

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 Petition for Writ of Certiorari
to the Montana Supreme Court*

**MOTION FOR LEAVE TO FILE AND
BRIEF OF THE LIBERTY JUSTICE CENTER AND
AMERICAN FEDERATION FOR CHILDREN AS
AMICI CURIAE IN SUPPORT OF PETITIONERS**

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April 15, 2019

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**MOTION FOR LEAVE TO FILE BRIEF OF
AMICI CURIAE
LIBERTY JUSTICE CENTER AND
AMERICAN FEDERATION FOR CHILDREN**

This case presents an issue of substantial importance to millions of children nationwide who participate in school-choice programs or may do so in the future. Liberty Justice Center and the American Federation for Children are uniquely positioned to provide “relevant matter not already brought to [the Court’s] attention by the parties” as it considers whether to take this case. *See* Rule 37(1). In particular, amici illustrate in their brief the impact of the Montana Supreme Court’s decision below on children who have special needs or are religious minorities, victims of bullying, or military families, among others. Amici also discuss the important First Amendment principles around pluralism and diversity inherent in the case.

We seek permission to file under Rule 37(2)(b) of this Court. Amici secured consent to file this brief from petitioner Espinoza. Respondent Montana Department of Revenue declined to consent because amici mistakenly sought consent seven days before the filing deadline, and Rule 37(2)(a) requires ten-day notice of intent to file. Counsel for the respondent suggested as an alternative seeking permission to file under Rule 37(2)(b).

Counsel for the respondent also secured a thirty-day extension from the Court to file a response to the petition, so the respondent will have the ability to read this brief in full while preparing his response.

Therefore, Liberty Justice Center moves this Court for leave to file the accompanying brief *amici curiae* in support of certiorari.

Respectfully submitted,

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QUESTION PRESENTED

Whether Montana violates the First Amendment's Free Exercise Clause by prohibiting students and families who choose to enroll in private religious schools from participating in the Montana Tax Credit Scholarship Program while allowing participation by students enrolling in private non-religious schools?

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INTEREST OF THE *AMICI CURIAE*¹

The Liberty Justice Center is a nonprofit, nonpartisan, public-interest legal aid firm that seeks to protect economic liberty, private property rights, free speech, and other fundamental rights. The Liberty Justice Center pursues its goals through strategic, precedent-setting litigation to revitalize constitutional restraints on government power and protections for individual rights. *See, e.g., Janus v. AFSCME*, 138 S. Ct. 2448 (2018) (representing petitioner Mark Janus). The Liberty Justice Center is particularly interested in the potential impact of this case on its home state of Illinois, which recently enacted a similar school scholarship tax credit and which has a Blaine Amendment in its state constitution.

The American Federation for Children is a leading national advocacy organization promoting school choice with a specific focus on school vouchers, scholarship tax credit programs, and Education Savings Accounts (“ESAs”). The American Federation for Children seeks to improve our nation’s K-12 education by advancing public policy that empowers parents, particularly those in low-income families, to choose the education they determine is best for their children.

¹ Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than amici funded its preparation or submission. Counsel secured consent from petitioner to file this brief but failed to secure consent from the respondent, as explained in the motion. Counsel therefore moves to file this brief under Rule 37(2)(b).

SUMMARY OF ARGUMENT AND INTRODUCTION

“Today many of our inner-city public schools deny emancipation to urban minority students.” *Zelman v. Simmons-Harris*, 536 U.S. 639, 676 (2002) (Thomas, J., concurring). Sadly, the Montana Department of Revenue has taken the initiative to erect regulatory barriers that also deny emancipation to thousands of low-income students across the Big Sky State. It does so in a misguided attempt to enforce a state constitutional clause enacted to exclude a religious minority that is now defended as a tool to protect religious minorities. Ironically, it ends up sabotaging that goal because educational choice has a proven track record of promoting pluralism and protecting minorities in our society.

The heartbeat of the school choice movement is compassion for children in difficult circumstances: not just minority children stuck in failing inner-city schools, but students who may have access to generally good public schools but find themselves with an individual need for an alternative educational setting. When it comes to education, one size does not fit all. Students with special physical or intellectual challenges, victims of bullying, children of active-duty military, religious minorities, girls or boys who do best in a single-sex learning environment—all benefit from the multitude of options created by school choice. Their stories, recounted in the first section below, not only inspire, but demonstrate the compelling need for these options and the integral nature of religious institutions in these programs.

Our states and nation benefit as well, as the panoply of distinctive educational institutions expands and reinforces the rich mosaic of diversity. As shown in section two, these values of diversity, pluralism, and the freedom to choose one's associations lie at the heart of our social order. Montana's decision to undermine those values and deny these opportunities to thousands of its children calls for the Court's intervention.

ARGUMENT

I. **This case can open doors of opportunity for millions of students nationwide.**

The use of Blaine Amendments to exclude faith-based schools from choice programs severely curtails the educational options available to families. Across our nation, approximately two-thirds of private schools are religious in character or background. *Private Universe School Survey, 2015-16*, U.S. Dept. of Ed., National Center for Education Statistics (Sept. 2017) (C-62), <https://nces.ed.gov/pubs2017/2017160.pdf>. See *Zelman*, 536 U.S. at 656-57 (recounting data showing substantial majorities of private schools in Cleveland's choice program were religiously affiliated). In state after state, efforts to give children educational options beyond the traditional public school have run into Blaine Amendments that prevent worthy schools from serving children in need. See, e.g., *Jackson v. Benson*, 578 N.W.2d 602, 612 (Wis. 1998), *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006); *Duncan v. New Hampshire*, 102 A.3d 913, 916-17 (N.H. 2014); *Schwartz v. Lopez*, 382 P.3d 886, 890 (Nev. 2016) (en banc). When about 40 states have a Blaine-style

amendment, a conclusive decision from the Court on this question could affect the educational opportunities of literally millions of children nationwide.

As this Court has recognized, educational choice is a lifeboat for children from “low-income and minority families [... who lack...] means to send their children to any school other than an inner-city public school.” *Zelman*, 536 U.S. at 644. Excluding religious schools from participating in a choice program slams the door shut on the substantial majority of options for those families. *See id.* at 657 (noting that 82% of Cleveland’s participating private schools are religious schools). But educational choice benefits more than just urban, low-income, or racial-minority students; as this brief demonstrates, many other children choose to learn through private religious schools made possible by state-sponsored programs.

A. Students with physical or intellectual needs

One child with special physical or intellectual needs who exemplifies how such children benefit from school choice is John. In the words of his mom Cristin, John is “talented, he’s brilliant, he’s loving, and he’s autistic.” His mom explains, “We recognized very early on that John was not like all of the other kids. By the time he was three, he had taught himself to read. He was already displaying photographic memory abilities. He could tell you, for hours and hours, all you ever wanted to know about space, weather phenomena, and dinosaurs.”

Unfortunately, even with an individualized education plan (IEP) in place, John did not fit in at a series of

local public schools. His parents reached the point of exasperation until they discovered that the Nevada Opportunity Scholarship program made possible a different choice: a school where, his mom says, “[t]hey encourage patience, kindness, and that every child is important. And better yet? He was happy again. He loved school again. He believed in himself again. Everything went from being ‘I can’t’ to ‘I can.’” For John, school choice and private, faith-based Far West Academy made all the difference. “John Balsamo,” Am. Fed. of Children, <https://www.federationforchildren.org/voices-for-choice/john-balsamo/>.

The scholarship program in Nevada, where John lives, includes 93 participating private schools, including many from diverse faith backgrounds (Baptist, Catholic, Lutheran, Islamic, Jewish, and many more). “2018-2019 Registered Schools Opportunity Scholarship,” Nevada Dept. of Ed., http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Private_Schools/Scholarship_Grants/Registered_Schoolsrev1.pdf. Nevada is not unique. The John McKay Scholarships for Students with Disabilities Program in Florida is the oldest and largest of the school choice programs serving students with special needs. Approximately 56% of the schools participating in the McKay Scholarship program are religious, including schools identifying as Baptist, Catholic, Jewish, Islamic, Pentecostal, and Seventh Day Adventist. Florida Private Schools Directory, Florida Dept. of Ed., <https://www.floridaschoolchoice.org/Information/private-school-directory/default.aspx?prgmtype=2> (approximately 1070 of 1900 schools accepting the McKay

Scholarship are religiously affiliated). If the Florida Supreme Court had interpreted its Blaine Amendment to be as restrictive of religious institutions as has Montana's high court in this case, parents of children with special needs would have seen their options literally cut in half.

B. Victims of bullying

Walter is a victim of bullying who exemplifies how such children can survive and thrive with school choice. Walter started school with an Attention Deficit Hyperactive Disorder ("ADHD") diagnosis and quickly fell two grades behind in reading and math. He says he had to focus on just surviving rather than learning: "I remember coming home from school multiple times with ripped clothing and bruises from other students bullying me. My grades were as low as my motivation, and there didn't seem to be any signs of change." Then Walter's mom applied for an EdChoice Ohio scholarship so he could attend Tree of Life Christian School, where he thrived, taking part in sports, music and drama, and student council. He graduated and is now a senior studying journalism at Mount Vernon Nazarene University. "Walter Blanks," Am. Fed. for Children, <https://www.federationforchildren.org/voices-for-choice/walter-blanks/>.

Another victim of bullying is Emily. Her mom, Annie, says the verbal and physical abuse began as soon as she enrolled at her local public high school: "On a daily basis, male students called her derogatory names and groped her in hallways." Complaints to school authorities went nowhere, and her grades started

sliding. Then Annie secured a tax-credit scholarship for Emily to enroll at John Carroll Catholic High School. She writes, “The harassment ended, students treated each other with respect, and my child blossomed.” Annie Bullins-Jones, “Bullying victims should have education options,” *The Stuart News* (Jan. 3, 2018),

<https://www.stepupforstudents.org/published-opinion/annie-bullins-jones-bullying-victims-should-have-education-options/>.

Parents like Walter’s mom and Emily’s mom often find that school choice is their only alternative when their child has been consistently, even violently, bullied at school. Kevin Currie-Knight & Jason Bedrick, “Can School Choice Keep Children Safe from Bullying?” *EdChoice* (Sept. 26, 2017), <https://www.edchoice.org/blog/can-school-choice-keep-children-safe-from-bullying/>. A national survey of students in private and public schools found that the students in private schools felt greater enforcement of the school’s anti-bullying policy, greater acceptance of students from minority groups, and greater social inclusivity. “School Bullying Report Card,” *Niche* (2015), <https://ink.niche.com/school-bullying-report-card/> (aggregating responses from over 185,000 student users). Students at religious schools also report lower levels of bullying than students in public schools. *2015 School Crime Supplement (SCS) to the National Crime Victimization Survey (NCVS)*, U.S. Dept. of Ed. (Dec. 2016) (Table 2.2), <https://nces.ed.gov/pubs2017/2017015.pdf>. Foreclosing these options by discriminating against religious schools in Montana would trap bullied students in schools that are failing to protect them.

Florida recently enacted legislation to extend school choice specifically to students who have been bullied. Arianna Prothero, “In Florida, Bullied Students Will Get Vouchers to Attend Private School,” *Educ. Week* (March 8, 2018), <https://www.edweek.org/ew/articles/2018/03/08/in-florida-bullied-students-will-get-vouchers.html>. Just over 900 schools accept this “Hope Scholarship.” Over 550 of them are religious. *Florida Private Schools Directory*, Florida Dept. of Ed., <https://www.floridaschoolchoice.org/Information/private-school-directory/default.aspx?prgmtype=2>. As in Florida’s scholarship for special needs, students who are victims of bullying would lose more than half their options if religious schools were excluded by an interpretation like Montana’s.

C. Religious minorities

Schools like the Muslim Academy of Greater Orlando are often a refuge for Muslim students fleeing harassment, bullying, and isolation at their public schools. Once there, students find a welcoming community with high academic standards. Low-income students enrolled through the Florida scholarship program make significant learning improvements compared to other similarly situated students. Principal Jameer Abass says, “[W]hat I am trying to teach the kids is you are part of a larger society. You are American. We do fundraising for the Leukemia society and try to be as much as possible part of the community. We have kids involved in Jewish Boy Scouts.” Livi Stanford, “Muslim schools share concerns about security,” *RedefinED* (May 22, 2017),

<https://www.redefinedonline.org/2017/05/muslim-schools-refuge/>.

Our nation's private, religious schools are a wonderful reflection of our country's diverse religions. Not only Catholic and Lutheran, but Amish, Quaker, Islamic, Jewish, Seventh Day Adventist—all these faiths sponsor private schools that offer parents additional choices for their children's education. *See Private Universe School Survey, 2015-16*, U.S. Dept. of Ed., National Center for Education Statistics (Sept. 2017) (C-63), <https://nces.ed.gov/pubs2017/2017160.pdf> (listing the religious affiliations of private schools). For some parents from minority religious faiths, especially recent immigrants, a choice scholarship is the only way they can send their child to a school that reinforces, rather than undermines, that faith. In other circumstances, school choice may be essential to safeguard children from a hostile environment where they are targeted for wearing unusual head-gear or not cutting their hair like most of their classmates. *See* Nadia S. Ansary, "Religious-Based Bullying: Insights on Research and Evidence-Based Best Practices from the National Interfaith Anti-Bullying Summit," Institute for Social Policy and Understanding (2018), <http://icnacsj.org/wp-content/uploads/2018/11/ISPU-AMHP-Religious-Based-Bullying.pdf> (finding young "Muslims and Jews experience disproportionately high rates of hate speech and bullying"). Yet Montana's policy would exclude these schools precisely because they serve minority religious communities.

D. Tribal students

Arizona Democratic State Senator Carlyle Begay of Ganado represented nine tribal communities. In his words, expanding Arizona’s Empowerment Scholarship Accounts to children from reservations “means so much to families living in my district and throughout all of Arizona’s tribal communities. Native American parents went from having almost no options to having a mechanism to build their child’s education around their child’s learning needs. It is an exciting first step toward fixing education on tribal lands!” “Gov. Ducey signs Empowerment Scholarship Account law benefiting all Native American students on tribal lands,” Am. Fed. for Children (April 7, 2015), <https://www.federationforchildren.org/gov-ducey-signs-empowerment-scholarship-account-law-benefiting-native-american-students-tribal-lands/>.

Senator Begay’s tribal constituents can use their Arizona scholarships at any private school in Arizona willing to accept the tuition rate. 72% of Arizona private schools are religious in character (166 of 230 schools). Andrew D. Catt, *Exploring Arizona’s Private Education Sector*, EdChoice (Dec. 2016), <https://www.edchoice.org/wp-content/uploads/2016/12/2016-12-AZ-Private-School-Survey.pdf>, at 42. If Arizona had read its Blaine Amendment as Montana does, Native American students would lose three-quarters of their ESA options. The historical geography of these religious schools makes the loss of options all the more compelling: “One reason the Catholic Church is still running schools like St. Labre is that in many Indian communities, the Church is the only game in town.” Naomi

Schaefer Riley, “Catholic schools for Native Americans, known for abuse and assimilation, try to do good,” *Wash. Post* (Aug. 12, 2016), https://www.washingtonpost.com/news/acts-of-faith/wp/2016/08/02/catholic-schools-for-native-americans-known-for-abuse-and-assimilation-try-to-do-good/?utm_term=.815ed2327e02. *See* American Indian Catholic Schools Network, <https://ace.nd.edu/american-indian-catholic-schools-network/about-the-network>.

E. Children in military families

Samuel exemplifies the children of military parents who benefit from school choice. His father, Daniel, defends our nation in the United States Navy. While Daniel was deployed to the Middle East, Samuel was getting bullied on the bus and at school. Daniel says hearing reports from home about his son’s difficulties was “very hard for me because while I was fulfilling my commitment to protect the nation, my family needed protection as well.” He says the “ESA program has been a huge relief” for their family. Samuel is now enrolled in a school with a zero-tolerance policy on bullying. He and his three siblings all attend private schools thanks to Arizona’s ESA program. Daniel finds them “a better fit because the schools we have chosen have more of a small community atmosphere with heavy structure,” which are essential attributes to support a military family through a deployment.

Hundreds of students enrolled in Arizona’s empowerment savings accounts are dependents of service personnel stationed in Arizona. Rob O’Dell & Yvonne

Wingett Sanchez, “Arizona taxpayer-funded vouchers benefiting students in more-affluent areas,” *Arizona Republic* (March 30, 2017), <https://www.azcentral.com/story/news/politics/arizona-education/2017/03/30/arizona-taxpayer-funded-vouchers-benefiting-students-more-affluent-areas/99707518/> (13% of the 3,360 enrolled in the program came from military families). The program offers an important alternative for families who live near bases; a nationwide 2016 study by the Rand Corporation found that public schools near stateside military installations tend to be low-performing districts. Charles A. Goldman, et al., “Options for Educating Students Attending Department of Defense Schools in the United States,” Rand Corp. (2016), https://www.rand.org/pubs/research_reports/RR855.html. As noted above, three-quarters of the schools military families can choose in Arizona would be excluded based on the Montana rule.

F. Children in single-sex schools

Dominique is one of many children who use school choice to select a single-sex learning environment. She attended the historically black, all-girls St. Mary’s Academy in New Orleans. Thanks to Louisiana’s Student Scholarships for Educational Excellence Program, she says, “I formed bonds that I’m not sure I would have made had I gone somewhere else. . . . My school offers a very familial atmosphere. The people here truly care for me, and they motivate me rather than try to change or discourage me.” “Dominique Hagens,” Am. Fed. for Children, <https://www.federationforchildren.org/voices-for-choice/dominique-hagens/>.

Though academics argue about the value of single-sex schools, the U.S. Department of Education concluded after an exhaustive literature review that “single-sex schooling can be helpful, especially for certain outcomes related to academic achievement and more positive academic aspirations.” “Early Implementation of Public Single-Sex Schools: Perceptions and Characteristics” U.S. Dept. of Ed. (2008), <https://files.eric.ed.gov/fulltext/ED504174.pdf>. As single-sex, religious schools deliver results, more and more are opening, especially in urban and minority communities. Lisa Eliot, “Single-sex schools are on the rise for kids of color,” *The Atlantic* (Jan. 8, 2017), https://www.salon.com/2017/01/08/single-sex-schools-are-on-the-rise-for-kids-of-color_partner/; Denisa Superville, “Single-Gender Schools Prove Best for Some Students,” *Educ. Week* (Sept. 30, 2016), <https://www.edweek.org/ew/articles/2016/10/05/single-gender-schools-prove-best-for-some-students.html>. Many of these single-sex schools would be excluded by Montana’s policy because of their religious character. *See* National Coalition for Girls Schools, https://ncgs.memberclicks.net/index.php?option=com_mcsearchresults&view=search&uuid=41eee324-c1b7-4772-9945-fdc850acad76#/ (listing over 200 members in the United States, many of which are private and religious); International Boys School Coalition, <https://www.theibsc.org/page.cfm?p=38&max=1000> (listing just under 100 members in the United States, many of which are private and religious).

G. Children in Alternative Educational Settings

There are also educational options that may be less generally available, but still may be the best choice for certain students. Some students may wish to use a voucher or scholarship towards tuition at a boarding school, with its immersive nature that combines the social, athletic, educational, and religious. *See* Association of Boarding Schools, <http://www.boardingschools.com/media/148588/tabs2018membersubscriberlist.pdf> (listing over 200 members, many of which are religious). Others may prefer to enroll at a military academy. *See* Association of Military Colleges & Schools of the United States, <https://amcsus.org/schools/> (listing 27 junior and high school-level military academies, several of which are private and religious). Yet other young people may be best served by a faith-based recovery high school, which focuses on serving students struggling with heroin, opioids, and other addictions. *See, e.g.*, Perry West, “Pennsylvania diocese opening faith-based addiction recovery high school,” Catholic News Agency (Dec. 17, 2018), <https://www.catholicnewsagency.com/news/pennsylvania-diocese-opening-faith-based-addiction-recovery-high-school-18179>. These options, though less common than other types of schools, may be the right fit for children from troubled families, children dealing with discipline issues, or children struggling to maintain sobriety. These options would also see schools pushed out of the program by Montana’s policy writ large.

There is “no one way to school” in this country.
ASHLEY BERNER, PLURALISM AND AMERICAN PUBLIC

EDUCATION: NO ONE WAY TO SCHOOL (2017). While everyone agrees that all children should have equal access to education, virtually no one thinks the way we educate all children should be absolutely uniform, as though we were putting children on an education assembly line. People understand that different children have different needs, preferences, strengths, and weaknesses. School choice is a tool to provide children equal access to education while recognizing that all children are unique in the way they learn. Putting barriers to the access that children have to diverse learning experiences, by prohibiting children from using public money for religious schools, denies these children the ability to have their unique educational needs met.

Each of the children whose stories are included above personify in their own way the underlying reality that every child has their own individual educational needs. Each of them learns best and thrives socially and personally in a particular setting. And each of them relies on the state to support their education through some version of school choice. Montana has denied its children that opportunity through its decision to exclude religious schools from its tax credit program. By resolving the question presented in this case, the Court can provide certainty to millions of students and parents nationwide, reassuring them that they can continue in the school setting they think is best. And the Court can open the possibility for many more families to find a school that is a better fit for their one-of-a-kind kid.

II. Educational pluralism promotes core democratic values

The stories above are not simply feel-good anecdotes about school choice. They also represent a deeper, broader reality about diversity among our educational institutions and the need for a pluralism to protect minorities. When institutions are given the space to be unique, to serve particular populations, to establish internal cohesion through a shared vision or affiliation, then our broad spectrum of institutions taken together are wonderfully diverse. This diversity serves the students drawn to particular types of institutions, especially vulnerable and minority students like those described above, but it also contributes to a broader array of voices and ideas within our society and communities as a whole. It is pluralism between and among institutions that brings its only kind of diversity. See Paul Horwitz, *Institutional Pluralism and the (hoped-for) effects of candor and integrity in legal scholarship*, 101 MARQ. L. REV. 925, 925 (2008).

Education may well be “the most important function of state and local governments.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954). But that has never meant that it is the exclusive responsibility of government to provide every child’s education. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925). Rather, Americans rightly recognize that “private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience.” *Bd. of Educ. v. Allen*, 392 U.S. 236, 247 (1968). This court has witnessed a “persistent desire of a number of States to find proper means of helping sectarian education,” *Wolman v.*

Walter, 433 U.S. 229, 262 (1977) (Powell, J., concurring/dissenting), from *Cochran v. Louisiana State Bd. of Educ.*, 281 U.S. 370 (1930), to *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011). The score of cases in this category all stem from the fact that legislators and citizens wish to see their states support parents and children who choose private, religious schools in their communities.

This pluralism of educational institutions in our nation finds deep roots in our past: it is a practice both historic and healthy for our polity. “School systems in the United States used to be plural, too, funding Catholic, Congregationalist and de-facto Jewish schools alongside nonsectarian ‘common schools’ until the end of the 19th century, when several factors converged to create the impetus for uniform, district schools — including anti-immigrant (and anti-Catholic) political movements, local control, and the professionalization of teachers.” Ashley Berner, *Pluralism in American School Systems*, Johns Hopkins School of Educ. Institute for Educ. Policy (Jan. 2018), <http://edpolicy.education.jhu.edu/wp-content/uploads/2018/01/PluralismBrief-Jan2018.pdf>. Though John Dewey’s disciples pushed nationwide for uniform schools, the resilience of our diverse schools, including private and religious schools, carries through to this day.

These schools are a blessing to critical parts of our communities. Institutional pluralism in education works. It works for all the children whose stories are shared above, children who needed a school as unique as they are. It works according to the research: “Evidence from around the world suggests that studying

within ‘distinctive educational communities in which pupils and teachers share a common ethos’ vastly increases the odds of students’ acquiring academic and civic knowledge, skills, and sensibilities.” *Id.* It works for more than test scores and graduation rates; these distinctive educational institutions are the bulwarks of order and civil society in many neighborhoods and communities. Margaret F. Brinig & Nicole S. Garnett, *Catholic Schools, Urban Neighborhoods, and Education Reform*, 85 NOTRE DAME L. REV. 887 (2010).

CONCLUSION

We are an incredibly diverse people, and our education systems reflect the many religions, cultures, and populations that have sought the sanctuary of these shores over the centuries. When our states embrace the diversity of our schools, when they celebrate and empower rather than punish distinctive educational institutions, they embrace the best of our country, its heritage and its hope for the future. This pluralism of local schools is as important to our social order as a pluralism of distinctive institutions in the press, higher education, or the political process. It’s important to children like John, Walter, Emily, Dominique, the students of the Muslim Academy of Greater Orlando, and the children on Senator Begay’s reservations because it offers them schools that let them be their best. For all their sakes, the Court should grant certiorari in this case.

Respectfully submitted,

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