## QUESTION PRESENTED

1. Whether the First Amendment's Establishment Clause is violated by an Arizona statute under which school tuition organizations—state instrumentalities that are funded with tax revenues and heavily regulated by the state Department of Revenue—discriminate on the basis of religion in awarding scholarships.

2. Whether Respondents have standing as taxpayers to assert an Establishment Clause challenge to the Arizona statute.

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## INTERESTS OF *AMICI CURIAE* [1]

This *amici curiae* brief in support of the Respondents is being filed on behalf of the American Humanist Association, American Ethical Union, Atheist Alliance International, Center for Inquiry, Council for Secular Humanism, Freedom From Religion Foundation, Institute for Humanist Studies, Secular Coalition for America, Secular Student Alliance, Society for Humanistic Judaism and Unitarian Universalist Association, comprising a diverse array of secular and religious organizations that advocate on behalf of religious liberty and equal opportunity, and offer a unique viewpoint concerning the history of religious freedom and civil rights in the United States of America.

*Amici* assert that this case addresses core humanist and atheist concerns about the public's responsibility to provide a secular education for our children. The Arizona statute at issue in this case—Ariz. Rev. Stat. §43-1089—subverts the tax system by providing tax credits for the funding of religious education for children. Taxpayers are given a dollar-for-dollar tax credit for contributions to school tuition organizations ("STOs"). In a hypothetical

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[1] *Amici* file this brief with the consent of all parties. Consents of the parties are on file with the Clerk of the Court. No counsel for any party in this case authored in whole or in part this brief. No person or entity, other than *amici*, their members or their counsel made a monetary contribution for the preparation or submission of this brief. The amici have no parent corporations, and no publicly held companies own 10% or more of their stock.

world, each STO might be required to award scholarships based on financial need or other non-religious criteria; such an STO would discriminate neither against nor in favor of religious applicants in the awarding of scholarships. In actual practice, however, there are Catholic STOs that provide scholarships only for education at Catholic schools, Jewish STOs that provide scholarships only for education at Jewish schools, and so on. Further, the STOs, when considered collectively, provide much more money for religious education than for secular education. The choice of Arizona parents to provide a secular private education for their children is thus severely limited by the manner in which the Arizona tax credit program operates. It is far easier to obtain a scholarship for religious education.

*Amici* wish to bolster the principle of religious neutrality—that government may not prefer one religion over another, or religion over nonreligion—by informing the Court that *amici* support the Ninth Circuit's decision and that a reversal of the decision would have the constitutionally impermissible effect of advancing religion.

## SUMMARY OF ARGUMENT

First, the Respondents have made a *prima facie* case that the Arizona statute at issue, as applied by the Department of Revenue, violates the Establishment Clause, inasmuch as the primary purpose and effect of Ariz. Rev. Stat. §43-1089 is state funding of private religious instruction.

Second, regarding the issue of standing, enforcement of fundamental rights guaranteed by the constitutions of the United States and Arizona requires access to the courts. Petitioners would have the Court deny citizens of Arizona their fundamental right of religious liberty by closing the Doors of Justice—access to the courts. A failure to accord Respondents standing would, in effect, erect an impenetrable barrier to judicial scrutiny of legislative action.

State taxpayers have had standing to challenge violations of the Establishment Clause for the past 63 years—since the Court first applied the Establishment Clause to the states. Respondents' status as state taxpayers and the facts of this case are consistent with the requirements for taxpayer standing set forth by the Court in *Flast v. Cohen*, 392 U.S. 83 (1968), *Doremus v. Board of Ed. of Borough of Hawthorne*, 342 U.S. 429 (1952), *Hein v. Freedom From Religion Foundation, Inc.,* 551 U.S. 587 (2007) and *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006).

Third, the function of the federal judiciary is to resolve cases and controversies arising under the Constitution. Raising the bar of standing in order to insulate government officials and programs from accountability or redress—as the Petitioners implore the Court to do—is entirely inconsistent with the Court's function.

This case presents the Court with the opportunity to preserve our First Liberty—freedom

from government-sponsored religion—by affirming the decision of the court below.

## ARGUMENT

### I. ARIZONA'S "SCHOLARSHIP" PROGRAM VIOLATES THE CONSTITUTIONS OF THE UNITED STATES AND ARIZONA.

In Arizona, the Christian majority has used state government to advance their religion notwithstanding the First Amendment's prohibition against laws "respecting an establishment of religion."[2] Specifically, the primary purpose of enacting Ariz. Rev. Stat. §43-1089 ("Section 1089") was to fund private religious education and the primary effect has been that 90% of the scholarships awarded by STOs are awarded on the basis of religion.

By incentivizing the public to direct aid towards STOs without a provision forbidding discrimination on the basis of religion, Section 1089 aids majoritarian religions and "provide[s] the Church with a legal weapon that no atheist or agnostic can obtain." *City of Boerne v. Flores*, 521 U.S. 507, 537 (1997) (Stevens, J., concurring). In effect, the program allows taxpayers to "vote" with their pocketbooks, which ensures that dominant religions will be preferred and minority religions and

[2] U.S. Const., amend. 1: "Congress shall make no law respecting an establishment of religion."

nonreligion marginalized. "[T]he majoritarian process . . . guarantees, by definition, that minority candidates will never prevail and that their views will be effectively silenced." *Santa Fe Indep. Sch. Dist. v. Doe,* 530, U.S. 290, 308 (2000). Arizona allows the majority (Christians)[3] to use this instrument of the government to promote their version of religion, which misconceives what it is that the Constitution protects.

The Court has held that the First Amendment has "never meant that a majority could use the machinery of the State to practice its beliefs." *School Dist. of Abington Tp., Pa. v. Schempp,* 374 U.S. 203, 226 (1963). Rather, the framers intended the Bill of Rights to place "certain subjects . . . beyond the reach of majorities," where fundamental rights "may not be submitted to vote" and "depend on the outcome of no elections." *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 639 (1943). Under this statute, STOs promoting secular education or minority religions, including Buddhism, Taoism, Ethical Culture and others, *Torcaso v. Watkins,* 367 U.S. 488, 495 n. 11 (1961), like Wicca, are unlikely to be formed because of the administrative costs in establishing and operating an STO and diseconomies of scale.

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[3] Although any group may form an STO, Arizona drafted its statute to enable "85 percent or more of the state financed scholarship money" to be "available only to students whose parents are willing to send them to sectarian institutions." *Winn v. Arizona Christian School Tuition Organization,* 586 F.3d 649, 650 (2009) ("*Winn II*").

### A. School Tuition Organizations are instrumentalities of the state.

The STOs are instrumentalities of the state or "state actors" and, as result, the religious discrimination that religious STOs engage in when awarding scholarships to applicants must be imputed to the state for purposes of the Establishment Clause. *See Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374, 378 (1995). ("We have held once, *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), and said many times, that actions of private entities can sometimes be regarded as governmental action for constitutional purposes.")

For several reasons it is evident that STOs are state instrumentalities or state actors. First, STOs are funded with tax revenues—funds that would have otherwise been paid to the Arizona Department of Revenue had the tax revenues not been diverted to the STOs.

Second, STOs are heavily regulated by the Department of Revenue and the regulation is far more extensive than the regulation applied to private charities. STOs must meet the detailed requirements of new Chapter 16 of Title 43 of the Arizona Revised Statutes in order to be "certified" by the Department, and the Department has authority to revoke the certification if the statutory requirements are not met. One such requirement pertains to the use of an STO's revenues. Under § 43-1603(B)(1), an STO "[m]ust allocate at least ninety percent of its annual revenue for educational

scholarships or tuition grants." Presumably, the other 10 percent of the annual revenue must be spent on salaries and other administrative expenses. An STO does not have substantial discretion as to the use of its funds, but an ordinary charity would have such discretion. For example, an STO cannot satisfy the 90% requirement by purchasing computers and donating the computers to private schools even though that would serve an educational purpose. Also, unlike a private scholarship fund or other private charity, an STO must, under §43-1605, hire an independent certified public accountant to conduct an annual financial audit or review to evaluate the STO's compliance with the fiscal requirements of the statute. The report prepared by the CPA must be timely submitted to the Department. The state does not impose such detailed regulations on private scholarship funds regardless of their size. It makes sense that the statute imposes such detailed and burdensome requirements on STOs. After all, the operations of an STO are carried out with tax revenues, not private funds.

Third, the state's sovereign power to use tax revenues for education is delegated under the statute to the executives and officers of STOs and the education of children is "an activity that traditionally has been the exclusive, or near exclusive, function of the State." *Horvath v. Westport Library Ass'n*, 362 F.3d 147, 151 (2nd Cir. 2004).

### B. Constitutions of the United States and Arizona prohibit government funding of religious instruction.

In the present case, both the purpose and effect of Section 1089 is to promote religion. This is expressly prohibited by the Establishment Clause[4] of the United States Constitution and Religious Purpose Clause[5] of the Arizona Constitution.

The Court said emphatically in *Everson v. Board of Education*, 330 U.S. 1, 15-16 (1947):

> 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. (Emphasis added.)

To circumvent the prohibition in *Everson* against the use of tax revenues to support religious institutions, the Arizona legislature enacted Section 1089. Under Section 1089, an *illusion* is created that STOs are supported with private charitable

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[4] The Establishment Clause is made applicable to the states by the Due Process Clause of the Fourteenth Amendment. *Everson v. Board of Education of Ewing Township*, 330 U.S. 1 (1947).

[5] Ariz. CONST., art. 2, §12: "No public money or property shall be appropriated for or applied to any *religious* worship, exercise, or *instruction*, or to the support of any religious establishment." (Emphasis added.)

contributions. It is true that payments to STOs are made using private checking accounts, but that does not mean the payments are charitable contributions. Given the dollar-for-dollar tax credit, payments to STOs must be considered *tax payments*—money paid to satisfy tax obligations that would otherwise have been paid to the Department of Revenue.

The Arizona legislature and the Christian majority in that state have manipulated the tax code to provide government funds—cleverly disguised as charitable contributions—for the support of private religious schools. Under this Court's decisions, *infra*, it makes no difference whether a state is using its tax authority, rather than its spending authority, to fund so-called scholarships and grants to religious schools when the purpose and effect of the legislation is to fund religious instruction.

### C. The "purpose" of Section 1089 is to fund private religious instruction, thereby violating the Establishment Clause.

A statute violates the Establishment Clause, *inter alia*, when it lacks "a secular legislative purpose," or when "its principal or primary effect" either "advances" or "inhibits religion." *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1968).

The Ninth Circuit left open the issue of whether Section 1089 failed *Lemon's* purpose prong concluding that "plaintiffs' allegations, if accepted as true, leave open the possibility that plaintiffs could reveal the legislature's stated purpose in enacting Section 1089 to be a pretense." *Winn v. Arizona*

*Christian School Tuition Organization*, 562 F. 3d 1002, 1012 (2009) *("Winn I").*

*Amici* are of the view that there is more than sufficient evidence in the record for the Court to find that the legislature's purpose for enacting Section 1089 indeed fails the purpose prong of *Lemon*.

*McCreary County, Ky. v. ACLU of Ky.* 545 U.S. 844, 864 (2005) informs us that "the secular purpose required has to be genuine, not a sham, and not merely secondary to a religious objective." Though deference is to be accorded the purpose articulated by the legislative branch, "[w]hen a governmental entity professes a secular purpose for an arguably religious policy . . . it is nonetheless the duty of the courts to 'distinguis[h] a sham secular purpose from a sincere one.'" *Santa Fe,* 530 U.S. at 308 (quoting *Wallace v. Jaffree*, 472 U. S. 38, 75 (1985) (O'Connor, J., concurring in judgment).

Arizona's stated purpose is a sham. The deference that the Court normally accords a legislative branch is not justified here. The record provides ample "evidence that the State deliberately skewed incentives toward religious schools" in violation of the Establishment Clause. *Zelman v. Simmons-Harris*, 536 U.S. 639, 650 (2002).

First, Arizona deliberately excluded discrimination based on religion in Section 1089 to enable STOs and schools to select applicants based on religion rather than on secular criteria (as was the case in *Zelman*). Any STO is eligible for funding so long as the schools supported by the STO do not

"discriminate on the basis of race, color, handicap, familial status or national origin." § 1089(H)(2). Consistent with the rule of statutory construction that the explicit mention of one thing is the exclusion of another, Arizona drafted its statute to allow taxpayers to contribute to STOs that discriminate on the basis of religion to favor religious applicants.

In *Zelman,* participating private schools were only eligible for funding if they agreed not to "discriminate on the basis of race, religion, or ethnic background, or to 'advocate or foster unlawful behavior or teach hatred of any person or group on the basis of race, ethnicity, national origin, or religion.'" Ohio Rev. Code 3313.976(A)(6); *Zelman v. Simmons-Harris,* 536 U.S. at 645. Arizona could have drafted its statute to prohibit STOs from funding schools that discriminate on the basis of religion, but that would have defeated the very purpose of the statute.

Second, under the Section 1089 program now in effect, scholarships need not be awarded on the basis of financial need, academic achievement or other non-religious criteria. This strongly suggests a legislative intent to fund religious instruction. And this is quite different from *Zelman.* Under the Ohio school voucher program, children with the greatest financial need are given priority.[6] Although § 43-

[6] See Ohio Rev. Code 3313.977(A)(1)(c), for example, in which each registered private school is required to give a priority in kindergarten through third grade to "Children from low-income families . . . until the number of such students in each grade equals the number that constituted twenty per cent of the total

1603(D)(2) of Arizona's revised scholarship program (which takes effect on January 1, 2011) suggests that STOs "[s]hall consider the financial need of applicants," *amici* believe that the revision is insignificant as this new financial need clause is largely precatory. The revised statute requires that STOs "consider" financial need, however, the statute does not specify how much weight financial need is to be given in the awarding of scholarships.[7]

Third, Section 1089 provides a 100% tax credit to donors contributing to STOs with the result that Arizona funds the entire STO program. Arizona skewed incentives towards religion by offering 100% tax credits[8] instead of a tax credit typically in the range of 10-30% or tax deductions. This distinction is significant because the former creates an extraordinary incentive for the taxpayer to contribute to an STO because the taxpayer literally pays nothing—the state of Arizona picks up the entire expense of the STO program. A tax credit allows more people to donate to STOs as it makes the donation essentially free to the taxpayer. *See Hibbs v. Winn*, 542 U.S. 88, 95 (2004). Arizona's statute is an "ingenious" plan "for channeling state

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number of students enrolled in the school during the preceding year in such grade."

[7] For example, an STO might "consider" and note that Applicant A is financially needy while Applicant B is not needy, but nonetheless prefer Applicant B because he is far more devout in his religious practices.

[8] A taxpayer may annually take a 100% credit against his or her state income tax liability up to $500; married taxpayers filing jointly may take a credit up to $1,000. Ariz. Rev. Stat. §43-1089(A).

aid to sectarian schools." *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756, 785 (1973).

Indeed, the Court recognizes that "criteria might themselves have the effect of advancing religion by creating a financial incentive to undertake religious indoctrination." *Agostini v. Felton,* 521 U.S. 203, 231 (1997). In *Agostini* the Court held that financial incentives are not present "where the aid is allocated on the basis of neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis." *Id.* Because Arizona does not mandate that beneficiaries of Section 1089 be selected in a nondiscriminatory fashion, the statute has the effect of advancing religion and violates the principle of neutrality. "In the relationship between man and religion, the State is firmly committed to a position of neutrality. Though the application of that rule requires interpretation of a delicate sort, the rule itself is clearly and concisely stated in the words of the First Amendment." *Schempp,* 374 U.S. at 226.

Fourth, Arizona has failed to establish adequate criteria—intelligible principles—to guide STOs and taxpayers to achieve the putative secular purpose of providing "equal access to a wide range of schooling options for students of every income level." *Winn I,* 562 F.3d at 1011. Judge O'Scannlain incorrectly noted that, "by 'delegating' the choice to taxpayers, the government [b]roke the circuit." *Winn II,* 586 F.3d at 667. (O'Scannlain, J., dissenting). But Arizona did not "break the circuit" since it merely delegated its legislative duty to STOs. The

nondelegation doctrine maintains that "[a] legislative body cannot part with its powers by any proceeding so as not to be able to continue the exercise of them." *Town of East Hartford v. Hartford Bridge Co.,* 51 U.S. 511, 535 (1850). Legislatures may only delegate legislative authority if they provide adequate criteria—"intelligible principles"—to guide the exercise of discretion in pursuance of that law. *Whitman v. American Trucking Associations, Inc.,* 531 U.S. 457, 472 (2001).

Fifth, Arizona's tax credit program does not provide parents with a true private choice because the availability of vouchers rests in the hands of taxpayers who "direct funds to religious organizations." *Winn II,* 586 F.3d at 650. The crux of *Zelman* rested "not on whether few or many recipients chose to expend government aid at a religious school, but, rather, on whether recipients generally were empowered to direct the aid to schools or institutions of their own choosing." *Zelman* 536 U.S. at 651. The persons empowered under Section 1089 are not the recipients of the aid but rather the taxpayers who are providing the aid. Judge O'Scannlain's assertion that the program "is no Hobson's choice," since Arizona provides a "wide variety of secular alternatives," is misleading. *Winn II,* 586 F.3d at 666 (O'Scannlain, J., dissenting). He presumed that the "host of options available to Arizona parents" are equivalent to private school education. The "other options" listed in the dissent are far from adequate substitutes. First, tax credits that "are available for donations to public schools for 'extracurricular activities or character education,'" *id.*, are not alternatives since they merely go towards

ancillary school programs. Second, "homeschooling," *id.,* may not even be an option for many single parents or low-income families who cannot afford the time to teach or the money to pay for an at-home teacher. Finally, the "extensive system of charter schools," *id.,* is not an alternative to private school education since charter schools are part of the public school system and barred from receiving STO vouchers effective January 1, 2011.

Rather, the true purpose of Section 1089 is to fund private religious education at taxpayer expense and thereby relieve parents of the financial burden of sending their children to private religious schools. This is an impermissible religious purpose under the Establishment Clause and Arizona's Religious Purpose Clause.

### D. The "effect" of Section 1089 is to fund private religious instruction, thereby violating the Establishment Clause.

Section 1089 unquestionably fails the second prong of the *Lemon* test as its principal and primary effect advance religion. It is not coincidental that 93% of the $54 million collected by STOs in 2008 went to religious schools, and at least 91.5% of the $52 million collected in 2009.[9] Arizona intentionally omitted a religious-nondiscrimination clause, thereby intending the recipients of the vouchers to

[9] Review of 2008 and 2009 scholarships under Section 1089 conducted by *The Arizona Republic*. *See* "U.S. Supreme Court to weigh Arizona's tax credit law", May 25, 2010, available at http://www.azcentral.com/arizonarepublic/news/articles/2010/05/25/20100525arizona-tax-credit-law.html.

be overwhelmingly religious institutions and for nonsectarian schools to be incidental beneficiaries.

The Establishment Clause does not allow a state to hide behind the application of formally neutral criteria and remain studiously oblivious to the effects of its actions. *Capitol Square Review and Advisory Bd. v. Pinette,* 515 U.S. 753, 777 (1995) (O'Connor, J., concurring in part and concurring in judgment); *Santa Fe* at 307 n.21 (2000). The effect of Arizona's statute is not "neutral in all respects toward religion," *Zelman,* 536 U.S. at 653, because the statute is constructed in such a way that could enable all STOs to limit scholarships to religious schools only.[10] To form an STO, a nonprofit organization must offer scholarships or tuition grants to students "without limiting availability to only students of one school." Section 1089(G)(3). Because this language allows STOs to limit scholarship funds to religious schools only, Judge

[10] For example, the Catholic Tuition Support Organization (CTSO), which supports 25 Catholic schools and receives funding under Section 1089, sets forth the following requirement: "No person shall be admitted as a student to any Catholic school unless that person and the parents/guardian subscribe to the school's philosophy and agree to abide by the educational policies and regulations of the school and the Diocese." (D.H.B. 2110 (A)). The Diocesan Handbook expressly states, "Preference shall be given to Catholic students." *Diocese of Tucson Department of Catholic Schools*, Handbook of School Policies and Procedures, §2110 "Admissions" (2004). **(**Available at http://www.diocesetucson.org/Handbook%20of%20School%20Policies%20and%20Procedures.pdf.) Further, "Catholic and non-Catholic students must agree to attend religious classes and the religious activities conducted in the school." *Id*. at §2110(B).

O'Scannlain's argument that the statute could just as easily have "resulted in a total dearth of funding for religious organizations," and that the "feast or famine is utterly out of the state's hands," is incorrect. *Winn II* 586 F.3d at 662. (O'Scannlain, J., dissenting). Since Arizona could have prevented STOs from limiting tuition grants to religious schools only, the feast of funding for religious organizations is not out of the state's hands.

When the state is lending direct support to a religious activity, even a secular purpose and facial neutrality (if such were the case) may not be enough to guarantee its constitutionality. "The State may not, for example, pay for what is actually a religious education, even though it purports to be paying for a secular one, and even though it makes its aid available to secular and religious institutions alike." *Roemer v. Board of Public Works*, 426 U.S. 736, 747 (1976). In *Roemer,* the Court upheld a statute providing public aid in the form of noncategorical grants because secular activities could be separated out from sectarian ones and thus, the funded institutions were not so "pervasively sectarian." The Court based its ruling, *inter alia,* on the fact that "the student admission criteria did not depend on the students' religion." *Id.* at 755-756. Unlike *Roemer,* many of Arizona's private religious schools supported by STOs are pervasively sectarian.

In *Sloan v. Lemon,* 413 U.S. 825, 831 (1973), the Court held that Pennsylvania's tuition reimbursement legislation for tuition to nonpublic schools, without regard to income level, had the impermissible effect of advancing religion and

violated the Establishment Clause. The Court noted, "Pennsylvania authorizes grants to all parents of children in nonpublic schools—regardless of income level." *Id.* at 831. Conversely, the school voucher program upheld in *Zelman* provided educational assistance to poor children in a demonstrably failing public school system. *Zelman,* 536 U.S. at 653. The only "preference stated anywhere in the program [was] a preference for low-income families, who receive greater assistance and are given priority for admission at participating schools." *Id.* Unlike *Zelman* and like *Sloan*, Arizona does not provide scholarships to families based on the greatest financial need.

The Court has said that the antidiscrimination principle inherent in the Establishment Clause necessarily means that discrimination on the basis of religion cannot prevail. *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 611 (1989); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963). Because Arizona provides public funding to sectarian schools that discriminate on the basis of religion, the statute is invalid. *See e.g.*, *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (the Court implied that "a classification . . . drawn upon inherently suspect distinctions such as race, religion, or alienage" is unconstitutional).

## II. ARIZONA TAXPAYERS HAVE STANDING TO CHALLENGE TAX CREDITS FOR CONTRIBUTIONS TO SCHOOL TUITION ORGANIZATIONS.

### A. Non-Establishment Clause cases are inapposite with respect to taxpayer standing in Establishment Clause cases.

When a lawsuit is based on constitutional provisions other than the Establishment Clause, the plaintiff will generally lack standing when bringing suit solely in his or her capacity as a taxpayer. For example, in *DaimlerChrysler*, the general rule against taxpayer standing[11] was applied because the lawsuit was based on the Commerce Clause, which is not considered similar to the Establishment Clause for purposes of taxpayer standing. The Establishment Clause is unique. Only the Establishment Clause is a "specific limitation" on the power of Congress to tax or spend for the general welfare. *Flast,* 392 U.S. at 104-105.

Given the unique nature of standing when a taxpayer alleges that violations of the Establishment Clause have occurred, no reliance can be placed on general principles of standing or on cases cited by Petitioners and their *amici* involving provisions of the Constitution other than the Establishment Clause. Such cases are inapposite and serve only to confuse the issues presented. These cases include *Valley Forge Christian College v. Americans United*

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[11] *See Commonwealth of Massachusetts v. Mellon,* 262 U.S. 447, 488 (1923).

*for Separation of Church & State*, 454 U.S. 464 (1982) (no taxpayer standing to sue under the Property Clause of Art. IV, § 3, cl. 2 ); *United States* v. *Richardson,* 418 U. S. 166 (1974) (no taxpayer standing to sue under of Accountability Clause of Art. I, § 9, cl. 7); *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 228 (1974) (no taxpayer standing to sue under the Incompatibility Clause of Art. I, § 6, cl. 2); and *DaimlerChrysler* (no taxpayer standing to sue under the Commerce Clause of Art. I, § 8, cl. 3).

### B. Respondents have standing under *Flast* and *Doremus*.

1. State taxpayer standing under *Flast*.

The Court held in *Flast* that a taxpayer will meet the requirements of Article III standing "when he alleges that congressional action under the taxing and spending clause is in derogation of those constitutional provisions which operate to restrict the exercise of the taxing and spending power." *Flast,* 392 U.S. at 105-106. The *Flast* Court developed a two-pronged "nexus" test for taxpayer standing: (1) the plaintiffs must show a "logical link between [taxpayer] status and the type of legislative enactment attacked" and (2) the "taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged." *Id*. at 102.

Under Flast, a taxpayer has standing to sue under the Establishment Clause whenever government funds are expended in support of

religion pursuant to Congressional legislation. As Justice Stewart explained, "Because that clause plainly prohibits taxing and spending in aid of religion, every taxpayer can claim a personal constitutional right not to be taxed for the support of a religious institution." *Flast,* 392 U.S. at 114 (Stewart, J., concurring). This reasoning applies equally when it is not the federal government, but one of the states, which is appropriating government funds in an unconstitutional manner; see *infra* pp. 25-26.

If this Court were to overrule *Flast* or limit its logic to federal taxpayers only, fundamental principles of constitutional law favoring judicial review would thereby be frustrated.

Taxpayers have a "vested legal right" that their government not expend tax dollars in support of religion. *See McCreary County,* 545 U.S. at 860. Whenever tax dollars are spent in this manner, taxpayers should be able to seek the protections of the Establishment Clause by bringing a lawsuit in federal district court. Federal courts are not required to rule in favor of these taxpayers, but judicial review should be available and taxpayers given their day in court. Overruling *Flast* would be a serious mistake. It would be inconsistent with the basic principles of *Marbury v. Madison,* 5 U.S. 137 (1803), that favor judicial review when an allegation is made that legal rights are violated.

In *Flast*, the Court quoted James Madison's statement about the evils of forcing a taxpayer to contribute "three pence" for the support of religion.

*Flast,* 392 U.S. at 103. The Court's reference to a forced contribution of "three pence" is significant. Three pence is, and always was, a trivial and insignificant amount of money.[12] The reference underscores the salient point that the taxpayer plaintiff in *Flast* had standing even though the Establishment Clause violation alleged to exist neither increased the plaintiff's tax burdens nor otherwise caused any measurable pecuniary injury unique to the plaintiff. Further, the taxpayer plaintiff in *Flast* had standing even though no allegation was made that the plaintiff's tax burden would be reduced if the Court ordered the government to cease making expenditures that violated the Establishment Clause. The only requirement for standing under *Flast* is that a substantial sum be appropriated by the legislature in support of religion. It is this expenditure of the money in support of religion that creates standing, not the financial impact of the expenditure on any particular plaintiff.

The Court said in *Flast*: "Our history vividly illustrates that one of the specific evils feared by those who drafted the Establishment Clause and fought for its adoption was that the taxing and spending power would be used to favor one religion over another or to support religion in general." 392 U.S. at 103. That evil is precisely the problem presented in the present case. Under the Arizona

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[12] "The million-dollar grants sustained today put Madison's miserable 'three pence' to shame." *Tilton v. Richardson*, 403 U.S. 672, 697 (1971) (Douglas, J., with Black and Marshall, JJ., concurring in part and dissenting in part.)

statute, tax dollars that would otherwise have been paid to the Department of Revenue to satisfy tax obligations are diverted overwhelmingly to religious STOs. These payments to the STOs are not charitable contributions, although they are often referred to as such. In the case of a true charitable contribution, the taxpayer incurs a substantial financial cost despite the economic benefit of the tax deduction allowed for the contribution. By contrast, the Arizona statute provides a dollar-for-dollar tax credit for so-called "contributions" to school tuition organizations. As noted in *Hibbs* at 95, such a "contribution" costs the taxpayer nothing as long as the taxpayer has a state tax liability equal to or greater than the amount contributed. Whether the taxpayer makes a $500 payment to an STO or the Department of Revenue, she is in either case making a payment in satisfaction of a $500 tax liability and thereby receives a $500 tax credit. The STOs are thus in receipt of tax payments, as the Ninth Circuit noted when it stated, "By structuring the program as a dollar-for-dollar tax credit, the Arizona legislature has effectively created a grant program whereby the state legislature's funding of STOs is mediated through Arizona taxpayers." *Winn I*, 562 F.3d at 1010. The STOs are thus funded by the state legislature and are receiving tax dollars, not private charitable contributions.

The present case thus fits squarely within the facts of *Flast* and *Bowen v. Kendrick,* 487 U.S. 589 (1988) in that the statute authorizes the funding of religious organizations (religious STOs) with tax

dollars.[13] The only difference between the present case and *Flas*t and *Bowen* relates to the method or mechanics by which religious entities receive tax dollars. In the present case, tax dollars are transferred *directly* from taxpayers to religious STOs without first passing through the State Treasury. In *Flast* and *Bowen*, by contrast, there was no direct transfer of funds from taxpayers to religious entities. Instead, tax dollars were first paid into the Federal Treasury by taxpayers and later on amounts were distributed from the Treasury to religious grantees or to other entities that, in turn, made distributions to religious grantees. The precise method or mechanics by which tax dollars flow to religious entities has no constitutional significance for purposes of standing to sue. The only relevant inquiry under *Flast* is whether there is a nexus between the plaintiff's status as a taxpayer and the legislation at issue.

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[13] It might be argued, in the alternative, that the dollars paid to STOs are not tax payments but, instead, voluntary charitable contributions for which a tax incentive (credit) is granted by the state legislation. Even under this view, a taxpayer would have standing to challenge the operation of the Arizona statute. In *Flast*, the Court emphasized that there was a nexus between the plaintiff's status as a taxpayer and the exercise of Congressional power under the Taxing and Spending Clause. The particular facts of *Flast* involved government spending but the rationale of *Flast* would permit an Establishment Clause challenge to any action under the Taxing and Spending Clause, not merely to legislative spending. There is obviously a nexus between a plaintiff's status as a taxpayer and the tax legislation (e.g., the tax credits at issue). Under this alternative view, Respondents have standing to challenge the Arizona tax credits even if the statute is considered to establish a private, rather than governmental, funding of STOs.

The nexus requirement is met in the present case because the respondent-taxpayers are objecting to the religious use of what would otherwise be tax dollars authorized by the Arizona legislature. The required nexus between the plaintiff's status as a taxpayer and the government-foregone tax dollars at issue is at least as substantial as the nexus between the plaintiff's status as a federal taxpayer and the government-appropriated tax dollars at issue in *Flast*. Further, the injury in both *Flast* and the present case is for all practical purposes the same—the expenditure of tax dollars for religious purposes. It cannot be known whether, or to what degree, the expenditure of tax dollars for religious purposes will increase the plaintiff's tax liability or reduce the level of government services the plaintiff receives. In both *Flast* and the present case it is the religious expenditures made with tax dollars or the equivalent, rather than their economic impact on the plaintiff, that create taxpayer standing.

Petitioners may argue that Respondents do not meet the first prong of the *Flast* test because the Arizona statute is not a "congressional action under the taxing and spending clause," that is, under Art. I, § 8 of the Constitution. It is true that *Flast* involved a congressional appropriation under Art. I, §8, and Section 1089 was enacted pursuant to the taxing and spending clause of Ariz. Const. art. IX, §3. But it is apparent from *Flast* and other cases that no meaningful distinction can be drawn between a state taxpayer's Establishment Clause challenge to state legislative spending and a federal taxpayer's Establishment Clause challenge to Congressional spending. An Establishment Clause

exception to the general rule against taxpayer standing applies, whether the challenge is to federal or state legislative spending. In *DaimlerChrysler* this Court made it clear that the general rule against taxpayer standing applies to state as well as federal taxpayers. *DaimlerChrysler*, 547 U.S. at 345. If the general rule applies equally to state as well as federal taxpayers, then so should the Establishment Clause exception to the general rule apply in exactly the same way to state as well as federal taxpayers.

2. State taxpayer standing under *Doremus*.

Some argue that *Doremus* controls state taxpayer standing cases, leaving *Flast* to control federal taxpayer standing cases. *Amici* are of the view that the Court's decisions in *Doremus* and *Flast* are consistent with one another and both should guide the Court in determining whether a taxpayer—state or federal—has Article III standing. Under each of these cases the taxpayer has standing when a substantial amount of tax dollars is spent in support of religion pursuant to statutory authorization (as opposed to purely Executive action). Thus, in *Doremus* the Court explained that *Everson* was a case where there was a "measurable appropriation or disbursement of school district funds occasioned solely by the activities complained of." *Doremus,* 342 U.S. at 434. By contrast, in *Doremus* there was no such measurable appropriation or disbursement of government funds because the Bible readings at issue did not increase the cost of running the school. If the Bible readings had increased the cost of running the school, the Court suggested that the plaintiffs would have had standing. *Id.* at 433.

Unlike *Doremus*, Arizona's statute involves substantial legislative funding of STOs. As explained above, the statute for all practical purposes authorizes the payment of tax dollars to STOs that would otherwise have been made to the Department of Revenue.

Thus, whether the Court applies the standing requirements laid out in *Flast* or *Doremus*, Respondents have standing in this case.

### C. For more than sixty years the Supreme Court and lower courts have granted taxpayer standing in Establishment Clause cases; this practice is entitled to deference and respect.

This Court formally recognized and approved state and federal taxpayer standing in *Doremus* and *Flast*. Even before those cases were decided, the concept of taxpayer standing existed, although it was not given any detailed explanation by the courts. For example, in *Everson* at 3, the Court noted that "[t]he appellant, in his capacity as a district taxpayer filed suit in a state court," and the Court thus recognized the plaintiff's standing to sue as a taxpayer. No allegation was made in *Everson* that the taxpayer plaintiff had incurred, or would incur, any measurable pecuniary injury due to the school board's reimbursement policy for the costs of bus transportation. In particular, no allegation was made that the plaintiff faced an increased tax liability as a consequence of the unconstitutional expenditure of government funds. The plaintiff

nonetheless had standing to sue.

By contrast, in *Doremus,* 342 U.S. at 433-435, the Court held that it lacked jurisdiction to hear the taxpayer challenge a New Jersey statute requiring Bible reading in public schools. Crucial to the Court's decision was that there was no allegation by the plaintiff that the Bible reading was "supported by any separate tax, or paid for from any particular appropriation, *or that it adds any sum whatever to the cost of conducting the school*." *Id.* at 433 (emphasis added). The difference between the two cases is clear. Unlike *Doremus*, in Everson substantial government expenditures were associated with the government activities challenged under the Establishment Clause; there was "a measurable appropriation or disbursement of school district funds occasioned solely by the activities complained of." *Id.* at 434. The existence of the allegedly unconstitutional government spending was sufficient, *by itself*, to confer standing on the plaintiff in *Everson*. Similarly, in the present case, the plaintiffs have standing based on the unconstitutional diversion of tax payments to STOs. It is not necessary under *Doremus* (or *Flast*) for the Respondents in the present case to allege that Arizona's tax credit program results in an increase in their tax liabilities or that a decrease in tax liabilities will occur if the tax credit program is halted.

The *amicus* brief of the Becket Fund refers to fourteen cases[14] since *Doremus* "where the Court

[14] *See* W*alz v. Tax Comm'n*, 397 U.S. 664, 666 (1970); *Lemon v. Kurtzman*, 403 U.S. 602, 611 (1971); *Sloan v. Lemon*, 413 U.S.

apparently assumed the existence of state taxpayer standing without ever analyzing the question" and three cases[15] decided by the Court in which "the Court found standing in passing, but did not examine the question of state taxpayer standing in any detail." Brief *Amicus Curiae* of the Becket Fund for Religious Liberty Supporting Petitioners, *ACSTO v. Winn*, Nos. 09-987 and 09-991 (2010), at 5-7.

The Becket Fund and the Petitioners attach no significance to these cases because they do not directly address the issue of standing to sue. *Amici* view these cases differently. While the cases do not directly analyze issues of standing, they are instructive in that they implicitly recognize the litigants' standing to sue. The cases should be given respect and deference. They can best be understood as clarifying and illustrating the principles of

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825, 827 (1973); *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756, 762 (1973); *Hunt v. McNair*, 413 U.S. 734, 735 (1973); *Levitt v. Committee for Public Education and Religious Liberty*, 413 U.S. 472, 478 (1973); *Marburger v. Public Funds for Public Schools of New Jersey*, 417 U.S. 961 (1974) (mem.); *Griggs v. Public Funds for Public Schools of New Jersey*, 417 U.S. 961 (1974) (mem.); *Roemer v. Board of Public Works of Maryland*, 426 U.S. 736, 744 (1976); *Wolman v. Walter*, 433 U.S. 229, 232 (1977); *Mueller v. Allen*, 463 U.S. 388, 392 (1983); *Board of Education of Kiryas Joel School District v. Grumet*, 512 U.S. 687, 694 n.2 (1994); *Mitchel v. Helms*, 530 U.S. 793 (2002) (plurality op.); *Zelman v. Simmons-Harris*, 536 U.S. 639, 648 (2002).

[15] *Meek v. Pittenger,* 421 U.S. 349, 355 n.5 (1975), overruled by *Mitchell v. Helms*, 530 U.S. 793, 808 (2002); *Marsh v. Chambers*, 463 U.S. 783, 785 n.4 (1983); *School District of City of Grand Rapids v. Ball*, 473 U.S. 373 (1985), overrule by *Agostini v. Felton*, 521 U.S. 203 (1997).

taxpayer standing discussed in *Doremus*, *Flas*t and *DaimlerChrysler*.

The Supreme Court and lower courts would not have exercised jurisdiction in the cases cited by the Becket Fund had there been real doubts as to the presence of standing.[16] This is especially true given the courts' *independent* obligation to determine *sua sponte* whether plaintiffs have standing, even when the parties do not raise the issue. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230-231 (1990). Standing is an aspect of Article III jurisdiction and a court must determine whether it has Article III jurisdiction; the court cannot shirk this responsibility. In the cases noted by the Becket Fund, standing was assumed to exist. The failure to address standing was not due to the incompetence of the litigants or their attorneys, or to judicial incompetence. The most likely explanation is that standing was obviously present in these cases and it would not have occurred to anyone to question whether the plaintiff had standing.

While these Supreme Court cases lack any analysis of standing, the uniform past practice of exercising jurisdiction in these cases is entitled to respect and deference, just as it was in *Hibbs*. In *Hibbs*, this Court recognized that the consistent past practice of exercising jurisdiction in similar cases was highly relevant in determining whether the Tax Injunction Act, 28 U.S.C. § 1341, barred the present

[16] In *Valley Forge*, 454 U.S. at 475-476, the Court said: "Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States."

lawsuit and deprived the courts of jurisdiction.[17] Just as the Court looked to past practice in determining whether the TIA barred this suit, so too should the Court now look at the past practices of the Court and lower courts in resolving the issue of state taxpayer standing. It is often said that "actions speak louder than words." This proverbial saying applies in the present case.

*Amici* would also like to call the Court's attention to several Circuit Court opinions that explicitly discuss the issue of state taxpayer standing or imply that taxpayers have standing to challenge state and federal tax benefits for religion. In *Public Funds for Public Schools of New Jersey v. Byrne*, 590 F.2d 514, 516 n.3 (3rd Cir. 1979), the Third Circuit *explicitly* concluded in footnote 3 of its opinion that the plaintiffs had state taxpayer standing under *Flast*. Tellingly, this Court affirmed the Third Circuit's decision in *Byrne*, see 442 U.S. 907 (1979), and the

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[17] The *Hibbs* Court stated as follows (542 U.S. at 110-112):

> [N]umerous federal-court decisions—including decisions of this Court reviewing lower federal-court judgments—have reached the merits of third-party constitutional challenges to tax benefits without mentioning the TIA. …
>
> In a procession of cases not rationally distinguishable from this one, no Justice or member of the bar of this Court ever raised a §1341 objection that, according to the petitioner in this case, should have caused us to order dismissal of the action for want of jurisdiction. … Consistent with the decades-long understanding prevailing on this issue, respondents' suit may proceed without any TIA impediment.

Court cannot be assumed to have ignored footnote 3 in the Third Circuit's opinion.

In *Johnson v. Econ. Dev. Corp. of County of Oakland*, 241 F.3d 501 (6th Cir. 2001), the court held that Michigan taxpayers had standing to challenge the issuance of tax-exempt revenue bonds to finance the construction of buildings at a Catholic school. Relevant to the present case, the Sixth Circuit rejected a distinction asserted by the defendant between legislative expenditures for religion and a loss of tax revenues due to tax exemptions for religion. Either may be challenged by state taxpayers. *Johnson*, 241 F.3d at 507-508. The present case is even a stronger one for concluding that the plaintiff has standing. In *Johnson*, a Catholic school was the indirect beneficiary of tax-exempt bond financing (the bondholders received the direct benefit of the exemption). In the present case, religious schools receive actual tax revenues.

In *Warren v. Commissioner*, 302 F.3d 1012, 1015 (9th Cir. 2002) (*"Warren II"*), the Court stated that Professor Erwin Chemerinsky would have standing under *Flast* if he sued as a taxpayer to challenge §107(2) of the Internal Revenue Code, under which clergy are entitled to receive tax-exempt housing allowances. In *Warren v. Commissioner*, 282 F.3d 1119 (9th Cir. 2002) (*"Warren I"*), the Ninth Circuit *sua sponte* raised the constitutionality of §107(2) and appointed Professor Chemerinky as amicus to advise the court on the constitutional issue. The constitutional issue was not resolved because Congress enacted legislation that mooted the tax

issue on appeal, a technical dispute as to the dollar amount that could be excluded from gross income by the taxpayer. Because the case had become moot due to the legislation, the Ninth Circuit dismissed the appeal. In denying Professor Chemerinsky's motion to intervene as a party in the case, the court stated that he would have standing if he filed suit as a taxpayer to challenge the constitutionality of section 107(2). *Warren II,* 302 F.3d at 1015.

In *Abortion Rights Mobilization, Inc. v. Baker*, 885 F.2d 1020 (2d Cir. 1989), the plaintiffs alleged that the IRS and the Treasury were ignoring the Catholic Church's violations of the ban against lobbying and political activity in § 501(c)(3) of the Internal Revenue Code. Plaintiffs were thus challenging the government's failure to enforce the requirements of § 501(c)(3). As the Court stated, the plaintiffs "do not challenge Congress' exercise of its taxing and spending power as embodied in § 501(c)(3) of the Code; they do not contend that the Code favors the Church." *Id.* at 1028. The obvious implication of the quoted language is that the plaintiffs would have been held to have standing as taxpayers if they had challenged § 501(c)(3) itself or if they had alleged that, in properly administering the Code, the IRS granted tax benefits to the Church. The actual case involved the opposite allegation—that the government was improperly administering the Code. That permitted the Second Circuit to conclude that the plaintiffs did not have standing because there was "no nexus between plaintiffs' allegations and Congress' exercise of its

taxing and spending power." *Id.*[18]

Since *Everson*, the Court and lower courts have "repeatedly decided Establishment Clause challenges brought by state taxpayers against state tax credit, tax deduction and tax exemption policies, without ever suggesting that such taxpayers lacked Article III standing," as noted by the Ninth Circuit in this case. *Winn I,* 282 F.3d at 1010. The Ninth Circuit's ruling in this case is consistent with the longstanding practice of this Court in ruling on the merits in cases such as *Walz*, *Hunt*, *Mueller* and *Nyquist*. The Ninth Circuit's ruling is also consistent with the explicit holdings on taxpayer standing by the Third and Sixth Circuits in *Byrne* and *Johnson* and with the opinions of the Ninth and Second Circuits in *Warren II* and *Abortion Rights Mobilization.*[19]

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[18] The description of this case is based on a recent article in Tax Notes. *See* Michael L. Gompertz, *Lawsuit Challenges Income Tax Preferences for Clergy*, 128 Tax Notes 81, 92 (July 5, 2010)

[19] The Ninth Circuit's ruling is also consistent with a recent federal district court ruling, *Freedom From Religion Foundation, Inc. v. Geithner*, 2010 U.S. Dist. LEXIS 50413 (May 21, 2010), holding that a federal taxpayer has standing to challenge tax benefits for clergy under § 107 of the Internal Revenue Code. A commentator has provided an extensive discussion of this case and concludes that the court correctly held that taxpayers have standing to challenge §107. *See* Michael L. Gompertz. *Lawsuit Challenges Income Tax Preferences for Clergy*, 128 Tax Notes 81, 91-94 (July 5, 2010).

## III. THE PURPOSE OF "STANDING" IS TO ENSURE A REAL "CASE OR CONTROVERSY," NOT TO INSULATE THE ACTS OF GOVERNMENT FROM JUDICIAL REVIEW.

The enforcement of fundamental rights guaranteed by the Constitution requires access to the Courts. As the Court stated in *Marbury,* 5 U.S. at 166:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury . . . The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

When the Establishment Clause is violated by governmental funding of religion as in the present case, there is a clear need for a judicial "remedy to give meaning and teeth to the constitutional guarantees against unlawful conduct by government officials. Without some effective sanction, these protections would constitute little more than rhetoric." *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 415 (1971) (Burger, C.J., dissenting). While Chief Justice Burger's statement was made in reference to violations of the Fourth Amendment, its logic is equally applicable to Establishment Clause violations. To deny standing in the present case would be to deny an effective

remedy for violations of fundamental rights, thus transforming the protections of the Establishment Clause into "little more than rhetoric."

Although the federal courts may not seek out and strike down any governmental act that they deem to be repugnant to the Constitution, the Courts are obliged to do so when the question is raised by a party whose interests entitle him to raise it. *Hein,* 551 U.S. at 598.

In this case, the Respondents—as taxpayers who have been harmed by state action—are entitled to raise the constitutional question of whether Section 1089 violates the Establishment Clause. Section 1089 infringes upon the liberty rights of all Arizona citizens. Standing is fully warranted in this case because our nation's history "vividly illustrates that one of the specific evils feared by those who drafted the Establishment Clause . . . was that the taxing and spending power would be used to favor one religion over another or to support religion in general." *Flast,* 392 U.S at 103-04.

Under our system of governance, Arizonans who are harmed by Section 1089 are entitled to constitutional protection from the majoritarian political process and its favoring of religion. If the Court renounces more than six decades of legal precedent and denies Respondents standing, it will immunize the government from accountability for Establishment Clause violations to the detriment of the civil liberties of the People.

## CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully request that the judgment of the United States Court of Appeals for the Ninth Circuit be affirmed.

Respectfully submitted,

/s/ ROBERT V. RITTER
Robert V. Ritter
*Counsel of Record*
Appignani Humanist Legal Center
1777 T Street, N.W.
Washington, D.C. 20009
(202) 238-9088
britter@americanhumanist.org
Counsel for *Amici*

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# APPENDIX

## IDENTIFICATION OF *AMICI CURIAE*

The American Humanist Association advocates for the rights and viewpoints of humanists. Founded in 1941 and headquartered in Washington, D.C., its work is extended through more than 100 local chapters and affiliates across America. Humanism is a progressive philosophy of life that, without theism and other supernatural beliefs, affirms our ability and responsibility to lead ethical lives of personal fulfillment that aspire to the greater good of humanity. The Mission of the American Humanist Association is to promote the spread of humanism, raise public awareness and acceptance of humanism and encourage the continued refinement of the humanist philosophy. Most recently, the American Humanist Association filed *amicus* briefs with the Court in *Christian Legal Society v. Martinez*, No. 08-1371, 561 U.S. __ (2010), *Salazar v. Buono*, No. 08-472, 559 U.S. __ (2010) and *Pleasant Grove City v. Summum*, No. 07-665, 555 U.S. ___ (2009).

The American Ethical Union is a federation of Ethical Culture/Ethical Humanist Societies and circles throughout the United States. Ethical Culture is a humanistic religious and educational movement inspired by ideal that the supreme aim of human life is working to create a more humane society. The American Ethical Union has participated of the years in a number of *amicus curiae* briefs in defense of religious freedom and church-state separation.

The Atheist Alliance International is an organization of independent religion-free groups and individuals in the United States and around the world. Its primary goals are to help democratic, atheistic societies become established and work in coalition with like-minded groups to advance rational thinking through educational processes. Through the Alliance, members share information and cooperate in activities with a national or international scope.

The Center for Inquiry ("CFI") is a nonprofit educational organization dedicated to fostering a secular society based on science, reason, freedom of inquiry, and humanist values. Through education, research, publishing, social services, and other activities, including litigation, CFI encourages evidence-based inquiry into science, pseudoscience, medicine and health, religion, and ethics. CFI believes that the separation of Church and State is vital to the maintenance of a free society that allows for a reasoned exchange of ideas about public policy. CFI maintains that the boundaries between government and religion are an essential part of our free society, and that ensuring that government does not impermissibly endorse or favor religion is critical to maintaining those boundaries. CFI has participated as an *amicus* in several prominent cases, including *Salazar v. Buono*, 129 S. Ct. 1313 (2009) and *Christian Legal Society v. Martinez*, 130 S. Ct. 795 (2009).

The Council for Secular Humanism ("Council") is a nonprofit educational organization headquartered

in Amherst, New York. The Council engages in a variety of activities that are designed to support institutions, principles, and values that are consistent with a secular worldview. The Council has participated as an *amicus* in several prominent cases, including *McCreary County v. ACLU*, 545 U.S. 844 (2005) and *Washington v. Glucksberg*, 521 U.S. 702 (1997).

The Freedom From Religion Foundation ("Foundation"), a national nonprofit organization based in Madison, Wisconsin, is currently the largest national association of freethinkers, representing atheists, agnostics and others who form their opinion about religion based on reason rather than faith, tradition or authority. The Foundation's two purposes are to educate the public about nontheism, and to defend the constitutional principle of separation between state and church. The Foundation has members in every state in the United States and in the District of Columbia and Puerto Rico. The Foundation's membership, which is dedicated to the principle of separation between state and church, includes college/university students across the country. Moreover, the Foundation offers annual scholarships to college students and college-bound high school seniors, which are awarded through an essay competition. This is one of the few programs in the country awarding scholarships to freethinking and nonreligious students for their independent views. The Foundation receives thousands of applications for this program each year, further demonstrating students' keen interest in keeping state and church separate.

The Institute for Humanist Studies (IHS) is a think tank whose mission is to promote greater public awareness, understanding and support for humanism. The Institute specializes in pioneering new technologies and methods for the advancement of humanism. In all its work, the Institute aims to exemplify the humanist values of reason, innovation, and cooperation. In its efforts to support humanism it seeks to defend the constitutional rights of religious and secular minorities by directly challenging clear violations of the law where it relates to the First Amendment's guarantee that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." It is their stance that the role of the government is to show no preference for one religion over another nor to provide support for a religious idea when there is no identifiable secular purpose. As a non-membership organization, the IHS is able to complement other humanist organizations and cooperate with other humanist groups to ensure that no member of society is discriminated against because of religion or lack thereof.

The Secular Coalition for America is a 501(c)4 advocacy organization located in Washington, D.C. whose purpose is to amplify the diverse and growing voice of the nontheistic community in the United States. SCA lobbies the U.S. Congress on issues relevant to secular Americans including the federal funding of religious schools and separation of church and state.

The Secular Student Alliance is a network of over 200 atheist, agnostic, humanist and skeptic groups on high school and college campuses. Although it has a handful of international affiliates, the organization is based in the United States with the vast majority of its affiliates at high schools and colleges. The mission of the Secular Student Alliance is to organize, unite, educate and serve students and student communities that promote the ideals of scientific and critical inquiry, democracy, secularism and human-based ethics.

The Society for Humanistic Judaism mobilizes people to celebrate Jewish identity and culture, consistent with Humanistic ethics and a nontheistic philosophy of life. Humanistic Jews believe each person has a responsibility for their own behavior, and for the state of the world, independent of any supernatural authority. The SHJ is concerned with protecting religious freedom for all, and especially for religious, ethnic and cultural minorities such as Jews, and most especially for Humanistic Jews, who do not espouse a traditional religious belief. The Society's members want to ensure that they, as well as people of all faiths and viewpoints, will not be discriminated against by government favoring of any one religion over another or theistic religion over humanistic religion.

The Unitarian Universalist Association is a religious association of more than 1,000 congregations in the United States and North America. Through its democratic process, the

Association adopts resolutions consistent with its fundamental principles and purposes. In particular, the Association has adopted numerous resolutions affirming the principles of separation of church and state and personal religious freedom. General Assemblies of the Association have repeatedly opposed direct and indirect public aid to sectarian private schools.