

SUPREME COURT OF LOUISIANA

Docket Nos. 2013-CA-0120, 2013-CA-0232 (Consolidated)

Louisiana Federation of Teachers, et al.,
Plaintiffs-Appellees/Cross-Appellants,

v.

State of Louisiana, et al.,
Defendants-Appellants/Cross-Appellees.

A Civil Proceeding on Appeal From the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Suit Numbers 612,733; 613,142; and 613,320
District Judge Timothy E. Kelley

Original Brief in Support of Plaintiffs-Appellees on Behalf of *Amici Curiae*
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Introduction

In attempting to rebut the district court’s conclusion that the Louisiana Constitution prohibits the government from diverting taxpayer money from the Minimum Foundation Program to private schools, the State and its *amici* downplay the actual legal issue before this Court, and instead maintain that the voucher program “provid[es] choices for parents of students otherwise trapped by circumstances in inadequately performing public schools.” Appellant Br. 1. The State’s policy argument not only distracts from the specific constitutional question at issue, but it also overlooks the practical effect of the voucher program. Far from providing meaningful choices to parents, the program would shift millions of taxpayer dollars away from public schools—which are open to all and which teach a curriculum that is religiously neutral—to voucher schools, nearly all of which are religious.

The transfer of taxpayer dollars from public schools to religious voucher schools will have several consequences. First, public funds will be diverted from the religiously neutral public schools to support private-school curricula, many of which are thoroughly infused with religion—not just in theology class, but in classes about biology, history, and sometimes even math. These taxpayer-funded religious curricula, moreover, often will fail to comport with state educational standards governing public schools, which aim to ensure that public educational dollars are

spent appropriately. Second, many parents who want to use the vouchers to send their children to private schools may have few, if any, viable options: Voucher schools set their own attendance levels, need not provide services to students with disabilities, and may require students to participate in religious exercises and act in accordance with particular religious principles or expel those who refuse to do so. As a result, despite the program's requirement that voucher schools enroll recipients through an "open admissions process," students with disabilities, students of minority faiths, and students who do not want religious indoctrination or instruction will effectively be excluded from the voucher program. Those students, in turn, will be confined to public schools whose resources will have been depleted by the voucher program. Third, the private religious schools that receive taxpayer dollars will be neither transparent nor accountable to the public, as most voucher schools are not required to report their students' performance. Even failing voucher schools, moreover, will continue to receive taxpayer funds.

Although the Constitution gives parents the right to send their children to private, religious schools if they so choose, nothing requires the State to fund these choices at taxpayer expense; the cases relied on by *amici* do not suggest otherwise. And although some religious leaders have pointed to school vouchers as a way to provide financial support for struggling religious institutions, it is not the taxpayer's obligation to subsidize religious entities or attempt to stem their losses.

Rather, the country's founding principles recognize that religious liberty suffers when religious institutions depend on the government for their survival. The use of taxpayer money to finance religious education is especially improper where, as here, those funds are reserved for investments in the state's public schools—which teach a religiously neutral curriculum and which are open, available, and accountable to all.

Background

Last year, the Louisiana Legislature enacted Senate Concurrent Resolution 99 and Act No. 2 of the 2012 Louisiana Legislative Session in an effort to significantly expand the state's voucher program. Taken together, these statutes allow any public-school student whose family income is less than 250% of the federal poverty line, and who attends a school receiving a grade of C, D, or F under the state's assessment system, to apply for a voucher to attend a private school. La. R.S. § 17:4013(2). The laws require these voucher payments to come from the Minimum Foundation Program, a formula that determines the minimum foundation of education in all public elementary and secondary schools in Louisiana. *See id.* § 17:4016.

Thus far, over 120 schools have been approved to receive taxpayer dollars as part of the voucher program; up to 99 percent of these voucher schools are religious schools. *See List of Participating Schools*, Department of Education, <http://www>.

louisianabelieves.com/docs/school-choice/louisiana-scholarship---list-of-participating-schools.pdf (last visited March 14, 2013); *see also* Casey Michel, *After Delaying Release of Voucher Documents, Louisiana To Send Taxpayer Funds to “Prophet,”* Talking Points Memo (Aug. 23, 2012, 9:04 AM), http://tpmmuckraker.talkingpointsmemo.com/2012/08/louisiana_school_vouchers_prophet.php?ref=fpnewsfeed (“99 percent of [the voucher schools] are religious”). All but a few of the approved voucher schools are Christian. *See List of Participating Schools, supra.*

In June, three groups (the Louisiana Federation of Teachers, the Louisiana Association of Educators, and the Louisiana School Boards Association) filed separate lawsuits challenging the constitutionality of the two voucher laws. After consolidating the cases, the district court (1) rejected claims that Senate Concurrent Resolution 99 was not properly adopted by the legislature, and that Act 2 violated the “one object” requirement of Article III, § 15(A) of the Louisiana Constitution, but (2) concluded that the voucher program violated Article VIII, § 13(B) of the Louisiana Constitution by diverting Minimum Foundation Program funds that are “constitutionally mandated to be allocated to public elementary and secondary schools.” R. 477. The parties are now before this Court on cross appeals.

Argument

I. Most of the approved voucher schools will use taxpayer funds to finance an education based on religion.

The diversion of existing public-school resources to voucher schools will result in taxpayer support for religious instruction at religious schools, with little to no oversight by the State, let alone the public. First, many taxpayer-funded voucher schools teach a curriculum that is almost entirely religious, with religion dominating not only the study of theology, but also instruction on subjects such as biology, history, economics, and math. Second, even if parents wish to take advantage of the voucher program, they may not be able to: Virtually all of the voucher schools are religious schools, which impose religious curricula and religious exercises on students, and voucher schools need not provide services to students with disabilities. As a result, many students will effectively be foreclosed from participating in the voucher program. Third, the transfer of taxpayer dollars from public schools to religious schools comes with minimal transparency and oversight. Most of the approved voucher schools are exempt from even the most basic requirements to report on student performance, and failing voucher schools can and will continue to receive taxpayer dollars.

The result is significant taxpayer subsidies for religious education at religious schools with religious curricula, which are not truly open even to all voucher students, and which are neither transparent to the public nor required to

improve student performance. And those students who are unable to enroll in the voucher program, because of their faith or disability, will be left behind in public schools that have been stripped of resources in order to fund the voucher program.

A. The voucher program will use taxpayer dollars to support religious curricula.

The program will transfer millions of taxpayer dollars from public schools to voucher schools that will use these resources to teach a religious curriculum. Many taxpayer-funded voucher schools will use explicitly religious textbooks, including fundamentalist Christian textbooks such as those published by Bob Jones University Press, A Beka Book, American Christian Schools International (ACSI), and Accelerated Christian Education.¹ Indeed, approximately one in six taxpayer-funded voucher schools relies on textbooks that promote creationism and/or reject evolution. See Melinda Deslatte, *Vouchers Get Dose of Religion*, Associated Press (Aug. 3, 2012), <http://theadvocate.com/home/3489257-125/vouchers-get-dose-of-religion>. These schools “have been approved to take in more than 750 voucher students and receive more than \$4 million in taxpayer funding.” *Id.*

¹ See, e.g., *Elementary School Subject Offerings and Curriculum*, Jehovah-Jireh Christian Academy, http://jcawarriors.com/index.php?option=com_content&view=article&id=49&Itemid=64 (last visited March 14, 2013); Bishop McManus Academy, *Student Handbook 1*, available at <http://bishopmcmanus.com/images/10000/6000/640AC/user/Handbook2013.pdf>; *About Us*, Family Worship Christian Academy, <http://www.fwcaonline.org/> (last visited March 14, 2013).

For instance, Claiborne Christian School, a K–12 school in Ouachita Parish, explains that the school uses Christian-based textbooks during elementary years, and that teachers will skip any stories contrary to the biblical view of life. The school introduces more secular publishers during middle and high school, but only to teach the students “to evaluate information, ideas, and situations against the Truth found in God’s Word,” and so that they can “discern and refute lies commonly found in textbooks, college classrooms, and in the media.” Claiborne Christian School, *Parent/Student Handbook* 14, available at http://www.claibornechristian.org/files/student_handbook.pdf. Another school is even more explicit: Faith Academy, an elementary and middle school in Ascension Parish, wants its students to “[b]e educated to defend creationism.” Faith Academy, *Student Handbook* 6, available at http://www.faithacademycrusaders.com/site100-01/1001562/docs/2013-2014_hof_schools_handbook.pdf.

In many cases, taxpayer dollars will support not just the teaching of creationism, but a scientific curriculum that is religious in nearly every respect. The following examples may be appropriate for Sunday schools or religious schools that are privately financed, but not for schools financed by taxpayer dollars earmarked for public schools:

- *Humans coexisted with dinosaurs*: “Bible-believing Christians cannot accept any evolutionary interpretation. Dinosaurs and humans were definitely on the earth at the same time and may even have lived side by side within the past few thousand years.” Deanna Pan, *14 Wacky ‘Facts’ Kids Will Learn in Louisiana’s Voucher Schools*, Mother Jones (Aug. 7, 2012), <http://www.motherjones.com/blue-marble/2012/07/photos-evangelical-curricula-louisiana-tax-dollars> (quoting *Life Science* (Bob Jones Univ. Press ed., 3rd ed. 2007)).
- *Dinosaurs are alive today*: “Are dinosaurs alive today? Scientists are becoming more convinced of their existence.” Valerie Strauss, *Loch Ness Monster Real in Biology Textbook*, The Answer Sheet (June 26, 2012, 3:32 PM), http://www.washingtonpost.com/blogs/answer-sheet/post/loch-ness-monster-real-in-biology-textbook/2012/06/26/gJQAPhwr4V_blog.html (quoting *Biology* (Accelerated Christian Education Inc. ed. 1995)).
- *The Loch Ness Monster exists*: “Have you heard of the ‘Loch Ness Monster’ in Scotland? ‘Nessie,’ for short has been recorded on sonar from a small submarine, described by eyewitnesses, and photographed by others. Nessie appears to be a plesiosaur.” Bruce Wilson, *The Loch Ness Monster Is Real; The KKK Is Good: The Shocking Content of Publicly Paid for Christian School Textbooks*, AlterNet (June 18, 2012), http://www.alternet.org/story/155926/the_loch_ness_monster_is_real%3B_the_kkk_is_good%3A_the_shocking_content_of_publicly_paid_for_christian_school_textbooks?paging=off (quoting *Biology* (Accelerated Christian Education Inc. ed. 1995)).

These curricula infuse religion into not only biology, but in some cases subjects such as environmental science and even math. With respect to environmentalism, one textbook states that the goal of environmentalists “is to destroy the prosperous economies of the world’s richest nations.” Pan, *supra* (quoting *Economics: Work and Prosperity in Christian Perspective* (A Beka Book ed., 2nd ed. 1999)). And another publisher states that “the laws of mathematics are a creation of God and thus absolute”; as a result the textbook “provides attractive,

legible, and workable traditional mathematics texts that are not burdened with modern theories such as set theory.” Pan, *supra* (quoting *Distinctives*, A Beka Book, <http://www.abeka.com/Distinctives.aspx>).

Several of the approved voucher schools, moreover, infuse religion into subjects such as American history, geography, and global economics. One textbook states that “God used the Trail of Tears to bring many Indians to Christ.” *Id.* (quoting *America: Land That I Love* (A Beka Book ed., Teacher ed. 1994)). Another, lamenting the lack of Christianity in Africa, states that “[o]nly about ten percent of Africans can read and write,” *id.* (quoting *Old World History and Geography in Christian Perspective* (A Beka Book ed., 3rd ed. 2004)); the actual African literacy rate is 63 percent. See UNESCO Institute for Statistics, *Adult and Youth Literacy 3* (2012), available at <http://www.uis.unesco.org/literacy/Documents/fs20-literacy-day-2012-en-v3.pdf>. Yet another warns that as a result of globalization, “[t]he Anti-christ will tightly regulate who may buy and sell.” Pan, *supra* (quoting *Economics: Work and Prosperity in Christian Perspective* (A Beka Book ed., 2nd ed. 1999)).

Finally, the voucher program will shift taxpayer dollars from public schools that must stay neutral on questions of theology to schools whose curricula may be hostile to certain other religions. One text, for instance, warns students that “[t]he seed of error that took root during the fourth and fifth centuries blossomed into the Roman Catholic Church—a perversion of biblical Christianity.” Rachel Tabachnick,

Vouchers/Tax Credits Funding Creationism, Revisionist History, Hostility Toward Other Religions, Talk to Action (May 25, 2012, 8:41 AM), <http://www.talk2action.org/story/2011/5/25/84149/9275> (quoting David A. Fisher, *World History for Christian Schools* (Bob Jones Univ. Press ed., 2d Teachers ed., 1994)). Another states that Hinduism was “devastating to India’s history.” *Id.* (quoting George Thompson and Jerry Combee, *World History and Cultures in Christian Perspective* (A Beka Book ed., 2d ed., 1997)). And yet another teaches that African religions are “false religious beliefs” from Egyptian descendants of the Bible’s Ham. *See id.* (quoting *Old World History and Geography* (A Beka Book ed., 1991)).

In addition to raising serious concerns about taxpayer support for religion, the use of taxpayer money for this type of curriculum is unlikely to improve student outcomes, as measured by the State’s own academic standards and many of the colleges and universities to which Louisiana students may wish to apply. Science classes that stress creationism, for instance, are likely to conflict with standards governing public schools, which incorporate scientifically tested and accepted explanations for the natural world. *See, e.g.*, La. Admin. Code tit. 28, pt. CXXIII, § 1929 (students should be taught to “[e]xplain how DNA evidence and fossil records support Darwin’s theory of evolution”). And courts have upheld universities’ right to reject students educated using textbooks that “characterized religious doctrine as scientific evidence, included scientific inaccuracies, failed to encourage critical

thinking, and took an ‘overall un-scientific approach to the subject matter.’” *Ass’n of Christian Schs. Int’l v. Stearns*, 678 F. Supp. 2d 980, 992–93 (C.D. Cal. 2008), *aff’d* 362 Fed. Appx. 640 (9th Cir. 2010). In short, the voucher program will divert taxpayer dollars from public schools to religious schools, resulting in publicly funded religious instruction at odds with the State’s academic standards.

B. The voucher program will effectively exclude religious minorities, students with disabilities, and others.

Unlike the public schools, which are religiously neutral and open to all, voucher schools can limit their attendance, refuse to provide services to students with disabilities, and adopt curricular and other religious requirements that will serve to effectively exclude students of minority faiths. These excluded students, moreover, will be left in public schools with depleted resources.

Although the voucher program nominally provides that participating voucher schools must “[u]se an open admissions process in enrolling scholarship recipients,” La. R.S. § 17:4022(1), in practice the program will not truly be open to all. For one, unlike public schools, publicly funded voucher schools have the opportunity to set their own attendance levels and criteria; voucher schools specify to the Board of Elementary and Secondary Education the number of seats the school will have available for scholarship recipients at each grade level. La. R.S. § 17:4020(b). Many voucher-eligible schools lack the resources to take on additional students; some have been forced to scale back their plans to do so. *See, e.g.*, Melinda Deslatte,

Analysis: Ruston School Raises New Voucher Concern, Associated Press (June 4, 2012), http://www.necn.com/06/04/12/Analysis-Ruston-school-raises-new-vouche/landing_politics.html?&apID=07f342e349634ef7b821668bb10ee429 (New Living Word School initially attempted to triple the number of students it enrolled following enactment of the voucher program, even though the school had limited facilities and equipment); *Ruston Church School Using Chapel To Accommodate Voucher Students*, Associated Press (Aug. 15, 2012), http://www.nola.com/education/index.ssf/2012/08/ruston_church_school_using_cha.html (school reduced initial voucher enrollment from 315 students to 165 students).

Moreover, before any student enrolls, the voucher school must “inform the parent or legal guardian of a scholarship recipient of any and all rules, policies, and procedures of such school, including but not limited to academic policies, disciplinary rules, and procedures of the school”; “[e]nrollment of a scholarship recipient in a participating school constitutes acceptance of any such rules, policies, and procedures of such school.” La. R.S. § 17:4022(6). Thus, although they are receiving millions of dollars in taxpayer funding, voucher schools may require students, as a condition of enrollment, to submit themselves to religious indoctrination, participate in religious exercises, and act in accordance with the school’s religious tradition and belief—even if doing so would contradict the student’s or parent’s own religious beliefs. And because approximately 99 percent of

the voucher schools are religious schools—and all but a few of these are Christian—students of minority faiths and students who want to obtain a non-religious education will have few, if any, viable options. *See List of Participating Schools, supra; Michel, supra.*

For example, students who attend St. John School, a Catholic school in Jefferson Parish, are expected to attend all masses and prayer services. *See St. John School, Parent-Student Handbook 7, available at <http://www.stjohnschool.org/files/53843/2012-2013%20handbook.pdf>.* Ascension Christian High School in Ascension Parish requires students to make a personal commitment to Jesus, attend activities to further growth in the Christian faith, and participate in Bible study. *See Ascension Christian High School, Student Handbook, 6–7, available at <http://www.achslions.com/2013-2014%20HOF%20Schools%20Handbook.pdf>.* Gay and lesbian students might attend a school using a textbook stating that gays and lesbians “have no more claims to special rights than child molesters or rapists.” Pan, *supra* (quoting *Teacher’s Resource Guide to Current Events for Christian Schools, 1998–1999* (Bob Jones Univ. Press ed. 1998)).

Voucher students who do not meet the religious expectations of schools (or any other requirements) may well be disciplined “or expelled from the school according to the school’s discipline policy.” *See* La. R.S. § 17:4022(5). Claiborne Christian School, for instance, requires that “any pregnant student report their

pregnancy to the administration as soon as possible,” and will expel not only pregnant students but also any male student found to have caused a pregnancy. *See Handbook of Claiborne Christian School, supra*, at 25. Indeed, even a student merely suspected of being pregnant will be suspended “until such time as medical proof is presented” that she either is or is not pregnant. *Id.*

Taxpayer-funded voucher schools will also be largely off limits for students with special needs. The voucher regulations provide that “a participating nonpublic school is required to offer only those services that it already provides or such services as necessary to assist students with special needs that it can provide with minor adjustments.” La. Admin. Code tit. 28, pt. CLIII, § 303(D)1(a); Zoe Sullivan, *Vouchers No Quick Fix for Disabled Students in Louisiana*, New America Media (Aug. 20, 2012), <http://newamericamedia.org/2012/08/louisianas-voucher-program-fails-disabled-students.php>. As a result, students with disabilities will have few if any options under the voucher program. These students will be left in schools with even fewer resources as a result of the diversion of funds to voucher schools. As one parent of a disabled student has stated, “[t]o me, the voucher system is really designed to leave these special needs students contained in failing schools that will have less money to do the job that they’re already not doing well.” *Id.*

In sum, the voucher program will result in *de facto* discrimination against students with disabilities or special needs, students of minority faiths, gay and

lesbian students, or students who simply want to keep their academic and religious instruction separate. For these students, the voucher program will provide minimal choice; as a practical matter, they will be excluded from voucher schools and confined to public schools with diminished resources.

C. Taxpayer-funded voucher schools will not be transparent about or held accountable for student performance.

Although the voucher program will shift taxpayer dollars from public schools to religious schools, the program does not provide for even basic methods of transparency or accountability—to the State, the taxpayers, or even to parents. And even the minimal standards governing voucher schools could leave voucher-school students with worse results than in their previous public schools.

First, any taxpayer-funded voucher school that does not enroll forty or more voucher students in tested grades or ten or more voucher students in any single tested grade is exempt from publicly reporting voucher students' scores on standardized tests. *See* La. Admin. Code tit. 28, pt. CLIII, § 1305. This exception will nearly swallow the rule: Three-fourths of taxpayer-funded voucher schools will fall into the category exempt from reporting requirements. *See* Stephanie Simon, *Louisiana Sets Rules For Landmark School Voucher Program*, Reuters (July 23, 2012), <http://www.reuters.com/article/2012/07/24/us-usa-education-louisiana-idUSBRE86N00J20120724>; Will Sentell, *White: Some Voucher Schools Will Have To*

Meet State Standards, The Advocate (Aug. 3, 2012), <http://theadvocate.com/home/3422272-125/white-some-voucher-will-have>.

The lack of public reporting for most schools removes one of the most powerful methods of ensuring that voucher schools are using taxpayer dollars to improve students' education: "The public's right to be adequately informed is of fundamental importance and few things affect the public well being as does education." *Laplante v. Stewart*, 470 So. 2d 1018, 1021 (La. Ct. App. 1985). Indeed, the very information that has enabled taxpayers to try and improve the public schools will be unavailable for most of the voucher schools.

Second, the voucher schools that are subject to state evaluation may continue to receive taxpayer money for existing students even if they receive failing grades, and may continue to enroll new students at taxpayer expense even if they receive a grade of a D. For over a decade, the state has assigned performance scores to public schools to "communicate the quality of schools to parents and the public." *Letter Grades*, Department of Education, <http://www.louisianabelieves.com/accountability/school-letter-grades> (last visited March 14, 2013). These performance scores, which are based on standardized tests and graduation rate, are then converted into a letter grade. Starting this year, a school that scores below 50 on the 150-point assessment scale will receive a grade of "F." *See id.*

Under the new accountability regulations, however, a voucher school that scores below 50 is still eligible to receive public money for the students already enrolled there. La. Admin. Code tit. 28, pt. CLIII, § 1305. Voucher schools receiving a school performance score that is equivalent to a letter grade of C or D will still be able to enroll additional scholarship recipients for the next year. *See id.* Thus, a student could use taxpayer dollars to attend a voucher school that is no better—and perhaps worse—than the student’s previous, public school. And even these minimal, uneven protections for students are nonbinding; the superintendent may waive the rules governing taxpayer-funded voucher schools, “to ensure the academic welfare, health, or safety of participating students, or to address extenuating circumstances.” La. Admin. Code tit. 28, pt. CLIII, § 1301. As a result, the transfer of taxpayer dollars from public schools to religious schools will feature little transparency and few consequences even for failing voucher schools.

II. Religious freedom does not require taxpayers to subsidize religious practice or religious education.

In attempting to justify the diversion of resources from public schools to voucher schools—and in defending the use of taxpayer dollars to support religious education—*amici* also assert a “right” that does not exist. It is well-established that there is no constitutional right to attend private, religious schools at taxpayer expense; the U.S. Supreme Court has “affirmed the right of private schools to exist and to operate; it [has] said nothing of any supposed right of private or parochial

schools to share with public schools in state largesse, on an equal basis or otherwise.” *Norwood v. Harrison*, 413 U.S. 455, 462 (1973).²

Yet *amicus* Louisiana Family Forum claims that “in sending their children to public schools, many parents are forced to forego their fundamental right to have their child receive an education that reinforces their family’s values and beliefs (whether religious or secular).” LFF Br. 3. In addition, religious leaders confronting declining enrollment in certain religious schools have looked to taxpayer support as a means of restoring financial health. See Will Sentell, *Catholic School Enrollment Drops*, *The Advocate* (Mar. 13, 2013), <http://theadvocate.com/news/neworleans/5227641-148/catholic-school-enrollment-drops> (enrollment at Catholic schools has fallen 18 percent over the past thirteen years); Archbishop Charles J. Chaput, *Catholic Schools Week—How You and I can Help*, *Catholic Standard & Times* (Jan. 26, 2012), <http://catholicphilly.com/2012/01/think-tank/weekly-message-from-archbishop-chaput/archbishops-weekly-column-catholic-schools-week-how-you-and-i-can-help> (“We can honor Catholic Schools Week this year by actually doing

² See also, e.g., *Locke v. Davey*, 540 U.S. 712, 719, 725 (2004) (rejecting constitutional challenge to state college scholarship program that did not permit students to obtain a scholarship to pursue a degree in theology); *Teen Ranch, Inc. v. Udow*, 479 F.3d 403, 410 (6th Cir. 2007) (state may prohibit use government funds to place children in a youth residential organization that incorporated religious teaching into its programs, because “failure to fund [plaintiff’s] religious programming does not violate [plaintiff’s] free exercise rights”); *Eulitt v. Maine*, 386 F.3d 344, 346 (1st Cir. 2004) (federal Constitution does not require state “to extend tuition payments to private sectarian secondary schools on behalf of students who reside in a school district that makes such payments available on a limited basis to private nonsectarian secondary schools”).

something about the fiscal problems hurting our schools. We need to press our lawmakers, respectfully but vigorously, to pass school choice.”).

Nevertheless, *amici* cannot identify any provision in federal or Louisiana law that entitles parents to send their children to private, religious schools at taxpayer expense. Parents, of course, have the right to send their children to private schools, including private religious schools. Most of the cases relied upon by LFF, *see* LFF Br. 3–4, reiterate just that point: The state cannot prohibit parents from sending their children to private schools or otherwise commandeer the curriculum of private schools. *See Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 531, 534–35 (1925) (invalidating statute that required attendance at public schools); *Meyer v. Nebraska*, 262 U.S. 390, 397, 403 (1923) (invalidating Nebraska law that restricted the teaching of foreign languages in private or religious schools). And many of the cases invoked by LFF have nothing to do with schools at all. *Troxel v. Granville*, 530 U.S. 57, 67 (2000) (invalidating law conferring child visitation rights on third parties); *Santosky v. Kramer*, 455 U.S. 745, 747–48 (1982) (addressing proper evidentiary standard in parental rights termination proceedings). None of these cases requires or even suggests that the State must subsidize students’ attendance at private, religious schools.

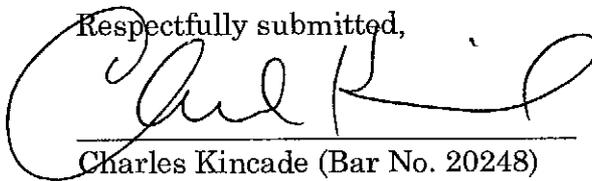
This is unsurprising, given the nation’s founding principles. In opposing legislation in Virginia that would have financed “Teachers of the Christian

Religion,” James Madison explained that “it is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him.” 2 *Writings of James Madison* 183, 184 (Gaillard Hunt ed. 1901). Madison also recognized the corollary, that government funding of religion is bad for religion as well: “Religion flourishes in greater purity, without than with the aid of Gov[ernmen]t.” Letter from James Madison to Edward Livingston (July 10, 1822), in 9 *The Writings of James Madison* 102–103 (Gaillard Hunt ed., 1910). It is the independence of religious entities that has enabled religion to flourish in the United States, and this basic principle of religious freedom counsels against the diversion of public-school funds to aid religious institutions.

Conclusion

The district court’s decision should be affirmed.

Respectfully submitted,



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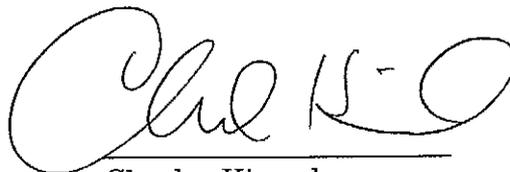
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A handwritten signature in black ink, appearing to read "Charles Kincade", written in a cursive style. The signature is positioned above a horizontal line.

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