No. 18-1195

In The
Supreme Court of the United States

KENDRA ESPINOZA, et al.,

Petitioners,

v.

MONTANA DEPARTMENT OF REVENUE, et al.,

Respondents.

On Writ Of Certiorari To The Montana Supreme Court

BRIEF AMICUS CURIAE OF FREEDOM FROM RELIGION FOUNDATION, CENTER FOR INQUIRY, AMERICAN ATHEISTS, AND AMERICAN HUMANIST ASSOCIATION IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

Amici are public-interest organizations that advance the rights and freedoms of atheists, agnostics, and nonbelievers.

The Freedom From Religion Foundation 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. Founded in 1978 as a 501(c)(3) nonprofit, FFRF has over 30,000 members, including members in every state, including Montana, and the District of Columbia. FFRF has 23 local and regional chapters across the country. FFRF's purposes are to educate 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.

The Center For Inquiry is a nonprofit organization devoted to promoting reason, science, critical thinking, and humanist values. Through education, research, publishing, social services, and other activities, including litigation, CFI advocates for public policy that is

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[1] Rule 37 statement: Both parties issued blanket consents to the filing of amicus briefs. No party's counsel authored any part of this brief. Amici alone funded this brief's preparation and submission.

rooted in science, evidence, and objective truth. CFI works to defend the rights of nonbelievers around the world and to protect the freedom of inquiry that is vital to a free society.

American Atheists, Inc. is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the "wall of separation," created by the First Amendment, between government and religion. The organization strives to create an environment where atheism and atheists are accepted as members of the nation's communities and where casual bigotry against the atheist community is seen as abhorrent and unacceptable. American Atheists promotes the understanding of atheists through education, outreach, and community building, and works to end the stigma associated with being an atheist in America.

The American Humanist Association is a national nonprofit membership organization based in Washington, D.C., with over 252 local chapters and affiliates in 43 states and the District of Columbia. Founded in 1941, the AHA is the nation's oldest and largest Humanist organization. Humanism is a progressive lifestance that affirms—without theism or other supernatural beliefs—a responsibility to lead a meaningful, ethical life that adds to the greater good of humanity. The mission of the AHA's legal center is to protect one of the most fundamental principles of our democracy: the constitutional mandate of separation of church and state. To that end, the AHA's legal center has litigated dozens of Establishment Clause cases in state

and federal courts nationwide, including in the U.S. Supreme Court.

As secular and humanist organizations that promote freedom of conscience for those who do not practice religion, amici offer a unique viewpoint on—and share significant concerns about—government funding of private religious schools and the entanglement between state and church it entails.

SUMMARY OF ARGUMENT

This case is not about discrimination; it is about government-compelled support of religion. Above all, religious freedom means that no taxpayer is compelled to financially support a religion or religious education that is not their own. No Aid Clauses, including the Montana Constitution's, foster and protect the religious freedom of all citizens by enshrining this principle. Montana's neo-voucher program violated the Montana No Aid Clause and, therefore, this basic principle.

The principle underlying No Aid Clauses—that taxpayers cannot be forced to support religion or religious education—dates to America's founding and was uniformly accepted after years of experience. The American experiment in separating state and church succeeded. We lack the oppressive history of government-enforced tithing. As a result, some fail to understand that the No Aid principle actually protects religious freedom.

If this Court undermines that history of success and invents a constitutional right for religion to dip into the public purse, state-church relations will be altered drastically. This will bring down government regulation on 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. This abuse can be seen in pilot voucher programs right now. Keeping religious schools out of the public treasury allows them to remain free from government regulation and public accountability.

No Aid Clauses foster religious freedom and this Court should reaffirm that principle.

ARGUMENT

The Montana No Aid Clause protects and fosters the religious freedom of *all* citizens. It does so by ensuring that the state does not wield its taxing power to fund religious education either directly or indirectly. In this way, no taxpayer is compelled to financially support a religion that is not their own.

In this case, Montana Christians claiming discrimination have drowned out that basic principle. But it remains true nonetheless. 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 for 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]

Religious liberty is imperiled in this case. But this case is not about discrimination; it is about government-compelled support of religion. The right to be free from that compulsion *is* religious liberty. That right is the progenitor of every other facet of religious freedom. That right is possessed by every Montana citizen and taxpayer, not just a few Christian parents. *That* is the right at issue here.

The state's taxing power is inherently coercive. When that power is used directly or indirectly to benefit religious education, it violates the rights of conscience of citizens.[5] To employ the state's taxing power

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[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 (ed. David B. Mattern, J. C. A. Stagg, Mary Parke Johnson, and Anne Mandeville Colony, 2009).

[4] *Id.*

[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 (ed. Robert A. Rutland and William M. E. Rachal, 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

in such a manner is to permit the very tyranny that Jefferson and Madison sought to restrain with the Virginia Statute for Religious Freedom.

Religious freedom means that no citizen can be compelled to subsidize a religion that is not their own. If this Court abandons this basic principle, we will have reached a disastrous moment in American history: the era of government-compelled tithing.

I. The structure and purpose of Montana's neo-voucher program fall under the broad text of the Montana No Aid Clause.

While some states have adopted school "voucher" programs to fund private education, Montana's program involves a tax scheme that funds tuition via a dollar-for-dollar credit. Such neo-voucher programs are the product of combining tax and education laws. The Montana Supreme Court has definitively determined that § 15-30-3111 of the Montana Code provides state aid for private religious education. The court said, "The Legislature, by enacting a statute that provides a dollar-for-dollar credit against taxes owed to the state, is the entity providing aid to sectarian schools via tax credits in violation of Article X, Section 6." App. 25 ¶30. To parse this neo-voucher program or contrast it to other voucher programs in other states is

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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. . . .").

to miss the plain truth of the matter: as determined by the Montana Supreme Court, this program used the state's coercive taxing power to subsidize tuition payments for religious education.

The Montana Supreme Court's determination is consistent with how the program operates. Taxpayers owe taxes to Montana. They are relieved of that obligation if they divert the payment to an entity that funds religious education. Montana appropriated $3 million to cover the anticipated shortfall from forgiving those obligations. This program would not exist but for the taxes owed to the state—the taxes that are to be forgiven and which exist only because of how Montana was manipulating its taxing power. App. 40 ¶53 (Gustafson, J., concurring).

The Montana Supreme Court interpreted the Montana Constitution as sufficiently broad to encompass and end this neo-voucher program. Montana "shall not make *any direct or indirect* appropriation or payment from *any* public fund or monies, or *any* grant of lands or *other property* for *any* sectarian purpose or [school]." App. 17–18 ¶18–19. That text is clear, emphatic, and sweeping.

The structure of the neo-voucher program fell under the No Aid Clause, but the structure is less important than its purpose. The purpose of neo-vouchers is the same as vouchers. Sponsors of these laws seek to: 1) aid religious education and 2) undermine public education. These two purposes conflict with the purpose of Montana's No Aid Clause, made clear during

the state's 1972 Constitutional Convention, which was to ensure that "the public school system . . . receive 'unequivocal support.' " App. 19 ¶22.

Both purposes are religious, but the second purpose is rarely spoken of openly, at least now that "school choice" is the focus-group-tested language adopted by the movement. But in the minds of some school choice activists, the erosion of traditional Protestantism in America is due to public schools. These same activists "see the weakening of support for public education as a desirable side effect or even a goal of their work."[6] As one researcher and author has found, the national groups supporting religious initiatives "see our system of public education as a bad thing."[7] She reports, "These are the same groups that sponsor efforts to undermine, defund, and perhaps ultimately destroy the system altogether."[8]

Sometimes, proponents of neo-vouchers are open about this goal. Kyle Olson helped create and chaired National School Choice Week through its 2011 birth. As its executive director, Olson 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."[9] While "school choice" is theoretically

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[6] Katherine Stewart, THE GOOD NEWS CLUB: THE CHRISTIAN RIGHT'S STEALTH ASSAULT ON AMERICA'S CHILDREN, 5 (Public Affairs, 2012).

[7] *Id.*

[8] *Id.*

[9] Kyle Olson, *Jesus Isn't in Michigan*, TOWNHALL (March 18, 2011), https://bit.ly/2qz27Sx. He went on to say, "And he would

about providing choice in education, for many it is about ending public education.

The neo-voucher scheme here provides a dollar-for-dollar tax credit that undermines public education. Montana is within its rights to do just what its Constitution says: give the public school system its "unequivocal support," including to the point of refusing to incentivize private education. App. 19 ¶ 22.

II. No Aid Clauses, including Article X, Section 6 of the Montana Constitution, foster and protect the religious freedom of all citizens.

The true purpose behind Montana's No Aid Clause is to protect religious freedom. Failing to enforce this clause or riddling it with unprecedented exceptions erodes religious liberty.

The principle embodied in every No Aid Clause, including Montana's, 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

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smash a temple that has been perverted to meet the needs of the administrators, teachers, school board members, unions, bureaucrats and contractors. But, Jesus isn't in Michigan—or Indiana—so it's incumbent upon leaders to do something about it." *See also* Katherine Stewart, THE GOOD NEWS CLUB: THE CHRISTIAN RIGHT'S STEALTH ASSAULT ON AMERICA'S CHILDREN at 254.

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.[10]

American governments simply do not have the power to tax citizens to fund churches and religious education. When they do so, they are acting *ultra vires*. Alexander Hamilton explained this in The Federalist No. 69, when he wrote that the government "has no particle of spiritual jurisdiction." Madison supported this sentiment, arguing that "[i]t is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him."[11] 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 where the government can force citizens to donate to a sect that, for example, condemns them to eternal damnation and torture for exercising that freedom of religion. The Virginia Statute for Religious Freedom recognizes that government-compelled support for one's *own* religion also violates the rights of conscience: "[E]ven the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose

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[10] Madison, *Memorial and Remonstrance*, ¶1.

[11] James Madison, *Memorial and Remonstrance Against Religious Assessments*, ¶1 (1785).

morals he would make his pattern."[12] Thus, striking down Montana's No Aid Clause would jeopardize the religious freedom of every citizen of the state, 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. Carroll said that "the rights of conscience are, in their nature, of peculiar delicacy, will little bear the gentlest touch of the governmental hand."[13] The government hand at issue here is not the one refusing to slip cash to Christian schools, but rather, the hand reaching into every citizen's pocket to extract that cash—and it's not particularly gentle.

The Founders determined that the government could not subsidize religion and this Court reaffirmed that principle when it first applied the Establishment Clause to the states. In *Everson*, the Court said:

> The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one

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[12] 2 Thomas Jefferson, *82. A Bill for Establishing Religious Freedom, 18 June 1779*, *in* THE PAPERS OF THOMAS JEFFERSON, 2:545–53 (Julian P. Boyd, ed., 1950).

[13] 1 ANNALS OF CONG. 758–59 (1789) (Joseph Gales ed., 1834).

> religion over another . . . *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. . . .

Everson v. Bd. of Ed. of Ewing Twp., 330 U.S. 1, 15–16 (1947) (emphasis added).

On this point, the Court was unanimous. 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 Ed. of Sch. Dist. No. 71*, 333 U.S. 203 (1948). The Court 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 in *McCollum* argued 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 manifesting governmental "hostility" to religion, the First Amendment protected religious liberty by erecting "a wall between Church and State which must be kept high and impregnable." *Id.* at 211–12.

The Supreme Court later reiterated a strong commitment to the religious liberty principles articulated in *Everson*, including the prohibition on giving public aid to religion. *See Sch. Dist. of Abington Twp., Pa. 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, in the *McCollum* case, the Court was "urged to repudiate" the *Everson* principles 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 focused on the separation of religion and government—to the benefit of both. The Court never hinted that the religion clauses actually *require* taxpayers to fund religion.

Our nation, our Founders, and the justices of this Court have always understood that religious liberty flourishes when government does not tax citizens to aid religion. It is no surprise then that state constitutions clarified the protection for the religious liberty of citizens. Consistent with this fundamental truth, delegates at the Montana Constitutional Convention in 1972 sought to protect religious liberty by ensuring that the state did not coerce Montanans into subsidizing religious institutions.

III. The principle underlying No Aid Clauses dates to America's founding and was uniformly accepted after years of experience.

Though recent opponents to the separation of state and church have used revisionist history in an

attempt to rewrite state-church relations,[14] the federal government's early history of state-church separation has been clear to this Court for more than half a century. "[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).

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 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). Montana followed this tradition when writing and rewriting its Constitution.

Regardless of the timeline, in the case of disestablishment, America's "laboratories of democracy" yielded remarkably consistent results. Every state discovered a 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

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[14] Andrew L. Seidel, *Bad History, Bad Opinions: How "Law School Office History" is leading the Courts Astray on School Board Prayer and the First Amendment*, 12 Ne. L. Rev. ___ (forthcoming Dec. 2019).

houses of worship and ministers. And as the States all disestablished, one by one, they all undid those laws." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2033 (2017) (Sotomayor, J., dissenting).

This history is crucial to the issue 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 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.

This history seems distant today, but was the result of centuries—millennia—of oppression from 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 separating state and church. As a result, many Americans lack a basic understanding of how state-church separation and the No Aid principle actually protect religious freedom. That has led some, including the well-meaning parents in this case, to consider whether or not the provisions are still valuable. They are, and this Court ought not to strike them down when they have served this country so well in protecting religious liberty.

IV. Undermining No Aid Clauses and offering direct or indirect aid to religious education will require government regulation of religious schools.

Granting religious schools a right to access the public purse will eventually lead the government to regulate 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 change if private schools receive public funds.

Justice Robert Jackson explained that separating state and church, including financially, benefits both government and religion while fostering religious freedom for all. Justice Jackson was a model justice. He took a leave of absence from the court to prosecute Nazi war crimes as U.S. Chief of Counsel at Nuremberg. He checked himself out of the hospital on the day the Supreme Court handed down *Brown v. Board of Education* so that he could be present in the courtroom and emphasize the Court's unanimity in that historic case. In *Korematsu*, Justice Jackson wrote one of history's greatest dissents, condemning 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. 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 v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 26–27 (1947) (Jackson, J., dissenting) (emphasis added). Justice Jackson continued, "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.*

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

> This freedom . . . 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 this Court 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). Attached to these benefits are relatively few conditions, most importantly, that taxpayers will not fund religion.

The push to eviscerate No Aid Clauses like Montana's is meant to augment the benefits churches receive under the separation of state and church, and eliminate those conditions. Churches and religious

schools want to have their cake—which they think American taxpayers must buy—and eat it too.

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.

The country's longest-lived private voucher scheme, the Milwaukee Parental Choice Program, is a prime example. The program has been bloated with abuse. Over a 10-year period, more than $139 million in taxpayer funds went to Milwaukee voucher schools that were ejected from the program for failing to meet basic requirements.[15]

The abuse is startling. One Milwaukee 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 70 students schoolless.[16] State records documented alarming conditions, 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

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[15] Molly Beck, *State paid $139 million to schools terminated from voucher program since 2004*, WISCONSIN STATE JOURNAL (Oct. 12, 2014), https://bit.ly/36ObTR5.

[16] Erin Richards, *Milwaukee voucher school LifeSkills Academy closes in the dead of the night*, MILWAUKEE JOURNAL SENTINEL (Jan. 14, 2014), https://bit.ly/2oAnm5b.

water for lunch," and "cut" whole milk with water.[17] 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."[18] 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 and opened LifeSkills Academy II.[19]

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 the box spring for a bed—while they waited for buses to arrive."[20] The principal saw employees smoking marijuana in school and witnessed a staffer with a bag of crack cocaine. The school's founder and CEO was a

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[17] Amicus Curiae's Jan. 30, 2014 Letter to Florida Dept. of Educ., detailing these allegations. *Available at* https://bit.ly/2Nghnwv. Records supporting allegations *available at* https://bit.ly/2JL4wQv.

[18] *Id.*

[19] Erin Richards, *Leaders of closed Milwaukee voucher school are now in Florida*, MILWAUKEE JOURNAL SENTINEL (Jan. 15, 2014), https://bit.ly/2095ck8.

[20] Sarah Carr, *Who cleans up problem choice schools?*, MILWAUKEE JOURNAL SENTINEL (Sept. 15, 2003), https://goo.gl/zoCc45.

convicted rapist who received a 30-year prison term and served nine years.[21]

There are plenty of other examples of abuse from Milwaukee alone. Some voucher schools failed to provide textbooks to students.[22] Others taught subjects from fundamentalist Christian textbooks which claimed that "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."[23]

If religious schools continue to insist on an invented 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 government oversight. Keeping religious schools out of the public treasury allows them to remain free from government regulation and public accountability—another way that No Aid Clauses foster religious freedom.

[21] *Id*.

[22] Erin Richards, *Former employees cast doubt on voucher school's operations*, MILWAUKEE JOURNAL SENTINEL (Dec. 15, 2014), https://bit.ly/2n7I9Nf.

[23] Frances Paterson, *Building a Conservative Base: Teaching History and Civics in Voucher-Supported Schools*, The Phi Delta Kappan (Oct. 2000), at 151–52, https://www.jstor.org/stable/20439835.

CONCLUSION

The religious liberty interest threatened in this case lies with the taxpayer 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 cherished rights. Over our long history, there has never been any indication that religious liberty protections require the government to financially support religion. The cost of revisiting that principle now would be felt by every American.

Montana's neo-voucher program violated the religious freedom of every Montana citizen. The Montana Supreme Court righted this wrong. Citizens of every religion and of no religion were coerced into subsidizing religious education with which they fundamentally disagree. This is, as Jefferson wrote, "sinful and tyrannical." This Court should allow Montana's decision not to subsidize private education to stand. The Montana Constitution prohibits this use in simple, straightforward terms, and this interpretation is consistent with fundamental principles of religious liberty and the First Amendment.

If "We the People" abandon the principle embodied in No Aid Clauses, citizens will be taxed in ways that support religion and violate their rights of conscience. This path is likely to lead to expanded state regulation on religious institutions and will also weaken our public schools.

Simply put, religion must support itself. Benjamin Franklin, who cautioned about government support of

religion, said, "When a 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."[24] Let the faithful *voluntarily* support their faith and their religious schools. To involve the state in such decisions violates the religious liberty of all.

Respectfully submitted,

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[24] Benjamin Franklin, *Letter from Benjamin Franklin to Richard Price, 9 October 1780*, *in* THE PAPERS OF BENJAMIN FRANKLIN, 389–99 (Barbara B. Oberg, ed., 1997).