

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-1088

DAVID CARSON, AS PARENT AND NEXT FRIEND OF
O. C., ET AL., PETITIONERS

v.

A. PENDER MAKIN, COMMISSIONER OF THE
MAINE DEPARTMENT OF EDUCATION

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE,
FOR ENLARGEMENT OF THE TIME FOR ORAL ARGUMENT,
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.3, 28.4 and 28.7 of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting respondent, that the time for oral argument be enlarged to 70 minutes, and that the time be allotted as follows: 35 minutes for petitioners, 20 minutes for respondent, and 15 minutes for the

United States. Petitioners and respondent have consented to this motion.

The State of Maine has established a tuition-assistance program under which a local school administrative unit that does not operate its own secondary school or contract for secondary-school privileges at a nearby school "shall pay the tuition * * * at the public school or the approved private school of the parent's choice at which the student is accepted." Me. Rev. Stat. Ann. § 5204(4) (Supp. 2021). This case concerns the constitutionality of Me. Rev. Stat. Ann. tit. 20-A, § 2951(2) (Supp. 2021), which provides that a "private school may be approved for the" tuition-assistance program "only if it" is "a nonsectarian school." The court of appeals rejected petitioners' contention that Section 2951(2) violates the Free Exercise and Establishment Clauses of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. Pet. App. 21-59. The United States has filed a brief as amicus curiae supporting respondent, contending that petitioners' challenge to Section 2951(2) does not present an Article III case or controversy and that the court correctly upheld the constitutionality of Section 2951(2).

The United States has a substantial interest in the constitutional principles governing this case. Congress has enacted a number of statutory provisions that bar the use of federal funds for religious activities. See, e.g., 20 U.S.C. 122, 1011k(c), 1062(c)(1), 1066c(c), 1068e(1), 1137(c), 7885; 25 U.S.C.

1803(b), 1813(e), 2502(b)(2), 3306(a); 34 U.S.C. 12161(d)(2)(D); 42 U.S.C. 290kk-2, 5001(a)(2), 9858k(a). The United States participated below as amicus curiae supporting petitioners.

The United States has previously presented oral argument as amicus curiae in cases concerning the constitutionality of funding restrictions under the First Amendment. See, e.g., Espinoza v. Montana Dep't of Revenue, 140 S. Ct. 2246 (2020); Locke v. Davey, 540 U.S. 712 (2004). Participation by the United States in oral argument would provide the Court with the federal perspective in this case. We therefore believe that the United States' participation in oral argument would be of material assistance to the Court.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

OCTOBER 2021