# United States Court of Appeals

*for the*

# Third Circuit

Case No. 20-3474

LIBBY HILSENRATH, On behalf of her minor child, C.H.,

*Plaintiff-Appellant,*

– v. –

SCHOOL DISTRICT OF THE CHATHAMS; BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CHATHAMS; MICHAEL LASUSA, In his official capacity as the Superintendent of the School District of the Chathams; KAREN CHASE, In her official capacity as the Assistant Superintendent of

*(For Continuation of Caption See Inside Cover)*

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY IN CASE NO. 2-18-CV-00966, HONORABLE KEVIN MCNULTY, U.S. DISTRICT JUDGE

## BRIEF ON BEHALF OF PLAINTIFF-APPELLANT AND JOINT APPENDIX VOLUME 1 OF 2 (Pages A1 to A33)

RICHARD THOMPSON
THOMAS MORE LAW CENTER
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, Michigan 48106
(734) 827-2001
rthompson@thomasmore.org

– and –

MICHAEL P. HRYCAK, ESQ.
316 Lenox Avenue
Westfield, New Jersey 07090
(908) 531-8800
michaelhrycak@yahoo.com

*Attorneys for Plaintiff-Appellant*

Curriculum and Instruction at the School District of the Chathams; JILL GIHORSKI, In her official capacity as the Principal of Chatham Middle School; STEVEN MAHER, In his official capacity as the Supervisor of Social Studies for the School District of the Chathams; MEGAN KEOWN, In her official capacity as a Social Studies teacher for Chatham Middle School; CHRISTINE JAKOWSKI, In her official capacity as a Social Studies teacher for Chatham Middle School,

*Defendants-Appellees.*

## CORPORATE DISCLOSURE STATEMENT

In accordance with Rule 26.1 of the Federal Rules of Appellate Procedure, plaintiff-appellant Libby Hilsenrath on behalf of her minor son, C.H., certifies that each of them is a natural person rather than a corporate entity and that they thus have no disclosures to make under the aforementioned rule.

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## STATEMENT OF JURISDICTION

This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. The district court possessed jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) & (4). See A46 (Pl.'s Compl.). The district court possessed jurisdiction over Hilsenrath's request for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure.

The district court entered summary judgment in favor of the defendants on November 12, 2020, and closed the case. A1, A31 (Opinion, Order). Hilsenrath filed a timely notice of appeal on December 7, 2020. A32 (Notice of Appeal). This Court possesses subject-matter jurisdiction pursuant to 28 U.S.C. § 1291, as Hilsenrath seeks review of the final judgment of the district court which disposed of all parties' claims.

## STATEMENT OF ISSUES FOR REVIEW

1. Whether it is a violation of the Establishment Clause to require public school students, under the threat of lower grades, to view videos that present religious opinion as fact, that encourage Islamic prayer, and that include an explicit call for conversion. See A43 (Pl.'s Compl.), A255 (Pl.'s Mot. Summ. J.,), A1 (Nov. 12, 2020 Opinion).

2. Whether the Court erred by denying injunctive relief to prevent C.H. and students in Chatham schools from being required to watch proselytizing videos that endorse Islam as part of required school work. See A43 (Pl.'s Compl.), A255 (Pl. Mot. Summ. J.,), A1(Nov. 12, 2020 Opinion).

## STATEMENT OF RELATED CASES AND PROCEEDINGS

This case has not previously been before this Court. Pursuant to Local Appellate Rule 28.0, Hilsenrath is not aware of any other case or proceeding that is in any way related, completed, pending or about to be presented before this Court or any other court or state or federal agency.

## STATEMENT OF THE CASE

Libby Hilsenrath ("Hilsenrath") is the mother and legal guardian of C.H., her minor child. A273, A276 (L.H. Dep., p. 7, ln 12-16, p. 58, ln 23-25). When C.H. was a seventh grade student at Chatham Middle School during the 2016-2017 school year, he was enrolled in the mandatory World Cultures and Geography ("WCG") class. A258-A263, A115 (Pl. SOMF ¶¶ 2, 34-36; Defs. SOMF ¶ 125). The WCG class contained a unit dedicated to the Middle East and North Africa ("MENA") region. A335-A336, A442-A446 (LaSusa Dep. p. 42, ln 14p—p. 43, ln 11; Course Syllabus). Portions of the WCG class, including the MENA unit, were taught using Google Classroom, an internet forum for schools to remotely present information to

students, including documents, videos, and hyperlinks. A300, A327-A328 (C.H. Dep., p. 17, ln 17-23; LaSusa Dep., p. 26, ln 21—p. 27, ln 25).

C.H. was required to view and complete the lessons and assignments that were posted on the WCG Google Classroom A264-A265, A442-A446 (Pl. SOMF ¶¶ 41-48, Course Syllabus). C.H. was required to complete all assignments and was informed that any material presented as part of the WCG course could be graded and tested. A358-A359, A442-A446 (L.H. Dep., p. 76, ln 12—p. 77, ln 1-4; Course Syllabus). The material that was presented via Google Classroom was considered equivalent to similar items presented to C.H. during in-class instruction. A265 (Pl. SOMF ¶¶ 49-50). The syllabus for 7th Grade World Cultures and Geography class describes that homework and classwork comprise 10% of a student's grade and that "completion of all assignments is essential and expected in order to be successful in this course." A442-A446 (Course Syllabus). The course syllabus further states "Google Classroom websites will contain important class information including class calendars, handouts, assignment and project directions, and grading guidelines. Students and parents are advised to use this resource as the primary source of information about coursework." A445 (*Id*. at PgID 1439). Further, the study guide for the MENA unit test directed students to "Use slides on Google Classroom to ensure that you have all important information in your notes or on the handouts!" A428 *Id*.

On or about January 23, 2017, Hilsenrath discovered that the WCG Google Classroom contained an assignment directing C.H. to watch a video called Introduction to Islam.[1] A439 ("Intro to Islam video") A274, A277, A278, A280, A311, A312, A313, A314, A416-426, A439 (L.H. Dep., p. 17, ln 17-23, p. 68, ln 16-25, p. 69, ln 1-6, & p. 71, ln 8-22; and C.H. Dep., p. 33, ln 17-24, p. 34, ln 7-10, 14-16, & 23-25, p. 35 1-4 & 12-22, p. 36 1-9; Generalizations Presentation; and Intro to Islam Video). The written directions on Google Classroom required students to watch the Intro to Islam video and "[a]s you're watching this video clip, write down words that describe Islam as presented by this video." A426 *Id*.

This nearly five-minutes long video is filled with Islamic religious tenets presented as statements of fact, including: "Allah is the one God;" "[Allah] has no equal and is all powerful;" "Muhammad (Peace be upon him) is the last & final Messenger of God;" "God gave [Muhammad] the Noble Quran;" "[The Quran is] [d]ivine revelation;" "[The Quran is a] Perfect guide for Humanity;" "The Noble Quran [is] Guidance, Mercy and Blessing for all mankind;" "The Noble Quran[:] [w]ithout any doubt and an eloquent guide from Allah;" "The Beautiful Quran[:] Guidance for the wise & sensible;" "Muslims created a tradition of unsurpassable splendor;" and "Islam [is] [a] shining beacon against the darkness of repression, segregation, intolerance and racism." A344-348, A429-437, A439 (LaSusa Dep. p.

[1] The district court's opinion refers to the Introduction to Islam video as "Video 1."

51, ln 24-25, p. 52, ln 1-25, p. 53, ln 1-25, p. 54, ln 1-25, & p.55, 1-8; Qaseedah Burdah Translation and Intro to Islam Video). This video contains an excerpt from the Quran, the Islamic holy book, stating that Islam is the perfected religion and the only religion for mankind and concludes with an exhortation prayer for its viewers to become members of the Islamic religion, stating "May God help us all find the true faith, Islam. Ameen." A439 (Intro to Islam Video). The Intro to Islam video is set to an Arabic-language musical version of the Islamic poem Qaseedah Burdah and includes a link for students to download it. A324, A429-437, A439 (C.H. Dep., p. 61, ln 6-25, Qaseedah Burdah Translation and Intro to Islam video). Although in Arabic, the poem contains verses describing non-Muslims as "infidels" and praises Muhammad for slaughtering them in gruesome detail. A58, A429-A437 (Complaint ¶ 62, Pl. SJ.. Qaseedah Burdah Translation). C.H. described the music playing during the video as "prayer music." A324, A429-A437 (C.H. Dep., p. 61, ln 6-25; and Qaseedah Burdah Translation).

The district court relied on the deposition testimony of the seventh grade teacher, Ms. Jakowski, to find that "Ms. Jakowski did not play Video 1 in class and students were not required to watch it as homework." A3-A4 (Opinion). The Court's finding that "students were not required to watch it as homework," ignored Hilsenrath's summary judgment arguments and evidence to the contrary including the plain language of the slides on Google Classroom, the deposition testimony of C.H., the

language of the course syllabus, the MENA study guide, and the testimony of multiple school officials that material posted on Google Classroom was treated the same as in class work. A264, A194, A195, A331, A352, A353 (Pl SOMF Reply ¶ 40; Maher Dep. p. 30, ln 19-22, p. 34, ln 5-18; and LaSusa Dep p. 30, ln 14-24, p. 70, ln 22-25, pg. 71, ln 1-12) ("there is not any difference between what a teacher distributes in a classroom and what a teacher says in a classroom and what a teacher would post or write in Google Classroom in the online environment").

The WCG classroom also contained an assignment directing C.H. to watch an additional cartoon video about the Five Pillars of Islam[2] A441 ("Five Pillars video") which depicts a Muslim child ("Yusef") and a non-Muslim child ("Alex") playing when the Islamic call for prayer sounds in the background. A267 (Pl. SOMF ¶¶ 58-59). This leads to Yusef proselytizing Alex by explaining "Allah created everything," instructing Alex in the shahada, the Islamic conversion creed and prayer, and explaining the Five Pillars of Islam, including the second pillar which requires Muslims to pray five times a day. A441 (5 Pillars video]. Alex asks if it is hard to pray that often and Yusef responds, " No, Not at all! We are praying to god. And when I remember that it is god that keeps me healthy and keeps my heart beating it makes me want to pray." A267 (Pl. SOMF ¶¶ 62). Video at 2:57-3:07. The video shows Yusef's heart beating. Alex looks down and sees his heart beating as well,

[2] The district court refers to the Five Pillars of Islam video as "Video 2."

and smiles. (Video at 3:08-3:13). Yusef leaves to pray midday prayers and Alex looks sad until Yusef returns and invites Alex to come with him. (Video at 4:50-5:10.) Alex happily accepts. *Id*. The video concludes by providing an email address for viewers to request an information pack and schedule a mosque tour. (Video at 5:16-5:27) A267 (Pl. SOMF ¶¶ 63-64). The district court again relied on the deposition testimony of the seventh grade teacher, Ms. Jakowski to find that this video was not assigned as homework, again ignoring Hilsenrath's arguments and evidence to the contrary. A442-A446, A427-A428, A194, A195, A331, A352, A353 (Syllabus, MENA test guide, Maher Dep. 30, ln 19-22, p. 34, ln 5-18; and LaSusa Dep p. 30, ln 14-24, p. 70, ln 22-25, pg. 71, ln 1-12).

Although both videos were included in the WCG online classroom as student assignments, neither contained any form of disclaimer indicating that the videos did not represent the views or opinions of Chatham schools. A382, A439, A441 (LaSusa Dep., p. 102, ln 5-10; Intro to Islam video and 5 Pillars video). The WCG class also assigned students to complete a worksheet that required C.H. to engage in a fill-in-the-blank written profession of the shahada ("shahada worksheet"), the Islamic conversion creed and prayer, which stated: "There is no god but [Allah] and [Muhammad] is his messenger." A281, A282, A289, A249-254 (L.H. Dep., p. 76, ln 12-25, p. 77, ln 1-4, p. 129, ln 2-9; and Islam Worksheets). This worksheet contained a hyperlink that directed C.H. to a webpage which recited the shahada and

informed C.H. that all that was required to convert to Islam was to recite the shahada three times before a witness. A268 (Pl. SOMF ¶¶ 67-68). A289-290, A249-254 (L.H. Dep., p. 129, ln 17-25, & p. 130, ln 1-4; and Islam Worksheets). The WCG class did not address other religions in a similar manner. The WCG class did not provide instructions on how to become a member of or convert to any world religion except Islam, or describe any other religion as the "true faith." A442-A446 (Syllabus).

After seeing the proselytizing nature of the assignments that were given to her minor son, Hilsenrath sought to have the videos removed. A123, A124 (*See* Def. SOMF ¶¶ 181, 186). She brought her concerns to the attention of the Social Studies Content Supervisor for the School District, the Assistant Superintendent of Curriculum, the Superintendent, and the Board of Education of the School District (hereinafter "School Board") via email. (School Board Dep., emails) Hilsenrath then attended a Board meeting on February 6, 2017 and voiced her concerns. She also discussed her concerns publicly on a television show.

Superintendent LaSusa later claimed that Hilsenrath's television appearance led to "threats" from viewers being directed at the school's faculty and/or School Board members, although no proof of any actual threats was ever offered into evidence. The district court accepted Superintendent LaSusa's assertion that this alleged disruption led him to remove the links to the videos from the power point

presentation. A8 (Opinion). But according to LaSusa's deposition testimony the video links were not removed until several months later, sometime before the MENA unit was introduced the following school year. A367-A368, A394 (LaSusa Dep. p. 87, ln 6-p88, ln. 8; LaSusa District Rep Dep. p. 38, ln 1-13). The district court found that the challenged videos were removed "before, not during, litigation" despite Hilsenrath's arguments to the contrary that no one from the school could provide a date when the videos were removed from Google Classroom. A15, A624-626 (Opinion, p. 15; Pl. Resp. to Defs. Counter-Statement of Additional Material Facts ¶ 7). The videos were still accessible via the WCG Google Classroom on January 4, 2018, when the district court complaint was being prepared. A56, A59 (See Compl. ¶¶ 57, 63 noting videos last viewed Jan. 4, 2018). Hardly a reasonable reaction to alleged threats claimed to have been received ten months before.

The School Board ratified the promotion of Islam contained in the WCG course material by confirming their approval at a public Board meeting and declining to vote to change the curriculum. A563, A569 (Pl. Resp. to Defs. SOMF ¶¶ 186, 206; A139 (Def. Ex. I, Deposition of Board Rep., p. 28, ln 6-22). Hilsenrath then filed her complaint on behalf of her minor son, C.H. on January 23, 2018, in the United States District Court for the District of New Jersey. A43 (Pl.'s Compl.).

The Complaint asserted one claim under 42 U.S.C. §1983 against the Chatham School District, School Board, Superintendent, Assistant Superintendent

of Curriculum and Instruction, Middle School Principal, Social Studies Supervisor, and two Social Studies Teachers alleging that Defendants' curriculum, in particular the Introduction to Islam and Five Pillars videos and worksheet, violate the Establishment Clause of the First Amendment by impermissibly endorsing Islam. A43-A72 (Compl.) The individual defendants were sued in their official capacities only. *Id*. The Complaint sought a declaration that Defendants violated Hilsenrath and C.H.'s constitutional rights and that their training, supervision, policies, practices, and procedures that promote Islam violate the Establishment Clause. *Id*. The Complaint sought to permanently enjoin the Defendants from "funding and implementing religious instruction that endorses Islam or that favors Islam over other religions or non-religion" including the Introduction to Islam and Five Pillars videos. *Id*. The Complaint also sought nominal damages and reasonable attorneys' fees. *Id*. After completing discovery, each party moved for summary judgment.

The district court issued an opinion on November 12, 2020, granting Defendants' motion for summary judgment and denying Hilsenrath's motion for summary judgment. A1 (Opinion). The district court dismissed the claims against the individual defendants and the District finding that the School Board is the proper defendant and that "Superintendent LaSusa's involvement in the curricular decisions is a policy sufficient to confer potential liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978)." In particular, the court held that "[f]ollowing

Hilsenrath's complaints, [LaSusa] along with others, reviewed the materials and determined that they comported with the religious neutrality policy and did not require removal; that determination represents the policy of the Board." A19 (Opinion). Hilsenrath does not challenge this portion of the district court's opinion.

Hilsenrath also argued that the School Board failed to provide any specific training to its officials and employees related to the First Amendment to the United States Constitution or its religion clauses or related to the school's religion policy. A353, A354, A355, A356, A357, 358, A365, A167 (LaSusa Dep., p. 71, ln 18-25, & p. 72, ln 1-14, p. 73, ln 22-25, p. 74, ln 1-25, p. 75, ln 1-25, p. 76, ln 1-6, p. 85, ln 2-9; and School Policy). But the district court did not address Hilsenrath's claims regarding Defendant's failure to train after finding "that she has one clearly viable *Monell* theory." *Id*. at 19, f. 11.

The district court also held that Hilsenrath had standing to pursue a claim for nominal damages but lacked standing to pursue injunctive and declaratory relief. A15-A16 (Opinion). The lower court further found that "the seventh grade World Cultures curriculum and materials did not violate the Establishment Clause." A9-A10 (*Id*. at 9-10). These findings are the basis for the instant appeal. Hilsenrath filed a timely notice of appeal on December 7, 2020. A32 (Notice of Appeal).

## SUMMARY OF THE ARGUMENT

The Chatham School Board impermissibly endorsed the religion of Islam by including videos in its curriculum that present Islamic religious beliefs and opinions as though they were facts, that encourage Islamic prayer, that present Islam as superior to other religions and non-religion, and that exhort twelve-year-old students to convert to Islam.

Not only does the Introduction to Islam video contain excerpts from the Quran and multiple statements of religious belief presented as fact, it ends with an explicit call for conversion stating, "May God help us all find the true faith, Islam. Ameen." A265-A266 (Pl. SOMF ¶¶ 53-57). The video asks theological questions and follows with theological answers; a format employed in Catechism instruction. Similarly, the Five Pillars video encourages conversion and Islamic prayer employing a format designed to appeal to young children and invites viewers to schedule a tour of a mosque. A267 (Pl. SOMF ¶¶ 59-64). These videos were assigned to be viewed by students using Google classroom, an online tool students could access at home without supervision. The challenged videos cannot pass constitutional scrutiny under *Lemon v. Kurtzman*, 403 U.S. 602 (1971), as they lack a valid secular purpose, impermissibly endorse Islam, and excessively entangle the government with religion. The District Court erred by failing to enjoin the School Board from again using this unconstitutional material in the Chatham public schools and by failing to

declare that Hilsenrath and C.H.'s constitutional rights were violated and awarding them nominal damages.

## STANDARD OF REVIEW

This Court reviews the "disposition of a summary judgment motion *de novo*, applying the same standard as the District Court." *Doe v. Luzerne County*, 660 F.3d 169, 174 (3d Cir. 2011) (citing *Pichler v. UNITE*, 542 F.3d 380, 385 (3d Cir. 2008)). "Under this standard, a court will 'grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Ramara, Inc. v. Westfield Ins. Co*., 814 F.3d 660, 666 (3d Cir. 2016) (quoting Fed. R. Civ. P. 56 (a)). "All inferences must be viewed in the light most favorable to the nonmoving party." *Luzerne County*, 660 F.3d at 174 (citing *Matsushita Elec. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

"On cross-motions for summary judgment, the court construes facts and draws inferences 'in favor of the party against whom the motion under consideration is made.'" *Pichler*, 542 F.3d at 386 (quoting *Samuelson v. LaPorte Cmty. Sch.,* 526 F.3d 1046, 1051 (7th Cir. 2008)). "The court may not, however, weigh the evidence or make credibility determinations as 'these tasks are left for the fact-finder.'" *Id*. (quoting *Petruzzi's IGA Supermarkets v. Darling-Delaware Co.,* 998 F.2d 1224, 1230 (3d Cir. 1993)).

## ARGUMENT

### I. THE SCHOOL BOARD OF THE CHATHAMS VIOLATED THE ESTABLISHMENT CLAUSE BY PERMITTING AND APPROVING VIDEOS THAT IMPERMISSIBLY ENDORSE ISLAM.

The Chatham School Board failed to comply with the requirements of the Establishment Clause when it permitted and approved of videos that endorse Islam as part of the School's curriculum. A public school does not have unfettered discretion regarding the material that it presents to impressionable children. Rather, "the discretion of the States and local school boards in matters of education must be exercised in a manner that comports with the transcendent imperatives of the First Amendment." *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987) (quoting *Board of Education, Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 864 (1982)). And the Supreme Court "has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools." *Id*. at 583-84.

The district court applied the familiar test articulated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), but in doing so made findings that were not supported by the record or by applicable case law. For a challenged activity to survive constitutional scrutiny under *Lemon*, (1) it must have a secular purpose: (2) its principal or primary effect must neither advance nor inhibit religion; and (3) it must not cause the government to be excessively entangled in religion. *Lemon*, 403 U.S. at 612-13;

*ACLU v. Black Horse Pike Regional Bd. of Educ.,* 84 F.3d 1471, 1483 (3d Cir.1996) (en banc). The School Board's decision to allow and approve videos to be posted in Google Classroom that encouraged unsupervised seventh grade students to convert to Islam fails each of *Lemon*'s prongs.

### A. THERE IS NO VALID SECULAR PURPOSE FOR REQUIRING PUBLIC SCHOOL STUDENTS TO WATCH PROSELYTIZING VIDEOS THAT ENCOURAGE CONVERSION TO ISLAM.

The district court accepted that the School Board's purpose behind the challenged materials was "to 'assure that our children are intellectually and socially prepared to become self-reliant members of 21st century society'" and that "[m]ore specifically, the curriculum aims to educate students about the world's major religions, a mission which requires some exposure to their tenets and texts." A22 (Opinion). But Hilsenrath has never objected to the school teaching factual information about religion or simply "expos[ing]" students "to their tenets and texts." Her objection is to her son's public school requiring him to watch videos which present religious belief and opinions as fact and that are blatantly proselytizing, encouraging conversion to Islam (A439) stating "May God help us all find the true faith, Islam. Ameen.".

The Supreme Court has emphasized that the study of religion or religious texts must be presented *objectively* as part of a secular program of education to be consistent with the First Amendment. *Sch. Dist of Abington Twp. v. Schempp*, 374

U.S. 203, 225 (1963) (noting the "study of the Bible or of religion, when presented objectively as part of a secular program of education" may be "effected consistently with the First Amendment"). And the Intro to Islam and Five Pillars videos are far from objective. The Intro to Islam video extolls Islam while the Qaseedah Burdah an Islamic religious song which C.H. recognized as "prayer music" plays in the background. A324 (C.H. Dep. p. 61, ln 22-25). Although the lyrics are in Arabic and the district court noted that there was no testimony that C.H. understood what the lyrics signified, A4 (Opinion p. 4. n. 4) the fact that the song describes non-Muslims as infidels and contains verses praising Muhammad for slaughtering them, is relevant to recognizing the proselytizing intent of the video. A58-A59 (Compl. 62, Song lyrics). The video's creator, a Muslim acting in his personal capacity, almost certainly did understand the significance of the lyrics when choosing the music for the video and when providing links for viewers to download the song. The video's content makes clear that its purpose is to recruit followers to the Islamic faith, while treating other religions as inferior.

The video preaches that: "Allah is the one God;" "[Allah] has no equal and is all powerful;" "Muhammad (Peace be upon him) is the last & final Messenger of God;" "God gave [Muhammad] the Noble Quran;" "[The Quran is] [d]ivine revelation;" "[The Quran is a] Perfect guide for Humanity;" "The Noble Quran [is] Guidance, Mercy and Blessing for all mankind;" "The Noble Quran[:] [w]ithout any

doubt and an eloquent guide from Allah;" "The Beautiful Quran[:] Guidance for the wise & sensible;" "Muslims created a tradition of unsurpassable splendor;" and "Islam [is] [a] shining beacon against the darkness of repression, segregation, intolerance and racism." A439 (Intro to Islam video). The Five Pillars video is also far from objective as it encourages viewers to engage in Islamic prayer and to schedule a visit to a mosque. There is obviously no secular purpose for the direct and explicit call for children to convert to Islam that is included at the end of the Intro to Islam video (A73) "May God help us all find the true faith, Islam. Ameen."

Superintendent LaSusa testified that a school accomplishes its educational mission by teaching factual information, but destroyed the school's legal position by admitting that none of the proselytizing statements presented in the Intro to Islam video are factual. A377-A378, A344-A348 (LaSusa Dep. p. 97, ln 15—p. 98, ln 2; p. 51, ln 10—p.55, ln. 8). The videos at issue here do not objectively present the topic of Islam, they seek to recruit followers to the religion and, therefore, may not constitutionally be presented as part of a public school curriculum.

There is no connection between the School Board's proffered secular purpose and the challenged course materials. Instructing students, as the Intro to Islam video does, that Islam is the "true faith" and that the "wise and sensible" will follow the Quran has no secular purpose. This material in no way furthers the extremely broad

and vague purpose of ensuring that "children are intellectually and socially prepared to become self-reliant members of 21st century society." A22 (Opinion).

Further, videos such as the Intro to Islam and Five Pillars videos, which seek to recruit followers to a certain religion are not necessary to, nor do they further the purpose of, "educat[ing] students about the world's major religions." A22 (Opinion). It is certainly possible to educate students about a religion without informing them that the religion is the "true faith" or that the "wise and sensible" follow a certain religious text. Indeed, the Establishment Clause demands "government neutrality between religion and religion, and between religion and nonreligion." *McCreary Cty. v. ACLU*, 545 U.S. 844, 860 (2005) (citations omitted). "[T]he prohibition against governmental endorsement of religion 'preclude[s] government from conveying or attempting to convey a message that religion or a particular religious belief is *favored or preferred*.'" *County of Allegheny v. ACLU*, 492 U.S. 573, 593 (1989) (quoting *Wallace v. Jaffree*, 472 U.S. 38, 70 (1985) (O'Connor, J., concurring) (alterations in original)). Government action must not constitute "purposeful or surreptitious effort to express some kind of subtle governmental advocacy of a particular religious message." *Lynch v. Donnelly*, 465 U.S. 668, 680 (1984).

The promotion of religion in public schools is not tolerated even if taught as part of a class that has a secular purpose. In *Edwards v. Aguillard*, 482 U.S. 578

(1987), for example, the Court held that creationism, a Biblical view regarding how the world was formed, could not be taught in public schools as a fact, even if taught in a science class. The Court reviewed whether Louisiana's "Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction" Act was valid under the First Amendment's Establishment Clause. *Id*. at 580-81. The Act forbade teaching the theory of evolution in public schools unless "creation science" was also taught. *Id*. at 581. The Supreme Court, applying *Lemon* found that the Act's stated secular purpose "to protect academic freedom" or to promote "a basic concept of fairness; teaching all of the evidence" was not actually furthered by the Act and that "[t]he goal of providing a more comprehensive science curriculum is not furthered either by outlawing the teaching of evolution or by requiring the teaching of creation science." *Id*. at 585-586.

Defendants in *Edwards* could not satisfy the secular purpose prong of *Lemon* by simply asserting that their purpose for teaching creationism was to provide a "comprehensive science curriculum." *Edwards*, 482 U.S. at 586. Similarly here, the School Board must identify a clear secular purpose for the challenged activity, the Intro to Islam and Five Pillars videos, not the WCG class in general, and the challenged material must actually further the alleged secular purpose. *See McCreary*, 545 U.S. at 859, 864 (declining to "limit the scope of the purpose enquiry so severely that any trivial rationalization would suffice"). It appears clear that the stated secular

purpose offered by the School Board and accepted by the district court, is actually an after-the-fact justification for allowing videos that violate the Establishment Clause to be presented to impressionable seventh grade public school students via Google Classroom.

The district court stated that it did "not analyze whether one page, slide, or statement is an Establishment Clause violation in and of itself" stating that it was instead focusing "on the challenged materials together and in the context of the curriculum." A21 (Opinion). But there has never been any context provided that transforms the blatantly proselytizing videos into appropriate curricular material for a public school. The district court stated that Hilsenrath "gets off on the wrong foot . . . by asking the Court to analyze the purpose behind each statement she objects to. A23 (Opinion, citing *Lynch*, 465 U.S. at 679-80). This ignores the crux of Hilsenrath's argument. It is not select statements within the videos that makes them objectionable, the video's entire content is aimed at glorifying Islam and encouraging conversion to the religion. The videos could not be perceived by a reasonable observer as an objective factual portrayal of the religion of Islam. Superintendent LaSusa admitted as much with regard to the Intro to Islam video. A344-A348 (LaSusa Dep. p. 51, ln 10—p.55, ln. 8). The Intro to Islam video in particular was clearly created with the intent of extolling Islam as it ends with the video's creator thanking Allah. A5 (See Opinion, citing video at 4:50). Further, the

lower court's citation to *Lynch* is inapposite. A23 (Opinion, citing *Lynch*, 465 U.S. at 679-80) In *Lynch*, the Court was analyzing the effect of a passive display that contained religious imagery, a creche, along with secular symbols. Here the Intro to Islam video contains explicit statements that Islam is the "true faith" and does not contain any secular symbols or statements that detract from the video's obviously religious message and purpose as existed in *Lynch*. *See Lynch,* 465 U.S. at 671. Similarly, the Five Pillars video encourages prayer, specifically prayer to Allah five times a day, and does not contain any secular symbols or statements that detract from this message. A441 (5 Pillars video).

To the extent the instant case is comparable to the Court's passive display cases, this case is more like the display considered in *County of Allegheny* 492 U.S. at 598, than the one in *Lynch*. The Court in *County of Allegheny* noted that "the creche in this lawsuit uses words, as well as the picture of the Nativity scene, to make its religious meaning unmistakably clear." *Id*. The angel in the creche says "Glory to God in the Highest!" because of the birth of Jesus, and "[t]his praise to God in Christian terms is indisputably religious – indeed sectarian – just as it is when said in the Gospel or in a church service." *Id*. The Court found that the display at issue was unlike the one considered in *Lynch* because "nothing in the context of the display detracts from the creche's religious message." *Id*.

Here, there is nothing to detract from the religious message of the challenged videos. The Intro to Islam video is set to religious music, "prayer music" as described by C.H., it displays many obviously religious images including pictures of mecca/the Kaaba (the holiest shrine in Islam) and people praying and reading the Quran. A439 (video). The written messages in the video describe Allah as "the one God," who "has no equal and is all powerful." A439 (video) The video also describes the Muslim prophet Muhammad as "the last & final Messenger of God;" who was given "the Noble Quran" by God. The video further describes the Quran, the Islamic holy book as "[d]ivine revelation," "a Perfect guide for Humanity," that the "The Noble Quran [is] Guidance, Mercy and Blessing for all mankind;" and that it is "[w]ithout any doubt and an eloquent guide from Allah;" and that it provides "[g]uidance for the wise & sensible." The video also states that "Muslims created a tradition of unsurpassable splendor;" and that "Islam [is] [a] shining beacon against the darkness of repression, segregation, intolerance and racism." *Id*.

The district court found that "[t]he content to which Hilsenrath objects is closely tied to secular educational purposes" because "Video 1 was used to introduce students to the tenets of Islam." A23 (Opinion). But this video, as described above, does not simply present factual information about a religion's tenets, it presents Islam as superior to all other religions or nonreligion, "a perfect guide for humanity" and "a tradition of unsurpassable splendor." As the school's superintendent

recognized, this is not factual information. A377-A378, A344-A348 (LaSusa Dep. p. 97, ln 15—p. 98, ln 2; p. 51, ln 10—p.55, ln. 8). This video does not further a valid secular purpose of teaching students *about* world religion by presenting religious belief and unqualified opinions as though they were facts. *County of Allegheny*, 492 U.S. at 593-94 ("[t]he Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief"). Similarly, and contrary to the district court's finding which contained no analysis of the actual language of the video, the Five Pillars video proselytizes, particularly in its presentation of Islamic prayer. This is not necessary to, nor does it further, the secular purpose of teaching public school students factual information about world religions.

### B. THE INTRODUCTION TO ISLAM AND FIVE PILLARS VIDEOS HAVE THE PRIMARY EFFECT OF ENDORSING ISLAM.

Even if a legitimate secular purpose could be gleaned from either of the videos, this material clearly fails the second prong of the *Lemon* test. A challenged action's "primary or principal effect can neither advance nor inhibit religion, meaning that regardless of its purpose, the action cannot symbolically endorse or disapprove of religion." *Busch v. Marple Newton Sch. Dist.*, 567 F.3d 89, 100 (3d Cir. 2009) (citing *Lemon*, 403 U.S. at 612; *Black Horse Pike Reg'l Bd of Educ.*, 84 F.3d at 1485-86). The Third Circuit has recognized that "the second prong of *Lemon* is akin, if not identical, to the endorsement test." *Doe v. Indian River Sch. Dist.*, 653

F.3d 256, 284 (3d Cir. 2011) (citing *Black Horse Pike Reg'l Bd. of Educ.,* 84 F.3d at 1486). The Court "must determine whether, under the totality of the circumstances, the challenged practice conveys a message favoring or disfavoring religion." *Black Horse Pike Reg'l School Board*, 84 F.3d at 1486. The Court "adopt[s] the viewpoint of the reasonable observer" in doing so. *Indian River Sch. Dist.*, 653 F.3d at 284; see *Carlino v. Gloucester City High Sch.,* 57 F. Supp. 2d 1, 22 (D.N.J. 1999) (identifying a reasonable observer in the context of an Establishment Clause challenge to a high school activity as a secondary school student).

The videos, which were posted on the official seventh grade WCG online classroom, unconstitutionally endorse Islam. The Intro to Islam video in particular asserts that Islam is the "true faith" and includes a prayer that viewers "find the true faith, Islam" among other proselytizing statements. A265-A267 (Pl. SOMF ¶ 53-64). The four reasons the district court provides for its contrary finding are not persuasive and largely ignore the actual content of the videos. As discussed further below, the district court erred by relying on conclusionary statements rather than analyzing record evidence, particularly the videos themselves, in light of controlling case law.

**1. The Challenged Curricular Material Does Not Treat Islam Equally With Other Religions.**

The first reason the district court gives for concluding that the challenged videos do not have the primary effect of advancing religion and that a reasonable

observer "would not perceive any endorsement" is that the curriculum treats Islam equally with other religions. A24 (Opinion). To support this conclusion the court states "[i]t is not a standalone course of study, but is part of a larger survey of world regions and religions, so there is no impermissible favoritism." *Id*. But the fact that other religions are studied as part of the WCG course does not mean that other religions were treated equally. The School Board has never presented any evidence that Judaism and Christianity, for example, were addressed in the same glowing terms or extolled as Islam was in the Intro to Islam and Five Pillars videos. The district court stated that "[a] reasonable observer would not perceive an endorsement of Islam when the course also presented other religions in a similar manner." A24 (Opinion). But that is precisely the problem, and the heart of Hilsenrath's claim—other religions were not treated in a similar manner.

The MENA portion of the WCG course did not cover the historical origins of Christianity or Judaism; it did not require students to learn the central tenets of these religions or require students to watch videos related to these religions. A62-A63, A85 (See Compl. 81, Amended Answer 81). And the school certainly did not present any material that referred to these religions as the "true faith" or to their religious texts as a "perfect guide for humanity" and "guidance for the wise and sensible" or to their traditions as being of "unsurpassable splendor." The district court stated that the WCG course "includes similar units on, for example, Hinduism and Buddhism,

in which students watch videos on those religions to understand their tenets and practices." A24 (Opinion). But the videos on Hinduism and Buddhism are not actually similar-- they present factual information, as would be expected in a public school course. A488 (videos on Hinduism and Buddhism). The Hinduism and Buddhism videos do not exhort the student viewers to convert, they do not present religious opinion as though it was factual information, and they do not present these religions as though they are superior to all others.

The district court disregarded Hilsenrath's arguments on this point by stating "there is no problem with Video 1's presentation" and by suggesting that the differences in the curricular treatment of various religions is "subtle." A25 (Opinion, n. 14 citing *Cal. Parents for the Equalization of Educ. Materials v. Torlakson*, 973 F.3d 1010, 1022 (9th Cir. 2020) (Bress, J. concurring)). But there is certainly a problem with a public school presenting proselytizing videos that include praying God helps everyone "find the true faith, Islam" and there is nothing subtle about the differences between videos that present factual information versus videos that present religious belief as fact and encourage conversion. *See McCreary Cnty.*, 545 U.S. at 867 ("[U]nder the Establishment Clause detail is key."). Demanding that schools not force students to withstand blatantly proselytizing messages would not "paralyze educators in their lawful objective of treating religion as a topic relevant to world history." A25 (Opinion, p. 25, n 14 quoting *Torlakson*, 973 F.3d at 1022

(Bress, J., concurring)). It is certainly possible to teach about world religions without teaching belief as fact or encouraging prayer to a certain deity as a pathway to happiness or acceptance from one's friends. Not only is it possible, it is constitutionally required. *Schempp*, 374 U.S. at 215 (On the subject of religion, a school is supposed to be "neutral, and, while protecting all, it prefers none, and it disparages none."). The School District endorsed and preferred Islam over other religions and non-religion by including proselytizing videos in its curriculum.

**2. A Reasonable Observer Would See That The Intro to Islam Video and Five Pillars Videos are Proselytizing And Endorse Islam.**

Next, the district court found that the challenged course material does not violate the second *Lemon* prong because "a reasonable observer would see that the curriculum and materials are presented as part of an academic exercise." A24 (Opinion). But the presentation of the videos, which were made available on Google classroom for students to watch at home alone, does nothing to ameliorate the proselytizing nature of these videos which were required viewing and part of a mandatory social studies class. A264-265, A281-A282, A442-A446, A416-A426 A496-A497 (See Pl. SOMF 41-50; L.H. Dep., p. 76, ln 12—p. 77, ln 1-4; Course Syllabus; Generalizations Lesson Plan, Pl. Resp. to Defs. SOMF ¶7). Government conduct must not demonstrate "purposeful or surreptitious effort to express some kind of subtle governmental advocacy of a particular religious message." *Lynch*, 465

U.S. at 680. This includes a public school's choice regarding what materials it presents to students.

C.H. was required to view, utilizing Google classroom, the Intro to Islam video that contained written excerpts from the Quran along with Islamic religious beliefs presented as statements of fact. A265 (Pl. SOMF ¶ 52). He was then required to write down words that describe Islam as presented by the video. A547-A548 (Pl. Resp. Defs. SOMF ¶ 149). The district court concluded:

> Video 1 is from the perspective of a believer, but a reasonable observer would understand that the video is not presented as representing the views of the teacher or the school; nor is there any indication that it was presented in a manner to suggest that students should accept the video-creator's views as revealed religious truth.

A25 (Opinion). But the lower court provided no citation to the record nor did it provide any analysis of the video itself or any accompanying lessons that would support this conclusion. Both the Intro to Islam and Five Pillars videos were included in the online WCG classroom without any form of disclaimer indicating that the videos did not represent the school's views. A267, A536-A537 (Pl. SOMF ¶ 65; Pl. Resp. Defs. SOMF ¶ 120). See *Walz v. Egg Harbor Twp. of Educ.*, 342 F.3d 271, 280 (3d Cir. 2003) ("proselytizing speech. . . if permitted, would be at cross-purposes with [the school's] educational goal and could appear to bear the school's seal of approval"); see also *Joki v. Bd. of Educ. of Schuylerville Cent. Sch. Dist.,* 745 F. Supp. 823, 831 (N.D.N.Y. 1990) (holding that a student painting in a public school

auditorium that included an image of a crucifixion along with other non-religious figures had the primary effect of impermissibly endorsing religion and noting "the school's display contains no placards to explain the paintings meaning or reason for being there.")

The district court found that although the creator of the Intro to Islam video can be perceived as believing what is presented in the video, the students were not encouraged to adopt those views. A25 (Opinion). The content of the video itself proves otherwise, however, as it directly prays "May God help us all find the true faith, Islam. Ameen." A439 (Intro to Islam Video). And, notably, "the Establishment Clause does not limit only the religious content of the government's own communications. It also prohibits the government's support and promotion of religious communications by religious organizations." *Cnty. of Allegheny*, 492 U.S. at 600.

In *Berger v. Rensselaer Cent. Sch. Corp*., 982 F.2d 1160 (7th Cir. 1993), the Seventh Circuit found unconstitutional a public grade school's decision to allow Gideons to distribute Bibles during school hours pursuant to a policy that allowed community members to distribute literature to students. The students were not required to read the Bible and could return them if they were not wanted but had "no choice but to sit through the Gideons' presentation and distribution of Bibles." *Id*. at 1165-67. The Seventh Circuit found "[e]ven if we were to accept defendant's

patently unrealistic assertion that the fifth grade students . . . did not feel coerced to accept and read the Gideon version of the Bible, they were still urged by Gideon representatives to study the Christian Bible." *Id*. Similarly here, students were encouraged by the videos to engage in Islamic prayer, visit a mosque, study the Quran, and "find the true faith, Islam." A439, A441 (videos).

Even if there was support for the district court's finding that students were not directly encouraged to adopt the views expressed in the challenged videos, this is not outcome determinative as to whether or not the School Board impermissibly endorsed religion by including the videos in its curriculum. In *Borden v. Sch. Dist. of Twp. of East Brunswick*, 523 F.3d 153, 177 (3d Cir. 2008), a high school football coach sought to simply remain silent and bow his head or take a knee as a sign of respect to his team during student led prayer. This Court found that because Coach Borden had previously prayed with his players during his twenty-three year tenure as the high school football coach that his silent acts would be perceived by a reasonable observer as an endorsement of religion. *Id*. at 178-179. The Court's finding that Coach Borden's silent acts would constitute an Establishment Clause violation did not depend on any allegation that the coach was requiring or encouraging his players to pray or to bow their heads or kneel with him. Rather, the Court focused on how the Coach's actions would lead a reasonable observer to perceive that Coach Borden was endorsing religion. *Id*. at 178. Here a reasonable

observer would recognize impermissible endorsement is created by the school requiring grade school children to watch videos that extol Islam above all other religions and encourage conversion.

Next, the district court compares Hilsenrath's case to the Ninth Circuit's observations regarding "Luther's 'Ninety-Nine Theses'" in *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1380 (9th Cir.1994), and in doing so completely misses the mark. A25 (Opinion). It is undoubtedly true, as the district court notes, that the "pronounced and even vehement bias" of Luther's Ninety-Nine Theses does not prevent their legitimate study in history class and their study, and the study of the Protestant Reformation, does not necessarily advance Protestantism. See *id*. (quoting *Brown*, 27 F.3d at 1380). But this assumes that *factual* information is being taught. *See Epperson v. Arkansas*, 393 U.S. 97, 106 (1968) ("While study of religions and of the Bible from a literary and historic viewpoint, *presented objectively as part of a secular program of education,* need not collide with the First Amendment's prohibition, the State may not adopt programs or practices in its public schools or colleges which 'aid or oppose' any religion.") (emphasis added). Luther was a historical figure and the things that he said and did can certainly be studied without infringing the protections of the Establishment Clause. But if, for example, a required public school course included material describing Luther's Theses not objectively, but as "divine revelation" or a "perfect guide for humanity"

and that Protestants "created a tradition of unsurpassable splendor" and Protestantism is a "shining beacon against the darkness of repression, segregation, intolerance and racism" this would be an unconstitutional endorsement of Protestantism just as these same phrases when used to describe Islam are an unconstitutional endorsement of Islam. *See McCreary County*, 545 U.S. at 875 ("the government may not favor one religion over another, or religion over irreligion"); *Edwards*, 482 U.S. at 593 ("preference" for particular religious beliefs constitutes an endorsement of religion); *Schempp*, 374 U.S. at 305 (Goldberg, J., concurring) ("The fullest realization of true religious liberty requires that government . . . effect no favoritism among sects or between religion and nonreligion").

Here, a reasonable observer would be aware of the preferential treatment given to Islam regarding the content of the videos presented in the WCG course and would be aware that the videos encouraging conversion to Islam were posted to the official online classroom where unsupervised students were required to view them. Consequently, the reasonable observer would conclude that Defendants favored and endorsed Islam over other religions.

**3. The Challenged Videos Endorse Islam Without Requiring Students To Engage In A Religious Ceremony.**

The third reason the district court gives for finding the Intro to Islam and Five Pillars videos pass constitutional review under *Lemon* is that they "did not require or even propose that the students engage in religious activity." A26 (Opinion). This

finding is both inaccurate and irrelevant. The Five Pillars video may not explicitly propose that students engage in prayer, but it certainly implies that they should do so and that they will be happy as a result. A441 (See Video, "We are praying to god. And when I remember that it is god that keeps me healthy and keeps my heart beating it makes me want to pray.") The video also concludes by presenting an email address where students can request an information packet or schedule a tour of a mosque. *Id*. The Intro to Islam video includes excerpts from the Quran that students read while religious music plays in the background. A439 (Video). More fundamentally, however, it is irrelevant to the endorsement analysis whether students were required to engage in "religious activity." This is not a necessary element of an Establishment Clause claim. See *Lemon*, 403 U.S. at 612-13; see also, *Stone v. Graham*, 449 U.S. 39 (1980) (per curiam); *Lynch*, 465 U.S. 668, *Cnty. of Allegheny*, 492 U.S. 573.

In *Doe v. Elmbrook School District*, 687 F.3d 840, 850 (7th Cir. 2012) (en banc), the Seventh Circuit found it was a violation of the Establishment Clause for a school to hold graduation services in a church sanctuary where religious materials and symbols were prevalent. The Seventh Circuit observed that the Supreme Court's decisions in *Lee v. Weisman* and *Santa Fe Independent Sch. Dist. v. Doe*, 530 U.S. 290 (2000) could not be "meaningfully distinguished" from the case before it "on the ground that the school district did not coerce overt religious activity" because the coercion involved in *Lee* and *Sante Fe* could not be "divorced from the problem

of government endorsement of religion in the classroom generally." *Id.* at 855. The Seventh Circuit observed that "[d]isplaying religious iconography and distributing religious literature in a classroom setting raises constitutional objections because the practice may do more than provide public school students with *knowledge* of Christian tenets . . . [t]he concern is that religious displays in the classroom tend to promote religious beliefs, and students might feel pressure to adopt them." *Id*. at 851. (citing *Edwards*, 482 U.S. at 608 (Powell, J., concurring)). "[T]he Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief or from 'making adherence to a religion relevant in any way to a person's standing in the political community." *Black Horse Pike Reg'l Bd*. 84 F.3d at 1487 (quoting *Allegheny*, 492 U.S. at 593-94). A school need not compel students to engage in a religious activity to run afoul of this command. See e.g. *Berger.*, 982 F.2d 1160.

**4. There Has Been No Evidence Of Any Context Presented That Could Justify Requiring Public Grade School Children To Watch Proselytizing Videos As Part Of A Required Social Studies Course.**

Lastly, the district court states that "miscellaneous facts about the larger context" support finding that the challenged material survives review under the second *Lemon* prong. The first of these "miscellaneous facts" is that the WCG course was given to seventh-grade students as opposed to elementary school students. A27 (Opinion). But twelve-year-old seventh-graders are far from adults, which is why

the Supreme Court has been "particularly vigilant in monitoring compliance with the Establishment Clause" in both "elementary and secondary schools." *Edwards*, 482 U.S. at 583-84; *Freedom from Religion Found. v. Hanover Sch. Dist.*, 626 F.3d 1, 8 (1st Cir. 2010) ("In the Establishment Clause context, public schools are different, in part because the students are not adults, and in part because a purpose of a public school is to inculcate values and learning."). The Supreme Court stresses that parents "condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family." *Edwards*, at 584.

In *Berger v. Rensselaer Cent. Sch. Corp.,* the Seventh Circuit noted that the plaintiff in *Lee v. Weisman* was fourteen-years-old, and that "[m]any cases have focused on the impressionability of students in elementary and secondary schools and the pressure they feel from teachers, administrators and peers." 982 F.2d at 1169 (citations omitted). The Seventh Circuit stated "[i]f the Supreme Court was concerned about the coercive pressures on fourteen-year-old Deborah Weisman, then we must be even more worried about the pressures on ten- and eleven-year-old fifth graders" such as the Berger plaintiff. *Id*. at 1170. Here, C.H. was twelve-years-old and in seventh grade when he was required to watch the proselytizing videos. A53 (Compl. 43). The concerns espoused by the Supreme Court regarding the

impressionability of students of this age certainly applies. See *Lee*, 505 U.S. at 592-93.

The district court also found that because "Islam occupied only two lessons within a yearlong course" it is less likely an objective observer would perceive an endorsement of Islam. A27 (Opinion). But the Supreme Court has held that a few short minutes of prayer during a secular graduation ceremony at the end of three or four years of study violates the Establishment Clause. *Lee*, 505 U.S. at 599; see *Black Horse Pike Reg'l Bd. of Ed.,* 84 F.3d 1471 (finding high school policy that permitted students to vote regarding whether to include prayer, moment of silence, or neither at graduation violated Establishment Clause); see also *Berger*, 982 F.2d at 1166, n. 5, 1171 (allowing outside group to distribute Bibles to students for a few minutes once a year held to violate the Establishment Clause). There is no time percentage requirement to demonstrate a violation of the Establishment Clause when reviewing what content is being taught by a public school. As the Third Circuit has recognized, "[t]here is no 'de minimis' defense to a First Amendment violation." *Indian River Sch. Dist.*, 653 F.3d at 283 n. 14 (citing *Elrod v. Burns*, 427 U.S. 347, 374 (1976)); *Schempp*, 374 U.S. at 225 ("[I]t is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment.")

The final reasons the district court gives for finding the challenged material passes *Lemon*'s second prong are that the curriculum was designed to teach students

about Islam "but also to teach them valuable lessons about uncritical acceptance of cultural generalizations" and that "many American students learn about world religions" and this includes but is not limited to Islam. A27 (Opinion). These final reasons do not even consider the content of the objected to videos. There is no connection made between "uncritical acceptance of cultural generalizations" and videos that encourage conversion to Islam. And it is irrelevant that "many American students study about world religions." Hilsenrath has never objected to the factual study of world religion and culture.

The district court includes in a footnote "[i]t is worth pointing out that C.H. never felt coerced, and, in fact perceived the purpose and effect of the lessons was to educate students about world religions and the importance of avoiding group generalizations." A28 (Opinion). But, whether or not C.H. could remember feeling coerced as a seventh grade student is irrelevant to the endorsement analysis under *Lemon* because coercion is not a required element of an Establishment Clause claim. "[A] violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended." *Schempp*, 374 U.S. at 223; see *Lee*, 505 U.S. at 605 n. 6 (Blackmun, J., concurring) (observing that as a practical matter "anytime the government endorses a religious belief there will almost always be some pressure to conform"). Additionally, this finding ignores that C.H. was only twelve-years-old when he viewed the challenged videos, and he was not deposed

until two years later. It is not surprising that a child would not remember details about videos he watched two years in the past or that he would not understand the meaning or legal implications of what it means to be "coerced."

C.H. was required to watch proselytizing videos as part of a mandatory course. He was informed via the course syllabus that homework and classwork comprise 10% of a student's grade and that "completion of all assignments is essential and expected in order to be successful in this course." A442-A446 (Course Syllabus). And the material that was presented via Google Classroom was considered equivalent to similar items presented to C.H. during in-class instruction. A265 (Pl. SOMF ¶¶ 49-50). The Supreme Court has recognized that schools have "great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure." *Edwards*, 482 U.S. at 584; *Indian River Sch. Dist.*, 653 F.3d at 275 ("[t]he possibility of coercion is greater in schools because children are more 'susceptible to pressure from their peers.'") "In public schools, th[e] danger of impermissible, indirect coercion is most pronounced because of the 'young impressionable children whose school attendance is statutorily compelled.'" *Freedom from Religion Found.,* 626 F.3d at 12 (quoting *Schempp*, 374 U.S. at 307 (Goldberg, J., concurring)). Here, the school exercised its coercive power by requiring C.H. to watch proselytizing videos under the threat of lower grades.

### C. THE CHATHAM SCHOOL BOARD CAUSED GOVERNMENT TO BE EXCESSIVELY ENTANGLED WITH RELIGION BY INCLUDING MATERIAL THAT ENDORSES ISLAM IN THE SCHOOL'S CURRICULUM.

The School Board has fostered an excessive entanglement with religion by approving curricular material that endorses Islam. The Supreme Court has recognized that "in the hands of government what might begin as a tolerant expression of religious views may end in a policy to indoctrinate and coerce." *Lee*, 505 U.S. at 591-92. Consequently, "[u]nder our system the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government." *Lemon*, 403 U.S. at 625.

In *Doe v. Indian River School District*, the Third Circuit determined that a school board's practice of praying at public meetings fostered excessive entanglement with religion because it was a formal activity which the Board instituted and ratified with a vote and the meeting at which the prayer was held was "completely controlled by the state." 653 F.3d at 288. Comparatively here, the School Board made the decision to allow videos that extol Islam and encourage conversion as part of the formal curriculum for the WCG class. Students, including C.H. were informed that class work and assignments comprised 10% of their grade and completion of all assignments was necessary to be successful in the mandatory WCG class. A544-A545 (Pl. Resp. Defs. SOMF ¶ 144). This curriculum, similar to

the meeting in *Indian River School District*, is "completely controlled by the state." See *Indian River Sch. Dist.*, 653 F.3d at 288.

The district court found that the instant case was not similar to *Indian River School District* because in *Indian River School District*, the school board "formally participated in a religious activity by composing and reciting prayers at meetings," and here the district court found "no religious activity . . . only factual presentation of the tenets of a religion for academic study." A29 (Opinion). But as discussed above, the Intro to Islam and Five Pillars videos do not merely present factual information. Superintendent LaSusa admitted that the proselytizing statements in the Intro to Islam video are not statements of fact. A377-A378, A344-A348 (LaSusa Dep. p. 97, ln 15—p. 98, ln 2; p. 51, ln 10—p.55, ln. 8). The School Board here formally participated in approving curricular material that presents religious belief as fact, includes quotations from the Quran and Islamic prayers, that describes Islam as the "true faith" and that encourage conversion and prayer. This conduct excessively entangles the public school with religion.

## II. HILSENRATH HAS STANDING TO SEEK DECLARATORY AND INJUNCTIVE RELIEF BECAUSE C.H. IS STILL A STUDENT IN THE CHATHAM SCHOOL DISTRICT AND IT IS LIKELY HE WILL AGAIN BE FACED WITH CURRICULAR MATERIAL THAT IMPERMISSIBLY ENDORSES ISLAM.

Hilsenrath seeks a declaratory judgment finding that the School Board violated C.H's constitutional rights and that its training, supervision, policies,

practices, customs, and procedures that promote Islam violate the Establishment Clause of the First Amendment. A70-A71 (Compl.). Hilsenrath also seeks to permanently enjoin the Defendants from funding and implementing religious instruction that endorses Islam, including the Introduction to Islam and Five Pillars videos, as set forth in the Complaint. *Id*.

The School Board has consistently refused to admit that videos which encourage conversion to Islam are not constitutionally permissible material to present to grade school children either in class, as a homework assignment, or as online instruction. When Hilsenrath complained to the Superintendent, Assistant Superintendent for Curriculum, and the School Board members regarding the proselytizing nature of material presented in the WCG Google classroom and sought to have the conversion videos removed, they refused. A123, A124 (Def. SOMF ¶¶ 181, 186). Although Superintendent LaSusa claimed to have removed the videos due to supposed disruption in the school caused by Hilsenrath's media appearance, the removal was not accomplished until several months later and no one could provide an actual date that the videos were removed. A367-A368, A394 (LaSusa Dep. p. 87, ln 6-p88, ln. 8; LaSusa District Rep Dep. p. 38, ln 1-13). The teachers and administrators questioned provided the same seemingly rehearsed response that the decision to remove the videos was collaborative based on reactions from the community and country, but no one could provide a date when this decision was

made or when the action accomplished. See e.g. A177 - Keown Dep. p. 51, ln 10-20 (the decision to remove the videos was "a collaborative decision based on the reaction of the community and reaction from the country"); A214 - Jakowski Dep. p. 37, ln 2-4 (the videos were removed "due to certain comments and concerns from the country and the community") A367 LaSusa Dep., p. 87, ln 13-18 (testifying it was his decision to remove the videos "in collaboration with other people"). Nevertheless, the video was still posted to the WCG Google classroom as the federal complaint was being prepared. A56, A59 (Compl. ¶¶ 57, 63). Moreover, despite claiming the videos were removed to resolve disruption in the school, no public announcement was ever made that the videos had been removed, thereby casting doubt on the genuineness of their reason for removal. The videos still remained posted approximately ten months after the threats were announced.

That the School Board refused to acknowledge the inappropriate nature of curricular material that endorses one religion, that contain statements of faith presented as fact, and that even include an explicit call for conversion, suggests it is highly likely C.H. will again be subjected to course material that violates his First Amendment rights. In *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1164 n. 4, a plaintiff parent sought a declaration that a school's policy which allowed an outside group to distribute Bibles to fifth graders violated the Establishment Clause. The Seventh Circuit agreed with the district court's finding that the parent had standing

to challenge the school's policy even after the complained of practice had voluntarily ceased and even though one of plaintiff's children was no longer in fifth grade and had never be subjected to the practice and the other child was "several years shy of the fifth grade." *Id*. The basis of this finding was that the school board had affirmed its policy and "the school board could renew the allegedly wrongful activity at any time." *Id*. The same is true here. The Chatham School Board affirmed the decision to include proselytizing videos in its curriculum and these videos can still be included in any lesson at any grade level.

The district court found that Hilsenrath's arguments regarding C.H's exposure to future injury were too speculative. This finding was based at least in part on a clearly erroneous finding of fact, contrary to Hilsenrath's arguments presented at summary judgment, that the only course in which C.H. would again encounter the topic of Islam is Advanced Placement World History. A14 (Opinion). The court stated that "[t]here is no indication that C.H. will opt to enroll in that particular course, so any exposure is speculative." *Id*. But Islam is also a listed topic in the required eleventh grade world history course. A578, A203, A204, A205, A206, A207 (Pl. Resp. to Def. Statement of Additional Material Facts 9, citing Defs Ex. V chart of religious references, PgID 704, 706, Defs Ex. W K-12 Presentation of Social Studies Overview, PgID 725). This is according to Defendants' own summary

judgment exhibits, which provide an overview of social studies courses and do not cover all religious references students will encounter in their K-12 studies. *Id*.

The School Board grants discretion to teachers to determine what material to include in their lessons to students without providing these teachers any training regarding application of the First Amendment or application of the school's religion policy to the creation and delivery of curriculum. A269, A113, A530 (Pl. SOMF ¶¶ 77-79; Def. SOMF ¶ 109; Pl. Resp. to Defs. SOMF ¶ 101). The individual responsible for curriculum oversight was unaware of the proselytizing videos at issue here until Plaintiff complained about them in an email. A109, A109-A110 (Defs. SOMF 78, 82-84). Thus, the lack of training and supervision regarding the First Amendment and the school's religion policy also makes it likely that C.H. will again be forced to endure instruction that violates the Establishment Clause. This real threat of future harm is sufficient to confer standing for the relief Plaintiff seeks. *See Freedom from Religion Found. Inc. v. New Kensington Arnold Sch. Dist.,* 832 F.3d 469, 481 (3d Cir. 2016) (finding a plaintiff parent on behalf of her minor child had standing to pursue injunctive relief against a school for posting a display of the Ten Commandments even after her child left the school because the possibility that the child could return to that school if the monument were removed gave the plaintiff "a concrete interest in the resolution of her request for injunctive relief"). Thus, Plaintiff has shown both an actual and threatened concrete injury, that the injury is

traceable to defendants' conduct, and that the injury is likely to be redressed by a favorable decision. *See id.* at 476; *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Common Cause of Pa. v. Pennsylvania*, 558 F.3d 249, 258 (3d Cir. 2009).

"The availability of declaratory [and injunctive] relief depends on whether there is a live dispute between the parties." *Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 216 (3d Cir. 2003) (quoting *Powell v. McCormack*, 395 U.S. 486, 517-518 (1969) (alteration in original)). Because C.H. has not graduated and remains a student in the Chatham school district, there remains a live dispute between the parties and injunctive and declaratory relief are available and warranted.

## CONCLUSION

For the foregoing reasons, Plaintiff-Appellant Libby Hilsenrath respectfully requests that the Court reverse the decision of the district court and remand the case for entry of an appropriate judgment finding that Defendant-Appellee School Board violated C.H.'s rights under the Establishment Clause through its endorsement of Islam and that C.H. is entitled to nominal damages, declaratory, and injunctive relief.

Dated: February 17, 2021

/s/ RICHARD THOMPSON
RICHARD THOMPSON
THOMAS MORE LAW CENTER
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, Michigan 48106
(734) 827-2001
rthompson@thomasmore.org

/S/ MICHAEL P. HRYCAK
MICHAEL P. HRYCAK, ESQ.
316 Lenox Avenue
Westfield, New Jersey 07090
(908) 531-8800
michaelhrycak@yahoo.com
Attorneys for Plaintiff-Appellant

## CERTIFICATION OF ADMISSION TO BAR

I, Richard Thompson, certify as follows:

1. I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

2. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: February 17, 2021

By: /s/ Richard Thompson
Richard Thompson

## CERTIFICATION OF ADMISSION TO BAR

I, Michael P. Hrycak, certify as follows:

1. I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

2. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: February 17, 2021

By: /s/ Michael P. Hrycak
Michael P. Hrycak

**CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). This brief contains 11,097 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure.

This brief complies with the typeface requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the type style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief has been prepared in a proportionally spaced typeface using the 2010 version of Microsoft Word in 14 point Times New Roman font.

This brief complies with the electronic filing requirements of Local Rule 31.1(c) because the text of this electronic brief is identical to the text of the paper copies, and the Vipre Virus Protection, version 3.1 has been run on the file containing the electronic version of this brief and no viruses have been detected.

Dated: February 17, 2021

By: /s/ Richard Thompson
Richard Thompson

**CERTIFICATE OF FILING AND SERVICE**

I certify that on this 17th day of February 2021, the foregoing Brief and Joint Appendix Volume 1 were filed through CM/ECF system and served on all parties or their counsel of record through the CM/ECF system.

Dated: February 17, 2021

By: /s/ Richard Thompson
Richard Thompson

# APPENDIX

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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

**LIBBY HILSENRATH, on behalf of her minor child, C.H.,**

**Plaintiff,**

**v.**

**SCHOOL DISTRICT OF THE CHATHAMS, BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CHATHAMS, MICHAEL LASUSA, KAREN CHASE, JILL GIHORSKI, STEVEN MAHER, MEGAN KEOWN, and CHRISTINE JAKOWSKI,**

**Defendants.**

Civ. No. 18-00966 (KM) (MAH)

**OPINION**

**KEVIN MCNULTY, U.S.D.J.:**

This case is an Establishment Clause challenge by Libby Hilsenrath, on behalf of her son C.H., to instruction about Islam in C.H.'s seventh-grade world cultures course. Before the Court are cross-motions for summary judgment. The motions raise certain threshold or technical issues of standing, arising from the passage of time and the school's voluntary withdrawal of certain of the curriculum materials, and also join issue on the merits. For the following reasons, Defendants' motion for summary judgment (DE 62) is **GRANTED**, and Hilsenrath's motion for summary judgment (DE 63) is **DENIED**.[1]

[1] Certain citations to the record are abbreviated as follows:

DE = docket entry

Def. Brf. = Brief in Support of Defendants' Motion for Summary Judgment (DE 62-3)

Def. SMF = Defendants' Statement of Material Facts (DE 62-2)

Pl. Brf. = Brief in Support of Plaintiff's Motion for Summary Judgment (DE 63)

This well-framed case presented sensitive issues requiring factual inquiry and the balancing of multiple factors. No one's educational, ideological, or religious priors were sufficient to decide it. I understand well the strong feelings that accompany such issues and claims. I do not dismiss the plaintiff's concerns, and I am by no means unsympathetic with parents' desire to control their children's exposure to religious indoctrination. I am also acutely aware that this is public, not parochial, education. Religion, however, is a fact about the world, and no study of geography and cultures is complete without it. There is, to be sure, a line to be drawn between teaching about religion and teaching religion. On this record, I must conclude that the school did not cross that line.

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Def. Opp. = Defendants' Opposition to Plaintiff's Motion for Summary Judgment (DE 68-3)

Pl. Opp. = Plaintiff's Opposition to Defendants' Motion for Summary Judgment (DE 69)

Def. Reply = Reply Brief in Support of Defendants' Motion for Summary Judgment (DE 70)

Pl. Reply = Reply Brief in Support of Plaintiff's Motion for Summary Judgment (DE 71)

C.H. Dep. = C.H. Deposition Transcript, Exhibit F to Defendants' Motion for Summary Judgment (DE 62-10)

Jakowski Dep. = Christine Jakowski Deposition Transcript, Exhibit Y to Defendants' Motion for Summary Judgment (DE 62-29)

LaSusa Dep. = Michael LaSusa Deposition Transcript, Exhibit K to Defendants' Motion for Summary Judgment (62-15)

Weber Dep. = Jill Weber Deposition Transcript, Exhibit I to Defendants' Motion for Summary Judgment (DE 62-13)

Video 1 = Introduction to Islam Video, Exhibit 17 to Plaintiff's Motion for Summary Judgment, https://www.youtube.com/watch?v=ZHujiWd49l4 (DE 63-18)

Video 2 = 5 Pillars of Islam Video, Exhibit 18 to Plaintiff's Motion for Summary Judgment, https://www.youtube.com/watch?v=ikVGwzVg48c (DE 63-19)

Worksheet = Introduction to Islam Worksheet, Exhibit PP to Defendants' Motion for Summary Judgment (DE 62-46)

## I. BACKGROUND

### A. Facts

#### 1. The World Cultures and Geography Course

During the 2016–2017 school year, C.H. was a seventh-grade student at Chatham Middle School, in the School District of the Chathams. He was enrolled in a mandatory course called World Cultures and Geography, taught by defendants Megan Keown and Christine Jakowski. (Def. SMF ¶¶ 96–98, 125.)[2] The aim of the course was to "develop[] a broad understanding of the world and its people" so that "students will become active and informed global citizens." (DE 62-36, at 1.) To that end, the course devoted a unit of study to each of the world's major regions. (*Id.*) In learning about those regions, students learned about the religions commonly practiced in each and compared the religions. (*See, e.g.*, *id.*; DE 62-39.)

One unit was devoted to the Middle East and North Africa ("MENA"); and students learned about Islam, the prevalent religion in that region. (DE 62-41.) There were nine lessons as part of this unit (mostly on geography and current events), but Islam was only the focus of two. (*Id.*)

##### *i. Introduction to Islam Video*

The first lesson was aimed at teaching students about generalizations through the lens of generalizations about Islam. (*Id.* at 2.) Ms. Jakowski presented a PowerPoint, and a copy was posted on Google Classroom, an online platform for teachers to provide students with access to course materials. (Jakowski Dep. at 29:8–18.) The last slide asked students to write down words they associated with Islam, watch a linked video introducing students to Islam ("Video 1"), and then discuss what generalizations they could make after watching the video and whether those generalizations were valid. (DE 62-42, at 10.) However, Ms. Jakowski did not play Video 1 in class and students were

[2] Ms. Keown prepared the syllabus for the class and taught until November 2016, when she went on maternity leave. Ms. Jakowski replaced her and taught the unit at issue. (Def. SMF ¶¶ 96–98.)

not required to watch it as homework. (Jakowski Dep. at 30:21–31:1, 36:4–6, 45:11–19.) Nonetheless, C.H., with his mother, did access the presentation and Video 1 from Google Classroom and watched at home. (C.H. Dep. at 35:23–36:9.)[3]

Video 1 is a five-minute introduction to Islam. The video scrolls through pictures of Middle Eastern and North African peoples, Islamic art, and Muslim sites, with singing in the background.[4] Interspersed with these images for the first half of the video are slides of text asking and answering questions about Islam:

- "What is Islam? . . . Faith of divine guidance for Humanity, based on peace, spirituality and the oneness of God[.]" (Video 1 at 0:17.)
- "Who is Allah? Allah is the one God who created the heavens and the earth, who has no equal and is all powerful[.]" (*Id.* at 0:29.)
- "Who is Muhammed (S)? Muhammed (Peace be upon him) is the last & final Messenger of God, God gave him the Noble Quran[.]" (*Id.* at 1:01.)
- "What is the Noble Quran? Divine revelation sent to Muhammed (S) last Prophet of Allah. A Perfect guide for Humanity[.]" (*Id.* at 1:38.)
- "What does history say about Islam? Muslims created a tradition of unsurpassable splendor, scientific thought and timeless art[.]" (*Id.* at 2:10.)

Around the two-minute mark, the video begins to focus less on Islam as a religion *per se*, and more on the achievements of Islamic civilization. (*Id.* at

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[3] A study guide for the MENA unit advised students that the test would be open note, that their notes should include "general knowledge about [Islam] and 5 pillars," and that they should "[u]se slides on Google Classroom to ensure that you have all important information in your notes or on the handouts." (DE 63-14, at 1.)

[4] On the YouTube page, the description from the video-creator states that the song playing in the background is "Qasida Burdah" and provides two links for download, but neither link seems to be currently active. Hilsenrath has provided what she attests is a translation of the song, which is religious in nature. (DE 63-17.) There is no testimony from C.H. that he clicked the links at the time of viewing the video or understood what the song, which was in Arabic, signified.

2:39, 3:02–25.) Also interspersed throughout the video are quotations (with attributions) from Muslim prayers, the Quran, and Muhammed. (*Id.* at 0:38, 1:14, 1:24, 1:48, 4:30, 4:19.) The video closes with a text slide stating, "May God help us all find the true faith, Islam. Ameen" (*id.* at 4:42), and another slide, seemingly from the video-creator, thanking his or her family and Allah (*id.* at 4:50).

C.H. later testified that he does not remember much about this video, and does not recall feeling coerced. (C.H. Dep. at 26:24–25:1, 37:3–11.)

***ii. Worksheet***

The second lesson further introduced students to the tenets of Islam. (DE 42, at 2.) Ms. Jakowski presented a second PowerPoint to the class that provided an overview of Islam's major characteristics and its five pillars, "the five obligations that every Muslim must satisfy in order to live a good and responsible life according to Islam." (DE 45, at 10.) As students listened to Ms. Jakowski's lesson, they were given a worksheet to complete that corresponded with the presentation. The worksheet had blanks which students would fill in, or incorrect statements which they would correct, based on information they learned. (Jakowski Dep. at 40:1–10.) The PowerPoint and worksheet covered a range of topics at a general level: for example, how often Muslims pray, the extent of alms giving, and why Muslims fast. (Worksheet at 3–5; DE 45, at 11–20.)

One slide and corresponding page of the worksheet concerned the pillar called *shahadah*, or "Testimony of Faith." (DE 45, at 10.) The *shahadah* is described as "[t]he basic statement of the Islamic faith," and the text of the *shahadah* was included in the PowerPoint. (*Id.* at 13.)[5] The worksheet

[5] Hilsenrath contends that the PowerPoint and worksheet also contained a link to a webpage that teaches visitors how to convert to Islam and that students viewed it. (Pl. Brf. at 14.) There is indeed a link in both documents to an informational webpage from the BBC describing the *shahadah*. (DE 68-9, at 30, 42.) The webpage states, among other things, that "anyone who cannot recite [the *shahadah*] wholeheartedly is not a Muslim" and "[r]eciting this statement three times in front of witnesses is all that anyone need do to become a Muslim." *Shahadah: the statement of faith*, BBC,

contained an incomplete version of the *shahadah*, and students filled in the blanks of the statement: "There is no god but Allah and Muhammad is his messenger" (the underlined words reflect the parts of the statement which the students completed). (Worksheet at 3.) C.H. completed part of the worksheet, including the *shahadah* page. (C.H. Dep. at 36:1–9; DE 62-47.)[6]

***iii. Five Pillars Video***

Like the first presentation, the five-pillars presentation contained a link to a video ("Video 2") (DE 45, at 10), but Video 2 was not played in class or assigned as homework. (Jakowski Dep. at 36:4–6). C.H. watched it at home with his mother. (C.H. Dep. at 35:23–36:9). Video 2 is five minutes long and opens with text stating that "the following is an Islamic educational presentation for primary and secondary schools." (Video 2 at 0:02 (capitalization altered).) Video 2 features two cartoon-animation boys, Alex and Yusuf, discussing Islam. Yusuf is Muslim, and Alex asks him questions about his religion. For example, Alex asks Yusuf when he prays and what Muslims believe (*Id.* at 0:50–2:00.) Yusuf states that "Allah is the creator of everything." (*Id.* at 1:30–34.) Yusuf then describes the five pillars to Alex and recites the *shahadah*. (*Id.* at 2:00–2:30.) Video 2 concludes with text instructing that the viewer can order more information from the video-creator, an organization called Discover Islam, and organize a mosque tour. (*Id.* at 5:20.) It is clear that

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http://www.bbc.co.uk/religion/religions/islam/practices/shahadah.shtml (last updated Aug. 23, 2009). Besides Hilsenrath's own testimony (DE 63-2, at 129–30), however, there is no indication that Ms. Jakowski instructed students to follow links in the PowerPoints at home or that C.H. himself followed any such link. (*E.g.*, (Jakowski Dep. at 45:11–19.) As to the worksheet, Ms. Jakowski testified that the worksheet was provided in class, presumably in hard copy (*id.* at 40:1–3), and C.H. completed the worksheet by hand, so there is no indication that he followed any link (C.H. Dep. at 44:23–45:5; *see also* DE 62-47).

[6] Ms. Jakowski described the worksheet as an in-class assignment, while C.H. stated that he could not recall whether he completed it at home or in class. (*Compare* Jakowski Dep. at 40:1–10, *with* C.H. Dep. at 45:8–9.) Fundamentally, however, it is undisputed that C.H. reviewed the PowerPoint and completed the worksheet as part of the course. (*See id.*)

Discover Islam is a United Kingdom organization because its website ends in "co.uk," the text of the video uses British spelling, and Yusuf and Alex speak with British accents.

2. **Hilsenrath's Complaints and Defendants' Response**

After watching the videos with C.H. and reviewing the worksheet, Hilsenrath felt that the curriculum favored Islam at the expense of Christianity and Judaism. So she sent emails expressing her concerns to (1) Steven Maher, Social Studies Content Supervisor for the School District; (2) Superintendent of Curriculum Karen Chase; (3) Superintendent Michael LaSusa; and (4) the Board of Education of the School District. (DE 62-48, 62-50.) It is important to understand the roles and responsibilities of each:

- Supervisor Maher develops the social studies curriculum and supervises the social studies teachers. (Def. SMF ¶¶ 85–88.)
- Assistant Superintendent Chase is responsible for oversight of the curriculum and Supervisor Maher. (*Id.* ¶ 78.)
- Superintendent LaSusa, under New Jersey law, is the "chief executive" of the District and has the power of "general supervision over all aspects, including . . . instructional programs, of the schools of the district." N.J. Stat. Ann. § 18A:17-20(b); *see also* Def. SMF ¶ 72. He oversees District policy regarding curriculum and course materials, and Assistant Superintendent Chase reports to him. (Weber Dep. at 20:1–21:1, 35:10–15, 54:13–16; La Susa Dep. at 9:22–25.) He also has the responsibility to "ensure that teachers follow" District policy that religion is treated neutrally. (DE 63-15.) Although the Board has the power to hire and fire the superintendent, the Board does not have the power to overrule him on decisions regarding instructional materials and curriculum. (Weber Dep. at 20:1–21:8.) Ultimately, it is his decision to remove materials from courses, a decision that does not require approval from the Board, and his determination is deemed to represent that of the Board and District. (*Id.* at 51:7–14, 57:7–11; LaSusa Dep. at 101:2–102:2.)

- The Board, under New Jersey law, is the "body corporate" that supervises the District. N.J. Stat. Ann. §§ 18A:10-1, 18A:11-1(c)–(d). It consists of nine members and requires five votes to take any action. (Weber Dep. at 34:9–10; *see also* N.J. Stat. Ann. § 18A:10-6.) Nonetheless, the superintendent retains final authority on most day-to-day matters involving the schools, including the curriculum, an area which the Board avoids. (Weber Dep. at 21:4–8.)

After sending emails, Hilsenrath attended a Board meeting in February 2017 and voiced her concerns. (Def. SMF ¶ 186.) In response, the Board's Curriculum Committee convened to discuss her complaints. (*Id.* ¶ 191.) When such complaints are raised, the Committee reviews and researches them and then presents findings and any recommendations to the Board publicly. (Weber Dep. at 19:7–25.) The Board usually does not take formal action regarding Committee recommendations but leaves that to the superintendent. (*Id.* at 20:1–21:8.) The Committee meeting included Superintendent LaSusa, Assistant Superintendent Chase, Supervisor Maher, social studies teacher Stephanie Lukasiewicz, Board Member Michelle Clark, and Board President Jill Weber. (Def. SMF ¶ 195; LaSusa Dep. at 93:25–94:1.)

After reviewing the curriculum and materials, Superintendent LaSusa and the Committee determined that no changes were necessary and presented their findings at the next Board meeting, emphasizing that the curriculum aligned with the District policy of religious neutrality. (DE 62-54, at 2–5; DE 62-5, at 24:1–14.) Prior to the meeting, however, Hilsenrath appeared on a national television show to voice her concerns, leading to threats from viewers directed at Board members, administrators, and teachers. (DE 62-54, at 2–3; DE 62-55.) Because of this disruption, Superintendent LaSusa and Supervisor Maher had the links to the videos removed from the PowerPoints. (*E.g.*, LaSusa Dep. at 87:6–18.)

**B. Procedural History**

Months later, when C.H. was in eighth grade and no longer in the World Cultures course, Hilsenrath sued the District, the Board, Superintendent LaSusa, Assistant Superintendent Chase, Principal Jill Gihorski, Supervisor Maher, and the two teachers, Ms. Keown and Ms. Jakowski. (Compl. ¶¶ 12–39.) Her claims against the individual defendants name them in their official capacities only. (*Id.* at 2.) She alleges one claim under 42 U.S.C. § 1983: that the curriculum, especially the videos and worksheet, violates the Establishment Clause of the First Amendment to the United States Constitution. (*Id.* ¶¶ 99–116.) She seeks (1) an injunction prohibiting Defendants "from funding and implementing religious instruction that endorses Islam or that favors Islam," (2) a declaration that Defendants violated her and C.H.'s rights under the Establishment Clause, (3) a declaration that Defendants' "training, supervision, policies, practices, customs, and procedures that promote Islam violate the Establishment Clause," (4) nominal damages, and (5) attorney's fees. (*Id.*, Prayer for Relief.)

Defendants moved to dismiss, but I denied the motion, holding that the Complaint on its face alleged an Establishment Clause claim. *Hilsenrath on behalf of C.H. v. Sch. Dist. of Chathams*, Civ. No. 18-966, 2018 WL 2980392, at *3–4 (D.N.J. June 13, 2018). Now, following discovery, the parties have cross-moved for summary judgment. C.H. is now in high school.

**II. DISCUSSION AND ANALYSIS**

To summarize, I hold as follows:

(1) Hilsenrath has standing to pursue a claim for nominal damages, but not for prospective injunctive or declaratory relief;

(2) The Board is a proper defendant, and Superintendent LaSusa's involvement in the curricular decisions is a policy sufficient to confer potential liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978);

(3) the claims against the individual defendants and the District will be dismissed; and

(4) the seventh grade World Cultures curriculum and materials did not violate the Establishment Clause.

**A. Standard of Review**

Federal Rule of Civil Procedure 56(a) provides that summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *See Kreschollek v. S. Stevedoring Co.*, 223 F.3d 202, 204 (3d Cir. 2000). In deciding a motion for summary judgment, a court must construe all facts and inferences in the light most favorable to the nonmoving party. *See Boyle v. County of Allegheny*, 139 F.3d 386, 393 (3d Cir. 1998). The moving party bears the burden of establishing that no genuine issue of material fact remains. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). "[W]ith respect to an issue on which the nonmoving party bears the burden of proof . . . the burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325.

Once the moving party has met that threshold burden, the non-moving party "must do more than simply show that there is some metaphysical doubt as to material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must present actual evidence that creates a genuine issue as to a material fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *see also* Fed. R. Civ. P. 56(c) (setting forth types of evidence on which nonmoving party must rely to support its assertion that genuine issues of material fact exist).

When the parties file cross-motions for summary judgment, the governing standard "does not change." *Clevenger v. First Option Health Plan of N.J.*, 208 F. Supp. 2d 463, 468–69 (D.N.J. 2002) (citation omitted). The court must consider the motions independently. *Goldwell of N.J., Inc. v. KPSS, Inc.*, 622 F. Supp. 2d 168, 184 (D.N.J. 2009). That one of the cross-motions is denied does not imply that the other must be granted. For each, "the court

construes facts and draws inferences in favor of the party against whom the motion under consideration is made" but does not "weigh the evidence or make credibility determinations." *Pichler v. UNITE*, 542 F.3d 380, 386 (3d Cir. 2008) (internal quotation and citations omitted).

**B. Standing**

I first must assess standing. *See Free Speech Coal., Inc. v. Att'y Gen. U.S.*, 974 F.3d 408, 421 (3d Cir. 2020). "To establish standing, a party must have '(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.'" *N.J. Dep't of Env't Prot. v. Am. Thermoplastics Corp.*, 974 F.3d 486, 493 (3d Cir. 2020) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)). Hilsenrath "has the burden of demonstrating that these requirements are met at the 'commencement of the litigation,' and must do so 'separately for each form of relief sought.'" *Freedom From Religion Found. Inc. v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 476 (3d Cir. 2016) (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)).

Of the standing trio, only the injury prong is at issue here. (*See* Def. Opp. at 7–13.) "Injury in fact requires 'the invasion of a concrete and particularized legally protected interest resulting in harm that is actual or imminent, not conjectural or hypothetical.'" *Sherwin-Williams Co. v. County of Delaware*, 968 F.3d 264, 268 (3d Cir. 2020) (quoting *Finkelman v. Nat'l Football League*, 810 F.3d 187, 193 (3d Cir. 2016)). Parents have a cognizable interest in "the conditions in their children's schools." *Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 217 n.2 (3d Cir. 2003). Accordingly, parents suffer an injury when a school's actions disfavor or favor religion. *E.g.*, *New Kensington*, 832 F.3d at 479 n.11. There is no dispute that Hilsenrath's allegations, if sustained, would entail some such injury. (Def. Opp. at 9.) Whether that injury confers standing, however, must be assessed in the context of the relief sought. *See New Kensington*, 832 F.3d at 476.

1. **Injunctive and Declaratory Relief Claims**

To seek injunctive or declaratory relief, Hilsenrath (personally and on behalf of C.H.) must show that she is either currently suffering the injury or will likely suffer the injury in the future. *Pa. Prison Soc'y v. Cortes*, 508 F.3d 156, 166 (3d Cir. 2007) (injunctive relief); *see Sherwin-Williams*, 968 F.3d at 269, 272 (declaratory relief); *St. Thomas-St. John Hotel & Tourism Ass'n, Inc. v. Gov't of U.S.V.I.*, 218 F.3d 232, 240 (3d Cir. 2000) (same). "[P]ast exposure to illegal conduct" is not enough. *McNair v. Synapse Grp. Inc.*, 672 F.3d 213, 233 (3d Cir. 2012) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974)). For example, in *City of Los Angeles v. Lyons*, the victim of a police chokehold sought to enjoin the department's chokehold policy. The Supreme Court held that he lacked standing to seek prospective relief because he could not show any likelihood that he would be choked again. 461 U.S. 95, 111 (1983).

Hilsenrath cannot show a current or future injury. C.H. is no longer in the course or even at the Middle School. He thus will not be "subjected" to the seventh-grade World Cultures curriculum again. Indeed, in the related context of mootness, courts have held that challenges to school policies or curriculum no longer present a live controversy when the student de-matriculates from the school. *Doremus v. Bd. of Educ. of Borough of Hawthorne*, 342 U.S. 429, 432–33 (1952) (Bible reading in class); *Donovan*, 336 F.3d at 216 (policy prohibiting Bible club); *Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 73–74 (2d Cir. 2001) (various classroom activities and lesson plans); *Wood v. Bd. of Educ. of Charles Cnty.*, No. GJH-16-00239, 2016 WL 8669913, at *4 (D. Md. Sept. 30, 2016) (materials similar to those challenged here). Thus, Hilsenrath lacks standing to seek an injunction prohibiting Defendants from continuing the curriculum or a declaration that Defendants are violating the Establishment Clause. (*See* Compl., Prayer for Relief (b), (c).)[7]

[7] Hilsenrath's requested relief includes enjoining Defendants from "funding" the curriculum at issue. (Compl., Prayer for Relief at (c).) In limited circumstances, the Supreme Court has recognized taxpayer standing to challenge Establishment Clause violations. *ACLU of N.J. v. Schundler*, 104 F.3d 1435, 1445 & n.9 (3d Cir. 1997).

To be sure, Hilsenrath also seeks a declaration that Defendants "violated" the Establishment Clause in the past. (*See id.* at (a).) Such a retrospective declaration, however, is not the endgame, but a "means" by which the plaintiff can obtain "some action (or cessation of action) by the defendant." *Hewitt v. Helms*, 482 U.S. 755, 761 (1987). Accordingly, plaintiffs lack standing to seek a declaration that past conduct was illegal when there is no prospect that such a declaration can be used to redress a current or future injury. *E.g.*, *Policastro v. Kontogiannis*, 262 F. App'x 429, 434 (3d Cir. 2008); *A.S. v. Harrison Twp. Bd. of Educ.*, 66 F. Supp. 3d 539, 548 (D.N.J. 2014); *A&M Gerber Chiropractic LLC v. GEICO Gen. Ins. Co.*, 925 F.3d 1205, 1210–11 (11th Cir. 2019). Hilsenrath can show only a past injury: the instruction C.H., an eighth grader when the action was filed, received in seventh grade. She therefore lacks standing to seek declaratory relief.

Hilsenrath's arguments to the contrary are unpersuasive. First, she argues that C.H. "will again encounter the religion of Islam as a topic" in other courses he takes in high school. (Pl. Reply at 5.) There are several problems with this theory of standing. For starters, generally "encounter[ing]" Islam in a curriculum is not an injury. *Cf. Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 255 (1963) (explaining that schools can constitutionally teach children about religions); *New Kensington*, 832 F.3d at 480 (plaintiff was not injured by religious display when she did not understand, at first observance, that it endorsed a religion). Assuming Hilsenrath means that C.H. will be exposed to favoritism of Islam in later courses, that injury is too speculative. Future injuries must be "certainly impending" or there must be "a substantial

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Hilsenrath's briefs do not press such a theory. Regardless, such a theory fails here because "a municipal taxpayer plaintiff must show (1) that he pays taxes to the municipal entity, and (2) that more than a de minimis amount of tax revenue has been expended on the challenged practice itself." *Nichols v. City of Rehoboth Beach*, 836 F.3d 275, 281 (3d Cir. 2016) (citing *ACLU-NJ v. Township of Wall*, 246 F.3d 258, 262 (3d Cir. 2001) (Alito, J.)). Hilsenrath has made neither showing. Moreover, any expenditure on the instructional materials here would be de minimis. *See Township of Wall*, 246 F.3d at 262–63 (surveying cases challenging Bible reading in schools).

risk that the harm will occur." *New York v. Dep't of Commerce*, 139 S. Ct. 2551, 2565 (2019) (citation omitted). Evidence of past harms is insufficient—a plaintiff on summary judgment must produce affidavits or the like to show that she will face the harm. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992).

The course in which C.H. may again encounter Islam is eleventh-grade Advanced Placement World History. (DE 62-26, at 12.) There is no indication that C.H. will opt to enroll to that particular course, so any exposure is speculative. *See Roberts v. Madigan*, 921 F.3d 1047, 1052 (10th Cir. 1990) ("[S]tudents cannot claim First Amendment violations . . . for actions against a teacher in whose class they were not enrolled." (internal quotation marks and citations omitted)). Even if C.H. planned to enroll, teachers enjoy discretion in crafting their lessons (*e.g.*, DE 62-26, at 1), so there is no basis to predict whether Islam will be presented at all, and if so, whether such presentation will take a form that offends the Establishment Clause. *See COPE v. Kansas State Bd. of Educ.*, 921 F.3d 1215, 1222–23 (10th Cir. 2016) (no standing to challenge state educational standards when it was unclear how those standards would be implemented in the classroom). Thus, Hilsenrath's theory that C.H. will again be exposed to Islam in a constitutionally offensive context is too speculative.

All that aside, Hilsenrath cannot show that "the injury will be redressed by a favorable decision." *Laidlaw*, 528 U.S. at 181. The arguments and evidence in this case are focused on the seventh-grade course. Any injunction would need to be based on the facts and arguments she presented. *See Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017) (per curiam) ("Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents."); *see also, e.g.*, *Groupe SEB USA, Inc. v. Euro-Pro Operating LLC*, 774 F.3d 192, 206 (3d Cir. 2014). I would have no solid ground to enjoin the instruction of Islam in an eleventh-grade course when the case

before me has been focused on a different, seventh-grade course. Accordingly, a favorable decision could not redress any future injury that is posited.

Second, Hilsenrath argues that although Defendants removed the videos from the World Cultures course, it is uncertain whether Defendants will later reincorporate the videos into the course. (Pl. Reply at 7–10.) In so arguing, she relies on the voluntary cessation doctrine, which says that a claim is not moot when a defendant stops his illegal conduct *during litigation* unless it is clear that the behavior is not likely to recur. (*Id.* at 7 (citing *New Kensington*, 832 F.3d at 476).) The cessation in this case occurred before, not during, litigation. But in any event, the doctrine has no force here because it cannot serve "as a substitute for the allegation of present or threatened injury upon which initial standing must be based." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 109 (1998). Put differently, that Defendants may use the videos in the future has no relevance because Hilsenrath cannot show that C.H. will ever again be in a course where the videos could be watched.[8]

Thus, Hilsenrath lacks standing to seek injunctive and declaratory relief, and to the extent her claims seek such relief, they will be dismissed.

2. **Nominal Damages Claim**

Hilsenrath also seeks nominal damages. (Compl., Prayer at (d).) Here, the standing analysis is different.

A plaintiff has standing to seek nominal damages for past Establishment Clause injuries. *New Kensington*, 832 F.3d at 480. That Hilsenrath cannot

[8] Both parties confuse mootness and standing, with Defendants arguing that the removal of the videos mooted Hilsenrath's claims before the Complaint was filed, and Hilsenrath responding with the voluntary cessation doctrine. (Def. Opp. at 15; Pl. Reply at 7.) Standing requires showing that a live controversy exists at the outset of litigation, while mootness requires showing that a live controversy persists throughout litigation. *Hartnett v. Pa. State Educ. Ass'n*, 963 F.3d 301, 305–06 (3d Cir. 2020). Because the removal of the videos occurred before litigation started, it could be analyzed in relation to the issue of standing. But it is not relevant because, regardless of whether the videos will be used in a seventh-grade world cultures course again, it is certain that C.H. will never again be in such a seventh-grade course.

show future injury is immaterial because damages offer retrospective relief. *Id.* at 478 n.7 (citing *Lyons*, 461 U.S. at 105). It stands to reason, then, that Hilsenrath would have standing to pursue a nominal-damages claim in relation to C.H.'s past exposure to the curriculum.

Neither the Third Circuit nor the Supreme Court has addressed whether a nominal-damages claim *alone* confers standing. In a concurring opinion in *New Kensington*, Chief Judge Smith expressed his view that the answer to that question should be no, because nominal damages do not truly provide redress for an injury. *Id.* at 483–84 (Smith, C.J., concurring).[9] A closely related issue is currently before the Supreme Court of the United States. In *Uzuegbunam v. Preczewski*, the Court will consider whether a government's post-filing cessation of an allegedly unconstitutional policy moots the case when only a nominal-damages claims is left. No. 19-968 (Brief for the Petitioners at 1).[10] The United States as *amicus* urges the Court to hold that a nominal-damages claim is sufficient to confer standing. *Id.* (Brief for the United States as Amicus Curiae Supporting Petitioners at 1, 9).

Although the issue is presently unsettled, I conclude that Hilsenrath's nominal-damages claim is sufficient to present a live controversy. No precedent bars such a holding. Nominal damages are available with respect to past Establishment Clause violations, *New Kensington*, 832 F.3d at 480 (majority op.), and damages claims ordinarily suffice to preserve a controversy even if prospective relief claims fail, *see Mission Prods. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1660 (2019). I therefore hold that the nominal-damages claim is sufficient to confer jurisdiction here.

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[9] The *New Kensington* panel did not need to address the question because at least one plaintiff had standing to seek injunctive relief. 832 F.3d at 481.

[10] Three Justices have already indicated their view that a nominal-damages claim preserves a live controversy. *N.Y. State Rifle & Pistol Ass'n, Inc. v. City of New York*, 140 S. Ct. 1525, 1535 (2020) (Alito, J., joined by Gorsuch & Thomas, JJ.).

The *New Kensington* concurrence takes the view that nominal damages do not redress any injury because they provide no tangible benefit. *New Kensington*, 832 F.3d at 485 (Smith, C.J., concurring); *see also Morrison v. Bd. of Educ. of Boyd Cnty.*, 521 F.3d 602, 610–11 (6th Cir. 2008) (dicta); *Utah Animal Rights Coal. v. Salt Lake City Corp.*, 371 F.3d 1248, 1267–68 (10th Cir. 2004) (McConnell, J., concurring). The weight of authority, however, is against that view. Nominal damages reflect that the harm is non-quantifiable, not non-existent. 25 C.J.S. Damages § 24 (2020). Nominal damages still vindicate a plaintiff's rights, and their "value can be of great significance to the litigant and to society." *Amato v. City of Saratoga Springs*, 170 F.3d 311, 317 (2d Cir. 1999); *see also, e.g.*, *Carey v. Piphus*, 435 U.S. 247, 253, 266 (1978) (explaining that nominal damages "vindicat[e]" certain rights that cannot otherwise be quantified). Although a nominal-damages award is "not exactly a bonanza, [] it constitutes relief on the merits." *Farrar v. Hobby*, 506 U.S. 103, 116 (1992) (O'Connor, J., concurring). Given the well-supported view that nominal damages provide redress for a past injury, like Hilsenrath's here, I conclude that she has standing to pursue her nominal-damages claim, and that, to that extent, I have jurisdiction over the case.

**C. Theories of Liability**

The next set of threshold issues requires the Court to identify the defendants against whom Hilsenrath can pursue an Establishment Clause violation and the theories of liability that are cognizable.

1. **The Board and the District**

In New Jersey, the terms "school board" and "school district" are often used interchangeably, but those entities do not have the same legal status. I rule that the Board, and not the District, is the proper defendant here.

School boards are the governmental entities which exercise the kind of powers at issue here. *See* N.J. Stat. Ann. § 18A:10-1 ("The schools of each school district shall be conducted, by and under the supervision of a board of education, which shall be a body corporate . . . ."). As such, school boards are

created as legal entities with the capacity to sue and be sued. *Id.* § 18A:11-2(a); *see also Febres v. Camden Bd. of Educ.*, 445 F.3d 227, 230 (3d Cir. 2006).

A school board may be subject to *Monell*-style municipal liability if its policy or custom caused the constitutional violation. *Mann v. Palmerton Area Sch. Dist.*, 872 F.3d 165, 174–75 (3d Cir. 2017). Policy can be shown if an official with final policymaking authority for the Board approved or ratified the curriculum and materials. *See McGreevy v. Stroup*, 413 F.3d 359, 367 (3d Cir. 2005). Such a showing requires me to "determine (1) whether, as a matter of state law, the official is responsible for making policy in the particular area of municipal business in question, and (2) whether the official's authority to make policy in that area is final and unreviewable." *Hill v. Borough of Kutztown*, 455 F.3d 225, 245 (3d Cir. 2006) (internal citations and emphases omitted). That inquiry involves "[r]eviewing the relevant legal materials, including state and local positive law, as well as 'custom or usage having the force of law.'" *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989) (quoting *City of St. Louis v. Praprotnik*, 485 U.S. 112, 124 n.1 (1988) (plurality)).

Superintendent LaSusa qualifies as an official with final policymaking authority. As to whether he is "responsible for making policy in the particular area of municipal business in question," *Hill*, 455 F.3d at 245, New Jersey law provides a positive answer. New Jersey grants superintendents "chief executive" status and power of "general supervision over all aspects, including . . . instructional programs, of the schools of the district." N.J. Stat. Ann. § 18A:17-20(b). The record, too, confirms that Superintendent LaSusa acts as the chief executive and is responsible for curriculum and academic programming decisions. (Weber Dep. at 20:1–21:1, 35:10–15, 54:13–16; LaSusa Dep. at 20:16–18.) What is more, the Board has specifically instructed him to ensure that teachers maintain religious neutrality (DE 63-15; LaSusa Dep. at 71:18–72:5, 73:1–4), "the particular area of municipal business in question" in this case, *Hill*, 455 F.3d at 245. His authority in these areas is "final and unreviewable," *id.*, because the Board cannot overrule him and, at

most, can require him to report to the Board regarding such issues. (Weber Dep. at 29:12–13, 35:10–15, 40:1–10, 54:13–16.)

Superintendent LaSusa also ratified the conduct at issue. "[W]hen a subordinate's decision is subject to review by the municipality's authorized policymakers, they have retained the authority to measure the official's conduct for conformance with their policies. If the authorized policymakers approve a subordinate's decision and the basis for it, their ratification would be chargeable to the municipality . . . ." *Prapotnik*, 485 U.S. at 127; *see also Kelly v. Borough of Carlisle*, 622 F.3d 248, 264 (3d Cir. 2010). Ms. Jakowski is a subordinate of Superintendent LaSusa, as he is at the top of her chain of command. (LaSusa Dep. at 9:17–25, 15:22–16:4.) As the final supervisor, he is "responsible for ensuring that [her] instruction meets appropriate standards" (*id.* at 23:1–5), including religious neutrality (*id.* at 73:1–4). Following Hilsenrath's complaints, he, along with others, reviewed the materials and determined that they comported with the religious neutrality policy and did not require removal; that determination represents the policy of the Board. (*Id.* at 94:20–95:4, 101:2–102:2; Weber Dep. at 51:7–14, 57:7–11.) Thus, Ms. Jakowski's lessons were subject to review by Superintendent LaSusa for compliance with policies (including the religious neutrality policy), and he approved those lessons going forward, so his "ratification" is "chargeable" to the Board under *Monell*. *Prapotnik*, 485 U.S. at 127; *see also McGreevy*, 413 F.3d at 368 ("[E]ven one decision by a school superintendent, if s/he were a final policymaker, would render his or her decision district policy.").[11]

[11] Hilsenrath also argues that the Board is liable under *Monell* based on a failure-to-train theory. (Pl. Opp. at 10–13 (citing *Forrest v. Parry*, 930 F.3d 93, 118 (3d Cir. 2019).) Such a theory, however, will fail if she cannot establish a constitutional violation. *Vargas v. City of Philadelphia*, 783 F.3d 962, 974–75 (3d Cir. 2015). Because I conclude that she has one clearly viable *Monell* theory, I do not reach this alternative failure-to-train theory.

Both as a matter of state law and the *Monell* doctrine, the Board is the legal entity responsible for the decisions that are challenged here. It is a proper defendant.

School districts stand on a different footing. Unlike a school board, a school district is not created as a legal entity subject to suit. *Mesar v. Bound Brook Bd. of Educ.*, No. A-2953-16T2, 2018 WL 2027262 (N.J. Super. Ct. App. Div. May 2, 2018). In addition, the plaintiff here does not identify any basis for holding the District separately liable. I will therefore dismiss the remaining nominal-damages claims as against the District.

2. **The individual defendants**

I will also dismiss the remaining, nominal-damages claims against the individual defendants in their official capacities.

The Complaint seeks damages against "all the Defendants." (Compl., Prayer at (d).) Hilsenrath clarifies in her brief, however, that she is seeking nominal damages only against the Board and the District, not the individual defendants. (Pl. Reply Br. at 15.)[12] Accepting that concession, I find that the

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[12] In the motion-to-dismiss decision, I recognized that the individuals were probably included only as "relief defendants," *i.e.,* persons who might be required for the fashioning of effective injunctive relief. Even at the pleading stage, however, these defendants appeared to be superfluous. *See Hilsenrath*, 2018 WL 2980392, at *1 (citing *Kentucky v. Graham*, 473 U.S. 159, 166–67 & n.14 (1985) ("There is no longer a need to bring official-capacity actions against local government officials, for . . . local government units can be sued directly for damages and injunctive or declaratory relief.")).

Technically, the plaintiff's concession might be seen as an amendment of the complaint, which cannot generally be accomplished by means of statements in a brief. *See Jones v. Treece*, 774 F. App'x 65, 67 (3d Cir. 2019); *see also Commw. of Pa. ex. rel Zimmerman v. PepsiCo, Inc.*, 836 F.2d 173, 181 (3d Cir. 1988). There is some authority for the proposition that I may treat Hilsenrath's brief as a motion to amend, if Defendants consent or there would be no prejudice. *Ragland v. Comm'r N.J. Dep't of Corrs.*, 717 F. App'x 175, 178 n.6 (3d Cir. 2017) (per curiam); *Onal v. BP Amoco Corp.*, 275 F. Supp. 2d 650, 658 n.2 (E.D. Pa. 2003), *aff'd*, 134 F. App'x 515 (3d Cir. 2005). Here, the amendment is simply a concession that plaintiffs are relinquishing part of a claim, which they are generally entitled to do, and which does not prejudice any defendant. I therefore accept the concession.

dismissal of the claims for injunctive and declaratory relief on standing grounds, *see supra,* leaves no claims outstanding against the individual defendants.

In sum, I rule that the remaining claims for nominal damages are properly asserted against the Board, but not the District or the individual defendants.

**D. Merits of the Establishment Clause Claim**

Finally, I turn to the underlying merits: whether the challenged materials and curriculum violate the Establishment Clause. I rule that they do not.

In some respects, the Establishment Clause test is in flux. The default test has long been that of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), although the Supreme Court and Third Circuit have withheld its application in certain contexts, *Freedom From Religion Found., Inc. v. County of Lehigh*, 933 F.3d 275, 280–81 (3d Cir. 2019). Not so here, however: "In the public school context, the Supreme Court has been inclined to apply the *Lemon* test." *Doe v. Indian River Sch. Dist.*, 653 F.3d 256, 282 (3d Cir. 2011). *Lemon* imposes a three-part inquiry, asking "(1) whether the government practice had a secular purpose; (2) whether its principal or primary effect advanced or inhibited religion; and (3) whether it created an excessive entanglement of the government with religion." *Id.* (quoting *Lemon*, 403 U.S. at 612–13). In undertaking this inquiry, I analyze the challenged materials together and in the context of the curriculum. Context is critical; I therefore do not analyze whether any one page, slide, or statement is an Establishment Clause violation in and of itself. *See, e.g.*, *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 597 (1989), *abrogated on other grounds by Town of Greece v. Galloway*, 572 U.S. 565 (2014). Indeed, to "[f]ocus exclusively on the religious component of any activity would inevitably lead to [the activity's] invalidation." *Lynch v. Donnelly*, 465 U.S. 668, 679–80, (1984). *See also Wood v. Arnold*, 915 F.3d 308, 314 (4th Cir.) ("[C]ourts . . . consistently have examined the entire context surrounding the challenged practice, rather than only reviewing the contested portion."

(collecting cases from the Fourth, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits)), *cert. denied*, 140 S. Ct. 399 (2019).

1. **Secular Purpose**

Under the first *Lemon* prong, I ask whether there is "some secular purpose," even if it is not the exclusive purpose, for the government action, or whether, to the contrary, its "actual purpose is to endorse or disapprove of religion." *Doe*, 653 F.3d at 283 (citation omitted). In discerning the purpose of a government action, I view it from the perspective of an "objective observer" with knowledge of the context. *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 862 (2005) (citation omitted).

The Board proffers that the purpose behind the materials and curriculum is to "assur[e] that our children are intellectually and socially prepared to become self-reliant members of 21st century society." (Def. Brf. at 45.) More specifically, the curriculum aims to educate students about the world's major religions, a mission which requires some exposure to their tenets and texts. (*Id.* at 45–46.) Educating students about religions, which requires exposure to religious texts, is a valid, secular purpose. *Stone v. Graham*, 449 U.S. 39, 42 (1980) ("[T]he Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like."); *Schempp*, 374 U.S. at 255 (explaining that "one's education is not complete without a study of comparative religion or the history of religion" and the Bible and religion can be studied "consistently with the First Amendment"). The Board's evidence consistently shows that the purpose in the lessons and instructional materials was merely educational, not to favor or disfavor a religion. (*E.g.*, DE 62-41, at 2–3 (lesson plan).) The Board's proffered purpose bears the hallmarks of being "genuine" and is therefore entitled to "deference." *McCreary*, 545 U.S. at 864.[13]

[13] The genuineness of the government's purpose, of course, might present a triable issue of fact in a particular case. Here, however, discovery has failed to uncover

In response, Hilsenrath argues that there can be no secular purpose for exposing students to proselytizing content such as the *shahadah* or statements like "Allah is one the God." (Pl. Opp. at 16–17.) She gets off on the wrong foot, however, by asking the Court to analyze the purpose behind each statement she objects to. *See Lynch*, 465 U.S. at 679–80 (holding that, in a challenge to a Christmas display that included a crèche, the district court erred in "infer[ring] from the religious nature of the crèche that the City has no secular purpose for the display"); *see also Wood*, 915 F.3d at 314 (citing authorities). Of course, the statements of a religion's adherents have a religious purpose, *in the mouths of those adherents*. But for secular educators to teach and study *about* such statements is not to espouse them, or to proselytize.

The content to which Hilsenrath objects is closely tied to secular educational purposes. Video 1 was used to introduce students to the tenets of Islam. It employed quotations from the Quran and Muslim prayers, but there is no constitutional problem in using religious materials to study "history, civilization, . . . comparative religion, or the like." *Stone*, 449 U.S. at 42. Video 2 likewise explored Islam through a neutral question-and-answer format that could not be regarded as proselytizing. True, the worksheet contained fill-in-the-blanks questions, as is typical at the middle-school level. The format fell well short of compelled recitation of a prayer, however, and was clearly "designed to assess the students' understanding of the lesson on Islam," as the Fourth Circuit explained when upholding a similar worksheet against a First Amendment challenge. *Wood*, 915 F.3d at 315.

Thus, the Board had a valid, secular purpose in using its curriculum and instructional materials to educate students. Nothing in the discovery materials brought to the Court's attention bespeaks a proselytizing mission on behalf of the Islamic faith, and there is nothing in the record to indicate that the Board's purpose exceeded its educational mandate.

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evidence of an underlying religious purpose. And the case law long ago established the principle that comparative religion is a legitimate subject of study.

2. **Primary Effect**

Under the second *Lemon* prong, I ask whether the primary *effect* of the government's practice is to advance or inhibit religion, regardless of any secular purpose. *Doe*, 653 F.3d at 284 (citation omitted). In doing so, I also consider the related endorsement test, which asks "whether, under the totality of the circumstances, the challenged practice conveys a message favoring or disfavoring religion," from "the viewpoint of the reasonable observer," considering "the history and ubiquity of the practice." *Id.* (citation omitted). The curriculum and materials do not have the primary effect of advancing Islam, and an observer would not perceive any endorsement. For that conclusion, I offer four reasons.

First, the curriculum treats Islam equally with other religions. It is not a standalone course of study, but is part of a larger survey of world regions and religions, so there is no impermissible favoritism. Generally, in curriculum cases, a school's presentation of multiple religious materials or presentation of religious material in conjunction with nonreligious material tends to demonstrate that the primary effect of the curriculum is not to advance any one religion. *See Cal. Parents for Equalization of Educ. Materials v. Torlakson*, 370 F. Supp. 3d 1057, 1081–82 (N.D. Cal. 2019) (surveying cases), *aff'd*, 973 F.3d 1010 (9th Cir. 2020). Here, the World Cultures course includes similar units on, for example, Hinduism and Buddhism, in which students watch videos on those religions to understand their tenets and practices. (DE 62-39, at 4, 8–11; DE 68-8.) A reasonable observer would not perceive an endorsement of Islam when the course also presented other religions in a similar manner. Further, Islam is introduced as part of a unit on the Middle East and North Africa in a course covering geography and world cultures, so it is presented in conjunction with nonreligious material about a region of the world.

Second, a reasonable observer would see that the curriculum and materials are presented as part of an academic exercise. When schools require

students to "read, discuss, and think" about a religion, such lessons do not have the primary effect of advancing that religion. *Wood*, 915 F.3d at 317; *see also Torlakson*, 973 F.3d at 1021; *Brown v. Woodland Joint Unified Sch. Dist.*, 27 F.3d 1373, 1380 (9th Cir. 1994). Reasonable observers understand that students are simply learning to "identify the views of a particular religion," not to follow the religion. *Wood*, 915 F.3d at 317; *see also Torlakson*, 973 F.3d at 1021 (curriculum did not have primary effect when it did not "call for the teaching of biblical events or figures as historical fact").

Here, the videos, lessons, and worksheet presented students with the tenets of Islam. This case falls into the category of those in which schools permissibly asked students to "read, discuss, and think" about a religion. *Wood*, 915 F.3d at 317. True, Video 1 is from the perspective of a believer, but a reasonable observer would understand that the video is not presented as representing the views of the teacher or the school; nor is there any indication that it was presented in a manner to suggest that students should accept the video-creator's views as revealed religious truth.[14] Rather, Video 1 was assigned to introduce students to the tenets of Islam. Although the video-creator can be perceived as believing those tenets, neither the lesson, Ms. Jakowski, nor even the video-creator invites or encourages the students to adopt those views. This is par for the course; to take the Ninth Circuit's cogent example, "Luther's 'Ninety-Nine Theses' are hardly balanced or objective, yet their pronounced and even vehement bias does not prevent their study in a history class' exploration of the Protestant Reformation, nor is Protestantism itself 'advanced' thereby."

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[14] Relatedly, Hilsenrath argues that because the videos on Hinduism and Buddhism are from the perspective of a more neutral narrator, the World Cultures course does not treat all religions equally and proselytizes when it comes to Islam. (Pl. Reply at 3.) As discussed above, there is no problem with Video 1's presentation. Moreover, "Plaintiffs' efforts to wring an Establishment Clause violation from subtle differences that they perceive in the curricular treatment of various religions does not withstand scrutiny, and, if accepted, would paralyze educators in their lawful objective of treating religion as a topic relevant to world history." *Torlakson*, 973 F.3d at 1022 (Bress, J., concurring).

*Brown*, 27 F.3d at 1380 (citation omitted). When, as here, religious beliefs are presented to educate, not convert, students, there is no endorsement of religion.[15]

Third, the curriculum and materials did not require or even propose that the students engage in religious activity. Courts weigh whether the school requires or invites students to partake in a religious activity. *E.g.*, *Wood*, 915 F.3d at 317; *Brown*, 27 F.3d at 1380; *Doe*, 653 F.3d at 284. For example, in *Malnak v. Yogi*, the Third Circuit held that a class about a religion crossed the line when students were required to participate in a religious ceremony. 592 F.2d 197, 199 (3d Cir. 1979) (per curiam). In contrast, here, C.H. passively watched two informational videos. As to the worksheet, "students were not required to memorize the *shahada*, to recite it, or even to write the complete statement of faith. Instead, the worksheet included a variety of factual information related to Islam and merely asked the students to demonstrate their understanding of the material by completing the partial sentences. This is

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[15] Hilsenrath makes much of the facts that (1) Video 2 ended with information about scheduling a tour of a mosque and (2) one of the PowerPoints and a worksheet contained a link to a BBC webpage that allegedly teaches visitors how to convert to Islam. (Pl. Brf. at 19; Pl. Opp. at 4; Pl. Reply at 14–15.)

First, as a general matter, information about how students—independently and on their own time—can visit a house of worship to learn more about a religion is not *per se* objectionable. I add that Video 2, made by a United Kingdom company, suggested a mosque tour under the heading "Discover Islam UK,", so there is little realistic possibility that a New Jersey seventh-grader would take up the offer, if that is what it was.

Second, there is no indication that C.H. or any student actually followed the link to the BBC webpage, *supra* note 5, so that link is not central to my inquiry. Regardless, the webpage is informational, and a reasonable observer would not view the BBC, a public service broadcaster, as evangelizing for a particular faith. The objection appears to be to a statement on this third-party website that "[r]eciting [the *shahadah*] three times in front of witnesses is all that anyone need do to become a Muslim." That statement, however, is factual, and would not reasonably be taken as the school's invitation to convert. No more would a factual statement, in a unit on Christianity, that Christian sects regard infant or adult baptism as the faith's rite of admission or adoption.

precisely the sort of academic exercise that the Supreme Court has indicated would not run afoul of the Establishment Clause." *Wood*, 915 F.3d at 316 (citing *Schempp*, 374 U.S. at 225, and analyzing the same worksheet challenged here). The curriculum never progressed from the academic to the liturgical, and it did not have the primary effect of advancing religion.

Fourth, a few miscellaneous facts about the larger context also cut against any holding that the primary effect here was to advance Islam: (1) The course was given to seventh-grade students, who are considered less impressionable than elementary school students, as to whom First Amendment concerns are perhaps more acute. Adolescents are equipped to, and proverbially do, exercise some independent judgment with respect to what they are told by adults. *See Parker v. Hurley*, 514 F.3d 87, 106 (1st Cir. 2008); *Fleischfresser v. Dirs. of Sch. Dist. 200*, 15 F.3d 680, 686 (7th Cir. 1994); *cf. Busch v. Marple Newtown Sch. Dist.*, 567 F.3d 89, 95–96 (3d Cir. 2008). (2) Islam occupied only two lessons within a yearlong course, so objective observers would be less likely to perceive an endorsement of Islam. *Wood*, 915 F.3d at 317–18; *Brown*, 27 F.3d at 1380. (3) The curriculum was designed not just to educate to students about Islam but also to teach them valuable lessons about uncritical acceptance of cultural generalizations. *See Fleischfresser*, 15 F.3d at 689 (reading program that used witchcraft as the subject of stories did not have the primary effect of advancing witchcraft because the primary effect of the lesson was to "improv[e] [] reading skills and to develop imagination and creativity"). And (4) many American students learn about world religions, including but hardly limited to Islam, as shown in cases like *Wood.* A reasonable observer considering the "history and ubiquity of the practice" would understand that such lessons here are part of a common academic program. *See Doe*, 653 F.3d at 284. These facts further weigh in favor of my

conclusion that these lessons did not run afoul of the second, "effects" prong of *Lemon*.[16]

3. **Excessive Entanglement**

Under the third *Lemon* prong, I ask whether the challenged practices "foster an excessive government entanglement with religion." *Doe*, 653 F.3d at 288 (quoting *Lemon*, 403 U.S. at 613). I analyze how the challenged practices create a "relationship between the government and religious authority," but "excessive entanglement requires more than mere interaction between church and state, for some level of interaction has always been tolerated." *Id.* (internal quotation marks, citations, and alterations omitted). In cases involving curriculum or programs at schools, courts have looked to whether the school works with religious entities to create the curriculum and whether the school must constantly monitor the activities to ensure no endorsement of religion. *See Stratechuk v. Bd. of Educ., S. Orange-Maplewood Sch. Dist.*, 587 F.3d 597, 608 (3d Cir. 2009); *Wood*, 915 F.3d at 318; *Brown*, 27 F.3d at 1384; *Fleischfresser*, 15 F.3d at 688.

Here, there is not even evidence of "mere interaction between church and state." *Doe*, 653 F.3d at 288 (citation omitted). Teachers and Supervisor Maher created the lesson plans, and there is no indication that they worked with any religious organization in doing so. (Def. SMF ¶¶ 154–55.)[17] Absent the rare

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[16] It is worth pointing out that C.H. never felt coerced, and, in fact perceived the purpose and effect of the lessons as to educate students about world religions and the importance of avoiding group generalizations. (C.H. Dep. at 24:18–25:1, 40:8–24, 41:22–25.) Still, it is not necessarily significant that one student or another is mature and independent-minded; *Lemon*'s second prong is an objective inquiry, not an evaluation of each student's response.

[17] This is not to say that working with a religious organization to develop an accurate and respectful curriculum should qualify as excessive entanglement. *See Doe*, 653 F.3d at 288 (government interaction with religious organizations is not *per se* excessive entanglement). And even if it did, "entanglement, standing alone, will not render an action unconstitutional if the action does not have the overall effect of advancing, endorsing, or disapproving of religion." *ACLU of N.J. ex rel Lander v. Schundler*, 168 F.3d 92, 97 (3d Cir. 1999). Be that as it may, this case does present

parent complaint, the teachers are left alone to implement the lessons themselves, so there is no need to entangle the Board in continual surveillance of the classroom. *See Brown*, 27 F.3d at 1384.

Hilsenrath cites *Doe*, in which school board members composed and recited prayers at meetings. 653 F.3d at 288. Both *Doe* and this case, she urges, involve excessive entanglement because the incorporate religion as part of a "formal activity" (there, board meetings; here, the required classroom curriculum). (Pl. Opp. at 22–23.) The "effects" analysis, *see* Section II.D.2, *supra*, largely disposes of that argument. *See Child Evangelism Fellowship of N.J. Inc. v. Stafford Twp. Sch. Dist.*, 386 F.3d 514, 534 (3d Cir. 2004) (Alito, J.) ("[T]he factors employed to assess whether an entanglement is excessive are similar to the factors used to examine effect." (internal quotation marks, citation, and alterations omitted)); *ACLU of N.J. ex rel Lander v. Schundler*, 168 F.3d 92, 97 (3d Cir. 1999) (explaining that the Supreme Court has sometimes collapsed the effects and entanglement prongs). Moreover, there is little similarity between *Doe* and this case. In *Doe*, the Third Circuit found entanglement because the board formally participated in a religious activity by composing and reciting prayers at meetings, "hallmarks of state involvement." 653 F.3d at 288. But, as explained above, there is no religious activity here, only factual presentation of the tenets of a religion for academic study. Absent evidence of more direct involvement with a religious entity, a school does not entangle itself religion simply by teaching it as part of a broader, balanced curriculum, even if curriculum development or teaching could be considered a "formal" state activity.

* * *

In sum, the curriculum and materials here survive scrutiny under each of the three *Lemon* prongs. Accordingly, the Board did not violate the

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*any* "level of interaction" between a school and a religious organization. *Doe*, 653 F.3d at 288 (citation omitted).

Establishment Clause. I will enter summary judgment in the Board's favor on Hilsenrath's remaining nominal-damages claim.

## III. CONCLUSION

For the reasons set forth above, Defendants' motion for summary judgment is granted and Hilsenrath's motion for summary judgment is denied. To recap, Hilsenrath's claims for injunctive and declaratory relief against all Defendants fail for lack of standing, but her nominal-damages claims may proceed. The nominal damages claims are properly asserted against the Board, which is an entity with the capacity to be sued, and which is potentially liable under a *Monell* theory. The claims are dismissed, however, as against the District and the individual defendants. As to the remaining, nominal-damages claim against the Board, summary judgment is granted, and the claim is dismissed, because the curriculum and materials satisfy the *Lemon* test and do not violate the Establishment Clause.

A separate order will issue.

Dated: November 12, 2020

/s/ Kevin McNulty

**Hon. Kevin McNulty**
**United States District Judge**

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

**LIBBY HILSENRATH, on behalf of her minor child, C.H.,**

**Plaintiff,**

**v.**

**SCHOOL DISTRICT OF THE CHATHAMS, BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CHATHAMS, MICHAEL LASUSA, KAREN CHASE, JILL GIHORSKI, STEVEN MAHER, MEGAN KEOWN, and CHRISTINE JAKOWSKI,**

**Defendants.**

Civ. No. 18-00966 (KM) (MAH)

**ORDER**

**THIS MATTER** having come before the Court on the motion for summary judgment filed by Defendants (DE 62), and the cross-motion for summary judgment filed by Plaintiff (DE 63); and the Court having considered the submissions of the parties (DE 62, 63, 68–71) without oral argument pursuant to Fed. R. Civ. P. 78(b); for the reasons stated in the accompanying Opinion, and good cause appearing therefor;

**IT IS** this 12th day of November 2020,

**ORDERED** that Defendant's motion for summary judgment (DE 62) is **GRANTED**; and

**IT IS FURTHER ORDERED** that Plaintiff's motion for summary judgment (DE 63) is **DENIED**.

The clerk is directed to close the file.

/s/ Kevin McNulty

**Kevin McNulty**
**United States District Judge**

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW JERSEY**

LIBBY HILSENRATH, on behalf of her Minor child, C.H.,

Case No. 2:18-cv-00966-KM-MAH

Plaintiff,

v.

SCHOOL DISTRICT OF THE CHATHAMS, BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CHATHAMS, MICHAEL LASUSA, in his official capacity as the Superintendent of the School District of the Chathams, KAREN CHASE, in her official capacity as the Assistant Superintendent of Curriculum and Instruction at the School District of the Chathams, JILL GIHORSKI, in her official capacity as the Principal of Chatham Middle School, STEVEN MAHER, in his official capacity as the Supervisor of Social Studies for the School District of the Chathams, MEGAN KEOWN, in her official capacity as a Social Studies teacher for Chatham Middle School, and CHRISTINE JAKOWSKI, in her official capacity as a Social Studies teacher for Chatham Middle School,

Defendants.
_____/

**NOTICE OF APPEAL**

NOTICE is hereby given that Plaintiff Libby Hilsenrath, on behalf of her minor child, C.H., hereby appeals to the United States Court of Appeals for the Third Circuit from the Order and Opinion entered in this civil action on November 12, 2020, granting Defendants' Motion for

Summary Judgment and denying Plaintiff's Motion for Summary Judgment and dismissing all claims.

Respectfully Submitted,

/s/ Michael P. Hrycak
Michael P. Hrycak
The Law Office of Michael P. Hrycak
NJ Attorney ID # 2011990
316 Lenox Avenue
Westfield, NJ 07090
(908)789-1870
michaelhrycak@yahoo.com

Richard Thompson*
MI Bar # P21410
Thomas More Law Center
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, MI 48106
(734) 827-2001
rthompson@thomasmore.org
* Admitted Pro Hac Vice

*Attorneys for Plaintiff*

DATED: December 7, 2020