Want to play horses, Violet?"

"Where's Violet? We're line buddies today."

. . . Violet went shy.



When it was just right,
she signed her valentine,
Love, Violet.

An idea with crayons and
scissors, glitter and glue.

Maybe tomorrow their
adventures would begin!

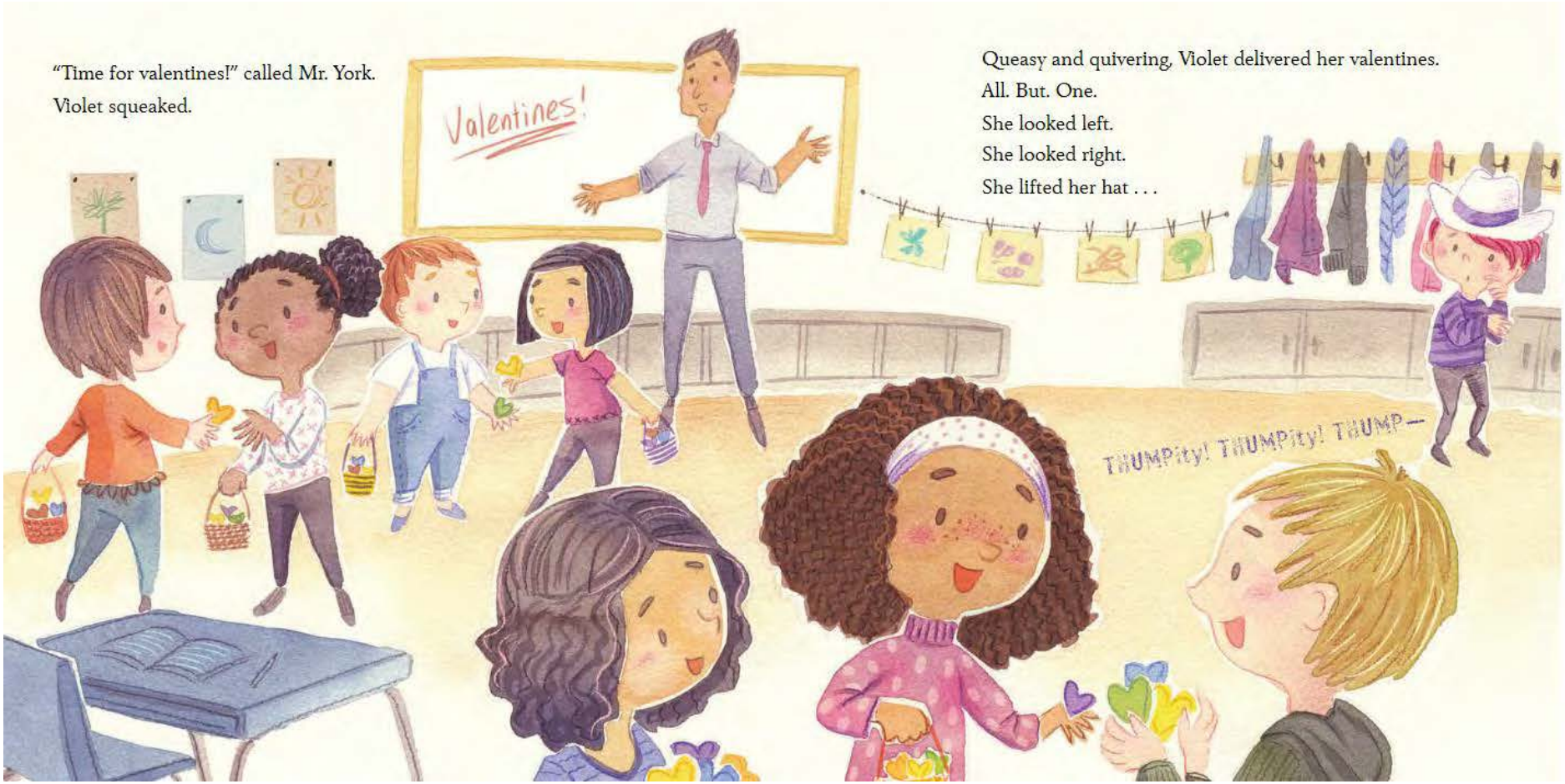
On Valentine's Day, Violet woke to shimmering snow.
On went her boots and lucky cowgirl hat.
And under that hat went Violet's surprise!
As Violet kicked through snow to school,
Carlos asked, "Did everybody bring valentines?"
"I bet you made a SPECIAL one for somebody!"
teased Jade.
"Ewww! Did not!" cried Carlos. "Violet, did YOU?"
Violet blushed hot. "I gotta go." She darted through
the wintry gust with her hat pulled low.

Just then, Mira raced up like the wind.
"Nice hat, Violet."
Snow sparkled on Mira's eyelashes.
Mira was magnificent.

But what if Violet's valentine *wasn't*?
Suddenly, Violet's heart thundered like a
hundred galloping horses.
She reached for her hat and . . .

THUMPity, THUMPity, THUMPity!

All day long, Violet's stomach lurched.
What if Violet couldn't give her valentine?
What if Mira didn't *want* her valentine?
What if . . . they never adventured?


"Time for valentines!" called Mr. York.
Violet squeaked.
Valentines!
Queasy and quivering, Violet delivered her valentines.
All. But. One.
She looked left.
She looked right.
She lifted her hat . . .
THUMPity! THUMPity! THUMP—

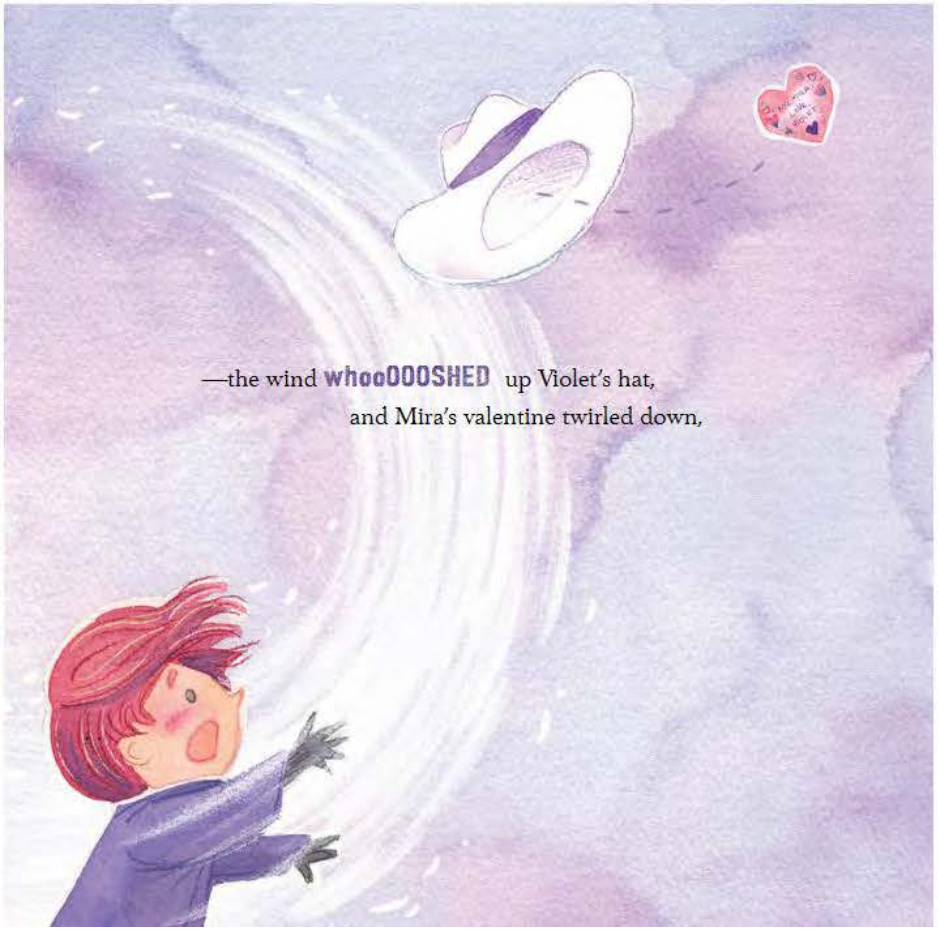
"Did you give all your valentines?" Mira asked, appearing out of nowhere.
Violet jumped! She smacked right into Mira and tumbled into the coats.
All around her, kids hooted and howled.
Violet shrank into the tangle of scarves.
She wanted to say sorry.
She wanted to give Mira her valentine.

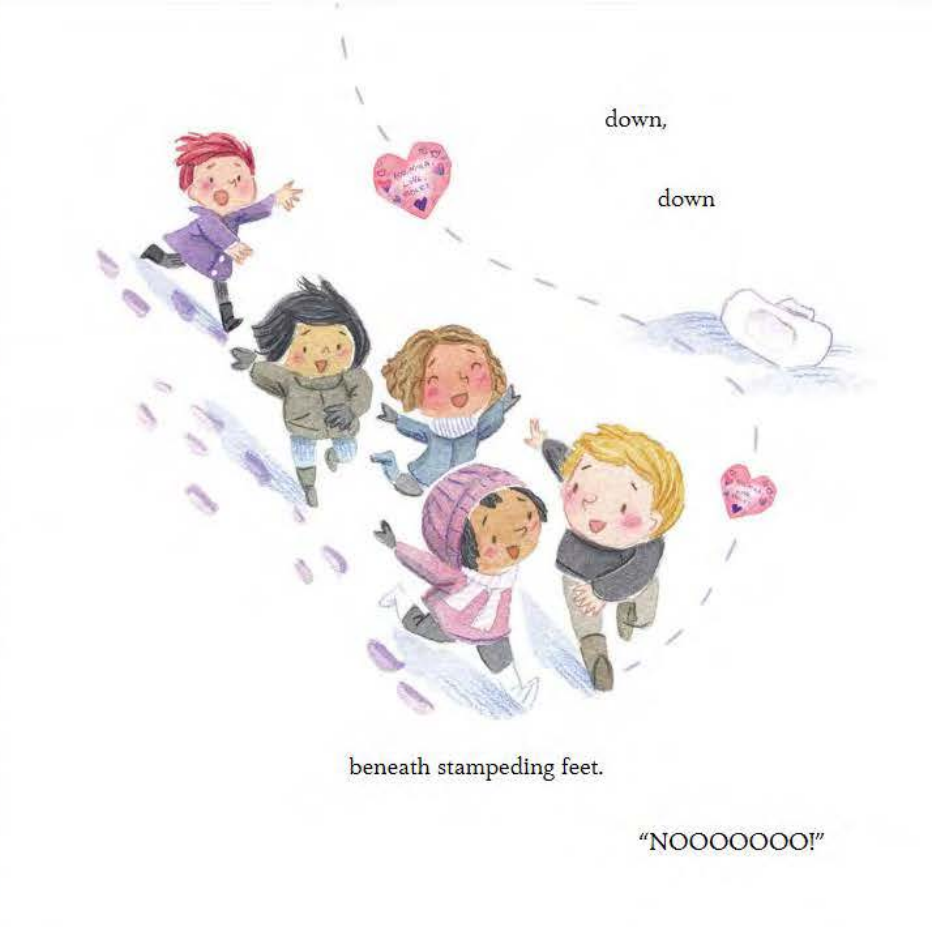
Instead, she scrambled away,
hiding her eyes (and her surprise)
under her hat.

At recess, Violet made a lonely angel in the snow.
How could she ever face Mira now?

Then laughter lassoed across the playground.
A laugh like leaping horses.
A laugh that warmed Violet down into her boots.
Violet sprang up.
Only one person had praised her hat.
Only one hadn't laughed when she fell.
Only one had ever asked her to play horses.
Could it be Mira *wanted* to be her valentine?

"MIRA!" cried Violet. "I have something for you!"
Violet flew through the snow.
She scaled drifts!
Slid across ice!
She even dodged a barrage of snowballs
under the jungle gym WHEN—

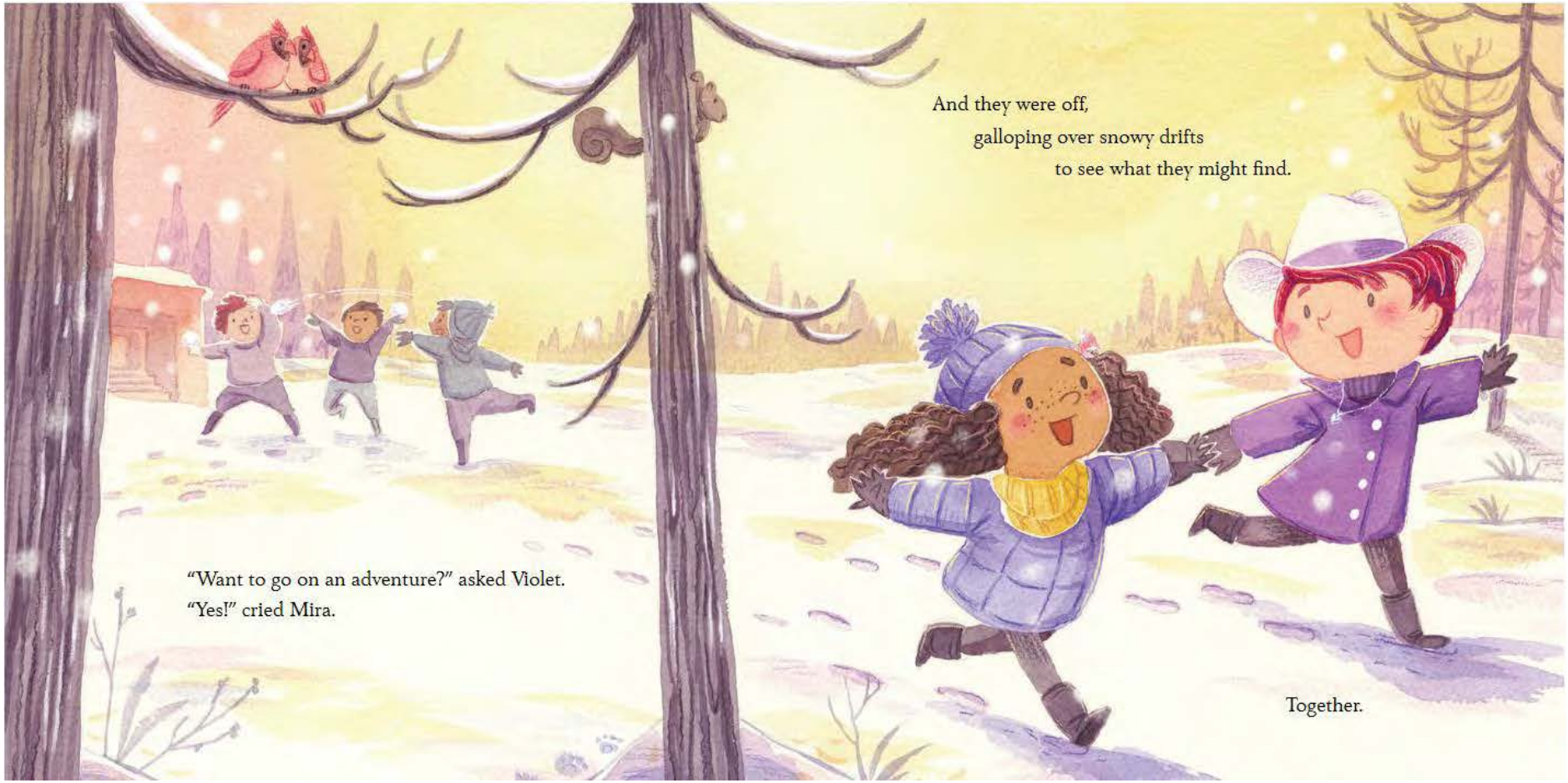

—the wind whooOOOSHED up Violet's hat,
and Mira's valentine twirled down,


down,
down
beneath stampeding feet.
"NOOOOOOO!"

Mira raced like the wind. "Violet! What's wrong?"
Violet sniffed. "This was for you. But it's *ruined*."

"For me? Violet . . . it's so pretty!"
Mira tucked a torn bit into her cap.
It glittered beside her hair.

Then, with a shy smile, Mira reached into her pocket
and pulled out a locket.
"For you," said Mira.


"Want to go on an adventure?" asked Violet.
"Yes!" cried Mira.
And they were off,
galloping over snowy drifts
to see what they might find.
Together.

Author's Note

The creation of this book was supported by a Beyond the Pure Fellowship for Writers grant from Intermedia Arts, made possible, in part, by the support of the Jerome Foundation; a Next Step Fund grant from the Metropolitan Regional Arts Council of the Twin Cities; and the Shabo Award for Children's Picture Book Writers from the Loft Literary Center.

Charlotte Sullivan Wild was a fiscal year 2015 recipient of an Artist Initiative grant from the Minnesota State Arts Board. The creation of this book was supported by the voters of Minnesota through a grant from the Minnesota State Arts Board, thanks to a legislative appropriation from the arts and cultural heritage fund.

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Exhibit I

BORN READY

THE TRUE STORY OF A BOY NAMED PENELOPE

Written by
JODIE PATTERSON

Illustrated by
Charnelle Pinkney Barlow

This story is dedicated to my five children—my stars.
We all have an opportunity to be flexible, to expand our vision, and to put love first.
Thank you for helping me see more, do more, and love more.
—J.P.

To my Dadda Ladda Myles C. Pinkney
—C.P.B.

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Library of Congress Cataloging-in-Publication Data
Names: Patterson, Jodie, author. | Pinkney Barlow, Charnelle, illustrator.
Title: Born ready : the true story of a boy named Penelope / Jodie Patterson, Charnelle Pinkney Barlow.
Description: First edition. | New York : Crown Books for Young Readers, 2021. | Audience: Ages 4–8. | Audience: Grades K-1. |
Summary: Just before his fifth birthday, Penelope lets his mother know he is a boy and, with her support and his ninja powers, faces the rest of his family and his classmates. Drawn from the author's memoir, The bold world.
Identifiers: LCCN 2020010665 (print) | LCCN 2020010666 (ebook) | ISBN 978-0-593-12363-8 (hardcover) | ISBN 978-0-593-12365-2 (library binding) | ISBN 978-0-593-12364-5 (ebook)
Subjects: CYAC: Transgender people—Fiction. | Family life—Fiction. | African Americans—Fiction.
Classification: LCC PZ7.1.P3814 Bor 2021 (print) | LCC PZ 7.1.P3814 (ebook) | DDC [E]—dc23
The illustrations in this book were created digitally with handmade watercolor textures.
Book design by Nicole de las Heras

Random House Children's Books supports the First Amendment and celebrates the right to read.

BORN READY

THE TRUE STORY OF A BOY NAMED PENELOPE

Written by
JODIE PATTERSON

Illustrated by
Charnelle Pinkney Barlow

Crown Books for Young Readers New York

'm no ordinary kid. I'm a ninja.

Ninjas are strong. Ninjas are smart.

Ninjas always win the fight. Usually, ninjas have ninja names.

But my parents named me after my grandmother Penelope. And that makes things hard.

Penelope, you're so cute! Penelope, you look like your sister! No one understands.

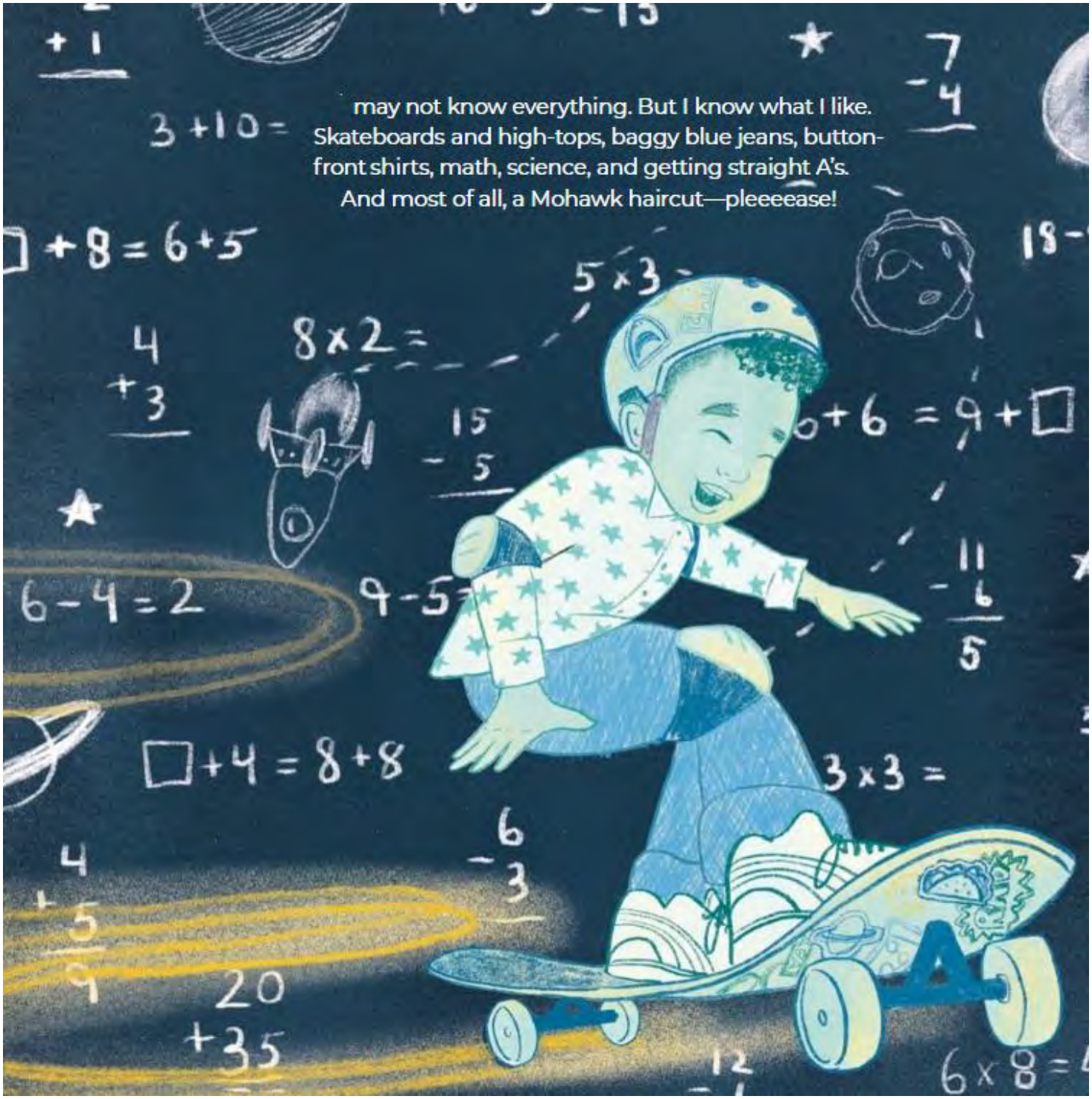
Big Brother acts like he knows everything.

"Penelope, do you know that the air around a lightning bolt is hotter than the sun?"

"Nope."

"Do you know that everything has a scientific explanation?"

"Nope."


may not know everything. But I know what I like.
Skateboards and high-tops, baggy blue jeans, button-front shirts, math, science, and getting straight A's.
And most of all, a Mohawk haircut—pleeeease!

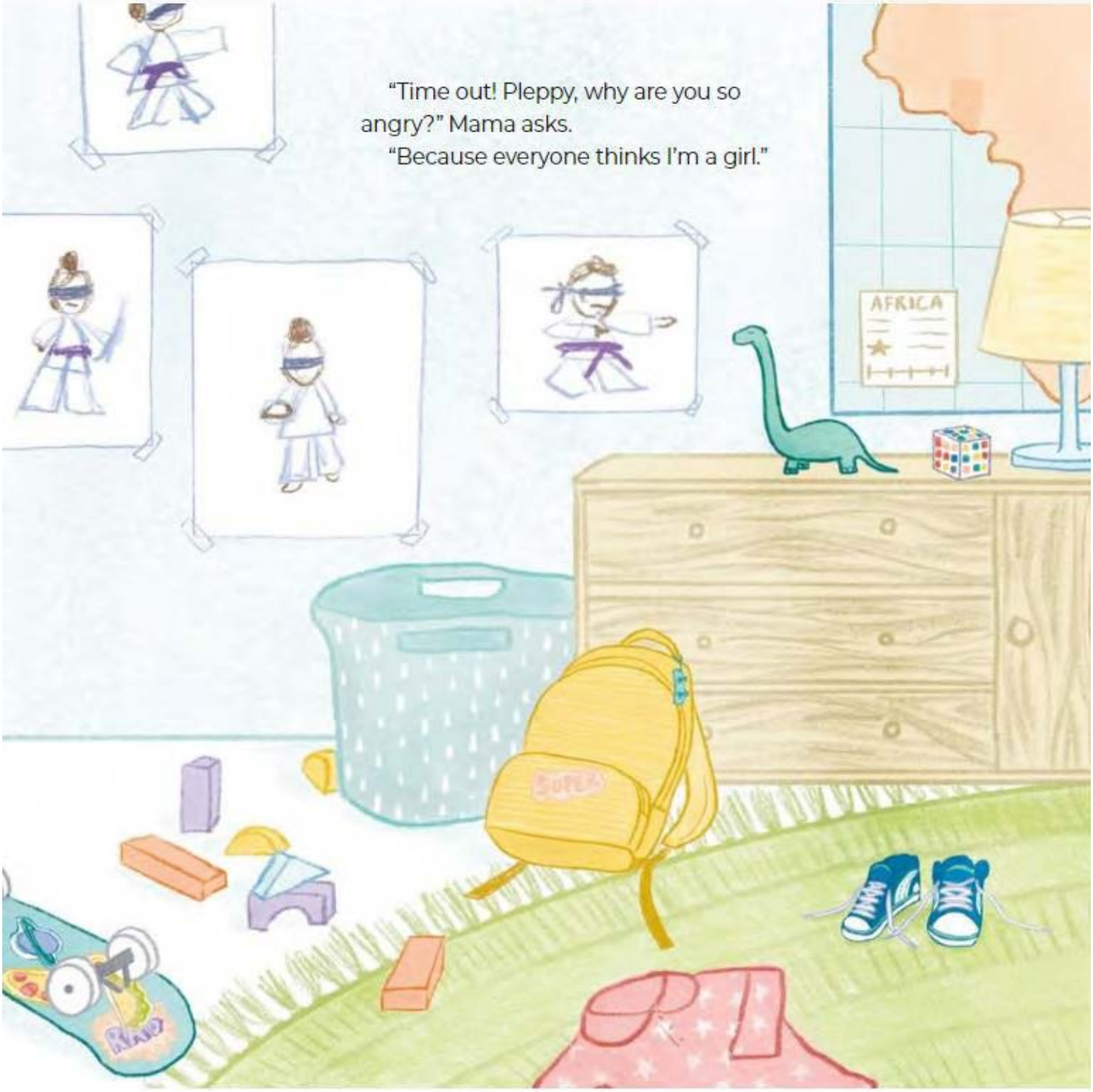
Mama is the busiest person I know.
Papa is the strongest person I know.
Big Brother is the smartest.
Big Sister is the bossiest.
And Baby, he's the happiest—he can make anyone smile.

If they'd all stop and listen, I'd tell them about me. Inside I'm a boy.
When I close my eyes and dream, I'm a boy.
When I karate-chop the bad guys, I. Am. A. Boy.
POW

But my family is too busy to notice.
stomp through the house
so they HEAR me.

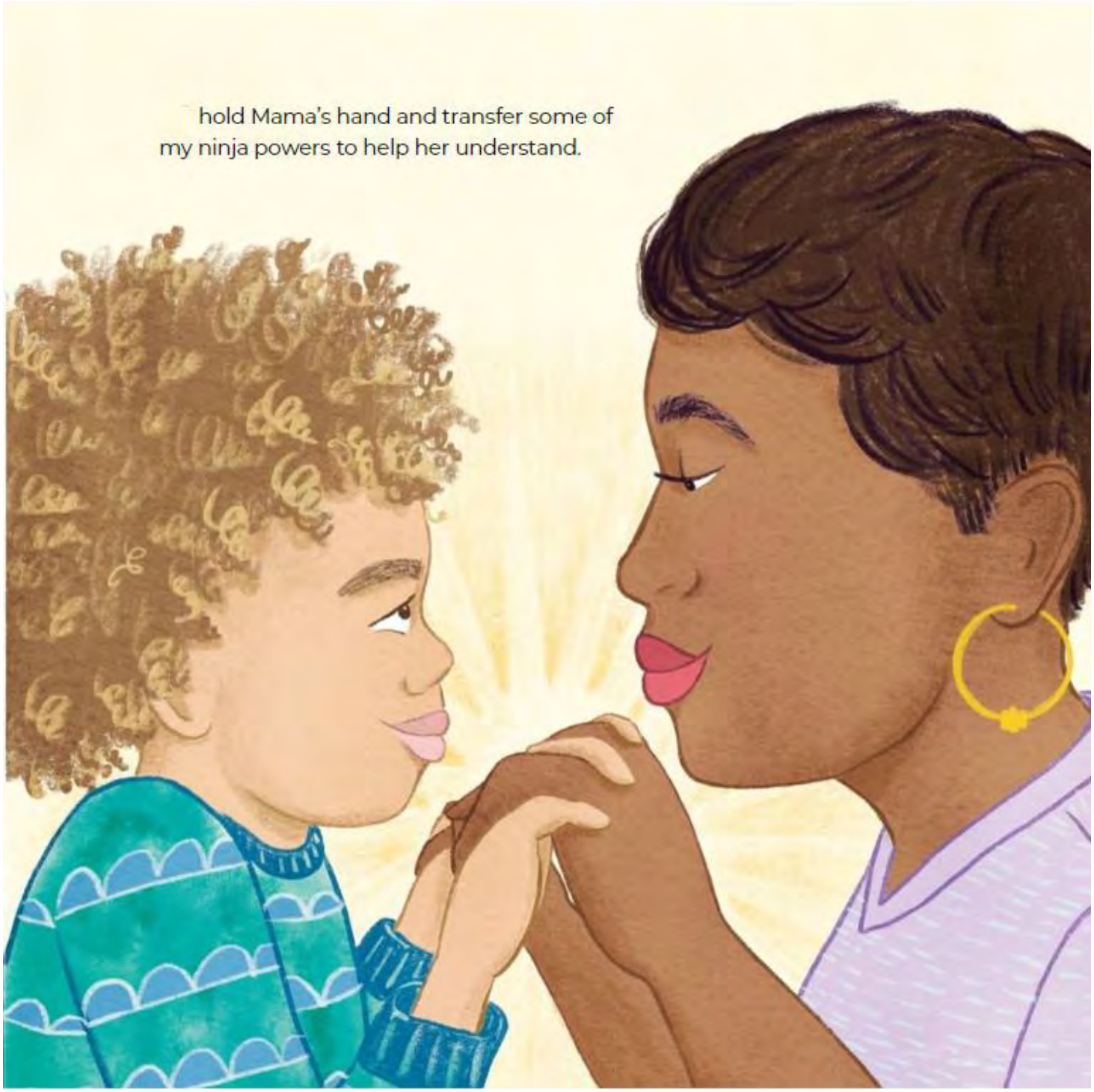
cut the line at the playground so they SEE me.

pound my fists hard so they FEEL me.

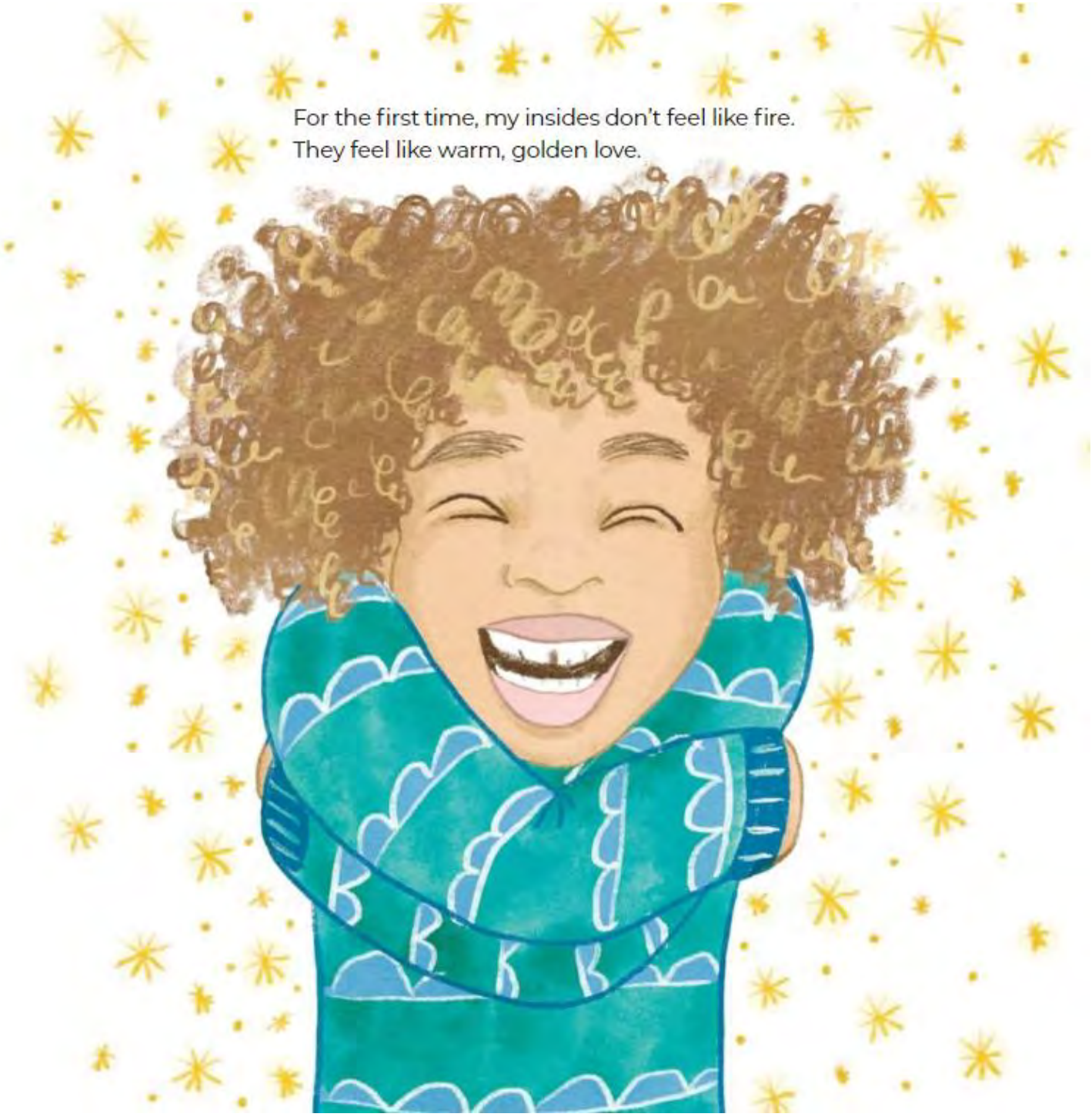

"Time out! Pleppy, why are you so angry?" Mama asks.
"Because everyone thinks I'm a girl."
AFRICA

"However you feel is fine, baby. It's what's on the inside that matters most. If you feel like a boy, that's okay."
"No, Mama, I don't *feel* like a boy. I AM a boy."

"Oh?"
Mama gets quiet.
"I love you, Mama, but I don't want to *be* you. I want to be Papa. I don't want tomorrow to come because tomorrow I'll look like you. Please help me, Mama. Help me be a boy."


hold Mama's hand and transfer some of
my ninja powers to help her understand.

Then Mama says the best word I've ever heard.
"Yes."
She says, "We will make a plan to tell everyone we love what we know."
"What's that?"
"You are a boy."


For the first time, my insides don't feel like fire.
They feel like warm, golden love.

Our family is from all over the world, and Mama says that makes us wise.

Grandpa G flies from Ghana for my birthday.

Mama bakes a cake.

We gather around the table.

"Akwaaba!" says Mama. "Penelope is not a pretend boy or a tomboy. He is our five-year-old big boy."

All eyes are stuck on me.

Grandpa G slams his hand down on the table. "Ah! Chale! In my language of Twi, gender isn't such a big deal. We don't use gender pronouns."

don't understand everything, but I do know Grandpa G is smiling.

Good! Let's eat cake.

But Big Brother isn't smiling. He looks mad.

"This doesn't make sense. You can't *become* a boy. You have to be born one."

Mama puts her arms around both of us and pulls us in tight. "Not everything *needs* to make sense. *This is about love,*" she whispers.

Papa stands up tall.
"Well, P, if you want *me* to call you a boy, you'll have to tell me yourself."
stand up tall, too. "I *am* a boy."

It's Monday, and Mama says school is my responsibility.
I'm going to show my friends all of me.

put on my blue pants.

button my favorite shirt.

tighten my long tie.

feel *good*.

walk into school like I "own the joint"—just like Grandpa JohnnyBoy, from Harlem, taught me.
"Hey, Pen, why are you wearing a boy's uniform?" my friend Big D asks.
"Because I *am* a boy. And I like my full name, please—Penelope."
"Yeah, makes sense. And you look great," he says.
We high-five.

Principal asks to see me.
"Penelope, I heard your classmates were asking about your uniform," she says. "Were you embarrassed?"
want to tell Principal that ninjas don't get embarrassed—we "get busy." But I just shake my head no.

"Your parents told me you are a boy. Is that true?"

"I think like a boy. I feel like a boy. I might look different from other boys, but yes, I'm sure I'm a boy."

"Well, Penelope . . . today you're *my* teacher!"

Mama says ninjas need to be powerful, so I study karate.

"Lil P, you ready for this?" Master Bill asks.

He's the loudest man I know. And I like it! He teaches me how to fight and train hard with my team.

"Lil P, give me a left foot roundhouse kick!" Master Bill says.

try my best, but it's confusing.
"Nooooo. Your LEFT foot! Left!"
Master Bill says: If you don't *do*, you can't *become*.
Mama says: Winners are losers who get back up.
say: Ninjas don't quit.

practice every day.
Breathing and stretching.
Blocking and punching.

Most important, I learn to get back up.
Master Bill says I'm ready.

Papa drives us to my first tournament.
bring my cheering squad!
"Baby, are you sure you want to fight?" Mama asks.
"Remember to protect yourself," Papa says.
"Don't worry," I tell them. "I'm not afraid."
Then Big Brother jumps in. "Ninjas never back down from a challenge, P. You got this," he says.

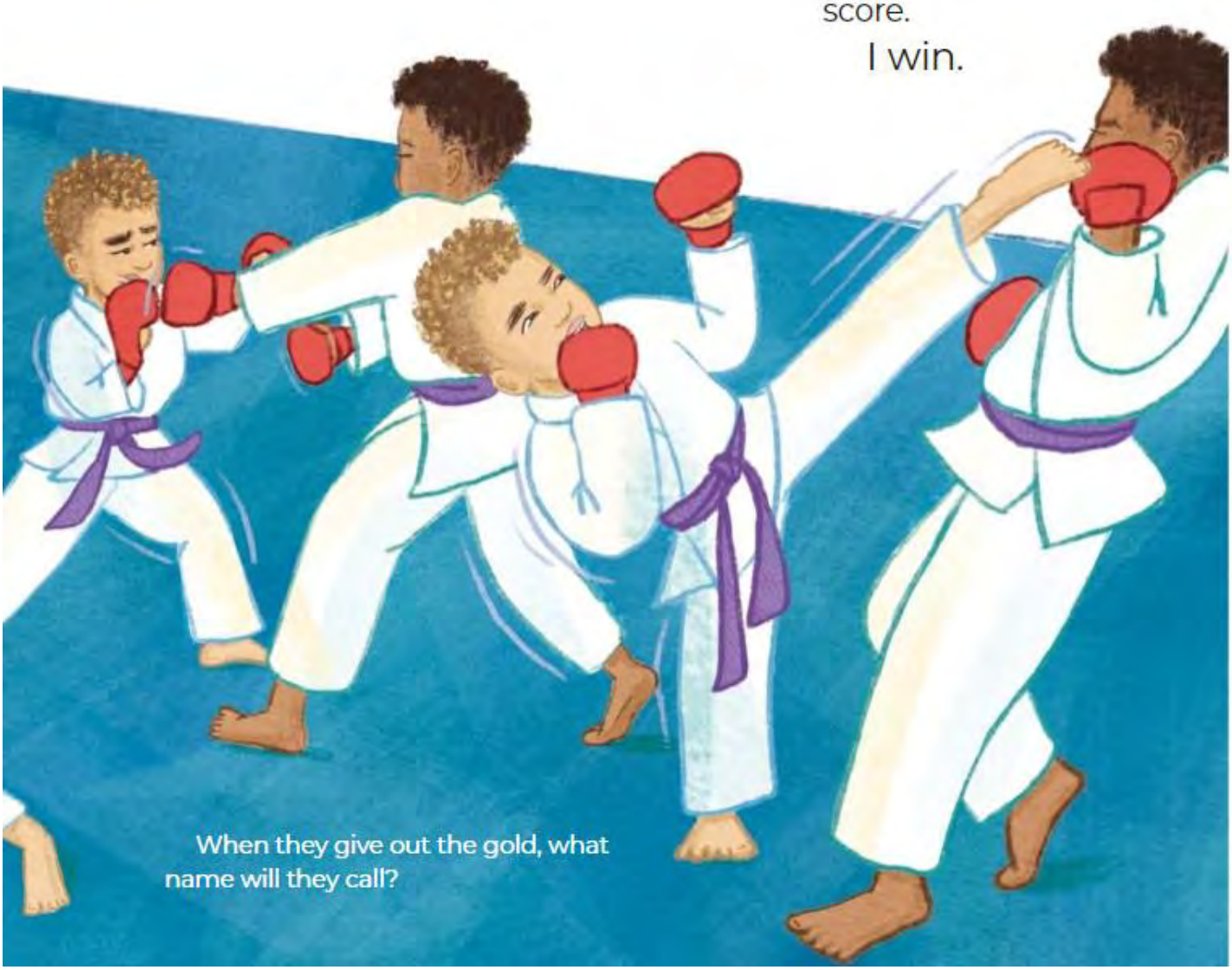
When we check in at the front desk,
my teammates are already there!
"Yo! You ready, P?"
"Born ready!"

My opponent is tall.
My opponent is fast.
We've both come to win.

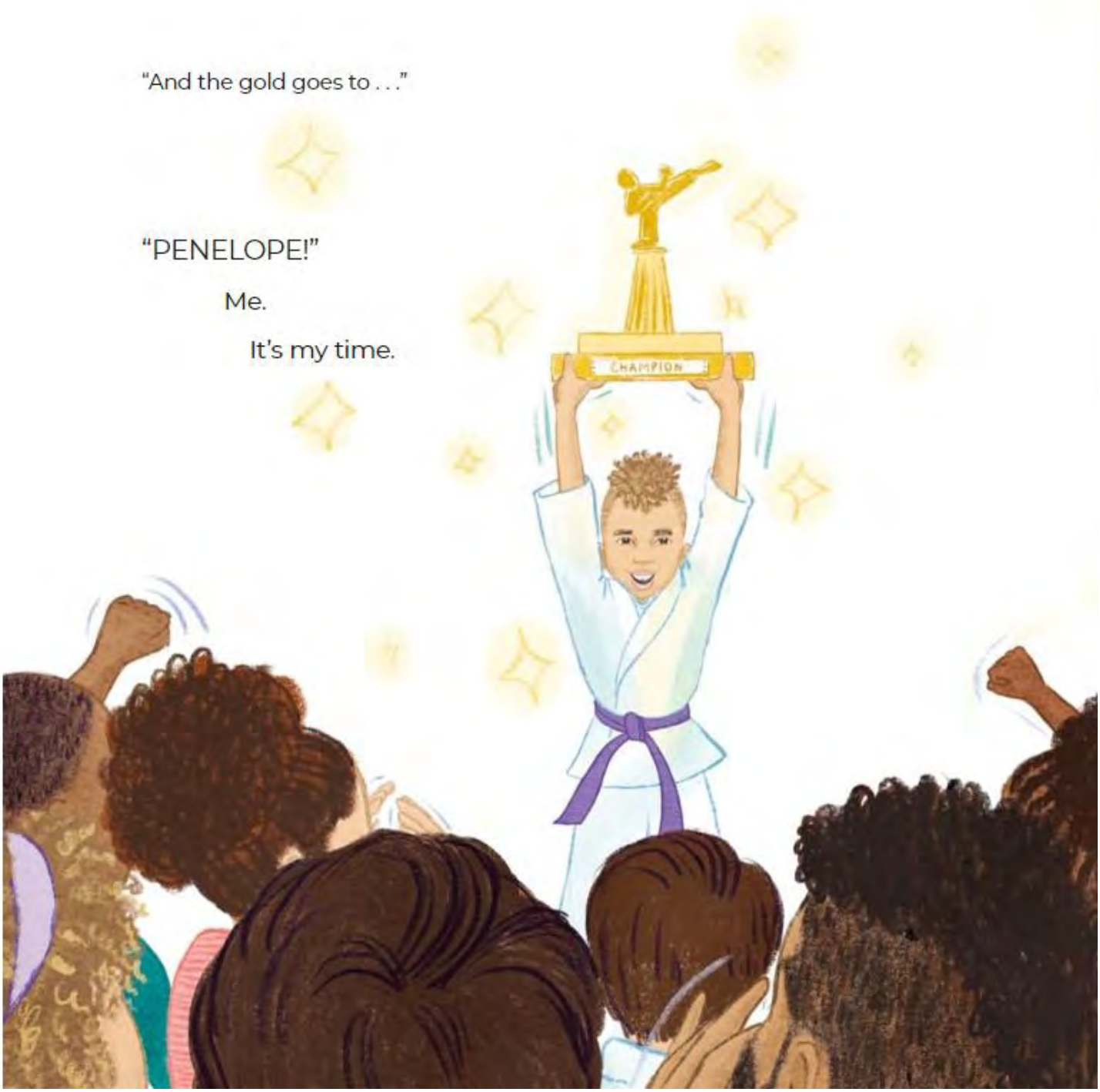
This won't be easy.

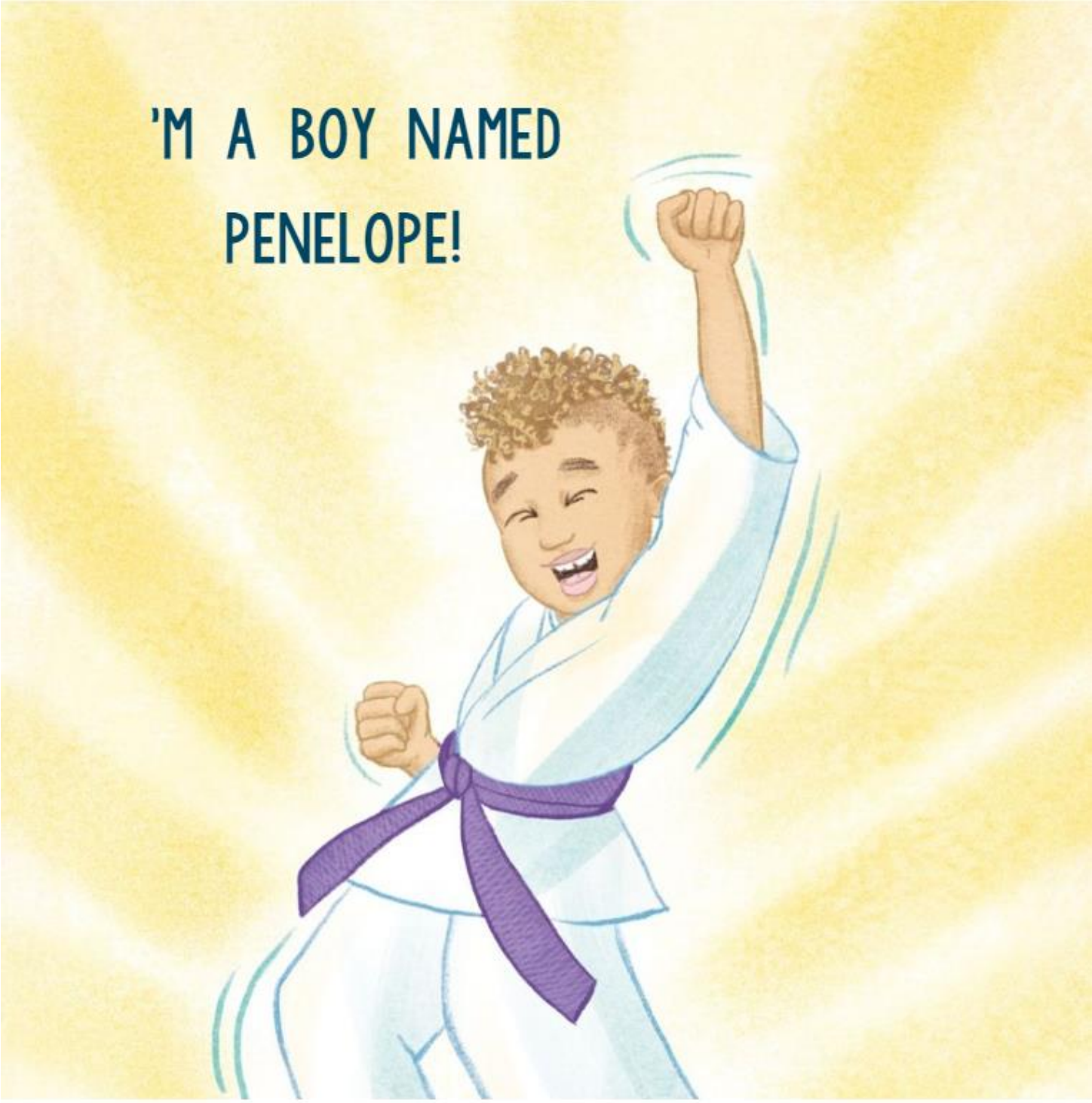
shuffle my feet.
I bob from side to side.
Boom! Roundhouse kick to the head.

score.
I win.



When they give out the gold, what name will they call?


"And the gold goes to . . ."
"PENELOPE!"
Me.
It's my time.
CHAMPION


'M A BOY NAMED
PENELOPE!

JODIE PATTERSON

is the author of *The Bold World: A Memoir of Family and Transformation* and was *Family Circle* magazine's Most Influential Mom in 2018. Jodie is also the chair of the Human Rights Campaign Foundation Board. She is the mother of five children, two of whom are self-proclaimed gender nonconformists—one transgender and another genderqueer. Jodie raises her family in Brooklyn, New York.

georgiany.com

Charnelle Pinkney Barlow

is an illustrator, an expert tea drinker, and a lover of all things doughnuts. She discovered a love for drawing and painting during her childhood in Poughkeepsie, New York, which led her to the world of children's book illustration. She now lives in Indianapolis, Indiana, with her husband, Jukabiea.

callmechartreuse.com

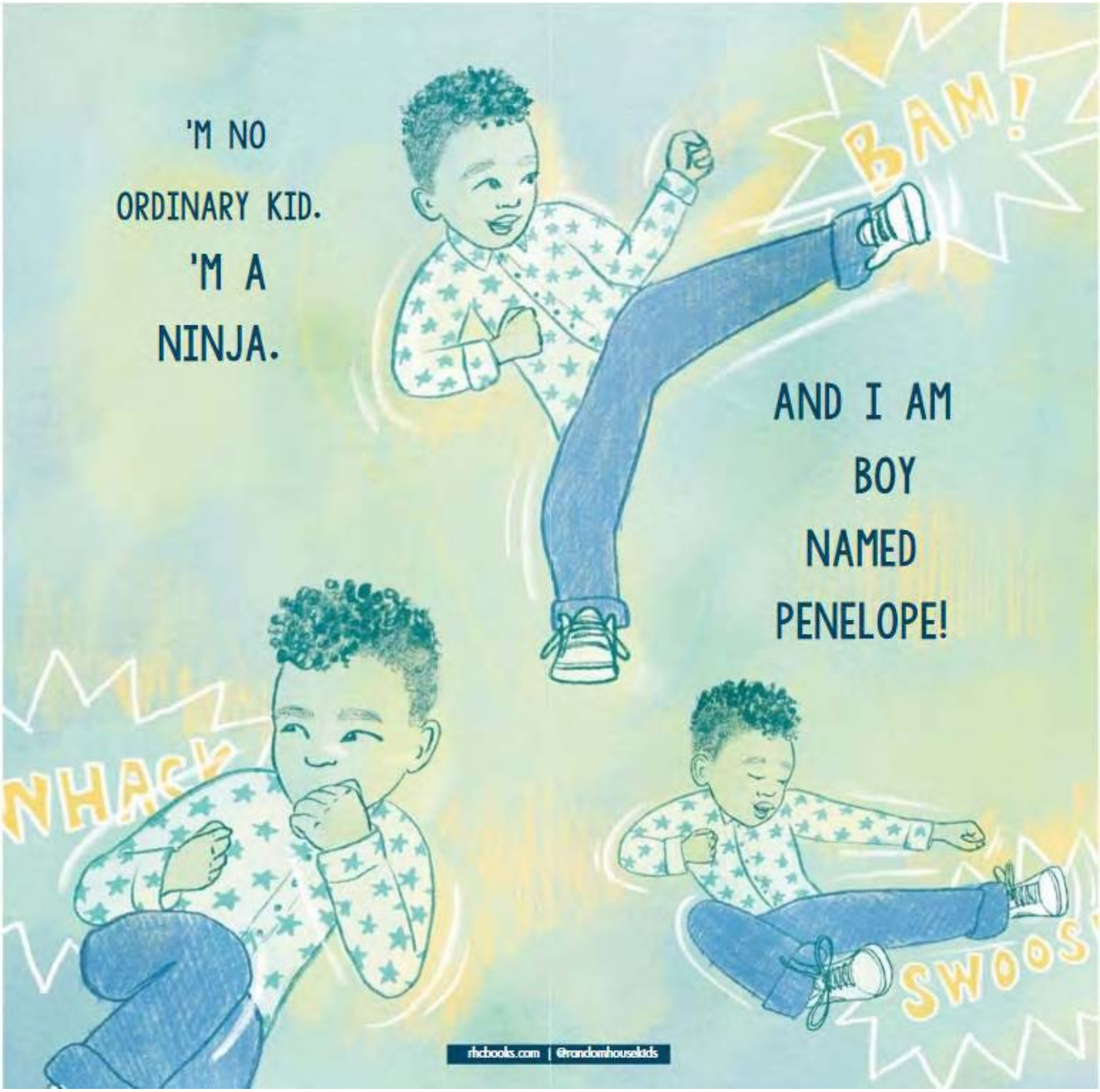
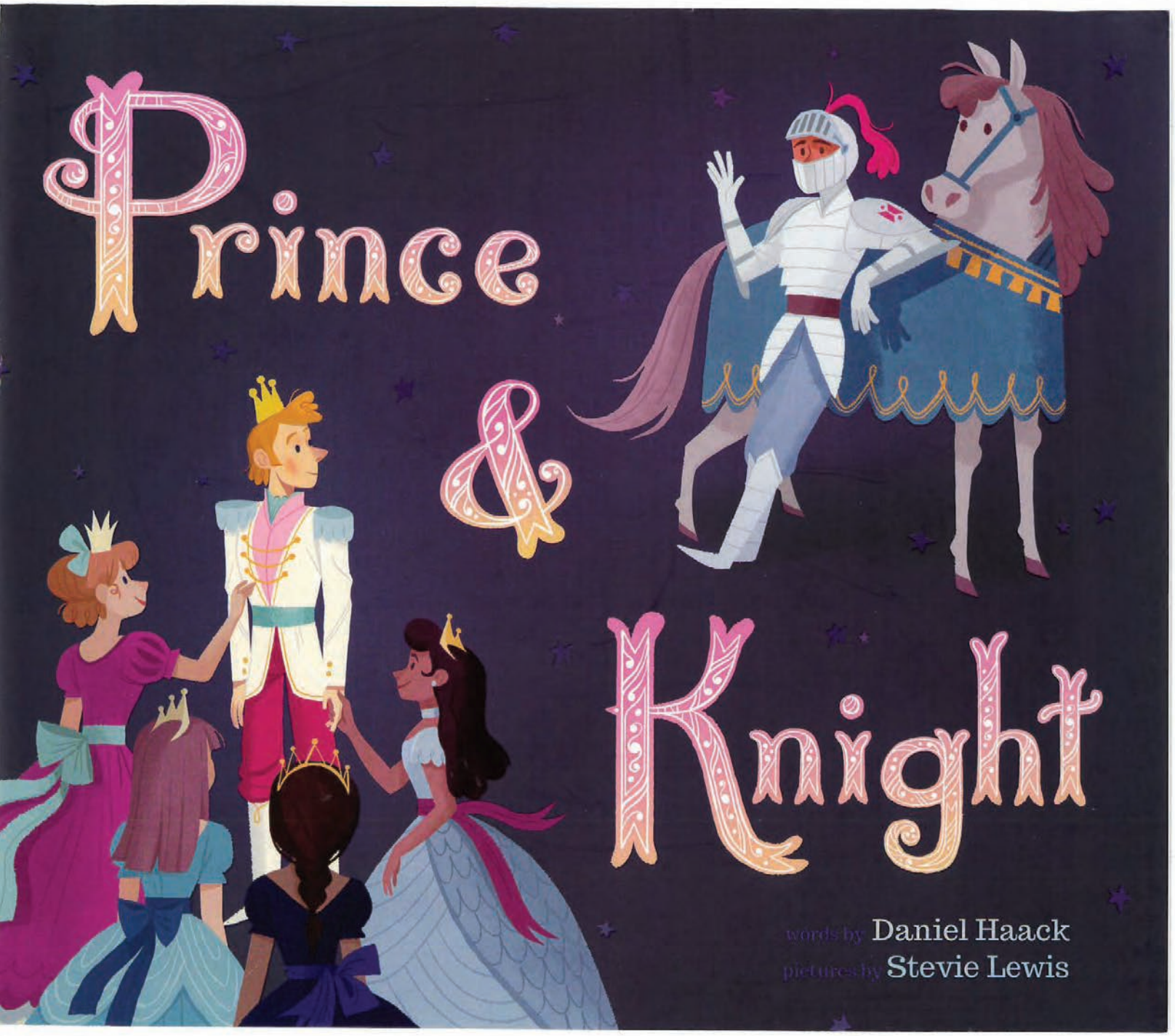

'M NO
ORDINARY KID.
'M A
NINJA.
BAM!
AND I AM
BOY
NAMED
PENELOPE!
WHACK
SWOOSH
rhcbooks.com | @randomhousekids

Exhibit J


Prince
&
Knight
words by Daniel Haack
pictures by Stevie Lewis

Prince & Knight

To those who have faced scarier foes
than dragons in the fight for love
— DH

For my mother, whose selfless love inspires
me to be open, kind and loving to others
— SL

A STUDIO PRESS BOOK
First published in the UK in 2020 by Studio Press,
an imprint of Bonnier Books UK,
The Plaza, 535 King's Road, London SW10 0SZ
www.studiopressbooks.co.uk www.bonnierbooks.co.uk

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Printed and bound in China
First Edition 10 9 8 7 6 5 4 3 2 1
A CIP catalogue for this book is available from the British Library
ISBN 978-17874-1-825-7

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sale of this book will be donated
to accelerating LGBTQ acceptance.
glaad.org

Prince & Knight
words by Daniel Haack
pictures by Stevie Lewis
STUDIO PRESS

Once upon a time,
in a kingdom far from here,

lived a charming prince
who was handsome and sincere.

His parents knew that soon, it would be time he took the throne.
But with a kingdom so grand, the prince could not rule alone.

So the three of them set out and travelled far and wide,
on a quest to find the prince a kind and worthy bride.

The prince met many ladies
(and made the maidens swoon!),

but soon it was clear
he was singing a different tune.

"Thank you," he told his parents. "I appreciate you tried,
but I'm looking for something different in a partner by my side."

But while the royals were away,
their land faced quite a scare
from a dragon fast approaching,
breathing fire everywhere!

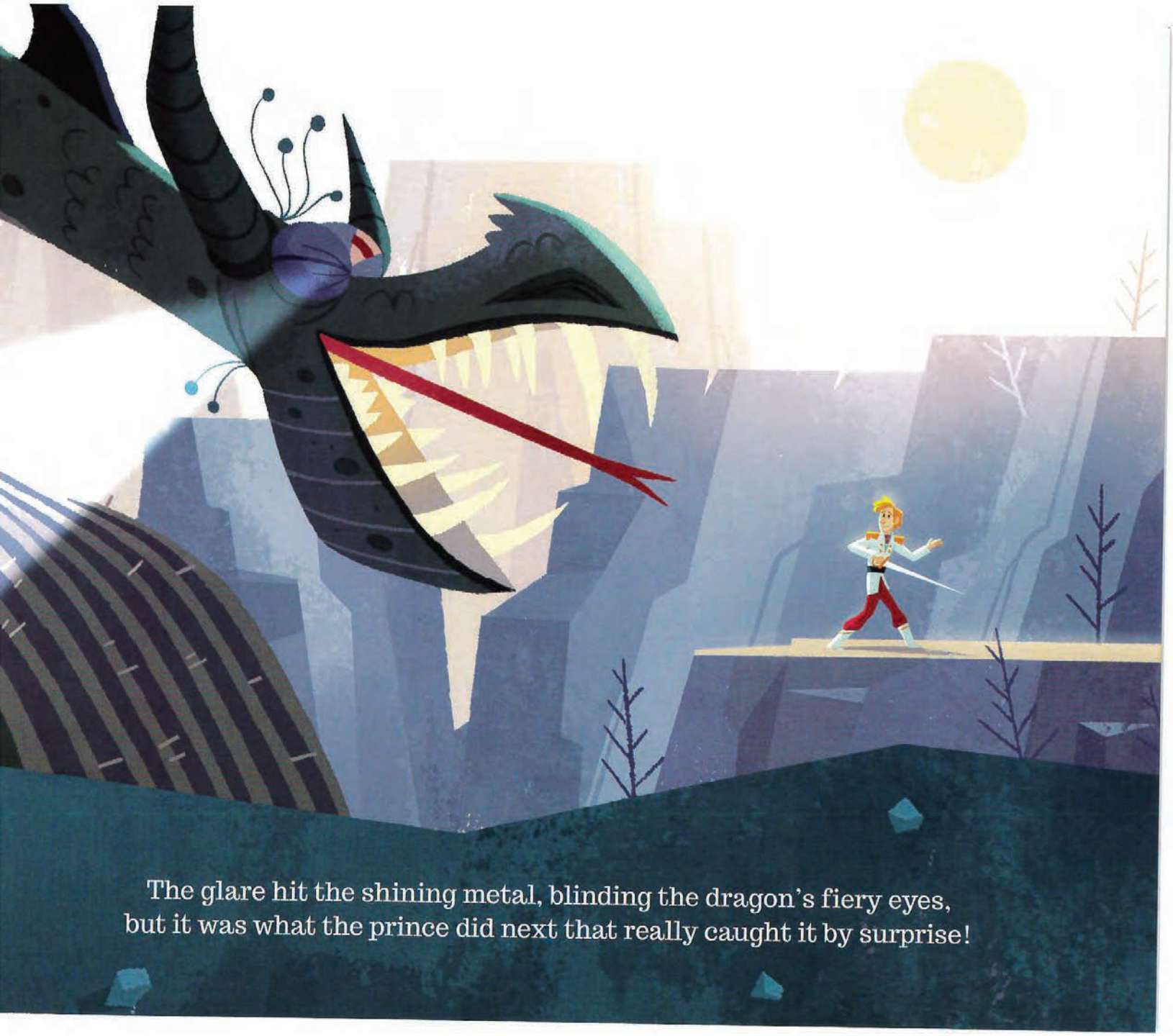
All the villagers ran in fear!
Even the soldiers hid and fled.
"This vicious beast is far too great.
We must retreat or we'll be dead!"

The prince heard the dreadful news,
and he raced home with all his might.
To protect his precious realm,
the prince was ready for a fight.

Alas! Before you fear our prince
had to face the beast alone . . .

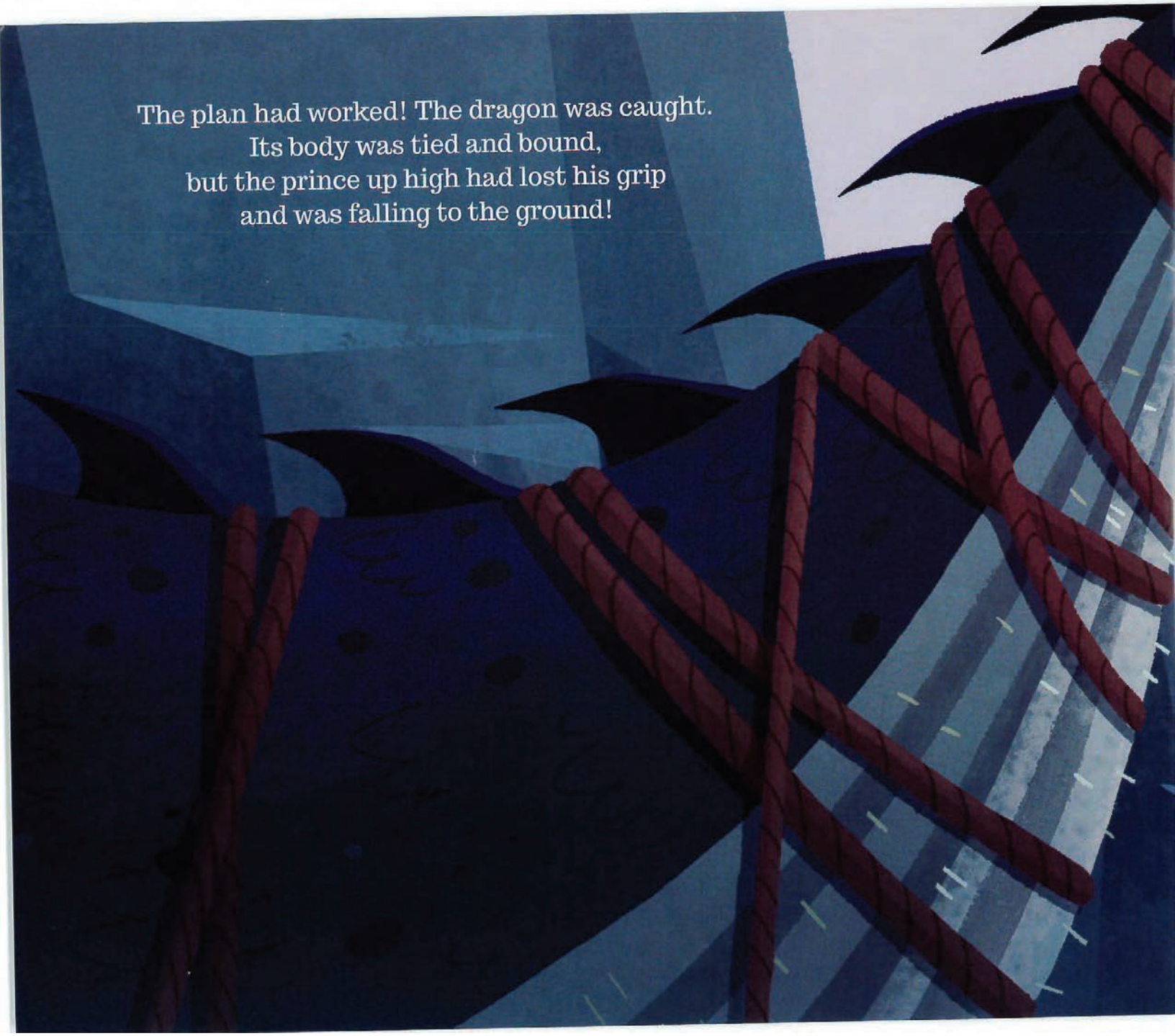
along on horseback
came a knight.
To the prince he was
unknown.

The dragon charged upon our heroes,
thinking it had already won,
but the knight had a bold idea,
and raised his shield to face the sun.


The glare hit the shining metal, blinding the dragon's fiery eyes,
but it was what the prince did next that really caught it by surprise!

The prince had climbed atop the dragon
and tied a rope around its head.

He wrapped the cord around the neck
and down the body like a thread.


The plan had worked! The dragon was caught.
Its body was tied and bound,
but the prince up high had lost his grip
and was falling to the ground!

The knight below jumped on his horse
and they began to race.

The prince was caught and free from harm,
held in the knight's embrace.

"You saved my life!"
"And you saved mine!"
They said to one another.

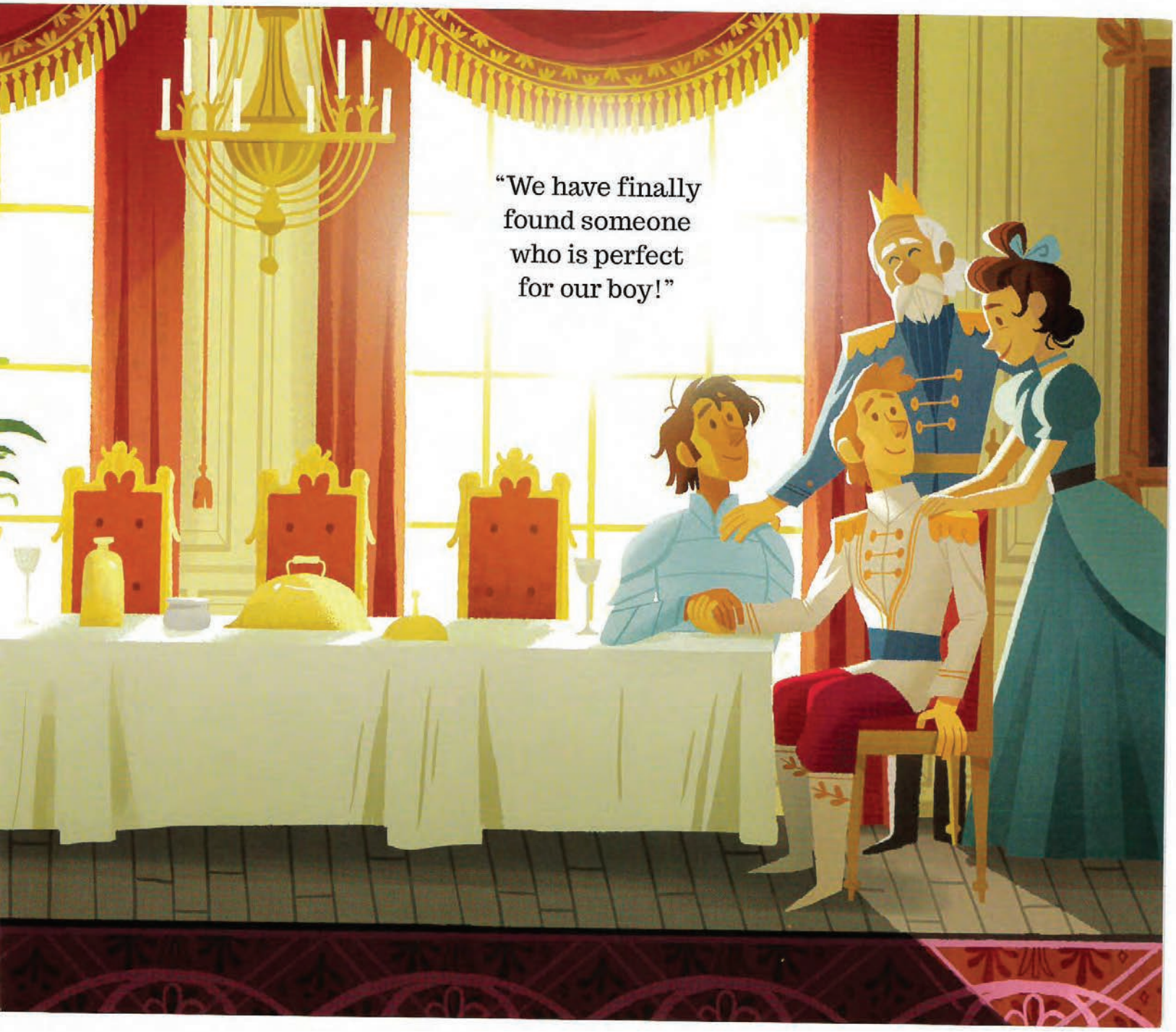
And in a flash, to each it felt
there simply was no other.

The knight took off his helmet
to reveal his handsome face,

and as they gazed
into each other's eyes,
their hearts
began to race.

As the villagers returned,
it became clear to those around
that the prince's one true love
had at last been surely found.

The king and queen
had come back too,
and were overwhelmed
with joy.


"We have finally found someone who is perfect for our boy!"

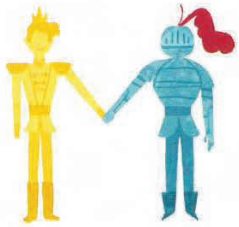
And on the two men's wedding day,
the air filled with cheer and laughter,
for the prince and his shining knight
would live happily ever after.

DANIEL HAACK began writing at a young age, although much of his earliest work centred exclusively around his desire to be a swashbuckling hero. Like the Prince and the Knight, he just wants to save the day and get the boy, too. He has since written for various publications and collections, and *Prince & Knight* is his debut children's book. He graduated from Ithaca College and now works in children's educational media, for which he won a Daytime Emmy Award. Originally from Mount Horeb, Wisconsin, and formerly a New Yorker, Daniel now lives in Los Angeles, California, USA.

danielhaack.com

STEVIE LEWIS has been living on the road for the past two years, furthering her passion for climbing, art and the outdoors. Striving to live simply and tread lightly on the earth, she gathers inspiration from a variety of adventures, be it climbing in the high desert in central Oregon, hiking through the wilderness of Alaska, or sharing laughs with fellow travellers around a campfire. After working for years in animation, she now illustrates children's books and creates art based on her travels.

chocosweete.com



Once upon a time,

in a kingdom far from here, there was a prince who would soon take the throne. His parents took him on a search for a bride. They travelled the land far and wide, but the prince was looking for something different in a partner...

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ISBN 978-1-787-41825-7
£6.99
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Exhibit K

From: Dina Brewer REDACTED
To: REDACTED Elementary Recipients REDACTED
Sent: Tue, Jan 24, 2023 1:05 pm
Subject: Jan. 23 Donuts/Dialogue Follow up

Good Morning Sherwood Families,
I am writing this morning to share the slide deck, as well as the Q&A from yesterday's parent meeting regarding the use of books with LGBTQ+ characters.
You can find the slide deck here.
You can find the questions/comments (and corresponding answers) from the parents who attended here.
In developing the Q&A document, the first question that was asked yesterday was, ***"Is this a school to school option? If so, what is Dr. Brewers thoughts on how this will benefit the kids? Why did she choose yes for*** REDACTED ***?"***
I wanted to take the opportunity to give all our REDACTED families an answer to this question.
While this is not a "school to school" option, but a systemwide initiative, I would like to share my thoughts with you.
I would like to start with sharing how sad I was after the meeting. In my 13 years as principal of REDACTED was one of the most difficult meetings I have facilitated. As I shared at the meeting, what matters most to me is that all students and their families feel welcome, accepted and most importantly safe when they walk through our doors.
I'm disheartened to share that after that meeting, several people (both staff and parents) expressed to me that they felt less safe as a result of some of the comments made by their community members.
The one overwhelming take away for me was that everyone in that room was afraid of something. Afraid for very different reasons, but afraid nonetheless. The fear is understandable - especially when we fear for our children. But acting on that fear in a way the marginalizes others, to the point that they become either villainized or invisible is not the example we want to set for our children.
Fear is a powerful motivator and can make people say and do things that they might not otherwise. To accommodate these fears, the county is considering an "opt out" for parents who do not want their children to hear the books with LGBTQ+ characters in them. I disagree with this decision unequivocally. Personally, I would liken this to allowing families to opt out of books with characters from other marginalized groups (for example, Jewish characters, Muslim characters, African-American characters to name just a few).
While I am sad at the tone of yesterday's meeting, I remain hopeful because of the many voices I heard from after the meeting.
For example, I received this email last night after the meeting from a parent who attended:
Whoa! That was intense. I really just wanted to say thank you for having the donuts and dialogue conversation this evening. After initially hearing about the curriculum, I was not in support of including these books into lessons primarily due to an age appropriate concern.
***However**, I want to say that I **really appreciated** you defending this roll out as a preventive method of creating inclusion and acceptance before the kids get to the middle school level, where we as parents really hear about the struggles with kids in the pre-adolescent stages. This makes a lot of sense in supporting our growing kids! If educators can support kids and develop empathy at this young age, the inclusion and acceptance will only grow as the kids get older! Duh. I am ashamed I didn't even think of that. And so, again, I appreciate the conversation that we had, despite some shocking turns it may have taken.*
My hope remains that if we are open to continuing the dialogue, we can teach children to better understand those who may not think exactly the way they think, but to accept them anyway.

Sincerely,
Dina Brewer, Ed.D
Principal

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REDACTED

Exhibit L

From: **Svitlana Roman** REDACTED
Date: Sat, Feb 25, 2023 at 8:39 AM
Subject: Re: [EXTERNAL] Re: Follow Up
To: Logan, Kisha REDACTED
CC: Campbell, Tamitha E REDACTED Jeff Roman REDACTED Swerdzewski, Laura M REDACTED

Good morning Dr. Logan,

Allow me to summarize our discussions and outcome of the conversation, which I will be taking to the BOE for further consideration:

1. These books are approved as supplemental materials.
2. These books are voluntary for teachers to be used and parents are able to out their children.
3. REDACTED Elementary is insisting that all teachers use at least one of these books to support efforts in this fight for inclusivity.

I will now further address these questions with the PTA, the Board of Education, etc.

I don't understand how such simple questions as ours can not be addressed in a simple, straightforward and respectful manner.

Please feel free to let me know if you disagree with any of my summary points, otherwise, thank you for your time and I will be continuing to pursue this via other channels.

Thank you,

Svitlana Roman.

On Fri, Feb 24, 2023 at 10:48 AM Logan, Kisha REDACTED wrote:

Dear Mr. Roman,

I apologize for the delay in my response. Thank you for your patience. We have communicated that as with all curriculum resources, there is an expectation that teachers utilize the texts as part of our district-wide efforts to create more inclusive classrooms. These texts exist as options available to be used during Unit 6 of the elementary ELA curriculum.

As you've noted, these books are new to our elementary teachers, and we have asked school leaders to ensure they have the coaching and professional learning they need to incorporate the texts with care. As the principal, Ms. Swerdzewski can work with her staff to implement a school-wide plan to introduce these texts to students.

As far as documentation, I have previously shared with Mrs. Roman the MCPS messaging sent on January 12. If you would like to email/contact the Board of Education, more information can be found here: https://www2.montgomeryschoolsmd.org/boe/.

Thank you,

Kisha Logan, Ed.D.
Director
Department of Pre-K-12 Curriculum
& Districtwide Programs
Office of Curriculum & Instructional Programs (OCIP)
REDACTED

From: Jeff Roman REDACTED
Sent: Thursday, February 16, 2023 9:26 PM
To: Logan, Kisha REDACTED
Cc: Svitlana Roman REDACTED ; Campbell, Tamitha E REDACTED
Swerdzewski, Laura M REDACTED

Subject: Re: [EXTERNAL] Re: Follow Up

Dr. Logan,

We have repeatedly asked that communication be provided to all teachers and parents that this newly introduced LGBTQ material is optional and not mandatory.

At this point, Ms. Swerdzewski appears to be contravening the guidance as stipulated by the MCPS Board. We keep getting convoluted responses about inclusive instruction and cultural relevance, but we're not getting a clear response to our straightforward request that REDACTED communicate to its staff and parents that these materials are optional.

My wife and I are asking one more time if Ms. Swerdzewski will communicate that this material is optional in the classroom to her teachers. If she will not, please provide supporting documentation that Ms. Swerdzewski has the authority to ignore the MCPS guidance as written.

If no documentation is provided, please offer contact information for MCPS Board members so that we may bring to their attention our simple request.

Thank you,

Jeffrey Roman

On Thu, Feb 16, 2023, 16:21 Logan, Kisha REDACTED wrote:

Good evening, Mrs. Roman,

I apologize for the delay in my response. I have been in contact with Ms. Swerdzewski and we are in complete agreement that it is not optional for teachers to incorporate culturally relevant and inclusive instructional materials into instruction. As with all curriculum resources, there is an expectation that teachers utilize the texts as a part of instruction. It is important to note that the newly introduced LGBTQ inclusive texts are supplemental and therefore their use is determined by the classroom teacher. It is standard practice that teachers have a choice regarding which materials to use.

MCPS is committed to ensuring our curriculum is inclusive of all and represents the diversity of our community. The materials are part of what makes the curriculum inclusive. Support will be provided to assist teachers that are not yet comfortable with incorporating these texts as part of instruction.

We will provide additional clarity to principals who will then work with their staff members prior to the inclusion of the texts in instruction.

If you have further questions, please let me know and I can set up a time for a phone call.

Thank you,

Kisha Logan, Ed.D.
Director
Department of Pre-K-12 Curriculum
& Districtwide Programs
Office of Curriculum & Instructional Programs (OCIP)
(240) 740-3930

From: Svitlana Roman REDACTED
Sent: Wednesday, February 15, 2023 9:54 PM
To: Logan, Kisha REDACTED
Cc: Campbell, Tamitha E REDACTED ; Jeff Roman REDACTED Swerdzewski, Laura M REDACTED
Subject: Re: [EXTERNAL] Re: Follow Up

Good evening, Dr. Logan,

I am following up on my previous e-mail. Given that students at REDACTED Elementary are going over Unit 6, which is when these texts are set to be introduced, I believe it would be negligent and unethical to allow for this clear miscommunication to remain unaddressed in a timely manner.

Thank you for your attention to this matter.

Svitlana Roman.

On Fri, Feb 10, 2023 at 9:20 PM Svitlana Roman REDACTED wrote:

Dr. Logan,

That is not the response I received from Ms.Swerdzewski when we met in person the other day. REDACTED teacher I reached out to first, also was unaware that the use of these books is voluntary.

It makes me believe that the messaging of MCPS is confusing and inconsistent.

I would like to request that clarification be distributed to all the teachers clearly outlining that using these materials is voluntary. In addition, I would like to request that parents receive a form making it easy to opt out of these texts being presented to their children.

Please let me know when this clarification will go out to the teachers, staff, and parents at REDACTED Elementary.

Thank you,

Svitlana

On Fri, Feb 10, 2023 at 5:10 PM Logan, Kisha REDACTED wrote:

Good afternoon, Mrs. Roman,

Yes, teachers can choose to not use new, inclusive texts as they work with their teams and plan instruction. Here is the message MCPS shared with the community:

As a reflection of our ongoing commitment to ensure our curriculum is inclusive and affirming of all students, MCPS has approved a selection of LGBTQ+-inclusive texts for use in the classroom. Reading stories that reflect the diversity of our school community and world encourages respect and empathy for all. As with all curriculum resources, there is an expectation that teachers utilize the texts as a part of instruction. **It is important to note that using the materials is optional as it is standard practice that teachers have a choice regarding which materials to use.**

If you need further clarification, please let me know and I can schedule a time to give you a call next week.

Thank you.

Kisha Logan, Ed.D.
Director
Department of Pre-K-12 Curriculum
& Districtwide Programs
Office of Curriculum & Instructional Programs (OCIP)
REDACTED

From: Svitlana Roman REDACTED
Sent: Wednesday, February 8, 2023 9:01 PM

To: Logan, Kisha REDACTED
Cc: Campbell, Tamitha E REDACTED Jeff Roman REDACTED Swerdzewski, Laura M <REDACTED
Subject: Re: [EXTERNAL] Re: Follow Up

Dr. Logan,

With all the respect, I don't believe you answered my question:

Does that mean that teachers can chose to not use the LGBTQ+ approved texts?

Thank you,

On Wed, Feb 8, 2023 at 7:52 PM Logan, Kisha REDACTED > wrote:

Good evening, Mrs. Roman,

As is standard practice, teachers are provided with a variety of approved texts to choose from as they plan instruction and use their knowledge and expertise to identify the best selection for their students. This does mean teachers use their knowledge of their students and the curriculum to choose an approved text to support instruction.

Thank you.

Kisha Logan, Ed.D.
Director
Department of Pre-K-12 Curriculum
& Districtwide Programs
Office of Curriculum & Instructional Programs (OCIP)
REDACTED

From: Svitlana Roman REDACTED
Sent: Monday, February 6, 2023 9:23 PM
To: Logan, Kisha REDACTED
Cc: Campbell, Tamitha E REDACTED Jeff Roman REDACTED
Swerdzewski, Laura M REDACTED
Subject: Re: [EXTERNAL] Re: Follow Up

Dr. Logan,

Does that mean that teachers can chose to not use the LGBTQ+ approved texts, since it appears there are multiple other approved texts.

I would ask you to be specific and support your response with documentation.

Thank you for your attention to this matter.

Svitlana Roman

On Mon, Feb 6, 2023 at 7:48 PM Logan, Kisha <REDACTED > wrote:

Hello, Mrs. Roman,

Thank you for your question. The Office of Curriculum and Instructional Programs provides teachers with instructional materials and resources to support instruction. As is standard practice, teachers are provided with a variety of approved texts to choose from as they plan instruction and use their knowledge and expertise to identify the best selection for their students.

Please let me know if you have further questions.

Thank you.

Kisha Logan, Ed.D.
Director
Department of Pre-K-12 Curriculum
& Districtwide Programs
Office of Curriculum & Instructional Programs (OCIP)
REDACTED

From: Svitlana Roman REDACTED
Sent: Sunday, February 5, 2023 7:34 PM
To: Swerdzewski, Laura M REDACTED
Cc: Campbell, Tamitha E REDACTED Jeff Roman REDACTED ; Logan, Kisha REDACTED
Subject: [EXTERNAL] Re: Follow Up

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Swerdzewski,

I would like to start by saying thank you for your time and attention.

Could you please acknowledge the letter (attached) and honor my written request to opt out REDACTED from such materials.

Further, I would like to direct my next question to Dr. Logan:

Please interpret the highlighted statement below:

As a reflection of our ongoing commitment to ensure our curriculum is inclusive and affirming of all students, MCPS has approved a selection of LGBTQ+-inclusive texts for use in the classroom. Reading stories that reflect the diversity of our school community and world encourages respect and empathy for all. As with all curriculum resources, there is an expectation that teachers utilize the texts as a part of instruction. **It is important to note that using the materials is optional as it is standard practice that teachers have a choice regarding which materials to use.**

Please provide any documentation to support your interpretation.

Thank you and I look forward to the on-going discussion.

Svitlana Roman.

PDF
BFE - Letter.pdf

On Wed, Feb 1, 2023 at 4:55 PM Swerdzewski, Laura M REDACTED wrote:

Good Afternoon Mr. and Mrs. Roman,

Following our meeting on Monday, I reached out to Dr. Kisha Logan, Director Department of Pre-K-12 Curriculum & Districtwide Programs, as well as Dr. Tamitha Campbell, Director, School Support and Well-being (I have cc'd them on this email). In terms of your question regarding the materials being optional for teachers to use and for me to send a letter stating it, what I had shared at our meeting is correct that the inclusion of these books is not optional for schools and therefore, as a principal I cannot direct teachers not to use them. As these texts are newly added supplemental texts, teachers have choice/option with when they are used during the unit of study. The teachers are REDACTED REDACTED Elementary School will be using them during Unit 6 of the Benchmark Advance Curriculum. As I had shared with you it is your right to ask that REDACTED not be present when this book is read to the class and if any other parents reach out I will meet with them to have the same discussion we engaged in and they can make a decision for their family. Teachers will be including the day that the book will be read to the class in their newsletter, which will help you plan accordingly.

I know that a lot of our conversation and your concerns reach beyond REDACTED Elementary School and I am hoping if you need more information Dr. Logan can help or direct you further.

Best Regards,

Laura Swerdzewski
Principal
REDACTED

Exhibit M

From: Enas Barakat REDACTED
Date: March 20, 2023 at 1:03:54 PM EDT
To: "Johnson, Matthew W" REDACTED
Cc: Tamer Mahmoud REDACTED , "Levin, Amanda M" REDACTED "Levin, Valerie M" REDACTED
Subject: Re: [EXTERNAL] Re: LGBQT Reading

Thank you for the accommodation.

Best Regards,
Ena Barakat

On Mar 20, 2023, at 12:50 PM, Johnson, Matthew W REDACTED wrote:

No problem and Ms. Levin will have the student sit outside the classroom during the activity.

From: Tamer Mahmoud REDACTED
Sent: Monday, March 20, 2023 12:16 PM
To: Johnson, Matthew W REDACTED
Cc: Enas Barakat REDACTED
Subject: [EXTERNAL] Re: LGBQT Reading

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Mr. Johnson,

Over the weekend, my wife and I read the book *Prince* and *Knight.* Our decision to opt out REDACTED is still the same. Please confirm that REDACTED will leave the classroom and work on an alternative activity when the book is being read.

Best regards,

Tamer Mahmoud

On Mar 17, 2023, at 9:40 AM, Johnson, Matthew W REDACTED wrote:

Good morning,

Thanks for reaching out regarding your concerns over the book *Prince and Knight* which the grade 2 team has selected to read. The book is very much about understanding that there are many differences between people and being accepting is the goal.

I have put the book in the main office if you would like to take a look at it to see if it is something you could support having your child read.

MCPS is not supporting parents opting out of the LGBQT readings and teachers are not required to provide alternative assignments.

I encourage you to look over the selected book before making a final decision.

Matt Johnson
Acting Principal
REDACTED

LGBTQ+ Inclusive Picture Books

WHO IS HERE TONIGHT?

- PEP
- KINDERGARTEN
- GRADE 1
- GRADE 2
- GRADE 3
- GRADE 4
- GRADE 5
- DISCRETE

INTRO SLIDE - MCPS STAFF INTRO

Margaret B. Gaudino
Coordinator, Evaluation and Selection of Instructional Materials and Library Books
School Library Media Programs

Eugenia (Jeanie) Dawson, Ed.D.
Director, School Support and Well-Being

Kisha Logan, Ed.D.
Director
Department of PreK-12 Curriculum & Districtwide Programs
Office of Curriculum & Instructional Programs (OCIP)

GROUND RULES

1. Engage in civil discourse
2. Assume good intentions
3. Accept non-closure

PROCESS

- Whole Group Presentation
- Index Cards for questions
- Q&A from cards

Questions from the RSVP form

Questions I have about books:

- Are these required reading, will they be read in story time?
- How do you take into account the religious and personal beliefs of Sherwood families who do not believe this is appropriate content for 5-11 year olds? Please address how a Halloween parade was cancelled because of religious or personal beliefs of 25-30 students and how do you compare these topics to that?
- How is this appropriate?

Questions I have about books:

- Is there a way to make sure my child doesn't check out these books. We believe these are topics for parents to address at home--not in school. Curious how "front and center" these are in the library.
- Will there be permanent display or are these books filed on shelf?
- Will they be part of their daily reading in class? Will there be discussions or education about LGBTQ un class?
- Is there an opt out option?
- None
- None. Excited to see them!

Questions I have about books: (cont)

- What are the themes of the books that make them appropriate for the school curriculum? Folktales?
- What do these books have to do with education? How are you going to answer questions that comes up? If a kid says they feel like a girl and they have been born a boy, what's your response and next steps?
- When will the be introduced? When is the curriculum that has the books as a resource slated to be started?
- While I respect others opinions and choices, this may not be appropriate topics for elementary school kids. Why are these being added to the library?

Something I would like added to the agenda for discussion:

- How can parents have access to the new curriculum resources?
- How can parents regulate what the children are exposed to?
- This is not a one size fits all topic. Some students will not be ready in ELEMENTARY school to have these important conversations and that is appropriate. Likewise, some religions have not supported these topics as well. Maybe an easier start to these conversations would be from the counselor, as needed.

Something I would like added to the agenda for discussion:

- What are the perimeters in place for those of us who don't want our kids exposed to this in school?
- We would like to know what Montgomery County's Elementary schools Reading and Math scores compared to other counties in the state and the rest of the country.
- Nothing
- rainbow books
- Thankful for the ability to be a part of the dialogue.

Something I would like added to the agenda for discussion:

- What are teachers going to be asked to present to the classroom students? What is being taken away from the curriculum to add this? What data/research is there to suggest that this should be discussed in a school setting versus a home setting? What research/data is there to suggests that elementary school aged children are all capable of understanding different ideas in human sexuality? What data/research suggests elementary age students should be taught about human sexuality in school? If parents need to give signed consent for their 5th graders to learn about their own bodies will parents/caregivers be asked to consent to their children being taught about different sexualities? Is the new curriculum already approved or is there room for more discussion with MCPS before it is rolled out in the classroom?

Some Research (click HERE)

MCPS's Commitments To This Work

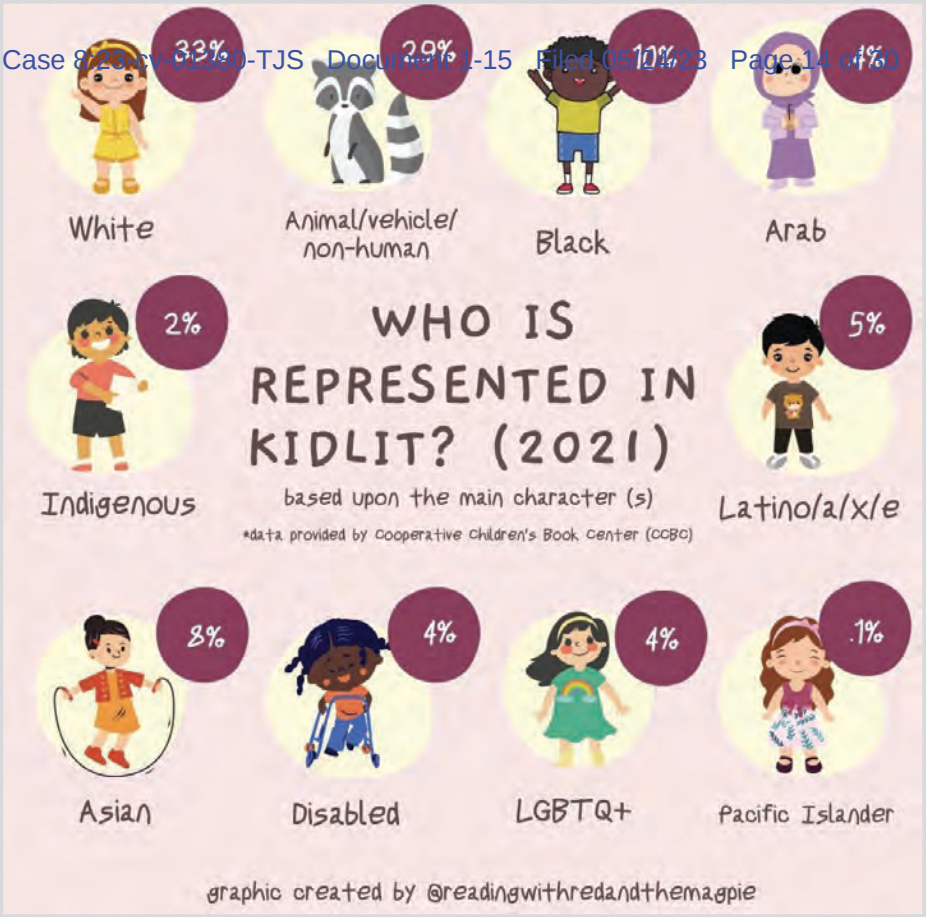
From Board Policy ACA: Nondiscrimination, Equity, and Cultural Proficiency:

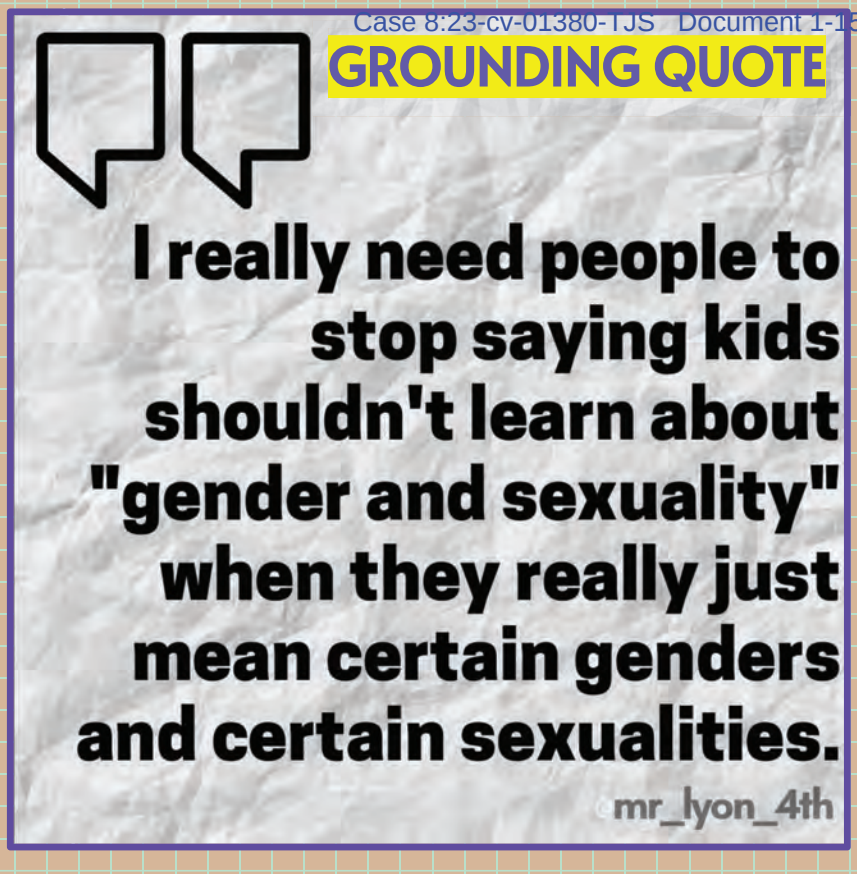
Instructional materials used in MCPS schools will reflect the diversity of the global community, the aspirations, issues, and achievements of women, persons with disabilities, persons from diverse racial, ethnic, and cultural backgrounds, as well as persons of diverse gender identity, gender expression, or sexual orientation.

From the Gender Identity Guidelines:

- Reduce stigmatization and marginalization of transgender and gender nonconforming students.
- Foster social integration and cultural inclusiveness of transgender and gender nonconforming students.

WHO IS CURRENTLY REPRESENTED IN OUR MATERIALS?





We teach--implicitly and explicitly--about gender and sexuality identity all the time in school. We teach the gender binary--you're either a boy or a girl and we teach that people are heterosexual.

For example, it is more likely than not that staff who have pictures of families up are teaching this. The texts we read, language we use, and images we have up are likely reinforcing this as well.

Anchoring in Our Why

When books are removed or flagged as inappropriate, it sends the message that the people in them are somehow inappropriate. It is a dehumanizing form of erasure. Every reader deserves to see themselves and their families positively represented in the books in their schools. These books are important for all children. ***Reading stories that reflect the diversity of our world builds empathy and respect for everyone's humanity.*** At a time when our country is experiencing an alarming rise in hate crimes, we should be searching for ways to increase empathy and compassion at every turn.

~Kid Lit Authors Send Letter to Congress to Speak Out Against Book Banning

IMPACT OF THIS WORK

Compared to students in schools without an LGBTQ+ inclusive curriculum, LGBTQ+ students in schools with an LGBTQ+ inclusive curriculum:

- Were less likely to hear homophobic remarks
- Were less likely to hear negative remarks about gender expression often or frequently
- Were less likely to hear negative remarks about transgender people often or frequently
- Felt greater belonging to their school community, performed better academically in school and were more likely to plan on pursuing postsecondary education
- Were more likely to report that their classmates were somewhat or very accepting of LGBTQ+ people

Windows, Mirrors & Sliding Glass Doors: Reflections on the Seminal Metaphor

Everyone Needs These Books

When we mostly provide mirrors for students whose identities align with dominant culture, we contribute to them internalizing a sense of dominance, superiority and entitlement.

Paraphrased from Anti-Bias Education Education For Young Children and Ourselves

Grace Lin
January 2016, Natick, MA

Exploring the Texts

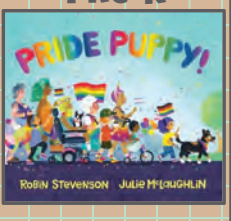
Communicating with our Community

This work is part of MCPSs commitment to equity. As part of that commitment to equity, we are working towards cultivating inclusive environments for all of our students and their families. Part of how we do this is through diversifying representation in the curriculum; expanding our representation shows our LGBTQ+ community members that this is a place where they are welcome and included. All students deserve to see themselves in their school and classroom, including students who identify as LGBTQ+ and come from LGBTQ+ headed families and have family members that are a part of the LGBTQ+ community. ***There are no planned explicit lessons related to gender and sexuality***, but these books do mean that LGBTQ+ identities will be made visible. Inclusive curricula support a student's ability to empathize, connect, and collaborate with a diverse group of peers, and encourage respect for all. No child, or adult, who does not agree with or understand another student's gender identity or expression or their sexuality identity is asked to change how they feel about it.

Grade Level Specific Books

click on the image to access the guide

PRE-K



K

1ST

2ND

3RD

4TH

5TH

Paired Texts For Use With Unit 4 and/or Unit 6

LGBTQ+ Picture Books

Read Aloud Texts and Their Curricular Connections		
Grade Level	**Text / Link**	**ELA Reading Anchor Standards Alignment**
PK		• I will be able to answer questions about characters. • I will be able to share what I know about why authors tell stories.
K		• I will be able to describe story characters. • I will retell key events about characters in a story.
1		• I will be able to answer questions about characters. • I will use text evidence to answer questions about story characters. • I will draw inferences about story characters based on their actions.

Evaluation and Selection

As part of MCPS' mission to equity, "instructional materials and library books are chosen to reflect the diversity of our global community, the aspirations, issues and achievements of women, persons with disabilities, persons from diverse, racial, ethnic, and cultural backgrounds, as well as persons of diverse gender identity, gender expression, or sexual orientation."

MCPS Regulation IIB-RA Evaluation and Selection of Instructional Materials and Library Books drives the evaluation work.

- Instructional materials shall be **directly aligned to the MCPS curriculum** and **relevant to and reflective of the multicultural society** and **global community.**
- As appropriate, the materials **shall offer opportunities to better understand** and appreciate the issues, aspirations, and achievements of women and persons from diverse racial, ethnic, and cultural backgrounds
- As appropriate, the materials shall provide students with the opportunity to investigate, analyze, and evaluate social issues.

LIBRARY BOOKS

Your library media specialist ensures that the the school library serves everyone - that students can find a range of materials to meeting their information needs and reading interests. Although, not every book will be for every child:

- All books are shelved in their respective Dewey category (Everybody, Fiction, Nonfiction)
- Inclusive books may be part of a natural display in the library – For example: *Love, Violet* might be placed in a "Friendship" display.
- Work with your own child to select books:
  - Look in Destiny Library Catalog - discuss what books you deem appropriate
- If you do not like a library book return it so your child can select a new one (even if it is not your child's library day).

IMPACT OF THIS WORK

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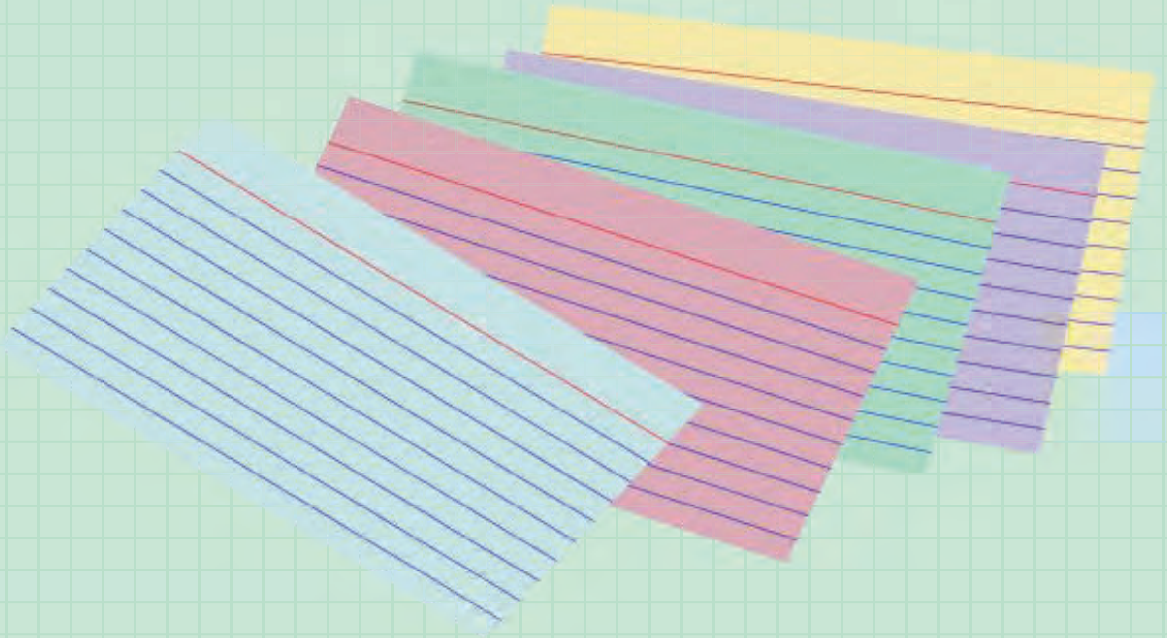
QUESTIONS FROM YOUR CARDS



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, *et al.*,

Plaintiffs,

v.

MONIFA B. MCKNIGHT, *in her official capacity as Superintendent of the Montgomery Board of Education*, *et al.*,

Defendants.

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

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Hearing Requested

Eric S. Baxter (readmission pending)
William J. Haun (pro hac vice)
Michael J. O'Brien* (pro hac vice)
Brandon L. Winchel* (pro hac vice)
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave, N.W., Suite 400
Washington, DC 20006
(202) 955-0095
whaun@becketlaw.org

James C. Mehigan, (Bar # 16239)
MEHIGAN LAW GROUP PLLC
11921 Freedom Drive, Suite 550
Reston, Virginia 20190
(703) 774-7281
jmehigan@mehiganlawgroup.com

*Not a member of the DC Bar; admitted in Louisiana and California respectively. Practice limited to cases in federal court.

Attorneys for Plaintiffs

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INTRODUCTION

Defendants Montgomery County Board of Education and its superintendent and board members (the "School Board") recently introduced a series of storybooks (the "Pride Storybooks") to be read to students beginning in pre-K. One book focuses on a pride parade and what a child might find there. Another is about a same-sex playground romance, with a teacher's guide that encourages young students to explore how it feels when they "don't just like" but "like like" someone. Another focuses on a child named Penelope who identifies as a boy. The mother chides Penelope's brother for trying to "make sense" of it: *"This is about love*," she insists. The discussion guide encourages teachers to instruct children that, at birth, doctors only "guess about our gender," but "we know ourselves best." Another book invites children to ponder what it means to be "cisgender" or "nonbinary," and asks "[w]hat pronouns fit you?" In yet another story, "Uncle Lior" visits to comfort "their" niece/nephew, whose pronouns are "like the weather. They change depending on how I feel." Yet another book is a *cri de cœur* for children to use whatever bathroom they wish, with young children carrying signs in front of the bathroom that read "Use the bathroom that is comfy 4 u," "Bathrooms are for every bunny," and "I have to pee, so let me be."

Plaintiffs Tamer Mahmoud and Enas Barakat are Muslim. They have three kids in the Montgomery County Public Schools ("MCPS"), including one in second grade. Plaintiffs Jeff and Svitlana Roman are Catholic and Ukrainian Orthodox respectively and also have a son in second grade. Plaintiffs Chris and Melissa Persak and their daughters are Catholic. The daughters are enrolled in an MCPS elementary school. This lawsuit is about whether they (collectively, the "Parents") will be given notice and opportunity to opt their children out of story hour when the Pride Storybooks are read—just as parents were given notice and opt-out rights for these books prior to March 23, 2023, and are still give notice and opt-out rights for other aspects of public

school instruction, as they have been for decades. By refusing notice and opt-outs—and forcibly exposing children to complex and confusing questions about their sexuality and gender identity at such a young age—the School Board is infringing the Parents' and children's religious beliefs and interfering with the Parents' ability to form their children in their distinct faiths. This interference violates the Free Exercise and Due Process Clauses under decades of Supreme Court precedent.

Moreover, the denial of notice and an opportunity to opt out is inconsistent with Maryland law and the School Board's own guidelines. Maryland law requires all public schools in the state to create opt-out procedures for concerned parents to excuse their children for *any* reason from *any* instruction concerning "family life and human sexuality." So do the School Board's own guidelines, which direct schools to "accommodate requests from students" or their parents "to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs." Yet the School Board refuses. It won't even notify the Parents when the Pride Storybooks will be read.

The School Board's disregard for Maryland law and its own regulations underscores the underlying constitutional violation. The Free Exercise and Due Process Clauses to the United States Constitution have long guaranteed parents' right to control the upbringing of their children. This parental right is at its apex when schools try to form young children to think about controversial social topics in ways that conflict with parents' religious beliefs. Restrictions that cut parents out of such instruction can substantially interfere with their attempt to follow God's will, their religious way of life, and their aspirations for their children—and therefore trigger strict scrutiny. Such a restriction can survive only if it serves a compelling government interest that cannot be met any other way.

That demanding test cannot be met here. A government's asserted interest cannot be compelling when duly enacted laws repudiate it, and existing Maryland and School

Board guidelines already allow for opt-outs in the precise circumstance at issue. Indeed, when the controversial books were first introduced, the School Board promised parents they would be notified when the books were read (and they were), and that they could opt their children out (and many did). The promise was repeated in a public statement on March 22 of this year.

But the very next day, the School Board announced no further notice would be given and no more opt-outs tolerated. Even then, the School Board authorized teachers to honor opt-outs for individual students through the end of the semester, as long as they understood there would be no such option next semester. What's more, the March 23 email flouting Maryland's opt-out law admitted that opt-outs would still be honored for students taking the sex-ed unit of their health classes. A no-opt-out policy that lets high school students skip sex-ed but compels kindergarteners to receive instruction on sexuality, gender identity, and gender transitioning cannot—as a matter of law—be "compelling."

That conclusion is consistent with our nation's constitutional history and tradition. The parental right to decide how to direct a child's religious upbringing was established well before the founding. Early cases granted parental opt-outs from Bible reading, dance class, and even grammar lessons. In 1972, the Supreme Court upheld the right of the Amish to opt their children out of high school altogether. The Court concluded that, under the Free Exercise Clause, the "primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). And under the Due Process Clause, this right has been recognized as "perhaps the oldest of the fundamental liberty interests" ever "recognized by [the] Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

In this context, the Parents are highly likely to succeed on the merits of their free exercise and due process claims. Forcing them to choose between keeping their

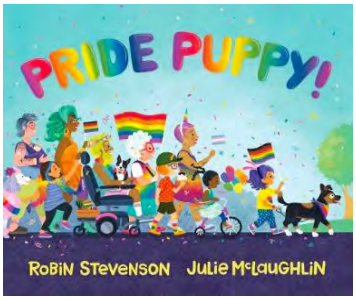
children in public schools and protecting them from instruction that violates their religious beliefs imposes immediate and irreparable harm. Equitable factors also weigh overwhelmingly in favor of maintaining the status quo by upholding the existing Maryland and School Board policies. On such foundational and controversial matters, children are entitled to the guidance of their parents—their first teachers, who love them best. For all these reasons, the Parents' motion for a preliminary injunction must be granted.

BACKGROUND

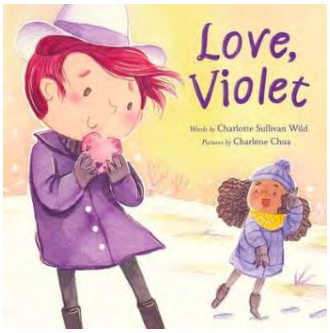
A. The Pride Storybooks

Last fall, the School Board introduced a series of new "LGBTQ+ Inclusive" books for students in elementary and middle school. But rather than focus on teaching basic civility and kindness toward all, the new books encourage children to question sexuality and gender identity, focus on romantic feelings, and embrace gender transitioning. Each book advocates a child-knows-best approach to these sensitive and controversial issues. They encourage students to disregard the relevant science, to ignore doctors, parents, and others with relevant knowledge and experience, and to explore their sexuality and gender identity at a young age in discussions with teachers and classmates.

For example, the book *Pride Puppy*, assigned for pre-K students, Compl. Ex. B, relates the story of two children whose puppy leads them on a chase through the crowd at a pride parade. Compl. Ex. C. A "Search and Find Word List" at the end of the book invites children to search for things they might see at a pride parade, including an "intersex [flag]," a "[drag] king" and "queen," "leather," a "lip ring," "underwear," and an image of "Marsha P. Johnson," an LGBTQ activist whose life was "built around sex and gay liberation, being a drag queen and dating all the time." Steve Watson, *Stonewall 1979: The Drag*



of Politics, The Village Voice (June 15, 1979), https://perma.cc/9NRA-JF2A; Compl. Ex. C at 18. The book also depicts a minister wearing a rainbow stole and students and teachers enthusiastically advocating for "Peers + Queers," "Pride Club," "Love Knows No Gender," and "Two Spirit Pride." *Id*. at 10. The book promotes pride parades as family-friendly events without cautioning about the frequent nudity and sexually explicit conduct that many parents find objectionable—especially for children. *See, e.g.,* Heather Tirado Gilligan, *Should You Take Your Kids To A Pride Parade?*, Fatherly (June 1, 2022), https://perma.cc/E22H-5DN4. ("[The kids] just had to learn to laugh and enjoy things. Like there were these Beanie Babies with giant penises on them.") Lauren Rowello, *Yes, kink belongs at Pride. And I want my kids to see it.*, Washington Post (June 29, 2021), https://perma.cc/RM3Q-9W6N ("[O]ur elementary-schooler … rais[ed] an eyebrow at a bare-chested man in dark sunglasses whose black suspenders clipped into a leather thong" and "a few dozen kinksters who danced down the street, laughing together as they twirled their whips and batons, some leading companions by leashes."); Brad Polumbo, *This Pride month, fellow gays, keep your kinks at home—and away from kids*, New York Post (June 8, 2023), https://perma.cc/4QBM-8QPG ("Riding in the back of a parade truck, a man clad in 'dominatrix' gear choked and whipped another man, scantily clad, to a cheering audience. … 'Tons of kids were present.'"); Brianna Sharpe, *Are Pride Parades Kid-Friendly? Parents Say Children Can Handle The Kink*, HuffPost (June 13, 2019), https://perma.cc/P6EW-HYFT ("It's their right as queer spawn.' … [N]obody likes nakedness more than children.").

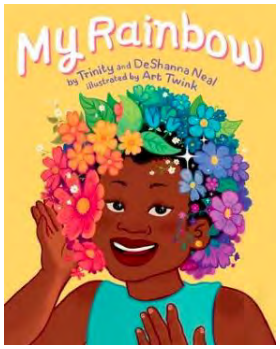


All of the stories are assigned for students as young as kindergarten. Compl. Ex. B. *Love, Violet* is about Violet's crush on a female classmate who "made Violet's heart skip." Compl. Ex. H at 4. On the playground Violet is enthralled with her classmate: "Snow sparkled on Mira's eyelashes. *Mira was magnificent." Id.* at 9. Violet is described as "blush[ing] hot" when asked about her valentine, *id.* at 8, but is ultimately rewarded when Mira returns Violet's affection with a heart-shaped locket. The teacher's resource encourages a "think aloud" moment with elementary students about how "uncomfortable we might [be] in situations when we feel our heart beating 'thumpity thump' & how hard it can be [to] talk about our feelings with someone that we don't just 'like' but we 'like like.'" Compl. Ex. D at 4.

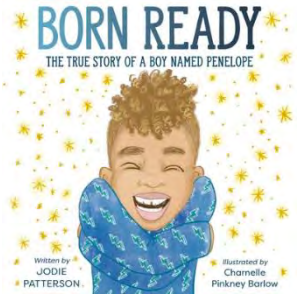
Prince and Knight is another romance about a prince who "met many ladies (and made the maidens swoon!)" but ultimately tells his parents "I'm looking for something different in a partner by my side." Compl. Ex. I at 12. He finally finds what he's looking for when thrown by an attacking dragon into the "embrace" of an arriving knight. *Id.* at 27. When the knight "reveals his handsome face," the two men "gaze[] into each other's eyes," and "their hearts beg[i]n to race." *Id.* at 30-31.

The book *Intersection Allies* introduces a nonbinary character whose friends "defend my choices" and "place" in the "bathroom" even when other kids are "confused" and portrays dual-gender bathrooms as "safe." Compl. Ex. F at 15. Teachers are encouraged to use the story to discuss terms like "sex," "gender," "transgender," and "non-binary" and to encourage each child to consider "What pronouns fit you best?" *Id.* at 42.

The books *My Rainbow* and *Born Ready—The True Story of a Boy Named Penelope* promote a child-knows-best approach to gender transitioning. In *My Rainbow*, a young, autistic boy believes that short hair keeps him from being a girl. When his mother points to her own short hair, the child responds "People don't care if cisgender girls like you have short hair. But it's different for transgender girls. I *need* long hair!" Compl. Ex. G at 16. The mother concludes her son knows best and sews him a rainbow-colored wig. The story and teachers' guide ignore the complexities and consequences of gender transitioning at a young age. Instead, young students are encouraged to just accept that a child's "identities" are part of what makes him or her a "masterpiece." *Id.* at 15.



Born Ready further insists on affirming a child's declared identity, however fledgling or confused. In it, Penelope explains, "I don't *feel* like a boy. I AM a boy." Compl. Ex. J. at 12. Penelope's mother agrees to tell their family "what we know. … You are a boy." *Id.* at 15. Grandpa agrees that "gender isn't such a big deal" because in his first language "[w]e don't use gender pronouns." *Id.* at 18. But when brother protests—"You can't *become* a boy. You have to be born one"—he's told that "[n]ot everything *needs* to make sense. *This is about love.*" *Id.* at 19. Papa agrees that Penelope is a boy as long as Penelope will "tell me yourself." *Id.* at 20. And when Penelope tells the principal "I think like a boy. I feel like a boy. … I'm sure I'm a boy," the teacher says "today you're *my* teacher." *Id.* at 24.



The teacher's guide encourages children to notice "how happy Penelope is when his mom" agrees "he is a boy" and how people in other countries "think about gender differently than we do in the U.S." Compl. Ex. D. at 5. Teachers are prompted to ask the students to consider "why is it such a big deal here?" *Id.* If a student states that

Penelope "can't be a boy if he was born a girl" or asks "[w]hat body parts" Penelope has, the School Board directs teachers to correct these "false" assumptions:

> When we are born, people make a guess about our gender and label us "boy" or "girl" based on our body parts. Sometimes they're right, and sometimes they're wrong. Our body parts do not decide our gender. Our gender comes from inside—we might feel different than what people tell us we are. We know ourselves best.

Compl. Ex. D at 5. Any disagreement is labeled "hurtful." *Id.*

Other books promoted by the School Board are similarly ideological in ways that violate the Parents' and their children's religious beliefs. The storybook *What Are Your Words* is about a child who changes pronouns based on how he feels at any given moment. Feeling "HAPPY! CREATIVE! FUNNY!" suggests "HE/HIM." Baxter Decl. Ex. O at 5. Feeling "THOUGHTFUL! ATHLETIC! SILLY!" suggests "SHE/HER." *Id.* And feeling "SLEEPY! CALM! HONEST!" suggests "EY/EM." *Id.* Through the entire story, the child is in angst trying to figure out "which pronouns fit today." *Id.* at 7. It's not until late in the evening, while at fireworks with "Uncle Lior," that the child finally finds his pronouns: "Those are my words! I'm like fireworks! … My words finally found me! *They* and *them* feel warm and snug to me" … for "today." *Id.* at 16.

Jacob's Room to Choose is about a transgender boy and transgender girl who appear to be in pre-K or kindergarten. During a break, they both run to the bathroom that corresponds with their biological sex but get "chased out" by other students. Baxter Decl. Ex. P at 6. A teacher uses a game to persuade her class that "a lot of you don't look like the signs" on the bathroom door. *Id.* at 12, "I wonder," she asks, "if there is another way?" *Id.* at 13. Soon the students come up with their own ideas and stage a bathroom demonstration. *Id.* The doors

are relabeled to welcome multiple genders and to indicate as being "with" or "without a urinal." *Id.* at 15. The children post signs and parade in front with placards that proclaim "Bathrooms are for every bunny" and "I have to pee so let me be." *Id.*

B. The Parents' Beliefs

The Parents are Muslim, Catholic, and Ukrainian Orthodox. Mahmoud ¶ 3; Roman ¶ 3; Persak ¶ 3. They teach their children that, as God's creation, each individual has equal dignity before God and is entitled to love, kindness, and respect from others. Mahmoud ¶¶ 3, 5; Roman ¶¶ 4-5; Persak ¶ 8. They believe that sexuality is a sacred gift from God to be expressed in marriage between a man and a woman for creating life and strengthening the marital union. Mahmoud ¶¶ 6-8; Roman ¶¶ 7-9; Persak ¶¶ 6-7. They also believe that biological sex is a God-given, immutable reality integral to each individual. Mahmoud ¶¶ 5-6, 9-12; Roman ¶¶ 6-7, 10-11; Persak ¶¶ 5, 7.

The Parents have a religious obligation to teach these principles to their children. Mahmoud ¶¶ 4, 14; Roman ¶ 12; Persak ¶ 7. They believe that young children should enjoy a time of innocence, when it is not necessary for them to have detailed understanding of issues surrounding human sexuality. *See* Mahmoud ¶¶ 14-18; Roman ¶ 13; Persak ¶¶ 10-12. As their children mature, the Parents believe they should be taught in age-appropriate ways and consistent with the Parents' religious beliefs. Mahmoud ¶¶ 14-18; Roman ¶ 12-13; Persak ¶¶ 10-12. This includes teaching young children to channel eventual romantic passions, rather than indulge them at first spark. Mahmoud ¶ 14-16; Roman ¶ 12, 14; Persak ¶¶ 3-4, 6-7, 16. The Parents believe that encouraging children prematurely to question their sexuality and gender identity can be spiritually injurious. Mahmoud ¶¶ 16-20; Roman ¶¶ 10-13, 20; Persak ¶¶ 4-6, 11-12.

The Parents also believe that some of what is taught via the Pride Storybooks is false. *See, e.g.*, Mahmoud ¶¶ 9, 19; Roman ¶ 14; Persak ¶¶ 5, 16. They disagree that

a child's sex can be separated from his or her biology and that "gender" is a separate form of identity that is manipulable at will or depends upon the child's conformance to stereotypes about masculinity and femininity. Mahmoud ¶ 9; Roman ¶ 14; Persak ¶ 5. Teaching such principles to children is inconsistent with the Parents' various religious beliefs and interferes with their chosen way of life, their aspirations for their children, and their understanding of God's will, each according to their particular religious tradition. Mahmoud ¶¶ 19-20; Roman ¶¶ 19-20; Persak ¶¶ 12-16. The Parents also believe that directing teachers to talk to children about sexuality, to invite children to question their gender identity, or to encourage young children to embrace gender transitioning can be spiritually and emotionally harmful to children's well-being. Mahmoud ¶¶ 16-20; Roman ¶¶ 10-13; Persak ¶¶ 4-6, 11-12.

Parents' beliefs are informed in part by their understanding that the science on questions regarding gender transitioning is complex and unsettled. *See, e.g.*, Mahmoud ¶ 9; Roman ¶ 14; Persak ¶ 5; *see also* Compl. ¶¶ 142-46; *The evidence to support medicalized gender transitions in adolescents is worryingly weak,* The Economist (Apr. 5, 2023), https://perma.cc/WXP4-PM7H ("[I]t is impossible to justify the current recommendations about gender-affirming care based on the existing data."); Lauren Moss, Pu*berty blockers to be given only in clinical research,* BBC News (June 2023), https://perma.cc/QT3L-2JLD (reporting that "gaps in evidence" have led NHS England away from puberty blockers and toward a "new 'holistic' approach" with "careful therapeutic exploration" of "other complexities related to mental health, neuro-development and family or social matters" that frequently accompany gender dysphoria). And because children—particularly those, like the Parents' own, in elementary school—are highly impressionable, exposing them to one-sided ideological instruction from authoritative schoolteachers on such complex and sensitive issues imposes serious risks. Mahmoud ¶¶ 16-20; Roman ¶¶ 10-13, 19-20; Persak ¶¶ 11-16. Similarly, children lack the physical and emotional maturity to

understand the obligations and consequences connected to romantic relationships. Mahmoud ¶¶ 2, 18-19; Roman ¶¶ 2, 19; Persak ¶¶ 2, 10-14. Encouraging them to focus prematurely on such issues can similarly distort their understanding of who they are and what is most important in life—questions young children are entitled to consider with the guidance of their parents and religious communities. Mahmoud ¶¶ 16-20; Roman ¶¶ 10-13; Persak ¶¶ 4-6, 11-12.

The Parents are not alone in their concern about prematurely encouraging children to question their sexuality and gender identity. A recent poll by the *Washington Post* and University of Maryland showed that, among Maryland registered voters, sixty-six percent disapproved of schoolteachers discussing LGBTQ issues with students from kindergarten through third grade. Nicole Asbury and Emily Guskin, *Most Md. voters say elementary school discussion of LGBTQ acceptance 'inappropriate,'* Washington Post (Oct. 12, 2022), https://perma.cc/6NED-E9RH. Fifty-six percent disapproved for fourth and fifth graders. *Id.* Even for middle schoolers, forty-two percent of voters disapproved. *Id.* Only for high school did a strong majority support such conversations, with twenty-seven percent disapproving. *Id.* A similar poll sponsored by the American Federation of Teachers produced a similar result, finding that "58 percent of likely voters in battleground states disapprove of the way students are taught about 'sexual preference and gender identity,'" either because "students are too young for [the] material" or because "parents are responsible for teaching it." Conor Friedersdorf, *What to Teach Young Kids About Gender*, The Atlantic (Sept. 16, 2022), https://perma.cc/R3DC-GHES.

The Parents agree with the School Board that every student deserves to be understood and respected. Mahmoud ¶¶ 3, 29; Roman ¶¶ 4-5; Persak ¶ 8. They abhor the notion that any students could be bullied or harassed for any reason, and they teach their own children to treat all others with kindness and love. Mahmoud ¶¶ 3-4; Roman ¶¶ 4-5; Persak ¶¶ 8-10. But decisions around sexuality and gender identity

are complex and enormously consequential. The Parents believe that children lack maturity to make them on their own. Mahmoud ¶¶ 2, 18-19; Roman ¶¶ 2, 19; Persak ¶¶ 2, 10-14. The Parents' religious beliefs and practices provide critical guidance on how to help their children navigate these issues for their long-term well-being. Mahmoud ¶¶ 4-16; Roman ¶¶ 4-13; Persak ¶¶ 3-7. The School Board's interference by encouraging children to prematurely question their sexuality and gender identity substantially interferes with the Parents' various religious ways of life. Mahmoud ¶¶ 19-20; Roman ¶¶ 19-20; Persak ¶¶ 12-16. The School Board rightly says that it welcomes people of diverse communities and celebrates the diverse cultural, racial, ethnic, and religious groups who call Montgomery County home. The Parents are only asking the School Board to live up to that commitment by respecting their religious beliefs and practices as well.

C. **Notice and Opportunity to Opt Out**

Based on their religious beliefs and desire for their children's well-being, each of the Parents requested that their children be excused from class when the Pride Storybooks are read. Compl. Ex. L; Compl. Ex. M at 2. Initially, these requests were granted. Mahmoud ¶ 27; Compl. ¶ 161; Compl. Ex. L at 7. This complied with Maryland law, which—like most states, *see id.* ¶¶ 85-87—requires that parents be allowed to opt their children out from instruction on "family life and human sexuality." *Id.* ¶¶ 85-94. It also complied with the School Board's own policies that promise to "accommodate requests from students" or their parents "to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs." Compl. Ex. A.

The School Board confirmed these opt-out policies in a public statement on March 22, 2023. Stephanie Ramirez, *MCPS revises policy on LGBTQ-friendly books*, Fox 5 Washington DC (Mar. 22, 2023), https://perma.cc/8L5G-XQ9X. But the very next day, it reversed course, announcing that—with regard to the Pride Storybooks—no further

notice would be provided and no opt-outs tolerated. *See 5 Things to Know*, Montgomery County Public Schools (Mar. 23, 2023), https://perma.cc/6XVG-R3CF. The School Board affirmed that high school students can still opt out of the "Family Life and Human Sexuality Unit of Instruction," while elementary students are compelled to participate in instruction encouraging them to question their sexuality and gender identity. *5 Things to Know*, https://perma.cc/6XVG-R3CF. When the Parents and others protested this unlawful decision, the School Boards' response was to accuse the Parents of promoting "hate," of promoting "a dehumanizing form of erasure," and of being "white supremacists" and "xenophobes." Testimony at the Montgomery County Public Schools Business Meeting, at 27:11-29:09 (Jan. 12, 2023), https://perma.cc/T234-559Q; Compl. Ex. N at 16; Lynne Harris, Remarks at the MCPS Board Meeting, at 1:48:00-1:48:15 (Mar. 28, 2023), https://shorturl.at/fAET6.

LEGAL STANDARD

A preliminary injunction is appropriate "where the plaintiff has established 'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'" *Dmarcian, Inc. v. Dmarcian Europe BV*, 60 F.4th 119, 138 (4th Cir. 2023) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 24 (2008)). That standard is easily met here.

ARGUMENT

I. The Parents are likely to succeed on the merits of their claims.

Under the Free Exercise and Due Process Clauses, government restrictions on the right of parents to direct the religious upbringing of their children are subject to strict scrutiny. *See Herndon by Herndon v. Chapel-Hill Carrboro City Bd. of Educ.*, 89 F.3d 174, 178-79 (4th Cir. 1996). Under strict scrutiny, a restriction is unlawful unless the government can show it is essential to protect a historically rooted "compelling governmental interest." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*,

508 U.S. 520, 531-32 (1993). This interest must be both "of the highest order" and "particular to the specific case." *Redeemed Christian Church of God v. Prince George's County*, 17 F.4th 497, 510 (4th Cir. 2021). The School Board's no-opt-out policy cannot survive this exacting standard.

A. Stripping opt-out rights triggers strict scrutiny under the Free Exercise Clause.

In *Employment Division v. Smith*, the Supreme Court held that laws burdening a person's religion escape strict scrutiny only if they are "neutral" and "of general applicability." 494 U.S. 872, 879 (1990). But neutral and generally applicable laws are the exception. Here, strict scrutiny is required for at least four reasons.

1. The School Board's no-opt-out policy violates the Free Exercise Clause under *Yoder* by interfering with the Parents' right to direct their children's religious upbringing.

Strict scrutiny applies to laws that restrict the "right of parents … to direct the [religious] education of their children." *Id.* at 881 (citing *Yoder*, 406 U.S. 205). The Supreme Court has long recognized this right. *See, e.g., Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923). It is rooted in "[t]he history and culture of Western civilization," which "reflect a strong tradition of parental concern for the nurture and upbringing of their children." *Yoder*, 406 U.S. at 232; *see also Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020). Under the Free Exercise Clause, this parental right is "now established beyond debate as an enduring American tradition." *Yoder*, 406 U.S. at 214, 232; *see also W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943) (upholding parents' right to opt Jehovah's Witness schoolchildren out of saying the Pledge of Allegiance, because "[f]ree public education … will not be partisan or enemy of any class, creed, party, or faction.").

In *Yoder*, the Court invoked this right to protect Amish parents opting their children out of high school entirely, notwithstanding state mandatory attendance

laws. 406 U.S. at 214, 232. The Court agreed that public schooling ranked "at the very apex" of the state's role, and that the state had a "duty to protect children from ignorance," *id.* at 213, 222. But those interests were insufficient to interfere with the parents' decisions to have their children work full-time after eighth grade as part of their religious formation within the Amish community. *Id.* at 214. The Court emphasized that the rights of parents to direct "the religious upbringing and education of their children in their early and formative years have a high place in our society." *Id.* at 213-14. Thus, despite the state's strong interest in "compulsory education," "fundamental claims of religious freedom [were] at stake." *Id.* at 221. And because "exposing Amish children to worldly influences" at school could "substantially interfer[e]" with their religious development "at the crucial adolescent stage," the Court applied strict scrutiny. *Id.* at 218.

Strict scrutiny applies here for similar reasons. The Parents' religious beliefs regarding marriage and family are central to their way of life, their aspirations for their children, and their understanding of God's will. Mahmoud ¶¶ 4-16; Roman ¶¶ 4-13; Persak ¶¶ 3-7. They believe a child's biological sex is a gift from God, Mahmoud ¶¶ 5-6, 9-12; Roman ¶¶ 6-7, 10-11; Persak ¶¶ 5, 7, and that marriage between a man and a woman is an important part of God's plan for this life. Mahmoud ¶¶ 6-8; Roman ¶¶ 7-9; Persak ¶¶ 6-7.

The Parents further believe they have a sacred obligation to form their children in their beliefs. Mahmoud ¶¶ 4, 14; Roman ¶ 12; Persak ¶ 7. This includes helping them accept the bodies they were born with, channel their sexual desires in healthy ways, and learn self-discipline. Mahmoud ¶¶ 5-6, 9-12, 15-16; Roman ¶¶ 6-7, 12; Persak ¶¶ 3-4, 5-7, 12. Issues around human sexuality and gender identity can be confusing to children, who lack sufficient maturity to fully understand and make decisions on such enormously consequential matters. Mahmoud ¶¶ 2, 18-19; Roman ¶¶ 2, 19; Persak ¶¶ 2, 10-14. The Parents believe it requires religious sensitivity to

determine how and when to introduce these topics to their children. Mahmoud ¶ 18; Roman ¶ 13; Persak ¶¶ 12-16. They believe that every person has equal dignity before God and deserves love and respect from others without exception. Mahmoud ¶¶ 3, 29; Roman ¶¶ 4-5; Persak ¶ 8. And they respect the right of others to make their own decisions about sexuality and gender identity. Mahmoud ¶ 4; Roman ¶¶ 4-5; Persak ¶ 9. But they believe they have a religious obligation to encourage their children to make these decisions consistent with God's will. Mahmoud ¶¶ 4, 14; Roman ¶ 12; Persak ¶¶ 3-4, 7.

Forcing their children to read and discuss the Pride Storybooks undermines the Parents' efforts to form their children in their faith, including by encouraging children to question their sexuality and gender identity, focus prematurely on romantic relationships, and disregard their parents and their parents' religious teachings on these issues. Mahmoud ¶¶ 19-20; Roman ¶¶ 19-20; Persak ¶¶ 12-16. As in *Yoder*, this "substantially interfer[es] with the religious development of … children and [their] integration" into a religious "way of life" and "faith community." *Yoder*, 406 U.S. at 218. That interference is happening at a "crucial … stage of development"—far younger than in *Yoder*—when children are particularly vulnerable and impressionable. *Id*. This carries "a very real threat of undermining [the Parents'] religious practice." *Id*. at 218.

"The First Amendment ensures that religious … persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered," *Obergefell v. Hodges*, 576 U.S. 644, 679-80 (2015). Because the no-opt-out policy threatens that right, strict scrutiny is triggered.

2. The School Board's no-opt-out policy separately violates the Free Exercise Clause under *Fulton* by allowing individualized exemptions.

Strict scrutiny also applies whenever the government "has in place a system of individual exemptions" that "len[ds] itself to individualized governmental assessment of the reasons for the relevant conduct." *Smith*, 494 U.S. at 884 (citing *Sherbert v. Verner*, 374 U.S. 398 (1963)); *see also Fulton v. City of Philadelphia,* 141 S. Ct. 1868, 1877 (2021) (strict scrutiny applies when the government provides "a mechanism for individualized exemptions"). The mere existence of a system of exemptions means the policy is not generally applicable, "regardless whether any exceptions have been given." *Fulton*, 141 S. Ct. at 1879.

Here, a system of discretionary exemptions exists both in writing and in practice. The School Board's Religious Diversity Guidelines provide that schools should "make reasonable and feasible adjustments to the instructional program to accommodate requests from students [or their parents] to be excused from specific classroom discussion or activities that they believe would impose a substantial burden on their religious beliefs." Compl. Ex. A at 3. It provides that, in some instances, students may be allowed to sit out entire aspects of a class. For example, in a music class, "schools may seek to avoid, if possible, requiring a student with a religious objection to play an instrument or sing." *Id*. at 4.

Students "who do not want to participate" may also be excused when schools teach about religious holidays or events "in a factual manner" or even ostensibly secular events that "may be viewed by others as having religious overtones." *Id*. "[E]ach situation must be addressed on a case-by-case basis." *Id*. at 2. Also, "[b]ecause free exercise of religion is a constitutional right," students cannot be denied a "perfect attendance" award when their "only absences" have been for "observance of religious holidays." *Id*. at 2. While the School Board's practice to offer exemptions is laudable,

the highly discretionary nature of the process necessarily triggers strict scrutiny. *Fulton*, 141 S. Ct. at 1879.

The policy's application further invites strict scrutiny. When the School Board introduced the Pride Storybooks, it announced that their use was "expect[ed]" but "optional," because it is "standard practice that teachers have a choice regarding which materials to use." *Age-Appropriate and Grade-Level Inclusive Books to be Added to MCPS Schools*, Montgomery County Public Schools (Jan. 18, 2023), https://perma.cc/C7WK-9PS7; *see also* Compl. Ex. L at 4. Parents were also assured that "readings are not mandatory" and "will not be scheduled … until families are notified." Compl. Ex. D at 5. As recently as March 22, the School Board affirmed that parents could "choose[] to opt out." Ramirez, https://perma.cc/8L5G-XQ9X. Even after the School Board's March 23 about-face, principals were authorized to continue allowing opt-outs for the remainder of the school year. Mahmoud ¶ 27; Compl. ¶ 161; Compl. Ex. L at 7.

In short, the no-opt-out policy is highly discretionary, both as written and implemented. Because it allows the school officials in their "sole discretion" to decide which requests are "worthy of solicitude," the no-opt-out policy is subject to strict scrutiny. *Fulton*, 141 S. Ct. at 1879.

3. The School Board's no-opt-out policy violates the Free Exercise Clause under *Tandon* because it includes categorical exclusions for comparable secular conduct.

The School Board also triggers strict scrutiny by categorically allowing some students to opt out of instruction on "family life and human sexuality" while forcing pre-K and elementary students to stay in. Supreme Court precedent confirms that a government restriction on religion is not "generally applicable"—and thus triggers strict scrutiny—when its "categorizations" treat comparable activities differently. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020).

"[W]hether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). Here, the School Board's asserted interest is in promoting "inclusive and safe spaces for students, including those who identify as LGBTQ+ or have family members in the LGBTQ+ community." Ramirez, https://perma.cc/8L5G-XQ9X. This interest is rooted in Maryland's "Equity Regulation," which was adopted by the Maryland Board of Education in 2019 and requires every school district to ensure "educational equity" to "maximize [students'] academic success and social/emotional well-being." COMAR § 13A.01.06.01(A). "[E]ducational equity" is defined as "view[ing] each student's individual characteristics as valuable," including their "[f]amily structure," "[g]ender identity and expression," and "[s]exual orientation." § 13A.01.06.03(B)(2) & (5).

After adopting the Equity Regulation, the Maryland Board of Education amended its "Health Ed" regulation to reflect the new equity standards. *See* Memorandum from Superintendent Karen B. Salmon to Members of the State Board of Education (June 25, 2019), https://perma.cc/6JCX-B7RC. The Health Ed Regulation sets the standards for all "Health Education Instructional Programs for Grades Prekindergarten—12." § 13A.04.18.01. It has long required—"in or prior to the grade 5"—comprehensive instruction on "family life and human sexuality." § 13A.04.18.01(C)(1)(c) & (D)(2)(d). The 2019 amendment to the Health Ed Regulation added that this instruction "shall represent all students regardless of ability, sexual orientation, gender identity, and gender expression." Salmon Memo at 12, https://perma.cc/6JCX-B7RC; *see also* § 13A.04.18.01(D)(2)(a). The Pride Storybooks are a part of this "inclusive" effort. Ramirez, https://perma.cc/8L5G-XQ9X.

But the Health Ed Regulation explicitly requires school districts to establish "procedures for student opt-out regarding instruction" related to any "family life and human sexuality objectives" other than "menstruation." § 123A.04.18(D)(2)(e)(*i*) &

(*iii*). And the School Board agrees that "[s]tudents and families" can continue to opt out of the "Family Life and Human Sexuality Unit of Instruction" in their health classes—but not when the same topics are introduced for the same purpose during story time for children as young as pre-K. Ramirez, https://perma.cc/8L5G-XQ9X. Because the School Board's no-opt-out policy plainly treats the Parents' religious exercise less favorably than "comparable secular activity," *see Tandon*, 141 S. Ct. at 1296, it fails general applicability and triggers strict scrutiny. *Fulton*, 141 S. Ct. at 1877.

The School Board's suggestion that only opt-outs from a "Unit of Instruction" are "specifically permitted by Maryland law," Ramirez, https://perma.cc/8L5G-XQ9X, is mistaken. Under the plain language of the Health Ed Regulation, the mandate to provide instruction and allow opt-outs applies to *any* instruction on "family life and human sexuality" in *all* "Grades Prekindergarten–12." COMAR § 13A.04.18.01(heading), (A)(1)-(2), (C)(1)(c), & (D)(2)(d)-(e). Nothing in the law suggests that the opt-out requirement is available only for certain classes or units of study. But even if the School Board were correct, strict scrutiny would still apply, because "whether two activities are comparable for purposes of the Free Exercise Clause" is not judged by government labeling, but by "the asserted government interest that justifies the regulation at issue." *Tandon*, 141 S. Ct. at 1297. Here, the Pride Storybooks comprise instruction on family life and human sexuality that is provided for the same "equity" and "inclusion" purposes as related material in health class. Categorically allowing opt-outs in one circumstance but not the other, whether dictated by Maryland law or not, triggers strict scrutiny.

4. The School Board's no-opt-out policy separately violates the Free Exercise Clause under *Lukumi* and *Masterpiece* because it targets religious exercise.

"The Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion." *Masterpiece Cakeshop, Ltd. V. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018) (quoting *Lukumi*, 508 U.S. at 534). "[M]ere compliance with the requirement of facial neutrality" is not sufficient. *Lukumi*, 508 U.S. at 534. "The Free Exercise Clause protects against governmental hostility which is masked, as well as overt." *Id.*

Here, the school Board has long granted parental opt-outs from a wide variety of school activities. *See e.g.*, Compl. Ex. A at 2-4 (*e.g.*, books, band, Halloween). As required by Maryland law, this has always included opt-outs from instruction on "family life and human sexuality." COMAR § 13A.04.18.01; Ramirez, https://perma.cc/8L5G-XQ9X. The School Board's overnight decision to withdraw opt-outs for the Pride Storybooks only—and only after parents began raising religious objections—is alone sufficient to trigger strict scrutiny for lack of neutrality. Such targeting of religion is "not neutral … and therefore trigger[s] strict scrutiny under the Free Exercise Clause." *Tandon*, 141 S. Ct. at 1296.

The School Board's "'official expressions of hostility' to religion" make matters worse. Policies enacted with religious animosity can be "'set aside' … without further inquiry"—that is, without even conducting a strict-scrutiny analysis. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 n.1 (2022) (quoting *Masterpiece*, 138 S. Ct. at 1732); *see also Fulton*, 141 S. Ct. at 1877 ("Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs").

After parents requested opt-outs at a March 28, 2023, board meeting, Defendant Lynne Harris accused them on the record of perpetuating hate:

> Saying that a kindergartner can't be present when you read a book about a rainbow unicorn because it offends your religious rights or your family values

> or your core beliefs is just telling that kid, "Here's another reason to hate another person."

Harris Remarks at 1:48:00-1:48:15, https://perma.cc/AW3T-DMJB; *see also* Compl. Ex. N at 16 (suggesting that religious parents seeking opt-outs are engaging in a "dehumanizing form of erasure"). Harris later made a similar comment in reference to parental testimony at a January 12, 2023 meeting on the Pride Storybooks, saying "[y]es, ignorance and hate does exist in our community." Compl. ¶ 155. Later, she also compared a largely Muslim group of concerned parents to "white supremacists" and "xenophobes." *See* Em Espey, *Parents, students, doctors react to MCPS lawsuit targeting LGBTQ+ storybooks*, MoCo360 (June 2, 2023), https://perma.cc/5GD9-2YVQ.

No other member of the School Board disavowed these comments. Nor did they object after a member of the County Council picked up the theme, claiming that concern over the Pride Storybooks puts "some Muslim families on the same side of an issue as White supremacists and outright bigots." Hannah Grossman, *Dem Maryland official says Muslim children aligned with 'White supremacists' for opposing LGBTQ curriculum*, Fox News (June 7, 2023), https://perma.cc/3AJE-RSBA. Rather, these statements are further evidence that the School Board's purpose in denying opt-outs is to counter parents whose religious beliefs it deems non-inclusive. *See* Espey, https://perma.cc/5GD9-2YVQ (quoting School Board Member Lynne Harris).

Persons raising religious concerns to government policies are "entitled to a neutral decisionmaker who would give full and fair consideration" to their objections. *Masterpiece*, 138 S. Ct. at 1731-32. Because the School Board's hostile statements about religious objectors "cast doubt on the fairness and impartiality" of the School Board, *id*. at 1721, the no-opt-out policy may be "set aside," even without strict scrutiny. *Kennedy*, 142 S. Ct. at 2422 n.1.

B. Stripping opt-out rights also triggers strict scrutiny under the Due Process Clause.

Separate and apart from the Free Exercise Clause, the School Board's no-opt-out policy also triggers strict scrutiny because it violates the Parents' rights under the Due Process Clause. Indeed, the parental right to direct a child's upbringing "is perhaps the oldest of the fundamental liberty interests recognized by th[e] Court." *Troxel*, 530 U.S. at 65. Upheld in "a long line of cases," *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), the right is deemed "essential" and "far more precious … than property rights," *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

Parents who send their children to public schools do not forfeit this constitutional right at the schoolhouse door. *See Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038, 2053 (2021) (Alito, J., concurring). "[T]he child is not the mere creature of the State," and "those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Troxel*, 530 U.S. at 65 (quoting *Pierce*, 268 U.S. at 535). This right arises from the "cardinal" principle "that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.* at 65-66. Thus, even "[p]ublic schools must not forget that '*in loco parentis*' does not mean 'displace parents.'" *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000).

Even prior to our nation's founding, "the common law placed considerable responsibility upon parents" to provide for their children's education and care given the "relative immaturity of minors." Eric A. DeGroff, *Parental Rights & Public School Curricula: Revisiting* Mozert *After 20 Years*, 38 J.L. & Educ. 83, 108-09 (2009). Constitutional jurisprudence likewise acknowledges that elementary-school children are uniquely susceptible to being influenced by third parties in their religious and moral upbringing. *See, e.g., Edwards v. Aguillard*, 482 U.S. 578, 584 (1987)

("Students in [public schools] are impressionable and their attendance is involuntary."). And so, while "[f]amilies entrust public schools with the education of their children," they "condition their trust on the understanding that the classroom will not purposely be used to advance religious [or ideological] views that may conflict with the private beliefs of the student and his or her family." *Id.*

Demanding that elementary-aged children contemplate complex and sensitive issues around sexuality and gender identity—from a one-sided perspective that is contrary to the Parents' religious convictions—strikes at the heart of the Parents' right to introduce and teach those topics on their own terms and timeline. As under the First Amendment, such "infringements on liberties deemed constitutionally 'fundamental'" are subject to "a heightened or 'strict' level of judicial scrutiny." *Herndon by Herndon*, 89 F.3d at 177-79.

II. The no-opt-out policy cannot survive strict scrutiny.

"A government policy can survive strict scrutiny only if it advances interests of the highest order and is narrowly tailored to achieve those interests." *Fulton*, 141 S. Ct. at 1881 (cleaned up). This only happens in "rare cases." *Lukumi*, 508 U.S. at 546. This isn't one of them. Here, no matter why the School Board's policy triggers strict scrutiny, it fails the test.

A. The School Board lacks a compelling governmental interest in stripping the Parents' opt-out rights for the Pride Storybooks.

The first step in strict scrutiny "obligate[s]" the School Board to show "that it had a compelling interest in" withdrawing opt-outs for the Pride Storybooks. *Redeemed Christian Church*, 17 F.4th at 510. What's more, "the government must show that pursuit of its compelling interest was the actual reason for its challenged action." *Id.* The School Board cannot meet its burden for three independent reasons.

First, the School Board cannot show a compelling interest in stripping opt-out rights because it allowed opt-outs to the Pride Storybooks until March 23, 2023—

including to the Parents in this case. Granting such exemptions before inexplicably withdrawing them, all while retaining discretion over what instruction is subject to notice and opt-out, fatally "undermines the [School Board's] contention that its [no-opt-out] policies can brook no departures." *Fulton*, 141 S. Ct. at 1882. Instead, the School Board has suggested that it has a compelling interest in reversing its own prior position in order to save children from the "dogma" and "bigot[ry]" espoused by their parents. *See* Espey, https://perma.cc/5GD9-2YVQ (School Board Member Lynne Harris stating that children who support opt-out rights are "parroting dogma" from their parents); Testimony at the Montgomery County Public Schools Business Meeting, at 27:11-29:09 (Jan. 12, 2023), https://perma.cc/T234-559Q (comparing religious objectors to "white supremacists" and "xenophobes"). But that argument fails under *Fulton*. *See* 141 S. Ct. at 1882 (holding that a "weighty" interest "in the equal treatment of prospective foster parents and foster children" is "undermine[d]" by "a system of exceptions"). And it fails under *Yoder* too: "There can be no assumption that today's majority is 'right' and the [Parents] and others like them are 'wrong.'" 406 U.S. at 223-24. And there is no duty "to 'save' a child from himself or his [religious] parents by requiring" that the Pride Storybooks be read. *Id.* at 232.

Moreover, the School Board's "insist[ence] that a categorical ban" on opt outs is now required flouts the "long history" and "continue[d]" practice of most states. *See Ramirez v. Collier*, 142 S. Ct. 1264, 1279 (2022). Most states—including Maryland—provide parents with advance notice and opt-outs for their children from instruction on human sexuality. Compl. ¶ 87. Others only have such instruction on an opt-*in* basis. *Id.* ¶ 88. Given this "historic[] and routine[]" consensus on traditional religious exercise, there is no "basis for deference" to the School Board's judgment. *Ramirez*, 142 S. Ct. at 1279-80.

Second, the School Board cannot meet its burden because any interest the Board asserts must be "particular to the specific case." *Redeemed Christian Church*, 17

F.4th at 510. This "more precise analysis" means "courts must scrutinize the asserted harm of granting specific exemptions to particular religious claimants." *Fulton*, 141 S. Ct. at 1881 (cleaned up); *see also Yoder*, 406 U.S. at 227 (requiring a "more particularized showing … to justify the severe interference with religious freedom such additional compulsory attendance would entail"). The School Board fails this requirement, too—because it cannot explain why *these* Parents cannot have *their* children opt out of the Pride Storybooks. *See Tatel v. Mt. Lebanon Sch. Dist.*, No. 22-837, 2022 WL 15523185, at *19 (W.D. Pa. Oct. 26, 2022) (applying *Fulton*'s holding to analogous gender identity classroom instruction).

The School Board has made broad commitments to religious accommodations in its Religious Diversity Guidelines—allowing opt-outs from all manner of classroom discussions, activities, and reading assignments. Compl. Ex. A at 2-4. And the School Board is required by Maryland law to provide notice and opt-out procedures for all instruction on "family life and human sexuality"— whether or not an opt-out is sought for a religious reason. "Where the government permits other activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied." *Tandon*, 141 S. Ct. at 1297. Here, however, the School Board can't offer a compelling reason for violating Maryland law or its own Religious Diversity Guidelines. Nor is there a compelling interest in allowing parents to opt their high schoolers out of "family life and human sexuality" instruction, while their elementary school children must be made to read the Pride Storybooks without the parents' knowledge. *See 5 Things to Know*, https://perma.cc/6XVG-R3CF (affirming high school exemption); *Fulton*, 141 S. Ct. at 1882 ("The City offers no compelling reason why it has a particular interest in denying an exception to CSS while making them available to others.").

Third, the School Board cannot meet its burden because it must link its asserted interest to an analogous regulatory tradition—and the no-opt-out policy is a historical outlier.

Yoder held that compelling interests—especially ones invoked to support "relatively recent" regulations on longstanding religious exercise—must have historical analogues. *See* 406 U.S. at 226-30 (analyzing the "historical origin" of "compulsory education and child labor laws"). Recent cases confirm that those analogues must evidence "an early American tradition" that is analogous to the restriction at issue. *See Espinoza*, 140 S. Ct. at 2258-59 (refusing to credit "a tradition *against* state support for religious schools [that] arose in the second half of the 19th century"). Accordingly, there is no compelling interest in asserting "a categorical ban" on religious exercise that possesses a "long history" and is upheld by "longstanding [regulatory] practice." *Ramirez*, 142 S. Ct. at 1279-80, 1283; *see also New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2131 (2022) ("[I]f earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional.").[1]

Here, the School Board cannot root its Pride Storybook no-opt-out policy in a long historical tradition. That's because historical tradition is the opposite. At the time of the founding, "English cases from the Court of Chancery established the right of parents to make educational choices for their children despite the wishes of the child or even the preferences of civil authorities." DeGroff, 38 J.L. & Educ. at 110 & n.178 (collecting cases). "Even after the common school movement took hold in this country

[1] The Fourth Circuit has recognized *Bruen*'s application to the Establishment Clause, and to other "constitutional provisions"—like the Free Exercise Clause—"where the Supreme Court has directed that historical tradition defines an exception, rather than the rule." *Firewalker-Fields v. Lee*, 58 F.4th 104, 122 n.7 (4th Cir. 2023). "There, the burden falls on the defendant to establish the exception," *id.*, as the defendant must do when identifying a compelling government interest.

in the mid- to late 1800s, and compulsory education laws became commonplace around the turn of the century, the courts generally deferred to parental preferences when disputes arose over curricular requirements in the new publicly-funded schools." *Id.* at 113.[2] The general common law rule was as follows: "so long as, in exercising his parental authority in making the selection of the branches [his child] shall pursue, none others are affected, it can be of no practical concern to those having the public schools in charge." *Trs. of Schs. v. People ex rel. Van Allen*, 87 Ill. 303, 309 (Ill. 1877). Courts upheld this common law rule into the twentieth century, especially when religious upbringing was at issue.[3] And throughout the twentieth century, the possibility of an opt-out often informed why there was *not* a free exercise or parental rights claim.[4]

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[2] Regardless, a contrary tradition developing that late cannot overcome the control parents presumptively had at the founding. *See Espinoza*, 140 S. Ct. at 2258-59.

[3] *See, e.g.*, *Vollmar v. Stanley*, 255 P. 610, 613-14 (Colo. 1927) (upholding right of Catholic parent to excuse his child from morning readings of the King James Version Bible, as "one of the liberties guaranteed by the Fourteenth Amendment to the national Constitution"), *overruled on other grounds in Conrad v. City & Cnty. of Denver*, 656 P.2d 662, 670 n.6 (Colo. 1982); *Hardwick v. Bd. of Sch. Trs.*, 205 P. 49, 54 (Cal. App. 1921) (granting parental "object[ion] to his children being coerced by the school authorities into taking part in [dancing] exercises contrary to the teachings they have received from their parents upon that subject; and the fact that he asks … is not unreasonable"); *Spiller v. Inhabitants of Woburn*, 12 Allen 127, 127 (Mass. 1866) (upholding school policy to begin each morning with a Bible reading and prayer, because it provided that the "parents" could "request that [the student] shall be excused from doing so"); *see also State v. Ferguson*, 144 N.W. 1039, 1042 (Neb. 1914) ("no pupil attending the [public] school can be compelled to study any prescribed branch against the protest of the parent"); *accord Rulison v. Post*, 79 Ill. 567, 574 (Ill. 1875); *Morrow v. Wood*, 35 Wis. 59, 63-64 (Wis. 1874) ("there is a great and fatal error in" concluding that "the parent, by the very act of sending his child to school, impliedly undertakes to submit all questions in regard to study to the judgment of the teacher").

[4] *See, e.g.*, *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1533 (9th Cir. 1985) ("minimal" religious burden because the student "was assigned an alternate book" and was "given permission to avoid classroom discussions"); *Spence v. Bailey*, 465

More recently, courts have regularly upheld the right of parents to opt their children out of classroom discussions on "'sensitive topics before a parent [introduces them],'" to not "'complicate [or] even undermine parental authority.'" *Tatel v. Mt. Lebanon Sch. Dist.*, No. 22-837, 2023 WL 3740822, at *5-6 (W.D. Pa. May 31, 2023) (quoting *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 185 (3d Cir. 2005)). As in *Tatel*, the parental opt-out right extends to curricula on gender identity. Such instruction is not "merely … to influence tolerance of *other* children or families, but efforts to inculcate a teacher's beliefs about transgender topics in Plaintiffs' *own* children." *Id.* at *10.[5] The historical tradition of American law simply does not support that kind of intrusion into religious upbringing. As such, the Board cannot identify a compelling interest that survives "the strictest scrutiny" of constitutional law. *Espinoza*, 140 S. Ct. at 2257.

B. The no-opt-out policy is not the least restrictive means for achieving the asserted government interest.

Finally, even if the School Board could identify a compelling interest, the School Board still cannot show that its absolutism is narrowly tailored to achieve that interest. "[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 141 S. Ct. at 1881. And here, the School Board has never explained what changed between March 22, 2023 (where notice and opt outs were broadly provided, including to the Parents here) and March 23, 2023

F.2d 797, 799 (6th Cir. 1972) ("since Tennessee has made the R.O.T.C. training course optional with physical education, it would be difficult to conclude that the R.O.T.C. program was vital to the State's welfare"); *Moody v. Cronin*, 484 F. Supp. 270, 277 (C.D. Ill. 1979) ("the state could adopt a third alternative which would be to exempt plaintiffs from the physical education requirement").

[5] While the schoolteacher's instruction in *Tatel* was "not part of the school curriculum," (2023 WL 3740822, at *11), the school "allegedly adopted a de facto policy that prohibits Plaintiffs from notice and the ability to opt their children out of [the teacher's] transgender agenda based on their religious beliefs." *Tatel*, 2023 WL 3740822, at *14.

(where they are still broadly available except with respect to the Pride Storybooks). Claims of "administrative inconvenience associated with providing notice and opt out rights" won't do, given the infringement on religious exercise. *Tatel*, 2022 WL 15523185, at *19-20 (citing *Burwell v. Hobby Lobby*, 573 U.S. 682, 692 (2014)). Nor could such claims square with the School Board's Religious Diversity Guidelines, where the School Board has committed itself to providing alternative assignments and spaces for students that are opting out of classroom discussions, activities, and readings for religious reasons. Compl. Ex. A at 2-4. Nor are the Parents asking this Court to enjoin the Pride Storybooks altogether (though another judge on this Court did just that against analogous curriculum from Montgomery County, *see Citizens for a Responsible Curriculum v. Montgomery Cnty. Pub. Schs.*, No. 05-1194, 2005 WL 1075634, at *11-12 (D. Md. May 5, 2005)). Rather, the Parents here are asking only for the ability to opt their children out—a remedy that is, itself, narrowly tailored—as demonstrated by it being the approach of most jurisdictions nationwide. *See* Compl. ¶¶ 87-88; *see also Holt v. Hobbs*, 574 U.S. 352, 368 (2015) (strict scrutiny not met where Arkansas failed to show, "in the face of petitioner's evidence, why the vast majority of States and the Federal Government" permit beards, "but it cannot").

III. The Parents satisfy the remaining preliminary injunction factors.

In addition to showing a likelihood of success on the merits, a preliminary injunction is warranted when plaintiffs demonstrate that they are likely to suffer irreparable harm in the absence of a preliminary injunction, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Dmarcian, Inc.*, 60 F.4th at 138. Plaintiffs easily satisfy these remaining factors.

Irreparable harm. "[I]n the context of an alleged violation of First Amendment rights, a plaintiff's claimed irreparable harm is 'inseparably linked' to the likelihood of success on the merits of plaintiff's First Amendment claim." *WV Ass'n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009). This

is because—as both the Supreme Court and this Court have emphasized—"[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Diocese of Brooklyn*, 141 S. Ct. at 67; *see also Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 191 (4th Cir. 2013) (same); *Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011) (same).

Parents' First Amendment claims easily satisfy this low bar. As discussed above, the School Board blatantly violated the historic and traditional First Amendment right of parents to direct the upbringing of their children by denying notice to parents of family life and human sexuality materials and refusing to provide an opt-out option.

Likewise, Parents' Due Process Clause claim readily satisfies this standard. Where "there is a likely constitutional violation, the irreparable harm factor is satisfied." *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) ("It has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (quoting *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009)). This is especially true where, as here, the School Board is seeking to introduce children to concepts of gender, sex, and sexuality far earlier than the Parents believe is appropriate. Innocence lost cannot be regained.

Balance of equities and public interest. The last two preliminary injunction factors—the balance of the equities and the public interest—"merge when the Government is the opposing party." *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). In other words, "the government's interest *is* the public interest." *Ass'n of Cmty. Cancer Ctrs. v. Azar*, 509 F. Supp. 3d 482, 501 (D. Md. 2020) (quoting *Pursuing Am. Greatness v. Fed. Election Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016)). "The court must balance the significant irreparable harms identified above against the harms th[e] [government] asserts will

arise from temporarily enjoining enforcement of the challenged rule." *Id.* As the Fourth Circuit has repeatedly held, "a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional." *Leaders of a Beautiful Struggle*, 2 F.4th at 346. "If anything, the system is improved by such an injunction." *Id.* It is also "well-established that the public interest favors protecting constitutional rights." *Id.*; *see Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) ("[U]pholding constitutional rights surely serves the public interest."). Consequently, because the School Board's policy violates Parents' rights under the Free Exercise and Due Process Clauses, the balance of equities and the public interest strongly support granting a preliminary injunction. The School Board cannot plausibly claim that an opt-out policy that is both required by state law and was willingly followed until March 2023 could somehow harm the public interest if followed for the duration of this case.

CONCLUSION

For all the foregoing reasons, Plaintiffs request that their motion for preliminary injunction be granted in full.

Dated: June 12, 2023

Respectfully submitted,

/s/ William J. Haun
Eric S. Baxter (readmission pending)
William J. Haun (pro hac vice)
Michael J. O'Brien* (pro hac vice)
Brandon L. Winchel* (pro hac vice)
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave, N.W., Suite 400
Washington, DC 20006
(202) 955-0095
whaun@becketlaw.org

James C. Mehigan, (Bar # 16239)
MEHIGAN LAW GROUP PLLC
11921 Freedom Drive, Suite 550
Reston, Virginia 20190
(703) 774-7281
jmehigan@mehiganlawgroup.com

*Not a member of the DC Bar; admitted in Louisiana and California respectively. Practice limited to cases in federal court.

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2023, a copy of the *Motion for Preliminary Injunction*, *Memorandum in Support of Motion for Preliminary Injunction*, with supporting declarations, and *Proposed Order*, which were electronically filed in this case on June 12, 2023, were emailed and mailed via First-Class Mail, postage prepaid, to the following in accordance with Fed. R. Civ. P. 5:

Alan Schoenfeld
Wilmer Hale
250 Greenwich Street
New York, NY 10007
Alan.schoenfeld@wilmerhale.com
Attorney for Defendants

Dated: June 12, 2023

/s/ William J. Haun
William J. Haun

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, et al. *Plaintiffs*, v. MONIFA B. MCKNIGHT, in her official capacity as Superintendent of the Montgomery Board of Education, et al. *Defendants*.	Case No. 8:23-CV-01380-TJS **DECLARATION OF TAMER MAHMOUD and ENAS BARAKAT IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

We, Tamer Mahmoud and Enas Barakat, declare and state as follows:

1. Our names are Tamer Mahmoud and Enas Barakat. We are over the age of 18 and are capable of making this declaration pursuant to 28 U.S.C. § 1746. We have personal knowledge of all of the contents of this declaration.

2. We are a married couple and reside in Montgomery County, Maryland. We have three children enrolled in MCPS, including —a son and daughter in tenth grade and a son in second grade.

3. We are devout Muslims and believe that all humans are God's creations with God-given dignity that must be respected, regardless of the person's faith, race, ethnic origin, sex, gender identity, sexual orientation, or social status. These are truths reinforced in the Qu'ran. *Surah al-Israa* 17:70.

4. As Muslims, we believe we have a sacred duty to teach our children our faith, including religiously grounded sexual ethics. We respect the rights of other parents to make their own decisions about sexuality, gender identity, and how to introduce these topics to their children.

5. We believe that mankind has been divinely created as male and female, *Surah al-Hujurat* 49:13, and that all people are connected through a common ancestor: the first male and the first female, *Surah an-Nisaa* 4:1.

6. Based on this teaching, we believe that sex and sexuality are sacred gifts from God to be expressed through the forming of a spiritual, marital bond between spouses—one male and one female—for the shared promise of security, tranquility, compassion, contentment, and joy. *Surah al-A'raf* 7:189; *Surah ar-Rum* 30:21.

7. We believe that this sacred bond between husbands and wives entails sexually distinct but mutual duties and affections: "They are clothing for you and you are clothing for them." *Surah al-Baqarah* 2:187.

8. We believe that marriage, sex, and sexuality are meant for creating children and teaching them virtue—not only to build a loving family but also to serve as an example of righteousness for society at large. *Surah al-Furqan* 25:74.

9. Inherent in these teachings, we believe that "gender" cannot be unwoven from biological "sex"—to the extent the two are even distinct—without rejecting the dignity and direction God bestowed on humanity from the start.

10. The Qu'ran teaches that we are to respect God's wisdom in creation. Thus, as a general rule, Islam strictly prohibits medical procedures that attempt to alter the sex of a healthy person, regardless of whether such procedures are termed gender "affirming" or "confirming." For individuals born with biological ambiguities, such as disorders of sexual development, Islam permits them to seek medical care for corrective reasons. *Surah An-Nisa* 119.

11. Similarly, the Prophet Muhammad (peace be upon him) explicitly condemned imitating the appearance of the opposite gender.

12. It is our belief that humans attain their fullest God-given potential by embracing their biological sex.

13. Islam distinguishes between feelings, actions, and identity. God holds individuals accountable for their words and actions, not for their involuntary thoughts and feelings. We believe that all individuals have the potential to be forgive by God for the mistakes they make.

14. We have a sacred obligation to teach these principles to our children. *Surah At-Tahrim* 66:6; *Sahih al-Bukhari* 7138; *Al-Adab Al-Mufrad* 212. This includes encouraging them to accept Islamic teachings on the differences between males and females, to embrace one's biological sex, and to practice self-restraint by expressing sexual desires in ways consistent with the Islamic faith.

15. We believe that practicing self-restraint in devotion to God is considered heroic. Its spiritual reward increases proportionally with the level of struggle involved. Our ultimate purpose is to prioritize devotion to God over our desires and not sacrifice our faith.

16. We believe there are detrimental spiritual consequences from letting authoritative figures such as schoolteachers teach our children principles concerning sexual and gender ethics that contravene well-established Islamic teachings.

17. Islam specifically prohibits prying into others' private lives and discourages public disclosure of sexual behavior. *Quran, al-Ḥujurat: 12* and *al-Noor: 19*. It would violate our religious beliefs and the religious beliefs of our children if they were asked to discuss romantic relationships or sexuality with schoolteachers or classmates.

18. Intentionally exposing our young, impressionable, elementary-aged son to activities and curriculum on sex, sexuality, and gender that undermine Islamic teaching on these subjects would be immoral and would conflict with our religious duty to raise our children in accordance with our faith. *Surah Al-An'am* 6:68-69.

19. The storybooks at issue in this lawsuit and others like them directly undermine our efforts to raise our elementary-aged child in accordance with our faith, because they encourage young children to question their sexuality and gender, to identify with

labels that categorize them by their sexuality, to focus prematurely on romantic relationships, to disregard differences between men and women, to accept gender transitioning, and to dismiss parental and religious guidance on these issues.

20. In short, forcing our son to participate in reading these books and engaging in related discussions would confuse his religious upbringing.

21. A summary of our Islamic beliefs on these issues was recently drafted by Muslim scholars and preachers representing a diverse range of theological schools. A copy of this statement, entitled *Navigating Differences – Clarifying Sexual & Gender Ethics in Islam*, is attached as Exhibit 1.

22. This document accurately captures our religious beliefs. As stated in the document, we believe that the principles it espouses are immutable and not open to revision by any person or entity, including the highest religious authorities. *Quran, al-An'ām: 115* ("And the word of your Lord has been fulfilled in truth and justice. None can alter His words, and He is the All-Hearing, the All-Knowing").

23. In keeping with these religious beliefs, we asked the acting principal of our son's elementary school for the option to opt him out of the class reading of *Prince and Knight* and to assign him an alternative activity.

24. The acting principal offered us an opportunity to read the book for ourselves.

25. The acting principal then followed up by stating that MCPS is not supporting parents opting out of the Pride Storybooks and that teachers are not required to provide alternative assignments.

26. We responded that our decision to opt out had not changed after reading the book, and we again asked for our son to receive an alternate assignment.

27. The acting principal finally responded (on March 20) that he would allow our son to sit outside the classroom while the book was discussed.

28. On March 23, the School Board announced that the storybooks at issue in this lawsuit would be mandatory for students going forward and that parents would no longer receive advance notice or opportunity to opt their children out.

29. As members of a religious minority that frequently experiences bigotry and exclusion, we reject the notion that moral disagreement amounts to intolerance, bigotry, or incitement of violence. We affirm our right to express our beliefs and direct the upbringing of our children on such sensitive and religiously significant issues while simultaneously recognizing our civic and religious obligations to exist peacefully with those whose beliefs differ from ours.

We each declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of June, 2023.

Tamer Mahmoud

Enas Barakat

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, et al. *Plaintiffs*, v. MONIFA B. MCKNIGHT, in her official capacity as Superintendent of the Montgomery Board of Education, et al. *Defendants*.	Case No. 8:23-CV-01380-TJS **DECLARATION OF JEFF ROMAN and SVITLANA ROMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

We, Jeff Roman and Svitlana Roman, declare and state as follows:

1. Our names are Jeff Roman and Svitlana Roman. We are over the age of 18 and are capable of making this declaration pursuant to 28 U.S.C. § 1746. We have personal knowledge of all of the contents of this declaration.

2. We reside in Montgomery County, Maryland, and have one son enrolled in MCPS in second grade.

3. We adhere to and follow the Roman Catholic (Jeff) and Ukrainian Orthodox (Svitlana) faiths. My (Svitlana's) beliefs align with the teachings of the Roman Catholic Church on marriage, family, sex, sexuality, and gender.

4. Our Christian faith teaches that all humans are children of God who are created in God's image and likeness and therefore have inherent dignity. Genesis 1:26-27; Catechism of the Catholic Church, § 1700 ("The dignity of the human person is rooted in his creation in the image and likeness of God.").

5. We believe that God commands us to treat others as bearers of this intrinsic nature. 1 Corinthians 3:16. We firmly reject that any student should be bullied or harassed for any reason, and we teach our son to treat all others with kindness and respect. 1 John 4:7-12, 16; Matthew 22:37-39.

6. Based on this teaching, we believe that all humans are created as male or female—each equal in dignity—and that a person's biological sex is not arbitrary, but rather a gift bestowed by God that entails differences in men's and women's bodies and how they relate to each other and to the world. *See* Genesis 5:2; Catechism of the Catholic Church, § 2393 ("By creating the human being man and woman, God gives personal dignity equally to the one and the other. Each of them, man and woman, should acknowledge and accept his sexual identity.").

7. We believe that because human beings are a unity of body and soul, our human bodies and sexuality, male and female, are an integral part of God's design and essential to being made in God's image and likeness. *See* 1 Thessalonians 5:23; Catechism of the Catholic Church, §§ 362-68. The human body, therefore, has great dignity, and human sexuality is a gift. *See id.*, §§ 369-73. "Learning to accept our body, to care for it and to respect its fullest meaning, is an essential element of any genuine human ecology." *Laudato si'*, 155.

8. Accordingly, we believe that the gift of human sexuality is precious with its power to create life and love and that it calls for an authentic and healthy integration in the person—the virtue of chastity. *See* Catechism of the Catholic Church, § 2337 ("Chastity means the successful integration of sexuality within the person and thus the inner unity of man in his bodily and spiritual being."). We believe that chastity is necessary to the right living of one's sexuality and requires habits of "self-mastery" to govern and channel one's sexual emotions rather than being "dominated by them." *Id.*, § 2339.

9. For this reason, we believe intimate sexuality is properly expressed only in marriage between a man and a woman for creating life and strengthening the marital union. *Id.*, § 2360-63; Genesis 2:24; Mark 10:6-9.

10. Based on these teachings, we believe that a person's biological sex is both unchanging and integral to that person's being, and that gender and biological sex

are intertwined and inseparable. *Amoris Laetitia*, 56 ("[B]iological sex and the socio-cultural role of sex (gender) can be distinguished but not separated."). And we believe that encouraging children to unwind them will teach them that their bodies are "an object, a mere tool at the disposal of the soul, one that each person may dispose of according to his or her own will," rather than a "constitutive part of the human subject, a gift to be received, respected, and cared for as something intrinsic to the person." Committee on Doctrine United States Conference of Catholic Bishops, *Doctrinal Note on the Moral Limits to Technological Manipulation of the Human Body* 4 (2023), https://perma.cc/T6Y6-NXAB. Thus, we believe that, "[b]eyond the understandable difficulties which individuals may experience, the young need to be helped to accept their own body as it was created, for thinking that we enjoy absolute power over our own bodies turns, often subtly, into thinking that we enjoy absolute power over creation." *Amoris Laetitia*, 285.

11. For the same reasons, we believe that humans attain their fullest God-given potential by embracing their biological sex. Catechism of the Catholic Church, § 2333 ("Everyone, man and woman, should acknowledge and accept his sexual identity. Physical, moral, and spiritual difference and complementarity are oriented toward the goods of marriage and the flourishing of family life."); *Laudato si'*, 155 ("The acceptance of our bodies as God's gift is vital for welcoming and accepting the entire world as a gift from the Father and our common home, whereas thinking that we enjoy absolute power over our own bodies turns, often subtly, into thinking that we enjoy absolute power over creation. Learning to accept our body, to care for it and to respect its fullest meaning, is an essential element of any genuine human ecology.").

12. We have a sacred obligation to teach these principles to our son and to encourage him at appropriate times to embrace these principles and our religious way of life. *See* Catechism of the Catholic Church, §§ 2221-26. In particular, we have a duty to provide our son an "education in the virtues," which "requires an

apprenticeship in self-denial, sound judgment, and self-mastery—the preconditions of all true freedom." *Id.*, § 2223. This, in turn, imposes a corresponding duty to "teach [our] children to avoid the compromising and degrading influences which threaten human societies." *Id.*, § 2224.

13. We believe that young children should enjoy a time of innocence, when it is not necessary for them to have detailed understanding of issues surrounding human sexuality, especially where that information is "dissociated from moral principles." *Familiaris Consortio*, 37; *see also* Proverbs 22:6; Colossians 3:21; Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality: Guidelines for Education within the Family*, 78 (teaching that the "period of tranquility and serenity" during "'the years of innocence' from about five years of age until puberty … must never be disturbed by unnecessary information about sex"); *id.*, 83 ("In some societies today, there are planned and determined attempts to impose premature sex information on children. But, at this stage of development, children are still not capable of fully understanding the value of the affective dimension of sexuality.").

14. For these reasons, we believe that much of what is taught via the Pride Storybooks is false religiously and scientifically. We disagree that a child's sex can be separated from his or her biology and that "gender" is a separate form of identity that is "manipula[ble] at will." *Laudato si'*, 155 ("[V]aluing one's own body in its femininity or masculinity is necessary if I am going to be able to recognize myself in an encounter with someone who is different. In this way we can joyfully accept the specific gifts of another man or woman, the work of God the Creator, and find mutual enrichment. It is not a healthy attitude which would seek to cancel out sexual difference because it no longer knows how to confront it."). And we disagree that elementary schools should encourage young children to focus prematurely on romantic emotions and relationships. *See* Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality: Guidelines for Education within the Family*, 78, 83.

15. We are guided by Pope Francis's admonition: "Today children – children! – are taught in school that everyone can choose his or her sex." Address to the Polish Bishops during the Apostolic Journey to Poland (July 27, 2016). Our Christian faith rejects the "ideology of gender" that "denies the difference and reciprocity in nature of a man and a woman" and "leads to educational programs and legislative enactments that promote a personal identity and emotional intimacy radically separated from the biological difference between male and female." *Amoris Laetitia*, 56. Rather, we believe that "[s]ex education should help young people to accept their own bodies and to avoid the pretension to cancel out sexual difference because one no longer knows how to deal with it." *Id.*, 285.

16. In keeping with these religious beliefs, we corresponded with our son's elementary school principal, seeking both an opt-out for our son and guarantees that parents would continue to receive notice about the Pride Storybooks and that teaching them would be optional for teachers.

17. On February 1, 2023, the principal responded "it is your right to ask that [your son] not be present when this book is read to the class and if any other parents reach out I will meet with them to have the same discussion we engaged in and they can make a decision for their family."

18. Nevertheless, on March 23, the School Board announced that the Pride Storybooks were being read to students and that parents would no longer receive advance notice or opportunity to opt their children out. *Id.*

19. Issues of sexuality and gender identity are complex and sensitive. Our son is not old enough to be thinking about many of the issues presented in the books MCPS is requiring him to read and would find them confusing.

20. Our son loves his teachers and implicitly trusts them. Having them teach principles about sexuality or gender identity that conflict with our religious beliefs significantly interferes with our ability to form his religious faith and religious

outlook on life and is spiritually and emotionally harmful to his well-being. *See* Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality: Guidelines for Education within the Family*, 83 ("Parents should politely but firmly exclude any attempts to violate children's innocence" by "impos[ing] premature sex information" "because such attempts compromise the spiritual, moral and emotional development of growing persons who have a right to their innocence.").

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of June, 2023.

Jeff Roman

Svitlana Roman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, et al. *Plaintiffs*, v. MONIFA B. MCKNIGHT, in her official capacity as Superintendent of the Montgomery Board of Education, et al. *Defendants*.	Case No. 8:23-CV-01380-TJS **DECLARATION OF CHRIS PERSAK and MELISSA PERSAK IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

We, Chris Persak and Melissa Persak, declare and state as follows:

1. Our names are Chris Persak and Melissa Persak. We are over the age of 18 and are capable of making this declaration pursuant to 28 U.S.C. § 1746. We have personal knowledge of all of the contents of this declaration.

2. We reside in Montgomery County, Maryland. We have two daughters in elementary school at MCPS.

3. We are Catholics by faith and believe that questions about sex and sexuality should be informed by the teachings of the Catholic Church. Our understanding of what is best for our children is also informed by our faith.

4. To that end, we believe matters regarding family life and human sexuality should be taught in way that is consistent with Catholic teaching.

5. In accordance with Catholic teaching on human sexuality, we believe that all humans are created as male or female, and that a person's biological sex is a gift bestowed by God that is both unchanging and integral to that person's being. *See* Genesis 5:2.

6. We believe that following God's commandments for marriage and family is not only necessary for raising the next generation of children, *see* Genesis 1:28, but also leads to human flourishing and happiness. *See* John 8:51, 14:21, 15:10.

7. As parents, we have a God-given responsibility to raise our children in accordance with the tenets of our faith. *See* Proverbs 22:6; Deuteronomy 6:6-7. Those tenets include the Catholic Church's teachings on the immutable sexual differences between males and females, the biblical way to properly express romantic and sexual desires, and the role of parents to love one another unconditionally and sacrificially within the confines of biblical marriage to create and sustain a family.

8. We believe that all persons should be treated with respect and dignity regardless of religion, race, sex, ethnicity, gender identity, sexual orientation, or other characteristics, as all people are made in God's image. *See* Genesis 1:26-27.

9. We respect the rights of other parents to make their own decisions about sexuality, gender identity, and how to introduce these topics to their children.

10. We want our daughters, at an appropriate age, to understand and appreciate the unique gifts and challenges of every individual.

11. We believe that discussing issues of sexuality and gender with young children requires sensitivity from parents to determine how and when to introduce these topics to children.

12. We believe that exposing our elementary-aged daughters to viewpoints on sex, sexuality, and gender that contradict Catholic teaching on these subjects is inappropriate and conflicts with our religious duty to raise our children in accordance with Catholic teaching.

13. We believe that children—particularly those in elementary school—are highly impressionable to ideological instruction presented in children's books or by schoolteachers.

14. We believe the risk is even more serious when ideological instruction is imposed to the exclusion of other viewpoints.

15. We believe that the Pride Storybooks go far beyond teaching kindness and respect and are being used to impose an ideological view of family life and sexuality that characterizes any divergent beliefs as "hurtful."

16. The Pride Storybooks undermine our efforts to raise our children in accordance with our faith as the books encourage young, elementary-aged children to question their sexuality and gender, ignore important differences between men and women, approve gender transitioning, focus prematurely on romantic relationships and sexuality, and dismiss parental and religious guidance on these issues.

17. Earlier this year we asked our school principle to have our daughters excused from class when any of the storybooks at issue in this lawsuit were being read.

18. The principal agreed that they would be excused from the classroom when any of the storybooks were read that semester.

19. The principal made it clear, however, that no future notifications or opt-outs would be provided.

20. The principal told us that opt-outs were allowed only to accommodate parents' "fears" and that she disagreed with it.

We each declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of June, 2023.

Chris Persak

Melissa Persak

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, et al., *Plaintiffs*, v. MONIFA B. MCKNIGHT, in her official capacity as Superintendent of the Montgomery Board of Education, et al., *Defendants*.	Case No. 8:23-CV-01380-TJS **DECLARATION OF ERIC BAXTER IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Eric Baxter, declare as follows:

1. I am Senior Counsel at the Becket Fund for Religious Liberty. I represent Plaintiffs in this matter.

2. On June 1, 2023, I received link a copy of the June 2023 edition of the Gator Gazette, a publication of Greenwood Elementary School, which is part of the Montgomery County, Maryland public school system. A copy of the June 2023 newsletter can be found here: https://perma.cc/D7S5-582P.

3. The first article in the newsletter is entitled "June is Pride Month!" The article states that "the Greenwood community … will be participating in 'Reading the Rainbow' month."

4. The article further states that, "[f]or each day in June, classrooms will read an inclusive, LGBTQ+ friendly book" followed by a "community circle discussion."

5. The article includes the following link to a Google document identifying the story books to be read as part of "Reading the Rainbow": https://shorturl.at/xzES1.

6. Attached as **Exhibit 1** is a true and accurate copy of one of the books on the list entitled *What Are Your Words?*

7. The book is also recommended by the School Board via its website here: https://perma.cc/Y44H-TWBF (Resources for Students Staff and Parents/Affirming LGBTQ+ Young Adults/Elementary Specific).

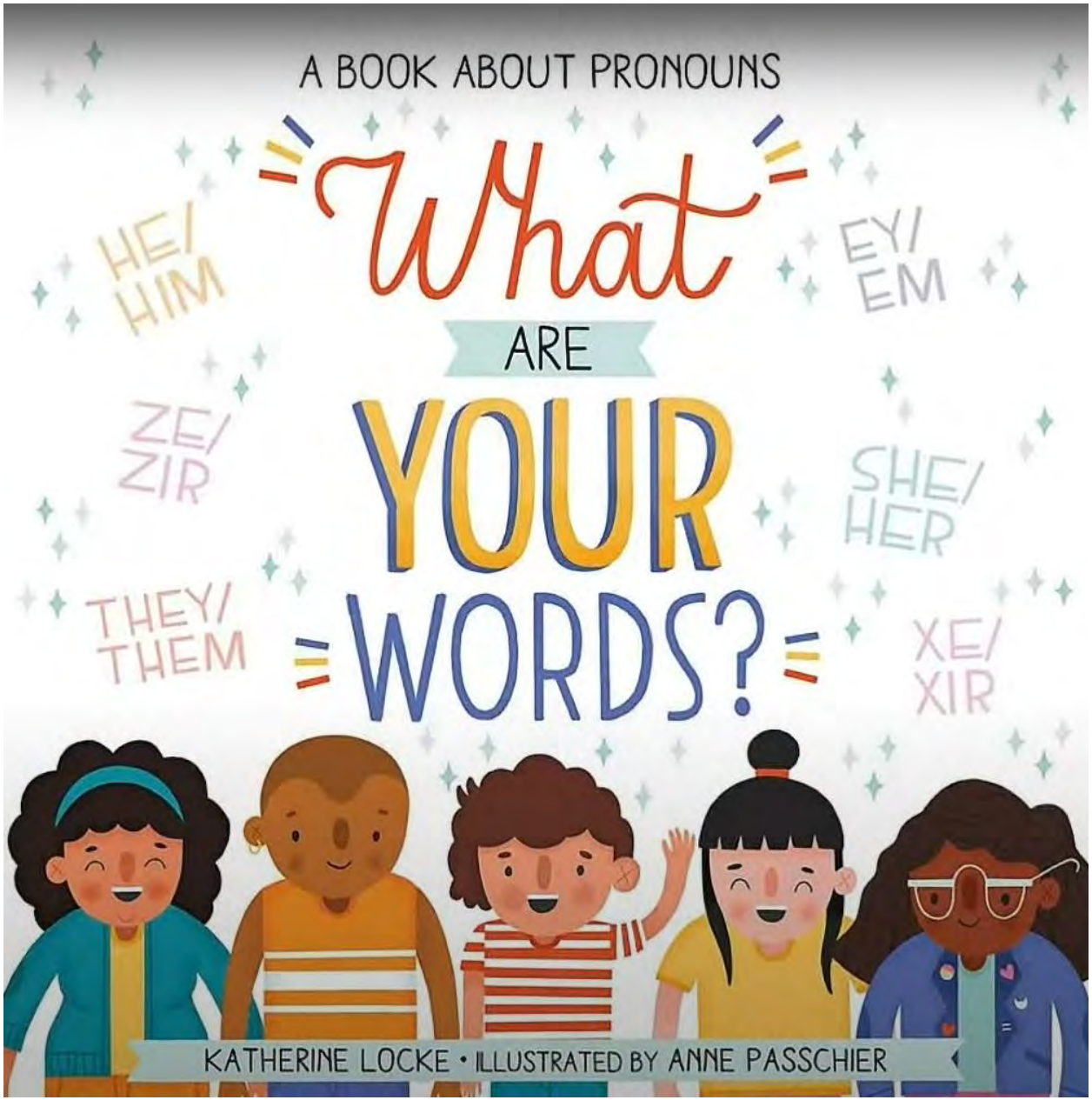
8. Attached as **Exhibit 2** is a true and accurate copy of another book recommended on Defendants' website entitled *Jacob's Room to Choose*.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 12th day of June, 2023.

Eric S. Baxter

Exhibit 1


A BOOK ABOUT PRONOUNS
What
ARE
YOUR
WORDS?
HE/ HIM
EY/ EM
ZE/ ZIR
SHE/ HER
THEY/ THEM
XE/ XIR
KATHERINE LOCKE • ILLUSTRATED BY ANNE PASSCHIER

My uncle Lior is coming to visit today! I can't wait to show them around my neighborhood. And I can't wait for all my neighbors to meet them!

Lior is my favorite uncle.

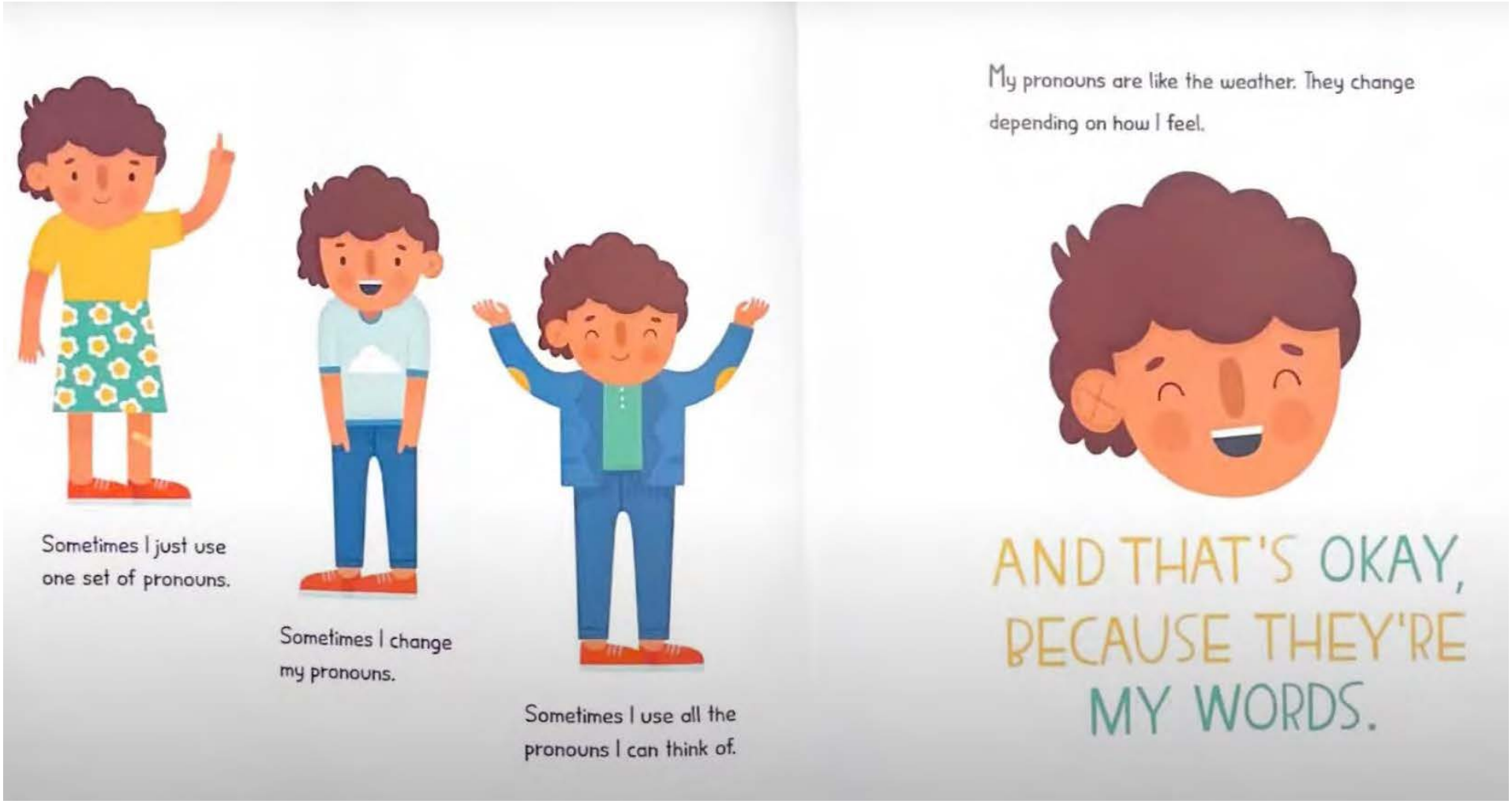
They have many beautiful, colorful hats.

The garden at their house is magical.

They are a biologist and look at teeny-tiny living things under a microscope.

I learn a lot from Uncle Lior, like that people can be described by more than what they look like or what they do. In fact, there are lots of words to say who people are and how they feel. Some of those words are pronouns. Pronouns are words that can take the place of your name, like *I*, *me*, *you*, *she*, *he*, or *they*.

Uncle Lior knows how important *my* words are to me because I am always growing and changing, and some of my words change with me. So every time they visit they ask, "What are your words, Ari?"
Sometimes I know my words right away.
HAPPY! CREATIVE! FUNNY! HE/HIM
Sometimes I have to think about my words.
THOUGHTFUL! ATHLETIC! SILLY! SHE/HER
Sometimes I have to try my words out.
SLEEPY! CALM! HONEST! EY/EM


Sometimes I just use one set of pronouns.
Sometimes I change my pronouns.
Sometimes I use all the pronouns I can think of.
My pronouns are like the weather. They change depending on how I feel.
AND THAT'S OKAY, BECAUSE THEY'RE MY WORDS.

This time when Uncle Lior asks about my words, I have a problem.

"I don't know what words to use!" I cry. I can't decide which pronouns fit today.

"That's okay," Uncle Lior tells me, their smile warm. "You have all day to think about it!"

But I want to know my words *now*.
He and *him* feel squirmy and wiggly to me.
Those aren't right.

CONFIDENT! TALL! LOUD! SHE/HER
I'll have to think about my words later because it's time for Uncle Lior, my sister, Rachel, and me to head to our neighborhood's big summer bash. Summer is my favorite season, and barbeques are my favorite type of party!
Rachel dances and sings in the street, twirling around and making me laugh. Rachel has her own words. Her pronouns don't change, but sometimes she's quiet instead of loud.
Today she is loud!

Mrs. Bolton walks behind us, laughing at her friend Charlie's joke. Mrs. Bolton's cat chases Charlie's little brown dog up and down the sidewalk. Mrs. Bolton and Charlie each have their own words too.

Our neighbor Anna tinkers with her car in the driveway. When I first met Anna, she had a different name and used different pronouns. But now she goes by Anna and uses *she* and *her* every day. She's my favorite neighbor.

"I'll be there soon!" she calls.

ARTISTIC! SWEET! KIND! ZE/ZIR
PLAYFUL! COLLECTOR! GARDENER! THEY/THEM
We see Robin Day and zir kids drawing with chalk.
When I introduce Robin to Uncle Lior, I use zir words.
Uncle Lior says hello and tells zir their words too.
"We'll see you at the bash!" they say.

Ava and George from the ivy-covered house are on their way to the summer bash.

"Nice to meet you, Lior!" Ava says.

"They are *Uncle* Lior," I explain proudly. Everyone laughs. Rachel laughs the loudest and turns to me.

"What are your words today, Ari?" she asks.

I think about my words.

She and *her* feel sharp and crackly to me.

Those won't work today.

WHY CAN'T I FIGURE OUT WHICH WORDS TO USE?

I WANT TO BE ABLE TO SHARE THEM WITH EVERYONE.

When we arrive at the bash, we see our new neighbor.

"Hello! My name is Ari. What are your words?" I ask.

"Hi, Ari! I'm Avery, and I use *they* and *them*," they reply.

"Like my uncle Lior!" I say. "What are your other words?"

Avery thinks. "My other words are *teacher*, *friendly*, and *loyal*! What are *your* words?" Avery asks.

I scrunch my face. I thought I would know by now.
"I'm not sure what fits me today," I tell them.

I try out some other words.
Ey and *eir* feel heavy and bumpy to me.
Those don't fit either!

"You'll figure it out," Avery tells me. "Sometimes it just takes patience."

But I don't want to be patient. It shouldn't take this long to find my words. Everyone else seems to know theirs!

I go to Uncle Lior and tug on their sleeve. "I still don't know my words."

"That's okay," Uncle Lior says reassuringly. "They're your words. They didn't disappear. If you don't know them today, you'll know them tomorrow."

Soon, it's time for fireworks. I wait for the show to start,
just like I've been waiting all day to figure out my words.
Waiting makes me buzzy like a bee and makes my skin feel itchy.
When the first explosions finally burst in the sky, everyone gasps.
Suddenly I feel my words fall into place.
Sometimes I know my words right away.
Sometimes I have to think about my words.
Sometimes I have to try my words out.
But sometimes I have to wait for my words to find me.

I squeeze Uncle Lior's hand.

"Uncle Lior!" I whisper excitedly.

"What?" they ask.

There's another boom of fireworks, and colors race through the sky.

I point. "Those are my words! I'm like fireworks!

IMPATIENT!
EXCITED!
COLORFUL!

And *they* and *them* feel right today."

"Fireworks!" Uncle Lior says with a laugh. They squeeze my hand back. "That's definitely you, Ari."

My words finally found me!
They and *them* feel warm and snug to me.
These pronouns are perfect.

CONFIDENT
CURIOUS
XE/XIR
GENEROUS
When the fireworks are over, we walk home,
all our words floating with us.
And our pronouns too.
THEY/THEM
SISTER
EY/EM
KIND
ZE/ZIR
GARDENER
TEACHER
MECHANIC
NEIGHBOR
HE/HIM
RESPONSIBLE
SHE/HER
HAPPY

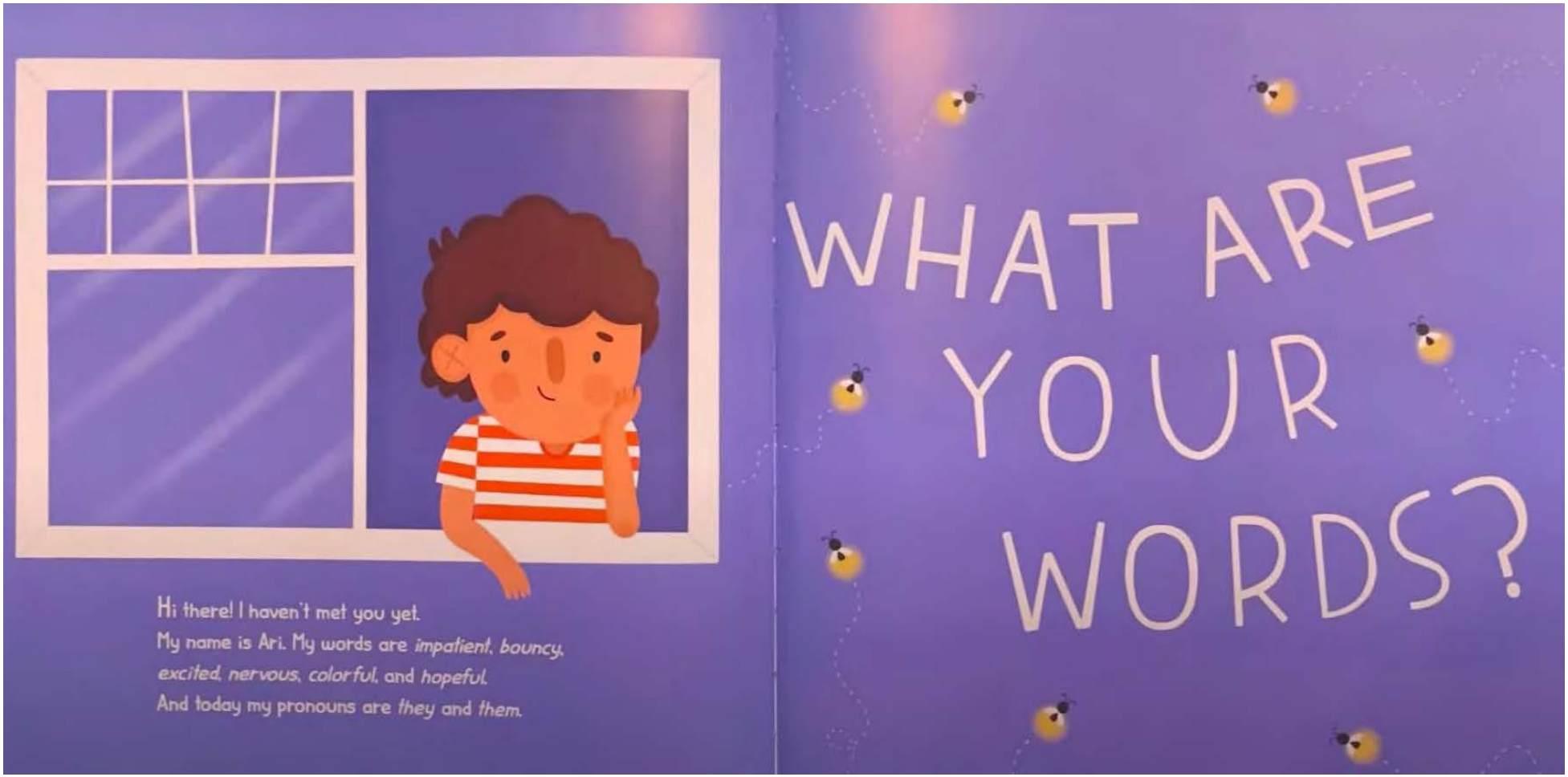
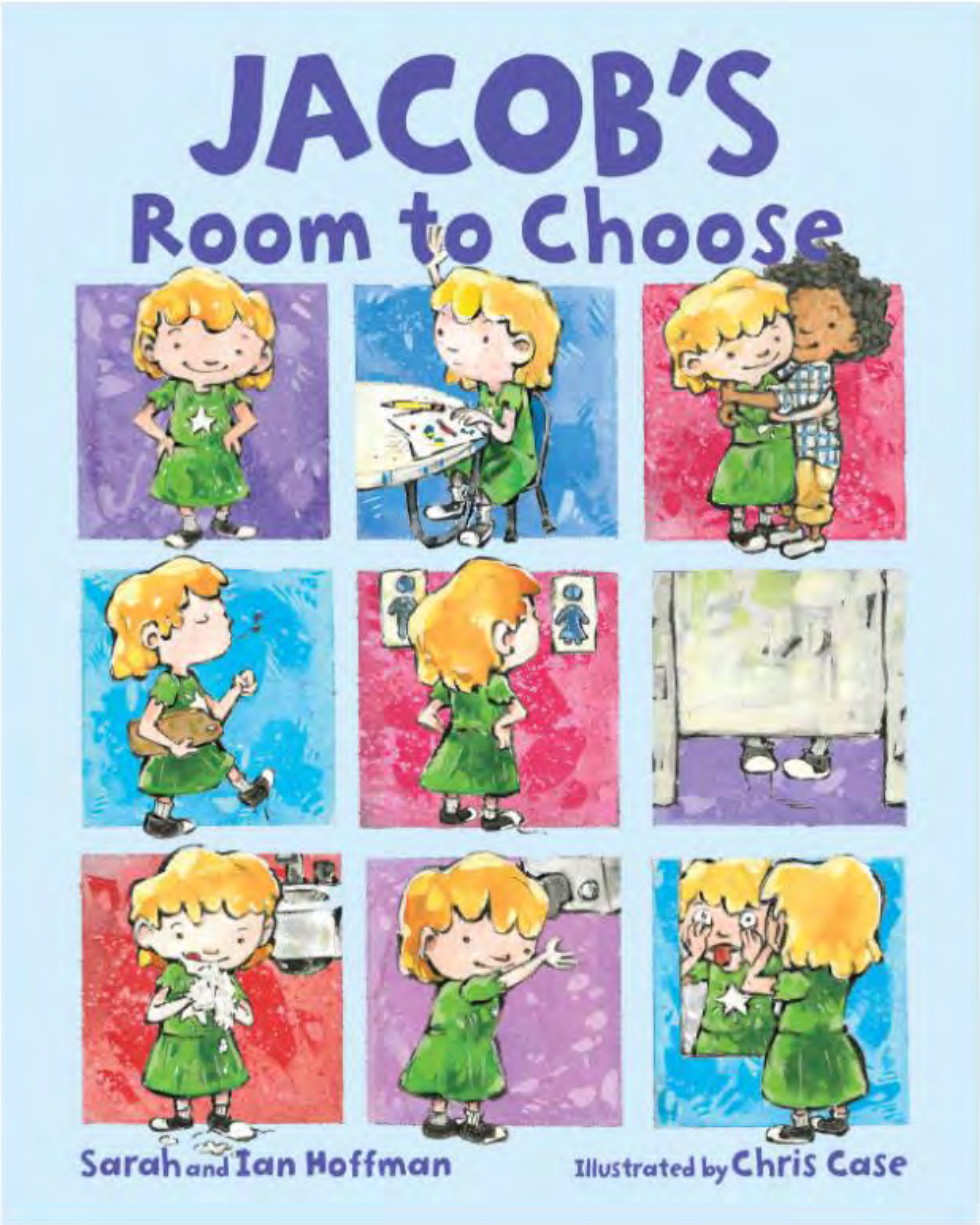

Hi there! I haven't met you yet.
My name is Ari. My words are *impatient*, *bouncy*, *excited*, *nervous*, *colorful*, and *hopeful*.
And today my pronouns are *they* and *them*.
WHAT ARE YOUR WORDS?

Exhibit 2



JACOB'S
Room to Choose

Sarah and Ian Hoffman
Illustrated by Chris Case

Magination Press • Washington, DC
American Psychological Association

"Okay, kids," said Ms. Reeves. "We've got 10 minutes left.
Does anyone need to use the bathroom before we head back to class?"

Jacob and Sophie raised their hands.

They stopped outside the bathroom doors.
"Do you think it's OK?" asked Sophie.
"I don't know," said Jacob.
Sophie walked through one door.
Jacob took a deep breath and walked through the other.

Two boys were at the sinks.
They stared at Jacob standing in the doorway.
Jacob knew what that look meant.
He turned and ran out.

Jacob stood in the hall, his heart pounding.
Just then Sophie ran out of her bathroom.
It was hard for Jacob to talk.
"Did you get chased out?"
Sophie nodded.

Back at the library, Sophie shifted from foot to foot.
"I need to use the bathroom," she said.
Ms. Reeves was confused.
"Didn't you and Jacob just go to the bathroom?"
Sophie squeezed her eyes shut against the tears.
"They wouldn't let her," said Jacob.
"They said she had to use the boys' room."

Ms. Reeves looked inside the bathroom. It was empty.
"Anybody in there?"
There was no response.
She waited in the hall while Sophie and Jacob went in.

"Better?" asked Ms. Reeves.
"Yes," said Sophie.
"Has this happened before?"
Sophie and Jacob glanced at each other.

"Usually I don't go at school," said Jacob.
Sophie started to cry again. "It's not fair," said Sophie.
"No," agreed Ms. Reeves. She gave them both a hug. "It isn't."

Back in the classroom,
Ms. Reeves drew on the board.
"What do these pictures mean?"
"Boys and girls!" the kids shouted happily.
"OK," said Ms. Reeves,
"but how do you know?"
"The girl has long hair," said Emily,
"and she's wearing a dress."
"The boy is wearing shorts," said Noah.
"And a t-shirt."

"Now I want each of you to stand near the picture that looks like you," said Ms. Reeves.
Jacob and Sophie looked at Ms. Reeves. Ms. Reeves winked back.
"Hold on," called Ms. Reeves. "Noah, you have long hair. That sign shows short hair. And Emily, you're wearing pants, but the person on that sign is wearing a dress."

Ms. Reeves scratched her head. "Why don't you switch places?"
Noah shrugged and walked to where Ms. Reeves pointed.

Emily looked at the group of boys.
"I don't want to stand there," she said.
"Why not?" asked Ms. Reeves.
"Because I'm a girl."

Ms. Reeves studied the kids again.
"You know what? A lot of you don't look like the signs. Let's try this: look at the person next to you and help them stand next to people who look like them."
Arguing and giggling, the kids shuffled and reshuffled until everyone found a place to stand.

Ms. Reeves pointed at the board.
"Are these pictures of what boys and girls really look like?"
"Yes," said Emily.
"No," said Sophie.
"Sometimes," said Jacob.
"I wonder," said Ms. Reeves, "if there is another way?
Everyone has to use the bathroom, right?"

"Maybe the signs should be pictures of toilets!" shouted Noah.
Everyone giggled.

"We should make our own bathroom signs," said Sophie.

"And rules," said Jacob. "Like, if you're in the bathroom and you see a kid who doesn't look like you — leave them alone."

"Or 'I have to pee, so let me be!'" said Noah.
The giggling turned to cheers.
"Great ideas!" said Ms. Reeves. "Let's get to work!"

The afternoon was filled
with markers and laughter.
I have to pee
so let me be!

New bathroom signs went up.
The bunny signs were funny.
Leave kids alone in e bathroom!
EVERYBODY USES THE THROOM!
Use the bathroom that is comfy 4
Bee Respectful
Bee Kind
EVERYONE
Bathroom with a urinal
Bathroom without a urinal
I have to pee
so let me be!
BATHROOMS ARE FOR EVERY BUNNY!

Jacob and Sophie stopped outside the bathroom doors.

"Do you think it's OK?" asked Jacob.
Sophie smiled. "I think it will be," she said.
And in they went.

Authors' Note

When our son Sam was in kindergarten, he had waist-length blond hair and a gentle smile. His favorite outfit was a pink dress. Everyone who met him assumed he was a girl, and he didn't mind.

Sam's interests were a mix of traditional "girl" things like ballet, make-believe, and art, mixed with traditional "boy" things like knights, castles, and dinosaurs. Clinically, children like Sam are called gender-nonconforming; we liked to call him a pink boy—the male equivalent of a tomboy.

We didn't think there was anything wrong with being a pink boy, but we knew Sam was different—and different isn't always easy. In order to support Sam, we worked hard to educate his teachers about gender-nonconforming children. In turn, his teachers taught lessons about gender, difference, and acceptance. We were surprised how quickly and comfortably Sam's classmates took to looking at Sam—and the world—in a whole new way.

But the bathrooms at school were used by kids who weren't necessarily Sam's classmates. Older kids, bigger kids, kids who hadn't been taught these lessons looked at Sam—and didn't like what they saw. He was verbally and physically attacked by children who had not been taught to be kind in the face of unexpected difference.

It wasn't just school bathrooms that were a problem. It was restaurant bathrooms, and playground bathrooms, and airport bathrooms. It was the zoo bathroom where a little boy with a crew cut screamed, "Get out of here!" and tried to punch Sam—while Sam was using the urinal. There was no public bathroom our son could use without an adult along to guarantee his safety.

It doesn't have to be that way. Your home probably doesn't have a "men's bathroom" and a "women's bathroom." It just has a bathroom the whole family uses. As gender-nonconforming young people enter the mainstream, schools and institutions are starting to adjust to their presence and make changes. After all, everyone needs to use the bathroom. It's not a choice; it's a necessity. Wouldn't it be great if everybody could do it in safety?

—*Sarah and Ian Hoffman*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, *et al.*,	)	
Plaintiffs,	)	Case No. 8:23-cv-01380-DLB
v.	)	
MONIFA B. MCKNIGHT, *in her official capacity as Superintendent of the Montgomery County Board of Education, et al.*,	)	
Defendants.	)	

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Bruce M. Berman (*pro hac vice*)
bruce.berman@wilmerhale.com
Jeremy W. Brinster (*pro hac vice* pending)
jeremy.brinster@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, DC 20037

Alan E. Schoenfeld (*pro hac vice*)
alan.schoenfeld@wilmerhale.com
Thomas K. Bredar (MD No. 21635)
thomas.bredar@wilmerhale.com
Emily Barnet (*pro hac vice* pending)
emily.barnet@wilmerhale.com
Cassandra A. Mitchell (*pro hac vice* pending)
cassie.mitchell@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich St.
New York, NY 10007

Counsel for Defendants

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INTRODUCTION

All children deserve to see themselves and their families represented at school. When instructional materials reflect the diversity of a school community, children learn better and are better equipped for personal, academic, and professional success. This principle guides Montgomery County Public Schools (MCPS) as it oversees the development and implementation of a curriculum serving students of all backgrounds. And it animated the careful process through which MCPS decided to incorporate books featuring characters who are lesbian, gay, bisexual, transgender, or queer (LGBTQ) into its language arts curriculum.

Plaintiffs in this case—parents of children who attend public schools in Montgomery County—do not want their children to read, listen to, or discuss these books because they believe the books will expose their children to sensitive topics in ways that do not align with their religious beliefs. But neither the Free Exercise Clause nor the Due Process Clause gives parents a veto over a public school's curriculum. Nor does MCPS's refusal to permit opt outs for any student, for any reason, suggest that it has impermissibly singled out Plaintiffs based on their religious faith. Plaintiffs have failed to prove that they are likely to succeed on the merits of their claims, that they have suffered an irreparable injury, or that the public interest or balance of the equities favors injunctive relief. A preliminary injunction should therefore be denied.

BACKGROUND

A. Montgomery County Public Schools Serve A Diverse Community

Montgomery County Public Schools is Maryland's largest school district, serving a diverse community north and west of Washington, D.C. *See* Decl. of Niki T. Hazel in Support of Defs.' Opp. to Plfs.' Mot. for Prelim. Inj. ¶ 1 ("Decl."). The school serves a population of over 160,000 students of many different backgrounds. *Id.* ¶¶ 1, 19. The Montgomery County Board of Education, MCPS's official policy-making body, oversees the process for selecting

instructional materials. Shebra Evans, Lynne Harris, Grace Rivera-Oven, Karla Silvestre, Rebecca Smondrowski, Brenda Wolff, and Julie Yang are members of the Board of Education and Monifa McKnight is the Superintendent of Schools.[1]

Central to MCPS's mission are curricula that represent the wide range of families calling Montgomery County home. By ensuring that curricula reflect the community to which its students belong, MCPS helps to "foster[] a positive learning environment that embraces all unique and individual differences" and to "ensure compliance with all federal, state, and local nondiscrimination laws." Ex. 1 at 1-2 (Policy ACA). Among these laws is Maryland's "Equity Regulation," which was adopted by the Maryland State Board of Education in 2019 and requires every school district to ensure "educational equity" to "maximize [students'] academic success and social/emotional well-being." COMAR § 13A.01.06.01(A), (B). "[E]ducational equity" is defined as "view[ing] each student's individual characteristics as valuable," including their "[e]thnicity," "[f]amily structure," "[g]ender identity and expression," "[r]ace," "[r]eligion," and "[s]exual orientation." *Id.* § 13A.01.06.03(B)(2) & (5).

As part of its commitment to serving its diverse community, MCPS works to accommodate families of all religious backgrounds. MCPS authorizes absences for religious holidays, ensures that students can make up missed assignments, and provides that students cannot be denied a perfect attendance award due to such absences. Decl. ¶ 20. MCPS no longer schedules classes on Eid al-Fitr and Eid al-Adha—two Islamic holidays significant to many MCPS students—and recognizes dozens of "days of commemoration" on which principals are advised not to schedule tests or other major events. *Id.* And MCPS has adopted Guidelines for

[1] This brief refers to the Board, its members, and the school system as "MCPS."

Respecting Religious Diversity (the "Guidelines") that provide a reference for schools regarding applicable MCPS policies, regulations, and state and federal laws. Compl. Ex. A. at 1.[2]

B. MCPS Is Guided By Principles Of Equity And Inclusion In The Selection Of Instructional Materials

MCPS recognizes that to meet its curriculum goals, it must take "proactive steps to identify and redress implicit biases and structural and institutional barriers that too often have resulted in identifiable groups of students and staff being unjustifiably or disproportionately excluded from or underrepresented in key educational program areas[.]" Ex. 1 at 1-2. MCPS therefore strives to "provide a culturally responsive Prekindergarten to Grade 12 curriculum that promotes equity, respect, and civility among [its] diverse community." *Id.* at 5. Such a curriculum prepares students to "[c]onfront and eliminate stereotypes related to individuals' actual or perceived personal characteristics," *id.*, such as race, religion, sex, gender identity, sexual orientation, and other "protected attributes or affiliations," *id.* at 3. MCPS accordingly expects that "[i]nstructional materials used in [its] schools will reflect the diversity of the global community[.]" *Id.* at 3, 5-6. Representation in the curriculum creates and normalizes a fully inclusive environment for all students, supporting each student's ability to empathize, connect, and collaborate with peers of different background and encouraging respect for all. Decl. ¶ 22.

To these ends, MCPS strives to devise "[p]rograms, curricula, instructional materials, and activities … [that] will provide all students with the knowledge, skills, attitudes, and behaviors that promote cultural proficiency and behaviors that enable students to live and work together in our increasingly diverse county, state, nation, and world." Ex. 1 at 7. For example, the English Language Arts (ELA) curriculum is designed to "promote[] instruction that," among other goals,

[2] This brief refers to the exhibits to Plaintiffs' original Complaint as "Compl. Ex." and refers to the operative First Amended Complain as "FAC."

"nurtures appreciation and understanding of diverse individuals, groups, and cultures." Ex. 2 at 2. Teachers are expected to engage students in "core learning practices," including "[s]electing from a range of diverse texts to understand and appreciate multiple perspectives." Ex. 3.

MCPS follows a long-established, written policy to evaluate and select new instructional materials. Ex. 4. Any materials that are to be approved for use county-wide must be evaluated by a committee of professional staff members and subject-area experts. *Id*. at 3. That committee evaluates potential materials for inclusion in the curriculum based on a number of criteria, including whether the materials are "age/grade appropriate[]," "support … student achievement toward MCPS curriculum standards," and, of particular relevance here, are "relevant to and reflective of the multicultural society and global community." *Id*. at 4; *see also* Ex. 5. Once the committee has identified books for potential inclusion in the curriculum, they are made available for community review and input; they are made available for examination in person by parents and staff for 30 calendar days, and their titles are posted on the Montgomery County Public Schools Evaluation and Selection website. *Id*.; Decl. ¶¶ 16-17. Any parent feedback is taken into account before a final decision is made to approve a book for instructional use. Decl. ¶ 17.

MCPS works continuously to ensure that its pre-K through 12th grade curriculum reflects Montgomery County families. For example, MCPS has purchased books for use as part of the ELA curriculum that feature people and characters from traditionally underrepresented races and cultures. Decl. ¶ 21. These books include the *March* trilogy, which recounts the life of civil rights icon Congressman John Lewis, and *The Leavers*, which introduces readers to the story of an Asian-American immigrant family. MCPS also recently updated the social studies curriculum to include materials focused on local history and historically marginalized groups. *Id.*

C. After A Multi-Year Process, MCPS Introduces LGBTQ-Inclusive Books As Part Of Its Language Arts Curriculum

In recent years, MCPS determined that the books used in its existing ELA curriculum were not representative of many students and families in Montgomery County because they did not include LGBTQ characters. Decl. ¶ 23. MCPS therefore undertook, in collaboration with parents and educators, a formal process of supplementing the ELA curriculum with more diverse texts (the "LGBTQ-Inclusive Books"). *Id.* ¶¶ 23-24.

In selecting these books, MCPS followed the process outlined in MCPS Regulation IIB-RA. Decl. ¶ 24. As part of this process, a committee composed of four reading specialists and two instructional specialists participated in multiple rounds of evaluations to determine whether each book would be a suitable addition to the ELA curriculum. *Id.* ¶ 25. The committee recommended approval of the LGBTQ-Inclusive Books after finding that they supported MCPS content standards and performance indicators, contained narratives and illustrations that would be accessible and engaging to students, and featured characters of diverse backgrounds whose stories and families students could relate to. *Id.* ¶ 26; *see also* Ex. 5.

The LGBTQ-Inclusive Books are just that—books that feature LGBTQ characters. The books aim to impart critical reading skills while telling stories about diverse families. These include stories about a family attending a Pride parade, Compl. Ex. B, a niece meeting her uncle's husband-to-be, *id.*, a prince falling in love with a knight as they work together to battle a dragon in a mythical kingdom, *id.*, a girl racing through the snow with her crush, *id.*, and a transgender boy sharing his gender identity with his family, *id.* The books do not instruct children to "question sexuality and gender identity, focus on romantic feelings, … embrace gender transitioning," or take a side in religious or scientific debates surrounding sexual orientation or gender identity. *Contra* Plfs.' Mem. in Support of Mot. for Prelim. Inj. at 4 ("PI

Br."). The LGBTQ-Inclusive Books are instead used to support students' ability to empathize, connect, and collaborate with diverse peers, to encourage respect for all, and to help students understand that different values are represented in the MCPS community. *See* Decl. ¶ 22.

MCPS has accordingly suggested that teachers fold the LGBTQ-Inclusive Books into the ELA curriculum in the same way that they would any other book—putting the books on shelves for students to find on their own; recommending a particular book to a student who would enjoy it; offering the books as an option for literature circles, books clubs, or paired reading groups; or reading the books aloud. Decl. ¶ 29. MCPS's communications with teachers also make clear that use of the books involves no instruction on sexual orientation or gender identity per se. *Id.* ¶ 30. As with all curriculum resources, there is an expectation that teachers use the LGBTQ-Inclusive Books as part of classroom instruction. *Id.* ¶ 31. Teachers have a choice regarding which MCPS-approved materials to use and when to use them throughout each unit, but they cannot elect to not use the books at all. This reflects MCPS's view that, if these instructional materials are not used at all, a teacher is not fulfilling MCPS's expectation that students will be taught pursuant to a representative and culturally responsive curriculum. *Id.*

D. MCPS Clarifies That Parents Cannot Opt Their Children Out Of Classroom Instruction Using The LGBTQ-Inclusive Books For Any Reason

The MCPS Guidelines for Respecting Religious Diversity permit (but do not require) schools to make "reasonable and feasible adjustments to the instructional program to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs." Compl. Ex. A at 3-4. They also provide, "if such requests become too frequent or too burdensome, the school may refuse to accommodate the requests." *Id.* at 4.

At the beginning of the 2022-2023 school year, some parents asked teachers, principals, and staff that their children be excused from instruction with the LGBTQ-Inclusive Books. Decl. ¶ 33. Many of the opt out requests were not religious in nature. Some parents, for instance, opposed what they believed was an effort to teach students about sex, to teach students lessons about LGBTQ issues, or to use instructional materials that were not age-appropriate. *Id.* ¶ 34. In some instances, individual teachers and principals sought to accommodate these requests by allowing students to be excused when the books were read in class. *Id.* ¶ 35. Through conversations with principals, MCPS became aware that individual schools could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom environment and undermining MCPS's educational mission. *Id.* ¶ 36.

Based on these concerns, MCPS decided that it was not feasible or consistent with its curricular goals to accommodate requests for students to be excused from classroom instruction using the LGBTQ-Inclusive Books. Allowing parents to remove their children from lessons in which those books were used would interfere with MCPS's efforts to cultivate an inclusive and welcoming learning environment and undermine its goals of reducing stigmatization and fostering social integration of all students and families. Decl. ¶¶ 37, 39. And it would impose unworkable burdens on educators who would be required to track and accommodate opt out requests—not only on teachers in individual classrooms, but also on media specialists and other instructors who teach in multiple classrooms each day across entire schools. *Id.* ¶ 38. On March 23, 2023, MCPS therefore informed parents, teachers, and principals that schools could no longer entertain requests for students to opt out of the LGBTQ-Inclusive Books for any reason. *Id.* ¶¶ 40-41. If schools already had granted accommodation requests, however, they could continue to accommodate those families through the end of the 2022-2023 school year. *Id.* ¶ 41.

E. Plaintiffs Sue MCPS And Seek A Preliminary Injunction On Their Free Exercise and Due Process Claims

Plaintiffs—three sets of parents individually and on behalf of their minor children attending MCPS schools—brought this action against the Montgomery County Board of Education, its members, and the Superintendent of Schools. The amended complaint adds plaintiff Kids First, an unincorporated association of parents and teachers who oppose the no-opt-out policy. *See* FAC ¶ 32. Plaintiffs assert that MCPS's policy of refusing to permit parents to opt their children out of classroom instruction using the LGBTQ-Inclusive Books violates the Free Exercise and Free Speech Clauses of the First Amendment to the U.S. Constitution, the Due Process Clause of the Fourteenth Amendment, and several provisions of Maryland law. *See id.* ¶¶ 183, 218, 228, 245, 267, 284. Plaintiffs moved for a preliminary injunction on their free exercise and due process claims. PI Br. 1-2.[3]

LEGAL STANDARD

A preliminary injunction is an "extraordinary remedy" and "shall be granted only if the moving party clearly establishes entitlement to the relief sought." *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017) (citations omitted). "Mandatory injunctive relief"—such as the injunction Plaintiffs seek here, to alter rather than preserve the no-opt-out policy in effect—"in any circumstance is disfavored, and warranted only in the most extraordinary circumstances." *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994). "When a party moves for a preliminary injunction … it invites the district court to act as the finder of fact on a limited record." *Speech First, Inc. v. Sands*, 69 F.4th 184, 190 (4th Cir. 2023). Plaintiffs must therefore put forth sufficient evidence to "demonstrate 'that [they are] likely to succeed on the merits, that [they are]

[3] Plaintiffs did not seek an injunction on their free speech or Maryland law claims, nor did they argue that they are likely to succeed on those claims.

likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest.'" *Di Biase*, 872 F.3d at 230.

ARGUMENT

I. Plaintiffs Are Unlikely To Succeed On The Merits of Their Free Exercise Claims

Plaintiffs have not "ma[d]e a clear showing" that they are "likely to succeed at trial" on their Free Exercise Claims. *Di Biase*, 872 F.3d at 230. Plaintiffs challenge MCPS's policy of refusing to permit parents to opt their children out of "reading, listening to, or discussing" the LGBTQ-Inclusive Books. *See* Mot. for Prelim. Inj. 1. This policy does not infringe Plaintiffs' free exercise rights because it does not penalize or prohibit their religious practice, nor does it curtail their freedom to direct the religious upbringing of their children. Even if Plaintiffs could make a "clear showing" that the policy incidentally burdens their religious practice, the policy is nonetheless subject to rational-basis review because it is neutral and generally applicable. It easily satisfies that standard. And even if strict scrutiny applied, the policy would survive because it is narrowly tailored to advance MCPS's compelling interests in fostering a safe and inclusive learning environment and complying with applicable nondiscrimination laws and policies. Plaintiffs' claims that they are constitutionally entitled to opt their children out of an element of the public-school curriculum that they disagree with therefore fails.[4]

A. The MCPS Policy Does Not Infringe Plaintiffs' Free Exercise Rights

Plaintiffs cannot prove that the MCPS policy infringes their rights under the Free Exercise Clause because it does not impose any constitutionally significant burden on their

[4] The complaint also brings claims against MCPS on behalf of Kids First and individual plaintiffs' minor children, who are students at Montgomery County Public Schools. *See* FAC ¶¶ 24-35. Plaintiffs advance no arguments and present no distinct evidence that could establish that the free exercise or due process rights of their children or of Kids First have been infringed by MCPS's policy. Plaintiffs have thus failed to establish that those claims are likely to succeed.

religious practice. The Free Exercise Clause "only applies when the government burdens religious exercise" by penalizing or prohibiting it. *Roswell v. Mayor & City Council of Balt.*, 2023 WL 3158728, at *8 (D. Md. Apr. 28, 2023) (citing *Carson v. Makin*, 142 S. Ct. 1987, 1996 (2022)). That basic limitation forecloses Plaintiffs' claims here. It is well-established that classroom instruction pursuant to a public school's mandatory curriculum does not cognizably burden the free exercise rights of parents whose children attend that school.[5]

The MCPS policy is lawful because it does not coerce Plaintiffs into refraining from raising their children according to their religious values or penalize their efforts to direct their children's religious upbringing. Under the policy, Plaintiffs' children are expected to be present during class when their teachers read from and discuss books in order to impart critical reading skills. *See* Decl. ¶ 42. Plaintiffs' fundamental complaint is that the books in question, by virtue of the characters' sexual orientation or gender identity, may "expos[e]" Plaintiffs' children to "questions" about which Plaintiffs have sincerely held religious views. PI Br. 2. But such "expos[ure]" to "questions" does not coerce Plaintiffs to refrain from raising their children in their preferred religious faith or penalize them for their religious conduct. Consistent with that basic understanding, courts have uniformly held that a public school's refusal to excuse students from mandatory instruction does not place a constitutionally significant burden on parents' religious exercise, where, as here, parents have chosen to send their children to public school and are free to discuss the material and subject matter with their children at home. *See California Parents for the Equalization of Educ. Materials v. Torlakson*, 973 F.3d 1010, 1020 (9th Cir. 2020); *Parker v. Hurley*, 514 F.3d 87, 102 (1st Cir. 2008); *Leebaert v. Harrington*, 332 F.3d 134,

[5] The Supreme Court's recent decision in *303 Creative LLC v. Elenis* does not support Plaintiffs' motion, as it considered only compelled speech in a far different context, and did not address free exercise or due process claims. 2023 WL 4277208 (U.S. June 30, 2023).

144-145 (2d Cir. 2003); *Fleischfresser v. Directors of Sch. Dist. 200*, 15 F.3d 680, 690 (7th Cir. 1994); *Mozert v. Hawkins Cnty. Bd. of Educ.*, 827 F.2d 1058, 1060 (6th Cir. 1987); *Jones v. Boulder Valley Sch. Dist. RE-2*, 2021 WL 5264188, at *12 (D. Colo. Oct. 4, 2021).

Plaintiffs argue that the policy burdens their religious exercise because it restricts the right of parents, recognized by the Supreme Court in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), to direct the religious upbringing of their children, PI Br. 14. *Yoder* is inapposite for two reasons.

First, unlike in *Yoder*, Plaintiffs have not argued, let alone clearly established, that exposure to LGBTQ-inclusive books is fundamentally irreconcilable with their desire to raise their children consistent with their religious faith. In *Yoder*, the plaintiffs challenged their criminal convictions under a law requiring that they send their children to high school, based on their sincerely held belief that "attendance at high school, public or private, was contrary to the Amish religion and way of life," "interpose[d] a serious barrier to the integration of the Amish child into the Amish religious community," and "endanger[ed] their own salvation and that of their children." *Id.* at 209, 211-212. The *Yoder* plaintiffs presented expert testimony that compulsory high school attendance would "result in the destruction of the Old Order Amish church community as it exists in the United States today." *Id.* at 212. Here, by contrast, Plaintiffs have offered no evidence that the challenged policy would "gravely endanger if not destroy the free exercise of [the parents'] religious beliefs." *Id.* at 219. Instead, Plaintiffs assert that MCPS's policy "undermines [their] efforts to form their children in their faith," by exposing students to views contrary to their parents' religious teachings. PI Br. 16. For example, the Mahmoud-Barakats declare that exposure to the LGBTQ-Inclusive Books would "confuse [their son's] religious upbringing," Mahmoud-Barakat Decl. ¶ 20; the Romans that their son would find the books "confusing," Roman Decl. ¶ 19; and the Persaks that the books might "encourage"

their children to "dismiss parental and religious guidance on these issues," Persak Decl. ¶ 16. Plaintiffs do not claim that exposure to the books is inherently incompatible with their religious faith, only that it could raise questions about certain topics on which Plaintiffs have religious views. Their concerns thus fall short of clearly establishing that the challenged policy coerces them into refraining from religious exercise or penalizes their religious conduct.

Second, unlike in *Yoder*, Plaintiffs do not wish to withdraw their children from public school but instead seek to pick and choose the elements of the public-school curriculum that their children will experience. *Yoder* established no such right. It addressed only how to resolve parents' claims that they were being compelled to subject their children to an educational system fundamentally irreconcilable with their religious convictions. That is why *Yoder* drew on *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), in which the Supreme Court likewise considered a compulsory public school attendance statute and questioned only the "general power of the State to standardize its children by forcing them to accept instruction *from public teachers only*." 406 U.S. at 233 (quoting *Pierce*, 268 U.S. at 535) (emphasis added). Indeed, *Yoder* took pains to emphasize that its holding "in no way alter[ed] [the Court's] recognition of the obvious fact that courts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education." *Id.* at 234-235. The Supreme Court's decision in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), cited by Plaintiffs, likewise provides no support for a parental right to opt out of a mandatory curriculum. In holding that the State could not require students to salute the flag, *Barnette* expressly distinguished that coercive requirement—"a compulsion of students to declare a belief" on a particular topic—with the type of educational requirement here: a practice under which students are at most "merely made acquainted with" a topic. *Id.* at 631.

Yoder, *Pierce*, and *Barnette* therefore provide no support for Plaintiffs' arguments that the challenged MCPS policy places a constitutionally significant burden on their religious practice. Indeed, it is now "well recognized" that, having chosen to send a child to public school, a parent has no constitutional right to "'direct *how* a public school teaches their child.'" *Parker*, 514 F.3d at 102 (quoting *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 395 (6th Cir. 2005)). The Fourth Circuit explained this "critical distinction" in *D.L. ex rel. K.L. v. Baltimore Board of School Commissioners*, 706 F.3d 256, 263 (4th Cir. 2013). There, the court held that parents' free exercise rights were not unduly burdened by a public school district's refusal to provide disability-related educational services to a private school student because the parents "retain[ed] full discretion over which school" their child would attend. *See id.* The court further recognized that the parents' claims of a burden on religious free exercise "clash[ed] with case law upholding government's ability to make policies and curricular decisions in the best educational interest of students." *Id.* In light of this authority, the Fourth Circuit concluded, "[t]he right to a religious education does not extend to a right to demand that public schools accommodate [parents'] educational preferences." *Id.* at 264.

Returning to the wall of authority rejecting free exercise claims like those Plaintiffs advance here, the First Circuit's decision in *Parker v. Hurley* is particularly instructive. The parents there brought free exercise and due process claims against public school officials, "assert[ing] that they must be given prior notice by the school and the opportunity to exempt their young children from exposure to books they find religiously repugnant." 514 F.3d at 90. The First Circuit recognized that *Yoder* did not control, as the parents did "not allege coercion in the form of a direct interference with their religious beliefs, nor of compulsion in the form of punishment for their beliefs." *Id.* at 105. Like here, the parents were aware that the challenged

books would be used in classroom instruction and thus "retained their ability to discuss the material and subject matter with their children." *Id.* at 106. The court accordingly held that the parents' free exercise rights were not burdened because "the mere fact that a child is exposed on occasion in public school to a concept offensive to a parent's religious belief does not inhibit the parent from instructing the child differently." *Id.* at 105.

Other courts have uniformly agreed, rejecting arguments that the curricular choices made by public school administrators impose constitutionally significant burdens on parents' free exercise rights. The Second Circuit has, for instance, held that a public school's refusal to excuse a student from its "mandatory health curriculum" does not create "an irreconcilable *Yoder*-like clash" with a parent's religious practice, as exposing a child to a health curriculum covering issues related to drugs, tobacco, and premarital sex is distinguishable from compulsory public-school attendance that may threaten a "community's entire way of life." *Leebaert*, 332 F.3d at 144-145. In *Fleischfresser*, the Seventh Circuit similarly concluded that a public school's use of reading materials featuring "supernatural beings" did not "preclude[e] the parents from meeting their religious obligation to instruct their children." 15 F.3d at 683, 689-690. The Sixth Circuit likewise rejected a free exercise challenge to the assignment of a book "that involved mental telepathy," *Mozert*, 827 F.2d at 1060, emphasizing that under *Yoder*, parents could have their children "excused from exposure to some ideas they find offensive" only by opting them out of public schooling altogether, *id.* at 1067. Finally, the Ninth Circuit affirmed the dismissal of a free exercise claim brought by parents challenging the depiction of Hinduism in California's model curriculum, as parents' religious exercise is not burdened just because a "'public school curriculum conflicts with their religious beliefs.'" *Torlakson*, 973 F.3d at 1020.

These holdings accord with the reality that, like any other school district, MCPS "need not serve up its publicly funded services like a buffet from which [Plaintiffs] can pick and choose," but instead has "the right to allocate resources and control curriculum as it s[ees] fit." *D.L.*, 706 F.3d at 264 (citing *Swanson v. Guthrie Indep. Sch. Dist. No. I-L*, 135 F.3d 694, 699-700 (10th Cir. 1998)). As the Supreme Court has recognized, "States and local school boards are generally afforded considerable discretion in operating public schools." *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987). Courts have therefore been careful not to question "the state's power to prescribe a curriculum for institutions which it supports." *See Meyer v. Nebraska*, 262 U.S. 390, 402 (1923); *see also Boring v. Buncombe Cnty. Bd. of Educ.*, 136 F.3d 364, 371 (4th Cir. 1998) (holding that "the makeup of the curriculum" of public schools is generally "entrusted to the local school authorities").

Two recent out-of-circuit decisions further underscore that the use of the LGBTQ-Inclusive Books as part of the ELA curriculum does not burden Plaintiffs' religious exercise.

First, in *Jones v. Boulder Valley School District RE-2*, a magistrate judge in Colorado considered a challenge by parents to a school district's refusal to allow opt outs from "any class conversations, literature, lesson plans, teaching or materials that discuss[ed]" issues related to gender identity. 2021 WL 5264188, at *5. While the school district in *Jones* responded to initial parent complaints by allowing them to excuse their children from formal "transgender tolerance programming," including a planned assembly, *see id.* at *1-2, the district declined to "remove age-appropriate materials that address or discuss gender identity" or "opt students out of day-to-day discussions regarding gender that may arise organically," *see id.* at *7. The court found that none of the plaintiffs' children had actually been exposed to formal instruction about transgender issues, but it observed that, even if they had been, "exposure in school or class to concepts or

ideas that are antithetical to one's religious beliefs does not violate the Free Exercise Clause." *Id.* at *12. The court thus made clear that the district did not burden the parents' religious practice by exposing their children to a "curriculum that is 'pro-LGBTQ' or 'pro-Transgender'" in that it "seeks to weave principles of tolerance and understanding of different views and lifestyles into the courses taught at the School." *Id.* at *14. The court instead concluded that the parents had "no free exercise right to be free from any references to or discussion about transgender persons or transgender issues" and no entitlement to "any advance notice or warning of such discussions." *Id.*

Second, in *Tatel v. Mt. Lebanon School District*, the Western District of Pennsylvania held that parents *had* stated a Free Exercise claim—but in a very different context that underscores the deficiencies in Plaintiffs' claims here. *See* 2023 WL 3740822 (W.D. Pa. May 31, 2023). *Tatel* considered parents' allegations that a teacher attempted to impart her personal views outside the context of the prescribed curriculum—that she "pursued her own non-curricular agenda in which [she] attempted to inculcate in the first-grade children in her class the teacher's beliefs about a child's gender identity and to initiate and engage in discussions with the first-graders in her class about the children's *own* gender identity." *Id.* at *3. In finding that this burdened the parents' religious exercise, the court made clear that central to its analysis was that the parents sought "relief from a teacher's *noncurricular* transgender agenda, not the published curriculum." *Id.* at *10 (emphasis added); *see also id.* at *11 (the teacher's "alleged agenda about transgender topics goes far beyond merely reading one or three books in an objective manner [and] is not part of the school curriculum"). Here, Plaintiffs unequivocally take issue with "the published curriculum," and thus cannot show a Free Exercise Clause violation.

Because the policy does not infringe plaintiffs' free exercise rights under *Yoder* and decades of case law rejecting identical claims, these claims are unlikely to succeed on the merits.

B. Even If The Policy Incidentally Burdens Religious Practice, It Is Generally Applicable And Neutral And Thus Subject To Rational-Basis Review

Even if Plaintiffs could prove that MCPS's policy against opt outs from the LGBTQ-Inclusive Books "has the incidental effect of burdening religious exercise," the policy would be subject to only rational-basis review as "a facially neutral and generally applicable regulation." *See Canaan Christian Church v. Montgomery Cnty.*, 29 F.4th 182, 198 (4th Cir. 2022). Plaintiffs advance three arguments in an attempt to portray the policy as targeting their religious practice, but each fails. MCPS does not provide for any exemptions from the policy; the policy does not favor secular conduct over religious conduct; and the policy was not enacted out of hostility toward religion. Because Plaintiffs cannot establish that the policy is anything but generally applicable and neutral, it is "subject only to rational basis review." *Id.*

1. MCPS's policy is generally applicable under *Fulton* because it does not contemplate any exceptions

MCPS has imposed an across-the-board policy prohibiting opt outs from classroom instruction using the LGBTQ-Inclusive Books. Decl. ¶ 42. There are no exceptions. The record instead shows that, while individual teachers and principals initially attempted to accommodate parents' objections to the LGBTQ-Inclusive Books, and allowed previously approved opt out requests to remain in place through the end of the 2022-2023 school year, *id.* ¶¶ 33-35, 41, the policy adopted by MCPS and challenged by Plaintiffs permits no opt outs of any kind, *id.* ¶¶ 40, 42. To put it plainly: A parent may not opt out her child for religious reasons; nor may a parent opt out her child for non-religious reasons.

This flat ban on opt-outs means that strict scrutiny is not triggered because the policy does not involve "[i]ndividualized assessments by the government with a mechanism for

granting exceptions." *Canaan Christian Church*, 29 F.4th at 198. The Supreme Court has held that a "'mechanism for individualized exemptions'" renders a policy "not generally applicable" because it "'invites' the government to consider the particular reasons for a person's conduct." *Fulton v. City of Phila.*, 141 S. Ct. 1868, 1877 (2021) (quoting *Employment Div. v. Smith*, 494 U.S. 872, 884 (1990)). Application of such a policy can "devalue[] religious reasons" for noncompliance "by judging them to be of lesser import than nonreligious reasons," and thus expose religious practice to discriminatory treatment. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993). MCPS's policy has none of these attributes.

Indeed, MCPS's generally applicable policy offers a stark contrast with the policy that triggered strict scrutiny in *Fulton*. In *Fulton*, Philadelphia's policy prohibiting discrimination by foster care providers allowed a city official to grant exemptions in his "sole discretion." 141 S. Ct. at 1878. *Fulton*, moreover, drew on precedent holding that policies requiring decisionmakers to consider the justification for a requested exemption were not generally applicable. The Court cited *Lukumi*, for example, which involved a law whose application "require[d] an evaluation of the particular justification" given for noncompliance, providing "individualized exemptions from a general requirement." 508 U.S. at 537. And the Court discussed *Sherbert v. Verner*, which considered a law under which applicants could not receive unemployment benefits if they failed to accept suitable work unless they had "good cause" for their failure. 374 U.S. 398, 400, 407 n.7 (1963). As *Fulton* explained, "the unemployment benefits law in *Sherbert* was not generally applicable because the 'good cause' standard permitted the government to grant exemptions based on the circumstances underlying each application." 141 S. Ct. at 1877. The policy authorizing exemptions in each of those cases thus explicitly allowed—if not encouraged—the decisionmaker to grant or deny exemptions based on the reason the exemption was sought. The

policy at issue here prohibits opt outs for any reason, "without exception," and thus "*Fulton* is inapplicable." *Canaan Christian Church*, 29 F.4th at 199.

Plaintiffs seek to establish that the MCPS policy governing LGBTQ-Inclusive Books violates this general applicability requirement by cherry-picking language from MCPS's Guidelines for Respecting Religious Diversity to portray a nonexistent "system of discretionary exemptions." PI Br. 17-18 (citing Compl. Ex. A). But the Guidelines are not relevant here. The challenged policy is MCPS's no-opt-out policy for the LGBTQ-Inclusive Books, which is fully consistent with *Fulton* because it permits no "exemptions based on the circumstances underlying each application." *See* 141 S. Ct. at 1877. In any event, the Guidelines, like the no-opt-out policy, are generally applicable. They do not permit individual assessments of the motivations for parents' objections to classroom instruction. The Guidelines permit schools to "make reasonable and feasible adjustments to the instructional program" to accommodate requests to excuse students from classroom discussion. Compl. Ex. A at 3. They thus permit schools to evaluate whether requests can realistically be accommodated but do not establish a framework under which schools are permitted to evaluate the reasons for those requests or to determine which reasons are "worthy of solicitude." *Fulton*, 141 S. Ct. at 1879. The Guidelines, moreover, expressly recognize that it may not be feasible to accommodate objections to certain instructional programs *at all*—as was the case here: if opt out requests "become too frequent or too burdensome, the school may refuse to accommodate the requests." Compl. Ex. A at 4. Nothing in this provision invites a school to consider the reasons behind an accommodation request.

Contrary to Plaintiffs' assertions, MCPS's no-opt-out policy does not trigger strict scrutiny under *Fulton* simply because the section of the Guidelines covering "Religion in the Instructional Program" envisions that MCPS may accommodate religious objections in some

contexts, where accommodations are feasible, but not others, where accommodations are not. Plaintiffs take issue with other sections of the Guidelines that explain how MCPS strives to respect religious diversity when it comes to "Absences for Religious Holidays" and "Teaching About Religion or Religious Holidays in Schools." PI Br. 17-18 (citing Compl. Ex. A at 2, 4). But MCPS's approach toward students who wish to observe religious holidays, or refrain from "holiday activities" they view as having "religious overtones," Compl. Ex. A at 2, 4, does not suggest that the policy at issue here (the policy of no opt outs from the LGBTQ-Inclusive Books) is "highly discretionary" and thus subject to strict scrutiny, PI Br. 18. And contrary to Plaintiffs' suggestion, the Guidelines do not require schools to address all religious objections "on a case-by-case basis." *Id.* As the Guidelines make clear, this "case-by-case" assessment is limited to a scenario not at issue here—when teachers must determine how long an extension to grant students who have missed class for a religious holiday. Compl. Ex. A at 2.

2. MCPS's policy is generally applicable and neutral under *Tandon* because it does not favor secular over religious conduct

MCPS's no-opt-out policy is also generally applicable and neutral because it treats secular and religious activity exactly the same. The Supreme Court has held that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). Strict scrutiny has therefore been applied to pandemic restrictions that "treat[ed] some comparable secular activities," such as patronizing hair salons and restaurants, "more favorably than" religious activities, such as "at-home religious exercise." *Id.* at 1297.

Plaintiffs object to the fact that MCPS treats opt out requests under one curriculum differently from opt out requests under another curriculum. PI Br. 19-20. MCPS allows no opt

outs of any kind—religious or secular—from the use of the LGBTQ-Inclusive Books in the ELA curriculum. By contrast, MCPS does allow opt outs—both religious and secular—from aspects of the health education curriculum serving "family life and human sexuality objectives," as it must under Maryland law. *See* COMAR § 13A.04.18(D)(2). Plaintiffs' argument that these policies implicate *Tandon* fails out of the gate because they have not established that MCPS is distinguishing between religious and secular activities. Plaintiffs offer no evidence that the conduct MCPS forbids (opt outs from the ELA curriculum) is religious while the conduct that MCPS permits (opt outs from the health education curriculum) is secular. MCPS's no-opt-out policy for the LGBTQ-Inclusive Books thus does not trigger strict scrutiny under *Tandon*.

Plaintiffs independently fail to establish, as they must under *Tandon*, that opt outs from the ELA curriculum are comparable to opt outs from the health education curriculum. "[W]hether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Tandon*, 141 S. Ct. at 1296. A "relatively close comparison" is required, *Doe v. Catholic Relief Servs.*, 618 F. Supp. 3d 244, 255-256 (D. Md. 2022), and is lacking here. Opt outs from the two curricula are not comparable because the curricula are tailored to different grade levels, cover different topics, and serve different educational objectives. The asserted government interests behind the two opt-out policies are also distinct. The government interest justifying MCPS's policy of allowing opt outs from the health education curriculum is clear: Maryland law requires it. Decl. ¶ 43. By contrast, Maryland law is silent on the question of opt outs from the ELA curriculum. MCPS has prohibited such opt outs here—whether religious or secular—because they would disrupt classroom instruction and undermine MCPS's efforts to create a learning environment free from discrimination. *Id.* ¶¶ 36-39.

In an attempt to establish that opt outs from the two curricula are comparable, Plaintiffs point to a Maryland State Board of Education requirement that health-education instruction "represent all students regardless of ability, sexual orientation, gender identity, and gender expression." PI Br. 19. But this *state-level* health education standard does not change the analysis. None of the sources Plaintiffs cite suggests that MCPS offers the family life and human sexuality unit of the health education curriculum to be more inclusive of LGBTQ individuals, or that opt outs from that unit pose the same risks of disrupting the classroom or undermining nondiscrimination goals that motivate MCPS's no-opt-out policy for the LGBTQ-Inclusive Books. *See* PI Br. 19. MCPS therefore has not treated comparable conduct differently.

3. MCPS's policy is neutral under *Masterpiece Cakeshop* because Plaintiffs cannot establish religious hostility

MCPS's policy is also neutral because it "proscribes conduct without regard to whether that conduct is religiously motivated or not." *Hines v. S.C. Dep't of Corr.*, 148 F.3d 353, 357 (4th Cir. 1998). The object of the challenged policy, that is, is not to "infringe upon or restrict practices because of their religious motivation." *Lukumi*, 508 U.S. at 533. Nor does an examination of the policy's enactment reveal any "'clear and impermissible hostility' toward religious beliefs." *Bethel Ministries, Inc. v. Salmon*, 2020 WL 292055, at *8 (D. Md. Jan. 21, 2020) (quoting *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1729 (2018)). Rather, a "look behind the [policy]'s text" confirms that it was put in place "in spite of," rather than "because of," any incidental effect it might have on religious exercise. *Alive Church of the Nazarene, Inc. v. Prince William Cnty.*, 59 F.4th 92, 108 (4th Cir. 2023).

Seeking to establish religious hostility where none exists, Plaintiffs reprise their insistence that allowing opt outs—religious or otherwise—from some school activities, while refusing to allow opt outs—religious or otherwise—from *this* required element of the curriculum

somehow targets their religious exercise. It does not. Nor can Plaintiffs establish that the no-opt-out policy shows hostility toward religion by arguing that MCPS ended opt outs "only after parents began raising religious objections." PI. Br. 21. The policy reflects MCPS's determination that allowing opt outs of any kind was infeasible. *See* Decl. ¶ 40. Only a subset of the opt-out requests fielded by MCPS cited religious motivations, *id.* ¶ 34, and Plaintiffs provide no evidence that MCPS decided to end opt outs based on those objections alone.

Plaintiffs cite *Masterpiece Cakeshop* in an effort to portray MCPS's policy as "enacted with religious animosity." PI Br. 21. In *Masterpiece Cakeshop*, the Supreme Court held that a government acting as "an adjudicatory body deciding a particular case" must "proceed in a manner neutral toward and tolerant of [the] religious beliefs" of the individual before it. 138 S. Ct. at 1730-1731. In assessing governmental neutrality, "'the historical background of the decision under challenge'" and "'contemporaneous statements made by members of the decisionmaking body'" are relevant factors. *See id.* at 1731. *Masterpiece Cakeshop* determined that these factors demonstrated religious hostility because members of the government body in that case had made comments hostile to the petitioner's religion in the midst of adjudicating his case and had subjectively determined that his particular religious objections were illegitimate while finding that similar conscience-based objections were valid. *Id.* at 1729-1730.

The record here, by contrast, is devoid of evidence that MCPS's policy was enacted with hostility toward religion. At the outset, Plaintiffs offer no support for their attempt to extend *Masterpiece Cakeshop* to any circumstance in which a person "rais[es] religious concerns to government policies." PI Br. 22. *Masterpiece Cakeshop* involved an adjudicatory body weighing the legitimacy of a particular religious objection, 138 S. Ct. at 1731, not a policymaking body's *refusal* to adjudicate objections on a case-by-case basis, regardless of the

reason for the objection. Other courts have rejected similar efforts to extend *Masterpiece Cakeshop* to remarks that "did not take place in an adjudicative context." *See Tingley v. Ferguson*, 47 F.4th 1055, 1086-1087 (9th Cir. 2022). What is more, nearly all of the statements that Plaintiffs point to postdate MCPS's adoption of an across-the-board policy prohibiting opt outs from instruction using the LGBTQ-Inclusive Books. PI Br. 21-22. Some even postdate the filing of Plaintiffs' complaint in this case. *Id.* at 22. These belated comments do not support Plaintiffs' claim that the no-opt-out policy was instituted out of religious animus.

Finally, the comments Plaintiffs cite do not establish that MCPS engaged in a "negative normative 'evaluation of the particular justification'" for any Plaintiff's "objection and the religious grounds for it." *Masterpiece Cakeshop*, 138 S. Ct. at 1731. For example, Plaintiffs claim that a presentation about the LGBTQ-Inclusive Books "suggest[ed] that religious parents seeking opt-outs are engaging in a 'dehumanizing form of erasure.'" PI Br. 22 (quoting Compl. Ex. N at 16). But the cited quote was not from any MCPS official; it is from a letter to Congress by children's book authors, describing their view of the consequences that may result "[w]hen books are removed or flagged as inappropriate." *See* Compl. Ex. N at 16. It is not about "religious parents seeking opt-outs." PI Br. 22. Nor did Board member Lynne Harris say, "in reference to parental testimony," that "ignorance and hate does exist in our community." *Id.* As Plaintiffs' own complaint reflects, this comment was not made by Harris, *see* FAC ¶ 158, and it made no reference to parents' opt out requests, or to religion at all, *see* Video of Montgomery Cnty. Bd. of Educ. Business Meeting (Jan. 12, 2023) at 00:40:24-00:40:42, https://mcpsmd.new.swagit.com/videos/196679. The only comments Plaintiffs cite by a Board member referencing parental opt outs make clear that MCPS opposed opt outs for any reason: Plaintiffs quote Harris as opposing opts outs based on parents' "religious rights *or* [their] family

values *or* [their] core beliefs," and those based on non-religious objections such as xenophobia and white supremacy. PI Br. 21-22 (emphasis added). Plaintiffs identify no "official expression[] of hostility" toward religion "cast[ing] doubt on the fairness and impartiality" of the policy. *Masterpiece Cakeshop*, 138 S. Ct. at 1730, 1732. No such hostility exists here.[6]

C. Plaintiffs' Free Exercise Claims Fail Under Any Standard Of Review

MCPS's no-opt-out policy easily satisfies rational-basis review. But even if strict scrutiny applied, the policy would survive because the record at this stage amply demonstrates that it is narrowly tailored to serve MCPS's compelling interest in fostering an inclusive educational environment in which all students learn to read proficiently and think analytically.

1. MCPS's policy satisfies rational-basis review

MCPS policy easily satisfies rational-basis review, and Plaintiffs make no attempt to argue otherwise. Rational basis scrutiny "requires merely that the law at issue be 'rationally related to a legitimate governmental interest.'" *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 561 (4th Cir. 2013). The policy prohibiting parents from opting their children out of classroom reading materials that depict diverse families is rationally related to MCPS's goals of reflecting the diversity of the MCPS community in educational materials, fostering inclusiveness, and reducing stigmatization. Decl. ¶¶ 6-8, 37-39.

2. MCPS's policy satisfies strict scrutiny

Even if strict scrutiny applied, MCPS's policy would survive because it "serve[s] a compelling interest and [is] narrowly tailored to that end." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2426 (2022). MCPS has set goals of "reflect[ing] the diversity of … persons of

[6] The comments of "a member of the County Council," PI Br. 22, are irrelevant absent evidence that the speaker had any hand in formulating the policy at issue.

diverse gender identity, gender expression, or sexual orientation," Ex. 1 at 5-6, as well as "[r]educ[ing] stigmatization" and "[f]oster[ing] social integration and cultural inclusiveness of transgender and gender nonconforming students," Ex. 6 at 1. MCPS determined that the ELA curriculum was not sufficiently representative, and therefore did not meet these pedagogical goals, absent the use of instructional materials including LGBTQ characters. Decl. ¶¶ 23, 31.

MCPS's policy thus serves several interests that courts have indicated are compelling. *See John and Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 622 F. Supp. 3d 118, 137 (D. Md. 2022), *appeal docketed*, 22-2034 (4th Cir. Oct. 3, 2022). The policy advances (1) MCPS's interest as a public school in providing a safe educational environment, *see* Decl. ¶ 39; *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 217 (3d Cir. 2001); (2) its interest in ensuring the health and safety of LGBTQ students, *see* Ex. 6 at 1; Ex. 1 at 5-6; *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 612 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 2878 (2021); *Doe by and through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 528 (3d Cir. 2018); and (3) its interest in complying with federal and state antidiscrimination policies and regulations, *see* Ex. 6 at 1; Ex. 1 at 2; *Grimm*, 972 F.3d at 618-619 (finding Title IX violation based on exclusion from participation in an education program "on the basis of sex"); *see also League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 518 (2006) (Scalia, J., concurring) (indicating that "compliance with federal antidiscrimination laws can be a compelling state interest").

MCPS's policy is also narrowly tailored to advance these compelling government interests. The interests that the policy advances are served by the very actions that Plaintiffs seek to enjoin—exposing students to instructional materials that represent characters of diverse backgrounds. MCPS cannot ensure that it is providing a classroom environment that is safe for all students, that allows LGBTQ students to thrive, and that meets its obligations under state and

federal laws, if students can be excused from class any time their teacher uses the LGBTQ-Inclusive Books. Allowing such opt outs would undermine MCPS's curricular goals and prevent MCPS from meeting the needs of the students who opt out. Permitting opt outs would also harm MCPS's efforts to serve the student community as a whole, which includes children who see themselves or their families represented in the LGBTQ-Inclusive Books and would therefore bear the stigma of a policy that enabled students to leave class whenever the books are used.[7]

II. Plaintiffs Are Unlikely To Succeed On The Merits Of Their Due Process Claims

Plaintiffs cannot establish that they are likely to succeed on their due process claims because parents have no right to control how a public school educates their children. The challenged MCPS policy is therefore subject to—and easily satisfies—rational-basis review. Plaintiffs insist that strict scrutiny applies under the Due Process Clause, "[s]eparate and apart from the Free Exercise Clause," because parents have a fundamental "right to direct a child's upbringing." PI Br. 23. But binding precedent plainly holds that any standalone due process claim triggers rational-basis review. Nor has the Fourth Circuit applied strict scrutiny to so-called "hybrid" claims brought under both the Due Process and Free Exercise Clauses.

While the Supreme Court has "recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children," *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality), courts have also long recognized that this right is not unlimited, *see supra* Section I.A. Specifically, "[w]hile parents may have a fundamental right to decide *whether* to send their child to a public school, they do not have a fundamental right generally to

[7] Plaintiffs' scattershot arguments on strict scrutiny likewise fail. They cite no case suggesting that MCPS is not permitted to end opt outs and adopt an across-the-board no-op-out policy; they do not counter MCPS's explanation that allowing *any* student to opt out hinders its educational mission; and they come nowhere close to establishing an unequivocal tradition of parental veto power over public-school curricula, as their own sources explain. *See* PI Br. 25-28.

direct *how* a public school teaches their child." *Blau*, 401 F.3d at 395-396. Parents' "right to control individual components of their [children's] education … is not constitutionally protected." *Bailey v. Virginia High Sch. League, Inc.*, 488 F. App'x 714, 716 (4th Cir. 2012). Therefore, only rational-basis review applies when parents claim that a public school has infringed "their right to control their children's education." *Herndon by Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 89 F.3d 174, 179 (4th Cir. 1996).

Across many cases, courts have applied rational-basis review to reject due process claims, like Plaintiffs', relating to specific educational policies and curricula. The Second Circuit rejected a challenge to a public school's mandatory health curricula under rational-basis review. *Leebaert*, 332 F.3d at 142-143. Similarly, the Sixth Circuit rejected a challenge to a mandatory dress code on the ground that "issues of public education," including "the school curriculum," are "generally 'committed to the control of state and local authorities.'" *Blau*, 401 F.3d at 395-396. And the First Circuit held that, whether it applied rational-basis review or some form of heightened scrutiny, parents could not show that school officials violated the due process rights of parents by denying their requests for prior notice of, and exemptions from, instruction involving "books that portray diverse families, including families in which both parents are of the same gender" and that "depict[] and celebrate[] a gay marriage." *Parker*, 514 F.3d at 90.

Rather than confront this authority, Plaintiffs cite a handful of cases discussing the due process rights of parents in circumstances far removed from the situation here, involving child custody disputes, grandparent visitation rights, and a mandatory pregnancy test. *See* PI Br. 23-24. None suggests parents have a due process right to exempt their children from an aspect of a public-school curriculum. Courts have instead consistently held that there is no such right. Any due process claim "[s]eparate and apart from the Free Exercise Clause," PI Br. 23, therefore

triggers only rational-basis review, which the MCPS policy satisfies, *see supra* Section I.C.1.

To the extent Plaintiffs intend to argue that strict scrutiny should apply under a "hybrid" theory, *see* PI Br. 24, that too is unavailing. The Fourth Circuit has never held that strict scrutiny applies to "hybrid" claims. *See Workman v. Mingo Cnty. Bd. of Educ.*, 419 F. App'x 348, 353 (4th Cir. 2011) (noting a "circuit split over the validity of th[e] 'hybrid-rights' exception" to rational-basis review). *Herndon* observed that the Supreme Court had applied rational-basis review to all claims of a parental right to control their child's public-school education, except for the challenge in *Yoder*, where "religious concerns were central." 89 F.3d at 178. But *Herndon* did not endorse, nor has the Fourth Circuit since applied, strict scrutiny for "hybrid" claims. Indeed, the weight of authority suggests that Plaintiffs cannot join a weak free exercise claim with a weak due process claim to create a "hybrid" claim requiring the application of strict scrutiny. There is "no good reason for the standard of review to vary simply with the number of constitutional rights that the plaintiff asserts have been violated." *Leebaert*, 332 F.3d at 143. Instead, "in law as in mathematics zero plus zero equals zero." *Henderson v. Kennedy*, 253 F.3d 12, 19 (D.C. Cir. 2001). The few courts that have applied strict scrutiny to certain "hybrid" claims still require a "*colorable* claim that a companion right has been violated," *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1032 (9th Cir. 2004) (emphasis added), which Plaintiffs have not established, *see supra* Part I. And even if the Court were to apply strict scrutiny, MCPS's policy would satisfy that standard. *See supra* Section I.C.2.

III. Plaintiffs Do Not Satisfy The Remaining Preliminary Injunction Factors

The Court need not consider the remaining factors because Plaintiffs have not clearly established that they are likely to succeed on their free exercise or due process claims. *See Henderson for Nat'l Labor Relations Bd. v. Bluefield Hosp. Co.*, 902 F.3d 432, 439 (4th Cir. 2018). Plaintiffs moreover concede that their arguments on the remaining factors rise or fall with

the merits of their claims, making no argument that these other factors are independently satisfied. PI Br. 30-32. An injunction must therefore be denied.

In any case, Plaintiffs have not shown that an injunction is required to forestall irreparable harm. MCPS's no-opt-out policy does not infringe Plaintiffs' constitutional rights, *see supra* Parts I and II, meaning Plaintiffs have not established "a likely constitutional violation." *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021). Since the infringement of constitutional rights is the only irreparable harm Plaintiffs identify, their claim for injunctive relief must fail. Nothing is stopping Plaintiffs from sharing with their children their religious teachings on issues of sex, sexual orientation, and gender identity. *See Roswell*, 2023 WL 3158728, at *4 (no irreparable harm where plaintiff could continue to engage in protected speech, just not in his "'preferred method of communication'").

Nor do the balance of equities and public interest favor an injunction. These factors merge when the government is the party opposing injunctive relief. *Association of Am. Pubs., Inc. v. Frosh*, 586 F. Supp. 3d 379, 397 (D. Md. 2022). Because there is no likely constitutional violation, these factors do not support an injunction. *Roswell*, 2023 WL 3158728, at *5. On the other hand, "'the public consequences in employing the extraordinary remedy of an injunction'" are severe. *Association of Am. Pubs.*, 586 F. Supp. 3d at 397. Requiring MCPS to permit opt outs from lessons using the LGBTQ-Inclusive Books would significantly disrupt classroom instruction, undermining MCPS's curricular goals and its efforts to foster a learning environment free of discrimination. Decl. ¶¶ 36-40. Both the balance of equities and the public interest thus tip sharply against an injunction.

CONCLUSION

Plaintiffs' motion for a preliminary injunction should be denied.

Dated: July 12, 2023

Respectfully submitted,

MONIFA B. MCKNIGHT, *in her official capacity as Superintendent of the Montgomery County Board of Education*; THE MONTGOMERY COUNTY BOARD OF EDUCATION; *and* SHEBRA EVANS, LYNNE HARRIS, GRACE RIVERA-OVEN, KARLA SILVESTRE, REBECCA SMONDROWSKI, BRENDA WOLFF, AND JULIE YANG, *in their official capacities as members of the Board of Education*

By Counsel

/s/ *Thomas K. Bredar*
Bruce M. Berman (*pro hac vice*)
bruce.berman@wilmerhale.com
Jeremy W. Brinster (*pro hac vice* pending)
jeremy.brinster@wilmerhale.com
Wilmer Cutler Pickering
Hale and Dorr LLP
2100 Pennsylvania Ave. NW
Washington, DC 20037

Alan E. Schoenfeld (*pro hac vice*)
alan.schoenfeld@wilmerhale.com
Thomas K. Bredar (MD No. 21635)
thomas.bredar@wilmerhale.com
Emily Barnet (*pro hac vice* pending)
emily.barnet@wilmerhale.com
Cassandra A. Mitchell (*pro hac vice* pending)
cassie.mitchell@wilmerhale.com
Wilmer Cutler Pickering
Hale and Dorr LLP
7 World Trade Center
250 Greenwich St.
New York, NY 10007

Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 12, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Thomas K. Bredar
Thomas K. Bredar

EXHIBIT 1

POLICY BOARD OF EDUCATION OF MONTGOMERY COUNTY

Related Entries: ACD, ACF, ACH, ACH-RA, ACG, BMA, GAA, GBA-RA, GBH, GEG-RA, JHF, JHF-RA, JHG-RA

Responsible Offices: Chief of Staff Montgomery County Public School; Teaching, Learning, and Schools; Strategic Initiatives; Districtwide Services and Supports; Human Resources and Development; General Counsel

Nondiscrimination, Equity, and Cultural Proficiency

A. PURPOSE

To affirm the Montgomery County Board of Education's desire to create an educational community guided by its five core values—Learning, Relationships, Respect, Excellence, and Equity.

To affirm the Board's deep commitment to providing every student equitable access to the educational opportunities, rigor, resources, and supports that are designed to maximize the student's academic success and physical, psychological, and social/emotional well-being, and ensuring all staff are empowered to do their best work.

To assert the Board's belief that each and every student matters, each student's individual characteristics are valuable, and in particular, that educational outcomes should never be predictable by any individual's actual or perceived personal characteristics, and that equity demands intensive focus and attention to eliminate all gaps in student achievement.

To establish and promote a framework that prepares all students to live and work in a globally-minded society; fosters a positive learning environment that embraces all unique and individual differences; and, uses an equity lens to consider the impact of any program, practice, decision, or action on all student groups with a strategic focus on marginalized student groups.

To affirm the Board's unwavering commitment that all staff will be culturally proficient, and demonstrate mutual respect without regard to any individual's actual or perceived personal characteristics.

To uphold the Board's core values, and ensure compliance with all federal, state, and local nondiscrimination laws.

B. ISSUE

Discrimination in any form will not be tolerated. It impedes Montgomery County Public Schools' (MCPS) ability to discharge its responsibilities to all students and staff, and achieve our community's long-standing efforts to create, foster, and promote equity, inclusion, and acceptance for all.

The Board recognizes that equity goes beyond meeting the letter of the law. Equity also requires proactive steps to identify and redress implicit biases and structural and institutional barriers that too often have resulted in identifiable groups of students and staff being unjustifiably or disproportionately excluded from or underrepresented in key educational program areas and sectors of the workforce, as well as over-identified in student discipline actions. Continued vigilance is necessary to end identified inequities that students and staff experience because of their actual or perceived personal characteristics.

For the purposes of this policy, the following definitions are used:

1. *Cultural proficiency* is the ongoing process of becoming knowledgeable of one's own culture, as well as the cultures of others in order to foster an appreciation, understanding, and respect for varying cultural expressions that exist in the actions and interactions of an organization; and, to strengthen and enrich the organization and the community at large with the presence and contributions of many cultures.

2. *Discrimination* includes actions that are motivated by an invidious intent to target individuals based on their actual or perceived personal characteristics, as well as acts of hate, violence, insensitivity, disrespect, or retaliation—such as verbal abuse, harassment, bullying, slurs, threats, physical violence, vandalism, or destruction of property—that impede or affect the learning or work environment. Discrimination also includes conduct or practices that may be facially neutral but that have an unjustified impact based on individuals' actual or perceived personal characteristics. Discrimination encompasses racism, sexism, and other forms of institutional prejudice in all their manifestations.

3. *Equity* is the commitment to ensure that every student and staff member, without regard to their actual or perceived personal characteristics, is given the individual challenges, support, and opportunities to exceed a rigorous common standard in order to be prepared for academic and career success.

4. *Equity lens* means that for any program, practice, decision, or action, the impact on all students is addressed, with a strategic focus on marginalized student groups.

5. *Implicit bias* refers to the attitudes or stereotypes that affect our understanding, actions, and decisions. These biases, which encompass both favorable and

unfavorable assessments, may be activated involuntarily and without an individual's awareness or intentional control.

6. *Personal Characteristics* include race, ethnicity, color, ancestry, national origin, nationality, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family structure/parental status, marital status, age, ability (cognitive, social/emotional, and physical), poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations.

C. POSITION

1. The Board expects the district to develop and promote a culture of high expectations for all students and staff performance and maintain environments that will be equitable, fair, safe, diverse, and inclusive; and eliminate inequities of opportunities, raise the level of achievement for all students, and significantly address achievement gaps.

2. The Board prohibits the use of language and/or the display of images and symbols that promote hate and can be reasonably expected to cause substantial disruption to school or district operations or activities. This prohibition will not be used, however, to prevent responsible discussion of such language, images or symbols for educational purposes.

3. The Board expects all students and staff to conduct themselves in a manner that demonstrates mutual respect without regard to an individual's actual or perceived personal characteristics.

4. The Board prohibits discrimination, by students and staff, of any kind, directed at persons because of their actual or perceived personal characteristics.

5. The Board commits to modelling the expectations in this policy, and expects all Board and MCPS reports, presentations, and decision making to take into account the equity implications of this policy.

6. The Board also expects and promotes the following:

   a) Collaboration among staff, students, parents/guardians, and the community

      (1) Staff are expected to work together and with students, parents/guardians, and community members to ensure that each school and work site is free from discrimination.

      (2) Parents/guardians are encouraged to establish expectations for their children that are consistent with the beliefs, intentions, and obligations set forth in law and as reflected in this policy, and to collaborate with MCPS staff to meet these expectations.

(3) Staff are expected to promote engagement of all parents/guardians in their children's education and work to remove barriers that impede their active participation without regard to actual or perceived personal characteristics.

(4) MCPS shall seek broad participation on task forces, committees, commissions, and other advisory bodies which represent diverse communities, cultures, languages, and perspectives.

b) Equality of educational opportunities

(1) The Board is committed to addressing disparities in levels of access to factors critical to the success of all students, including the following:

(a) Resources, including challenging and creative courses, programs, and extracurricular activities;

(b) Effective and qualified teachers, leaders, and support staff;

(c) Adequate facilities and equipment;

(d) Updated technology;

(e) Quality education materials;

(f) Practices and procedures that provide for educational equity and ensure that there are not obstacles to accessing educational opportunities for any student; and

(g) Sufficient funding.

This commitment is, and must continue to be, evident in how resources are allocated, including an intentional strategy of providing additional funding to students in greater need, as well as to schools that serve larger numbers of students in need.

(2) MCPS will work to identify and address structural and institutional barriers that could prevent students from equitably accessing educational opportunities in all schools.

(3) MCPS will expect the equitable administration of disciplinary consequences as one of the essential components to equitable access to educational opportunities in schools.

(4) MCPS will work toward empowering emergent multilinguals/English Learners to master social and academic English, using their first language(s) and culture(s) as assets, to thrive in school, college, careers, and as global citizens. MCPS will provide access to rigorous coursework and equal access to comparable academic programs both among schools and among students within the same school without regard to actual or perceived personal characteristics.

(5) MCPS will encourage all students to pursue their goals and interests, without regard to historical barriers or stereotypes. Students will be provided wide access to various and multiple opportunities to enroll in challenging programs and participate in a wide variety of school activities, including athletics, extracurricular and non-academic programs, to enrich their perspectives and to prepare for meaningful and fulfilling work in their chosen careers.

(6) MCPS will promote and encourage schools, classrooms, work sites, and school-sponsored representations (including mascots, logos, team names, chants, or musical accompaniments) to be inclusive, nondiscriminatory, and bias-free, and to provide a welcoming climate for all.

(7) MCPS will provide a culturally responsive Prekindergarten to Grade 12 curriculum that promotes equity, respect, and civility among our diverse community, accurately depicts and represents the distinctive contributions of our global community, and provides opportunities for staff and students to model cultural proficiency in every school and program. The curriculum shall enable staff to model, and students to develop, the following attitudes, skills, and behaviors:

(a) Value one's heritage and the heritage of others;

(b) Respect, value, and celebrate diversity as an essential component of a healthy and thriving community;

(c) Value the richness of cultural pluralism and commonality;

(d) Develop and promote inclusive relationships and work effectively in cross-cultural environments; and

(e) Confront and eliminate stereotypes related to individuals' actual or perceived personal characteristics.

(8) Instructional materials used in MCPS schools will reflect the diversity of the global community, the aspirations, issues, and

achievements of women, persons with disabilities, persons from diverse racial, ethnic, and cultural backgrounds, as well as persons of diverse gender identity, gender expression, or sexual orientation.

c) Professional learning and education to achieve districtwide cultural proficiency

MCPS will encourage effective collaboration among staff, parents/guardians, and community members by offering opportunities to enhance cultural proficiency, creating districtwide engagement, and promoting understanding and resolution of differences and disagreements.

d) Equality of employment opportunities

(1) MCPS shall continue to monitor and promote a diverse workforce and take appropriate action to create a district free of implicit bias and discrimination in all aspects of employment.

(2) MCPS will take positive steps to eliminate structural and institutional barriers to recruiting, hiring, retaining, and promoting a diverse workforce.

(3) MCPS will identify staff positions in which individuals from diverse backgrounds are underrepresented, and promote a diverse workforce by actively recruiting and/or promoting qualified candidates, consistent with negotiated agreements. For example, MCPS will continue to recruit staff to positions that are nontraditional for their gender.

(4) MCPS will empower staff to promote the Board's core values and beliefs expressed in this policy in daily interactions with peers, students, parents/guardians, and members of the community.

D. DESIRED OUTCOMES

1. Every school and work site will embody a culture of respect, grounded in the Board's core values, that promotes understanding, respect, civility, acceptance, and positive interaction among all individuals and groups.

2. Structural and institutional barriers to educational and employment opportunities will be eliminated.

3. MCPS schools and work sites will be equitable, safe, diverse, inclusive, and free of discriminatory acts of hate, violence, insensitivity, and disrespect.

4. Educational outcomes shall not be predictable by actual or perceived personal characteristics, and gaps in student achievement will be significantly reduced.

5. MCPS students and staff will become models in the community of civility, acceptance, respect, and positive interactions.

6. The educational experiences of all students will be enriched by providing exposure to staff from many backgrounds reflecting the pluralistic nature of the community, thereby providing settings for education that promote understanding of diversity and contribute to the quality of the exchange of ideas inherent in the educational setting.

E. IMPLEMENTATION STRATEGIES

1. The Board will address disparities in levels of access to resources critical to the success of students by implementing an intentional strategy of providing additional funding to students in greater need, as well as to schools that serve larger numbers of students in need; and ensuring equitable access to effective leaders and teachers for all students.

2. MCPS will engage with staff, students, parents/guardians, and the entire community to build and sustain a culture emblematic of the ideals of this policy.

3. MCPS will identify a process for analyzing data to develop goals, objectives, strategies, and timelines for the implementation of equitable and culturally competent practices in each school. Multiple indicators are necessary to monitor student outcomes, engagement, and school climate, and specific data will be used to ensure accountability for student, school, and districtwide performance; to reduce variability in outcomes; and to ensure that academic outcomes will not be predictable by actual or perceived personal characteristics and can be assessed and reported transparently to the public.

4. Programs, curricula, instructional materials, and activities, including athletics, extracurricular and non-academic programs and activities, will provide all students with the knowledge, skills, attitudes, and behaviors that promote cultural proficiency and behaviors that enable students to live and work together in our increasingly diverse county, state, nation, and world.

5. MCPS will provide tailored and differentiated professional learning to –

   a) build capacity for cultural proficiency and cultural responsiveness,

   b) gain the skills and knowledge to create a learning environment that is student-centered and meets the individual and diverse needs of all students, and

   c) address areas of inequity in the system and the barriers that may impede students success, social-emotional learning, and physical and psychological health of students.

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6. At all times, staff will foster –

   a) physically and psychologically safe and welcoming environments for learning and working;

   b) model and encourage respectful, and civil discourse and interactions among all staff, students, parents/guardians, and community members; and

   c) strive to remove cultural, linguistic, technological, or transportation-related barriers that may prevent families from engaging with their children's education, through the use of culturally responsive resources, such as –

      1. interpreters,

      2. translated documents, and

      3. collaboration with organizations that may facilitate communication between MCPS and families.

7. Specific strategies will be identified, communicated and used to prevent discrimination, and procedures will be followed to resolve, monitor, and analyze such incidents of discrimination if they occur.

8. MCPS will identify partnerships and work cooperatively with the Montgomery County Executive, the Montgomery County Council, local law enforcement agencies, other county agencies, community groups, business organizations, and other stakeholders to increase equity and reduce discrimination for students and staff.

9. A statement summarizing this Board policy of nondiscrimination, will be prominently included in MCPS publications and on the MCPS website. Any publication that states the Board policy of nondiscrimination in English will also be translated into those languages for which translation and interpretation services are most frequently requested by parents/guardians of MCPS students.

10. The superintendent of schools will designate an appropriate lead office to implement this policy, with support from other offices as appropriate, and assume responsibility for the following:

    a) Monitoring and ensuring MCPS compliance with all federal, state, and local nondiscrimination laws and MSDE reporting requirements;

b) Identifying the method of evaluation to measure the effect of equitable practices districtwide and in schools;

c) Promptly investigating, and resolving complaints of discrimination;

d) Designating an individual responsible for the facilitation, monitoring, and implementation of system equity initiatives;

e) Increasing awareness of the Board's values and expectations under this policy;

f) Requiring that an equity lens be used in reviews of –

1) staff, curriculum, pedagogy, professional learning, instructional materials, and assessment designs; and

2) all staff recruiting, hiring, retention, and promotion processes;

g) Providing professional learning regarding nondiscrimination, equity and cultural proficiency; and conducting outreach to support the application of these concepts in professional conduct and practice; and

h) Maintaining appropriate records.

11. The superintendent of schools may direct an employee who exhibits insensitive behavior, as evidenced by violating the values and expectation expressed in this policy, to participate in additional training regarding cultural proficiency. Continued insensitivity will not be tolerated by the Board and may result in further disciplinary action, including dismissal, consistent with the *MCPS Employee Code of Conduct*.

F. REVIEW AND REPORTING

1. The superintendent of schools will –

a) ensure that equity be addressed in the Local Every Student Succeeds Act (ESSA) Consolidated Strategic Plan;

b) disaggregate student data to analyze trends and identify gaps, and use such data to support the creation of equitable solutions; and

c) provide the public and the Board with regular updates on the implementation of this policy and efforts undertaken by the district to create an equitable school system that fulfills the Board's core values.

2. This policy will be reviewed every three years in accordance with the Board of Education's policy review process.

Related Sources: MCPS Culture of Respect Compact[1]; Student Code of Conduct in MCPS; MCPS Employee Code of Conduct; MCPS Guidelines for Respecting Religious Diversity; MCPS Guidelines for Student Gender Identity; U.S. Constitution U.S.C.), Amendment 14; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; 34 Code of Federal Regulations (CFR), Part 106, 34 CFR Part 100; Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § § 1400-1487; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 et seq.; Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981; Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634; Equal Pay Act of 1963, 29 U.S.C. § 206(d); Equal Rights Amendment to the Maryland Constitution's Patient Protection Affordable Care Act, 42 U.S.C. § 18001 et seq.; Maryland Constitution Declaration of Rights (Article 46); Annotated Code of Maryland, State Government Article, Title 20, Human Relations; Annotated Code of Maryland, Education Article 6-104, 7-424.1; Code of Maryland Regulations (COMAR) 13A.05.01; Montgomery County Racial Equity and Social Justice Act Amendments to Montgomery County Code §1A-201, §2-64A, §2-81C, §27-83, §33A-14.

Policy History: Adopted by Resolution No. 595-69, November 11, 1969; amended by Resolution No. 16-72, January 11, 1972; amended by Resolution No. 536-77, August 2, 1977; amended by Resolution No. 240-96, March 25, 1996; amended by Resolution No. 323-96, May 14, 1996; amended by Resolution No. 249-03, May 13, 2003; amended by Resolution No. 318-17, June 26, 2017; copy edits December 11, 2019; amended by Resolution No. 321-21, June 29, 2021.

Note: Tenets of Board policies ACB, *Nondiscrimination*, ACE, *Gender Equity*, GBA, *Workforce Diversity*, and GMA, *Human Relations Training of MCPS Staff*, were incorporated into Resolution No. 318-17 amendments to this policy, and were rescinded upon adoption of amended Board Policy ACA on June 26, 2017.

[1] *Culture of Respect Compact among Montgomery County Public Schools, Montgomery County Education Association, Service Employees International Union Local 500, and the Montgomery County Association of Administrators and Principals*

EXHIBIT 2

English Language Arts Framework

Goal

The goal of the Pre-K–12 English Language Arts program is to create literate, thoughtful communicators, capable of controlling language effectively as they negotiate an increasingly complex and information-rich world. Students will refine specific skills and strategies in reading, writing, speaking, listening, and viewing and will use these skills and strategies widely as tools for learning and reflection. Exploring a variety of texts, students will understand and appreciate language and literature as catalysts for deep thought and emotion.

Enduring Understandings

- Language is a powerful tool for expressing ideas, beliefs, and feelings.
- Knowledge of language facilitates thought.
- Readers, listeners, and viewers continually develop and apply strategies to construct meaning from increasingly complex and challenging texts.
- Writers and speakers strategically use language to communicate for a variety of purposes.
- Individuals need advanced literacy skills to participate actively and successfully in today's demanding, information-based society.
- Literature reveals the complexities of the world and human experience.

Content

Guided by the Maryland English Language Arts Content Standards (2008) and the Common Core State Standards for English Language Arts (2010), the Pre-K–12 English Language Arts program focuses on the communication processes of reading, writing, speaking, listening, and viewing through the study of language and literature.

Each unit integrates the communication processes and contents. No one process (reading, writing, speaking, listening, and viewing) is taught in isolation; neither of the contents (literature and language) is taught in isolation. Rather, students learn the dynamic relationships among them as they study the significant role language plays in literature and in the craft of expressing oneself through the written and spoken word. Enduring Understandings and Essential Questions for each unit provide a larger purpose for learning targeted content. Specifically, each unit exposes students to the following aspects of the communication processes, literature, and language:

Reading and Listening—Effective readers and listeners use strategies before, during, and after reading or listening to construct and extend meaning according to the text and purpose. They access background knowledge, survey structure, predict, question, summarize, clarify, visualize, draw conclusions, validate perceptions, analyze, synthesize, and evaluate. In English Language Arts classes, students develop and apply these strategies to a variety of increasingly challenging and complex texts.

Viewing—Effective viewers approach visual texts in much the same way they approach written or spoken texts. In English Language Arts, students actively view visual texts by applying and refining strategies they use when reading and listening and learn new concepts specific to understanding visual media.

Writing and Speaking—Effective communicators are aware of the essential elements of powerful writing and speaking—ideas and development, organization, diction, syntax, voice, and language conventions. They use their knowledge of the nature, organization, and structure of language to improve as writers and speakers. Effective writers employ a recursive process that includes pre-writing, drafting, revising, editing, and publishing. In English Language Arts, students apply their understanding of language and the writing process to develop organized and coherent responses to literature, synthesize information, develop arguments for a variety of purposes, describe situations or events, and express their personal ideas.

Literature—Effective readers realize that universal human experiences often serve as sources of literary themes. Readers also understand that authors make conscious decisions to affect an audience. In English Language Arts, students read, listen to, and view traditional and contemporary works to examine how authors, speakers, and directors use language, literary elements, and genres to provide their audiences with new insights and perspectives.

Language—Effective communicators are aware of the rules that govern language, grammar, syntax, and organization, and they understand the power of word choice and semantics. In English Language Arts, students use their knowledge of language to improve as communicators and to analyze the textual decisions authors make to influence voice, tone, and meaning in literary works.

Instructional Approach

Designed to provide challenge for all learners, the Pre-K–12 English Language Arts curriculum offers a flexible program focused on developing strategies for active reading and clear writing. Instructional activities guide students to examine the techniques authors use to develop universal themes in various genres. Students build, refine, and apply skills in organization and clear use of language in recursive writing tasks throughout the year. The English Language Arts curriculum promotes instruction that

- integrates the communication processes and contents.
- is student centered and challenging for all learners.
- provides experiences for students to construct and produce their own meaning.
- encourages critical thinking and metacognition.
- places literature study in a social and personal context.
- includes ongoing assessment for the purpose of modifying instruction to ensure student success.
- promotes opportunities for teachers to provide frequent and immediate feedback to students.
- values all learners and is differentiated for their strengths, interests, and learning styles.
- nurtures appreciation and understanding of diverse individuals, groups, and cultures.

- offers students many opportunities to demonstrate and apply their learning in a variety of modes.
- includes a variety of instructional approaches and conceptual models, such as simulations, shared inquiry, seminars, research, and concept formation.
- uses flexible grouping practices and collaboration.
- provides frequent formal and informal writing opportunities, with attention to the writing process and portfolio assessment.
- incorporates grammar and vocabulary study in the context of writing and literature study.
- emphasizes and models critical thinking and problem solving.
- includes a wide variety of texts, both assigned and student selected, representing diverse cultures and a range of difficulty.
- provides opportunities to study speaking, listening, and viewing processes to enhance the study of text.
- offers frequent opportunities for close critical reading, analysis, and discussion.
- provides active and direct work with writing, using models, frequent feedback, and rubrics to give students opportunities to improve their work.
- incorporates and encourages the use of technology.
- develops strategic readers and writers.

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EXHIBIT 3

Core Learning Practices for English Language Arts

In an effort to create sustainable, culturally responsive pedagogy, teachers should regularly work with their PLCs to plan instructional experiences where ***students*** frequently engage in these learning practices. PLCs should use these practices along with the Components of a Rigorous Classroom and the Instructional Continuum of Personalized Learning to ensure students are meeting the demands of the Common Core State Standards.

Analysis and Use of Language

- Evaluating the effects of an author's word choices
- Exploring how and why an author varies sentence structure and style
- Determining and clarifying meaning of unknown and multiple-meaning words from context
- Choosing precise language to convey ideas effectively
- Varying sentence structure for meaning, interest, and style (e.g., sentence combining and imitating)

Close Reading

- Engaging with complex text
- Questioning and making meaning from text
- Reading a variety of texts across genres—short fiction, nonfiction, poetry, essays, and visual texts
- Thinking critically about diverse points of view

Critical Thinking and Inductive Reasoning

- Evaluating ideas and challenging beliefs
- Recognizing faulty logic and sound reasoning
- Synthesizing evidence to formulate independent conclusions
- Examining abstract or ambiguous concepts
- Engaging in authentic inquiry and incorporating new knowledge to refine thinking
- Using metacognition to develop thinking skills

Learning *By* Writing and *About* Writing

- Taking risks to develop ideas and voice
- Writing frequently to explore thinking and to build fluency and stamina
- Composing narratives, arguments, and explanatory texts, as well as blending these types of writing
- Synthesizing the best evidence from multiple sources in support of claims
- Engaging in frequent reflection and using ongoing feedback to develop and strengthen writing

Student Choices

- Cultivating curiosity and wonder by driving their own learning
- Making choices in content, process, pace, and product
- Reflecting on how they learn to make informed choices
- Using a variety of ways to access challenging content and engage in tasks worth doing
- Leading discussions on self-selected texts
- Selecting from a range of diverse texts to understand and appreciate multiple perspectives

Student Discourse

- Propelling conversations and building on ideas
- Participating in a range of collaborative discussions (e.g., Shared Inquiry, Socratic seminar)
- Providing meaningful and constructive feedback
- Using effective presentation skills
- Citing evidence to support claims
- Working together to clarify questions and solve problems

EXHIBIT 4

REGULATION MONTGOMERY COUNTY PUBLIC SCHOOLS

Related Entries: BLB, EGB-RA, IGP-RA, IGT-RA, IIB
Responsible Office: Deputy Superintendent of Schools

Evaluation and Selection of Instructional Materials and Library Books

I. PURPOSE

To set forth the procedures for the evaluation and selection of instructional materials and library books in order to locate and make available for students and professional staff members instructional materials that support the curriculum and goals of education on a countywide basis

To establish a procedure for parents, students, and staff to request a reconsideration of previously approved instructional materials being used in MCPS

II. BACKGROUND

Instructional materials are evaluated and selected according to specified procedures by professional staff to assure that the materials in teaching/learning situations support the curriculum and meet the diverse needs of students in accordance with state laws.

III. DEFINITIONS

A. *Instructional materials* are print and non-print items that are designed to impart information to the learner in the teaching/learning process. Instructional materials may be consumable and expendable and include such items as charts, kits, textbooks, magazines, newspapers, pictures, recordings, slides, transparencies, videos, video discs, workbooks, and electronic resources such as software, CD-ROMs, and online services.

B. *Library books* are literary works, narratives, and other texts that are selected for research or free choice reading but not used for directed instruction.

C. *Subject-Area Evaluation and Selection Committees* consist of teachers, media specialists, other relevant staff, and the coordinator/supervisor of each subject area who evaluate textbooks, videos, electronic resources, and other instructional materials for county-wide use.

IV. PROCEDURES

A. General

1. The Evaluation and Selection Unit coordinates the processes of the evaluation of instructional materials and library books in accordance with this regulation.

2. Instructional materials and all library books are to be reviewed and evaluated prior to purchase.

3. All instructional materials and library books received as gifts and intended for use with or by MCPS students must be evaluated.

4. Instructional materials duplicated or copied in compliance with Regulation EGB-RA: *Using Copyrighted Materials* for use with or by MCPS students must be evaluated.

5. All instructional materials and library books must be selected from those approved through the evaluation process.

6. Guidelines to implement specific evaluation and selection procedures are provided by the Evaluation and Selection Unit.

B. Identification of Materials

1. Professional staff members and Subject-Area Evaluation and Selection Committees may request and evaluate materials by using:

a) MCPS Form 365-25: *Record of Evaluation for Instructional Materials* for print and non-print materials

b) MCPS Form 365-29: *EPIC-CDROM/Computer Software Record of Evaluation* for electronic materials

2. Newly approved textbooks will remain in the Evaluation and Selection Unit for 30 calendar days to permit examination by professional staff and parents before school orders will be honored.

3. The Evaluation and Selection Unit will coordinate all requests from vendors and representatives who want to meet with Subject-Area Evaluation and Selection Committees and workshops held by subject-area coordinators.

4. Professional staff members are encouraged to seek newly published educational materials through professional activities such as conferences and training sessions. Requests for preview and evaluation copies of materials are made through the Evaluation and Selection Unit. Vendors who contact staff should be directed to the Evaluation and Selection Unit.

5. Vendors and publishers' representatives are prohibited from soliciting the sale of instructional materials on school premises. (See Regulation COD-RA: *Prohibition of Vendors on or Near School Premises*, and Exhibit COD-EA: *Vendors on School Grounds, Montgomery County Code*.)

C. Evaluation of Instructional Materials

1. General

a) All textbooks must be evaluated by Subject-Area Evaluation and Selection Committees using MCPS Form 365-25: *Record of Evaluation for Instructional Materials*.

b) Instructional materials for county-wide use must be evaluated by Subject-Area Evaluation and Selection Committees using MCPS Form 365-25: *Record of Evaluation for Instructional Materials*.

c) Instructional materials, other than textbooks and Family Life and Human Sexuality materials, for single-school use must be evaluated by more than one professional staff member (the school media specialist, a teacher in the content area, or an administrator) using MCPS Form 365-25: *Record of Evaluation for Instructional Materials*.

d) Instructional materials should, in their overall effect, make a positive contribution to the MCPS program and directly align to MCPS curriculum. Titles that are part of a series and kits or sets must be evaluated individually on their own merit.

e) Criteria that should be applied to the evaluation of all instructional materials are:

(1) Materials shall be directly aligned to the MCPS curriculum and relevant to and reflective of the multicultural society and global community.

(2) As appropriate, the materials shall offer opportunities to better understand and appreciate the issues, aspirations, and achievements of women and persons from diverse racial, ethnic, and cultural backgrounds, avoiding those which contain negative attitudes, stereotypes, caricatures, epithets, and dialect (except in historical or literary contexts).

(3) As appropriate, the materials shall provide students with the opportunity to investigate, analyze, and evaluate social issues.

(4) Materials shall take the following into account:

(a) Direct support of student achievement toward MCPS curriculum standards

(b) Authenticity

(c) Impact on instructional time

(d) Age/grade appropriateness (in the case of motion media, Motion Picture Movie Association age ratings must be applied when applicable)

(e) Recency – Copyright date

(f) Clarity, conciseness, and understandability

(g) Value in terms of purchase price

(h) Compliance of electronic materials and resources with MCPS hardware and network standards

2. Family Life and Human Sexuality

   a) Consistent with MCPS Regulation IGP-RA, *Comprehensive Health Education Instructional Program*, instructional materials that are to be used in direct classroom instruction in the family life and human sexuality education program ~~(Focus Areas II and III)~~ are to be evaluated within the health education curriculum advisory committee in accordance with criteria established by MCPS and the Maryland State Department of Education.

   b) Annually, under direction of the principal, each school must organize a school-community advisory group representing a variety of viewpoints within the community.

      (1) This committee will review the curriculum and instructional materials for the family life and human sexuality program and will assist the principal in planning information sessions for parents about the program.

      (2) Parents/guardians will have an opportunity to review the state and county regulations and to examine the curriculum and the county-approved instructional materials to be used with students.

      (3) The committee will advise the principal on implementation of the program and assist the principal in evaluating the program.

   c) Instructional materials in the family life and human sexuality curriculum that are approved only for direct supervised instruction are to be placed in a designated area of the school accessible to staff only.

D. Evaluation of Library Books

   1. Approval of library books requires review and signature of more than one professional staff member using MCPS Form 365-25: *Record of Evaluation for Instructional Materials*.

   2. Professional staff members may use reviews from selected journals and MCPS bibliographies to evaluate library books.

E. Review of Approved Instructional Materials and Library Books

1. School-based and central office staff will review on an on-going basis all instructional materials in schools based upon curriculum objectives and revisions, datedness of material, out-of-print items, challenge to authenticity, and comparative market prices.

2. The library media specialist, in conjunction with other local school professional staff, will review the media center collection on an ongoing basis.

3. MCPS professional staff may request, through the Evaluation and Selection Unit, newly published and updated instructional materials and library books from vendors and publishers by completing the bibliographic data on MCPS Form 365-25: *Record of Evaluation for Instructional Materials*.

F. Reconsideration of Instructional Materials and Library Books

When the appropriateness of instructional materials or library books is questioned by a parent, student, or staff member, resolution begins at the school level.

1. When resolution cannot be reached at the school level, a "*Request for Reconsideration of Instructional Materials and Library Books*" form, which can be obtained from the supervisor of Evaluation and Selection, must be completed and forwarded to the Evaluation and Selection Unit. The supervisor of evaluation and selection shall contact the principal or library media specialist for all pertinent data concerning the request.

2. Upon receipt of the "*Request for Reconsideration of Instructional Materials and Library Books*," the Evaluation and Selection Unit will:

   a) Appoint an ad hoc committee to reevaluate the material and establish a date for completion of its work. The committee will be composed of school library media specialist(s), teacher(s), principal(s), counselor(s), subject coordinator(s), and one librarian from the public sector other than MCPS, such as the public library system or higher education.

   b) Notify in writing principals, library media specialists, and school staff giving pertinent information concerning the text and the reason for the request. Such materials will not be purchased during the reevaluation period. The instructional material or library books in

question will not be withdrawn from the collection during the time the committee is reevaluating the material.

c) Any professional staff member may then write a memorandum to the supervisor of Evaluation and Selection outlining concerns relevant to the item in question. All correspondence becomes a part of the committee file.

c) The instructional material or library book in question and the report of the ad hoc committee will be examined by the director of School Library Media Programs and the associate superintendent for Instruction and Program Development. Upon examination of the recommendations of the ad hoc committee and in consultation with other staff members at the discretion of the associate superintendent, the associate superintendent will decide the disposition of the item in question.

e) The parent or staff member who filed the complaint will be sent a letter signed by the associate superintendent for Instruction and Program Development stating the decision.

f) Any material that has been through the complete reevaluation process within the past three years will not be reconsidered. The earlier committee action will stand.

g) Consideration of a title that has been removed through the reevaluation process must be initiated by professional staff using MCPS Form 365-25.

h) Schools will be notified by written communication as to the status of the reevaluated material.

G. Appeals

1. Appeals to the Superintendent of Schools

a) Requests to appeal the decision of the associate superintendent for instruction and program development must be made in writing to the superintendent.

b) The superintendent or designee will, upon review of the documentation constituting the record and consultation with

appropriate administrative staff, respond in writing to the complainant.

2. Appeals to the Board of Education

a) Requests to appeal the decision of the superintendent must be made in writing to the president of the Board of Education. The appeal must be related to the original particulars cited on the *Request for Consideration of Instructional Materials and Library Books* form.

b) When a request for appeal is received, the superintendent will provide each Board member with a file on the item under appeal to include:

(1) A copy of the "*Request for Reconsideration of Instructional Materials and Library Books*" form submitted by the complainant

(2) Available published reviews of the item

(3) A copy of the evaluation form

(4) A statement from the principal of the school from which the complaint originated about how the item is used in the instructional program

(5) Any statements from other professional staff concerning the usefulness of the item

(6) The report of the reevaluation ad hoc committee

(7) A copy of the letter notifying the parent, student, or staff member who filed the complaint of the superintendent's decision

(8) A copy of the publication in dispute

(9) Any additional relevant information

c) Consideration of the appeal will be handled by the Board in accordance with Policy BLB: *Rules of Procedure in Appeals and Hearings.*

Regulation History: Formerly Regulation No. 365-2, October 16, 1980; revised November 23, 1999; updated office titles June 1, 2000; revised September 20, 2005; technical update for compliance with COMAR, March 29, 2023.

EXHIBIT 5

Office of Curriculum and Instructional Programs—Evaluation and Selection Unit
MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland 20850

RECORD OF EVALUATION FOR INSTRUCTIONAL MATERIALS

INSTRUCTIONS: Please PRINT or TYPE on this form.

*School or Office Name _____ *School # (if applicable) _____
*Requester Name and Position _____
*Full Title of Material _____
*Author/Editor/Producer/Compiler _____
*Publisher _____ *Copyright _____
Vendor _____ Catalog # _____ Catalog Date _____
Series Title _____
*ISBN ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ *Cost _____

*Grade Level(s): PK K 1 2 3 4 5 6 7 8 9 10 11 12 College Level Prof.

*Subject(s) _____
*Course Name (Secondary schools only) _____
Reading Level (if known) _____
*Media type _____

☐ Textbook, Workbook, Test Preparation (five signatures by teaching professionals, content supervisor signature required, 30-day shelf for community review)
☐ Instructional *or* Library Materials (two signatures by teaching professionals required)
☐ Software/Purchased web content (two signatures by teaching professionals required)
☐ Requested testing for compatibility by **Field Installation**
Date Approved by **Field Installation**: _____/_____/_____
☐ Instructional film ☐ Captioning Available
☐ Languages other than English available If so, which ones? _____
MPAA Age Rating (choose one): ☐ G ☐ PG ☐ PG13 ☐ R ☐ NC-17
Attach waiver request (Form 365-21) or film waiver (content supervisors only) for instructional film outside MPAA age rating
☐ Not Rated (e.g., films produced before the MPAA rating system or non-commercial films, which are not covered by MPAA)

Appropriate Audience
☐ Accelerated and Enriched ☐ Learning Disability ☐ Deaf/Hard of Hearing
☐ Physical Disability ☐ ESOL (English for Speakers of Other Languages) ☐ Read Aloud
☐ High Interest, Lower Vocabulary ☐ Visually Impaired

*For recommendations—Check One
☐ Highly Recommended ☐ Recommended ☐ Disapproved
*Please print or type your name, your position, and provide a signature:
1. _____
2. _____
3. _____
4. _____
5. _____
Date _____/_____/_____

COMMENTS: Provide the following information to describe how the materials are essential to student learning:

1.*Direct support of content standards and performance indicators

2. *Authenticity of the material

3. *Impact on instructional time

4. *Clarity or ease of understanding

5. *Provide information about content, strengths/weaknesses, areas of concern (restrictions) and cultural relevance (culture, religion, ethnicity, region, country, author, characters, gender)

Please check where appropriate:
☐ Contents ☐ Glossary ☐ Bibliography ☐ Index ☐ Illustrations
☐ Maps ☐ Charts ☐ Timeline ☐ Web references

For films and textbooks only, content supervisors, print or type:
First and Last Name _____
Position _____
Signature _____
Date ____/____/____

*Required fields

MCPS Form 365-25, Rev. 11/11

Instructions for Completing Revised MCPS Form 365-25

All fields with an asterisk (*) must completed unless exceptions are noted.

Field Name	Directions for completion
*School or Office Name	Enter school or office name.
*School # (if applicable)	Enter school number, if requestor is school staff member. Central service requestors may leave this blank.
*Requester Name and Position	Enter first and last names and position title of person requesting the material be evaluated.
*Full Title of Material	Enter complete title. Complete information for a book is located on the title page. For non-print materials, this information is either on the packaging or the media itself.
*Author/Editor/Producer/Compiler	Enter complete names. Complete information for a book is located on the title page. For non-print materials, this information is either on the packaging or the media itself.
*Publisher	Enter the publisher's name (generally applies to books). Usually complete information is on the title page. It also can be located on the back of the book's title page.
*Copyright	Enter the copyright date located on the back of a book's title page. The copyright date on non-print materials is not in a standard location. It is often on the back of the packaging.
Vendor	The vendor is the supplier. If it is different from the publisher and if the information is available, enter the vendor name.
Series Title	Enter the series name, if known (generally applies to books). The most complete information is on the title page.
*ISBN	Enter the ISBN number, which is located on the back of a book's title page and is often on the packaging of non-print materials or on the media.
* Cost	This information is located in catalogs, on the material or on the websites of online ordering companies (e.g., Amazon or Barnes and Noble).
*Grade Level(s): PK K 1 2 3 4 5 6 7 8 9 10 11 12 College Level Prof.	Enter the specific grade level or a range of grade levels of intended use.
*Subject(s)	Enter the content areas appropriate to intended use.
*Course Name (Secondary schools only)	Enter the exact course name in which this material will be used.
Reading Level (if applicable)	Enter the reading level, if known, and applicable to the media type.
*Media type	Enter the delivery method that applies to this material (e.g., book, DVD, CD-ROM, Playaway, Blu-Ray, MP3).
☐ Textbook, Workbook, Test Preparation (Five signatures by teaching professionals, content supervisor signature required, 30-day shelf for community review)	If requesting approval for a textbook, check the box. **This is the last field to complete.** After completion, send a copy of Form 365-25 with the material to the appropriate content supervisor. Textbooks include traditional textbooks, workbooks, test preparation materials, core books/anchor texts. These can be in print or non-print forms (as expressed in "Media Type"). If the title is approved by the content supervisor, MCPS Form 365-25 and the material is sent to Evaluation and Selection to sit on the 30-day shelf for community review before it is available for purchase.
☐ Instructional or Library Materials (Two signatures by teaching professionals required)	If you seek approval as an instructional material (for all teaching staff) or library material (only media specialists), check this box. Two reviewers/evaluators are required for approval, and both are required to sign the form before submitting to Evaluation and Selection.
☐ Software/Purchased web content (Two signatures by teaching professionals required) ☐ Requested testing for compatibility by Field Installation Date Approved by Field Installation:____/____/____	If you seek approval for software or web content that must be purchased, check this box. Before submitting this form, contact Field Installation staff for testing. Confirm that you have contacted Field Installation by checking *"Requested testing for compatibility by* **Field Installation**" and by entering the "*Date Approved by* **Field Installation.**" This is the date you received permission from Field Installation to use this product.

Field Name	Directions for completion
☐ Instructional Film ☐ Captioning Available ☐ Languages other than English available. If so, which ones?	If you seek approval for instructional film, check this box. Also, check whether captioning is available. Include information about languages other than English, if applicable.
MPAA Age Rating (choose one): ☐ G ☐ PG ☐ PG13 ☐ R ☐ NC-17 Attach waiver request (Form 365-21) or film waiver (content supervisors only) for instructional film outside MPAA rating age) ☐ Not Rated (e.g., films produced before the MPAA rating system or non-commercial films, which are not covered by MPAA)	For information concerning the MCPS procedures for MPAA rated films, contact the appropriate content supervisor or the Evaluation and Selection of Instructional Materials unit.
Appropriate Audience: ☐ Accelerated and Enriched Inst. ☐ Learning Disability ☐ Deaf/Hard of Hearing ☐ ESOL (Eng. for Speakers of Other Languages) ☐ High Interest, Lower Vocabulary ☐ Physical Disability ☐ Read Aloud ☐ Visually Impaired	Check all that apply.
*For recommendations—Check One ☐ Highly recommended ☐ Recommended ☐ Disapproved	• Choose the appropriate recommendation.
Signatures: *Please print or type your name, your position, and provide a signature:	• If you are requesting textbook evaluation, do not sign, but send the form to the content supervisor for committee review. See directions under Media Type above. • If you are evaluating instructional materials, library materials, software or purchased web content, only two professional teaching staff signatures are required. • Please make sure to print (or type) your name and your position.
*Direct support of content standards and performance indicators	Describe the intended use of this material along with applicable and specific standards, indicators, unifying questions for the content area(s) and/or courses.
*Authenticity of the material	Is the author/editor/producer/compiler qualified to publish this title? Are the situations realistic? Can the facts be verified?
*Impact on instructional time	How much time do you expect the use of this title to take (could be minutes, a day, or total minutes or any combination)? Is using this title a productive use of class time and in what way?
*Clarity/ease of understanding	Is the material accessible to the population you want to reach? Is the language appropriate for the intended audience? Is difficult or challenging content handled appropriately for the intended audience?
*Provide information about • Content • Strengths/weaknesses • Areas of concern (restrictions) • Cultural relevance (culture, religion, ethnicity, region, country, author, characters, gender)	• Content—brief summary of the material • Strengths/Weaknesses—What is especially good about this resource? Why would you spend money on this resource? What are drawbacks to this resource? What is missing that you would like to see in a resource on this topic? • Areas of Concern—Do you predict any restrictions to its use? Any content that doesn't quite "hit the mark?" • Cultural relevance—as appropriate, please provide information

Field Name	Directions for completion
Please check where appropriate: ☐ Contents ☐ Glossary ☐ Bibliography ☐ Index ☐ Illustrations ☐ Maps ☐ Charts ☐ Timeline ☐ Web references	Check all that apply to this resource.
For films and textbooks only, content supervisors print or type first and last name: _____ Position: _____ Signature: _____ Date ____/____/_____	Content supervisors (only) print or type name and position. Sign when approving a textbook or film outside the MPAA age rating.

EXHIBIT 6

2019–2020

Guidelines for Student

GENDER IDENTITY

in Montgomery County Public Schools

www.montgomeryschoolsmd.org

Montgomery County Public Schools
Rockville, Maryland

VISION

We inspire learning by providing the greatest public education to each and every student.

MISSION

Every student will have the academic, creative problem solving, and social emotional skills to be successful in college and career.

CORE PURPOSE

Prepare all students to thrive in their future.

CORE VALUES

Learning
Relationships
Respect
Excellence
Equity

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850 Hungerford Drive
Rockville, Maryland 20850
www.montgomeryschoolsmd.org

Montgomery County Public Schools (MCPS) is committed to a safe, welcoming school environment where students are engaged in learning and are active participants in the school community because they feel accepted and valued. To this end, all students should feel comfortable expressing their gender identity, including students who identify as transgender or gender nonconforming.[1] It is critical that all MCPS staff members recognize and respect matters of gender identity; make all reasonable accommodations in response to student requests regarding gender identity; and protect student privacy and confidentiality. To assist in these efforts, MCPS has developed the following guidelines for student gender identity that are aligned with the Montgomery County Board of Education's core values, guidance from the Maryland State Department of Education[2], and the Montgomery County Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*, which prohibits discrimination, stigmatization, and bullying based on gender identity, as well as sex, gender, gender expression, and sexual orientation, among other personal characteristics. These guidelines cannot anticipate every situation which might occur. Consequently, the needs of each student must be assessed on a case-by-case basis.

GOALS

- Support students so they may participate in school life consistent with their asserted gender identity;
- Respect the right of students to keep their gender identity or transgender status private and confidential;
- Reduce stigmatization and marginalization of transgender and gender nonconforming students;
- Foster social integration and cultural inclusiveness of transgender and gender nonconforming students; and
- Provide support for MCPS staff members to enable them to appropriately and consistently address matters of student gender identity and expression.

DEFINITIONS

The definitions provided here are not intended to label students but rather to assist in understanding transgender and gender nonconforming students. Students might or might not use these terms to describe themselves.[3,4]

AGENDER Without a gender (also "nongendered" or "genderless").

CISGENDER A person whose gender identity and gender expression align with the person's sex assigned at birth; a person who is not transgender or gender nonconforming.

GENDER EXPRESSION The manner with which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, speech and word choices, or mannerisms.

GENDER FLUID A person whose gender identity or gender expression is not fixed and shifts over time depending on the situation.

GENDER IDENTITY A person's deeply held internalized sense or psychological knowledge of the person's own gender. One's gender identity may be the same as or different from the sex assigned at birth. Most people have a gender identity that matches their sex assigned at birth. For some, however, their gender identity is different from their sex assigned at birth. All people have gender identity, not just persons who are transgender or gender nonconforming people. For the purposes of this guidance, a student's gender identity is that which is consistently asserted at school.

GENDER NONCONFORMING A term for individuals whose gender expression differs from conventional or stereotypical expectations, such as "feminine" boys, "masculine" girls, and those whose gender expression may be androgynous. This includes people who identify outside traditional gender categories or identify as two or more genders. Other terms that can have similar meanings include "gender diverse" or "gender expansive."

INTERSEX A range of conditions associated with the development of physical sex characteristics that do not fit the typical definition of male or female.

LGBTQ An acronym for the Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning community. This acronym often is written as LGBTQ+ in an effort to be more inclusive. It is also stated as LGBTA to include people who are asexual, or LGBTI, with the I representing intersex, or LGBTQIA to represent all of the above.

NON-BINARY A person who transcends commonly held concepts of gender through their own expression and identity (e.g., gender expansive, gender creative, or gender queer). Some non-binary people are also transgender.

[1]Related Montgomery County Board of Education Policies and MCPS Regulations: ACA, ACF, JHF, JHF-RA, ACA-RA, ACF-RA

[2]For more information and lists of additional resources, see: *Maryland State Department of Education, Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination* (October 2015), available at: *marylandpublicschools.org/about/Documents/DSFSS/SSSP/ProvidingSafeSpacesTransgendergenderNonConformingYouth012016.pdf*.

[3]Terminology used in these guidelines is intended to be as inclusive as possible; however, it is understood that terms and language are evolving and may become outdated quickly.

[4]Definitions were informed by the following sources: American Civil Liberties Union; American Psychological Association; Baltimore City Schools; California School Boards Association; Chicago Public Schools; District of Columbia Public Schools; Gay, Lesbian, and Straight Education Network; Howard County Public Schools; Human Rights Campaign; Lambda Legal; Maryland State Department of Education; Maryland Public Secondary Schools Athletic Association; Massachusetts Department of Elementary and Secondary Education; National Collegiate Athletic Association; National School Boards Association; New York City Department of Education; PFLAG; and Trevor Project.

SEX ASSIGNED AT BIRTH The sex designation recorded on an infant's birth certificate, should such a record be provided at birth.

TRANSGENDER An adjective describing a person whose gender identity or expression is different from that traditionally associated with the person's sex assigned at birth. Other terms that can have similar meanings are "transsexual" and "trans."

TRANSITION The process by which a person decides to live as the gender with which the person identifies, rather than the gender assigned at birth. In order to openly express their gender identity to other people, transgender people may take a variety of steps (e.g., using a nickname or legally changing their names and/or their sex designation on legal documents; choosing clothes and hairstyles that reflect their gender identity; and generally living, and presenting themselves to others, consistently with their gender identity). Some, but not all, transgender people take hormones or undergo surgical procedures to change their bodies to align with their gender identity. Although transitioning includes the public representation on one's gender expression, transitioning is a personal process and individuals transitioning have the right to privacy.

PROACTIVELY WORKING WITH TRANSGENDER AND GENDER NONCONFORMING STUDENTS

- The principal (or designee), in collaboration with the student and the student's family (if the family is supportive of the student), should develop a plan to ensure that the student has equal access and equal opportunity to participate in all programs and activities at school and is otherwise protected from gender-based discrimination at school. The principal, designee, or school-based mental health professional (e.g., school psychologist or school counselor) should use MCPS Form 560-80, *Intake Form: Supporting Students, Gender Identity* to support this process and assist the student in participating in school. The completed form must be maintained in a secure location and may not be placed in the student's cumulative or confidential files. While the plan should be consistently implemented by all school staff, the form itself is not intended to be used or accessed by other school staff members.
- Each student's needs should be evaluated on a case-by-case basis, and all plans should be evaluated on an ongoing basis and revised as needed. As a part of the plan, schools should identify staff members who will be the key contact(s) for the student. The plan should delineate how support will be provided and how and to whom information will be disseminated. In addition, each plan should address preferred name; pronouns; athletics; extracurricular activities; locker rooms; bathrooms; safe spaces, safe zones, and other safety supports; and formal events such as graduation.
- Prior to contacting a student's parent/guardian, the principal or identified staff member should speak with the student to ascertain the level of support the student either receives or anticipates receiving from home. In some cases, transgender and gender nonconforming students may not openly express their gender identity at home because of safety concerns or lack of acceptance. Matters of gender identity can be complex and may involve familial conflict; if this is the case, and support is required, the Office of School Support and Improvement or the Office of Student and Family Support and Engagement (OSFSE) should be contacted. In such cases, staff will support the development of a student-led plan that works towards inclusion of the family, if possible, taking into consideration of safety concerns, as well as student privacy, and recognizing that providing support for a student, even when the family is non-supportive is critical.

PRIVACY AND DISCLOSURE OF INFORMATION

- All students have a right to privacy. This includes the right to keep private one's transgender status or gender nonconforming presentation at school.
- Information about a student's transgender status, legal name, or sex assigned at birth may constitute confidential medical information. Disclosing this information to other students, their parents/guardians, or third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act (FERPA).
- Schools will ensure that all medical information, including that relating to transgender students, is kept confidential in accordance with applicable state, local, and federal privacy laws.
- Please note that medical diagnosis, treatment, and/or other documentation are not required for a school to accommodate requests regarding gender presentation, identity, and diversity.
- Transgender and gender nonconforming students have the right to discuss and demonstrate their gender identity and expression openly and decide when, with whom, and how much to share private information. The fact that students choose to disclose their status to staff members or other students does not authorize school staff members to disclose students' status to others, including parents/guardians and other school staff members, unless legally required to do so or unless students have authorized such disclosure. It is inappropriate to ask transgender or gender nonconforming students more questions than are necessary to support them at school.

NAMES/PRONOUNS

- All students have the right to be referred to by their preferred name and/or pronoun. Students should be addressed by school staff members by the name and pronoun corresponding to the gender identity that is consistently asserted at school. Students are not required to obtain a court-ordered name and/or sex designation change or to change their student records as a prerequisite to being addressed by the name and pronoun that corresponds to their preferred name. To the extent possible, and consistent with these guidelines, school

personnel will make efforts to maintain the confidentiality of the student's transgender status.

- Whenever schools are not legally required to use a student's legal name or sex assigned at birth on school records and other documents, the school should use the name and gender preferred by the student, including using the student's preferred name for classroom rosters (**especially** those provided to substitute teachers), identification badges, announcements, certificates, newspapers, newsletters, and yearbooks.
- Schools should seek to minimize the use of permission slips and other school-specific forms that require disclosure of a student's gender or use gendered terminology such as boys/girls (instead of students) or mother/father (instead of parent/guardian).
- Unless the student or parent/guardian has specified otherwise, when contacting the parent/guardian of a transgender student, MCPS school staff members should use the student's legal name and pronoun that correspond to the student's sex assigned at birth.
- Asking about a person's pronouns makes spaces more inclusive and welcoming of transgender, gender nonconforming, and non-binary people.

OFFICIAL SCHOOL RECORDS

- Schools are required to maintain a permanent student record for each student, which includes the legal name and gender of the student. In situations where schools are required to use the legal name and gender from a student's permanent record, such as for standardized tests or reports to the Maryland State Department of Education (MSDE), school staff members and administrators shall adopt practices to avoid the inadvertent disclosure of the student's legal name and gender when it differs from the student's preferred name and gender.
- A student's permanent record will be changed to reflect a change in the student's legal name or gender upon receipt of documentation that such legal name and/or gender have been changed. Any of the following documents is evidence of a legal name and/or gender change:
  - A court order;
  - New birth certificate;
  - State- or federally-issued identification; or
  - Documentation from a licensed healthcare practitioner.
- If a student and/or the student's parent/guardian requests a change to the student's permanent record absent such documentation, the school should contact OSFSE.
- The school must protect the student's previous identity once a change to a student's legal name and/or gender has occurred. Please refer to the Student Record Keeper Manual, Office of Shared Accountability (OSA), or OSFSE for additional information.
- When a name and/or gender change has been made to official school records, the school must notify OSA so that appropriate notice to MSDE can be made.
- When a name and/or gender change has been made to official school records, school administrators should advise families that they must provide updated copies of any records provided to the school that were generated by external sources (e.g., immunization records, doctor's orders, or other records from medical providers).
- Similarly, a former student's permanent record should be changed to reflect a change in the former student's legal name or gender upon receipt of documentation that such legal name and/or gender have been changed pursuant to a court order, new birth certificate, state- or federally-issued identification, or with documentation from a license healthcare practitioner. These changes are processed by Central Records.

DRESS CODE

- Transgender and gender nonconforming students have the right to dress in a manner consistent with their gender identity or gender expression, so long as it complies with the MCPS dress code. School staff members shall not enforce a school's dress code more strictly for transgender or gender nonconforming students than for other students.
- Schools should consider gender neutral dress codes for class or yearbook photos, honor society ceremonies, graduation ceremonies, or dances. In addition, in circumstances where gendered clothing is worn (e.g., in shows and performances), students should be allowed to wear the garments associated with their gender identity.

GENDER-BASED ACTIVITIES

- Schools should evaluate all gender-based policies, rules, and practices, and maintain only those that have a clear and sound pedagogical purpose. For example, if music and performance groups arrange students into sections, they should seek to group them by voice type/qualities, rather than by gender.
- Whenever students are separated by gender in school activities or are subject to an otherwise lawful gender-specific rule, policy, or practice, students must be permitted to participate consistent with their gender identity.

GENDER-SEPARATED AREAS

- Where facilities are designated by gender, students **must** be provided access to gender-specific facilities (e.g., bathrooms, locker rooms, and changing rooms) in alignment with their consistently asserted gender identity.
- Any student who is uncomfortable using a shared facility because of safety, privacy, or any other reason, should upon request, be provided with a safe and non-stigmatizing

alternative arrangement such as a single bathroom, or with respect to locker rooms, a privacy partition or curtain in changing areas, use of a nearby private restroom or office, or a separate changing schedule. The student should be provided access in a manner that safeguards confidentiality.

- Students who are entitled to use a facility consistent with their gender identity cannot be required to use an alternative arrangement. Alternative arrangements should be used only at the request of a student and in a manner that keeps the student's transgender status confidential.
- Some students may feel uncomfortable with a transgender student using the same sex-specific facility. This discomfort is not a reason to deny access to the transgender student. School administrators and counseling staff members should work with students to address their discomfort to foster understanding of gender identity and to create a school culture that respects and values all students.

NEW CONSTRUCTION/RENOVATION:

- If existing facilities do not meet the requirements of school administration to provide a gender-neutral facility for students, schools should work with Department of Facilities Management to develop facility plans which could include renovation of existing facilities.
- Bearing in mind student safety considerations, the Department of Facilities Management should work to design gender-neutral bathroom facilities that are for student/public use.
- To the extent feasible, MCPS should build at least one gender-neutral restroom on each floor and in high-traffic areas.
- To the extent feasible, MCPS should incorporate at least one gender-neutral changing facility into the design of new schools and school renovations, allowing for safety and confidentiality considerations in the design and location of the gender-neutral facility.

PHYSICAL EDUCATION CLASSES AND INTRAMURAL SPORTS

- Whenever the school provides gender-segregated physical education classes and intermural sports, students must be allowed to participate in a manner consistent with their gender identity.

INTERSCHOLASTIC ATHLETICS

- Transgender and gender nonconforming student participation in interscholastic athletics is determined in accordance with Maryland Public Secondary Schools Athletic Association (MPSSAA) policies and guidelines (Available online at *www.mpssaa.org/assets/1/6/MPSSAA_Transgender_Guidance_revised_8.16.pdf*).
- Per MPSSAA guidance and to ensure competitive fairness, the integrity of women's sports, and equal opportunities to participate without discrimination, transgender and gender nonconforming students in MCPS shall be permitted to participate on the interscholastic athletics team of:
  - the student's sex assigned at birth; or
  - the gender to which the student has transitioned; or
  - the student's asserted gender identity.
- Schools should refer any appeals regarding eligibility to participate in interscholastic athletics to the MCPS Athletics Unit.
- Competition at other schools: Accommodations provided at the home school should be made available at other facilities with the consent of the student and as part of the student's plan. The coach or home school should notify the school to be visited about any necessary accommodations, keeping the identity of the student confidential.

CLUBS

- Many MCPS middle and high schools have student-led clubs that connect and support the interests of LGBTQ+ and gender nonconforming students—such as Gender and Sexuality Alliance (GSA) clubs (formerly known as Gay Straight Alliance clubs). These clubs should run like any other club with clearly defined purposes.

OUTDOOR EDUCATION/OVERNIGHT FIELD TRIPS

- Students must be allowed to participate consistent with their asserted gender identity.
- Sleeping arrangements should be discussed with the student and family (if the family is supportive of the student). Upon request, the student should be provided with a safe and non-stigmatizing alternative arrangement, such as a private sleeping area, if practicable.
- Schools should try to accommodate any student who may desire greater privacy, if practicable, without isolating other students.
- A student's transgender status is confidential information and school staff members may not disclose or require disclosure of a student's transgender status to other students or their parents/guardians as it relates to a field trip without the consent of the student and/or the student's parent/guardian.

BULLYING AND HARASSMENT

- LGBTQ+ students have a higher incidence of being bullied and harassed, as well as a higher rate of suicide contemplation and are more than five times as likely as non LGBTQ+ students to attempt suicide.
- Board Policy JHF, *Bullying, Harassment, or Intimidation*, and MCPS Regulation JHF-RA, *Student Bullying, Harassment, or Intimidation* are available on the MCPS website at: *www.montgomeryschoolsmd.org/departments/policy/section.aspx?sectionID=10.*

- Bullying and harassment include conduct that is directed at a student based on a student's actual or perceived gender identity or expression, and includes conduct that targets a student because of a characteristic of a friend, family member, or other person or group with whom a student associates.
- Complaints alleging discrimination or harassment directed at a student based on a student's actual or perceived gender identity or expression should be handled in the same manner as other discrimination or harassment complaints. Schools should be vigilant about bullying and harassment and address it promptly.
- School staff members should take all reasonable steps to ensure safety and access for transgender and gender nonconforming students at their school and support students' rights to assert their gender identity and expression.
- Students shall not be disciplined based upon their actual or perceived gender identity or expression.
- Schools are encouraged to have age-appropriate student organizations develop and lead programs to address issues of bullying prevention for all students with emphasis on LGBTQ+ students.

SAFE SPACES

- **Hallway or "Flash" Pass:** If needed, schools should allow a transgender or gender nonconforming student to go to a safe space (e.g., main office, counselor's office) at any time the student encounters a situation that feels unsafe or uncomfortable.
- **Safe Zones:** Schools will designate certain teachers' classrooms, specific offices, or a location in a school that is deemed a safe zone where any student, for whatever reason, may go to be free from judgment and to feel comfortable and safe. Schools also should ensure that staff members who have safe zone stickers on their doors have received appropriate training regarding providing inclusive, affirming environments.

CONTACTS

- For more information please contact the MCPS OSFSE at 240-314-4824, or the MCPS Office of the Chief of Staff, Student Welfare and Compliance, at 240-740-3215.

MCPS NONDISCRIMINATION STATEMENT

Montgomery County Public Schools (MCPS) prohibits illegal discrimination based on race, ethnicity, color, ancestry, national origin, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family/parental status, marital status, age, physical or mental disability, poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations. Discrimination undermines our community's long-standing efforts to create, foster, and promote equity, inclusion, and acceptance for all. Some examples of discrimination include acts of hate, violence, insensitivity, harassment, bullying, disrespect, or retaliation. For more information, please review Montgomery County Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*. This Policy affirms the Board's belief that each and every student matters, and in particular, that educational outcomes should never be predictable by any individual's actual or perceived personal characteristics. The Policy also recognizes that equity requires proactive steps to identify and redress implicit biases, practices that have an unjustified disparate impact, and structural and institutional barriers that impede equality of educational or employment opportunities.

For inquiries or complaints about discrimination against MCPS staff *	**For inquiries or complaints about discrimination against MCPS students ***
Office of Employee Engagement and Labor Relations Department of Compliance and Investigations 850 Hungerford Drive, Room 55 Rockville, MD 20850 240-740-2888 OCOO-EmployeeEngagement@mcpsmd.org	Office of the Chief of Staff Student Welfare and Compliance 850 Hungerford Drive, Room 162 Rockville, MD 20850 240-740-3215 COS-StudentWelfare@mcpsmd.org

**Inquiries, complaints, or requests for accommodations for students with disabilities also may be directed to the supervisor of the Office of Special Education, Resolution and Compliance Unit, at 240-740-3230. Inquiries regarding accommodations or modifications for staff may be directed to the Office of Employee Engagement and Labor Relations, Department of Compliance and Investigations, at 240-740-2888. In addition, discrimination complaints may be filed with other agencies, such as: the U.S. Equal Employment Opportunity Commission, Baltimore Field Office, City Crescent Bldg., 10 S. Howard Street, Third Floor, Baltimore, MD 21201, 1-800-669-4000, 1-800-669-6820 (TTY); or U.S. Department of Education, Office for Civil Rights, Lyndon Baines Johnson Dept. of Education Bldg., 400 Maryland Avenue, SW, Washington, DC 20202-1100, 1-800-421-3481, 1-800-877-8339 (TDD), OCR@ed.gov, or www2.ed.gov/about/offices/list/ocr/complaintintro.html.*

This document is available, upon request, in languages other than English and in an alternate format under the *Americans with Disabilities Act*, by contacting the MCPS Department of Communications at 240-740-2837, 1-800-735-2258 (Maryland Relay), or PIO@mcpsmd.org. Individuals who need sign language interpretation or cued speech transliteration may contact the MCPS Office of Interpreting Services at 240-740-1800, 301-637-2958 (VP) or MCPSInterpretingServices@mcpsmd.org. MCPS also provides equal access to the Boy/Girl Scouts and other designated youth groups.

MONTGOMERY COUNTY PUBLIC SCHOOLS

Rockville, Maryland

Published by the Department of Materials Management
for the Office of Student and Family Support and Engagement
1248.19ct • Editorial, Graphics & Publishing Services • 7/19 • NP

PRODUCED BY LOCAL 500 SEIU MEMBERS

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

TAMER MAHMOUD, *et al.*, Plaintiffs, v. MONIFA B. MCKNIGHT, *in her official capacity as Superintendent of the Montgomery County Board of Education*, *et al.*, Defendants.	))))))))))))	Civil Action No. 8:23-cv-01380-DLB

DECLARATION OF NIKI T. HAZEL IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Niki T. Hazel, declare as follows:

1. I am the Associate Superintendent, Curriculum and Instructional Programs at Montgomery County Public Schools, where I have been employed for 28 years. In my current role, I oversee PreK-12 Curriculum, Accelerated and Enriched Instruction, Emergent Multilingual Learner Education, Early Childhood Programs, Title I Schools, Choice and Application Programs and Services, School Library Media Programs, Career Readiness, and Technology Education. I make this declaration based on my personal knowledge and upon review of MCPS's records maintained in the ordinary course of business, to which I have access based on my job responsibilities.

A. Montgomery County Public Schools And The Montgomery County Board of Education Serve A Diverse Community

2. Montgomery County Public Schools is Maryland's largest school district. It enrolled 160,554 students for the 2022-2023 school year across 210 schools.

3. The Montgomery County Board of Education (the "Board") is the official educational policy-making body in the county. It sets goals, establishes policies, and commits resources to benefit MCPS's diverse student population.

4. The Board consists of seven county residents elected by voters for a four-year term and a student elected by secondary school students for a one-year term.

5. The Board values learning, respect, relationships, excellence, and equity. The Board believes that building relationships with its diverse community requires it to understand the perspectives and experiences of others. It also believes that the diversity of culture, interests, skills, and backgrounds in its community is an asset that makes it stronger.

6. These values are memorialized in the Board's Policy ACA on Nondiscrimination, Equity, and Cultural Proficiency. Policy ACA is attached as **Exhibit 1**. Policy ACA provides that one of the Board's purposes is to "foster[] a positive learning environment that embraces all unique and individual differences" and to "ensure compliance with all federal, state, and local nondiscrimination laws." The Board recognizes that it must take "proactive steps to identify and redress implicit biases and structural and institutional barriers that too often have resulted in identifiable groups of students and staff being unjustifiably or disproportionately excluded from or underrepresented in key educational program areas …." The Board therefore strives to "provide a culturally responsive Prekindergarten to Grade 12 curriculum that promotes equity, respect, and civility among our diverse community …." The curriculum prepares students to "[c]onfront and eliminate stereotypes related to individuals' actual or perceived personal characteristics," such as race, ethnicity, national origin, religion, immigration status, sex, gender identity, sexual orientation, and other "protected attributes or affiliations." The Board

accordingly expects that "[i]nstructional materials used in [its] schools will reflect the diversity of the global community …."

B. MCPS Carefully Selects The Materials That It Approves For Instructional Use

7. In accordance with Policy ACA, the MCPS English Language Arts ("ELA") Framework notes that the ELA curriculum is designed to "promote[] instruction that," among other goals, "nurtures appreciation and understanding of diverse individuals, groups, and cultures." The ELA Framework is attached as **Exhibit 2**.

8. MCPS has adopted Core Learning Practices under its ELA curriculum, under which MCPS teachers are expected to "plan instructional experiences where students frequently engage in" a variety of core learning practices, including "[s]electing from a range of diverse texts to understand and appreciate multiple perspectives." These Core Learning Practices are attached as **Exhibit 3**.

9. After contracting with Johns Hopkins University to conduct a comprehensive review of its curriculum, MCPS announced in 2018 that it would contract with highly rated and proven third-party educational companies to implement its English Language Arts and Mathematics curricula.

10. A committee of parents, teachers, and staff members chose Benchmark Education ("Benchmark") to implement MCPS's ELA curriculum after determining that its curricular resources best aligned with the Maryland College and Career Ready Standards published by the Maryland State Department of Education.

11. MCPS regularly supplements the external curricular resources delivered by companies such as Benchmark. Regulation IIB-RA outlines the standard procedure for selecting these instructional materials. That regulation is attached as **Exhibit 4**.

12. Instructional materials are approved by a selection committee comprised of professional staff members and subject-area experts.

13. That committee evaluates materials that may be approved for instructional use for alignment with the MCPS curriculum, age-appropriateness, and relevance to and reflection of a multicultural society.

14. The committee evaluates instructional material based on several criteria, including that the materials be "relevant to and reflective of the multicultural society and global community," be "[a]ge/grade appropriate[]," and "support … student achievement toward MCPS curriculum standards."

15. Instructional materials are evaluated by the relevant selection committee using MCPS Form 365-25. A copy of that form is attached as **Exhibit 5**. Form 365-25 requires the committee of reviewers to provide five categories of information describing "how the materials are essential to student learning." These categories are "[d]irect support of content standards and performance indicators," "[a]uthenticity of the material," "[i]mpact on instructional time," "[c]larity and ease of understanding," and "information about content, strengths/weaknesses, areas of concern (restrictions) and cultural relevance (culture, religion, ethnicity, region, country, author, characters, gender)."

16. The instructional material selection process also allows for community input. Newly approved books remain in the Evaluation and Selection Unit for 30 calendar days to permit examination by professional staff and parents. Titles are also available for examination on the Montgomery County Public Schools Evaluation and Selection website.

17. In that 30-day examination period, parents and caretakers have opportunities to review and share feedback. When parents provide feedback on instructional materials during

this time period, the coordinator of the evaluation and selection process reviews and considers this feedback before making a final decision about whether to approve the materials.

18. Teachers are provided materials that are approved for instructional use. Teachers are expected to use the instructional materials provided, and can select which of these materials to incorporate into their lesson plans.

C. MCPS Strives To Adopt Policies And Curricula That Reflect The Diversity Of Montgomery County Families

19. MCPS is Maryland's largest school district, serving an incredibly diverse community. MCPS serves a population of over 160,000 students, over 75% of whom are non-white, 44% of whom receive free and reduced-price meals, and 19% of whom receive English language development services. The community also includes people of many different religious faiths, family statuses, gender identities, sexual orientations, and other protected attributes or affiliations.

20. MCPS seeks to ensure that its policies and its curricula meet the needs of Montgomery County families. In line with this effort, MCPS has worked to accommodate families of all religious backgrounds. For example, MCPS authorizes absences for religious holidays, ensures students can make up missed assignments, and provides that students cannot be denied a perfect attendance award if their only absences have been excused for the observance of religious holidays. Beginning with the 2016-2017 school year, MCPS stopped scheduling classes on Eid al-Fitr or Eid al-Adha, two major Islamic holidays. And MCPS advises principals that schools should avoid scheduling tests or other major events on dozens of other "days of commemoration," during which MCPS expects that many students may be absent for or engaged in religious or cultural observances.

21. MCPS also works continually to ensure that its pre-K through 12th grade curriculum reflects Montgomery County families. MCPS has accordingly made regular efforts to incorporate instructional materials that reflect the diversity of the community. For example, MCPS has purchased books for use as part of the ELA curriculum that are intended to be more representative of other races and cultures. These books include the *March* trilogy, which recounts the life of civil rights icon Congressman John Lewis, and *The Leavers*, which introduces readers to the story of an Asian-American immigrant family. MCPS also recently updated its Social Studies curriculum to incorporate instructional materials about local history and the narratives of historically marginalized groups.

22. Representation in the curriculum creates and normalizes a fully inclusive environment for all students in MCPS. It supports a student's ability to empathize, connect, and collaborate with diverse peers and encourage respect for all.

D. MCPS Selects The LGBTQ-Inclusive Books To Ensure Representation In The ELA Curriculum

23. In recent years, MCPS determined that the books used in its existing ELA curriculum were not representative of many students and families in Montgomery County because they did not include LGBTQ characters. The LGBTQ-Inclusive Books were thus introduced following a years-long process that engaged parents, community members, students, teachers, and staff.

24. In the spring of 2022, MCPS initiated the procedures outlined in MCPS Regulation IIB-RA to evaluate potential new instructional materials that would be more inclusive of LGBTQ people.

25. Pursuant to this process, a committee comprised of four reading specialists and two instructional specialists participated in two rounds of evaluations of potential instructional materials.

26. The committee recommended approval of the LGBTQ-Inclusive Books after finding that the books supported MCPS content standards and performance indicators, contained narratives and illustrations that would be accessible and engaging to students, and featured characters of diverse backgrounds whose stories and families students could relate to. The committee also reviewed a number of books that it decided not to recommend for instructional use.

E. MCPS Introduces The LGBTQ-Inclusive Books As Part Of The Curriculum

27. MCPS introduced the books as part of the preK-12 English Language Arts curriculum in the 2022-2023 school year. The list of LGBTQ-Inclusive Books includes 13 books, recommended by grade level. A list of these books with accompanying summaries is available on the MCPS website at https://www2.montgomeryschoolsmd.org/curriculum/office/inclusive-resources.

28. Over the summer, MCPS prepared principals and teachers for the introduction of these books. MCPS sent an email update to principals about the upcoming book arrivals and a professional learning for reading specialists that was set to take place in October. MCPS also offered an optional professional development for reading specialists, counselors, and media specialists. More than 130 participants engaged in a session about using the LGBTQ-Inclusive Books as part of the English Language Arts Curriculum.

29. The MCPS Office of Curriculum and Instructional Programs suggested that teachers incorporate the new texts into the curriculum in the same way that other books are used, namely, to put them on a shelf for students to find on their own; to recommend a book to a

student who would enjoy it; to offer the books as an option for literature circles, book clubs, or paired reading groups; or to use them as a read aloud.

30. In communications with schools, MCPS made clear that there is no planned explicit instruction on gender identity and sexual orientation in elementary school, and that no student or adult is asked to change how they feel about these issues. Instead, like other books in the English Language Arts Curriculum, the newly approved books are used to assist students with mastering reading concepts like answering questions about characters, retelling key events about characters in a story, and drawing inferences about story characters based on their actions.

31. As with all curriculum resources, there is an expectation that teachers use the LGBTQ-Inclusive Books as part of instruction. Teachers have a choice regarding which MCPS-approved materials to use and when to use them throughout each unit. While the LGBTQ-Inclusive Books include one suggested book per grade level, teachers can choose among the texts, and are not limited to a single book corresponding to their grade level. Teachers cannot, however, elect not to use the LGBTQ-Inclusive Books at all. This reflects MCPS's view that, if these instructional materials are not used at all, a teacher is not fulfilling MCPS's expectation that students will be taught pursuant to a representative and culturally responsive curriculum.

F. The Board Announces That Parents Cannot Opt Their Children Out Of Classroom Instruction Using The Books For Any Reason

32. During the 2022-2023 school year, MCPS's Guidelines for Religious Diversity provided that "[w]hen possible, schools should try to make reasonable and feasible adjustments to the instructional program to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs," or "would invade student privacy by calling attention to the student's religion." The Guidelines

further provided that "[w]hen a student is excused from the classroom activity, the student will be provided with an alternative to the school activity or assignment," and that "it may be feasible to accommodate objections from students or their parents/guardians to a particular reading assignment on religious grounds by providing an alternative selection that meets the same lesson objectives. However, if such requests become too frequent or too burdensome, the school may refuse to accommodate the requests."

33. At the beginning of the 2022-2023 school year, some parents began contacting individual teachers, principals, or MCPS staff about the LGBTQ-Inclusive Books. Some of these parents asked that their children be excused from classroom instruction using the LGBTQ-Inclusive Books.

34. Many of the opt out requests were not religious in nature. Some parents, for instance, expressed their opposition to what they believed was an effort to teach students about sex, to teach students lessons about LGBTQ issues, or to use instructional materials that were not age-appropriate.

35. In some instances, individual teachers or principals who fielded these requests sought to accommodate them by telling parents that students could be excused when the LGBTQ-Inclusive Books were read in class.

36. In March 2023, MCPS met with a small group of principals. Through these conversations, MCPS became aware that individual principals and teachers could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom environment and undermining MCPS's educational mission.

37. Among MCPS's concerns was high student absenteeism. In one instance, for example, MCPS became aware that parents sought to excuse dozens of students in a single elementary school from instruction using the LGBTQ-Inclusive Books.

38. Another concern was the infeasibility of continuing to use the LGBTQ-Inclusive texts in classroom instruction while honoring individual opt-out requests. Doing so would not only require teachers to track and accommodate opt out requests in their classrooms. It also would also force media specialists and other instructors who spend time in multiple classrooms each day to ensure that they were abiding by the accommodations granted to every student they encountered across an entire school.

39. MCPS moreover determined that allowing opt outs from instruction using the LGBTQ-Inclusive Books would defeat its efforts to ensure a classroom environment that is safe and conducive to learning for all students. MCPS was concerned that, when some students are permitted to leave the classroom whenever language arts lessons draw on books featuring LGBTQ characters, students who believe that the books represent them or their families are exposed to social stigma and isolation. This result risks putting MCPS out of compliance with its obligations under state and federal nondiscrimination laws. MCPS's interest in compliance with these nondiscrimination laws is reflected in Policy ACA, as well as MCPS's Guidelines for Student Gender Identity. The 2019-2020 Guidelines for Student Gender Identity are attached here as **Exhibit 6**.

40. Based on these concerns, MCPS decided that it was not feasible or consistent with MCPS's curricular goals to accommodate requests for students to be excused from the LGBTQ-Inclusive Books.

41. On March 23, 2023, MCPS therefore informed parents, teachers, schools, and principals that, moving forward, schools could no longer entertain requests for students to opt out of the LGBTQ-Inclusive Books, for any reason. If schools already had granted accommodation requests, those accommodations would no longer be provided after the 2022-2023 school year ended.

42. Under the policy now in effect, MCPS does not permit students to be excused from classroom instruction using the LGBTQ-Inclusive Books for any reason. Students and families may not choose to opt out of engaging with these instructional materials.

43. MCPS continues to allow families to opt students out of the Family Life and Human Sexuality Unit of Instruction, which is required by Maryland law, as reflected in COMAR § 13A.04.18.01.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of July, 2023.

Niki T. Hazel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, *et al.*,

Plaintiffs,

v.

MONIFA B. MCKNIGHT, *in her official capacity as Superintendent of the Montgomery Board of Education*, *et al.*,

Defendants.

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

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Hearing Requested

Eric S. Baxter
William J. Haun (pro hac vice)
Michael J. O'Brien* (pro hac vice)
Brandon L. Winchel* (pro hac vice)
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave, N.W., Suite 400
Washington, DC 20006
(202) 955-0095
whaun@becketlaw.org

*Not a member of the DC Bar; admitted in Louisiana and California respectively. Practice limited to cases in federal court.

Attorneys for Plaintiffs

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INTRODUCTION

The School Board's assertion of authority over students is astonishing. If parents want to use the public school, they lose all control over what is taught. While the School Board claims "to accommodate families of all religious backgrounds," Opp.2, bets are off if—in its selective view—requests are "too frequent" or "too burdensome," Opp.6. In other words, the more offensive the curriculum, the less parents will be heard. "Let them home school"(or pay exorbitant private tuition) is the School Board's apparent response. It's a shocking perspective from elected officials asked to represent the taxpaying *parents* in a highly diverse school district. And not just parents. Documents produced from the School Board show that the Pride Storybooks were imposed over the concerns of MCPS principals—who collectively told the School Board last November that the books "seem to support the explicit teaching of gender and sexuality identity," were age-inappropriate, and provided guidance to teachers that was "dismissive of religious beliefs." McCaw, Ex. B at 2, 4.

The School Board asserts that opt-outs are required only if compelled participation in classroom instruction would result in the destruction" of a religious community. Opp.11. Yet three years ago, the Supreme Court rejected that extreme reading of *Yoder*. Never mind that confusing young children's understanding of gender and sexuality—in Pre-K—*is* an existential threat to their self-understanding, as well as to the Parents' religious beliefs that uphold marriage and procreation as essential for perpetuating family relationships and humanity. As the MCPS principals told the School Board: "It is problematic to portray elementary school age children falling in love with other children, regardless of sexual preferences." McCaw Ex. B at 2.

Beyond *Yoder*, the School Board's own admissions show that its system for granting religious exemptions is one of unfettered discretion. Accommodations allowed one day (*e.g.*, March 22, 2023) can be withdrawn the next. High school students can opt out of sex ed, but kindergarteners cannot opt out of the Pride

Storybooks, even though both are admittedly driven by the same equity concerns. Students can opt out of Halloween parties, choir, and any other class or activity that contradicts their faith, but not grade-school story hour where they are encouraged to share what it means to "like like" someone, to explore their pronouns, and to accept that their sex is just some doctor's guesswork. Even before adding accusations that the Parents here are "white supremacists" and "xenophobes" promoting "hate" and "a dehumanizing form of erasure"—which the School Board *still* has not disavowed—there is no real dispute: the School Board has unbridled discretion over which religious concerns will be accommodated, and that triggers strict scrutiny. Br.13.

Once strict scrutiny applies, the School Board's decision to ban opt-outs for the Pride Storybooks flunks. Everyone agrees with ensuring a "safe educational environment" and student "health and safety." Opp.26. But the Supreme Court has repeatedly rejected such generalized interests as "imponderable" and insufficient to justify denying religious accommodations to specific individuals. It is impossible to know when "safety" is reached, so the School Board could always use "safety" to suppress constitutional rights. That concern is amplified here, where the School Board insists that mere disagreement creates intolerable "stigma" and "isolation." Hazel ¶ 39. The right to disagree is one of the *most protected* features of our constitutional system. Vague notions of safety—or equally vague claims of "antidiscrimination policies"—are not enough to suppress it. Indeed, the only policy directly on point—Maryland's regulation regarding instruction on family life and human sexuality—requires opt-outs.

That leads to a final point. The School Board has not even considered less restrictive ways to pursue its asserted interests. The School Board could promote the desired inclusivity with books that encourage kindness and respect, *despite differences in opinion*. Here, the Parents are not demanding a curriculum change. They simply seek the same notice and opportunity to opt out required by Maryland

law and the School Board's own Religious Diversity Guidelines—a solution that worked for the last school year and that works nationwide.

The most the Board can say is that "dozens" of students have opted out from a "single elementary school," with presumably hundreds of students spread through dozens of classrooms. What's more, the School Board told community representatives in private meetings that denying opt outs wasn't about administrability—it was about not "hurt[ing]" feelings. Garti ¶ 5. Besides, even if the administrability concern were true, it's a problem of the School Board's own making. As the MCPS principals told the School Board last November, pushing ideological storybooks on highly impressionable pre-K and elementary-school students would be "dismissive of religious beliefs," result in "shaming comment[s]" to children who disagreed, and "[s]tate[] as a fact" things that "[s]ome would not agree" are facts. McCaw Ex. B at 4. This isn't a religious challenge to a curriculum generally. Nor is it an effort to remove books from schools. Rather it's an effort to restore the opt-out policy that respected parental rights until March 23 of this year. By pressing forward anyway, the School Board isn't just lacking self-awareness, it's demonstrated a "how to" for triggering, and failing, strict scrutiny. A preliminary injunction should be entered.

ARGUMENT

Despite the School Board's efforts to inflate the Parents' burden, Opp.8, the standard for injunctive relief here is the familiar one. Br.13. Moreover, an injunction that "require[s] a party who has recently disturbed the status quo to reverse its actions" is prohibitory, not mandatory, as it "restores, rather than disturbs, the status quo ante." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014).[1]

[1] Contrary to the School Board's contention, Opp.9 n.4, such an injunction would protect Kids First too. *See* FAC Prayer for Relief ¶ e.

I. The Parents are likely to succeed on the merits.

A. The Parents' free exercise is burdened and strict scrutiny is triggered.

The Pride Storybooks burden the Parents' religion because they "substantially interfere" with children's religious development at a "crucial … stage." *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972); Br.14-16. The School Board responses fail.

First, the School Board argues that the Free Exercise Clause is only triggered by "penalizing or prohibiting" religious exercise, and denying an opt-out from the Pride Storybooks doesn't do that. Opp.10. Wrong. Free exercise is burdened whenever an individual receives "substantial pressure … to modify his behavior and to violate his beliefs." *Thomas v. Rev. Bd.*, 450 U.S. 707, 718 (1981). The School Board claims the Parents "have not argued" that standard. Opp.11. Again, wrong. "It would violate our religious beliefs and the religious beliefs of our children if they were asked to discuss romantic relationships or sexuality with schoolteachers or classmates." Mahmoud ¶¶ 17-18; *accord* Persak ¶¶ 12-16; Roman ¶¶ 19-20. Such affirmations suffice. *See Lovelace v. Lee*, 472 F.3d 174, 187-89 & n.2 (4th Cir. 2006); *Carson v. Makin*, 142 S. Ct. 1987, 1996 (2022) ("indirect coercion" is a burden).

Next, the School Board "tell[s] the plaintiffs that their beliefs are flawed because … the end that they find to be morally wrong is simply too attenuated." *Little Sisters of the Poor v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020) (cleaned up). To the School Board, the Pride Storybooks "involve[] no instruction on sexual orientation or gender identity per se" and parents "are free to discuss [them] at home." Opp.6, 10. But not if there's no notice. And as MCPS principals said last November: the Pride Storybooks "seem to support the explicit teaching of gender and sexual identity" and childhood romances are "problematic" "regardless of sexual preferences." McCaw Ex. B at 4. Moreover, "courts must not presume to determine the plausibility of a religious claim." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) (cleaned up). And trying to here is threadbare.

Gender goes to a person's "deeply felt, inherent sense" and "is formulated for most people at a very early age." *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 594, 612 (4th Cir. 2020). This is the logic behind Maryland—and most other jurisdictions—mandating opt-outs for instruction on family life and human sexuality. First Am. Compl. (FAC) [Dkt. 36] ¶¶ 87-88; Br.27-29. It is likewise no surprise that the School Board itself allowed opt-outs until March 23. Nor is it any surprise that MCPS principals relayed these same concerns to the School Board last November. McCaw Ex. B. "Introducing and teaching a child about complex and sensitive gender identity topics before the parent would have done so can undermine parental authority." *Tatel v. Mt. Lebanon Sch. Dist.*, No. 22-cv-837, 2023 WL 3740822, at *8 (W.D. Pa. May 31, 2023) (cleaned up). Denying parents both advanced notice and an opt out means they're left only to try un-ringing a rung bell. This pressures parents to "abandon belief and be assimilated into society at large." *Yoder*, 406 U.S. at 218; Br.9-12.

Ultimately, the School Board admits the behavioral pressure. It withdrew the opt-outs to "normalize[] a fully inclusive environment for all students," Opp.3, "reduc[e] stigmatization[,] and foster[] social integration of all students and families" (*id.* at 7). The mere sight of children leaving the classroom for unspecified reasons when the Storybooks are read, to the School Board, threatens a "safe educational environment." *Id.* at 26-27. Nor does the School Board dispute its guidance with *A Boy Named Penelope*: teachers should tell inquiring students that it is "hurtful" to claim a girl "can't be a boy if he was born a girl." Compl. Ex. D. [Dkt. 1-5] at 5. Nor is there any dispute that *Intersection Allies* encourages students to "stand[] together" to "rewrite the norms." Compl. Ex. F [Dkt. 1-7] at 37. Or that *A Boy Named Penelope* encourages students to "teach[]" gender identities to adults. Compl. Ex. I [Dkt. 1-11] at 24. *What are your words?* encourages students to determine their own pronouns. Baxter Ex. 1 at 20. What's more, the MCPS principals explained how the books are age inappropriate and how the School Board's teaching materials direct teachers to make

statements "dismissive of religious beliefs," that could "sham[e]" dissenting children, and that present "[q]uestionable" facts. McCaw Ex. B at 2, 4. The School Board can "disagree[]" that normalizing these perspectives is "tantamount to endorsement," but a free exercise burden still exists because the normalizing pressures the Parents and their children to modify their religious beliefs and behavior. *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1876 (2021); *see also* Br.9-12.

Second, the School Board claims that a "wall of authority" refutes the Parents' burden. Opp.12-17. The "wall" can't bear that load. Start with *Yoder*. The School Board's attempt to cramp *Yoder* requires ignoring *Espinoza*, which did not limit *Yoder* to policies that "gravely endanger if not destroy the free exercise of the parents' religious beliefs." Opp.11 (cleaned up); *see Espinoza v. Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020). Rather, *Yoder* protects the "enduring American tradition" of religious educational choices. *Id.* (majority); *id.* at 2276 (Gorsuch, J., concurring) (*Yoder* "protect[s]" "parents' decisions about the education of their children"); *id.* at 2284 (Breyer, J., dissenting) ("the freedom of parents to teach their children the tenets of their faith").

Nor do the School Board's six string-cited cases help. Opp.10-11. One case, *Leebaert*, relies on the cramped, pre-*Espinoza* reading of *Yoder*—and its strict scrutiny analysis is inconsistent with the Fourth Circuit's. *Compare Leebaert v. Harrington*, 332 F.3d 134, 144-45 (2d Cir. 2003), *with Hicks ex rel. Hicks v. Halifax Cnty. Bd. of Educ.*, 93 F. Supp. 2d 649, 664 (E.D.N.C. 1999) (discussing *Herndon v. Chapel Hill-Carrboro City Bd. of Educ.,* 89 F.3d 174, 178 (4th Cir. 1996)). *Torlakson*, *Fleischfresser*, and *Mozert* are general curriculum challenges, not religious-based opt-out requests to specific instruction. Collapsing that distinction leads the School Board to: overlook the long tradition of courts upholding opt-outs, Br.27-29; misunderstand *Tatel* as a case about a teacher "impart[ing] her personal views," Opp.16, when it's about a "de facto [school] policy," Br.29 n.5; and discuss a Fourth Circuit case (*D.L.*)

that has nothing to do with religious opt-outs to specific instruction, Opp.13. *Jones*, Opp.11, 15-16—as the School Board admits—is not a religious opt-out to specific instruction either, but to unpredictable, "organic[]" discussion. Opp.15. The remaining case—*Parker*, called "particularly instructive," Opp.13—teaches error. *Parker*'s "sum" is that religious parents lack opt-out rights because "there is no claim of direct coercion." *Parker v. Hurley*, 514 F.3d 87, 105 (1st Cir. 2008). But the Free Exercise Clause doesn't require direct coercion. *Supra* at 4. Strict scrutiny applies.

B. Strict scrutiny is triggered under *Fulton*.

The School Board tries to dodge strict scrutiny under *Fulton*, Br.17-18, by claiming "[t]here are no exceptions" to its brand-new no-opt-out policy, Opp.17. Even if that were true, strict scrutiny would still be triggered, because the School Board's Religious Diversity Guidelines expressly allow for opt-outs. *See* Compl. Ex. A [Dkt. 1-2] at 3. ("Requests to be Excused from Instructional Programs for Religious Reasons."). That the School Board insists that it *currently* "permits no opt outs of any kind," Opp.17, is irrelevant because it retains discretion to re-implement them. That discretion alone "renders a policy not generally applicable, regardless whether any exceptions have been," or currently are being, "given." *Fulton*, 141 S. Ct. at 1879.

It also undermines the School Board's claim that its supposedly total ban on opt-outs eliminates "[i]ndividualized assessments," Opp.17, 19, and denies officials "sole discretion" to grant exceptions. Opp.18. The Guidelines themselves provide that, "*[w]hen possible*," schools should "*try*" to accommodate religious objections to "specific classroom discussions or activities." Compl. Ex. A [Dkt. 1-2] at 3 (emphases added). The March 23 about-face was itself proof of this highly discretionary system, allowing the School Board in its "sole discretion" to permit opt-outs through the end of the year, *see, e.g.*, Persak ¶¶ 18-19, but then deny them for any "inclusive books … read in the future," FAC [Dkt. 36] ¶ 160.

The School Board's recitation of the Guidelines' escape clause for opt-outs that "become too frequent or too burdensome," Opp.19, underscores the point. The School Board alone decides what is "too frequent" or "too burdensome," further exposing its discretion to deny opt-outs based on "individualized assessments" made in its "sole authority."

Nor can the School Board argue that the Guidelines "are not relevant here" because "[t]he challenged policy is MCPS's no-opt-out policy for the LGBTQ-Inclusive books." Opp.19. The School Board cannot carve out one *application* of its larger religious accommodation policy to avoid only the religious objections it doesn't like. *See Fulton*, 141 S. Ct. at 1879 (rejecting Philadelphia's effort to rely on one exemption-less contractual provision, despite another with exceptions). The "no-opt-out policy for the LGBTQ-Inclusive Books," Opp.19, is simply one application of the Guidelines—an application that itself proves the need for strict scrutiny.

C. Strict scrutiny is triggered under *Tandon*.

Tandon requires strict scrutiny because the School Board allows secular opt-outs from sex ed, but not religious opt-outs for elementary-school kids. Br.18-20. The School Board's responses all fail. First, the School Board argues that it is not "distinguishing between religious and secular activities," because neither "religious [n]or secular" opt-outs are permitted for the Pride Storybooks, while "both religious and secular" opt-outs are permitted from sex ed. Opp.20-21. Yet under *Tandon v. Newsom*, "[i]t is no answer that [the School Board] treats some comparable secular … activities as poorly as … the religious exercise at issue." 141 S. Ct. 1294, 1296 (2021). And it "contributes to the gerrymander" to apply "a pattern of exemptions" in one context but not another. *Church of Lukumi Babalu, Aye, Inc. v. City of Hialeah*, 508 U.S. 536-37 (1992). Because *Tandon* forbids "*any* comparable secular activity" from receiving treatment "more favorably than religious exercise," strict scrutiny applies. 141 S. Ct. at 1296.

Next, the School Board claims the Pride Storybooks and sex ed are not comparable because "Maryland law requires" opt-outs for sex ed, but that law is "silent on the question of opt outs from the ELA curriculum." Opp.21. But general applicability isn't resolved by deferring to government "categorizations." *Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020) (finding no general applicability despite government "categorizations" of "essential" and "non-essential businesses"). It is determined by "the asserted government interest that justifies the regulation at issue." *Tandon*, 141 S. Ct. at 1297. When governments use their "categorizations" to produce "disparate treatment" toward religious exercise, strict scrutiny follows. 141 S. Ct. at 66.

Here, the interest underlying the Pride Storybooks and sex ed is the same: educational "equity" on matters of family life and human sexuality. Hazel ¶¶ 5-7. As the School Board acknowledges, "Maryland's 'Equity Regulation'" is "[a]mong the[] laws" the Pride Storybooks were adopted to comply with—and it is also why instruction in Health Education was amended in 2019, where opt-outs are allowed on family life and human sexuality. Opp.2; *see also* Br.19-20. As the School Board told Maryland, the Equity Regulation for "Comprehensive Health Education" contains "the shared commitments expressed" in the policies that the School Board cites for the Pride Storybooks. *Compare* Attachment to Memorandum from Karen B. Salmon, State Superintendent of Schools, to Members of the State Board of Education 39 (Oct. 22, 2019), https://perma.cc/2LYT-R5G3 ("Education's Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*") *with* Hazel ¶ 6 (same). That "disparate treatment" in pursuing the same equity interest shows a lack of general applicability. *Diocese of Brooklyn*, 141 S. Ct. at 66.

Similarly, the "risk[]," Opp.22, that students would respectfully be excused from the Pride Storybooks is no different than students respectfully walking out of sex ed when various gender identities are explored.

As such, the School Board's third argument—that there's no "suggest[ion] that MCPS offers … the health education curriculum to be more inclusive of LGBTQ individuals"—is simply wrong. Opp.22. The School Board's own Policy ACA on Nondiscrimination, Equity, and Cultural Proficiency—"memorializ[ing]" the "diversity" and "equity" values espoused by "[t]he Board," Hazel ¶ 6—applies to all "[i]nstructional materials used in MCPS schools," and states "[t]he Board recognizes that equity goes beyond meeting the letter of the law." Opp. Ex. 1 at 2, 5, 7. Students can opt out of any discussion of "equity" on family life and human sexuality during sex ed and any other "specific classroom discussion or activities," Compl. Ex. A [Dkt. 1-2] at 3—unless the Pride Storybooks are at issue. That is not generally applicable.

D. Strict scrutiny is triggered under *Masterpiece* and *Lukumi*.

In response to its religious targeting, Br.21, the School Board argues that "allowing opt outs of any kind was infeasible" and "[o]nly a subset of the opt-out requests … cited religious motivations." Opp.23. This doesn't show neutrality toward religion. Rather, it's an admission that—as to the Pride Storybooks only—the case-by-case analysis of the Religious Diversity Guidelines was discarded.

Pivoting to religious hostility, the School Board cramps *Masterpiece*'s holding to "adjudicatory bod[ies]." Opp.23. This is belied by *Kennedy*, which holds that *Masterpiece* applies to any "law[]" or "policies" that are "accompan[ied]" by "official expressions of hostility." 142 S. Ct. 2407, 2422 n.1 (2022). Ultimately, the School Board—like other decisionmakers, must afford religious objectors "neutral and respectful consideration." *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1729 (2018). That consideration doesn't just apply, as the School Board argues, before a policy takes effect. *See* Opp.24. Rather, the failure to later "object[]" to or "disavow[]" hostile comments casts doubt on the School Board's "neutral and respectful consideration" going forward. *Masterpiece*, 138 S. Ct. at 1729-30.

Here, the School Board's consideration of religious objections to the Pride Storybooks was—and remains—compromised. Defendant Harris demonstrated overt religious hostility at the March 28 board meeting when she accused religious parents of perpetuating hate. *See* Lynne Harris, Remarks at the MCPS Board Meeting, at 1:48:00-1:48:15 (Mar. 28, 2023), https://shorturl.at/fAET6. The School Board sees her words as neutral because she deplored other "core beliefs" and "family values" too. Opp.24-25. But such comparisons aggravate, not ameliorate, religious hostility. *Masterpiece*, 138 S. Ct. at 1729. The School Board correctly observes that Harris did not say, at another meeting, that "ignorance and hate does exist in our community." Opp.24. But another board member *did* make that comment, *see* FAC [Dkt. 36] ¶ 158, so all the School Board has proved is that hostility is not confined to Harris alone. No other board members have "object[ed]" to or "disavow[ed]" the hostile comments. *Masterpiece*, 138 S. Ct. at 1729-30. The ban on opt-outs for the Pride Story books must thus be "set aside." *Kennedy*, 142 S. Ct. at 2422 n.1.

E. Strict scrutiny is triggered under the Due Process Clause.

The School Board's policy also violates the Parents' fundamental due process right to direct their children's education and upbringing. Br.23-24. The School Board does not deny that this right is "fundamental." Opp.27. Instead, it argues that infringement is subject only to rational-basis review and that the same crumbling "wall of authority" forecloses such a claim here. Neither argument has purchase.

First, under Fourth Circuit precedent, when due process "parental rights" "combine with First Amendment free exercise concerns," the challenged policy is evaluated under "heightened scrutiny." *Herndon*, 89 F.3d at 178-79; *Hicks*, 93 F. Supp. 2d at 664 (same).

Next, the School Board fails to salvage its "wall of authority." Adding *Blau* and *Bailey*, Opp.27-28, doesn't help. *Blau* contained "no[] claim that the [school policy] was incompatible with any religious beliefs that [the plaintiffs] may hold." *Blau v.*

Fort Thomas Pub. Sch. Dist., 401 F.3d 381, 386 (6th Cir. 2005). Nor *Bailey*. *Bailey v. Va. High School League, Inc.*, 488 F. App'x 714, 716 (4th Cir. 2012) ("does not implicate a fundamental right.").

The School Board's position—that parents have no say in "*how* a public school teaches their child[ren]," Opp.28—is inconsistent with the many courts recognizing that parental due process rights are implicated on sensitive subjects "that strike at the heart of parental decision-making authority on matters of the greatest importance," *Tatel*, 2023 WL 3740822, at *7; Br.27-29. The School Board is not "empowered, as parens patriae, to 'save' a child from himself or his [religious] parents by requiring [certain] compulsory" education. *Yoder*, 406 U.S. at 232.

II. The no-opt-out policy cannot survive strict scrutiny.

A. There is no compelling interest.

The School Board must—but can't—show a compelling interest in denying opt-outs. Br.24-29. That's confirmed by the "interests" purported in response.

First, interests in "a safe educational environment" and student "health and safety," Opp.26, fail the "more precise analysis" "demand[ed]" by the First Amendment. *Fulton*, 141 S. Ct. at 1881; Br.24-29. Closer inspection shows that these interests sound in censorship. Tellingly, the School Board's cited authority is *Saxe v, State College*, Opp.26, where a school policy claiming a "safe" educational environment was invalidated—partly because its censorial reach "could include much 'core' political and religious speech." 240 F.3d 200, 217 (3d Cir. 2001). Here, by denying opt-outs because their mere existence creates "stigm[a]" and prevents schools from "meeting the needs of the students who opt out," Opp.27, the School Board reveals its ideological goal: children excused from Pride Storytime are discriminators, and providing opt-outs hinders conformity. This was the tenor of the MCPS principals' concerns expressed to the School Board. Ex B. Giving "public school authorities" this censorial power "strikes at the very heart of the First Amendment."

Morse v. Frederick, 551 U.S. 393, 423 (2007) (Alito, J., concurring); *see also B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d 293, 309 (3d Cir. 2013) (Alito's opinion "controls" *Morse*).

Next, the School Board asserts that avoiding "stigmatization" is part of "complying with federal and state antidiscrimination policies and regulations." Opp.26; Hazel ¶ 39. "Such speculation is insufficient to satisfy strict scrutiny." *Fulton*, 141 S. Ct. at 1882. Plus, it's just wrong. Maryland law requires opt-outs—no matter how many—on all manner of family life and human sexuality instruction. Br.12, 20, 26. And religious liberty can supersede antidiscrimination law. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2318 (2023) (public accommodations law cannot compel speech with "political and religious significance"); *Bostock v. Clayton County*, 140 S. Ct. 1731, 1754 (2020); *Fulton*, 141 S. Ct. at 1882.

Finally, the School Board argues that "allowing *any* student to opt out hinders its educational mission." Opp.27 n.7. But "educational mission" "can easily be manipulated in dangerous ways." *Morse*, 551 U.S. at 423 (Alito, J., concurring). That's why "[i]t is a dangerous fiction to pretend that parents simply delegate their authority—including their authority to determine what their children may say and hear—to public school authorities." *Id.* at 424 (Alito, J., concurring).

As the Supreme Court just held, it is not "coherent for purposes of strict scrutiny" for courts to violate fundamental rights in the name of "imponderable" educational goals. *Students for Fair Admissions, Inc. ("SFFA") v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2166-67 (2023). Such goals include "enhanc[ing] appreciation, respect, and empathy" for minorities, imparting "new knowledge," and having a "robust" "exchange of ideas." *Id.* at 2166. Here, the School Board's "educational mission" comprises just such "imponderable[s]": "fostering an inclusive educational environment," "reducing stigmatization and fostering social integration of all students and families," and a "learning environment free of discrimination." Opp.25,

7, 30. "Although these are commendable goals," "it is unclear how courts are supposed to measure any of the[m]," or "know when they have been reached, and when the perilous remedy of [religious burdens] may cease." *SFFA*, 143 S. Ct. at 2166. As in *SFFA*, the School Board responds by demanding deference. *Compare* 143 S. Ct. at 2168 ("trust us") *with* Opp.15 (be "careful not to question" educational goals). Schools "may define their missions as they see fit. The Constitution defines" the judiciary's. *SFFA*, 143 S. Ct. at 2168.

B. The policy is not the least restrictive means.

"[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 141 S. Ct. at 1881. Banning opt-outs flunks. Br.29-30. First, the School Board asserts that "allowing *any* student to opt out hinders its educational mission." Opp.27 n.7. School districts nationwide disagree. FAC [Dkt. 36] ¶ 93-97; Br.12. Within Maryland, school systems that expressly recognize that state law requires opt-outs at the elementary level on all family life and human sexuality instruction—not just in sex ed—include Baltimore, Frederick, and Carroll Counties.[2] The School Board hasn't shown why its "system is so different." *Holt v. Hobbs*, 574 U.S. 352, 367 (2015).

Second, the School Board argues that "accomodat[ing] the growing number of opt out requests" would result in "significant disruptions." Opp.7. This is "but another formulation of the classic rejoinder of bureaucrats throughout history: If I make an exception for you, I'll have to make one for everybody, so no exceptions." *Holt*, 574

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[2] *See Health Education Frequently Asked Questions: Baltimore County Public Schools (BCPS) System*, https://perma.cc/F45S-2FVL (acknowledging that content is "integrated" into the rest of the curriculum but that opt-outs are still allowed); *Elementary Health Education Frequently Asked Questions (FAQ),* Frederick County Public Schools, https://perma.cc/45LL-P7HF (outlining opt-out rights and alternative instruction); *Approval of Family Life Advisory Committee Opt-Out Recommendations for Grades PreK through 5 Family Life Unit*, Carroll County Public Schools (Jan. 11, 2023), https://perma.cc/A7BB-R35Y (same).

U.S. at 368. The Supreme Court rejects such arguments. *Id.* (citations omitted). And there are good reasons to reject it here too. For one, the School Board gave a different answer in private meetings—telling community members that opt outs were being denied to avoid having students' "feelings hurt," not because they're unadministrable. Garti ¶ 5. Moreover, "the one instance" School Board specified is that there were "dozens" of opt-out requests at one school—in a school district of "160,000 students of many different backgrounds." Hazel ¶ 37; Opp.1. Yet the School Board also "advises principals" to avoid scheduling "tests or other major events on dozens" of religious holidays, with no claimed administrability problem. Hazel ¶ 20. Finally—and most importantly—even if this evidence was credited, "it would plainly be incumbent upon the [School Board] to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights." *Sherbert v. Verner*, 374 U.S. 398, 407 (1963). If "administrability" justifies a categorical refusal to accommodate religious objectors, the School Board has an incentive to infringe First Amendment rights: avoid accommodation by increasing offense.

III. The remaining preliminary injunction factors are easily satisfied.

The Parents have met the remaining preliminary injunction factors. Br.30-32. The School Board's only response is to claim that these other factors don't matter because there is no constitutional rights violation. Opp.30. Wrong, as the foregoing confirms.

CONCLUSION

Innocence lost is gone forever. The Court should grant the preliminary injunction.

Dated: July 26, 2023

Respectfully submitted,

/s/ Eric S. Baxter
Eric S. Baxter
William J. Haun (pro hac vice)
Michael J. O'Brien* (pro hac vice)
Brandon L. Winchel* (pro hac vice)
THE BECKET FUND FOR RELIGIOUS LIBERTY

1919 Pennsylvania Ave, N.W., Suite 400
Washington, DC 20006
(202) 955-0095
whaun@becketlaw.org

*Not a member of the DC Bar; admitted in Louisiana and California respectively. Practice limited to cases in federal court.

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2023, a copy of *Plaintiffs' Reply in Support of Motion for Preliminary Injunction*, *Declaration of Hisham Garti,* and *Declaration of Robert McCaw,* which were electronically filed in this case on July 26, 2023, were emailed and mailed via First-Class Mail, postage prepaid, to the following in accordance with Fed. R. Civ. P. 5:

Alan Schoenfeld
Wilmer Hale
250 Greenwich Street
New York, NY 10007
Alan.schoenfeld@wilmerhale.com
Attorney for Defendants

Dated: July 26, 2023

/s/ Eric S. Baxter
Eric S. Baxter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, et al., *Plaintiffs,* v. MONIFA B. MCKNIGHT, in her official capacity as Superintendent of the Montgomery Board of Education, et al., *Defendants.*	Case No. 8:23-CV-01380-TJS **DECLARATION OF ROBERT MCCAW**

I, Robert Stephen McCaw, declare as follows:

1. My name is Robert Stephen McCaw. I am over 21 years old and capable of making this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of all of the contents of this declaration.

2. I am the Government Affairs Department Director at the Council on American-Islamic Relations (CAIR), the nation's largest Muslim civil rights and advocacy organization. Since 2011, I have overseen CAIR's Muslim civic engagement and empowerment programs. Since 2015, I have served as Chairman of the U.S. Council of Muslim Organizations Steering Committee for the National Muslim Advocacy Day on Capitol Hill. I hold a Master's degree in political science and a Certificate in Public Affairs from the University of Florida, Gainesville.

3. On June 8, 2023, I submitted an open records request to the Montgomery County Public Schools (MCPS) regarding its no-opt-out policy regarding newly introduced reading materials and teacher-led discussions about issues involving gender, family life and other related topics.

4. A copy of MCPS's response is attached as Exhibit A.

5. MCPS also included over 130 pages of documents that were responsive to the request, including all "communications" between June 1, 2022, and June 8, 2023, "from or to Superintendent [Monifa B.] McKnight or Chief Academic Officer [Dr. Peggy A. Pugh] concerning the newly approved MCPS reading list of books" that are at issue in the captioned litigation.

6. I have reviewed all of the documents provided in response to the request. I *found no mentions of any concern that the number of parental requests for opt-outs* were becoming too numerous or burdensome for MCPS.

7. The documents attached as Exhibit B were also included among the documents produced by MCPS.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 26th day of June, 2023.

Robert Stephen McCaw

Exhibit A

Maryland's Largest School District
MONTGOMERY COUNTY PUBLIC SCHOOLS
Expanding Opportunity and Unleashing Potential

PUBLIC INFORMATION OFFICE

July 17, 2023

Mr. Robert McCaw
rmccaw@cair.com

Dear Mr. McCaw:

I have received your Maryland Public Information Act (MPIA) request seeking copies of emails, text messages, files, reports, policies, trainings, guidance, classroom lesson plans, reading lists or other records, herein listed as "communications," sent, received or possessed by MCPS Superintendent of Schools Dr. Monifa B. McKnight (Monifa_B_McKnight@mcpsmd.org) and MCPS Chief Academic Officer Dr. Peggy A. Pugh (Peggy_Pugh@mcpsmd.org) between June 1, 2022, and June 8, 2023, related to the subjects identified below. The requested information includes:

• Any communications from or to Superintendent McKnight or Chief Academic Officer Pugh concerning the August 2022 professional development training titled: "Building Community with LGBTQ+ Affirming Picture Books."

• Any communications from or to Superintendent McKnight or Chief Academic Officer Pugh concerning the newly approved MCPS reading list of books for students in prekindergarten to eighth grade. Books include: "Pride Puppy" by Robin Stevenson; "Uncle Bobby's Wedding" by Sarah Brannen; "Intersection Allies: We Make Room for All" by Chelsea Johnson, LaToya Council and Carolyn Choi; "My Rainbow" by Trinity and DeShanna Neal; "Prince & Knight" by Daniel Haack; "Love, Violet" by Charlotte Sullivan Wild; "Born Ready: The True Story of a Boy Named Penelope" by Jodie Patterson; "Cattywampus" by Ash Van Otterloo; "The Best at It" by Maulik Pancholy; "Ivy Aberdeen's Letter to the World" by Ashley Herring Blake; "Hurricane Child" by Kacen Callender; "The Stonewall Riots: Coming Out in the Streets" by Gayle E. Pitman; and "Troublemaker for Justice: The Story of Bayard Rustin, the Man Behind the March on Washington" by Jacqueline Houtman, Walter Naegle and Michael G. Long.

I am responding on behalf of the superintendent of schools who, as official custodian of records for the school system, is responsible for replies under the Maryland Public Information Act, Title 4 of the General Provisions (GP) Article.

Please copy and paste the following link to find enclosed responsive documents to your request:
https://drive.google.com/drive/folders/1zIDT-5dIKvpI_lJG3NDb1h6QtKfmM0Do?usp=sharing

Documents have been redacted in accordance with the student records exception in GP § 4-313.

If you believe you have been wrongly denied a public record, you are entitled to seek judicial review of this decision pursuant to GP § 4-362. In addition, pursuant to GP § 4-1B-01 et seq., you also have the option to express any concerns about this decision to the Public Access Ombudsman.

With regards,

Christopher C. Cram
Director, Department of Communications

850 Hungerford Drive Room 137 Rockville, Maryland 20850 240-740-2837 montgomeryschoolsmd.org

CCC:vem

Copy to:
Dr. Pugh
Ms. Williams

Exhibit B

From: Bayewitz, Michael D
To: Murphy, Patrick K; Rogovoy, Elizabeth M; Reuben, Ruschelle; Hazel, Niki T; Logan, Kisha; Pugh, Peggy A; Cram, Christopher C; Stockton, Brian S; Hull, Brian; Bolden, Natasha; Edmundson, Greg
Cc: Clark-Harrison, Arienne M; Handy, Christine C - MCAAP; Forkert, Ryan D
Subject: MCAAP Elementary Cabinet White Paper on LGBTQ+ Materials
Date: Tuesday, November 22, 2022 10:36:09 AM
Attachments: MCAAP Elementary Cabinet White Paper on LGBTQ+ Materials.docx

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Good morning,

On behalf of the MCAAP Elementary Cabinet, I am sharing the attached document that outlines specific concerns and questions raised by principals in regard to the LGBTQ+ supplemental materials. We also offer several suggestions. We stand ready to collaborate with central office leadership to be thought partners in order to ensure that our schools are welcoming, inclusive places where students feel physically and emotionally safe.

Arienne and I are happy to field any questions you may have.

I hope each of you are able to enjoy a happy and healthy Thanksgiving break!

Michael D. Bayewitz
Chair, Elementary Chapter, MCAAP
Principal, Cloverly Elementary School

Principals support the desire for all students to see themselves and their families in their literature. We value all stakeholders and strive for our school communities to be inclusive and value diversity. Principals also share Dr. McKnight's interest in rebuilding trust with our community. To achieve these goals, we must strive for clear communication and full transparency with all stakeholders.

It is within this context that we share the following concerns around the recent distribution, communication, and messaging around the LGBTQ+ supplemental books and materials.

1. **Communication Regarding Intent of Materials**
   Central office leaders have communicated to principals that the purpose of the materials is to portray and represent LGBTQ+ characters in literature, for students to be able to see themselves and/or family in their learning, and to promote inclusivity; it has been communicated that MCPS is not teaching about sexual orientation and gender identity as stand alone concepts in elementary school. However, several of the books and supporting documents seemingly contradict this message. (See item #7). Principals are requesting a clear and transparent message from MCPS to families about the intent and purpose of these books, as well as a draft message principals could utilize after the system-wide communication.

2. **Appropriateness of Materials**
   Numerous concerns have been raised by principals, teachers, and community members that the content of the books does not align with the stated messages. There are concerns that the plot of some of the books center around sexual orientation and gender identity. There are concerns that some of the books are not appropriate for the intended age group, or in one case, not appropriate at all for young students. Specific concerns raised include:

   - Pride Puppy (Pre-K)- Depicts a "*queen*", (drag queen in glossary).
   - Uncle Bobby's Wedding (K)- No concerns shared
   - Intersection Allies- (Gr. 1)- No concerns shared about content, but the text is too difficult and unengaging for first grade students.
   - My Rainbow (Gr. 2)- The plot is about an African American autistic girl who comes to understand she identifies transgender. The words *transgender* and *cisgender* are used but not explained.
   - Prince and Knight (Gr.3)- The plot is about a prince searching for a bride and who falls in love with a knight.
   - Love, Violet (Gr. 4)- The plot is about a young school-age girl who falls in love with another girl in her class. It is problematic to portray elementary school age children falling in love with other children, regardless of sexual preferences.

- Born Ready: True Story of a Boy Named Penelope (Gr. 5)- The plot is about a girl who identifies as a boy.

Principals are requesting that MCPS consider other titles that more closely align to the communicated intent of the materials.

3. **If Materials are Mandatory or Optional**
MCPS has stated publicly that these are optional materials. This stance places principals (and leadership teams) in a potentially polarizing position of having to decide whether to use the materials. In many schools that we have spoken with, there have been parents who have already vehemently expressed their desire for their child to be removed from the classroom during any lessons surrounding gender identity, sexual orientation, or LGBTQ+ related content. Other parent groups have shared their strong support for the materials to be used. If this is a school by school, or teacher by teacher decision, this will significantly damage school-community relationships.

4. **Opt-Out Option**
MCPS has stated publicly that there is no option to opt-out, with the rationale that MCPS is simply providing books about inclusion of LGBTQ+ characters and inclusivity. However, due to the concerns shared earlier about the plot and nature of the books, this creates a significant concern by some parents about "indoctrination" or "hidden agendas."

5. **Teacher Training**
Teachers have not been trained on the use of these materials and subsequent questions, conversations, and class discussions that may occur. Some teachers have shared their discomfort about the content, the terminology, and the appropriateness of the books developmentally as well as from a sexual education perspective. For example, family life isn't taught until fifth grade, but a second grade book uses terminology such as *cisgender* or *transgender*.

6. **Process of Selection of Materials**
It has been shared that these materials went through the established MCPS process of including multiple stakeholders and community involvement in the approval process. However, given the sensitive nature of the materials, there needs to be a more robust, inclusive, public-facing process that includes deliberate attempts to include administrators, teachers, and parents as stakeholders. It is especially important to include communities that represent various perspectives across Montgomery County.

7. **Communication Moving Forward**
Beginning with the materials arrived in schools this summer without clear communication, the communication around the materials and messaging has been wrought with confusion. Moving forward, principals are seeking one office, or one point-person, to be the contact of communication for principals.

8. **Supporting Documents Containing Mixed Messaging and/or Questionable Content**
   a. In "Sample Student Call-Ins" document. Example provided:

A Student might say something like……	We can respond with….
"Being____ (gay, lesbian, queer, etc) is wrong and not allowed in my religion."	I understand that is what you believe, but not everyone believes that. We don't have to understand a person's identify to treat then with respect and kindness. (Concern- dismissive of religious beliefs)
"That's weird. He can't be a boy if he was born a girl." "What body parts do they have?"	That comment is hurtful; we shouldn't use negative words to talk about people's identities. (Concern- shaming comment to a child). When we're born, people make a guess about our gender and label us boy or girl based on our body parts. Sometimes they're right and sometimes they're wrong. Our body parts do not decide our gender. (Concern: Stated as a fact. Some would not agree this as a fact).

   b. "Adding an LGBTQ+ Lens to Our Critical Selection Repertoire"
Sample of concerns:

- "Who wrote & illustrated the book? How do they identify? Are they writing from a place of lived experience(s)?" (Concern: This criterion is exclusionary and should not limit possible resources that are relevant.)
- Does the book promote deep engagement and leave room for discussion and curious exploration? (Concern: This suggests the literature is designed to spark curiosity about the topic, as opposed to exposure and inclusivity).

   c. "Responding to Caregivers / Community Questions"
Concern: Throughout this document, many of the answers provided contradict the overarching messaging and seem to support the explicit teaching of gender and sexual identify.

Exhibit 1

Adding an LGBTQ+ Lens to Our Critical Selection Repertoire

- Who wrote & illustrated the book? How do they identify? Are they writing from a place of lived experience(s)?
- Whose voices are being centered (as opposed to side characters or tokenized ones)? Whose perspective is missing? Whose life experience is not included? How might that impact how the story is received by those whose voices are present and those who are not?
- Is this a book that will serve to show students they are accepted in their full humanity, affirm their lived experiences and support ALL of their identities? Or will it serve to perpetuate bias, stereotypes and negative viewpoints?
- Are stereotypes reinforced or disrupted?
- Is heteronormativity reinforced or disrupted?
- Is cisnormativity reinforced or disrupted?
- Are power hierarchies that uphold the dominant culture reinforced or disrupted?
- Is the book structured in a way that assumes the reader's identities align with dominant culture? Is the LGBTQ+ reader "othered"?
- Are LGBTQ+ storylines presented in a way that frames them as mostly similar to and needing to be tolerated by those with dominant culture identities?
- Is the book an authentic representation of LGBTQ+ individuals as whole people, living complex lives that do not adhere to dominant culture narratives?
- Does the book promote deep engagement and leave room for discussion and curious exploration?
- Are the story, characters and illustrations rich and fully developed?

Sources: Empowering Educators Guidebook, Critically Analyzing Books for Representation, Beyond Normalization: An Analysis of Heteronormativity in Children's Picture Books, Mirrors and Windows with Texts and Readers: Intersectional Social Justice at Work in the Classroom

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, *et al.*,

Plaintiffs,

v.

MONIFA B. MCKNIGHT, *in her official capacity as Superintendent of the Montgomery Board of Education*, *et al.*,

Defendants.

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

PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Eric S. Baxter
William J. Haun
Michael J. O'Brien*
Brandon L. Winchel* (pro hac vice)
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave, N.W., Suite 400
Washington, DC 20006
(202) 955-0095
whaun@becketlaw.org

*Not a member of the DC Bar; admitted in Louisiana and California respectively. Practice limited to cases in federal court.

Attorneys for Plaintiffs

Plaintiffs (the "Parents") respectfully submit this brief to provide the Court with additional information regarding the School Board's Health Education on "family life and human sexuality" instruction.

At the August 9 hearing on the Parents' motion for preliminary injunction, the Court inquired about whether the contents of the School Board's Health Education and the Pride Storybooks were comparable under *Tandon v. Newsom*. Comparability is determined by "the asserted government interest that justifies the regulation at issue." 141 S. Ct. 1294, 1296 (2021); *see also* Br. 19; Reply 9. Here, the School Board's own Policy ACA on Nondiscrimination, Equity, and Cultural Proficiency makes promoting diversity and equity an interest for all "'[i]nstructional materials used in MCPS schools'" that goes "'beyond meeting the letter of the law.'" Reply 10 (quoting Opp. Ex. 1 at 2, 5, 7). Below, the Parents explain how the substance of the Health Education instruction is comparable to the substance of the Pride Storybooks, further evidencing how both activities advance the same inclusivity and safety interests.

First, the School Board's own website documents the inclusivity and safety efforts underlying the gender and sexuality topics taught in family life and human sexuality instruction. By Grade 5, students will know how to "[d]escribe male and female stereotypes and their impact on the individual and a diverse society." *Comprehensive Health Education in Grade 5: Family Life and Human Sexuality*, Montgomery County Public Schools, https://perma.cc/W6N5-2TY7. By Grade 7, students will: discuss "sexual orientation," "gender identity," and "teasing, bullying, and intolerance related to all aspects of sexuality"; "[d]emonstrate respect for individual differences in all aspects of sexuality"; "[a]ccess research-based information about gender identity, gender expression, and sexual orientation"; "[c]ommunicate respectfully with and about all people"; "[a]dvocate to promote dignity and respect for all people"; and "[p]ersuade others to avoid teasing, bullying, or stigmatizing others based on their personal characteristics or aspects of their sexuality." *Comprehensive*

Health Education in Grade 7: Family Life and Human Sexuality, Montgomery County Public Schools, https://perma.cc/8QRK-3SGR. And in high school, students are expected to: "[j]ustify the benefits of respecting individual differences in aspects of sexuality"; "[i]dentify how school and community programs and policies can promote dignity and respect for people of all sexual orientations and gender identities and expressions"; "[e]xamine the impact of gender expression and gender identity on members of marginalized communities"; and "[a]nalyze ways systemic oppression and intersectionality impact the sexual agency of communities of color and other marginalized groups." *Health Education in High School: Health Education A Scope and Sequence*, Montgomery County Public Schools, at Unit 4: Family Life and Human Sexuality, https://perma.cc/HB3Y-P7A8; *Health Education in High School: Health Education B Scope and Sequence*, Montgomery County Public Schools, at Unit 8: Family Life & Human Sexuality, https://perma.cc/9H26-5DJZ. These objectives are stated in language more appropriate for middle- and high-school-level instruction, but the same interests motivate the Pride Storybooks elementary school mandate. Opp. at 25-27.

Second, the Maryland Comprehensive Health Education Framework also confirms that gender identity and sexuality are taught in Health Education classes, under the rubric of family life and human sexuality, and advances the School Board's asserted inclusivity and safety interests. *Maryland Comprehensive Health Education Framework: Pre-Kindergarten Through High School*, Maryland State Department of Education (June 2021), https://perma.cc/UT6W-8FWN. Specifically, the Maryland Framework was "updated … in 2020" to "implement the [2019] regulation" and "reflect statutory changes in health education, anti-bullying and harassment, and ensuring educational equity." *Id.* at 6. Per the Framework, "[l]ocal educational professionals should ensure that lessons and content are age appropriate and reflect educational equity," while "[l]ocal education agencies develop the curricula to

implement the regulations … aligned with the framework."[1] *Id.* As part of family life and human sexuality instruction, students in Grades 2 and 3 are expected to "[d]emonstrate ways to treat people of all gender identities and expressions with dignity and respect." *Id.* at 30. In Grades 6-8, students are expected to: "[d]efine sex assigned at birth, gender identity, and gender expression"; "[c]ompare sex assigned at birth and gender identity and explain how they may or may not differ"; "[e]xplain sex assigned at birth and gender identity and explain how they may or may not differ"; "[e]xplain sexual orientation"; "[d]efine sexual identity and explain a range of identities related to sexual orientation"; and "[d]escribe sexual identity and explain a range of identities related to sexual orientation." *Id.* at 33. By high school, students are expected to "[i]dentify" and "[a]nalyze how school and community programs and policies can promote dignity and respect for people of all sexual orientations and gender identities and expressions." *Id.* at 37.

In sum, the inclusivity and safety interests underlying the Pride Storybooks are present in the School Board's Health Education curriculum on family life and human sexuality. Those comparable interests are confirmed by the comparable substance of Health Ed objectives and the Pride Storybooks. Yet opt-outs are allowed for the former while denied for the latter. Teaching the same objectives in a different class period under a different label changes nothing. Reply 9 (citing *Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 66 (2020)).[2] The School Board's disparate treatment is not generally applicable, and therefore warrants strict scrutiny under *Tandon*.

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[1] Local education agencies are also required to "establish policies, guidelines, and procedures for parents to opt-out their students from family life and human sexuality instruction in all grades, except for HIV and AIDS prevention," which "reflects the State Board's and MSDE's respect for individual parents' values and beliefs concerning family life and human sexuality instruction." Framework at 6.

[2] *See also Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2141, 2176 (2023) ("'[W]hat cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows,' and [a constitutional] prohibition … is 'levelled at the thing, not the name.'" (quoting *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325 (1867)).

Dated: August 10, 2023

Respectfully submitted,

/s/ Eric S. Baxter
Eric S. Baxter
William J. Haun
Michael J. O'Brien*
Brandon L. Winchel* (pro hac vice)
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave, N.W., Suite 400
Washington, DC 20006
(202) 955-0095
whaun@becketlaw.org

*Not a member of the DC Bar; admitted in Louisiana and California respectively. Practice limited to cases in federal court.

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2023, the foregoing brief was served on counsel for all parties by means of the Court's ECF system in compliance with Fed. R. Civ. P. 5.

Dated: August 10, 2023

/s/ Eric S. Baxter
Eric S. Baxter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, et al., *Plaintiffs*, v. MONIFA B. MCKNIGHT, in her official capacity as Superintendent of the Montgomery Board of Education, et al., *Defendants*.	Case No. 8:23-CV-01380-TJS **DECLARATION OF GRACE MORRISON IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Grace Morrison, declare as follows:

1. My name is Grace Morrison. I am over 21 years old and capable of making this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of all of the contents of this declaration.

2. I am a board member of Kids First, the Plaintiff unincorporated association of parents and teachers formed to advocate for the return of parental notice and opt-out rights in the Montgomery County Public Schools.

3. My husband and I reside in Montgomery County, Maryland. Our youngest child was adopted as an infant from Ukraine. She is now 10 years old and has Down Syndrome and Attention Deficit Disorder. She has been in the Montgomery County Schools since she was 3 years old. She is currently enrolled in the Learning for Independence Program in a Montgomery County Public School. She has an IEP and her advanced needs qualify her for a full time, one-on-one paraeducator. She also receives special services in the school such as speech therapy and occupational therapy.

4. My husband and I adhere to the Roman Catholic faith, including the Church's teachings on marriage, family, sex, sexuality, and gender.

5. As the Catholic Church teaches, we believe that marriage is the lifelong union of one man and one woman—distinct from each other, while complementary to each other—and that the nature and purpose of human sexuality is fulfilled in that union. For these same reasons, we live and teach the Church's teachings to our children about gender, which we believe is interwoven with one's sex, sexuality, and the ordering of the male and female bodies.

6. While—as we know first-hand from our adoption experience—not every child is raised with a mother and a father, every child is created by a mom and dad. We believe this is the result of God's ordering of the human species. Our faith motivated us to adopt our youngest daughter, to provide her a loving mother and father, and to raise her in our Catholic faith—just as we have our biological children.

7. Among other requirements, our sacred obligation as parents compels us to form our daughter's understanding of what it means to be a woman, to love another person, the nature and purpose of marriage, and how to embrace the vocation she is called to by God.

8. Our religious obligations as our youngest daughter's parents are pressured by the "Pride" literature. In addition to conflicting with our religious understandings of marriage, sexuality, and gender, it is practically impossible for us to contradict that instruction.

9. Due to her learning challenges, she doesn't understand or differentiate instructions from her teachers and her parents. In fact, at ten years old, we only recently helped her understand the need to use the girl's restroom. My husband and I won't be able to contradict what she hears from teachers. Due to her learning challenges, she will not be able to understand how or why we disagree.

10. Moreover, because of her needs we do not have a clear alternative for her education except to remain in the public schools. Even if we could afford private education, none of the private school options we are aware of would be able to keep

her instruction at her developmental level, even with those school's best efforts and intentions. She would still need to go outside any private school for occupational therapy and speech therapy. Only the public school system has all those resources.

11. Because of this pressure, I asked my daughter's teacher via email if her class would be reading any of the "Pride" literature on May 31, 2023. Had I not asked, I would not have known.

12. My daughter's teacher told me that the literature would be presented by the librarian on June 2, and by her teacher on June 5 and 6 in the language arts class. I inquired about an opt out, and her teacher said that no opt out was possible. Subsequently, I emailed my daughter's principal to inquire more about the literature. I was told that they adhere to the MCPS policy. I responded that we would not have our daughter attend school at that time, and we kept her home.

13. Consequently, the School Board's decision to disallow opt outs from the Pride Storybooks directly and significantly burdens the religious obligation of me and my husband to instruct our youngest child in accordance with the Catholic faith.

14. By not allowing an opt out, my husband and I are forced to place our daughter in a school where she will be taught views on marriage, sexuality, and gender that will be practically impossible for us to contradict. We have no other realistic choice but public school.

15. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 11th day of August, 2023.

Grace Morrison

Grace Morrison

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

TAMER MAHMOUD, *et al.*, Plaintiffs, v. MONIFA B. MCKNIGHT, *in her official capacity as Superintendent of the Montgomery County Board of Education*, *et al.*, Defendants.	)))))))))))	Civil Action No. 8:23-cv-01380-DLB

DEFENDANTS' RESPONSE TO PLAINTIFFS' SUPPLEMENTAL BRIEF AND DECLARATION OF GRACE MORRISON

Defendants respectfully submit this response to Plaintiffs' supplemental brief, Dkt. No. 51 ("Supp. Br."), and Declaration of Grace Morrison, Dkt. No. 52 ("Morrison Decl."), as permitted by the Court's August 14, 2023 paperless order, Dkt. No. 53. Plaintiffs' belated filings do not move the needle; they have not satisfied their burden to establish that they are entitled to the extraordinary remedy of a preliminary injunction. The motion for a preliminary injunction, Dkt. No. 23, should therefore be denied.

I. Plaintiffs' Supplemental Brief On Family Life And Human Sexuality Instruction Does Not Salvage Their Meritless Argument Under *Tandon*

Plaintiffs will not succeed on the merits of their free exercise claim under *Tandon v. Newsom* because they have presented no evidence that MCPS has "treat[ed] *any* … secular activity more favorably than religious exercise." 141 S. Ct. 1294, 1296 (2021). They cannot, as they must, show that opt outs from family life and human sexuality instruction are secular while opt outs from instruction using the LGBTQ-Inclusive Books are religious. Plaintiffs therefore do not point to the kind of disparate treatment that triggers strict scrutiny under *Tandon*—disparate treatment between "secular activity" and "religious exercise." *See id.*; *see also Roman Catholic*

Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63, 66 (2020) ("[T]he regulations cannot be viewed as neutral *because they single out houses of worship* for especially harsh treatment." (emphasis added)). That alone defeats Plaintiffs' *Tandon* claim.

Even if Plaintiffs' *Tandon* claim could somehow proceed without secular and religious activity to compare, Plaintiffs have not established that opt outs from family life and human sexuality instruction are comparable to opt outs from instruction using the LGBTQ-Inclusive Books. Plaintiffs argue that MCPS cannot allow opt outs from one but not the other because "both activities advance the same inclusivity and safety interests." Supp. Br. 1. But Plaintiffs have not shown that the same "asserted government interest that justifies" MCPS's no-opt-out policy from the LGBTQ-Inclusive Books is undermined by allowing opt outs from family life and human sexuality instruction. *Cf. Tandon*, 141 S. Ct. at 1297 (analyzing whether secular activities permitted by state "pose[d] a lesser risk of transmission" than religious exercise prohibited under COVID restrictions). The no-opt-out policy for the LGBTQ-Inclusive Books was implemented based on concerns about high student absenteeism, the administrative infeasibility of honoring individual opt-out requests, and exposing students to social stigma and isolation when their classmates are permitted to leave the classroom whenever the books are read. *See* Hazel Decl. ¶¶ 36-39. Plaintiffs have put forward no evidence that these interests would be imperiled by the opt outs from family life and human sexuality instruction envisioned by Maryland law. Plaintiffs—who carry the burden to support their request for preliminary injunctive relief—describe no comparable risks of absenteeism or administrative infeasibility posed by excusing students from family life and human sexuality instruction. And while family life and human sexuality instruction—which has included opt outs for more than a decade—may have recently been updated to cover issues of sexual orientation, gender identity, intolerance,

stereotypes, and stigmatization, *see* Supp. Br. 1-2, Plaintiffs do not offer any evidence that parents may choose to remove students from class when only those topics are discussed, risking the kind of social stigma and isolation of other students that concerned MCPS in the context of opt outs from the LGBTQ-Inclusive Books.

II. The Morrison Declaration Does Not Support Plaintiffs' Free Exercise or Due Process Claims

Plaintiffs appear to be using the Morrison Declaration to argue that the no-opt-out policy violates the Morrisons' free exercise or due process rights because, due to their child's special needs, the Morrisons cannot contradict instruction from their child's teachers that clashes with the Morrisons' religious views. *See* Morrison Decl. ¶ 9. The Morrison Declaration does not support the motion for preliminary injunction because neither the Morrisons (who are not plaintiffs) nor Kids First—the unincorporated association joined as a plaintiff in the First Amended Complaint, Dkt. No. 36, of which Grace Morrison is a board member—has moved for preliminary injunctive relief, *see* Plfs.' Mot. for Prelimin. Inj., Dkt. No. 23, at 1.

But even setting that aside, the Morrison Declaration does not support granting injunctive relief for the same reason that the other parent declarations do not: Parents are not constitutionally entitled to public school instruction that is entirely consistent with their religious beliefs. "[T]he mere fact that a child is exposed on occasion in public school to a concept offensive to a parent's religious belief does not inhibit the parent from instructing the child differently." *Parker v. Hurley*, 514 F.3d 87, 105 (1st Cir. 2008). That is still the case even when a public school student has a disability that could make it more difficult for a parent to contravene effectively a teacher's instruction. The Morrisons state that their child "doesn't understand or differentiate instructions from her teachers and her parents." Morrison Decl. ¶ 9. But the Morrisons have not averred that a teacher's instruction will always win out over the

religious teachings that the Morrisons share with their child. Nor would that offend the Constitution. Any child, with or without a learning disability, may come away from public school instruction with a new perspective not easily contravened by their parents. So long as the parents "remain[] free to discuss these matters and to place them in the family's moral or religious context, or to supplement the information with more appropriate materials," the parents' rights have not been violated. *Parker*, 514 F.3d at 105.

Binding precedent makes clear that the Morrisons do not have a viable free exercise claim. The Fourth Circuit has held that parents may be forced to disenroll their children from private religious schools and enroll them in a public school in order to access publicly funded special educational services. *See D.L. ex rel. K.L. v. Baltimore Bd. of Sch. Comm'rs*, 706 F.3d 256, 262 (4th Cir. 2013). In *D.L.*, as here, parents argued that their religious exercise rights were burdened because they were pressured to send their child, who had been diagnosed with ADHD and anxiety, to public school so that their child could receive costly special educational services. *Id.* at 258, 262; *see* Morrison Decl. ¶ 10 (asserting that "[o]nly the public school system has all th[e] resources" their daughter needs). And in *D.L.*, as here, the parents could not prevail under the Free Exercise Clause because "[t]he right to a religious education does not extend to a right to demand that public schools accommodate [parents'] educational preferences" and does not prohibit a practice "merely because it causes economic disadvantage on individuals who choose to practice their religion in a specific manner." *Id.* at 263, 264.

To the extent the Morrisons believe that the education their child is receiving is not compatible with her special educational needs, the appropriate avenue for raising their concerns is through their child's Individualized Educational Program ("IEP"). *See* Morrison Decl. ¶ 3. Parents can request a meeting to review their child's IEP at any time. *See* Special Education,

Common Questions, Montgomery County Public Schools, https://www2.montgomeryschoolsmd.org/departments/special-education/common-questions/identification/ (last visited Aug. 15, 2023). The Morrisons do not suggest that they have done so.

Dated: August 15, 2023

Respectfully Submitted,

/s/ Alan E. Schoenfeld
Bruce M. Berman (*pro hac vice*)
bruce.berman@wilmerhale.com
Jeremy W. Brinster (*pro hac vice*)
jeremy.brinster@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, DC 20037

Alan E. Schoenfeld (*pro hac vice*)
alan.schoenfeld@wilmerhale.com
Emily Barnet (*pro hac vice*)
emily.barnet@wilmerhale.com
Cassandra A. Mitchell (*pro hac vice*)
cassie.mitchell@wilmerhale.com
Thomas K. Bredar (MD No. 21635)
thomas.bredar@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich St.
New York, NY 10007

Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 15, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ *Alan E. Schoenfeld*
Alan E. Schoenfeld

Exhibit 3

Sample Student Call-Ins (Inspired by Liz Kleinrock)

A student might say something like...	We can respond with...
Being _____ (gay, lesbian, queer, etc) is wrong and not allowed in my religion.	I understand that is what you believe, but not everyone believes that. We don't have to understand or support a person's identity to treat them with respect and kindness. School is a place where we learn to work together regardless of our differences. In any community, we'll always find people with beliefs different from our own and that is okay--we can still show them respect.
They can't get married or be a family, they're both men. Does that mean they're gay? That's weird	When people are adults they can get married. Two men who love each other can decide they want to get married, be a family and care for each other. There are so many different kinds of families and ways to be a family. Each family is special and has ways that they are similar to and different from our own. The word "gay" describes people of the same gender who love each other. In our school we respect all people so we don't talk about being "gay" in a negative way like saying it's "weird."
She can't like a girl like that, she can only like boys because she's a girl.	Disrupt the either/or thinking by saying something like: actually, people of any gender can like whoever they like. People are allowed to like whoever they want. How do you think it would make __(character's name)__ to hear you say that? Do you think it's fair for people to decide for us who we can and can't like? Then, provide an example to counter the statement: • My best friend is a woman and she is married to another woman.
That's weird. He can't be a boy if he was born a girl.	That comment is hurtful; we shouldn't use negative words to talk about peoples' identities. Sometimes when we learn information that's different

What's transgender? What body parts do they have?	from what we always thought, it can be confusing and hard to process. When we're born, people make a guess about our gender and label us "boy" or "girl" based on our body parts. Sometimes they're right and sometimes they're wrong. When someone's transgender, they guessed wrong; when someone's cisgender, they guessed right. Our body parts do not decide our gender. Our gender comes from our inside--we might feel different than what people tell us we are. We know ourselves best. When someone tells us what their gender is, we believe them because they are the experts on themselves. It's none of our business what body parts a person has, so we should never ask that question.
How can someone be both a boy and a girl or neither? That doesn't make sense	It can be confusing to learn something new or try to understand something we've never felt or experienced before. Sometimes people feel like a boy or a girl, sometimes they feel like both, sometimes they feel like neither. We can't really guess someone's gender based on how they look or act. Not assuming people's gender is a way that we can respect one another.
Is that a boy or a girl?	We can't know someone's gender by looking at them. Also, not everyone is a boy or girl. Some people identify with both, sometimes one more than the other and sometimes neither. I know that we tend to look at someone and guess but we actually shouldn't do that because we could be guessing incorrectly. When we meet people, that's something they might share with us, but not always. When I introduce myself, I say hi my name is Mrs. Phillips and I use she/her pronouns. Then I ask, what's your name? Are you comfortable sharing your pronouns with me? This helps me respect people's identity because then I'm using the right pronouns when I'm talking about them and they're not here. For example, when you tell your caregiver about your day you can say, Mrs.

	Phillips read a cool book today, she said it's her favorite one.
Stereotypes like: dresses are for girls, boys can't paint their nails, those are boy toys, that's a girl book, etc. ***a consideration--are there items in my learning space that are sorted by gender?	Disrupt the either/or thinking by saying something like people of any gender can like dresses/nail polish/books/toys, etc. Those things don't have a gender and everyone is free to like what they like. Liking something is often based on our personality and interests and not on what gender we are. How do you feel when you get to wear the clothes you like, read what you like, play what you like and express yourself in the ways that feel good to you? Shouldn't everyone be able to do that? Then, provide an example to counter the stereotype made: ● "Harry Styles wears dresses." ● Men who paint their nails
That's so gay	Regardless of how it's intended, using gay to describe something negative reflects a long history of prejudice against LGBTQ+ people, so please don't use it in that way. There are so many different ways to say what you mean that are not insulting to others. You may not have meant to be hurtful, but when you use the word 'gay' in any way outside of its definition, it's disrespectful. When I ask you to not use expressions like "that's so gay," I'm just trying to make you aware that it is hurtful to a lot of people. How do you think it would feel to hear a word used over and over again to describe something negative when it also describes who you are? We have all been on the receiving end of an insult and felt its sting, so why wouldn't you put a little effort into avoiding language that insults others, especially when there are so many alternatives?

Sources:

- Correcting Kids' Stereotypes
- Responding to Sexism, Homophobia and Transphobia: Tips for Parents and Educators of Younger Children
- Reading the Rainbow

- It Feels Good To Be Yourself
- Teaching About Gender and Diversity
- Welcoming Schools: Responding to Questions
- Anti-Bias Education for Young Children and Ourselves
- Gender Spectrum

Exhibit 4

Responding to Caregivers/Community Questions

The purpose of this document is to support educators with responding to caregivers.

Possible Question: Why should my child learn about gender and sexuality identity at school?
Possible Response: The learning we're talking about will happen through exposure to diversified gender and sexuality identity representation, not explicit instruction. Students are already learning about gender and sexuality identity in myriad ways. For example, when we read a story with mom and dad, a Prince kisses a Princess at the end of a fairy tale. A School is where children are taught to respect one another and learn to work together regardless of their differences. Learning about--through exposure to diversified representation--gender diversity and sexuality identity diversity is part of that work. Our students are growing up in a world that is increasingly recognizing the diversity of gender and sexuality. Creating a more tolerant, inclusive, and accepting school environment teaches all children to recognize and resist stereotypes. We teach children to stand up for others, resist bullying, and work together. All students deserve to see themselves in books, including students who identify as LGBTQ+, come from LGBTQ+-headed families, and have family members who are part of the LGBTQ+ community. Inclusive books support a student's ability to empathize, connect, and collaborate with diverse peers and encourage respect for all. Anti-LGBTQ bias hurts all children, both those directly affected and those who learn in an atmosphere of fear and tension, afraid to explore their own lives because of worry about disapproval and rejection. LGBTQ+ inclusive books benefit all students by promoting acceptance and respect and teaching them more about the diverse people and families in the world.

Possible Question: Isn't my child too young to be learning about gender and sexuality identity?
Possible Response: Children are already learning about it and mostly see "straight" and "cisgender" representations around them. Messages about gender are everywhere, and children receive clear messages about the "rules" for boys and girls, and the consequences for violating them. By learning about the diversity of gender, children have an opportunity to explore a greater range of interests, ideas, and activities. For all children, the pressure of "doing gender correctly" is significantly reduced, creating more space for them to discover new talents and interests. Students of all ages must be given the opportunity to learn that the words "gay," "lesbian," and "transgender" are adjectives that should be used with respect to describing people in their community, not words used in a negative way to hurt, insult, and degrade. Beginning these conversations in elementary school will help young people develop empathy for a diverse group of people and learn about identities that might relate to their families or even themselves. It is never too early for schools to set up a foundation of understanding and respect.

Possible Question: Ideas about gender diversity go against the values we are instilling in my child at home. Are you trying to teach my child to reject these values?
Possible Answer: Absolutely not. Our children encounter people with different beliefs when they join any community. Teaching about LGBTQ+ is not about making students think a certain way; it is to show that there is no one “right” or “normal” way to be. Expanding our representation shows our LGBTQ+ community members that this is a place where they are welcome and included. While one aim for learning about diversity is to become more accepting of those around us, not everyone will be best friends. That does not mean that they can’t get along and learn together. The purpose of learning about gender and sexuality identity diversity is to demonstrate that children are unique and that there is no single way to be a boy, girl, or any other gender. If a child does not agree with or understand another student’s gender identity or expression or their sexuality identity, they do not have to change how they feel about it. However, they do not get to make fun of, harass, harm, or ignore the existence of other students whose gender identity or expression or sexuality identity they don’t understand or support. Gender and sexuality identity inclusive education is about teaching students to live and work with others. You do not need to fully understand another person’s experience to treat them appropriately. It comes down to the simple agreement that all children must be treated with kindness and respect. Teaching LGBTQ+ inclusive books acknowledges the reality that many students come from LGBTQ+-headed families, have family members that are part of the LGBTQ+ community, are being taught by LGBTQ+ educators, and are, increasingly, identifying as LGBTQ+ themselves, even in elementary school.

Possible Question: Can I keep my child home when students are learning about LGBTQ+ topics?
Possible Answer: As part of MCPSs commitment to equity and our school's mission, we are working towards cultivating inclusive environments for all of our students and their families. Part of how we do this is through diversifying representation in the curriculum; expanding our representation shows our LGBTQ+ community members that this is a place where they are welcome and included. All students deserve to see themselves in their school and classroom, including students who identify as LGBTQ+, come from LGBTQ+-headed families, and have family members who are part of the LGBTQ+ community. While there are no planned explicit lessons related to gender and sexuality, students will see these identities embedded in our curriculum and learning environment. Explicit instruction involves teaching a specific concept or procedure in a highly structured and carefully sequenced manner where there is an opportunity to model, coach and apply the learning. The concepts or terms that relate to gender and sexual identity are not taught explicitly, but there may be a need to define words that are new and unfamiliar to students. This is not explicit instruction; for students for whom some of these identities are new, questions and conversations might organically happen.

Inclusive curricula support students' ability to empathize, connect, and collaborate with diverse peers and encourage respect for all. No child who does not agree with or understand another student's gender, expression, or their sexual identity is asked to change how they feel about it. Parents always have the choice to keep their student(s) home while using these texts; however, it will not be an excused absence.

Possible Question: Are these books appropriate? What place do they have in the classroom?

Possible Answer: Our Board Policy states, "Instructional materials used in MCPS schools will reflect the diversity of the global community, the aspirations, issues, and achievements of women, persons with disabilities, persons from diverse racial, ethnic, and cultural backgrounds, as well as persons of diverse gender identity, gender expression, or sexual orientation." Additionally, two of the goals of the MCPS guidelines are: "Reduce stigmatization and marginalization of transgender and gender nonconforming students and Foster social integration and cultural inclusiveness of transgender and gender nonconforming students." These books are a way for us to actualize the policy and gender identity guidelines.

These books have undergone a rigorous evaluation process conducted by a group of school-based and central office-based staff members, and are approved as instructional materials. All of the content within them is age and developmentally-appropriate. The texts are directly connected to language arts standards and CASEL competencies, used for social and emotional learning lessons.

Sources: Responding to Concerns: Teaching About Gender, Developing LGBTQ+ Inclusive Resources, Reading the Rainbow

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, *et al.*,

Plaintiffs,

v.

MONIFA B. MCKNIGHT, *in her official capacity as Superintendent of the Montgomery Board of Education*, *et al.*,

Defendants.

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

PLAINTIFFS' REPLY IN SUPPORT OF SUPPLEMENTAL BRIEF AND DECLARTION OF GRACE MORRISON IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Eric S. Baxter
William J. Haun
Michael J. O'Brien*
Brandon L. Winchel* (pro hac vice)
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave, N.W., Suite 400
Washington, DC 20006
(202) 955-0095
whaun@becketlaw.org

*Not a member of the DC Bar; admitted in Louisiana and California respectively. Practice limited to cases in federal court.

Attorneys for Plaintiffs

INTRODUCTION

The School Board concedes that its family life and human sexuality instruction in Health Ed has "recently been updated to cover issues of sexual orientation, gender identity, intolerance, stereotypes, and stigmatization" (Supp. Resp. 2-3)—the same topics addressed by the Pride Storybooks for the same equity and safety interests. By banning opt-outs from the Pride Storybooks, while allowing them from Health Ed, the School Board has conceded a lack of general applicability, thus triggering strict scrutiny, where *it*—not the Parents—bears the burden of proof.

The School Board further concedes that instruction in the Pride Storybooks may give children "a new perspective not easily contravened by their parents" but claims this creates no cognizable burden on the parents' rights so long as they remain "free" to "discuss these matters" with their children at home. Supp. Resp. 4. But without notice, parents don't know what to discuss with their children or when. For elementary-age children, that can be enormously consequential. Moreover, *Wisconsin v. Yoder*—where parents were also free to discuss their children's "exposure" to "'worldly' influence[s]" in the public schools, 406 U.S. 205, 211 (1972)—already rejected the School Board's analysis. There, the Court found a burden on Amish parents' religion because the state—against the parents' preferred approach—wanted to promote the children's "opportunity to make an intelligent choice between the [parents' religious] way of life and that of the outside world" and to "standardize" the children's perspectives by "forcing them to accept instruction" in the public schools. *Id*. at 232.

Here, the School Board concedes the same purpose to "normalize[]" certain perspectives, Opp. 3, which it admits may "not easily [be] contravened by their parents." Supp. Resp. 4. And it offers no limit to what such instruction may include. Under its theory, once a child is placed in public school, the School Board can teach anything it wants without parental notice and opportunity opt-out. But "[p]ublic

schools must not forget that 'in loco parentis' does not mean 'displace parents.'" *Tatel v. Mt. Lebanon Sch. Dist.,* No. 22-cv-837, 2023 WL 3740822, at *5 (W.D. Pa. May 31, 2023) (quoting *Gruenke v. Seip*, 225 F.3d 290, 307 (3rd Cir. 2000)). Courts cannot be in the business of denominational favoritism—that is, deciding that Amish objections to "exposure" constitute a religious burden under the Free Exercise Clause, but not the objections of parents of other faiths.

I. The Health Education instruction and Pride Storybooks advance the same interests and are comparable under *Tandon.*

The School Board does not contest that its Health Ed instruction on family life and human sexuality includes instruction on gender and sexuality that advances the same equity and safety interests as the Pride Storybooks. Supp. Resp. 2-3; *see* Br. at 19. Because "the asserted government interest" is the same for both aspects of curriculum, the two are comparable under *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021). Consequently, the School Board's policy to allow opt-outs from family life and human sexuality instruction in Health Ed "for more than a decade," while denying opt-outs from family life and human sexuality instruction in the Pride Storybooks, is not generally applicable. Supp. Resp. 2; *see also Smiley v. Jenner*, No. 1:23-cv-01001, 2023 WL 5122437, at *5 (S.D. Ind. July 28, 2023) ("'instruction' and 'human sexuality' are terms that people 'use and understand in normal life.'") (citation omitted).

In response, the School Board repeats its argument that its inconsistent opt-out policy does not distinguish between religious and secular activity. Supp. Resp. 2; *see* Opp. 20-21. But under *Tandon*, strict scrutiny is triggered whenever the government treats "*any* comparable secular activity more favorably than religious exercise."[1] 141 S. Ct. at 1296. By the School Board's own admission, opt-outs—including "religious"

[1] Indeed, the Court has also held laws unconstitutional when comparable religious activity is treated more favorably than the religious exercise in question. *See, e.g.*, *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 536 (1993) (law's exemption for kosher slaughter but not sacrificial slaughter "support[ed] conclusion" that strict scrutiny applied).

opt-outs—are barred for the Pride Storybooks, while opt-outs—including "secular" opt-outs—are allowed for Health Ed. Opp. 20-21. "It is no answer that [the School Board] treats some comparable secular … activities"—like secular opt-outs for Pride Storybooks—"as poorly as … the religious exercise at issue," or vice versa. *Tandon*, 141 S. Ct. at 1296.

Last, the School Board attempts to shift its burden by claiming *the Parents* must prove that the School Board's concerns about "absenteeism," "administrative infeasibility," and "social stigma" are the same with respect to both aspects of the curriculum. Supp. Resp. 2-3. Easy enough. It cannot reasonably be disputed that a fifth grader being excused from instruction on family life and human sexuality has the exact same impact whether being excused from story time or Health Ed. But more importantly, the School Board is wrong about the burden. On comparability, all the Parents must show is that the same government interests (here, promoting equity and safety) underlie both aspects of the curriculum and "w[ere] not applied in an evenhanded, across-the-board way." *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2423 (2022). The School Board does not dispute this point, and that triggers strict scrutiny. If the School Board then wants to justify its disparate treatment for reasons of "absenteeism," "administrative infeasibility," and avoiding "stigma," the burden falls on the School Board alone. *Tandon*, 141 S. Ct. at 1296 ("[T]he government has the burden to establish that the challenged law satisfies strict scrutiny.").

Plaintiffs have already demonstrated that the School Board's concerns regarding administrability and stigma are not cognizable compelling interests. Br. 24-30; Reply 12-15. And even if they were, the School Board has not even tried to justify how administrability is a more pressing concern for students in story hour than for the same students in Health Ed, where all opt-outs must be honored. Nor can it justify how its asserted interested in reducing stigma is furthered by disallowing opt-outs in one context but not the other, especially where students in both concededly may voice

disagreement with the teaching, even in ways that might hurt other students' feelings. In short, the School Board has the burden to satisfy strict scrutiny, but has not even tried, and would fail if it did.

II. The Morrison Declaration shows a substantial burden on parental rights.

The School Board argues that the Morrison Declaration does not support injunctive relief because Kids First has not moved for a preliminary injunction. Supp. Resp. 3. But the requested injunction "would protect Kids First too." Reply 3 n.1.

Rather than dispute the Morrison Declaration, the School Board defends its decision to indoctrinate children in ways that may "not easily [be] contravened by their parents." Supp. Resp. 4. So long as parents "remain[] free to discuss these matters" with their children, "the parents' rights have not been violated." *Id.* Under the School Board's theory, schools are free to teach children anything—graphic sexual instruction, that the Holocaust didn't happen, that slavery benefited Black people,[2] or (as the School Board has previously argued) that "[r]eligion has often been misused to justify hatred and oppression." *Citizens for a Responsible Curriculum v. Montgomery Cnty. Pub. Schs.*, No. 8:05-cv-1194, 2005 WL 1075634, at *10 (D. Md. May 5, 2005) (entering TRO against prior curriculum that favored some religious beliefs over others). Per the School Board, so long as parents can "discuss these matters" with their children after the fact—if the parents even know it was taught, and no matter how futile those discussions might be—the parents' rights are not violated.

Wrong. As Justice Alito's controlling opinion in *Morse* explained, "[i]t is a dangerous fiction to pretend that parents simply delegate their authority—including their authority to determine what their children may say and hear—to public school

[2] *See, e.g.*, Antonio Planas, *New Florida standards teach students that some Black people benefited from slavery because it taught useful skills*, NBC NEWS (July 20, 2023), https://perma.cc/Q7TH-MUVN.

authorities." *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring); Reply 12-13. As with the Morrisons, "[m]ost parents, realistically, have no choice but to send their children to a public school." *Morse*, 551 U.S. at 424 (Alito, J., concurring). Instructing children in materials that run "contrary to" the parents' beliefs "substantially interfere[s]" with parental rights. *Yoder*, 406 U.S. at 218.

The School Board cites an inapplicable case: *D.L. ex rel. K.L. v. Baltimore Bd. of Sch. Comm'rs*. The issue is not whether public schools must "accommodate [parents'] educational preferences." 706 F.3d 256, 264 (4th Cir. 2013). Rather, the issue is whether parents—already preempted by their children's schools in raising complex and sensitive issues on sex, sexuality, and gender—have the right to know and opt their children out of public school instruction that violates their religious beliefs.

"[I]ntroducing [the Pride Storybooks'] topics before the parent would have done so can undermine parental authority." *Tatel*, 2023 WL 3740822, at *8. The School Board's response is to defend its undermining. Resp. 4 ("not easily contravened"). If this isn't conflating "in loco parentis" with "displace parents," it's hard to see what would be. *Tatel*, 2023 WL 3740822, at *5. The Parents need an injunction to retain their "*primary* authority and duty to raise, educate, and form the character of their children." *Id.* at *6 (quoting *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2053 (2021) (Alito, J., concurring) (emphasis added)).

Dated: August 16, 2023

Respectfully submitted,

/s/ Eric S. Baxter

Eric S. Baxter
William J. Haun
Michael J. O'Brien*
Brandon L. Winchel* (pro hac vice)
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave, N.W., Suite 400
Washington, DC 20006
(202) 955-0095
whaun@becketlaw.org

*Not a member of the DC Bar; admitted in Louisiana and California respectively. Practice limited to cases in federal court.

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2023, the foregoing brief was served on counsel for all parties by means of the Court's ECF system in compliance with Fed. R. Civ. P. 5.

Dated: August 16, 2023

/s/ Eric S. Baxter
Eric S. Baxter