

APPEAL NO. 24-3278

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CHRISTIN HEAPS,

Plaintiff-Appellant,

v.

DELAWARE VALLEY REGIONAL HIGH SCHOOL
BOARD OF EDUCATION, *et al.*,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of New Jersey
Case No. 3:24-cv-00107

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

Denise M. Harle
Florida Bar No. 81977
SHUTTS & BOWEN LLP
215 S. Monroe Street
Suite 804
Tallahassee, Florida 32301
(850) 241-1717
dharle@shutts.com

Alyssa L. Cory
Florida Bar No. 118150
SHUTTS & BOWEN LLP
4301 W. Boy Scout Boulevard
Suite 300
Tampa, Florida 33607
(813) 229-8900
acory@shutts.com

Counsel for Religious Freedom Institute

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Religious Freedom Institute states that it is a nonprofit 501(c)(3) organization, with no parent companies, subsidiaries, corporate affiliates, or publicly-traded shares.

/s/ Alysia L. Cory

Counsel for Amicus Curiae
Religious Freedom Institute

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STATEMENT OF INTEREST¹

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

¹ All parties have consented to the filing of this amicus brief. Pursuant to Fed. R. App. P. 29(a)(4)(E), no party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person—other than Amicus and its counsel—contributed money that was intended to fund preparing or submitting this brief.

SUMMARY OF ARGUMENT

Since the founding of this nation, a fundamental aspect of parental rights has been the ability to guide the moral and spiritual upbringing of one's children, including beliefs about human nature and teachings from holy texts. The exact legal origin and scope of parental rights in America have been subject to debate. But whatever the precise framework, New Jersey's law, its guidance to school districts, and the school board's official policy to usurp parental authority by secretly indoctrinating a child about gender and sexuality is an assault on what the Framers recognized as sacred rights protected by the Constitution and essential to a free society.

U.S. Supreme Court precedent, applied correctly, affirms that the deeply rooted constitutional rights in question are subject to the highest level of scrutiny. The district court's order denying preliminary injunctive relief fails to acknowledge the heightened risk in school settings of government infringement on the rights and duties of American parents of both majority and minority faith traditions—including Jewish, Christian, Muslim, and Hindu parents—to raise their children according to their religious beliefs. It should be reversed.

ARGUMENT

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

The district court took issue with a perceived lack of historical or legal precedent establishing that Mr. Heaps’ parental right to direct his child’s upbringing at issue falls within the liberty interests protected by the Fourteenth Amendment. JA 24-25. Then, failing to make the connection between this right and the Due Process Clause, the district court concluded that Mr. Heaps was unlikely to succeed on the merits of his claim. But such a conclusion incorrectly constricts parental authority in the school setting and strays from the broad fundamental rights afforded to parents, as confirmed by caselaw. *See Mahmood v. Taylor*, No. 24-297, 2025 WL 1773627, at *14 (U.S. June 27, 2025) (“[T]he right of parents ‘to direct the religious upbringing of their’ children would be an empty promise if it did not follow those children into the public school classroom.”). History and tradition must inform this Court’s inquiry concerning the parental rights at issue; and those authorities reveal no basis for truncating parental rights past the schoolhouse door.

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

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

The right that parents possess to make decisions for their children arises from the duties parents owe to their children. As early as the seventeenth century, a common-law system existed in which parents had “a God-given duty to nourish, protect and educate their young, and to have a corresponding right” to “fulfill those duties.” Eric A. DeGroff, *Parental Rights and Public School Curricula: Revisiting Mozart after 20 Years*, 38 J.L. & Educ. 83, 117 (2009). “The duty of parents . . . is a principle of natural law; an obligation . . . laid on them not only by nature herself, but by their own proper act, in bringing them into the world.” Blackstone, *supra*, at *435.

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

Parental authority is also essential for the maintenance of a free society and stable government. “Legal restrictions on minors, especially those supportive of the parental

role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding." *Bellotti v. Baird*, 443 U.S. 622, 638-39 (1979). The "strength of a [s]tate" thus depends in large part on the development of children into "a well-ordered, intelligent, and honorable population." James Schouler, *Treatise on the Law of the Domestic Relations*, 316 (1870). And the common-law protection of parental authority served to "intimately tie[] together the duty and freedom of interdependent human beings, for the advantage of parents, the political community, and, most importantly, children." Joseph K. Griffith II, "Long Recognized at Common Law": Meyer and Pierce's Nineteenth- and Twentieth-Century Precedent on Parental Educational Rights and Civic Education, 53 *Persp. on Pol. Sci.* 1, 5 (2024).

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

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

American history and tradition presume the parent’s right to make decisions about their children’s upbringing and education. This presumption stems from a child’s lack of “maturity, experience, and capacity for judgment required,” and the “natural bonds of affection [that] lead parents to act in the best interests of their children.” *Id.* at 602. And so, the Fourteenth Amendment codified these common-law traditions: rights-affirming documents, such as the Bill of Rights, “were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors.” *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897).

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

Process Clause includes [this parental] right . . . to direct the education and upbringing of one’s children.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

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

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

Over a century ago, the Supreme Court articulated a parent’s fundamental right to direct the upbringing of their children, in response to trends diminishing parental rights that originated from the establishment of compulsory-education laws. *Meyer* and *Pierce* declared parental rights, as understood by the common-law tradition, to be within the liberty protected by the Fourteenth Amendment. In *Meyer v. Nebraska*, the Court stated the “liberty guaranteed . . . by the Fourteenth Amendment” includes, “[w]ithout doubt,” the right “to marry, establish a home and bring up children.” 262 U.S. 390, 399

(1923). And in doing so, the Court affirmed the reach of the parent’s right “to give his children education suitable to their station in life,” a right “long recognized at common law as essential to the orderly pursuit of happiness by free men.” *Id.* at 399-400. Regarding “the liberty of parents and guardians to direct the upbringing and education of children,” the Supreme Court in *Pierce v. Society of Sisters*, explained “[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” 268 U.S. 510, 534-35 (1925). *Meyer* and *Pierce* reaffirmed the primary authority of parents in matters concerning their children’s education under the Fourteenth Amendment.

* * *

The district court disregarded this time-honored right and the constitutional scrutiny it necessitates. If parents have a right to opt-out their child from being taught “geography, book-keeping, grammar, singing lessons, domestic science, and dancing exercises,” Joseph K. Griffith II, *Is the Right of Parents to Direct Their Children’s Education “Deeply Rooted” in Our “History and Tradition?”*, 28 *Tex. Rev. L. & Pol.* 795, 806 (2024), or—as a matter of free exercise—to opt-out their child from reading LGBTQ+-promoting books, *Mahmoud*, 2025 WL 1773627, at *24, then surely parents have a right to *know* that school staff are privately meeting with their child to facilitate a “social transition” of their child’s gender identity.

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

The Framers were deeply concerned with freedom of conscience and religious liberties. By 1789, all states but one had constitutional guarantees for religious freedom. Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1455 (1990). At the time of the Constitution’s framing, free exercise of religion “was universally said to be an unalienable right.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 574 (2021) (Alito, J., concurring) (quoting McConnell, *supra*, at 1465). This enumerated sacred right is why, invoking the “‘enduring American tradition,’” the Supreme Court has “long recognized the rights of parents to direct ‘the religious upbringing’ of their children.” *Espinoza v. Montana Dep’t of Rev.*, 591 U.S. 464, 486 (2020) (quoting *Yoder*, 406 U.S. at 213-14, 232). “And this is not merely a right to teach religion in the confines of one’s own home. Rather it extends to the choices that parents wish to make for their children outside the home.” *Mahmoud*, 2025 WL 1773627, at *13.

“[D]uring the Founding Era and around the time of the Fourteenth Amendment’s ratification, parents’ jurisdiction over their children was understood to be prior to and independent of the state’s.” Melissa Moschella, *Strict Scrutiny as the Appropriate Standard of Review for Parental Rights Cases: A Historical Argument*, 28 Tex. Rev. L. & Pol. 771, 772 (2024). And “historical evidence shows that the founding generation believed parents had absolute authority . . . to direct the proper development of their

children.” *Brown v. Ent. Merch. Ass’n*, 564 U.S. 786, 822 (2011) (Thomas, J., dissenting). Permeating these practices was the concern for children’s moral and spiritual formation—whether viewing children as “innately sinful,” as in the Puritan colonial tradition, or “more as blank slates requiring careful and deliberate development,” as around the time of the Revolution. *Id.* at 824. Indeed, scholars have noted the “strong historical tradition of parental rights, including for religious reasons.” Stephanie H. Barclay, *Replacing Smith*, 133 *Yale L.J.F.* 436, 467 (2023).

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

This history of recognized religious traditions makes the school board’s action here a double burden, striking at the core of both child-rearing and religious freedom. On their face and as applied, New Jersey law, state guidance, and the official school-board policy offend numerous sects of religious believers and infringe their inviolable rights.

A. Judaism

A crucial tenet for Jewish Americans is the Torah's command that parents are to teach their children in principles of faith: "[I]hese words that I command you today shall be on your heart. You shall teach them diligently to your children . . ." *Deuteronomy* 6:6-7. A rabbinic commandment called *chinuch* also directs parents to educate their children in following the Torah's precepts. *Jewish Education* 101, Chadbad.org, https://www.chabad.org/library/article_cdo/aid/1230127/jewish/Jewish-Education-101.htm (last visited Apr. 28, 2025).

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

mitzvot, dating back several millennia, reflect Judaism's expectation that parents will inculcate the Torah's values in their children, including core faith teachings on sexuality.

B. Christianity

Consistent with their Judaic roots, Orthodox, Catholic, and Protestant traditions adhere to the biblical commands to raise children according to biblical beliefs. *Proverbs* 22:6 (“Train up a child in the way he should go; even when he is old he will not depart from it.”); *Ephesians* 6:4 (“[B]ring [your children] up in the discipline and instruction of the Lord.”); *1 Thessalonians* 2:11-12 (“...as a father deals with his own children, encouraging, comforting, and urging [them] to live lives worthy of God”). Christianity teaches mothers and fathers that their children are to be trained in the Lord's ways for important reasons: both because those children are gifts from God, *Psalms* 127:3 (“Children are a heritage from the Lord, offspring a reward from Him.”), and because those children, in turn, influence the world for good, *Psalms* 127:4 (“Like arrows in the hand of a warrior, so are the children of one's youth.”).

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

and “precedes, accompanies, and enriches other forms of instruction in the faith.” *Id.* at 536-37 ¶¶ 2221, 2226.

For tens of millions of Christians in the United States, these imperative generational teachings include doctrine on sexuality and gender. For example, the Orthodox Church of America, teaches that “[o]ur sexuality begins with our creation,” and “[t]he Bible says ‘Male and female He created them.’” *Session 2: “In the Beginning...” Healing our Misconceptions* (quoting *Genesis* 1:27), Orthodox Church of America, (Dec. 12, 2023), <https://perma.cc/BU2X-BQ87>. The Catholic Church’s doctrine similarly instructs that “[e]veryone, man and woman, should acknowledge and accept his sexual *identity*” and that “[p]hysical, moral, and spiritual *difference and complementarity* are oriented toward the goods of marriage and the flourishing of family life.” Catechism, 560 ¶ 2333. And a majority of Protestant denominations—Assemblies of God, Church of God in Christ, Presbyterian Church in America, Anglican Church in North America, Southern Baptist, and more—accept the Bible’s teaching that God created humankind male and female, and established marriage as between man and woman.

These sincere beliefs preclude the concept of a child’s “social transition.” For example, the largest Protestant denomination in the United States, the Southern Baptist Convention attests that “God’s design was the creation of two distinct and complementary sexes, male and female (*Genesis* 1:27; *Matthew* 19:4; *Mark* 10:6) which designate the fundamental distinction that God has embedded in the very biology of the human race.” Southern Baptist Convention, *On Transgender Identity*, (June

1, 2014), <https://www.sbc.net/resource-library/resolutions/on-transgender-identity/>. Accordingly, they believe that “gender identity is determined by biological sex and not by one’s self-perception—a perception which is often influenced by fallen human nature in ways contrary to God’s design.” *Id.* (citing *Ephesians* 4:17-18). Thus, like millions of Bible-believing Christians, Southern Baptists “oppose efforts to alter one’s bodily identity . . . to refashion it to conform with one’s perceived gender identity.” *Id.*

C. Islam

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

These generational teachings extend to Islam’s prohibition on acting on same-sex sexual desires and transexual behavior. As devout Muslims recognize, the Quran condemns men who “lust after men instead of women.” *Qur’an, Al-A’raf* 7:80-81. Both Shi’ah and Sunni Muslims hold to the Quran’s teaching: “O Mankind! We created you all from a male and a female,” *Id., Al-Hujurat* 49:13—“all human beings, whether male or female.” *Id., Surah An-Nisa* 4:1. And the Hadith—collected revelations of the prophet Muhammad—relay that “[t]he Messenger of God cursed the women who imitate men and the men who imitate women,” Jami` at-Tirmidhi, 43 ch. 34, and “[t]he

Prophet cursed effeminate men (those men who ... assume the manners of women) and those women who assume the manners of men.” Sahih al-Bukhari, 77 ch. 62. Sharia law does not recognize sex change as possible. *Male, Female, or Other: Ruling of a Transgender Post Sex Change Procedures*, Am. Fiqh Acad., <https://www.fiqhacademy.com/resolutions/3> (last visited July 7, 2025).

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

D. Hinduism

For Hindus, *Dharma* is the natural universal law of religious or moral duties. Child-rearing is a parent’s highest righteous duty: “Parents are indeed the first guru[, and] [t]he child’s deepest impressions come from what the parents do and say.” Satguru Bodhinatha Veylanswami, *Raising Children as Good Hindus*, Hinduism Today (Apr. 15, 2021), <https://www.hinduismtoday.com/hpi/2021/04/15/insight-raising-children-as-good-hindus/>. In Hinduism, parents have the preeminent right and obligation of parents to impart education to their children and help them understand their sacred duties in life. *Brihadaranyaka Upanishad*, 1.5.17, <http://vivekavani.com/bru1c5v17/>

Ancient Hindu legal treatises, *Dharmasastra*, teach that marriage is divinely sanctioned—and heterosexual. *Dharma Sastra*, vol. 6 Manu Sanskrit, ch. III, 80-93, <https://archive.org/details/dharmasastra-with-english-translation-mn-dutt-6-vols-20-smritis/Dharma%20Sastra%20Vol%206%20Manu%20Sanskrit/page/80/mode/2up>.

It instructs that righteous behavior can only occur when sexual behavior is within heterosexual marriage, and when males and females align with their distinct roles and identities. *Gender and Sexuality*, Patheos, <https://www.patheos.com/library/hinduism/%20ethics-morality-community/gender-and-sexuality> (last visited May 29, 2025). To allow one’s child to be taught gender fluidity or practice transgenderism would violate *Dharma*.

* * *

Government officials here surreptitiously undermined both the parent–child relationship itself and deeply held religious beliefs that many American parents are doctrinally obliged to instill in their children. This action not only burdens a right “implicit in the concept of ordered liberty,” *Glucksberg*, 521 U.S. at 721 (citation omitted)—child rearing—it also assaults religious freedom with oppression, coercion, and discrimination. The school employees’ act of concealment “unduly burdens the free exercise of religion,” *Yoder*, 406 U.S. at 220, and fails strict scrutiny. It shocks the conscience too.

CONCLUSION

The Court should reverse.

Respectfully submitted,

/s/ Alyssa L. Cory

SHUTTS & BOWEN LLP

Denise M. Harle

Florida Bar No. 81977

215 S. Monroe Street, Suite 804

Tallahassee, Florida 32301

(850) 241-1717

DHarle@shutts.com

Alyssa L. Cory

Florida Bar No. 118150

4301 W. Boy Scout Blvd, Suite 300

Tampa, Florida 33607

(813) 229-8900

ACory@shutts.com

Counsel for Amicus Curiae

Religious Freedom Institute

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1. Pursuant to Fed. R. App. P. 32(g), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7). Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 3,707 words.

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5. I further certify that, in accordance with 3d Cir. Local App. R. 28.3(d), I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

Dated: July 7, 2025

/s/ Alyssa L. Cory
Alyssa L. Cory

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2025, I electronically filed the foregoing brief with the United States Court of Appeals for the Third Circuit using the appellate CM/ECF system. I certify that counsel for all parties in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Alyssa L. Cory
Alyssa L. Cory