

DOES 1, 2, 3, 4, and 5,
Plaintiffs,
v.
ENFIELD PUBLIC SCHOOLS,
Defendant.

Date: May 4, 2010

Dates of graduation ceremonies sought to be relocated: **June 23 and 24, 2010**

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

INTRODUCTION	1
STATEMENT OF FACTS	2
Graduations at First Cathedral	2
Use of Property Taxes to Pay for Church Graduations.....	7
History of Graduations at the Cathedral	8
Alternative Locations for the Graduations.....	13
The Plaintiffs.....	15
ARGUMENT	20
I. The Plaintiffs Have a Strong Likelihood of Showing That Holding Public-School Graduations in a Religious Environment Is Unconstitutional	20
A. Graduation Ceremonies in a Church Trample the Establishment Clause’s Prohibition on Governmental Religious Coercion.....	21
1. The Establishment Clause Prohibits Schools From Coercing Students and Parents to Attend a House of Worship for a School Event	22
2. The Constitutional Violation Here Is Especially Egregious Because the Graduates Must Continuously Face a Large Cross, and Must Encounter Other Sectarian Iconography.....	26
B. The Graduation Ceremonies in the Cathedral Convey a Message of Governmental Endorsement of Religion	31
C. The Schools Have Delegated Governmental Authority to the Cathedral, and the Cathedral Uses That Authority to Promulgate Its Religious Message to Impressionable Youths	33
D. The Schools Cannot Avoid Excessive Entanglement with Religion If They Continue to Hold Graduation Ceremonies in the Cathedral	34
E. The Schools Use Tax Funds to Support the Propagation of Religion.....	35
F. Even If Holding a Public-School Graduation in a Church Does Not Violate the U.S. Constitution, It Violates the Connecticut Constitution	36
II. The Plaintiffs Are Entitled to a Preliminary Injunction	37
III. Relief Requested	39
CONCLUSION.....	40

INTRODUCTION

“Everyone knows that in our society and in our culture high school graduation is one of life’s most significant occasions.” *Lee v. Weisman*, 505 U.S. 577, 595 (1992). For students of two public high schools in Enfield, Connecticut, both part of the Enfield Public Schools (“the Enfield Schools” or “the Schools”), this significant life event takes place in the sanctuary of the First Cathedral (“the Cathedral”), a Christian church. There, seniors from Enfield High School (“Enfield High”) and Enrico Fermi High School (“Enrico Fermi”) are to receive their diploma packets underneath a large Christian cross and banners reading “Jesus Christ is Lord” and “I am GOD.” Before the ceremony, students and their family members will be informed that they are in “GOD’S HOUSE WHERE **JESUS CHRIST** IS LORD.” Virtually every aspect of the Cathedral’s architecture has inherent religious symbolism and is a reflection of the “one true mission of the church: to win souls to Jesus Christ.”

This arrangement violates the Establishment Clause of the First Amendment to the United States Constitution, for many reasons. At the very least, the Establishment Clause prohibits the government from coercing persons to attend church and from otherwise coercively subjecting them to religion. But by selecting the First Cathedral as their venue for graduation ceremonies, the Enfield Schools present graduates and their family members with a stark choice: either forgo the ceremonies altogether, or submit to immersion in a visual environment pervaded by sectarian messages.

The Enfield Schools’ conduct also communicates a message of government favoritism of religion, because (1) religious symbols and messages are displayed at a school event; (2) the Schools decided to hold the graduations at the Cathedral only after being intensively lobbied by a religious organization; (3) the Chair of the Enfield Board of Education is a minister who has

urged students to “keep God in [their] life” and pray; and (4) there are many secular sites that can host the graduations. Moreover, the Schools are delegating control over the physical setting of a public-school event to a religious institution. In addition, the use of the Cathedral fosters divisiveness in the school community along religious lines. Finally, public funds are being used to support the Cathedral’s propagation of its religious beliefs.

The Schools have scheduled their high-school graduations to take place on June 23 and 24, 2010, at the Cathedral. At that time, the plaintiffs—two graduating seniors and three parents of those seniors—will be forced to forgo their own graduation ceremonies unless they immerse themselves in a manifestly religious environment. The plaintiffs are entitled to a preliminary injunction against the holding of the graduations at the Cathedral.

STATEMENT OF FACTS

1. Defendant Enfield Public Schools is a municipal corporate body that maintains control of all public schools within the limits of the Town of Enfield, Connecticut. Conn. Gen. Stat. §§ 10-240, 10-241. The Enfield Board of Education (“the Board”) is an elected body that has final policy-making authority and control over the Enfield Schools. *Id.* § 10-240; Exs. 21-23. The Enfield Schools have two high schools: Enfield High and Enrico Fermi. Ex. 18. Enfield High’s 2010 senior class has approximately 214 students, while Enrico Fermi’s has approximately 267 students. Ex. 19. The majority of the students in the Enfield Schools are Christian. Ex. 7 ¶ 10.

Graduations at First Cathedral

2. Enrico Fermi held its graduation ceremonies at the Cathedral in 2007, 2008, and 2009. Exs. 47; 49; 51; 118; 121; *see also* Exs. 64-68. Enfield High did so in 2008 and 2009. Exs.

48; 50; 119; 120; *see also* Ex. 71. Both schools plan to hold their graduations at the Cathedral in 2010. Ex. 41 at 6-8; 83; 84.

3. The Cathedral—also known as the First Baptist Church of Hartford—is a Christian church in Bloomfield, Connecticut. *See, e.g.*, Ex. 10; Ex. 47 at CCLE 283. Five large Christian crosses appear in the front façade of the Cathedral (Exs. 1-2; 1-3; 4 ¶ 4; 5 ¶ 7), and another cross towers over the Cathedral’s roof (Exs. 1-4; 1-5, 1-6; 1-7; 1-8; 1-9; 4 ¶ 5; 5 ¶ 7). When graduating students and their guests arrive for graduation ceremonies, they must stand outside the Cathedral for a time before the building’s doors are opened. Ex. 5 ¶ 6. From the outside of the Cathedral, students and guests can see into the Cathedral’s gift shop, which contains an assortment of Christian paraphernalia. 5 ¶ 6. To enter the building, students and their family members must pass underneath the large cross in the middle of the Cathedral’s façade. Ex. 5 ¶ 7; *see also* Exs. 1-11; 4 ¶ 6.

4. Students and family members then pass through the Cathedral’s lobby. Ex. 5 ¶ 8. Some students and family members also gather in the lobby before and after the graduation ceremonies. Ex. 5 ¶ 8. The large cross in the middle of the Cathedral’s façade contains a stained-glass depiction—which can be seen both from the outside of the building and from inside the lobby—of worshippers looking to the heavens and beams of light cascading onto them. Exs. 1-10; 1-11; 1-12; 4 ¶ 6. In the lobby, there is a fountain in the shape of a cross surrounded by a frame in the shape of a tomb. Exs. 1-13; 1-14; 4 ¶ 7; 5 ¶ 8. From the ceiling of the lobby hangs a large glass sculpture, representing the Holy Ghost descending from the heavens. *See* Exs. 1-15; 5 ¶ 8; *Acts* 2:1-13. Numerous religious paintings, including depictions of Jesus, are displayed in the lobby. Exs. 1-11; 1-13; 1-14; 4 ¶ 8; 5 ¶ 8. Also hanging in the lobby, near the entrance to the Cathedral’s sanctuary, are large banners reading: “The Promise Is Still Good! For no matter how

many promises God has made, they are ‘yes’ in Christ. –2 Cor. 1:20a”; and “Enter into His gates with thanksgiving, and into His courts with praise. Be thankful to Him, and bless his Name. Psalms 100:4.” Exs. 1-16; 4 ¶ 9. Students and their family members pass underneath these banners to enter the Cathedral’s sanctuary. *See* Ex. 4 ¶ 9.

5. The graduation ceremonies take place in the Cathedral’s sanctuary and generally last between ninety minutes and two hours. Exs. 3-2; 3-3; 3-4; 5 ¶ 9; 118-21. In a decorative window at the front of the sanctuary, there is a large Latin cross (Exs. 1-17; 1-18; 1-19; 1-20; 2-1; 3-1; 3-2; 4 ¶ 10; 5 ¶ 9) approximately twenty-five feet tall and ten feet wide (Exs. 4 ¶ 10). The decorative window with the cross also contains stained glass with religious imagery. Exs. 1-20; 2-1; 3-2; 4 ¶ 10; Ex. 5 ¶ 9. The window does not lead directly to the outside of the Cathedral; instead, the window and the cross can be illuminated by lights located behind the window’s glass. Ex. 4 ¶ 10.

6. To the left of the cross hangs a long banner that states, in large print, “Jesus Christ is Lord,” and in slightly smaller print, running down the banner: “Savior / Redeemer / Deliverer / Truth / Good Shepherd / Great High Priest / Head of the Church / Bread of Life / Lamb of God / King of Kings / Lord of Lords / Prince of Peace.” Exs. 1-17; 1-19; 1-21; 1-22; 2-2; 3-2; 4 ¶ 11; 5 ¶ 10. To the right of the cross hangs another long banner that states, in large print, “I am GOD,” and in slightly smaller print, running down the banner: “Jehovah Shammath / ‘The Lord is Here’ / Jehovah Nissi / ‘Our Banner’ / Jehovah Rapha / ‘Our Healer’ / Jehovah Tsidkenu / ‘Our Righteousness’ / Jehovah Yireh / ‘Our Provider’ / Jehovah Shalom / ‘Our Peace’ / Jehovah Tsabaoth / ‘The Lord of Hosts.’” Exs. 1-17; 1-19; 1-20; 1-23; 1-24; 2-3; 2-4; 2-6; 3-2; 3-3; 4 ¶ 12; 5 ¶ 11. Each of these banners is approximately twenty-five feet long. Ex. 4 ¶ 13.

7. The cross and the “Jesus Christ is Lord” and “I am GOD” banners are above a seating area at the front of the sanctuary where graduating students sit or stand during most of each graduation ceremony. Ex. 5 ¶ 12; *see also* Exs. 3-2; 3-3; 4 ¶ 14. The cross and the banners are also above the stage upon which the principal events at the graduations take place. Exs. 3-2; 3-3; 5 ¶ 12. Speakers—including Enfield Schools officials and students—stand at a podium on this stage to deliver their remarks, and some officials sit on the stage during the ceremonies. Exs. 3-2; 3-3; 3-4; 5 ¶ 12. Graduates receive their diploma folders on the stage; and before being handed out to students, the diploma folders sit on a table on the stage, which is covered by a school banner. Exs. 3-2; 5 ¶ 12. (Graduates collect their actual diplomas elsewhere in the Cathedral, after the graduation ceremony has ended. Ex. 5 ¶ 12.) The cross and the two religious banners are in the lines of sight of parents and family members who are watching events upon the stage. Ex. 3-2; 3-3; 5 ¶ 13.

8. Each of the two religious banners also has next to it a jumbo television screen on which speakers and events at the ceremonies are shown live. Exs. 1-17; 1-18; 1-25; 2-6; 3-2; 4 ¶ 15; 5 ¶ 13. As students and their guests wait for the ceremonies to start, the two jumbo screens—as well as numerous other large video screens throughout the sanctuary—periodically flash the message: “WELCOME TO THE / *The First Cathedral* / A CHURCH FOR ALL PEOPLE / THIS IS GOD’S HOUSE WHERE **JESUS CHRIST IS LORD.**” Exs. 2-5; 2-6; 5 ¶ 13 (emphasis in original).

9. On a carpet near the front of the sanctuary, there are seven images that symbolize seven different aspects of Jesus, as described in parables from the Bible: a fire, a fish, a lion, a shepherd’s crook, a lamb, a lily, and the chalice. Exs. 1-25; 1-26; 1-27; 1-28; 1-29; 1-30; 1-31; 1-32; 4 ¶ 16. Some students must walk over these images on their way to or from their seats;

students stand near these images when they are presented with honors or awards; and students assemble near these images at the end of the ceremonies. Ex. 5 ¶ 14.

10. Even aside from the obvious religious messages and symbols, virtually every aspect of the Cathedral's architecture has religious significance. The Cathedral itself is built in the shape of a dove, representing the Baptism of Jesus. Exs. 1-1; 4 ¶ 3; 5 ¶ 5. The lower level of the Cathedral represents the earth, while the middle level represents heaven. Ex. 5 ¶ 5. Thus, students and parents who sit in the lower level of the Cathedral's sanctuary sit on "earth," while those in the balcony level sit in "heaven."

11. The Cathedral has in excess of 11,000 members. Ex. 11 at 2. According to the Cathedral's website, the "one true mission of the church" is "to win souls to Jesus Christ." Exs. 12 at 1; 13 at 2. The website also states, "The more disciples we make here at the First Cathedral, the stronger and greater we build the Kingdom of God." Ex. 13 at 2; *accord* Ex. 14. Thus, the Cathedral's "Vision" is "To win souls, make disciples and create A Church For All People so that everyone will experience God's love." Ex. 15; *accord* Ex. 10 at 4.

12. A more detailed vision statement, set forth in the Cathedral's Member's Handbook, includes: "our vision is for a church . . . [w]here enthusiastic young people are encouraged, equipped and challenged to seek first the Kingdom of God and are guided in discipleship, just as the young men that Jesus called on the shores of Galilee." Ex. 13 at 4. And the Cathedral's website contains a page specifically addressed to youths. Ex. 16. The page states:

[W]e're here to assist you to achieve the AWESOME plan God has for you! So, learning about Jesus and His Bible isn't boring at all. It's an incredible journey!

In fact, it's a great adventure you can start right away! Would you like to discover how you can open your heart, life and soul to a God who loves you A LOT? Would you like to have a energy and power like a fire burning bright in your heart!

Then you've come to the right place!

Ex. 16. Children of high-school age, middle-school age, and elementary-school age all attend graduation ceremonies at the Cathedral as guests of graduating seniors. Ex. 5 ¶ 15.

13. The "Jesus Christ is Lord" and "I am GOD" banners that hang in the front of the Cathedral's sanctuary can be covered or removed. Ex. 105. On January 17, 2007, several school districts that were then using the Cathedral for graduations jointly asked the Cathedral to cover or remove the banners for graduation ceremonies. Ex. 105. However, the banners have not been covered or removed for any graduation ceremony that has been held at the Cathedral. Exs. 118-21. Nor has any of the other religious items described above. Exs. 118-21.

Use of Property Taxes to Pay for Church Graduations

14. For each graduation ceremony held at the Cathedral, the Enfield Schools have paid rental fees to the Cathedral. Exs. 47 ¶ 2; 48 ¶ 2; 49 ¶ 2; 50 ¶ 2; 51 ¶ 2. These fees have ranged from \$6,500 to \$8,200 per high school in the past. Exs. 47 ¶ 2; 48 ¶ 2; 49 ¶ 2; 50 ¶ 2; 51 ¶ 2. The Cathedral's fees for the 2010 graduations will be \$8,200 per high school. Ex. 84 at 1. The Schools pay the rental fees with funds obtained primarily from local property taxes, including real-estate taxes and motor-vehicle taxes. Exs. 24 at 4; 25; 26. Local real-estate taxes provide approximately 54.8 percent of the Enfield Schools' revenues, and local motor-vehicle taxes provide approximately 4.9 percent. See Exs. 25; 26.

15. The Cathedral's rental contracts contain no restrictions on how the Cathedral can use the rental fees it receives. Exs. 47-51. As a non-profit house of worship, the Cathedral must pay taxes on any income it receives that is unrelated to its mission. I.R.C. § 512(a)(1). In response to a media inquiry relating to whether the Cathedral pays taxes on the rental fees it receives for

high-school graduations, a Cathedral official stated that rental of the Cathedral's sanctuary—like everything else the Cathedral does—relates to the Cathedral's mission. Ex. 69 at 2-3.

History of Graduations at the Cathedral

16. The Enfield Schools are one of five Hartford-area school districts that have held graduations at the Cathedral during some years in the past decade. Windsor High School held its graduations at the Cathedral from 2001 through 2007 and in 2009; South Windsor High School did so from 2006 through 2009; East Hartford High School did so in 2009; and the Metropolitan Learning Center—a magnet school run by the Capitol Region Education Council—did so from 2007 through 2009. Exs. 55-59; 61-62; 74.

17. Prior to 2007 in the case of Enrico Fermi and 2008 in the case of Enfield High, the schools' graduations had been held on their respective athletic fields for decades. Exs. 5 ¶ 18; 6 ¶ 8; 64; 68; 72. Enrico Fermi needed to find a temporary alternative site for its 2007 graduation because of a construction project on the school's athletic fields. Ex. 64. So, in November 2006, the Board voted to have the 2007 Enrico Fermi graduation at the Cathedral. Ex. 64. Before that vote, a member of a graduation-site advisory committee represented to the Board that religious items at the Cathedral would be covered or removed for the graduation (Exs. 29 at CCLE124; 66 at 2-3), but this was not in fact done for any graduation at the Cathedral (Exs. 118-21). On December 11, 2006, the ACLU of Connecticut, one of the counsel for the plaintiffs, sent a letter to the Enfield Schools (as well as similar letters to other school districts that were then holding graduations at the Cathedral) informing the Schools that it is unconstitutional to have graduation ceremonies at the Cathedral and asking the Schools to move Enrico Fermi's graduation to a secular location. Exs. 103; 104. The Board nevertheless approved a contract with the Cathedral to hold Enrico Fermi's 2007 graduation there. Exs. 47; 67.

18. On January 22, 2008, the Board voted to hold Enrico Fermi's 2008 graduation at the Cathedral, even though construction of the school's athletic fields had been completed. Exs. 30 at 2; 31 at 14-16; 68. And during the 2007-2008 school-year, it was Enfield High's turn to have construction on its athletic fields, so the school needed to find a temporary alternative site for its 2008 graduation. Ex. 68. A survey of Enfield High seniors found that 103 seniors favored holding the graduation on the school's front lawn, and 33 favored having graduation at the Cathedral. Ex. 70. Nevertheless, on March 11, 2008, the Board voted to hold Enfield High's 2008 graduation at the Cathedral. Ex. 33 at 6-8; 71.

19. On October 14, 2008, even though the work on the athletic fields had now been completed at both high schools, the Board voted to have the 2009 graduations of both Enfield High and Enrico Fermi at the Cathedral. Exs. 34 at 5-6; 73. One of the Board members who then favored having graduations at the Cathedral stated at a Board meeting that having the graduations at the religious venue sends students the message that graduations are to be serious and solemn occasions. Ex. 35 at 8. Subsequently, members of the Class of 2009 at both high schools were polled about whether they preferred to hold their graduations at the Cathedral or at their schools: Enfield High seniors voted 130 to 14 against holding graduations at the Cathedral, while Enrico Fermi seniors voted 178 to 62 in favor of the Cathedral. Exs. 36 at 6; 73; 75. On May 12, 2009, Americans United for Separation of Church and State, one of the counsel for the plaintiffs, sent a letter to the Enfield Schools informing them that holding graduations at the Cathedral is unconstitutional and asking that the Schools end the practice. Ex. 106. The Board did not reconsider its decision for either high school's 2009 graduation. Exs. 45-46; 120-21.

20. On November 18, 2009, Americans United, the ACLU of Connecticut, and the ACLU Program on Freedom of Religion and Belief—together, the counsel for the plaintiffs—sent a

joint letter to the Enfield Schools advising the Schools that the three organizations had been retained to file litigation against the Schools if they did not agree to stop holding graduations at the Cathedral. Ex. 112. On October 22 and November 4, 2009, the plaintiffs' counsel sent Freedom of Information Act requests to the Enfield Schools, as well as the other four school districts that had been holding graduations at the Cathedral, relating to the practice. Exs. 107-111. Between December 2009 and February 2010, the other four school districts decided to stop holding graduations at the Cathedral. Exs. 77; 78; 80; 114; 115. On December 2, 2009, counsel for the Enfield Schools informed counsel for the plaintiffs that the Board had not yet made any decision as to where to hold Enfield High's and Enrico Fermi's 2010 graduations, and that the Board had not made a reservation with the Cathedral, had not made a deposit with the Cathedral, and had not entered into a contract with the Cathedral. Ex. 113. On January 26, 2010, the Board voted 6 to 3 to hold Enfield High's and Enrico Fermi's 2010 graduations at the schools. Exs. 38 at 5-9; 79.

21. The Family Institute of Connecticut then commenced an intensive lobbying effort to convince the Board to return graduations to the Cathedral. Exs. 89; 91; *see also* Exs. 92-99. The Family Institute is a socially conservative religious organization that advocates for "traditional Judeo-Christian family values"; seeks to see "Judeo-Christian principles . . . re-employed in our society and its public policy"; seeks to create "[a] society committed to helping family, church, synagogue and community meet the needs of its members without undue dependence upon government"; and states that it is "the one group leading the fight for the religious liberty of ALL Connecticut's churches." Exs. 86; 87; 96; *see also* Ex. 88.

22. The Family Institute brought First Cathedral Archbishop LeRoy Bailey, Board Chair Greg Stokes, and the American Center for Law and Justice into contact with each other. Ex. 89.

Mr. Stokes was elected to the Board in 2007, and was elected Chair of the Board on November 17, 2009. Exs. 27; 37 at 1. Mr. Stokes is a minister who serves as Pastor of the Cornerstone Bible Church in East Windsor, Connecticut. Ex. 101. In a January 14, 2008, blog entry, he wrote, “[m]y first love and responsibility is the fast growing congregation of Cornerstone Church,” and “[m]y second responsibility is to the Enfield Board of Education.” Ex. 102 at 10. On June 22, 2009, in a blog entry directed at graduating seniors, Mr. Stokes wrote:

[K]eep God in your life. We are physical, emotional, and intellectual beings. However, we are also spiritual beings and in my opinion that is the most important part of our existence. Many of you were brought to church as children and teens.

Now it is time for you to get involved in your faith and help to keep the church of your choice healthy and strong. You will find that prayer is the key to a successful life. In good times or bad, prayer is the component that will strengthen your daily life.

Ex. 102 at 7. The American Center for Law and Justice (ACLJ) is a socially conservative non-profit legal organization that, according to its website, “has ‘led the way’ in Christian legal advocacy.” Ex. 100.

23. The ACLJ and the Family Institute assured Board Chair Stokes that the ACLJ would represent the Enfield Schools *pro bono* if the Schools would agree to move their graduations back to the Cathedral. Ex. 95. On February 23, 2010, the Board voted to rescind its decision to hold graduations at the schools, but did not choose another location. Ex. 39 at 6; 81. In e-mails, the Family Institute told its members that if they could not convince the Board to return graduations to the Cathedral, “it will increase the power of aggressive secularism and cause further harm to the proper role of faith communities in our state” (Ex. 95); that “the secular left wants to punish Christian churches for their prophetic voice” (Ex. 91 at 2); and that “[t]he battle over graduations is simply the newest front in a war to silence and marginalize churches” (Ex. 91

at 2). On the day of the Board's March 23, 2010, meeting, three dozen members of the Family Institute personally called all nine members of the Board to lobby on behalf of returning the graduations to the Church. Ex. 89 at 1. At the March 23 Board meeting, the executive director of the Family Institute called on the Board to hold the graduations at the Cathedral to "stand up for religious rights." Ex. 40 at 4.

24. The Board did not make a decision on a graduation site at its March 23 meeting because the time allotted for the meeting expired before the Board could vote on the matter. Ex. 40 at 13. Between that meeting and the Board's meeting of Tuesday, April 13, 2010, the Family Institute's executive director met with several Board members to lobby them personally to return graduations to the Cathedral. Ex. 89 at 1. According to its blog, the Family Institute "secured the votes necessary to return graduations to First Cathedral, but did not reveal it publicly until Tuesday[, April 13]—when it was too late for our opponents to respond." Ex. 89 at 1. On April 13, the Board voted 6 to 3 to hold Enfield High's and Enrico Fermi's 2010 graduations at the Cathedral. Exs. 41 at 6-8; 83. After the vote was taken, the Family Institute publicly proclaimed that the graduations would not have been returned to the Cathedral but for the Family Institute's efforts, and thanked "Chairman Greg Stokes, whose steady support made [the April 13] victory possible." Ex. 89 at 1-2; *see also* Ex. 90.

25. The controversy over the selection of a graduation site has caused great divisiveness among Enfield High and Enrico Fermi students and parents. Exs. 124 ¶¶ 8-9; 125 ¶¶ 7-10.

26. Enfield High's graduation is scheduled for June 23, 2010, and Enrico Fermi's for June 24, 2010. Ex. 20.

Alternative Locations for the Graduations

27. The Board has chosen to hold graduations at the Cathedral despite being aware of numerous secular sites in and near Enfield that could host the graduations. *See* Exs. 29; 52; 53. The secular sites include: the high schools' sports fields; the Enfield Town Green; Big E Coliseum in West Springfield, Massachusetts; Bushnell Center for the Performing Arts in Hartford; Connecticut Convention Center in Hartford; La Renaissance in East Windsor; MassMutual Center Arena in Springfield, Massachusetts; Symphony Hall in Springfield; Welte Auditorium at Central Connecticut State University in New Britain; and XL Center in Hartford. *See* Exs. 29; 42; 52; 53.

28. A number of these sites compare favorably to the Cathedral in terms of cost, size, and/or distance from the two high schools. As noted above, the Cathedral's rental fee for 2010 will be \$16,400 total (for both graduations). Ex. 84. The seating capacity of the Cathedral's sanctuary is approximately 3,000. Exs. 12 at 2; 17 at 2; 58 ¶ 1. The Cathedral is approximately 16 miles and a 13-minute drive from Enfield High and approximately 24 miles and an 18-minute drive from Enrico Fermi. Exs. 43-44.

29. The MassMutual Center can host the graduations for \$16,700 total (for both graduations) if the graduations are held on the same day or \$20,400 total (for both graduations) if the graduations are held on two separate days. Ex. 42 at 3, 5. The MassMutual Center has a seating capacity of at least 6,650, and it is approximately 10 miles and a 12-minute drive from Enfield High and approximately 11 miles and a 17-minute drive from Enrico Fermi. Ex. 42 at 3, 5. Windsor High held its 2008 graduation at the MassMutual Center, finding the facility to be "spacious, bright, and pleasant" and "more than adequate." Ex. 60. At a January 12, 2010 Board meeting, Board member Peter Jonaitis, who was responsible for gathering information about

potential sites, stated about the MassMutual Center, “everything is there,” noting the Center’s large seating capacity, reasonable price, availability of plenty of parking, and jumbotron video screen. Ex. 122 at 12:24 to 14:24.

30. Symphony Hall, meanwhile, can host the graduations for \$8,500 total (for both graduations) if the graduations are held on the same day or \$11,300 total (for both graduations) if the graduations are held on two separate days. Ex. 42 at 3, 5-6. Symphony Hall has a seating capacity of approximately 2,600. Ex. 42 at 3, 5. In a report on potential graduation sites to the Board, Enfield Schools officials wrote that, given Symphony Hall’s seating capacity, “[w]e would likely need to limit each graduate to 8 tickets each but that should not be a huge issue.” Ex. 52 at CCLE289. Symphony Hall is approximately 10 miles and a 12-minute drive from Enfield High and approximately 11 miles and a 16-minute drive from Enrico Fermi. Ex. 42 at 3. At a March 23, 2010 Board meeting, Enrico Fermi Principal Paul Newton, who was a co-author of the report to the Board on potential graduation sites, informed the Board that any of several sites in Massachusetts, including the MassMutual Center and Symphony Hall, “would be suitable.” Ex. 40 at 12.

31. Another suitable option not even considered by the Board is the Big E Coliseum, which can host the graduations for \$8,912 total (for both graduations) if the graduations are held on the same day or \$10,214 total (for both graduations) if the graduations are held on two separate days. Ex. 42 at 3, 6. The Big E Coliseum has a seating capacity of approximately 5,000, and it is approximately 11 miles and a 17-minute drive from Enfield High and approximately 12 miles and a 21-minute drive from Enrico Fermi. Ex. 42 at 3, 6.

32. Other options exist in Enfield itself. At a March 1, 2010 meeting of the Enfield Town Council, the Town Manager informed the Council that the total cost of holding both high

schools' graduations on a tent-covered field off school grounds but in the Town of Enfield would be about \$21,170. Ex. 54 at 12-13; 82; *see also* Ex. 52 at CCLE292. And at an April 13, 2010 Board meeting, a Board member stated that the high-school gyms could be used as backup locations for the graduations if a court issues an injunction against holding graduations at the Cathedral. Ex. 41 at 7.

33. While some of the available off-school secular facilities are more expensive than the Cathedral, the Board has the power to reallocate funds it wishes to exceed the original budget for the graduations. *See* Exs. 22; 23; 41 at 4, 6. The originally budgeted amount was \$32,000 (\$15,000 for Enfield High and \$17,000 for Enrico Fermi); the Schools' total budget for the 2009-2010 fiscal year is approximately \$60 million. Exs. 24 at 4; 26; 39 at 6. And at a February 24, 2010 Board meeting, each high school's student representative to the Board suggested that a small fee be charged for graduation tickets in order to enable graduations to be held at more expensive off-school venues. Ex. 39 at 4.

34. Each of the other school districts that had been holding graduations at the Cathedral has chosen a secular location for its 2010 graduation. These locations include the Connecticut Convention Center, the Comcast Theater, and the Bushnell Center. Exs. 76; 80; 85.

The Plaintiffs

35. Plaintiff Doe 1 is a senior at Enfield High who will graduate in June 2010. Ex. 5 ¶ 2. Doe 1 is agnostic. Ex. 5 ¶ 3. Doe 1 attended the June 2009 Enfield High graduation at the Cathedral, because Doe 1's close friend was in the graduating class. Ex. 5 ¶ 4. In the sanctuary where the graduation ceremony occurred, Doe 1 was confronted with the "THIS IS GOD'S HOUSE WHERE **JESUS CHRIST** IS LORD" message on video-screens, as well as the "Jesus Christ is Lord" and "I am GOD" banners. Ex. 5 ¶¶ 10-13. Doe 1 also observed many religious

items in the sanctuary and other parts of the Cathedral. Ex. 5 ¶¶ 6-14. When Doe 1 took a photograph of Doe 1's close friend during the graduation ceremony, one of the Cathedral sanctuary's religious banners was in the background. Ex. 5 ¶ 11.

36. Doe 1 felt uncomfortable and uneasy at the 2009 graduation. Ex. 5 ¶ 16. Doe 1 felt as if Doe 1 was at church listening to someone preach to Doe 1. Ex. 5 ¶ 16. All the religious items in the Cathedral sent Doe 1 the message that only Christians are welcome there. Ex. 5 ¶ 16. Doe 1 felt that Doe 1 had been forced to go to church in order to be able to attend Doe 1's close friend's graduation. Ex. 5 ¶ 16. Doe 1 also feels that, by holding graduations in a religious environment, the Enfield Schools are endorsing Christianity and are being disrespectful to religious minorities such as Doe 1. Ex. 5 ¶ 17.

37. Doe 1 would like to be able to celebrate graduation together with Doe 1's classmates at Enfield High's commencement ceremony. Ex. 5 ¶ 19. But after attending the 2009 graduation, Doe 1 knew that it would be difficult, if not impossible, for Doe 1 to attend Doe 1's own graduation if it were held at the Cathedral. Ex. 5 ¶ 18. So Doe 1 was very pleased and relieved when the Board announced on January 26, 2010, that Doe 1's graduation would take place at Enfield High. Ex. 5 ¶ 18. Doe 1 was fitted for a cap and gown. Ex. 5 ¶ 18.

38. When the Board announced on April 13 that it had rescinded its prior decision and was moving Doe 1's graduation ceremony back to the Cathedral, Doe 1 was shocked and upset. Ex. 5 ¶ 19. To avoid feeling uncomfortable, unwelcome, and like an outsider—as Doe 1 did at the 2009 graduation ceremony—Doe 1 probably will not attend Doe 1's graduation ceremony if it is held at the Cathedral. Ex. 5 ¶ 19. Doe 1 has been put to the choice of missing Doe 1's own high-school graduation—a momentous event in Doe 1's life—or submitting to an unwanted religious environment.

39. Plaintiff Doe 2 is a parent of Doe 1. Ex. 6 ¶ 1. Doe 2 does not subscribe to the Christian faith. Ex. 6 ¶ 6. After Doe 1 attended the 2009 Enfield High graduation at the Cathedral, Doe 1 informed Doe 2 about the Cathedral's religious environment. Ex. 6 ¶ 2. Because of the religious symbols, banners, and messages at the Cathedral, Doe 2 will be very uncomfortable and offended if Doe 2 has to attend Doe 1's graduation ceremony there. Ex. 6 ¶ 6. Doe 2 will feel that religious beliefs to which Doe 2 does not subscribe are being imposed upon Doe 2. Ex. 6 ¶ 6. Doe 2 also feels that the Board's decision to hold the 2010 Enfield High graduation at the Cathedral shows a lack of concern for religious minorities such as Doe 2 and conveys an endorsement of religion to Doe 2. Ex. 6 ¶ 7.

40. Like any parent, Doe 2 would like to be able to attend Doe 2's child's high-school graduation ceremony. Ex. 6 ¶ 4. If Doe 1's graduation is held at the Cathedral and Doe 1 chooses not to attend due to the religious nature of the venue, Doe 2 will be deprived of a once-in-a-lifetime opportunity to celebrate Doe 2's child's graduation. Ex. 6 ¶ 5. If Doe 1 chooses to attend Doe 1's graduation at the Cathedral after all, then Doe 2 will be forced to submit to a religious environment that will make Doe 2 extremely uncomfortable—and effectively to go to church—to see Doe 2's child graduate. Ex. 6 ¶ 6.

41. Plaintiff Doe 3 is a senior at Enfield High who will graduate in June 2010. Ex. 7 ¶ 2. Doe 3 subscribes to the Jewish faith. Ex. 7 ¶ 3. One of Doe 3's biological parents is Christian; the other is not. Ex. 7 ¶ 4. When Doe 3 was younger, Doe 3 was raised by Doe 3's Christian biological parent to be a Christian. Ex. 7 ¶ 5. When Doe 3 rejected the Christian faith, Doe 3's Christian biological parent had a very negative reaction, and a great deal of conflict ensued between Doe 3 and the Christian biological parent over Doe 3's religious beliefs. Ex. 7 ¶ 5. Doe

3 now lives with Doe 3's non-Christian biological parent (Doe 4), who accepts Doe 3's religious beliefs and allows Doe 3 to exercise them freely. Ex. 7 ¶ 6.

42. In Fall 2009, Doe 3 looked at photographs of a friend's graduation at the Cathedral. Ex. 7 ¶ 7. Doe 3 observed Christian scriptures and symbols in the photographs. *Id.* As soon as Doe 3 saw the photographs, Doe 3 knew that Doe 3 would not be able to attend Doe 3's graduation ceremony if it were held at the Cathedral. Ex. 7 ¶ 7. The photographs brought back painful memories of Doe 3 being rejected for Doe 3's religious beliefs by Doe 3's Christian biological parent. Ex. 7 ¶ 7.

43. If Doe 3 were to attend a graduation ceremony at the Cathedral, Doe 3 would feel that the Cathedral is proselytizing its Christian beliefs to Doe 3 through its scriptures and symbols. Ex. 7 ¶ 8. Doe 3 would further feel like an outsider and unwelcome at the Cathedral, the same way that Doe 3 felt that Doe 3's beliefs were not welcome at Doe 3's Christian biological parent's home. Ex. 7 ¶ 8. Doe 3 also feels that, by holding graduations at the Cathedral, the Board endorses Christianity and conveys a message that it does not care about or respect religious minorities such as Doe 3. Ex. 7 ¶ 9.

44. Of course, Doe 3, like any typical high-school student, wants to be able to attend Doe 3's graduation ceremony. Ex. 7 ¶ 11. When the Board voted on January 26, 2010, to hold Enfield High's graduations on school grounds, Doe 3 became very happy because Doe 3 would now be able to go to Doe 3's graduation. Ex. 7 ¶ 11. Doe 3 invited members of Doe 3's extended family to attend Doe 3's graduation. Ex. 7 ¶ 11. Doe 3 was fitted for a cap and gown. Ex. 7 ¶ 11.

45. When the Board reversed itself on April 13 and voted to hold Doe 3's graduation at the Cathedral, Doe 3 was devastated. Ex. 7 ¶ 12. Doe 3 feels that the Board is forcing Doe 3 to go to church if Doe 3 wishes to attend graduation. Ex. 7 ¶ 12. But Doe 3 will not attend Doe 3's

graduation ceremony if it is held at the Cathedral. Ex. 7 ¶ 12. Doe 3 will, if the graduation is not moved, therefore be denied the opportunity to celebrate with Doe 3's classmates the momentous event in life that high-school graduation is.

46. Doe 4 is Doe 3's non-Christian biological parent. Ex. 8 ¶ 1. Doe 4 does not have any firm religious beliefs. Ex. 8 ¶ 2. Doe 4 would feel like an outsider if Doe 4 attends graduation at the Cathedral, as Doe 4 feels that when one steps into someone else's church, one gets the feeling that one should be part of their religion. Ex. 8 ¶ 3. Doe 5 is Doe 3's step-parent. Ex. 9 ¶ 1. Doe 5 would not be comfortable attending graduation at the Cathedral because Doe 3 would be uncomfortable there. Ex. 9 ¶ 2. Doe 4 and Doe 5 would like to be able to attend Doe 3's graduation ceremony, but they will be deprived of that opportunity if Doe 3's graduation is not moved out of the Cathedral, for Doe 3 will not go to the ceremony then. Exs. 8 ¶ 4; 9 ¶ 2.

47. Does 2, 4, and 5 also pay real-estate and/or motor-vehicle property taxes to the Town of Enfield. Exs. 6 ¶ 9; 8 ¶ 5; 9 ¶ 3. They object to the use of their taxes to finance graduations at the Cathedral. Exs. 6 ¶ 10; 8 ¶ 5; 9 ¶ 3.

48. The plaintiffs bring this action under pseudonyms to protect themselves and, where applicable, their children, from social ostracism, economic injury, governmental retaliation, and even physical harm. Plaintiffs who bring Establishment Clause challenges to religious activities in public schools routinely face such risks. *See* ROBERT S. ALLEY, *WITHOUT A PRAYER: RELIGIOUS EXPRESSION IN PUBLIC SCHOOLS* 84-89, 98, 106-08, 177, 182, 186 (1996). The plaintiffs here anticipate that they would face one or more of these dangers if their identities were made public. Plaintiffs are filing herewith a motion for permission to proceed anonymously.

ARGUMENT

“A party seeking a preliminary injunction must demonstrate ‘(1) irreparable harm in the absence of the injunction and (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the movant’s favor.’” *MyWebGrocer, LLC v. Hometown Info, Inc.*, 375 F.3d 190, 192 (2d Cir. 2004). Here, all factors support preliminary relief.

I. The Plaintiffs Have a Strong Likelihood of Showing That Holding Public-School Graduations in a Religious Environment Is Unconstitutional.

The Establishment Clause prohibits government action that has the purpose or effect of advancing religion, or that creates excessive entanglement with religion. *See, e.g., Zelman v. Simmons-Harris*, 536 U.S. 639, 648-49 (2002); *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). The “effect” prong of this “*Lemon* test” can be violated in a number of ways, including by government conduct that coercively imposes religion on people, or endorses religion, or provides public funds for the support of religion. *Warner v. Orange County Dep’t of Probation*, 115 F.3d 1068, 1074-75 (2d Cir. 1997) (coercion), *reinstated in full after vacatur and remand*, 173 F.3d 120 (2d Cir. 1999); *Skoros v. City of New York*, 437 F.3d 1, 29-30 (2d Cir. 2006) (endorsement); *DeStefano v. Emergency Hous. Group, Inc.*, 247 F.3d 397, 418-19 (2d Cir. 2001) (funding). And when a government body delegates authority to a religious institution, the state violates both the “effect” and the “entanglement” prohibitions. *See Larkin v. Grendel’s Den*, 459 U.S. 116, 125-26 (1982). The Enfield Schools’ practice of holding Enfield High and Enrico Fermi graduation ceremonies in the Cathedral violates the Establishment Clause in each of those four ways: it coercively imposes religion on graduates and their families; it communicates a message of governmental endorsement of religion; it directs tax funds to support propagation of

religion; and it confers control over the physical setting of public-school events to a religious entity.

A. Graduation Ceremonies in a Church Trample the Establishment Clause’s Prohibition on Governmental Religious Coercion.

“It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise.” *Lee*, 505 U.S. at 577. Indeed, “[t]he design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere.” *Id.* at 589. The Supreme Court has repeatedly applied these principles to invalidate the presentation of religious messages at public-school events. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310-12 (2000) (student-delivered prayer at high-school football games); *Lee*, 505 U.S. at 586-87 (clergy-delivered prayer at high-school commencement ceremonies); *Sch. Dist. v. Schempp*, 374 U.S. 203, 224-26 (1963) (Bible-reading at beginning of school day); *Engel v. Vitale*, 370 U.S. 421, 431 (1962) (prayer at beginning of school day).

The Supreme Court emphasized in *Lee* that there are “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.” 505 U.S. at 592. The prohibition on religious coercion protects not only youths, however, but adults as well. *See, e.g., DeStefano*, 247 F.3d at 411-13 (clients of alcohol treatment facility); *Warner*, 115 F.3d at 1075-76 (probationers). And when religion is injected into a government-sponsored event, factors such as social pressure, the importance of the event, and the age of the audience can give rise to unconstitutional coercion even when attendance at the event is not formally obligatory. *See, e.g., Santa Fe*, 530 U.S. at 311 (finding students’ exposure to prayer at football games to be coercive because students felt “immense social pressure . . . to be involved in the extracurricular event that is American high school football”);

see also DeStefano, 247 F.3d at 413 (noting that choice between using religious treatment program financed by state and coping with alcoholism without professional assistance “may be no choice at all”).

Such coercive pressure is particularly strong with respect to graduation ceremonies: “Everyone knows that in our society and in our culture high school graduation is one of life’s most significant occasions.” *Lee*, 505 U.S. at 595. Accordingly, the Supreme Court has held that conditioning attendance at public-school graduations on exposure to unwanted expressions of religion is prohibited. *Id.* at 596. “[T]he State cannot require one of its citizens to forfeit his or her rights and benefits as the price of resisting conformance to state-sponsored religious practice.” *Santa Fe*, 530 U.S. at 312 (quoting *Lee*, 505 U.S. at 596).

The Enfield Schools exact just this “price” from students at Enfield High and Enrico Fermi, and the cost imposed on their families is no less weighty. By holding graduations in the Cathedral, the Schools not only coerce graduates and their families to enter and participate in ceremonies within a Christian house of worship, but also compel their exposure to unwanted sectarian symbols. Under the Establishment Clause, either of these “prices” alone would be far too high, but their combination here renders the violation particularly egregious.

1. The Establishment Clause Prohibits Schools From Coercing Students and Parents to Attend a House of Worship for a School Event.

The government cannot require students to receive their diplomas in church for the same reason that it cannot require students to listen to a prayer as the price of graduation attendance: No government entity “can force [or] influence a person to go to or remain away from church against his will.” *Everson v. Bd. of Educ.*, 330 U.S. 1, 15 (1947); *see also Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (stating that government “may not coerce anyone to attend church”). Indeed, “[c]ompulsory church attendance was one of the primary restrictions on religious

freedom which the Framers of our Constitution sought to abolish.” *Anderson v. Laird*, 466 F.2d 283, 286 (D.C. Cir. 1972) (op. of Bazelon, C.J.).

Even when no formal religious worship service is underway, a church (and especially its sanctuary) remains an inherently religious setting—the physical embodiment of the faith community it shelters. To many faiths, a house of worship and all its constituent parts are objects of veneration. “[T]he places where . . . worship takes place are . . . breaks in the homogeneity of the profane world” that “translate[] a system of belief into built form and announce[] to the world the existence of a religious community and its history, traditions, and aspirations.” NICHOLAS W. ROBERTS & LEO A. DAY, *BUILDING TYPE BASICS FOR PLACES OF WORSHIP* 1 (2004). To Catholics, for example, “a beautiful church is also . . . a place of spiritual feeding, and a catechism in stone,” because “the church building is an image of our Lord’s body.” Fr. George William Rutler, *Ten Myths of Contemporary Church Architecture* ¶ 5, *SACRED ARCHITECTURE* (Fall 1998), available at <http://www.catholicliturgy.com/index.cfm/FuseAction/ArticleText/Index/65/SubIndex/116/ArticleIndex/24>. “Church buildings and the religious artworks that beautify them are forms of worship themselves and both inspire and reflect the prayer of the community as well as the inner life of grace.” National Conference of Catholic Bishops, *Built of Living Stones: Art, Architecture, and Worship*, § 18 (2000), available at <http://www.usccb.org/liturgy/livingstones.shtml#preface>.¹ Some believers thus see entering a church as a religious act in itself. See The Latin Mass Society of England and Wales, *The Kingdom of the Beloved Son*, available at <http://www.latin-mass-society.org/2007/kingdom.html> (“To pass through the door of

¹ See also LEONID OUSPENSKY & VLADIMIR LOSSKY, *THE MEANING OF ICONS* 60-63 (2d ed. 1999) (describing structural elements of Greek Orthodox Church as objects of worship); Anthony Batchelor, *The Hindu Temple* (July 1997), <http://www.templenet.com/Articles/hintemp.html> (“The temple is designed to dissolve the boundaries between man and the divine. Not merely his abode, the temple ‘is’ God. God and therefore by implication the whole universe is identified with the temple’s design and actual fabric.”).

a church already constitutes a religious act which signifies entry into the sacred. A church is the temple of God. It is not a meeting place of men but the place of worship of God.”).

For others, entering a Christian church is prohibited by their faith. According to one rabbi, “[i]t is forbidden [for Jews] to enter a church even for purposes that are not religious in nature,” due to “Judaism’s total opposition to anything that preserves elements of idolatry.” Rabbi Jonathan Blass, *Entering a Church for Non-Religious Purposes*, YESHIVA.ORG.IL, May 30, 2003, <http://www.yeshiva.org.il/ask/eng/print.asp?id=742>. Another rabbi has opined that, while Jews may enter churches under limited circumstances, “[i]t is forbidden to enter the sanctuary of a church, even when prayer is not conducted.” Rabbi Chaim Tabasky, *Prohibition to Be in a Church*, YESHIVA.ORG.IL, May 27, 2008, <http://www.yeshiva.org.il/ask/eng/print.asp?id=3859>.

In the case of the First Cathedral, every aspect of the church’s architecture has religious significance. The Cathedral is built in the shape of a dove to represent the baptism of Jesus. Facts ¶ 10. Once inside, the seating levels of the Cathedral’s sanctuary have eschatological significance, with the upper level symbolizing heaven, and the lower level, the earth. Facts ¶ 10. The building itself, even aside from its religious banners and icons, thus conveys a religious message to graduation attendees.

That objectors need not engage in any religious act beyond those entailed in entering and remaining in the Cathedral does not exempt the Schools’ graduation ceremonies from the Constitution’s prohibition against religious coercion. In the Supreme Court decisions that held prayers and Bible readings at school events to be unconstitutionally coercive, the students did not have to do anything other than listen to the prayers, and in at least some cases were free to leave entirely. *See Santa Fe*, 530 U.S. at 297-98, 312; *Lee*, 505 U.S. at 583, 593, 596; *Schempp*, 374

U.S. at 206-07; *Engel*, 370 U.S. at 423 & n.2, 430. Indeed, the unwanted imposition of religion is even more egregious here than the short (*see, e.g., Lee*, 505 U.S. at 583) prayers and readings in those cases, as Enfield High and Enrico Fermi graduates and their family members must spend approximately two hours (Facts ¶ 5) in the Cathedral's religion-permeated environment.

In keeping with the foregoing principles, the court in *Lemke v. Black*, 376 F. Supp. 87 (E.D. Wis. 1974), issued a preliminary injunction against the holding of a public-high-school graduation ceremony in a Catholic church. The court explained, "It is cruel to force any individual to violate his conscience in order to participate in such an important event in the individual's life." *Id.* at 89. The court added, "Even more compelling than the inherent injustice of requiring an individual to decide between his conscience and participating in graduation ceremonies is the fact that the decision is not truly voluntary." *Id.* at 90.² Likewise, in *Reimann v. Fremont County Joint School District No. 215*, Civil No. 80-4059, at 9-10 (D. Idaho May 22, 1980) (Ex. 117), the court enjoined a public high school from holding its graduation in a Mormon church because attendance would have been required for "people whose teachings do not permit them to accept the teachings of that church or who actually oppose[] them, and who don't want to be put in an atmosphere or into the environment of [a] church." The court recognized that "one could say a student doesn't have to go" but concluded that "the facts of life are they have a right to go and . . . want to go" *Id.* at 9.

² After the plaintiffs in *Lemke* had graduated, the court granted summary judgment to the plaintiffs. The defendants appealed from that ruling, and the Seventh Circuit ordered that the court's grant of summary judgment be vacated as moot. The Seventh Circuit's order did not vacate the court's preliminary-injunction opinion, however. Ex. 116.

2. The Constitutional Violation Here Is Especially Egregious Because the Graduates Must Continuously Face a Large Cross, and Must Encounter Other Sectarian Iconography.

In *Lee*, the Supreme Court held that — given the constitutional bar on religious coercion — schools could not subject students to a short, non-sectarian prayer at graduations. *See id.* at 594. Religious symbols seen with the eyes can exert coercive power equal to that of a religious entreaty heard with the ears. As the Supreme Court has recognized, symbols often speak louder than words:

Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind. Causes and nations, political parties, lodges and ecclesiastical groups seek to knit the loyalty of their followings to a flag or banner, a color or design.

W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 632 (1943). And the Court has specifically acknowledged the communicative potency of religious symbols: “the church *speaks* through the Cross, the Crucifix, the altar and shrine, and clerical r[a]jiment.” *Id.* (emphasis added).

The powerful religious symbolism of the cross is undeniable. The cross is “the preeminent symbol of the [Christian] religion.” *Libin v. Town of Greenwich*, 625 F. Supp. 393, 399 (D. Conn. 1985); accord *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 792 (1995) (Souter, J., concurring); *ACLU v. City of St. Charles*, 794 F.2d 265, 271 (7th Cir. 1986). The cross is a “pure religious object.” Frank S. Ravitch, *Religious Objects as Legal Subjects*, 40 WAKE FOREST L. REV. 1011, 1023-24 (2005). Indeed, it is “hard to think of a symbol more closely associated with a religion than the cross is with Christianity.” DOUGLAS KEISTER, *STORIES IN STONE: A FIELD GUIDE TO CEMETERY SYMBOLISM AND ICONOGRAPHY* 172 (2004).

For many believers, viewing the cross has great religious significance. An Episcopal sermon on the fourth Sunday of Lent last year instructed:

Every time we lift our eyes to the cross, we have a chance to hand over our fears, to confess our sins, and, through the grace of God, to begin to live no longer for ourselves alone, but for the one who lived and died and rose for us. . . . I invite us, as a spiritual practice, to turn to the cross whenever we feel afraid or overwhelmed, tempted or confused, whenever we need again to take in the healing love of God.

Rev. Margaret Bullitt-Jonas, Grace Church, Amherst, MA, *Lift Up Your Eyes, and Live* (Mar. 22, 2009), available at http://www.gracechurchamherst.org/worship/sermons/09%20and%2010/09-03-22_mbj_4th%20Sunday%20in%20Lent.pdf.³ Accordingly, Christians have used the powerful symbolic impact of the cross to spread their faith to others. For example, some nineteenth-century Protestant leaders displayed the cross “with a hope” that “the passing traveler” would “be usefully reminded of the spiritual truths intended to be conveyed by [its] emblematic design.” *Crosses and Weathercocks on Churches*, EPISCOPAL WATCHMAN, April 1827, at 14. In other words, they believed in “the power of the cross to impress the mind” with the “image of the dying Christ.” REV. GEORGE S. TYACK, *THE CROSS IN RITUAL, ARCHITECTURE, AND ART* 96 (1900).

³ A Methodist sermon delivered the same day, in a section entitled “Gazing at the Cross,” echoed that sentiment: “Look at Jesus and you will, without a doubt, find God. . . . May you gaze on Jesus, lifted high. May you spend your time looking into his eyes to see God . . . and, there, see your hope.” Rev. John H. Hice, First United Methodist Church of Royal Oak, Mich., *Gazing: “Look at Him”* (Mar. 22, 2009), available at http://www.rofum.org/pdf_sermons/032209_gazing.pdf. The United States Conference of Catholic Bishops, meanwhile, has said: “The cross with the image of Christ crucified is a reminder of Christ’s paschal mystery. It draws us into the mystery of suffering and makes tangible our belief that our suffering when united with the passion and death of Christ leads to redemption.” UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *BUILT OF LIVING STONES: ART, ARCHITECTURE, AND WORSHIP* § 91 (2000), available at <http://www.usccb.org/liturgy/livingstones.shtml>.

The offense that can be caused by the cross's symbolic force is not limited to non-Christians, for there are also some Christian sects that object to displays of the cross. One Baptist sect believed that allowing crosses to stand “would have ‘evil consequences’—for the godly it would be ‘smoake to our eyes, and thorns in our consciences . . . and scandalize our pure profession of religion,’ whilst for others ‘it would keep them from coming to look for Christ in an invisible way.’” JULIE SPRAGGON, *PURITAN ICONOCLASM DURING THE ENGLISH CIVIL WAR* 44 (2003) (quoting SAMUEL LOVEDAY, *AN ANSWER TO THE LAMENTATION OF THE CHEAPSIDE CROSSE*, clauses 1-3, 6 (1642)). Today, “[s]ome Protestant sects still do not display the cross.” *St. Charles*, 794 F.2d at 271. Jehovah's Witnesses reject the cross because they believe both that Jesus died on an upright stake rather than on a cross, and that the cross was originally a pagan symbol of phallus worship associated with the false god Tammuz. *See* WATCHTOWER BIBLE AND TRACT SOCIETY, *WHAT DOES THE BIBLE REALLY TEACH?* 205 (2005); WATCHTOWER SOCIETY OF PA., *REASONING FROM THE SCRIPTURES* 92-93 (1985). And Mormons believe that the inclusion of the cross in Christian architecture “is inharmonious with the quiet spirit of worship and reverence that should attend a true Christian's remembrance of our Lord's sufferings and death.” BRUCE R. MCCONKIE, *MORMON DOCTRINE* 172-73 (1966).

The Second Circuit has recognized the potential of religious items such as the cross to have a coercive impact. In *Cooper v. United States Postal Service*, 577 F.3d 479, 495 (2d Cir. 2009), *cert. denied*, 78 U.S.L.W. 3322, 3496, 3498 (U.S. Mar. 1, 2010) (No. 09-608), the Court held that a private contractor operating a unit of the U.S. Postal Service violated the Establishment Clause by displaying religious items in the postal-unit space. The court noted, “[t]he gravamen of the complaint is that [the plaintiff postal customer] was made to feel that he was an unwilling participant in a faith not his own when he entered [the] space” *Id.* at 496.

District courts have likewise recognized the unconstitutionality of injecting religious symbolism into public functions or events. In *Musgrove v. School Board*, 608 F. Supp. 2d 1303, 1305 (M.D. Fla. 2005), the court concluded that holding a public-school graduation in a church would violate the Establishment Clause. The court explained, “[T]o hold a graduation ceremony—four graduation ceremonies in a religious institution that has displayed a giant cross is, in my view, contrary to Supreme Court precedent.” *Id.*⁴ And in *Spacco v. Bridgewater School Department*, 722 F. Supp. 834, 842-43 (D. Mass. 1989), the court issued a preliminary injunction against the placement of public-school children in classrooms leased from a Catholic church, partly because students had to pass beneath a large cross in order to enter the building and were coercively exposed to religious icons and items outside and inside the building.⁵

The case law thus makes clear that government may not—especially in conjunction with the provision of a public-school education—coercively expose its citizens to religious symbols. Yet here, the Enfield Schools do precisely that by holding graduation ceremonies in a venue that is not only replete with crosses and other Christian iconography but is also itself iconographic. When seniors and their guests attend ceremonies at the Cathedral, they are immersed in a religious environment. As they arrive, the Cathedral’s dove shape symbolizes the baptism of

⁴ The court in *Musgrove* denied the plaintiffs’ motion for a temporary restraining order against the graduations only because the plaintiffs had filed the lawsuit the day before the graduations were to begin, and it would have been impractical to move the ceremonies on such short notice. *Id.* at 1306.

⁵ In opposing this motion, the Schools will likely rely on a number of cases that upheld leases by public schools of space from religious entities. But, in those cases, lease provisions either prohibited the display of religious items in the school’s space, or such items were not actually displayed. See *Porta v. Klagholz*, 19 F. Supp. 2d 290, 303 (D.N.J. 1998); *Thomas v. Schmidt*, 397 F. Supp. 203, 207 (D.R.I. 1975), *aff’d mem.*, 539 F.2d 701 (1st Cir. 1976); *State ex rel. Sch. Dist. of Hartington v. Neb. State Bd. of Educ.*, 195 N.W.2d 161, 162 (Neb. 1972); see also *Taetle v. Atlanta Indep. Sch. Sys.*, 625 S.E.2d 770, 771 (Ga. 2006) (“environment” used by school was “non-sectarian”).

Jesus Christ, while five large crosses appear on the Cathedral's front façade, and another towers over the roof. Facts ¶¶ 3, 10. To enter the Cathedral, attendees must walk underneath the large cross suspended in the middle of the Cathedral's façade. Ex. 5 ¶ 7. Once inside, they pass through a lobby that contains a cross-shaped fountain surrounded by a frame in the shape of a tomb, a large glass sculpture representing the Holy Ghost, and numerous religious paintings. Facts ¶ 4. To enter the sanctuary where the graduation ceremonies take place, students and their family members must walk under large banners with scriptural passages. Facts ¶ 4. Students then walk over a carpet with images of aspects of Jesus to take their places in the sanctuary for the ceremonies. Facts ¶ 9. Once inside the sanctuary, graduates and guests are faced with a large cross; to the sides of the cross, banners proclaim, "Jesus Christ is Lord," and, "I am GOD." Facts ¶ 6. Next to the banners are jumbo screens that periodically flash, "THIS IS GOD'S HOUSE WHERE **JESUS CHRIST** IS LORD," as students and parents wait for the ceremonies to begin. Facts ¶ 8. The graduation ceremonies then proceed as speakers deliver orations and students receive their diploma folders on a stage underneath the cross and the scriptural banners. Facts ¶ 7. Subjecting students and their family members to such a religious environment as the price of attending graduation is an egregious violation of the Constitution's prohibition against religious coercion.⁶

⁶ The fact that the cross and other religious items on display at the Cathedral are "not only religious but also sectarian" compounds the constitutional violation. "[T]he more sectarian the display, the closer it is to the original targets of the [Establishment] clause, so the more strictly is the clause applied." *St. Charles*, 794 F.2d at 271; *see also Larson v. Valente*, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.").

B. The Graduation Ceremonies in the Cathedral Convey a Message of Governmental Endorsement of Religion.

The Establishment Clause prohibits governmental entities from endorsing religion: government action must not convey, or attempt to convey, the “message that religion or a particular religious belief is *avored or preferred*.” *Allegheny*, 492 U.S. at 593 (quoting *Wallace v. Jaffree*, 472 U.S. 38, 70 (1985) (O’Connor, J., concurring)); *accord Santa Fe*, 530 U.S. at 307-08; *Skoros*, 437 F.3d at 29-30; *Southside Fair Hous. Cmte. v. City of New York*, 928 F.2d 1336, 1345-46 (2d Cir. 1991). In other words, government action violates the Establishment Clause if, “‘irrespective of government’s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval [of religion].” *Wallace*, 472 U.S. at 56 n.42 (quoting *Lynch v. Donnelly*, 465 U.S. 668, 690 (1984) (O’Connor, J., concurring)).

“[T]he Establishment Clause does not limit only the religious content of the government’s own communications.” *Allegheny*, 492 U.S. at 600. “It also prohibits . . . the government’s lending its support to the communication of a religious organization’s religious message.” *Id.* at 600-01. Thus, in *Allegheny*, the Court struck down the display of a privately-owned crèche in a public building, notwithstanding the presence of a sign indicating that the crèche was owned by a religious organization. *Id.* And, in *Santa Fe*, the Court invalidated a policy that allowed prayers to be given at football games pursuant to student votes, notwithstanding that the prayers were to be given by students and not school officials. 530 U.S. at 302-04.

Courts analyze whether a government action endorses religion from the standpoint of a hypothetical reasonable, objective observer, who is “‘deemed aware’ of the ‘history and context’ underlying a challenged program.” *Zelman v. Simmons-Harris*, 536 U.S. 639, 655 (2002) (quoting *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 119 (2001)). When school events

are at issue, this “reasonable observer” is deemed to be an “objective student.” *See Santa Fe*, 530 U.S. at 308.

The Enfield Schools’ graduation ceremonies take place within a house of worship replete with religious iconography. Yet the ceremonies are overseen and conducted by public-school officials. Ex. 5 ¶ 15. During graduations, the officials deliver remarks and distribute diploma folders on a stage above which a large cross hovers, flanked by banners that read, “Jesus Christ is Lord,” and, “I am GOD.” Facts ¶ 7. On that same stage, a school banner is displayed on a table that holds the diploma folders. Facts ¶ 7. Holding graduation ceremonies in the Cathedral thus creates a “symbolic link between the state and the [church]” that sends a message of governmental endorsement of religion. *See Parents’ Ass’n of P.S. 16 v. Quinones*, 803 F.2d 1235, 1240-41 (2d Cir. 1986); *see also Spacco*, 722 F. Supp. at 842-43 (holding public-school classes in church with uncovered religious symbols impermissibly endorsed religion, sending message that church and school were linked).

Moreover, the context and history of the Schools’ use of the Cathedral exacerbate the message of endorsement and favoritism of Christianity that such use sends. An objective student will be presumed to know that (1) the Board voted to hold graduations at the Cathedral, reversing a prior decision not to do so, only after intensive lobbying by a religious organization (Facts ¶¶ 20-24); (2) the Chair of the Board — who played a prominent role in the Board’s decision to return to the Cathedral — is a pastor at a local church, has urged students to “keep God in your life” and pray, and has declared that his “first love and responsibility” is his congregation while his “second responsibility is to the” Board (Facts ¶ 22); and (3) the Board chose the Cathedral despite the availability of numerous nonreligious venues that could host the graduations (Facts ¶¶ 27-34).

C. The Schools Have Delegated Governmental Authority to the Cathedral, and the Cathedral Uses That Authority to Promulgate Its Religious Message to Impressionable Youths.

The Establishment Clause prohibits “delegation of state power to a religious body,” for such delegation both has an effect of advancing religion and excessively entangles the government with religion. *See Hernandez v. Comm’r*, 490 U.S. 680, 696-97 (1989); *Larkin*, 459 U.S. at 125-27; *accord Skoros*, 437 F.3d at 37-38; *Commack Self-Serv. Kosher Meats v. Weiss*, 294 F.3d 415, 428-29 (2d Cir. 2002). The Schools have violated this rule by giving a religious institution the authority to control the physical setting of public-school events. It is the Cathedral, not the Schools, that decides whether to cover or remove religious items in the Cathedral for graduation ceremonies. Facts ¶ 13. In similar circumstances, where a school district allowed a church to decide whether to cover a cross on the outside of the church building the school used for classes, the court in *Spacco* found that there was improper entanglement of religion and government. *See* 722 F. Supp. at 845-46.

The Cathedral uses the authority conveyed by the Schools to expose thousands of graduation attendees per year—including numerous youths—to its religious message, and to thereby further its mission “to win souls to Jesus Christ.” Facts ¶¶ 11-12, 15. The Cathedral has refused to cover or remove for graduation ceremonies the “Jesus Christ is Lord” and “I am GOD” banners that hang above the stage in the Cathedral’s sanctuary, even though doing so would certainly be feasible and several school districts asked that this be done back in 2007. Facts ¶ 13. The Cathedral’s insistence on displaying the banners during graduation ceremonies is consistent with its “vision . . . for a church . . . [w]here enthusiastic young people are encouraged, equipped and challenged to seek first the Kingdom of God and are guided in discipleship, just as the young men that Jesus called on the shores of Galilee.” Ex. 13 at 4.

D. The Schools Cannot Avoid Excessive Entanglement with Religion If They Continue to Hold Graduation Ceremonies in the Cathedral.

Unconstitutional governmental entanglement with religion can result not only from delegation of governmental power, but also from governmental intrusions in the affairs of religious organizations, such as inquiries into religious doctrine. *See Hernandez*, 490 U.S. at 696-97; *Lemon*, 403 U.S. at 618-22; *Commack*, 294 F.3d at 427-28. The latter form of entanglement would occur if the Schools—instead of allowing the Cathedral to control the physical setting of the graduation ceremonies—were to attempt to cleanse the Cathedral of religious symbols and items for the ceremonies. The Schools would then have to decide which objects in the Cathedral are religious and which are not—exactly the kinds of judgments government officials must avoid. *See Commack*, 294 F.3d at 427. Such attempts to “sanitize” the Cathedral of religion for graduations could only compromise the Cathedral’s religious mission. The Establishment Clause prohibits such governmental interference with religious institutions, for “[i]ts first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion,” as “religion is too personal, too sacred, too holy, to permit its ‘unhallowed perversion’ by a civil magistrate.” *Engel*, 370 U.S. at 431-32 (quoting *Memorial and Remonstrance Against Religious Assessments*, II WRITINGS OF MADISON 183, 187).

In analyzing whether a government body’s conduct results in excessive entanglement between religion and government, courts also consider whether the conduct causes or creates the risk of community divisiveness along religious lines. *See, e.g., Lemon*, 403 U.S. at 622-23; *Bollenbach v. Bd. of Educ.*, 659 F. Supp. 1450, 1466 (S.D.N.Y. 1987). In enjoining the holding of a graduation in a church in *Lemke*, the court emphasized the potential for divisiveness that the practice created, stating, “any state activity which results in increased religious tension between public school students runs afoul of both the goals of the Framers of the First Amendment and

the historic purposes of public schools.” 376 F. Supp. at 89. While the Supreme Court noted in *Agostini* that divisiveness is not sufficient *by itself* to invalidate a governmental practice (521 U.S. at 233-34), since then the Court has continued to recognize divisiveness as a *factor* weighing against the constitutionality of a practice. *See Santa Fe*, 530 U.S. at 311, 317; *see also McCreary*, 545 U.S. at 860-61, 863, 876. Here, the church graduations have triggered a heated controversy among students and community members over the selection of a graduation site. Facts ¶ 25; *cf. Van Orden v. Perry*, 545 U.S. 677, 702-03 (2005) (Breyer, J., concurring) (fact that religious monument stood for four decades without complaints showed that it was not divisive and weighed in favor of its constitutionality). Such religious divisiveness is yet another indicator of a constitutional violation.

E. The Schools Use Tax Funds to Support the Propagation of Religion.

A fundamental Establishment Clause principle is that government funds cannot be used to promote religious doctrines. *See, e.g., Mitchell v. Helms*, 530 U.S. 793, 857, 865 (2000) (O’Connor, J., concurring in the judgment)⁷; *Bowen v. Kendrick*, 487 U.S. 589, 621-22 (1988); *DeStefano*, 247 F.3d 397, 418-19; *Southside*, 928 F.2d at 1348. Quoting the writings of Thomas Jefferson and James Madison, the Supreme Court has explained that it is “tyrannical” to “forc[e] an individual to contribute even ‘three pence’ for the ‘propagation of opinions which he disbelieves.’” *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 305 (1986) (citations omitted); *accord Everson*, 330 U.S. at 12-13; *DeStefano*, 247 F.3d at 407-08.

The Schools have been violating this principle by using funds obtained from local property (real-estate and motor-vehicle) taxes to pay the fees the Cathedral charges for hosting

⁷ Justice O’Connor’s concurrence, and not the plurality opinion, represents the holdings of *Mitchell*. *DeStefano*, 247 F.3d at 418.

graduation ceremonies. Facts ¶ 14. Tax funds thus support the holding of public-school ceremonies in a religious environment, and advance the Cathedral's ability to promulgate its religious message—here, to Enfield Schools students and family members. Indeed, the Cathedral has admitted that it views renting out the Cathedral's sanctuary for graduations, like everything else the Cathedral does, as related to its mission, which is “to win souls to Jesus Christ.” Facts ¶¶ 11, 15.⁸

This is not a case where public funds are used merely to pay a religious institution a market rental fee for the use of secular space it owns. *Cf., e.g., Porta v. Klagholz*, 19 F. Supp. 2d 290, 301-04 (D.N.J. 1998). Here, the Enfield Schools are paying for the provision of *religious* space for public events. That a religious institution may be providing a service of some value to the government cannot justify payment of public funds for that service if the service is infused with religion. *See, e.g., Lemon*, 403 U.S. at 613, 625 (benefits provided by sectarian schools held not relevant in decision striking down public aid for such schools); *Ams. United for Separation of Church & State v. Prison Fellowship Ministries*, 509 F.3d 406, 416-17, 424-25 (8th Cir. 2007) (state funding of religious treatment program for prisoners was unconstitutional notwithstanding fact that it would have cost state far more to provide substitute secular programming of its own).

F. Even If Holding a Public-School Graduation in a Church Does Not Violate the U.S. Constitution, It Violates the Connecticut Constitution.

Article Seventh of the Connecticut Constitution provides that “no person shall by law be compelled to join or support, nor be classed or associated with, any congregation, church or

⁸ Moreover, government bodies “may not make unrestricted cash payments directly to religious institutions”; payments to such institutions must be accompanied by “statutory prohibitions or administrative enforcements” that ensure that the funds are used in a secular manner. *Freedom From Religion Found. v. Bugher*, 249 F.3d 606, 612-13 (7th Cir. 2001) (citing *Tilton v. Richardson*, 403 U.S. 672, 680-83 (1971), and *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 759 (1976)). Here, there are no restrictions that prohibit the Cathedral from using for religious purposes the payments it receives from the Schools. Exs. 47-51.

religious association.” Although Article Seventh shares some attributes with the First Amendment to the U.S. Constitution, “[t]he Connecticut Supreme Court has . . . stated that the interpretation of this state’s constitution is not bound by federal constitutional construction.” *Cologne v. Westfarms Assocs.*, 442 A.2d 471, 477 (Conn. Super. Ct. 1982). By specifically providing that no person “‘shall . . . be compelled to . . . support . . . or be associated with’ any religious group . . . [t]he state provision is thus more comprehensive than the federal provision.” *Griswold Inn, Inc. v. Conn.*, 441 A.2d 16, 20 n.3 (Conn. 1981). In comparison with the federal Constitution, this language “demonstrates an intent to more positively enunciate the separation between church and state.” *Downing v. West Haven Bd. of Educ.*, 162 F. Supp. 2d 19, 32 (D. Conn. 2001).

The plaintiffs here are being compelled to “be associated with” and to “support” a church. The plaintiffs must go to the Cathedral in order to attend their own or their children’s graduations; thus, they are being coercively associated with a church. And because the Enfield Schools use taxpayer funds to pay the Cathedral’s fees for graduations, those of the plaintiffs who pay local taxes are being compelled to support a church. Holding graduations at the Cathedral therefore violates the Connecticut Constitution.

II. The Plaintiffs Are Entitled to a Preliminary Injunction.

As noted above, where — as here — a party demonstrates a likelihood of success on the merits, the party is entitled to a preliminary injunction upon a showing that the party will suffer irreparable harm if an injunction is not issued. *See MyWebGrocer*, 375 F.3d at 192. The plaintiffs will suffer such harm here as a matter of law, for “where a First Amendment right has been violated, the irreparable harm requirement for the issuance of a preliminary injunction has been satisfied.” *Green Party of N.Y. State v. N.Y. State Bd. of Elections*, 389 F.3d 411, 418 (2d Cir.

2004) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); accord *Bery v. City of New York*, 97 F.3d 689, 694 (2d Cir. 1996); *Libin*, 625 F. Supp. at 395 (applying this principle in an Establishment Clause case).

Indeed, “great irreparable harm” would be inflicted upon the plaintiffs “if the ceremony scheduled at the . . . [c]hurch is not enjoined.” See *Lemke*, 376 F. Supp. at 90. The student plaintiffs’ discomfort with the religious environment of the Cathedral is so great that they plan not to attend their graduation ceremony if the event is held there. Exs. 5 ¶ 19; 7 ¶ 12. They— together with their parents—would thereby be deprived of “one of life’s most significant occasions.” See *Lee*, 505 U.S. at 595. Even if one or both of the student plaintiffs changes their mind and attends graduation, the students and some of their parents would be forced to observe graduation in a religious environment that makes them highly uncomfortable. Facts ¶¶ 36, 39, 42-43, 46. Either way, the harm that would be inflicted upon the plaintiffs could never be undone: “these Plaintiffs . . . who will be deprived of attending a secular graduation ceremony, will never be able to recapture that moment.” *Musgrove*, 608 F. Supp. 2d at 1305.

Even if the Court concludes that the plaintiffs have not demonstrated a likelihood of success on the merits but have merely demonstrated “serious questions going to the merits,” the plaintiffs would still be entitled to a preliminary injunction if they can demonstrate “a balance of hardships tipping decidedly in the movant’s favor.” See *MyWebGrocer*, 375 F.3d at 192. That balance strongly favors the plaintiffs here. As noted above, the plaintiffs would suffer great harm if they were forced to miss (or suffer through in a religious environment) the momentous occasion that high-school graduation is.

On the other hand, the Enfield Schools will suffer little or no harm from an injunction. Many secular facilities remain available for the graduations. Ex. 42 at 3. Some of these facilities

are less expensive than the Cathedral, including at least one that has a greater seating capacity than the Cathedral and another that has a seating capacity that is only slightly smaller. Ex. 42 at 3. Other available secular facilities, including some that have a substantially greater seating capacity than the Cathedral, cost only a few thousand dollars more — a miniscule amount compared to the \$60 million budget of the Enfield Schools for this fiscal year (Facts ¶ 33). And even if the Enfield Schools did not want to spend their own funds to utilize one of the more expensive secular facilities, they could obtain the needed funds simply by charging attendees a few dollars per ticket, as suggested by the student representatives to the Board. Facts ¶ 33.

III. Relief Requested

For the foregoing reasons, the plaintiffs respectfully request that the Court issue a preliminary injunction enjoining the holding of the Enfield Schools' June 23 and 24, 2010, high-school graduation ceremonies in the First Cathedral or in any other house of worship.

In the alternative, the plaintiffs ask that the Schools be preliminarily enjoined from proceeding with the graduation ceremonies in the Cathedral (or in any other house of worship) unless all religious symbols, displays, and items inside and outside the Cathedral (or other house of worship) that graduates or their family members may encounter in the course of attending the graduation ceremonies are covered or removed for the ceremonies. The former relief is more appropriate than the latter, however, because (1) holding graduation ceremonies in a house of worship is *per se* unconstitutional (*see supra* § I(A)); (2) the Cathedral has been asked before to cover its religious displays for graduations but refused to do so (*see* Facts ¶ 13); and (3) the

alternative relief would lead to improper entanglement between government and religion (*see supra* § I(D)).⁹


CONCLUSION

For the foregoing reasons, the plaintiffs respectfully ask that this motion for a preliminary injunction be granted.

Respectfully submitted,

/s/ Alex J. Luchenitser*

Ayesha N. Khan*
Legal Director
Alex J. Luchenitser*
Senior Litigation Counsel
Devin Cain*
Steven Gey Fellow
Americans United for
Separation of Church
and State
518 C St. NE
Washington, DC 20002
Phone: 202-466-3234
fax: 202-466-2587
khan@au.org
luchenitser@au.org
cain@au.org


/s/ David J. McGuire
/s/ Sandra J. Staub*

Sandra J. Staub*
Legal Director
David J. McGuire
Staff Attorney (ct27523)
ACLU of Connecticut
2074 Park St.
Suite L
Hartford, CT 06106
phone: 860-523-9146
fax: 860-586-8900
sstaub@acluct.org
dmcguire@acluct.org

/s/ Daniel Mach*

Daniel Mach*
Director
ACLU Program on
Freedom of Religion
and Belief
915 15th St., NW
Washington, DC 20005
phone: 202-548-6604
fax: 202-546-0738
dmach@aclu.org

* Not admitted to practice before this court. *Pro hac vice* motions submitted herewith.

May 4, 2010

⁹ Because this suit seeks to enforce fundamental constitutional norms, the Court should waive Federal Rule of Civil Procedure 65(c)'s security requirement, lest it condition Plaintiffs' exercise of their constitutional rights on their financial status. *See Pharm. Soc'y of the State of N.Y., Inc. v. N.Y. State Dep't of Soc. Servs.*, 50 F.3d 1168, 1174-75 (2d Cir. 1995) (holding that district court properly waived security requirement in public-interest litigation); *Kermani v. N.Y. State Bd. of Elections*, 487 F. Supp. 2d 101, 115-16 (N.D.N.Y. 2006) (waiving security requirement in public-interest litigation); *Ward v. New York*, 291 F. Supp. 2d 188, 211 (W.D.N.Y. 2003) (same); *Cosgrove v. Bd. of Educ.*, 175 F. Supp. 2d 375, 398-400 (N.D.N.Y. 2001) (same).