No. 19-1746

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DAVID CARSON, as parent and next friend of O.C.
AMY CARSON, as parent and next friend of O.C.;
ALAN GILLIS, as parent and next friend of I.G.;
JUDITH GILLIS, as parent and next friend of I.G.;
TROY NELSON, as parent and next friend of A.N. and R.N.;
ANGELA NELSON, as parent and next friend of A.N. and R.N.,
Plaintiffs-Appellants,

v.

A. PENDER MAKIN, in her official capacity as COMMISSIONER OF THE MAINE DEPARTMENT OF EDUCATION,
Defendant-Appellee.

On Appeal from the
United States District Court for the District of Maine, Bangor

AMICUS BRIEF OF THE FREEDOM FROM RELIGION FOUNDATION IN SUPPORT OF APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

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INTEREST OF AMICUS[1]

The Freedom From Religion Foundation (FFRF) is the largest national association of freethinkers, representing atheists, agnostics, and others who form their opinions about religion based on reason, rather than faith, tradition, or authority. FFRF has over 30,000 members, including members in every state and the District of Columbia. FFRF has 23 local and regional chapters across the country, including an FFRF Maine chapter. FFRF's two purposes are to educate the public about nontheism and to preserve the cherished constitutional principle of separation between religion and government. FFRF ends hundreds of state-church entanglements each year through education and persuasion, while also litigating, publishing a newspaper, and broadcasting educational programming. FFRF, whose motto is "freedom depends on freethinkers," works to uphold the values of the Enlightenment.

[1] All parties consented to the filing of this amicus brief. No party's counsel in this case authored this brief in whole or in part. No party or party's counsel contributed any money intended to fund preparing or submitting this brief. No person, other than amicus, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

ARGUMENT

Maine has adopted a limited program to allow private educational institutions to receive direct grants of taxpayer money in certain communities that lack equivalent public schools due to low student population. To qualify for these grants, Maine requires, among other things, that the private schools be "nonsectarian." *See* 20–A M.R.S. § 2951(2). Section 2951(2)'s "nonsectarian" requirement protects and fosters the religious freedom of *all* citizens. It does so by ensuring that the State does not wield its taxing power to benefit religious schools or fund religious education. In this way, no taxpayer is compelled to financially support any religious ideology that runs counter to their personal beliefs.

This most basic religious liberty protection has been drowned out in this case by Maine Christians—members of the state's majority religion—claiming discrimination. Their attempts to secure government funding to subsidize religious education are a direct assault on the right

to religious liberty they claim to support. The constitutional prohibition on states taxing citizens for the benefit of religion, directly or indirectly, guarantees religious liberty for all. As Thomas Jefferson explained in the Virginia Statute on Religious Freedom, "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical . . . ."[2] James Madison called the statute "a true standard of Religious liberty."[3] He did so because it stood as "the great barrier [against] usurpations on the rights of conscience."[4]

To open up Maine's school funding scheme to religious schools would imperil, not protect, religious liberty. The Appellants argue otherwise because they have failed to correctly identify who possesses that right. The religious liberty at issue here does not lie with Christian

[2] 2 THOMAS JEFFERSON, *82. A Bill for Establishing Religious Freedom, 18 June 1779*, *in* THE PAPERS OF THOMAS JEFFERSON, 545–53 (Julian P. Boyd ed., 1950).
[3] 1 JAMES MADISON, *Detached Memoranda, Ca. 31 January 1820*, *in* THE PAPERS OF JAMES MADISON, RETIREMENT SERIES, 4 MARCH 1817 – 31 JANUARY 1820, 600–27 (David B. Mattern et. al. eds., 2009).
[4] *Id.*

parents or religious schools, for they remain free to operate and attend private religious schools absent government aid. The rights jeopardized in this case lie with every Maine citizen and taxpayer.

The state's taxing power is inherently coercive. When that power is used directly, or even indirectly, to benefit religious education, it violates the rights of conscience of all citizens.[5] To employ the state's taxing power in such a manner is to permit the very tyranny that Jefferson and Madison sought to restrain with the Virginia Statute for Religious Freedom. *That* is the evil that Section 2951(2) seeks to avoid: state encroachment on the right of citizens not to subsidize a religion that is not their own.

[5] 8 JAMES MADISON, *Memorial and Remonstrance against Religious Assessments, [ca. 20 June] 1785*, *in* THE PAPERS OF JAMES MADISON, 10 MARCH 1784 – 28 MARCH 1786, 295–306 (Robert A. Rutland & William M. E. Rachal eds., 1973) ("The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable, because the opinions of men, depending only on the evidence contemplated by their own minds cannot follow the dictates of other men . . . .").

If this Court accepts the Appellants' invitation to abandon this basic principle of religious freedom, we will have reached a disastrous moment in American history: the era of government-compelled tithing.

Reflecting on the legislative history of Section 2951(2), this Court previously recognized three important state interests advanced by excluding religious schools from receiving taxpayer money meant to fund the provision of secular education to Maine students. "These reasons include Maine's interests in concentrating limited state funds on its goal of providing secular education, avoiding entanglement, and allaying concerns about accountability that undoubtedly would accompany state oversight of parochial schools' curricula and policies (especially those pertaining to admission, religious tolerance, and participation in religious activities)." *Eulitt v. Maine Dept. of Educ.*, 386 F.3d 344, 356 (1st Cir. 2004).

This brief first discusses another much more fundamental and essential state interest protected by the statute: protecting the religious

freedom of its taxpayers by ensuring that they will not be compelled to fund religious education. The brief then highlights the additional state interest in avoiding the government oversight of private religious schools that would be needed were those schools receiving state funds. Finally, the brief addresses how the erosion of the state's interest in funding secular education would be more than just a byproduct of eliminating Section 2951(2), for that result is a desirable goal unto itself for many in the "school choice" movement.

I. Section 2951(2) protects religious liberty by ensuring that taxpayers are not compelled to subsidize a religion that is not their own.

The true purpose behind Section 2951(2)'s prohibition on public funding to private religious schools is the same fundamental purpose embodied in our Constitution's Establishment Clause: to protect religious freedom. Failing to enforce this "no aid" requirement would erode religious liberty.

A. Section 2951(2) embodies the fundamental constitutional "no aid" principle—that the government must not subsidize religious teaching or worship.

The principle embodied in Section 2951(2) is that the government should not tax citizens to benefit a religion. Religious worship, religious education, and maintaining places of worship should be the result of free and voluntary support given by the faithful. James Madison, the Father of the Bill of Rights and the Constitution, explained this purpose well in his condemnation of a three-penny tax to support Christian preachers and churches: "The Religion then of every man must be left to the conviction and conscience of every man," not the taxing power of the state.[6]

Religious duty, including financial support, is a personal duty over which governments can have no jurisdiction. "It is the duty of every man to render to the Creator such homage and such only as he believes

[6] 8 JAMES MADISON, *Memorial and Remonstrance against Religious Assessments, [ca. 20 June] 1785*, *in* THE PAPERS OF JAMES MADISON, 10 MARCH 1784 – 28 MARCH 1786, 295–306 (Robert A. Rutland & William M. E. Rachal eds., 1973).

to be acceptable to him," as Madison put it.[7] American governments simply do not have the power to tax citizens to fund churches and religious education. Alexander Hamilton explained this in The Federalist No. 69: referring to the president, he wrote that the government "has no particle of spiritual jurisdiction."[8] This principle is vital to ensure true religious freedom.

The compulsory support of a religion that is not one's own is anathema to American principles. Religious liberty cannot exist when the government can force citizens to donate to a sect that promises them, for example, eternal damnation and torture for exercising that freedom of religion. The Virginia Statute for Religious Freedom also recognized that compelled government support to one's *own* religion is a violation of one's rights of conscience: "[E]ven the forcing him to support this or that teacher of his own religious persuasion, is depriving him of

[7] *Id.*
[8] THE FEDERALIST NO. 69 (Alexander Hamilton).

the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern."[9] Thus, striking down Section 2951(2) would jeopardize the religious freedom of every citizen of Maine, including religious adherents.

It is not just direct taxes that violate religious liberty but employing the taxing power in any manner to fund sectarian education. Daniel Carroll, a Catholic representative to the Constitutional Convention from Maryland, put it best during the congressional debates on the First Amendment when he said that "the rights of conscience are, in their nature, of peculiar delicacy, will little bear the gentlest touch of the governmental hand."[10] The government hand at issue here is not the one refusing to slip cash to Christian schools, but the hand reaching into every citizen's pocket to extract that cash—and it's not particularly gentle.

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[9] 2 THOMAS JEFFERSON, *82. A Bill for Establishing Religious Freedom, 18 June 1779*, *in* THE PAPERS OF THOMAS JEFFERSON, 545–53 (Julian P. Boyd ed., 1950).
[10] 1 ANNALS OF CONG. 729–31 (1789).

The Founders determined that the government could not subsidize religion and the Supreme Court reaffirmed that principle when it first applied the Establishment Clause to the states. In *Everson v. Board of Education of Ewing Township,* the Court wrote, "The 'establishment of religion' clause of the First Amendment means at least this . . . *No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion . . .*" 330 U.S. 1, 15–16 (1947) (emphasis added).

The Court ruled just one year later that allowing religious instructors from various denominations into public schools violated the Establishment Clause. *McCollum v. Bd. of Educ. of Sch. Dist. No. 71*, 333 U.S. 203 (1948). The Court expressly relied upon *Everson* and the use of taxpayer money, saying, "This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith." *Id.* at 210. The school system

argued in *McCollum* that the program was permissible because the First Amendment "was intended to forbid only government preference of one religion over another, not an impartial governmental assistance of all religions." *Id.* at 211. The Court soundly rejected this argument and found that rather than "manifest[ing] a governmental hostility to religion," the First Amendment *protected* religious free exercise by erecting "a wall between Church and State which must be kept high and impregnable." *Id.* 211–12.

The Supreme Court later reiterated a strong commitment to the religious liberty principles in *Everson,* including the prohibition on giving public aid to religion. *See Sch. Dist. of Abington Twp. v. Schempp,* 374 U.S. 203, 216–17 (1963) (discussing the majority and dissenting opinions in *Everson*); *Torcaso v. Watkins*, 367 U.S. 488, 493 (1961) (recalling that the Court was "urged to repudiate" the principles in *Everson* in the *McCollum* case and noting it "declined to do this, but instead strongly reaffirmed what had been said in *Everson* . . ."). The

Court's lengthy discussions of the meaning and purposes of the First Amendment's religion clauses in these cases focus on separating religion and government—to the benefit of both. The Court could not have more resoundingly rejected the argument now advanced by the Appellants, that the religion clauses actually *require* taxpayers to fund religion. That notion is completely foreign to the Constitution.

Our nation, our Founders, and the Justices of the Supreme Court have always understood that religious liberty flourishes when government does not tax citizens to aid religion. It is no surprise then that many U.S. states have clarified the protection for religious liberty by statute or through state constitutional "no aid" provisions. Maine's addition of Section 2951(2) to its school funding scheme is consistent with this fundamental truth, learned over the course of our nation's history. Maine's interest in protecting its citizens' religious liberty by maintaining a strict separation between religious education and state funding could not be higher.

B. The "no aid" principle underlying Section 2951(2) dates to America's founding and was uniformly accepted after years of experience.

Though opponents to the separation of state and church recently have used revisionist history in an attempt to rewrite state-church relations, the federal government's early history of embracing state-church separation has been well-established and acknowledged by the Supreme Court for half a century at least. "[F]or the men who wrote the Religion Clauses of the First Amendment the 'establishment' of a religion connoted sponsorship, *financial support*, and active involvement of the sovereign in religious activity." *Walz v. Tax Comm'n of City of N.Y.*, 397 U.S. 664, 668 (1970) (emphasis added).

The history of the states is more varied, each adopting disestablishment principles at different times and to varying degrees. New Jersey, Pennsylvania, Maryland, North Carolina, and Virginia began disestablishment in the year of American independence, 1776. Other states took longer to realize the severe problems with sponsoring

or financially supporting religion, disestablishing up through the 1830s. *See Trinity Lutheran Church of Columbia, Inc. v. Comer,* 137 S. Ct. 2012, 2032–36 (2017) (Sotomayor, J., dissenting). But regardless of the timeline, in the case of disestablishment, America's "laboratories of democracy" yielded remarkably consistent results. Looking to the federal model, *every* state ultimately codified this self-evident truth: there is no freedom *of* religion without a government that is free *from* religion. States that funded churches via established religions changed course. "Every state establishment saw laws passed to raise public funds and direct them toward houses of worship and ministers. And as the States all disestablished, one by one, they all undid those laws." *Id.*

This history is crucial to the issue now before this Court. These states experienced religious establishments and after lengthy and careful debates decided to stop taxing citizens to support religion because doing so violated the civil rights and religious liberty of those citizens. The states learned this hard lesson over decades of living in a

pluralistic America, which has only become more diverse nearly two centuries later. Section 2951(2) is a recognition of this well-established history, within the specific context of Maine's school funding scheme.

This history seems distant today, but was the result of centuries—millennia—of oppression by religion blended with government. Thanks to the separation of state and church, Americans do not have that oppressive experience. And some have become complacent. We are, in some sense, victims of the successful American experiment in keeping state and church separate. Many Americans lack a basic understanding of how these provisions protect religious freedom. That has led some, including the well-meaning parents in this case, to question whether the provisions are still valuable. They are; and this Court ought not to rule against them when they have served this country so well in protecting religious liberty.

II. Section 2951(2) avoids government entanglement with religious education and the government oversight that must necessarily be coupled with state funding.

Granting religious schools a right to access the public purse will inevitably lead to government regulation of religious schools. It must. Where public money goes, public accountability must follow. State governments have generally had a "hands-off" approach to religious institutions, including private religious schools, which are largely unregulated by state education agencies. That will have to change if private schools receive public money.

The special concerns over state separation and intervention in religion were highlighted by Supreme Court Justice Robert Jackson, a titan of the Court whose exemplary dissent in *Korematsu* is widely considered one of history's greatest dissents for its condemnation of America's WWII internment camps for citizens of Japanese ancestry. In a less famous though similarly powerful dissent, he explained how the Constitution protects religious freedom—he wrote that the First

Amendment "take[s] every form of propagation of religion out of the realm of things which could directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers' expense." *Everson*, 330 U.S. at 26–27 (Jackson, J., dissenting). He further noted, "That is a difference which the Constitution sets up between religion and almost every other subject matter of legislation, *a difference which goes to the very root of religious freedom . . . .*" *Id.* (emphasis added).

Justice Jackson also highlighted the paramount rationale underlying the religious freedom protections in the First Amendment:

> This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity. It was intended not only to keep the states' hands out of religion, but to keep religion's hands off the state, and *above all, to keep bitter religious controversy out of public life by denying to every denomination any advantage from getting control of public policy or the public purse.*

Id. (emphasis added).

State-church separation gives religion significant benefits—preventing courts from adjudicating church ministerial disputes, for instance. *See, e.g., Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.,* 565 U.S. 171, 188 (2012) (holding that state resolution of a ministerial dispute violated the Free Exercise and Establishment clauses). Attached to these benefits are relatively few conditions, but one of those few is, most importantly, that taxpayers will not fund religion.

By seeking an end to Section 2951(2), Appellants seek to augment the benefits religious institutions receive under the separation of state and church while eliminating the essential conditions. The Appellants want to have their cake—which they think Maine taxpayers must buy—and eat it too. But if they are successful, this will lead to additional state oversight and control of religious schools.

When public money flows to private schools, however indirect the route, regulation is foreordained because the unregulated flow of funds

to unaccountable organizations guarantees abuse. Not surprisingly, the country's longest-lived private voucher program is bloated with such abuse. In Milwaukee, Wisconsin, over a ten-year period, more than $139 million in taxpayer funds went to voucher schools that were kicked out of the program for failing to meet basic requirements.[11]

The abuse is startling. One school run by a preacher, LifeSkills Academy, collected more than $200,000 in state subsidies for the 2012–13 academic year before closing abruptly "in the dead of night" in December, leaving seventy students without a school to attend.[12] State records documented alarming conditions,[13] including allegations that the school falsified records of National School Lunch Program meals, served expired food, served "Ramen noodles with hot sauce and a cup of

[11] Molly Beck, *State paid $139 million to schools terminated from voucher program since 2004*, WISCONSIN STATE JOURNAL (Oct. 12, 2014), *available at* bit.ly/2NlL9zI.
[12] Erin Richards, *Milwaukee voucher school LifeSkills Academy closes 'in the dead of the night*, MILWAUKEE JOURNAL SENTINEL (Jan. 14, 2014), *available at* https://bit.ly/2oAnm5b.
[13] *See Amicus Curiae* FFRF's Letter to the Florida Department of Education (Jan. 30, 2014), *available at* https://bit.ly/2Nghnwv.

water for lunch," and "cut" whole milk with water.[14] A former employee charged that the preacher falsified state records and believed he would get away with it because, "Can't nothing touch him but God."[15] Over its six years, LifeSkills collected more than $2.3 million in public money before shutting down and leaving families of students scrambling to find a new school. The preacher fled to a gated community in Florida, where he opened LifeSkills Academy II.[16]

Alex's Academic of Excellence—"Academic" is indeed how this school spelled its name—raked in more than $3.5 million in taxpayer funds over five years before closing. Evicted for code violations from two locations, the school ended up in a storefront. According to reports, "children departed through the back entrance on Thursday afternoon and stood beside a trash receptacle overflowing with refuse—including

[14] *See* Exhibit 10 of *id.*, *available at* https://bit.ly/2JL4wQv.
[15] *Id.*
[16] Erin Richards, *Leaders of closed Milwaukee voucher school are now in Florida*, MILWAUKEE JOURNAL SENTINEL (Jan. 15, 2014), *available at* https://bit.ly/32nQT0m.

the box spring for a bed—while they waited for buses to arrive."[17] The principal saw employees smoking marijuana in school and saw a staffer with a bag of crack cocaine. The school's founder and CEO was a convicted rapist who received a thirty-year prison term and served nine years.[18]

There are plenty of other examples from Milwaukee alone. Some private schools receiving voucher money failed to provide textbooks to students.[19] Others taught subjects from fundamentalist Christian textbooks that claimed things like "a belief in Darwinian evolution" was a cause of World War II and that through spirituals, "slaves developed the patience to wait on the Lord and discovered that the truest freedom is freedom from the bondage of sin."[20]

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[17] Sarah Carr, *Who cleans up problem choice schools?*, MILWAUKEE JOURNAL SENTINEL (Sept. 15, 2003), *available at* https://goo.gl/zoCc45.
[18] *Id.*
[19] Erin Richards, *Former Employees Cast Doubt on Voucher School's Operations*, MILWAUKEE JOURNAL SENTINEL (Dec. 15, 2014), *available at* https://bit.ly/2n7I9Nf.
[20] Frances Paterson, *Building a Conservative Base: Teaching History and Civics in Voucher-Supported Schools*, 82 THE PHI DELTA KAPPAN, 150, 151–52 (2000), *available at* www.jstor.org/stable/20439835.

While public schools have elected school boards, there is little–to–no public oversight of private schools receiving public money. The citizens who subsidize the schools end up with no say in even minimal academic or safety regulations. The solution to these problems is inevitable if private religious schools receive public funding: accountability through government oversight.

One *amicus* has already flagged for this Court that religious schools will resist any attempt by the state to hold them to the standards that apply to public schools, including, concerningly, the requirements in the Maine Human Rights Act (MHRA) that schools receiving state funding not discriminate in hiring decisions based on sexual orientation. *See* Amicus Brief of the American Center for Law and Justice at 5 ("Any requirements that condemned as 'discrimination' a religious school's adherence to its mission integrity, and in particular to religious doctrines on sexuality and human nature, would essentially put the religious school to the choice of changing its doctrines or

disqualifying itself from otherwise available public benefits."). Citizens of Maine should not have to condone such discriminatory hiring practices through taxpayer subsidies. And the State Legislature agrees.

If religious schools continue to insist on a constitutional right to dip into the public purse, and if this Court should agree, state-church relations will be altered in fundamental ways for which nobody is prepared. Ultimately, accepting public money *will* open private schools to public oversight, which in turn will invite government entanglement with those schools. Keeping religious schools out of the public treasury allows them to remain free from government regulation and public accountability—another way that Section 2951(2) fosters religious freedom.

III. Granting state funding to private religious schools will undermine secular education.

By seeking to eliminate Section 2951(2), Appellants seek to aid religious education at the expense of public education. This Court

previously noted that among other compelling interests, Section 2951(2) reflects the state's interest "in concentrating limited state funds on its goal of providing secular education." *Eulitt*, 386 F.3d at 356. It is self-evident that expanding Maine's school-funding scheme to include private religious education would divert state funds away from secular education. The standing of some parent-Appellants in this case is premised on this very assertion: but for Section 2951(2), they would divert taxpayer dollars away from institutions of secular education to their preferred private religious schools. For many in the "school choice" movement, it is more than just a happy accident that the government subsidization of religious education has the side effect of eroding secular education and our nation's public schools.

Now that "school choice" is the focus-group-tested language adopted by the movement, most proponents rarely talk openly about their goal of undermining public education. But in the minds of some school choice activists, the erosion of traditional Protestantism in this

country is due to the type of education students receive in traditional public schools. As author and researcher Katherine Stewart put it in her book exposing evangelical influence in public schools, these activists "see the weakening of support for public education as a desirable side effect or even a goal of their work."[21] Stewart summarized her findings bluntly: national groups supporting religious initiatives "see our system of public education as a bad thing," and noted, "[t]hese are the same groups that sponsor efforts to undermine, defund, and perhaps ultimately destroy the system altogether."[22]

Some "school choice" activists are open about their desire to undermine public education. Teri Adams, president of the Independence Hall Tea Party PAC, stated that the organization thinks "the public schools should go away," and that its "ultimate goal is to shut down

[21] KATHERINE STEWART, THE GOOD NEWS CLUB: THE CHRISTIAN RIGHT'S STEALTH ASSAULT ON AMERICA'S CHILDREN, 5 (Public Affairs, 2012).
[22] *Id.*

public schools and have private schools only."[23] The executive director of National School Choice Week, Kyle Olson, who helped create and chaired the project through its 2011 birth, wrote, "I would like to think that, yes, Jesus would destroy the public education temple and save the children from despair and a hopeless future."[24] Olson continued, "But, Jesus isn't in Michigan—or Indiana—so it's incumbent upon leaders to do something about it. And in Indiana, they're trying."[25] He was, of course, referring to the efforts of "school choice" advocates to undermine Indiana's public education system by instituting a voucher system.

The attack on Section 2951(2) makes it clear that the "school choice" push is about more than supplementing public education with private options. Maine's legislative initiative already allows for state funds to aid private secular schools. Eliminating Section 2951(2) would

[23] *Id.* at 254.
[24] Kyle Olson, *Jesus Isn't in Michigan*, TOWNHALL (Mar. 18, 2011), *available at* https://bit.ly/2NlaxG2; *see also* Stewart, *supra* note 21 at 254.
[25] Olson, *supra* note 24.

advance the more nefarious goal of the "school choice" movement: ending public education.

CONCLUSION

The religious liberty interest that is primarily threatened in this case lies not with the Appellants, but with Maine taxpayers, and it dates back to America's founding. The principle that the state must not fund religious instruction at taxpayer expense is among our most fundamental and essential rights. Over our long history, there has never been any indication that religious liberty protections actually require the government to financially support religion. The cost of revisiting that principle now will be felt by every citizen in the state.

Striking Section 2951(2) from Maine's school-funding scheme would compromise the religious freedom of every State citizen. Minority religious and nonreligious citizens would be immediately coerced into subsidizing religious education with which they fundamentally disagree. That result would be, as Thomas Jefferson wrote, "sinful and

tyrannical." The rights of the state's Christian taxpayers—the majority religion—would be similarly infringed, as Jefferson noted in that same document.[26] Finally, if they begin receiving state funding, religious schools will likely be subjected to the state regulation that must necessarily follow—although they may well fight in court for the special privilege of receiving state funding without the concomitant oversight, in which case it will be the students who suffer most.

This Court should not undo the Maine Legislature's decision not to subsidize sectarian education. Neither the parents seeking public money, nor the religious schools, have a right to taxpayer funds, directly or indirectly. The State's decision is the only path consistent with fundamental principles of religious liberty.

Simply put, religion must support itself. Benjamin Franklin, who cautioned about government support of religion, wrote, "When a

[26] 2 THOMAS JEFFERSON, *82. A Bill for Establishing Religious Freedom, 18 June 1779*, *in* THE PAPERS OF THOMAS JEFFERSON, 545–53 (Julian P. Boyd ed., 1950).

Religion is good, I conceive that it will support itself; and when it cannot support itself, and God does not take care to support, so that its Professors are oblig'd to call for the help of the Civil Power, 'tis a Sign, I apprehend, of its being a bad one."[27] Let the faithful *voluntarily* support their faith and their religious schools. To involve the state in such decisions violates everyone's religious liberty.

Respectfully submitted,

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November 7, 2019

[27] Letter from Benjamin Franklin to Richard Price (Oct. 9, 1780), *in* THE PAPERS OF BENJAMIN FRANKLIN at 389–399 (Barbara B. Oberg ed., 1997).

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Fed. R. App. P. 29(a)(5), as it contains 4,753 words, excluding those portions of the brief exempted from the word count by Fed. R. App. P. 32(f).

This brief further complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5)–(6) because it was prepared with Microsoft Word 2019 in Century Schoolbook 14-point font, a proportionally spaced typeface.

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system on the following persons:

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