

No. 20-1088

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IN THE  
**Supreme Court of the United States**

DAVID and AMY CARSON, as parents and  
next friends of O.C., and TROY and ANGELA NELSON,  
as parents and next friends of A.N. and R.N.,  
*Petitioners,*

v.

A. PENDER MAKIN, in her official capacity as  
Commissioner of the  
Maine Department of Education,  
*Respondent.*

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**On Writ Of Certiorari To The United States  
Court Of Appeals For The First Circuit**

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**BRIEF OF INNOVATIVE SCHOOLS  
AS AMICI CURIAE  
IN SUPPORT OF PETITIONERS**

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**INTEREST OF *AMICI CURIAE*\***

Blaze Kids Academy is in the process of designing and building a faith-based all-year-around boarding facility for students from rural parts of the United States. Children will live in a caring and warm home-like setting while attending Blaze School, an on-site school that offers a rigorous academic curriculum and access to competitive extracurricular activities. Blaze School will serve both local day students as well as Academy boarding students. Established in 2021, Blaze currently operates a pilot learning pod for 3rd through 7th grade students, with the goal of opening selective enrollment in grades K–8 in 2023. Enrollment will begin at 20 students and increase over time to 100 students in grades K–12. Blaze School supplements traditional classroom education with hands-on outdoor programming on the school’s 96-acre campus in rural Austin, Texas. Blaze Kids Academy and Blaze School are founded on Judeo-Christian principles with the mission of developing well-rounded citizens of exceptional character who grow to become service-minded individuals. To this end, Blaze incorporates prayer and service learning into its curriculum, and Judeo-Christian values are deeply ingrained in its core cultural values.

Build UP is the Nation’s first and only workforce development model that provides low-income youths

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\* Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* state that this brief was not authored in whole or in part by any party or counsel for any party. No person or party other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. The parties have filed blanket consents to the filing of *amicus curiae* briefs in accordance with Supreme Court Rule 37.3.

career-ready skills through paid apprenticeships with industry-aligned secondary and early-postsecondary academic coursework, leading them to become educated, credentialed, and empowered civic leaders, professionals, homeowners, and landlords. Founded in 2018, Build UP operates two campuses in Birmingham, Alabama, and is in the process of opening a third in Cleveland, Ohio. It currently has approximately 60 students enrolled for the 2021–2022 school year.

Kuumba Preparatory School for the Arts is an African-centered private school located in southeast Washington, D.C. The school offers a year-round non-traditional program to toddlers, preschoolers, intermediate, and high school students in an intimate setting for academics, culture, and the arts. Its goal is to assist children in developing their character and artistic talent through holistic education, and to develop students' self-awareness through historical and cultural linkages that will fulfill their sense of purpose.

*Amici* have an interest in this case because they use innovative and nontraditional methods to educate the whole student, emphasizing not only academic performance, but also character development and community engagement. Because of *amici*'s holistic approach to students' personal and academic growth, as well as the fact that many of their students depend on government tuition assistance, the First Circuit's decision could affect the type of programs and instruction they offer in the future. In an attempt to ensure their secular status, such innovative schools might be forced to forgo some of the very educational methods that make them so valuable to students in the first place.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The Nation's educational system is in a rut. The number of students who graduate high school prepared for college is nearing historic lows. See Elin Johnson, *Another Drop in College Readiness*, Inside Higher Ed (Nov. 4, 2019), <https://tinyurl.com/52vm8htt>. And far from facilitating the equality of opportunity on which the American Dream is premised, the Nation's educational system is leaving historically disadvantaged groups even farther behind. See *K-12 Disparity Facts and Statistics*, UNCF, <https://tinyurl.com/tyb8r7vm>.

There is no silver bullet for fixing our country's flagging educational system. Indeed, there is no one policy program that can be expected to work for each of the Nation's 48.1 million school-age children in each of our 13,588 school districts. See *Back-to-School Statistics*, National Center for Education Statistics, <https://tinyurl.com/5aw5wvav>; *Digest of Education Statistics*, National Center for Education Statistics, <https://tinyurl.com/9sm34f92>.

For precisely this reason, it is crucial that educators have the flexibility to experiment with new methods for reaching students who are being left behind, and that parents have the freedom to select the schools that give their children the best chance to achieve their full potential. Offering families educational choice—including the choice to send their children to schools that may take new and innovative approaches to developing intelligent and engaged citizens—is one of the best ways to address educational inequities and set students up for success.

Traditional religious schools have long offered a model for such education, emphasizing moral and character development alongside academic coursework. And today, innovative schools—such as *amici*—continue this legacy of educating the “whole child” alongside their religious-school neighbors.

*Amici* operate innovative schools founded on the principle that different students learn differently, and that it is the responsibility of educators to embrace students’ unique capacities as a tool for learning, not an obstacle to it. While none of *amici* is affiliated with a religious organization, all of them emphasize character development and values-centered learning. One *amicus*, for example, incorporates into its curriculum African-centered concepts, including African history and culture, as a means to build community and develop the self-awareness of its largely African-American student body. Another *amicus* supplements in-class learning with paid apprenticeships in students’ neighborhoods, providing students not only practical learning and an income, but also a connection to—and investment in—their communities. And yet another *amicus* offers students from rural communities a residential program that emphasizes interdisciplinary learning, social and emotional health, and a connection to nature.

Despite these divergent approaches, each *amicus* offers students pathways to thrive in an increasingly diverse and demanding world. But the greatest challenge remains ensuring that parents and students can take advantage of the educational opportunities that are best suited to their needs. Unfortunately, the First Circuit’s decision imposes unnecessary and arti-

ficial constraints on families' access to these opportunities by excluding from tuition assistance programs any school that is deemed insufficiently secular. And the adverse effects of this decision will be most acutely felt by those who already have the fewest opportunities open to them. The Court should reverse the decision below.

## ARGUMENT

### I. CHILDREN'S UNIQUE LEARNING STYLES REQUIRE DIVERSITY IN EDUCATIONAL OPPORTUNITIES.

No two children are exactly alike. Even within the same family, children have different tastes, inclinations, and interests. Siblings can have varying aptitudes and learn in unique ways. While one sibling excels in artistic expression, another may demonstrate a knack for building and engineering. And these differences don't disappear at the schoolhouse gate. Children bring a range of curiosities, talents, and experiences to the classroom that require individual attention and cultivation.

Recognizing these differences, schools across the country have taken steps to tailor instruction to the particular needs of individual students within the classroom, but structural hurdles—from large class sizes to resource constraints—have hampered their ability to do so in a widespread and effective way. Accordingly, it is crucial to promote differentiation and specialization not just *within* the classroom, but *across* schools as well. Parents should be able to choose from a range of schools that adopt different techniques aimed at different students with different needs.

The need for choice among schools and pedagogical approaches is rooted in children's inherently varied educational needs. Although researchers have posited various taxonomies to describe students' learning styles, they all agree that different students learn in different ways. See, e.g., Neil D. Fleming & Colleen Mills, *Not Another Inventory, Rather a Catalyst for Reflection*, 11 *To Improve the Academy* 137, 137 (1992) (noting fifteen different "instruments for identifying learning styles"), <https://tinyurl.com/47sj6vxv>. One common typology, for example, classifies students as Visual Learners, Auditory Learners, Reading/Writing Learners, or Kinesthetic Learners based on how they most effectively internalize information. See *Different Learning Styles—What Teachers Need to Know*, University of Kansas: School of Education & Human Sciences (June 28, 2021), <https://tinyurl.com/p96njfd6>.

A student's academic achievement is highly correlated to the match between his learning style and the teaching methods used by his educators. Research confirms what common sense suggests—"that teachers and administrators are able to improve the quality of instruction in their schools when they are aware of the learning styles of their students." Rahmatullah Bhatti & William M. Bart, *On the Effect of Learning Style on Scholastic Achievement*, 16 *Current Issues in Education* 1, 1 (Aug. 19, 2013), <https://tinyurl.com/2wdvezr2>; see also Stephen Petrina, *Curriculum and Instruction For Technology Teachers* 91 (2007), <https://tinyurl.com/y7sm7kcp> ("If we vary our methods, we have learned, we accommodate a wider range of learning styles than if we used one method consistently."). Indeed, for almost 30 years, it has

been understood that learning programs should “empower[] students through knowledge of their own learning styles to adjust their learning behavior” to maximize classroom success. Fleming & Mills, *supra*, at 138.

In response to this research, schools across the country have endeavored to incorporate differentiated instruction, tailored to the individual needs of students, into the classroom. In New York City, for example, the City’s Department of Education “launched iZone, a community of over 300 schools to test innovative classroom methods and technologies with the goal of ‘designing schools around the needs, interests, and motivations of individual students, by personalizing rather than standardizing the model of schooling and learning.’” Gng, *Education: One Size No Longer Has to Fit All*, Harvard Business School (Nov. 17, 2016), <https://tinyurl.com/19t3jda7>.

In Connecticut, “[t]eachers in Stamford Public Schools practice differentiated instruction,” in which “[e]very student is a unique learner with academic strengths and weaknesses” and “[c]lassrooms are designed to foster individual exploration, continued growth and educational independence.” *What Is Differentiated Instruction?*, Stamford Public Schools, <https://tinyurl.com/s9zpe2cn>.

And just this past spring, the California Department of Education announced revisions to its mathematics curriculum aimed at addressing the “differentiated” ways that both “high-achieving students” and “underserved or marginalized groups of students”

learn. *Mathematics Framework FAQs*, California Department of Education (July 14, 2021), <https://tinyurl.com/pzr2jnk>.

Despite these promising efforts to account for students' different learning styles, teachers are necessarily limited in their ability to tailor their methods to the divergent needs of students within a single classroom. Among other structural limitations, resource constraints make it difficult for teachers to provide tailored instruction to large and heterogeneous classes of many different students with many different needs. See Rebekah Clayton, *The Case Against a One-Size-Fits-All Education*, EF Academy Blog, <https://tinyurl.com/qyvzllch> ("Many schools use only a single mode of teaching because, in practice, the resource[s] required to create a varied learning experience is different from that of writing a lecture or creating a PowerPoint."). And concerns about quality control incentivize administrators to maintain fixed standards across classrooms at the expense of individualization. See Valerie Strauss, *Teacher: A One-Size-Fits-All Approach to Instruction Is Stifling Our Classrooms*, Washington Post (Dec. 23, 2016), <https://tinyurl.com/nklk75w0> ("In an effort to minimize gaps in teacher quality, some education reformers are pushing a routinized, one-size-fits-all approach to instruction and classroom culture.").

Moreover, even students with similar learning styles will arrive at school with different experiences, interests, and aptitudes. A brilliant student will struggle to keep up in a classroom where she is not fluent in the language of instruction. And a student who was underprepared by a previous teacher or school may require additional attention to get up to

speed. Conversely, a student with considerable out-of-classroom preparation and experience may find it difficult to pay attention if she does not find the curriculum stimulating. As one commentator observed, the challenge is how to “provide access for struggling learners to high-level, potent and engaging learning opportunities without denying the needs of highly able learners to work at a pace and level of complexity appropriate to their special learning needs[.]” Carol Ann Tomlinson, *Leadership for Differentiated Classrooms*, AASA, The School Superintendents Association, <https://tinyurl.com/2bf5dzby>; see also *SFUSD Veers Away from Honors Classes*, San Francisco Examiner (Feb. 12, 2012), <https://tinyurl.com/rchzv8> (“In diverse classes, teachers can adjust lessons to fit different children, whether they need enrichment or extra help with the basics. But this approach, called ‘differentiated instruction,’ can be difficult when class sizes are large and the range of abilities wide.”).

Given students’ divergent needs and the hurdles to addressing them all in one school program—let alone one classroom—it is imperative to foster differentiation among schools, and to allow parents to select the school that best fits the needs of their children. Some public school systems have already taken steps to do this. In Massachusetts, which has extended to public schools the flexibility typically afforded to charter schools, one district school “has used its flexibility to create a bilingual high school for a predominantly Latino student body, giving immigrant students a way to excel academically while they learn English and American-born Latinos a way to connect with their culture through language.” Tara Garcia Mathewson, *States Increasingly Extend Charter-Like Flexibility to*

*District Schools*, Hechinger Report (Aug. 15, 2019), <https://tinyurl.com/345eh9z4>. Another “adopted a trimester system to accept kindergartners three times per year, once they turn 5, changing a traditional cut-off that requires kids turning 5 after Sept. 1 to wait an entire year to start school.” *Id.*

But such innovation is still the exception rather than the rule within traditional schools. As a result, most innovation aimed at providing targeted education is occurring in the private sphere—including in innovative schools like those operated by *amici*.

## **II. FAITH-BASED SCHOOLS ARE THE ORIGINAL INNOVATIVE SCHOOLS AND HAVE LONG FOCUSED ON SERVING THE UNDERPRIVILEGED.**

Since the Founding, schools run by religious communities have been a vital part of our Nation’s educational system. While other schools catered either to a moneyed clientele or powerful political constituencies, religious schools made it their mission to educate the disenfranchised and underprivileged.

For example, “[l]arge numbers of Catholic schools were built in the older industrial cities of the Nation to serve the children of immigrants,” Dale McDonald, *Annual Statistical Report on Schools, Enrollment, and Staffing: United States Catholic Elementary and Secondary Schools 2006-2007* ix (2007), and many religious schools, both Protestant and Catholic, welcomed Black students years before their neighboring public school counterparts. See *American Missionary Association*, Encyclopedia Britannica, <https://tinyurl.com/2xm55u59> (discussing the network of over

500 schools for freed slaves created by a non-denominational Christian association); Vernon C. Polite, *Getting the Job Done Well: African American Students and Catholic Schools*, 61 *Journal of Negro Education* 211, 211 (1992), <https://tinyurl.com/4vpvv4hc> (“Catholic religious communities opened an impressive number of 76 schools for African American children at the turn of the century between 1890 and 1917.”).

Over time, instructors at religious schools developed innovative teaching and classroom-management methods that helped students from disadvantaged backgrounds thrive academically—whether in the form of longer schools hours, an emphasis on values-centered learning, or any number of other unique school policies. See Richard M. Jacobs, *U.S. Catholic Schools and the Religious Who Served in Them: Contributions in the 18th and 19th Centuries*, 1 *Catholic Education: A Journal of Inquiry and Practice* 364, 369 (1998), <https://tinyurl.com/rx2puuyw> (“By providing a less costly alternative to lay educators . . . religious communities of the 18th and 19th centuries made it possible for Catholic schools not only to survive, but also to extend educational services to some of the most marginalized members of American society.”); G.H. Akers, *Proper Education*, *Adventist Education* 8, 37 (Oct.-Nov. 1989), <https://tinyurl.com/39w5k555> (“Balance of physical, mental, and spiritual activities was an absolute imperative in the Ellen White model [of Christian education], and recognition that education is more than a ‘head trip.’ The heart and hand were to be equally involved, and where possible the balancing digressions from mental exertion were to be significant activity that was truly recreative and regenerative.”).

It is therefore no surprise that “[g]roundbreaking studies by eminent sociologist James Coleman and his colleagues in the 1980s found that students in Catholic and other private schools, including non-Catholic faith-based schools, had higher achievement than students from comparable backgrounds in public schools.” White House Domestic Policy Council, *Preserving a Critical National Asset: America’s Disadvantaged Students and the Crisis in Faith-based Urban Schools* 7 (2008), <https://tinyurl.com/2buv7put>; see also *id.* at 80–81 (finding that faith-based schools have a uniquely powerful impact on students from lower socioeconomic backgrounds, with their benefits increasing in proportion to students’ economic disadvantage); William H. Jeynes, *Religion, Intact Families, and the Achievement Gap*, 3 *Interdisciplinary Journal of Research on Religion* 1, 7 (2007), <https://tinyurl.com/rr9xs7kt> (“[C]hildren in the lowest [socioeconomic-status] quartile who attend religious schools achieve at higher levels than do children in the lowest [socioeconomic-status] quartile who attend public schools.”).

Still today, “[f]or many urban parents, the moral grounding, community ethic, safe and structured environment, and academic rigor of faith-based schools are invaluable to their children.” *Preserving a Critical National Asset, supra*, at 1. Religious schools remain at the forefront of developing new ways to serve all students, including those from underprivileged backgrounds.

For example, Verbum Dei High School in the Watts neighborhood of Los Angeles, California, and Cristo Rey Jesuit High School in Minneapolis, Minne-

sota, are two of a number of innovative Catholic preparatory schools that offer a Corporate Work Study Program, allowing students to combine a full academic course load with on-the-job work experience in a corporate office (typically one day per week). See *How Does the Work Study Program Operate?*, Verbum Dei High School, <https://tinyurl.com/4ywtprs6>; *Why It Works*, Cristo Rey Jesuit High School, <https://tinyurl.com/829b8r98>.

Such programs provide students the ability to earn a significant portion of the tuition for their private, college-preparatory education, as well as the opportunity to gain important skills to prepare them for a white-collar profession. And both schools boast an impressive 100% college-acceptance rate—much higher than traditional schools in the surrounding area.

Religious schools provide benefits not only for the students who attend them, but also for the educational system more broadly. It is not uncommon for secular schools to incorporate into their own curricula methodologies that were pioneered in religious schools. For example, Eva Moskowitz, the founder of Success Academy, a much-lauded network of 45 innovative public charter schools in New York City, has discussed the influence of Catholic schooling on the Success Academy model. Kathleen Porter-Magee, *Catholic on the Inside: Putting Values Back at the Center of Education Reform* 5, Manhattan Institute (Dec. 12, 2019), <https://tinyurl.com/ynzxkzun>.

In recent years, however, religious schools in the United States have seen a decline in enrollment, and many have shut their doors forever. Stephanie Ewert,

*The Decline in Private School Enrollment*, SEHSD Working Paper Number FY12–117, at 14 (Jan. 2013), <https://tinyurl.com/fauhvykx>. The First Circuit’s decision will likely hasten the decline, as fewer families will be able to afford religious education without financial assistance. And declining enrollment at religiously affiliated schools will not only affect the families who would choose to enroll their children there, but also the thousands of families whose children attend other innovative schools that, although not religiously affiliated, are the pedagogical heirs of their religious counterparts.

### **III. INNOVATIVE SCHOOLS—WHETHER FAITH-BASED OR NOT—CONTINUE TO PROVIDE OPPORTUNITIES TO THOSE LEFT BEHIND BY TRADITIONAL SCHOOLING.**

Today, innovative schools continue to serve students that have been left behind by the traditional schooling model. Some innovative schools are affiliated with a particular religious denomination or espouse an overtly religious mission, while others take inspiration from a religious heritage without teaching a particular faith, and still others are entirely secular. But none is values-neutral.

*Amici* are representative of the diversity of innovative schools operating today. Two *amici*, Kuumba Preparatory School of the Arts and Build UP, focus on moral and cultural development and the promotion of a positive social vision but are not affiliated with any particular faith community and do not profess to be “faith-based.” The third *amicus*, Blaze Kids Academy, is not affiliated with a particular religious group but

considers itself “faith-based” in the sense that its values are informed by Judeo-Christian principles and the school day begins with a nondenominational prayer.

Kuumba Preparatory School of the Arts is an African-centered private school located in southeast Washington, D.C. that enrolls students from toddlers to high school seniors. Taking its name from the Swahili word for “creativity,” Kuumba’s mission is “to develop the Artist/Scholar” by using the arts to stimulate learning and harness the power of theater, music, dance, poetry, and song to develop the whole child. Serving a predominantly African-American population, Kuumba aims to develop students’ self-awareness and sense of purpose by incorporating African-centered concepts into its core curriculum. Kuumba also teaches African languages and culture. And while Kuumba’s year-round program is rigorous, the school takes a holistic approach to education by prioritizing not only academic performance, but also artistic talent and character development, supplementing classroom learning with daily meditation and exercise.

Even for a school like Kuumba, which is not expressly religious yet aims to instill a sense of cultural pride in its student body, Maine’s law poses potential issues. In many cases, it is difficult if not impossible to separate religion from culture, especially in the realm of the arts. To preserve their status as a secular institution in Maine’s eyes, schools like Kuumba might forgo some of the very programs and teaching methods that are the key to their success. For example, Kuumba might reconsider teaching its students

songs or stories with roots in a certain African religious traditions—even if those songs or stories would serve an important role in fostering students’ positive self-identity and understanding their heritage.

Build UP, a private school headquartered in Birmingham, Alabama, is the nation’s first and only workforce development high school that provides low-income youth with career-ready skills through paid apprenticeships, leading them to become educated, credentialed, and engaged civic leaders, workers, homeowners, and landlords. Over the course of six years starting in the ninth grade, students in Build UP’s full-time program spend half their time in an academic setting and half their time rehabilitating abandoned homes into like-new single-family homes and duplexes. At the end of the six-year program, the students earn both a high school diploma and an associate’s degree in their chosen fields—and also purchase with a zero-interest mortgage the deed to at least one of the properties they have rehabilitated. In this way, Build UP’s students revitalize their communities and prevent the further erosion of surrounding property values. And by taking ownership of those properties upon graduation, students gain an important link to—and investment in—their neighborhoods.

Although Build UP, like Kuumba, is not religiously affiliated, its classes are taught in a local Baptist church that the students helped to remodel, and which the organization continues to maintain in exchange for rent-free use of the building. Build UP, too, could be impacted by laws like the one adopted by Maine insofar as it might hesitate to preserve or forge

such valuable relationships with faith-based institutions for the sake of preserving its secular status.

Finally, Blaze Kids Academy, located outside of Austin, Texas, showcases how Maine's law can impede new and innovative programs that are still in their infancy. Blaze, which has not yet opened its doors to a full class of students, plans to operate as a year-round private boarding school, serving underprivileged children from rural communities across the United States. Blaze features a highly interdisciplinary and outdoors-based approach to the core subjects, with opportunities to study in the gardens and along the creek of the school's 96-acre ranch. Blaze's curriculum will also focus on fostering strong social and emotional executive functioning skills. For example, students will help facilitate parent-teacher conferences in order to take ownership over their education.

While the Blaze leadership team currently conceives of the school as "faith-based," it has yet to decide what role (if any) formal religious instruction will play at the school. Because Blaze intends to serve students from rural areas across the country, and because it believes that many students in its target demographic will require tuition assistance to attend, the outcome of this case could play a significant role in Blaze's ultimate decision regarding how to treat religion in its classrooms.

As *amici* demonstrate, this case will have ramifications beyond religiously affiliated educational institutions such as Catholic schools. Innovative schooling writ large would suffer, too, should Maine's law be upheld. Many innovative schools emphasize the moral

and cultural development of their student body, and drawing the line between where morals and culture end and faith begins can be a difficult task. Given that there are no clear guidelines, innovative schools might shy away from some of the educational methods and institutional values that drive their success lest they risk disqualifying their students from critical financial assistance.

#### **IV. PARENTS SHOULD BE ABLE TO SELECT THE BEST SCHOOL FOR THEIR CHILDREN'S NEEDS.**

Parents know their children best, and in selecting the appropriate school to meet their children's needs, parents shouldn't be restricted by arbitrary distinctions and opaque standards. The First Circuit's decision in this case imposes just these kinds of artificial and unnecessary constraints on parents' ability to choose the schools best suited to their children's individualized needs. Regrettably, the decision will have the perverse effect of blocking funding from those students who are most likely to benefit from innovative schools, and it will chill creativity and experimentation by schools that fear such experimentation may result in their students losing access to critical tuition assistance.

Precisely because these schools go beyond traditional academics to cultivate character and community, they are less amenable to bright-line divides between the secular and the religious. While none of *amici* is religiously affiliated, each builds upon the moral and religious precepts of the communities it serves to instill integrity and a sense of belonging in its students. For example, Blaze incorporates prayer

as part of its focus on character development, and Build UP's classrooms are located in the Abyssinia Missionary Baptist Church, where students help maintain the building in lieu of paying rent.

Of course, the underserved and marginalized communities that have the most to gain from innovative schools that emphasize character development alongside academic achievement are also those least able to access these options without financial assistance. Most of Build UP's students receive financial assistance from state-approved Scholarship Granting Organizations under the Alabama Accountability Act of 2013, and many K–12 students at Kuumba receive assistance through Washington, D.C.'s Opportunity Scholarships. Likewise, Blaze anticipates that its students' families will need to rely on Texas's public tuition assistance program to cover or supplement their individual contributions. Limiting these programs to schools that conform to their respective jurisdiction's standards of secularity may well force parents to move their children into schools that are less well suited to their families' needs.

But it will not only be the individual students at these particular schools who lose. Innovative schools are a proving ground for new pedagogical methods that could, if successful, expand to new contexts. But if these schools fear that their innovative methods may compromise their students' ability to secure vital tuition assistance from public sources, they will likely abandon those plans to the detriment of the broader community.

There is no reason to invite these adverse consequences. Parents are more than capable of evaluating

the needs of their children and selecting the best schools to meet those needs. In some cases, those needs will be best served by traditional public schools; in others, they will be better served by secular private or charter schools; and in still others, students will thrive in religious or innovative schools. The government should not force parents to choose one type of school over another. Nor should it deny parents access to a school that offers their children the greatest opportunity to reach their full potential.

### CONCLUSION

For the foregoing reasons, the judgment of the First Circuit should be reversed.

Respectfully submitted,

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