

No. 20-1088

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.

**On Writ of Certiorari to the
United States Court of Appeals
for the First Circuit**

**BRIEF FOR GEORGIA GOAL SCHOLARSHIP
PROGRAM, INC. AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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QUESTION PRESENTED

Does a state violate the Religion Clauses or Equal Protection Clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or “sectarian,” instruction?

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**IDENTITY AND INTEREST OF
THE *AMICUS CURIAE*¹**

Georgia GOAL Scholarship Program, Inc. (“GOAL”) is the largest student scholarship organization (“SSO”) operating under the Georgia Education Expense Credit Program (the “Program”). Under the Program, the Georgia Department of Revenue awards Georgia income tax credits to taxpayers who contribute to SSOs to fund pre-K-12 scholarships to parents and guardians desiring to send their children to the non-public schools of their choice. The majority of the 160 non-public schools participating in GOAL are religious schools.

Therefore, a decision by this Court on whether a state-sponsored school choice program may discriminate based on the religious use made of funds received under the program is of vital interest to GOAL.

SUMMARY OF ARGUMENT

This case arises from a decision of the United States Court of Appeals for the First Circuit upholding the right of Maine officials to implement a student-aid program for high school students (the “Maine Program”) in a manner that discriminates against families who choose to promote the values and social and emotional learning of their children by enrolling them in a secondary school that teaches students from a theistic or traditionally religious perspective.

Under the Maine Program, families may receive funds to enroll their children in public or non-public

¹ Rule 37 statement: All parties have consented to the filing of this brief. Counsel for the amicus curiae authored the brief in its entirety. No person or entity other than the amicus curiae, its members or its counsel made a monetary contribution to the preparation or submission of the brief.

secondary schools that promote the values and social and emotional learning of students through values-based humanist perspectives and state-approved socio-psychological techniques, but families may not receive student aid if their children attend schools that Maine deems “sectarian.”

In *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001), this Court held that denying the Good News Club, a Christian youth development organization, after-school access to a public-school classroom cafeteria constituted impermissible viewpoint discrimination against the “purely” religious approach the Club took toward the moral and character education of children. As the Court explained, “[w]hat matters for purposes of the Free Speech Clause is that we can see no logical difference in kind between the invocation of Christianity by the Club and the invocation of teamwork, loyalty, or patriotism by other associations to provide a foundation for their lessons.” *Id.* at 111.

Throughout American history, state and local governments have used public funds to indoctrinate Pre-K-12 students in various values-based humanist perspectives and government-approved social and emotional thoughts, attitudes, and practices. By protecting the constitutional right of Petitioners to equal access to public funds for the values formation and social and emotional learning of their children in accordance with the dictates of their consciences at non-public religious schools, this Court can break the monopoly state and local governments have over Pre-K-12 education in America — a monopoly built on the false premise that government-run schools are not engaged in the religious undertaking of forming the values and social and emotional thoughts, attitudes, and practices of students.

ARGUMENT**I. Throughout American history, State K-12 Education has Indoctrinated Students in Values-Based Humanist Systems and Social and Emotional Thoughts, Attitudes and Practices in a Fundamentally Religious Undertaking to Develop the Intelligence, Values and Social and Emotional Well-Being of Children.**

This Court has explained that education may be the most important function of state and local governments because it “is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954). This Court’s statement about the role of education raises many questions. Which government officials ultimately decide the cultural values to which children are to be awakened and how do they decide? Is the foundation for these cultural values a Judeo-Christian one? Are classroom teachers capable of teaching cultural values free of their personal philosophical, moral, and political biases? What can a family without the financial means of sending their children to a non-public religious school do when they disagree with the cultural values being taught in the public school their children attend? Is it realistic that they would have the time, resources, or competency to challenge the values-based curriculum of a large urban school district and its team of lawyers?

The personal and subjective nature of educating children in cultural values lends itself to ambiguity, relativity, and possible abuse:

Values are defined in literature as everything from eternal ideas to behavioral actions. As used here values refer to criteria for determining levels of goodness, worth or beauty. Values are affectively-laden thoughts about objects, ideas, behavior, etc. that guide behavior, but do not necessarily require it (Rokeach, 1973). The act of valuing is considered an act of making value judgments, an expression of feeling, or the acquisition of and adherence to a set of principles.²

Beyond awakening children to cultural values, how do government-run K-12 schools help a student “adjust normally to his environment”? Who decides whether and when a student is normally adjusted to his environment? How do school authorities assess whether a student is well-adjusted to her environment? Which socio-psychological techniques and outside mental and behavioral health experts may a public-school counselor use in adjusting a student to her environment? As school officials help a student adjust normally to his environment, must they engage and seek permission from his parents to do so?

Indeed, since colonial days in America, state and local government officials have taken seriously the public school’s role “in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.” *Brown, supra*, at 493. These government officials and taxpayers have generously funded public schools, most often to the exclusion of non-

² W. Huitt, *Values*. EDUCATIONAL PSYCHOLOGY INTERACTIVE. Valdosta, GA: Valdosta State University (2004), <http://www.edpsycinteractive.org/topics/affect/values.html>.

public religious or “sectarian” schools engaged in the teaching of cultural values officials perceived would compete with the government-approved values comprising the “common” civic religion. This denial of public funds for cultural values education started with Roman Catholic parochial schools in the mid-19th century and continues to this day in most states with respect to all K-12 religious schools. Along the way, state and local government officials, often with support of the United States Department of Education, have adopted numerous programs designed to indoctrinate K-12 students in government-sanctioned cultural values and socio-psychological practices to help students “adjust normally to [their] environment[s].” These programs include, but are not limited to, character education, values education, student-centered learning, trauma-informed education, social and emotional learning, LGBTQ+ education, action civics, and educating for climate action.

Instead of competing against “traditional” or “sectarian” religious schools by awarding parents equal access to public funds for the education of their children in the values and social and emotional learning they deem best, state and local public-school officials have created a monopoly over K-12 education. Contrary to promoting democracy, this monopoly interferes with democratic evolution.

Democratic evolution is marked by the articulation of philosophical views about the ideal social order that, over time, are embraced by political leaders, government officials, and the general public. As these philosophical ideas are debated among citizens in private and, ultimately, in the political process, they coalesce into identifiable values systems. Because these values systems relate to the human person and

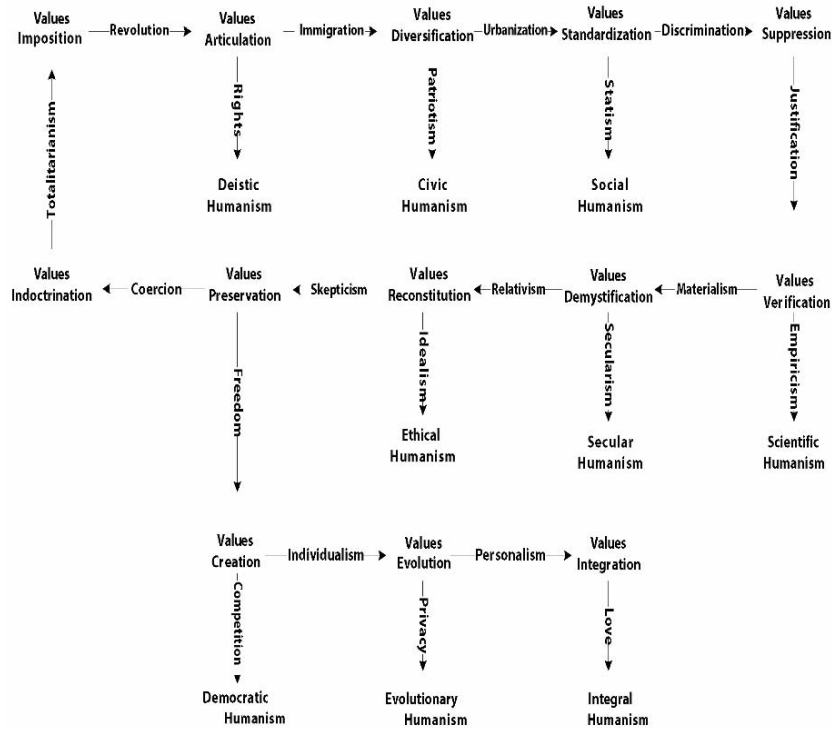
society, they have become known as “humanist.”³ Ultimately, courts are called upon to determine the propriety or limits of each new values-based humanist system. These court battles establish a legal framework for further social evolution.⁴

As reflected in the following Democratic Evolution[®] chart, the undersigned lead counsel (Kelly) has identified 12 humanist phases in America’s democratic evolution: creative, deistic, civic, social, scientific, trans, secular, ethical, democratic, evolutionary, integral, and political. Each of these humanist systems arose to solve a specific perceived cultural shortcoming of the prior humanist period. In essence, each humanist system represented an effort to create the ideal social order and, thereby, promote the happiness of citizens.

³ See Humanists UK, “Understanding Humanism: Humanist Perspectives”, <https://understandinghumanism.org.uk/perspectives/> (last visited Aug. 30, 2021).

⁴ See James P. Kelly, III, *Democratic Evolution and the Church of the United Nations*, ENGAGE, Vol. 8, Issue 3, 2007, available at https://www.georgiacf.org/docLib/20150227_democratevolutionandthechurchoftheunitednations2007.pdf.

DEMOCRATIC EVOLUTION



Creative humanism is based on the idea that the practice of the Christian faith and Christian values has a positive impact on the formation and restoration of democratic societies. To facilitate the growth of compulsory education in the American colonies, between 1687 and 1690, printer Benjamin Harris published *THE NEW ENGLAND PRIMER* (1687-1680), based largely on *THE PROTESTANT TUTOR*, which he had published in England. The selections in *THE NEW ENGLAND PRIMER* (pre-1896) included instruction in

the alphabet, vowels, consonants, double letters, and syllabaries of two letters to six letter syllables. The 90-page work contained religious maxims, woodcuts, alphabetical assistants, acronyms, catechism answers, and moral lessons.

The PRIMER prepared young children to read the Bible, because reading the word of God for oneself was the ultimate goal of literacy for many Christian Americans at this time. Many of the PRIMER'S selections were drawn from the KING JAMES BIBLE, so it embodied the dominant Puritan attitude and worldview of the day. Although estimates vary, children's literature scholar David Cohen reports that, between 1680 and 1830, printers produced as many as eight million copies of the various edition of THE PRIMER.⁵

The use of THE NEW ENGLAND PRIMER coincided with the rise of a key leader of the First Great Awakening, the Northampton, Massachusetts Anglican minister Jonathan Edwards. Amicus Historia, *Sunday Worship's Going Down*.⁶ Although, Edwards delivered his infamous sermon, titled "Sinners in the Hands of an Angry God" in 1741, recent studies have emphasized how thoroughly Edwards grounded his life's work on conceptions of beauty, harmony, and ethical

⁵ See Emma Hastings, *Children Used to Learn About Death and Damnation With Their ABCs*, SMITHSONIAN MAGAZINE. Washington, D.C.: National Museum of American History (Sept. 19, 2017) <https://www.smithsonianmag.com/smithsonian-institution/children-used-learn-about-death-and-damnation-their-abc-180964938/>.

⁶ Amicus Historia, *Sunday Worship's Going Down*® (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP-+DE-+Sunday+Worship's+Going+Down-+Final.mp4> (last visited Sept. 9, 2021).

fittingness, and how central the Enlightenment was to his mindset.⁷

By the end of the First Great Awakening in the 1740s, Enlightenment ideas such as the pursuit of happiness, reason, and advanced ideals such as liberty, progress, toleration, fraternity, constitutional government, and the separation of church and state had gained traction. All of these ideas and ideals ushered in the period of the American Revolution and contributed to create a demand for religious freedom and, in turn, *deistic humanism*.

Deistic humanism is based on the idea that God, though responsible for creating the world and humans vested with certain inalienable rights and duties, is like a watchmaker, who, once creating the universe, no longer intervenes in daily life. Once the Republic was established, many early American deists viewed deistic humanism as a more liberal means to promote morality, maintain order, and preserve the social contract. In particular, Thomas Jefferson who for many years waged a campaign in Virginia for a system of publicly supported education, believed that

[R]epublicanism was inherently good, that organized religion should be viewed with skepticism, that Jesus was not divine, that slavery was wrong. Given access to education, people could learn to embrace all these views, thanks to their powers of rationality and openness to new discoveries.⁸

⁷ See Sang Hyun Lee, ed. *The Princeton Companion to Jonathan Edwards*, Princeton Univ. Press (2005).

⁸ See Annette Gordon-Reed, *Jefferson's Doomed Educational Experiment*, THE ATLANTIC, (Dec. 2019), <https://www.theatlantic>.

One of Jefferson’s later acts evidencing his deistic worldview was to take a sharp instrument to existing copies of the New Testament to paste and create his own account of Christ’s “natural” philosophy. Amicus Historia, *Cut with Wide Latitude, Kept the Beatitudes*.⁹

Beginning in the middle of the 19th century, as European immigrants arrived in America, state and local officials perceived the need to more deliberately instill knowledge of, and respect for, Republicanism. As a result, they promoted *civic humanism*, which is based on the idea that social order is rooted in a love of country and in values that encourage sacrifice on behalf of the common good. In opposition to the continued attachment of citizens to Christianity and ecclesiastical authorities (especially Roman Catholic), states imposed civic humanism through mandatory government-funded civics and moral education.

At the heart of the resulting common school movement was the belief that free common schooling dedicated to good citizenship and moral education would ensure the alleviation of problems facing the new Republic. The person most identified with the common school movement was Horace Mann (1796–1859), a member of the Massachusetts state legislature, and then secretary of the Massachusetts Board of Education. Mann’s ideology was based upon a strong sense of Protestant Republicanism, which was rooted in a secular, “non-sectarian” (i.e., non-Roman

com/magazine/archive/2019/12/thomas-jefferson-alan-taylor-university-of-virginia/600793/.

⁹ Amicus Historia, *Cut with Wide Latitude, Kept the Beatitudes*© (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP-+DE-+Cut+with+Wide+Latitude%2C+Kept+the+Beatitudes-+Final+2.mp4>. (last visited Sept. 9, 2021)

Catholic) morality. He believed that education was a child's "natural right," and that moral education should be the heart of the curriculum. Amicus Historia, *Melting Pot*.¹⁰

By the beginning of the 20th century, state and government officials, educators, and social scientists realized that, absent family and social reforms, publicly-funded social welfare programs, and philanthropy, a basic academic and moral education would be insufficient to address the social ills emanating from mass immigration. *Social humanism* is based on the idea that improvement in the lives of the lowest and most numerous class of citizens depends on the abilities, educational training, and work of an elite intellectual and creative class of individuals. To this end, in 1889, along with Ellen Gates Starr, Jane Addams founded the world-famous social settlement Hull House on Chicago's Near West Side. Amicus Historia, *Hull House*.¹¹

Of course, as state and local government officials enacted government-funded social welfare programs, they pressured businesses and the wealthy to promote and fund social justice, which the Austrian economist Friedrich Hayek later argued distorts or suppresses free markets, personal choice, innovation, and economic growth. Hayek described social justice as "that incubus which today makes fine sentiments the instruments for the destruction of all values of a free

¹⁰ Amicus Historia, *Melting Pot*® (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP+-+CM+-+Melting+Pot+Final.mp4> (last visited Sept. 9, 2021).

¹¹ Amicus Historia, *Hull House*® (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP+-+CM+-+Hull+House+Final.mp4> (last visited Sept. 9, 2021).

civilization” leading to “the destruction of the indispensable environment in which the traditional moral values alone can flourish, namely personal freedom.” Friedrich Hayek, *LAW, LEGISLATION, AND LIBERTY: A NEW STATEMENT OF LIBERAL PRINCIPLES OF JUSTICE AND POLITICAL ECONOMY, VOL II* (1976), pp. xii and 67.

Despite Hayek’s warning from half a century ago, with the recent publication of the national Roadmap to Educating for American Democracy (the “EAD Roadmap”), the ambiguous and contested social justice movement is gaining traction in K-12 schools. Supporters of the Roadmap claim it offers “guidance and an inquiry framework that states, local school districts, and educators can use to transform teaching of history and civics to meet the needs of a diverse 21st century K–12 student body.”¹²

At the same time, some critics of the EAD Roadmap have expressed concerns about its content and the potential for teachers using it in public school civics and history classrooms to convert students into social justice activists who further promote the continued “re-founding” of an alleged historically unjust America.¹³ In those states who implement the EAD Roadmap, parents of limited financial means who want to form their children’s social justice worldview and practices in a traditionally religious school will be compelled to keep them in public schools that embrace the EAD

¹² See Educating for American Democracy, *Roadmap to Educating for American Democracy*, <https://www.educatingforamericandemocracy.org/the-roadmap/#content-themes> (last visited Sept. 2, 2021).

¹³ See Mark Bauerlein, *Always Be Founding*, CITY JOURNAL, May 7, 2021, https://www.city-journal.org/civics-education-initiative-implicitly-rejects-american-founding?wallit_nosession=1.

Roadmap, in whatever form and manner it may be implemented.

Not only does social humanism raise issues of bias and potential coercion, it also has efficacy and sustainability issues. During the first half of the 19th century, state and local officials realized that there was scant evidence that social reform and welfare programs were having a long-term sustainable impact on personal and community development. As a result, they embraced a *scientific humanism* based on the idea that social order depends on the application of evidence-based scientific principles to the problems of human development and social life. State and local education officials used their public schools to engage in progressive education, including student-centered learning, social-psychological techniques, and a democratic “common” faith.

In *A Common Faith*, the 1934 compilation of his writings based on his Terry Lectures at Yale University, John Dewey promoted the role of religious experience in realizing human potential through action and imagination. “Here are all the elements for a religious faith that shall not be confined to sect, class, or race. Such a faith has always been implicitly the common faith of mankind. It remains to make it explicit and militant.” *Id.* at p. 80.

Of course, to facilitate the practice of Dewey’s Common Faith, state and local officials used compulsory K-12 education and public schools to wean students from the “sectarian” religious beliefs and practices of their immigrant parents. Amicus Historia, *Teach the Children*.¹⁴

¹⁴ Amicus Historia, *Teach the Children*® (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+>

By 1972, the Paris-based United Nations Educational, Scientific and Cultural Organization (“UNESCO”) promoted a global education agenda rooted in scientific humanism, this agenda viewed science as “a decisive factor in training all parts of the personality;” made “objectivity is the decisive factor, overshadowing subjectivity”; and held that “human relations have everything to gain when the common quest for a truth, which involves a willing acceptance of reality and facts, prevails over clashes between emotions dressed up as reasons.”¹⁵

Today’s “trauma-informed” education and social and emotional learning (“SEL”) programs promote scientific humanism. The Collaborative for Academic, Social, and Emotional Learning (“CASEL”) is a national source for knowledge about evidence-based social and emotional learning. CASEL’s SEL framework fosters knowledge, skills, and attitudes across five areas of competence, including self-awareness, self-management, social awareness, relationship skills, and responsible decision-making.¹⁶

Launched in October 2020, the Maine Department of Education (“Maine DOE”) provides educators with a free, comprehensive CASEL-aligned and trauma informed, Pre-K-12th grade SEL curriculum titled SEL4ME, which is an outgrowth of research and

Kelly++HP++CM++Teach+the+Children+Final.mp4. (last visited Sept. 9, 2021)

¹⁵ See United Nations Educational, Scientific and Cultural Organization (“UNESCO”), *The World of Education Today and Tomorrow- Learning to Be* (1972) <https://tinyurl.com/r9s572y>.

¹⁶ See Collaborative for Academic, Social, and Emotional Learning (CASEL), *Core SEL Competencies*, <http://www.casel.org/core-competencies> (last visited Sept. 1, 2021).

findings from Maine’s Opioid Prevention Task Force and Task Force on Childhood Trauma.¹⁷

The SEL4ME curriculum makes it clear that the Maine DOE is following the national SEL trend of transforming K-12 public education from a purely academic undertaking into a holistic model for the social, emotional, and academic training of students. The transformation is also a global trend, which UNESCO and its affiliated Mahatma Gandhi Institute of Education for Peace and Sustainable Development (“MGIEP”) (“UNESCO-MGIEP”) are leading. In order to “transform education for humanity,” the UNESCO-MGIEP programs “are designed to mainstream SEL in education systems, innovate digital pedagogies, and put youth as global citizens at the center of the 2030 agenda for Sustainable Development.”¹⁸

UNESCO’s promotion of social and emotional learning on a global scale advances *transhumanism*, which is based on the idea that technology can be used to overcome the biological limitations of man and improve the human condition. As advanced technologies and connectivity increase access to politically approved information, there is a manipulable convergence and consolidation of global thought, thereby

¹⁷ See Maine Department of Education, “Priority Notice: Maine DOE Launches Social Emotional Learning Curriculum,” Oct. 27, 2020, <https://mainedoenews.net/2020/10/27/priority-notice-maine-doe-launches-social-emotional-learning-curriculum/>.

¹⁸ See UNESCO-MGIEP, *Building Socio-Emotional Learning for Education 2030*, <http://mgiep.unesco.org/> (last visited Sept. 1, 2021).

increasing the risk of totalitarianism. Amicus Historia, *Christogenesis*.¹⁹

“There is a close systematic relationship between panentheism, as a metaphysical theory about the relation between God and the world, and transhumanism, the ethical demand to use the means of the applied sciences to enhance both human nature and the environment.”²⁰ Maine parents who are unable to afford the cost of sending their children to the religious schools of their choice have reason to be concerned about the panentheist-transhumanist implications of the Aspen Institute’s September 2020 launch of K12 Climate Action, the goal of which is “to create a comprehensive action plan to address climate change in the United States by leveraging the power of the education sector.”²¹ K12 Climate Action has launched a Commission “dedicated to developing an action plan and building a coalition of people and organizations to support the public K-12 education sector in moving toward climate action, solutions, and environmental justice.” *Id.*

The pervasive influence of social humanism, scientific humanism, and transhumanism resulted in, and continues to result in, the secularization of America’s

¹⁹ Amicus Historia, *Christogenesis*® (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP-+CM-+Christogenesis+Final.mp4> (last visited Sept. 9, 2021).

²⁰ See Benedikt Paul Göcke, *Panentheism, Transhumanism, and the Problem of Evil- From Metaphysics to Ethics*, EUROPEAN JOURNAL FOR PHILOSOPHY OF RELIGION, Vol. 11 No. 2 (2019), <https://www.philosophy-of-religion.eu/index.php/ejpr/article/view/2971>.

²¹ See Aspen Institute, “The Aspen Institute Launches K12 Climate Action,” Sept. 23, 2020, <https://www.aspeninstitute.org/news/press-release/k12-climate-action/>.

K-12 public education system. *Secular humanism* is based on the idea that traditional religious beliefs and practices cannot be used as the basis of morality and decision-making in the public square. Influenced by academic, media, and entertainment institutions that criticize and marginalize traditional religion, and, particularly, by the writings of the existentialist philosopher and Lutheran Protestant theologian Paul Tillich, progressive Christians accepted the purging of traditional theistic religion from the public square and the usurpation of charitable functions by the State.

In *Seeger v. United States*, 380 U.S. 163, 187 (1965), in considering whether Daniel Seeger was entitled to a religious exemption from military service in the Vietnam War even though he professed no belief in a Supreme Being as required by the applicable federal statute, this Court employed Tillich's secular humanist theory of religion. Amicus Historia, *Betcha It's Holy Now*.²²

In seeking his exemption, Seeger explained that his was a "belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed." *Seeger*, 380 U.S. at 166. This Court explained that Seeger's beliefs occupied the same place in his life as the belief in a traditional deity holds in the lives of the Quakers, who were working with Seeger on his case. This Court was "reminded once more of Dr. Tillich's [following] thoughts":

And if that word (God) has not much meaning
for you, translate it, and speak of the depths

²² Amicus Historia, *Betcha It's Holy Now*® (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP+-+CM+-+Betcha+It's+Holy+Now--+Final.mp4> (last visited Sept. 9, 2021).

of your life, of the source of your being, or your ultimate concern, of what you take seriously without any reservation. Perhaps, in order to do so, you must forget everything traditional that you have learned about God. . . .

Id. at 167 (emphasis added), quoting Paul Tillich, *The Shaking of the Foundations* (1948), p. 57.

Surely, under such an expansive definition of what constitutes religious faith, when indoctrinating students in cultural values and social and emotional thoughts, attitudes, and skills about which they expect students to become ultimately concerned, Maine K-12 public education officials and those students engage in a religious undertaking. Yet, those same officials deny families equal access to student aid for use at schools who promote the values and social and emotional learning of students from a traditionally religious perspective.

In large part, the Question Presented in this case results from this Court's failure to definitively determine what constitutes "religion" in the context of America's ever-evolving K-12 public education system. It is a system that has evolved from the "passive" activity of transmitting facts and knowledge to the "positive" activities of indoctrinating students in ambiguous, hotly contested cultural values and seeking to form their social and emotional thoughts, attitudes, and practices. "The Court, it is true, evenhandedly prohibits government hostility toward any religion, theistic or otherwise. But when it comes to positive activity, it allows government to aid, advance, and support secularism, while denying any such government assistance to theism." Paul James Toscano, *A Dubious Neutrality: The Establishment of Secularism*

in the Public Schools, BRIGHAM YOUNG UNIVERSITY LAW REVIEW, Issue 2, p. 177-211 (1979), p. 187.²³

In this law review article, Toscano opined that, by forbidding government from aiding theism and forbidding theistic religion from exerting any influence on government or government institutions (including public schools), this Court “has embarked upon a trend toward the establishment of national secularism.” *Id.* at 189.

In the 1960s and 1970s, many in the education field realized that a national secular humanist belief system could not serve as the basis for a reliable pedagogy for the moral education of young people; however, they felt that a universal ethical system could do so. *Ethical humanism* is based on the idea that humans require a non-theistic moral and ethical values system upon which they can rely in order to bring justice and peace to the world. Realizing the negative impact secularization has on society, state and local public school officials attempt to indoctrinate young people in “universal” ethics, denying traditionally religious families equal access to public funds for the teaching of their theistic ethical worldview.

David Saville Muzzey was the *de facto* leader of the ethical humanist movement in America’s public education system. A leader at the New York Society for Ethical Culture, in 1911 Muzzey authored AN AMERICAN HISTORY, an American history textbook used by millions of American children during the first half of the 20th century.

²³ <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1191&context=lawreview> (1979) (last visited Sept. 9, 2021).

In *Seeger*, decided in the year Muzzey died, this Court noted with approval his explanation of ethical humanism:

Instead of positing a personal God, whose existence man can neither prove nor disprove, the ethical concept is founded on human experience. It is anthropocentric, not theocentric. Religion, for all the various definitions that have been given of it, must surely mean the devotion of man to the highest ideal that he can conceive.

Seeger, 380 U.S. at 183, *citing* David Saville Muzzey, *ETHICS AS A RELIGION*, (1951), p. 95. Only three years before *Seeger*, ensuring a competitive advantage for the teaching of ethical humanism in public schools, this Court in *Engel v. Vitale*, 370 U.S. 421 (1962) decided that state officials may not compose an official state prayer and require that it be recited in the public schools of the State at the beginning of each school day — even if the prayer is denominationally neutral and pupils who wish to do so may remain silent or be excused from the room while the prayer is being recited. Amicus Historia, *With a Little Bit of Luck*.²⁴

To address disturbing trends in student behavior through the practice of ethical humanism, in 2001, Maine’s Commission for Ethical and Responsible Student Behavior published *Taking Responsibility: Standards for Ethical and Responsible Behavior in Maine Schools and Communities* (“*Taking Respon-*

²⁴ Amicus Historia, *With a Little Bit of Luck*® (Heroic Productions, LLC 2021) <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP-+CM-+With+A+Little+Bit+Of+Luck-+Final.mp4> (last visited Sept. 9, 2021).

sibility”).²⁵ In his cover letter accompanying *Taking Responsibility*, Maine DOE’s Commissioner, J. Duke Albanese, emphasized how, “since the beginning of public education in America, our citizens have recognized that the aims of public education extend beyond academics to values, attitudes, and behaviors” and stated that the report “identifies core principles and best practices for schools and communities to use in creating, practicing, enforcing, and assessing expectations for all students, enabling them to develop as ethical, responsible, and involved citizens.”

During the first half of the 20th century, for black Americans, the promise of historian David Saville Muzzey’s ethical humanism was an empty one, as, in 1899, this Court had upheld the ability of local school board authorities to make political decisions, thereby depriving black families equal access to the K-12 educational opportunities afforded white Americans. *Cumming v. Richmond Cnty. Bd. of Educ.*, 175 U.S. 528 (1899). See Amicus Historia, *An American Dream*.²⁶ It was not until *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954), and the passage of the Civil Rights Act of 1964, that black Americans were able to start realizing the benefits of *democratic humanism*.

Democratic humanism is based on the idea that positive human development can only be achieved through the free exercise of civil and political rights.

²⁵ Available at <https://www.maine.gov/doe/sites/maine.gov/doe/files/bulk/Behavior/TakingResponsibilityStandardsforEthicalandResponsibleBehaviorinMaineSchoolsandCommunities.pdf> (last visited Sept. 1, 2021).

²⁶ Amicus Historia, *An American Dream*© (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP-+CL-+An+American+Dream-+Final.mp4> (last visited Sept. 9, 2021).

As citizens sense that the State's effort to impose a secular ethical culture to maintain order and the economy is undermining their civil, political, economic, social, and cultural rights, they engage in the democratic process, and, when necessary, civil disobedience.

Even after the passage of the Civil Rights Act of 1964, black Americans had to fight to realize their basic civil, political, economic, social, and cultural rights, suffering the continued indignity of unequal access to public accommodations and threats to their physical safety. Amicus Historia, *Motel in Atlanta*.²⁷ Even after this Court's decision in *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964), black Americans continued to face racial inequality and injustice before the law.

Today, the debate over the progress that has, and has not, been made in the area of race relations and racial justice is one that is being hotly contested by many academics, K-12 school officials, and American families.

From the perspective of the leaders of the 1619 Project, America has never properly acknowledged or addressed the impact of slavery in America from the formation of the Republic to this day. To educate K-12 students about their version of events, they are cooperating with state and local public schools on implementing the Pulitzer Center's *1619 Project Curriculum*, which "challenges us to reframe U.S. history by marking the year when the first enslaved

²⁷ Amicus Historia, *Motel in Atlanta*® (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP-+CM-+Motel+in+Atlanta+Final.mp4> (last visited Sept. 9, 2021).

Africans arrived on Virginia soil as our nation's foundational date."²⁸

Alternatively, leaders of 1776 Unites are promoting their *1776 Unites Curriculum*, which they assert "offers authentic, inspiring stories from American history that show what is best in our national character and what our freedom makes possible even in the most difficult circumstances." They offer that the *1776 Unites Curriculum* "maintains a special focus on stories that celebrate black excellence, reject victimhood culture, and showcase African-Americans who have prospered by embracing America's founding ideals."²⁹

As democratic humanism heightened the national focus on protecting and promoting civil and political rights, since the 1960s, America has experienced an *evolutionary humanist* "Great Awakening" in the form of an expansion of social and cultural rights. Evolutionary humanism is based on the idea that each person has the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 851 (1992). Amicus Historia, *Come Monday*.³⁰ As state and local officials use public schools to indoctrinate children in a liberal progressive agenda emphasizing their right, independent

²⁸ See Pulitzer Center, *1619 Project Curriculum*, 2021, <https://pulitzercenter.org/lesson-plan-grouping/1619-project-curriculum> (last visited Sept. 1, 2021).

²⁹ See 1776 Unites, *1776 Unites Curriculum*, <https://1776unites.com/our-work/curriculum/> (last visited Sept. 1, 2021).

³⁰ Amicus Historia, *Come Monday*® (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP-+CM-+Come+Monday+Final.mp4> (last visited Sept. 9, 2021).

of their parents, to form opinions about social and cultural rights, including, but not limited to, sex, sexual orientation, procreation, abortion, and marriage, objecting parents seek to exercise their right to direct the upbringing of their children.

Almost 50 years ago, this Court rejected the State of Wisconsin's broad contention that its interest in its system of compulsory education was so compelling that even the established religious practices of the Amish—whose children are only educated through eighth grade—must give way. *Yoder v. Wisconsin*, 406 U.S. 205, 221 (1972). In this Court's opinion:

The conclusion is inescapable that secondary schooling, by exposing Amish children to worldly influences in terms of attitudes, goals, and values contrary to beliefs, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish faith community at the crucial adolescent stage of development, contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child.

Id. at 218. See Amicus Historia, *Goodbye Yellow Bus Route*.³¹

Consistent with evolutionary humanism, the Maine DOE “supports all LGBTQ+ identifying, lesbian, gay, bisexual, transgender, gender queer and questioning

³¹ Amicus Historia, *Goodbye Yellow Bus Route*© (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP-+CM-+Goodbye+Yellow+Bus+Route+Final.mp4> (last visited Sept. 9, 2021).

students, families, and school staff.”³² In August 2021, the Maine DOE launched a new section of its website devoted to supporting LGBTQ+ students in Maine. The coordination of the website and its resources is the result of a year-long effort and partnership between Maine DOE, OUT Maine, and GLBTQ Legal Advocates and Defenders (“GLAD”). The website is designed “to provide meaningful resources and information to schools to give them the tools to support not only their LGBTQ+ students but their families and school staff as well.” *Id.*

In this context, and in light of this Court’s decision in *Yoder*, Maine’s evolutionary humanist mandate relating to LGBTQ+ education and practices and denial of Petitioners’ equal access to the Maine Program is unlawful. If, instead, Respondent permitted Petitioners to participate in the Maine Program and use their student aid at non-public schools that respect and promote their Christian religious beliefs, Maine would be protecting their *integral humanist* worldview. Integral humanism is based on the idea that the human person consists of both supernatural and temporal elements and that a person’s faith is an integral part of all aspects of his or her daily life.

As opposed to the various totalitarian conceptions of political society in vogue today, the conception here is of a pluralist body politic bringing together in its organic unity a

³² See Maine Department of Education, “Website of LGBTQ+ and Gender Expansive Resources Now Available to Schools,” Aug. 20, 2021, <https://mainedoenews.net/2021/08/20/website-of-lgbtq-and-gender-expansive-resources-now-available-to-schools/> (last visited Sept. 1, 2021).

diversity of social groupings and structures,
each of them embodying positive liberties.

Jacques Maritain, *INTEGRAL HUMANISM: TEMPORAL AND SPIRITUAL PROBLEMS OF A NEW CHRISTENDOM*, University of Notre Dame Press (1996) p. 256. Having lost trust in the various state-sponsored humanist systems that fail to respect human dignity, traditional values, and religious freedom, citizens embrace an integral humanism based in faith and reason that informs their political discourse and civic actions.

In a decision that has the effect of promoting integral humanism, this Court sanctioned the use by parents of publicly-funded student aid to send their children to religious schools, many of which were parochial Roman Catholic ones:

[W]here a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice, the program is not readily subject to challenge under the Establishment Clause.

Zelman v. Simmons-Harris, 536 U.S. 639, 652 (2002); See Amicus Historia, *Ticket to Ride*.³³ Unfortunately, in many cases, families living in states that fail to adopt publicly funded educational choice programs, or, like Maine, refuse to award student aid to parents desiring to send their children to traditionally religious schools, are subjected to *political humanism*.

³³ Amicus Historia, *Ticket to Ride*® (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP+++CM+++Ticket+to+Ride+Final.mp4> (last visited Sept. 9, 2021).

Political humanism is based on the idea that elected officials should exercise their political power and regulatory authority to achieve equal access to human security and, if necessary, wealth re-distribution. Frustrated by conservative or populist movements at the national level, transnational progressives use supranational organizations to advance their civil, political, economic, social, and cultural agenda on a global scale.³⁴

Promoting the United Nations' human rights education agenda is central to advancing political humanism at the state and national level. In 1953, a few years after adoption of the 1948 Universal Declaration of Human Rights, responsibility for human rights education fell to the Associated Schools Program of UNESCO, an organization headed by the avowed humanist Julian Huxley from 1946 to 1948. Amicus Historia, *Imagine*.³⁵ Presently, the United Nations Office of the High Commissioner for Human Rights ("UNOHCHR") is implementing the Fourth Phase (2020-2024) of the World Programme for Human Rights Education, "with special emphasis on education and training in equality, human rights and non-discrimination, and inclusion and respect for

³⁴ See John Fonte, "Liberal Democracy vs. Transnational Progressivism: The Future of the Ideological Civil War Within the West," *Orbis*, Summer 2002, https://www.hudson.org/content/researchattachments/attachment/254/transnational_progressivism.pdf.

³⁵ Amicus Historia, *Imagine*© (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP+-+CM+-+Imagine+FInal.mp4> (last visited Sept. 9, 2021).

diversity with the aim of building inclusive and peaceful societies.”³⁶

Bangor High School, the only public high school in Maine’s third largest city, recently announced a partnership with Robert F. Kennedy Human Rights to incorporate UN human rights education and enhance social and emotional learning. This “Speak Truth to Power” partnership is being piloted to proactively address concerns about racism expressed by students at Bangor High. “Additionally, the partnership will employ a whole-school approach that will use human rights education as an umbrella strategy for social-emotional learning, addressing inclusivity in the areas of gender, LGBTQ+, income inequality, mental health, food insecurity and individuals with disabilities.”³⁷

So, America has reached the end of its first passage through Democratic Evolution, having experienced (and retained certain features of) creative, deistic, civic, social, scientific, transhumanist, secular, ethical, democratic, evolutionary, integral, and political humanist systems. By upholding the fundamental freedoms guaranteed to Petitioners under the law, this Court has the opportunity to empower them to engage in further democratic evolution, as members of what

³⁶ See United Nations Office of the High Commissioner for Human Rights, “Fourth phase (2020-2024) of the World Programme for Human Rights Education,” <https://www.ohchr.org/EN/Issues/Education/Training/WPHRE/Fourthphase/Pages/FourthPhaseIndex.aspx> (last visited Sept. 1, 2021).

³⁷ See Bangor High School, “Bangor High School Partners with Robert F. Kennedy Human Rights to Launch New Speak Truth to Power Pilot Program,” Aug. 3, 2021, <https://bangorhigh.bangorschools.net/news/2021/08/03/bangor-high-school-partners-with-robert-f-kennedy-human-rights-to-launch-new-speak-truth-to-power-pilot-program/>.

the English historian, Arnold Toynbee, and Pope Benedict XVI called a “creative minority.”³⁸

II. Maine’s Refusal to Provide Petitioners with Equal Access to Public Funds for the Education of Their Children in Non-Public Schools That Use Religion to Develop the Values and Social and Emotional Well-Being of Students Violates Their Freedom of Speech, Thought, Due Process, And Equal Protection Rights.

A. Conditions on Generally Available K-12 Student Aid Must Not Violate the Right to Freedom of Speech.

The First Amendment to the U.S. Constitution states, “Congress shall make no law . . . abridging the freedom of speech . . .” U.S. Const. amend. I.

In *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001), this Court held that denying the Good News Club, a Christian youth development organization, after-school access to a public-school classroom cafeteria constituted impermissible viewpoint discrimination against the “purely” religious approach the Club took toward the moral and character education of children. Amicus Historia, *Let Us Pray People*.³⁹ As the Court explained, “[w]hat matters for purposes of

³⁸ See Samuel Gregg, *Benedict’s Creative Minority*, ACTON COMMENTARY, Sept. 22, 2010, <https://www.acton.org/pub/commentary/2010/09/22/benedict%E2%80%99s-creative-minority>.

³⁹ Amicus Historia, *Let Us Pray People*© (Heroic Productions, LLC 2021), <https://jimkelly-streaming.s3.amazonaws.com/Jim+Kelly+-+HP+-+CM+-+Let+Us+Pray+People+Final.mp4> (last visited Sept. 9, 2021).

the Free Speech Clause is that we can see no logical difference in kind between the invocation of Christianity by the Club and the invocation of teamwork, loyalty, or patriotism by other associations to provide a foundation for their lessons.” *Good News Club*, 533 U.S. at 111.

Under the Maine Program, parents receive student aid for the education of their children in K-12 public and non-public secondary schools that are using values-based humanist theories and practices to indoctrinate students in government-approved cultural values and to help them adjust “normally” to their environment. Yet, Maine is denying Petitioners equal access to student aid because they would use it at non-public schools that teach cultural values and social and emotional competencies from a traditionally religious perspective. In light of the decision in *Good News Club*, Maine cannot discriminate against Petitioners by denying them equal access to generally available K-12 student aid to communicate their preferred viewpoints about cultural values and social and emotional learning to their children at the accredited non-public religious schools of their choice.

B. Conditions on Generally Available K-12 Student Aid Must Not Violate the Right to Freedom from Compelled Thought.

The First Amendment prohibition against government abridging freedom of speech also constrains government attempts to compel the thoughts, beliefs, attitudes, and practices of school children.

Throughout the school day, Maine educators, counselors, and invited outside experts and groups inculcate students in government-approved cultural values and thoughts, attitudes and practices relating to

their social and emotional development. Any good faith intentions of the Respondent are insufficient to redeem the impositions on freedom of thought: “Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943). Yet, Respondent is compelling Petitioners’ children to conform to the government’s orthodoxy in these matters.

In *Barnette*, this Court upheld the First Amendment right of Jehovah’s Witnesses to refuse to participate in the Pledge of Allegiance during a public school day, holding that forcing such students to perform the Pledge “invade[d] the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.” *Id.* at 642. The Pledge of Allegiance to a flag representing such democratic values as tolerance, respect, civility, diversity, and sacrifice takes less than one minute to recite; nevertheless, this Court held that forced recital of the Pledge was unconstitutional. In Maine public school classrooms, the entire school day is devoted to instilling Maine’s official doctrine relating to these and many other cultural values and social and emotional development goals that some parents prefer would be taught from their religious perspective. “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *Id.*

By implementing or otherwise supporting a cultural values-based and social and emotional learning

curriculum, Maine officials seek to remedy many of the unprecedented challenges today's children face in their lives. Yet, if the Petitioners desire to promote the values and secure the social and emotional development of their children at the non-public religious schools of their choice, they must pay often unaffordable tuition to do so. Deliberate government interference with parents' right to control the social and emotional development of their children is more than an incidental burden, and, in such cases, the government may not force a person to choose between following the precepts of his or her religion and forfeiting generally available benefits. *Sherbert v. Verner*, 374 U.S. 398 (1963). "Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship." *Id.* at 404.

C. Conditions on Generally Available K-12 Student Aid Must Not Violate the Rights to Due Process and Equal Protection.

Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Via incorporation, the fundamental liberties protected by this Clause include most of the rights enumerated in the Bill of Rights. *See Duncan v. Louisiana*, 391 U.S. 145, 148-149 (1968). In addition, these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs. *Obergefell v. Hodges*, 576 U.S. 644, 663 (2015) (citing *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) and *Griswold v. Connecticut*, 381 U.S. 479, 485-486 (1965)).

Personal choices concerning contraception, family relationships, procreation, childrearing, and marriage, all of which this Court has determined are protected by the U.S. Constitution, are among the most intimate that an individual can make. *Obergefell*, 576 U.S. at 666. Constitutional liberty includes the right to establish a home, bring up children, and give them an education suitable for their station in life. *Meyer v. Nebraska*, 262 U.S. 390, 399-400 (1923).

Parents and guardians have the constitutionally guaranteed right to direct the upbringing and education of children under their control, and the State does not have the power to standardize its children. “The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925).

“That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear; but the individual has certain fundamental rights which must be respected.” *Meyer*, 262 U.S. at 401. As the State attempts to improve the physical, mental, and moral quality of children, it may not use coercive methods that conflict with the Constitution. *Id.*

The ability of parents to raise their children in accordance with the dictates of their consciences “is essential in preserving their own dignity and in striving for a self-definition shaped by their religious precepts.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 736 (2014) (Kennedy, J., concurring (discussing Free Exercise rights)).

The right of parents to promote the values and secure the social, emotional, and academic development of their children as they see fit, which is a protected liberty interest under the Due Process Clause, enjoys like protection from the Equal Protection Clause. *Obergefell*, 576 U.S. at 671-73 (discussing overlap of Due Process and Equal Protection rights).

Maine's unequal treatment of Petitioners interferes with their liberty to control the social, emotional, and academic development of their children. "Each concept—liberty and equal protection—leads to a stronger understanding of the other." *Id.* at 673. In Maine, parents who choose to promote the values and secure the social, emotional, and academic development of their children in public schools are able to receive student aid under the Maine Program. Also, under the Maine Program, parents who choose to promote the values and secure the social, emotional, and academic development of their children in private non-religious schools are eligible for student aid. However, Maine denies parents equal access to generally available K-12 student aid for the values-based social, emotional, and academic development of their children in non-public religious schools. In so doing, Maine imposes a frequently prohibitive financial penalty on families who would prefer their children not be inculcated in government-approved values and social and emotional thoughts, attitudes, and practices.

Maine is depriving Petitioners of their right to due process and equal protection under the Fourteenth Amendment as elaborated in *Meyer*, *Pierce*, and *Obergefell*. Maine has no compelling interest that is served by prohibiting Petitioners from using student aid available under the Maine Program at non-public religious schools that are promoting the values and

social and emotional thoughts, attitudes, and practices of their students from a theistic or other religious perspective. If, in the opinion of this Court, such a compelling state interest exists, Maine must more narrowly tailor the Maine Program to serve that compelling state interest.

Respondent's explicit religious discrimination against the Petitioners cannot survive strict scrutiny. The unconstitutionality of the result in this case flows from an egregious disregard of this Court's Free Speech, Freedom of Thought, Due Process, and Equal Protection decisions.

CONCLUSION

For the foregoing reasons, and those stated by Petitioners, the decision of the First Circuit should be reversed.

Respectfully submitted,

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