

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

DOES 1, 2, 4, 5, and 7;)
DOE 6, a minor,)
by DOE 6's next best friend, Doe 7,)
Plaintiffs,)
v.) Case No. 3:10-cv-00685-CFD
ENFIELD PUBLIC SCHOOLS,) Date: January 25, 2011
Defendant.)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT AND A PERMANENT INJUNCTION OR, IN
THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT**

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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 graduating from the Enfield Public Schools in Enfield, Connecticut (“the Enfield Schools” or “the Schools”), this significant life event — until the issuance of a preliminary injunction as a result of this lawsuit — has been taking place in the sanctuary of the First Cathedral (“the Cathedral”), a Christian church. In 2008 and 2009, both of the Schools’ high schools — Enfield High School (“Enfield High”) and Enrico Fermi High School (“Enrico Fermi”) — held their graduation ceremonies in the Cathedral, and Enrico Fermi also did so in 2007. Seniors received their diploma folders underneath a large Christian cross and banners reading “Jesus Christ is Lord” and “I am GOD,” after being greeted by an immense cross on the Cathedral’s roof and being forced to walk under a third large cross that frames the Cathedral’s entryway.

This arrangement — which the Schools have indicated they would like to continue — violates the Establishment Clause of the First Amendment to the United States Constitution, in four ways. First, the Enfield Schools coerce students and family members to enter a religious environment as the price of attending an event of great significance to them. Second, the Schools are communicating a message that they endorse and favor Christianity. Third, the Schools have fostered an excessive governmental entanglement with religion. Fourth, public funds are being used to support the Cathedral’s propagation of its beliefs.

For these reasons, the plaintiffs — a student at one of the high schools, that student’s parent, a graduate of Enfield High who attended a graduation at the Cathedral, and local taxpayers — are entitled to summary judgment that the Schools’ use of the Cathedral is unconstitutional, as well as a permanent injunction against future graduations at the Cathedral.

STATEMENT OF FACTS¹

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. Pls.' L.R. 56(a)(1) Statement ¶ 2. The Enfield Board of Education ("the Board") is an elected body that has final policy-making authority and control over the Enfield Schools. *Id.* ¶ 4. The Enfield Schools have two high schools: Enfield High and Enrico Fermi. *Id.* ¶ 5. Enfield High's graduating classes range from 155 to 240, while Enrico Fermi's range from 235 to 340. *Id.* ¶¶ 6-13.

Graduations at First Cathedral

The Cathedral is a Christian church in Bloomfield, Connecticut. *Id.* ¶ 14. Enrico Fermi held graduations at the Cathedral in 2007, 2008, and 2009, and Enfield High did so in 2008 and 2009. *Id.* ¶ 16. Both schools planned to hold their 2010 graduations at the Cathedral but were prevented from doing so by a preliminary injunction. *Id.* ¶ 17.

Five large Christian crosses appear in the windows of the front façade of the Cathedral. *Id.* ¶¶ 23, 39. The cross in the middle of the Cathedral's facade is above the Cathedral's main entryway and contains a stained-glass image — visible both from the outside of the building and from inside the Cathedral's lobby — of people lifting their hands in praise to God. *Id.* ¶¶ 39-44. Another cross, which is prominently visible regardless of what direction one approaches the building from, towers over the Cathedral's roof; underneath it are stained-glass religious images that contain more crosses. *Id.* ¶¶ 24-27. When graduating students and guests arrive for graduation ceremonies, they must stand outside the Cathedral for a time — up to two hours for guests seeking better seats — before the building's doors are opened. *Id.* ¶¶ 28-30.

From outside the Cathedral, students and guests can see into the Cathedral's bookstore,

¹ The plaintiffs' accompanying Local Rule 56(a)(1) Statement contains a more detailed statement of facts.

which contains an assortment of religious books and other religious items. *Id.* ¶¶ 31-34. At past graduations, attendees have purchased cards and balloons both inside and outside the bookstore, which remains open if a graduation overlaps with its normal hours. *Id.* ¶¶ 35-36. Students and family members who pre-order DVDs of the graduations do so using an order form on the bookstore's letterhead, which has an image of two hands touching each other by the fingertips with rays of light shining from the point where the hands meet. *Id.* ¶¶ 37-38.

Students and guests enter the building by passing underneath the large cross in the middle of the Cathedral's façade. *Id.* ¶¶ 39, 41-42. They then pass through the Cathedral's lobby, where some students and family members also gather before and/or after the ceremonies. *Id.* ¶¶ 45-46. In the lobby, there is a fountain in the shape of a cross surrounded by a frame in the shape of a tomb; according to the Cathedral, "[t]he fountain represents the fountain of living waters which springs into everlasting life." *Id.* ¶¶ 47, 49. From the ceiling of the lobby hangs a large sculpture or chandelier, which, the Cathedral has told its congregants, represents the "mighty rushing wind of the Holy Spirit." *Id.* ¶¶ 50-51.

Also hanging from the ceiling of the lobby are large banners reading: "Doing It Again In 2010 –Philippians 1:6." *Id.* ¶ 52. (The banners at that spot are changed each year. *Id.* ¶¶ 53-54.) From a lobby wall close to the Cathedral's sanctuary hangs a banner that reads, "Enter into His gates with thanksgiving, and into His courts with praise. Be thankful to Him, and bless His name. –Psalms 100:4." *Id.* ¶ 55. Graduating students and their guests have had to pass underneath or near religious banners at those spots to enter the Cathedral's sanctuary, where the graduation ceremonies take place. *Id.* ¶¶ 56, 67.

Religious paintings — including at least one depiction of Jesus and paintings with Biblical or other religious quotations inscribed on them — are displayed in the lobby, as well as

in the Cathedral's first- and second-floor hallways, which students and attendees must use to access restrooms, entrances to the sanctuary, a multi-purpose room, and one or more conference rooms. *Id.* ¶¶ 57-61. A large painting of a religious ceremony or ritual hangs beside the doors to the sanctuary's primary entrance. *Id.* ¶ 58. Graduating students gather in the multi-purpose room before the ceremonies begin, and collect their diplomas there or in a hallway outside it after the ceremonies end. *Id.* ¶¶ 62-63. In conjunction with past graduations, the Schools have held receptions for selected students in a conference room, which contains several additional religious paintings, off a second-floor hallway. *Id.* ¶¶ 64-66.

The Cathedral's sanctuary, where the graduation ceremonies take place, is the site of the Cathedral's worship services. *Id.* ¶¶ 67-68. The graduation ceremonies, which are overseen and conducted by Enfield Schools officials, last between one-and-a-quarter and two hours. *Id.* ¶¶ 18-19, 93. Both schools have also held graduation dress rehearsals, lasting approximately two to three hours, in the sanctuary. *Id.* ¶¶ 20-22.

In a decorative window at the front of the sanctuary, there is a large Latin cross, which is approximately twenty-five feet tall and ten feet wide. *Id.* ¶ 69. The decorative window with the cross also contains stained glass with religious imagery, including a dove symbolizing "the dove descending from the sky at the baptism of Jesus Christ." *Id.* ¶¶ 70-71. The window and the cross can be illuminated by lights located behind the window's glass. *Id.* ¶ 72. Even when the window is not illuminated, however, the cross and the religious imagery are clearly visible. *Id.* ¶ 73. The cross symbolizes the Christian faith of the members of the Cathedral. *Id.* ¶ 74.

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.” *Id.* ¶ 75. 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 Tsabbaoth / ‘The Lord of Hosts.’” *Id.* ¶ 76. Each of these banners is approximately twenty-five feet long. *Id.* ¶ 77.

The cross and the “Jesus Christ is Lord” and “I am GOD” banners are above a seating area — which serves as the Cathedral’s choir loft — where graduating students sit or stand during Enfield High graduations and where the school band sits during Enrico Fermi graduations. *Id.* ¶¶ 78-81. The Cathedral’s baptistery — the area where baptisms are performed — is located in a recess behind this seating area and underneath the cross. *Id.* ¶ 82.

The cross and the banners are also above the stage upon which the principal events at the graduations take place. *Id.* ¶ 83. 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. *Id.* ¶ 84. Graduates receive their diploma folders on the stage; and before being handed out to students, the diploma folders sit on a table that is atop the stage and is covered by a school banner. *Id.* ¶¶ 85-86. The cross and the two religious banners are in the lines of sight of audience members who are watching events upon the stage. *Id.* ¶ 88.

Next to each of the two religious banners is a jumbo television screen on which speakers and events at the ceremonies are shown live. *Id.* ¶ 89. At past graduations, before the ceremonies began, the two jumbo screens — as well as numerous other large video screens throughout the sanctuary — periodically flashed the message: “WELCOME TO THE / *The First Cathedral* / A CHURCH FOR ALL PEOPLE / THIS IS GOD’S HOUSE WHERE **JESUS CHRIST IS**

LORD.” *Id.* ¶¶ 90-91 (emphasis in original). Before a ceremony begins, the Cathedral also shows slides on the jumbo screens with announcements relating to conduct at the event, during which, among other things, the Cathedral invites attendees to “VISIT THE FELLOWSHIP HALL. ACROSS FROM THE SANCTUARY.” *Id.* ¶ 92.

In the carpet at the front of the sanctuary are seven images that have great significance in Christian doctrine: a fire, a fish, a lion, a shepherd’s crook, a lamb, a lily, and a chalice and loaf of bread. *Id.* ¶¶ 94-96. Students have walked over these images on their way to or from their seats, stood near these images when presented with awards, and assembled near these images at the end of the ceremonies. *Id.* ¶¶ 97, 99-100.

Virtually every aspect of the Cathedral’s architecture has religious significance. *Id.* ¶¶ 101-123. The Cathedral itself was built in the shape of a dove, representing the dove descending from the sky at the baptism of Jesus Christ. *Id.* ¶ 105. The image of a dove is the symbol or logo of the Cathedral and appears on a large First Cathedral sign that greets people as they arrive, on door plaques throughout the building, and on the sides of rows of seats in the sanctuary. *Id.* ¶¶ 106-10. The structure of the Cathedral “is a symbolic representation of the approach to God” (*id.* ¶ 112), with the first level representing “Heaven on Earth” (*id.* ¶ 113), the second or balcony level representing “Heaven” (*id.* ¶ 114), and the cupola representing “where God sits on his throne” (*id.* ¶ 115). A skylight in the Cathedral’s lobby “is symbolic of the windows of heaven.” *Id.* ¶ 117. The “theater seats [in the sanctuary] were selected to symbolize each person’s accountability to God” (*id.* ¶ 119) and are colored “ox-blood, symbolic of the blood of animal sacrifices” (*id.* ¶ 120). And “[t]he arrangement of the pulpit, choir loft and baptistery” in the sanctuary “depicts the events leading to salvation”; the choir loft is symbolic of “confession,” “when you bow down in acknowledgment, proclaiming Jesus’ sovereignty.” *Id.* ¶¶ 122-23.

The “Jesus Christ is Lord” and “I am GOD” banners in the Cathedral’s sanctuary can be covered or removed, but this was not done for any graduation held at the Cathedral, despite a 2007 request from the Schools to do so. *Id.* ¶¶ 124-28. Likewise, none of the other religious items described above have been covered or removed for any graduation. *Id.* ¶¶ 129-30.

The Cathedral’s mission and goals

According to the Cathedral’s website, the “one true mission of the church” is “to win souls to Jesus Christ,” and “[t]he more disciples we make here at the First Cathedral, the stronger and greater we build the Kingdom of God.” *See id.* ¶¶ 131-32; *see also id.* ¶ 137. The Cathedral’s building was therefore intended to be a “calling card” or “invitation” to non-members. *Id.* ¶ 138. The Cathedral considers “giving people [an] opportunity to see what we have to offer” and allowing graduating students and family members who are congregants the opportunity to “share . . . something they enjoy with others” to be positive aspects of hosting high-school graduations. *Id.* ¶¶ 139-41. And a detailed vision statement 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.” *Id.* ¶ 134; *see also id.* ¶ 135. Children of high-school age, middle-school age, and elementary-school age all attend graduation ceremonies at the Cathedral as guests of graduating seniors. *Id.* ¶ 136.

Use of property taxes to pay for church graduations

For each graduation ceremony held at the Cathedral, the Enfield Schools have paid the Cathedral rental fees ranging from \$6,500 to \$8,200 per high school. *Id.* ¶¶ 143-44. The rental fees for the Schools’ 2010 graduations would have been \$8,500 per high school. *Id.* ¶ 145. Including additional fees for handicapped-access ramps and receptions, the Cathedral’s total fees

for two graduations amount to approximately \$20,000 (not including any costs that would be associated with covering or removing religious items at the Cathedral). *Id.* ¶¶ 146-47. The Schools pay the rental fees with funds obtained primarily from local property taxes, including real-estate taxes and motor-vehicle taxes, which make up roughly 60 percent of the Schools' revenues. *Id.* ¶¶ 148-49. The Cathedral's rental contracts contain no restrictions on how the Cathedral can use the fees it receives. *Id.* ¶ 150. The funds the Cathedral receives in connection with hosting graduations "go towards the furtherance of its ministries." *Id.* ¶ 151.

History of graduations at the Cathedral

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. *Id.* ¶¶ 153-54. 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. *Id.* ¶ 155. Enrico Fermi needed to find a temporary alternative site for its 2007 graduation because of a construction project on the school's athletic fields. *Id.* ¶ 156. In November 2006, the Board voted to have the 2007 Enrico Fermi graduation at the Cathedral. *Id.* ¶ 158. Before that vote, a graduation-site advisory committee incorrectly represented to the Board that religious items at the Cathedral would be covered or removed for the graduation. *Id.* ¶¶ 159-61.

On December 11, 2006, the ACLU of Connecticut, one of the counsel for the plaintiffs, sent a letter to the Schools asking them to move Enrico Fermi's 2007 graduation to a secular location. *Id.* ¶ 162. That December, the Schools' superintendent also received a complaint from a student and parent, drawing attention to the church-state problems raised by holding graduation at the Cathedral. *Id.* ¶ 163. Nevertheless, in January 2007 the Board approved a contract with the Cathedral to hold Enrico Fermi's 2007 graduation there. *Id.* ¶ 164.

On January 22, 2008, the Board voted to hold Enrico Fermi's 2008 graduation at the Cathedral, even though construction on the school's athletic fields had been completed. *Id.* ¶¶ 165-66. By then, Enfield High was having construction on its athletic fields, so that school needed to find an alternative site for its 2008 graduation. *Id.* ¶ 167. A January 2008 survey of Enfield High seniors found that 103 seniors favored having graduation on the school's front lawn, while 35 favored having graduation at the Cathedral. *Id.* ¶ 168. Yet, on March 11, 2008, the Board voted to hold Enfield High's 2008 graduation at the Cathedral. *Id.* ¶ 169. On March 18, a graduating senior sent an email to the members of the Board stating that a number of Enfield High seniors would not be attending their graduation because of their religious beliefs. *Id.* ¶ 170. Later that March, an Enrico Fermi senior informed the Board at a Board meeting and in writing that she would not be able to go to her graduation because of the intense discomfort that entering a church would cause her. *Id.* ¶¶ 171, 173-74.

On October 14, 2008, even though the work on the athletic fields was now complete at both high schools, the Board voted to have both schools' 2009 graduations at the Cathedral. *Id.* ¶¶ 175-76. One Board member stated that having the graduations at the religious venue sends students the message that graduations are to be serious and solemn occasions. *Id.* ¶ 177. Subsequent polls of members of the Class of 2009 showed that Enfield High seniors were against graduating at the Cathedral by a 130 to 14 margin, while Enrico Fermi seniors preferred the Cathedral by 178 to 62. *Id.* ¶¶ 178-80. 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 asking the Schools to stop holding graduations at the Cathedral. *Id.* ¶ 181. The Board did not reconsider its decision for either high school's 2009 graduation. *Id.* ¶ 182.

On November 18, 2009, all of the plaintiffs' counsel sent a joint letter to the Enfield

Schools advising the Schools that the counsel had been retained to file litigation against the Schools if they did not agree to stop holding graduations at the Cathedral. *Id.* ¶ 185. On January 26, 2010, the Board voted 6 to 3 to hold the Schools' 2010 high-school graduations at the schools. *Id.* ¶ 193.

The Family Institute of Connecticut ("Family Institute") then ratcheted up a lobbying effort launched in December 2009 to convince the Board to return graduations to the Cathedral. *Id.* ¶¶ 191, 194, 204-208, 215, 220-24. The Family Institute is a socially conservative religious organization that seeks to see "Judeo-Christian principles . . . re-employed in our society and its public policy." *Id.* ¶ 192. The Family Institute brought First Cathedral Archbishop LeRoy Bailey (who serves as an advisor to the Family Institute), Board Chair Greg Stokes, and the American Center for Law and Justice ("ACLJ") into contact with each other. *Id.* ¶¶ 195-96. Mr. Stokes, who is senior pastor of a local church, was elected to the Board in 2007 and was elected Chair of the Board on November 17, 2009. *Id.* ¶¶ 197-99. In a June 22, 2009 blog entry, Mr. Stokes told graduating seniors, "[K]eep God in your life. . . . You will find that prayer is the key to a successful life." *Id.* ¶ 200. The ACLJ is a socially conservative non-profit legal organization that, according to its website, "has 'led the way' in Christian legal advocacy." *Id.* ¶ 201.

On February 23, 2010, the Board rescinded its decision to hold graduations at the schools, but did not choose another location. *Id.* ¶ 203. Starting about March 9, Mr. Stokes and Family Institute Executive Director Peter Wolfgang worked together to return graduations to the Cathedral. *Id.* ¶¶ 205-07. By March 23, the ACLJ and the Family Institute had assured Mr. Stokes that the ACLJ would represent the Enfield Schools *pro bono* if the Schools would agree to move their graduations back to the Cathedral. *Id.* ¶ 208. At a March 23, 2010 Board meeting, Mr. Wolfgang called on the Board to hold the graduations at the Cathedral to "stand up for

religious rights,” and Mr. Stokes promised that “[m]orally, ethically and spiritually each Board member will get their vote.” *Id.* ¶¶ 215-16. On April 13, the Board voted 6 to 3 to hold the Schools’ 2010 graduations at the Cathedral. *Id.* ¶ 223.

At some point in early 2010, a petition signed by approximately 450 Enfield High students had requested that the school’s graduation be held somewhere other than the Cathedral or the school itself. *Id.* ¶ 225. During the 2009-2010 school-year, many Enfield parents or community members made written or oral complaints to Board members or Schools officials objecting to the use of the Cathedral for graduations. *Id.* ¶ 226. The controversy over the selection of a graduation site has created great divisiveness among Enfield High and Enrico Fermi students and parents and in the Enfield community. *Id.* ¶¶ 163, 168, 170-71, 173-74, 178-80, 225-27.

The commencement of the suit and the Schools’ plans to modify the Cathedral

Enfield High’s 2010 graduation was scheduled for June 23, and Enrico Fermi’s for June 24. *Id.* ¶ 228. This lawsuit and a preliminary-injunction motion were filed on May 5, 2010. *Id.* ¶ 229. A preliminary-injunction hearing was held on May 24, 25, and 27. *Id.* ¶ 230.

Before the hearing began, the Schools and the Cathedral had not reached an agreement about which specific religious items in the Cathedral — other than the banners in the sanctuary and the lobby — would be covered for graduations, or who would be responsible for making or bearing the expenses of such changes. *Id.* ¶¶ 231-32. On May 25, the Board passed a motion expressing its intent to cover, remove or otherwise modify sixteen categories of items within the Cathedral for the 2010 graduations, including a catch-all category for anything that could be considered a “religious image or message.” *Id.* ¶ 233. The motion, however, made clear that none of the following could or would be modified: the large cross atop the Cathedral’s roof and the

stained-glass images beneath it; the large cross in the Cathedral's entryway and the stained-glass images contained therein; and the large cross over the stage in the sanctuary. *Id.* ¶ 234; *see also id.* ¶ 235.

It was the Board's intent that Schools officials and/or Board members themselves would decide what items would be considered "religious image[s] or message[s]" and thus need to be covered or removed, but that Cathedral staff would in part be responsible for implementing the modifications. *Id.* ¶¶ 236-37. The Cathedral was not consulted about the May 25 motion and, in fact, never saw it. *Id.* ¶ 238. The Cathedral might not have been willing or able to make some of the modifications, for both safety and spiritual reasons. *Id.* ¶¶ 239-43. And the Board and the Cathedral had opposite understandings about who would bear any costs associated with the modifications. *Id.* ¶¶ 245-47.

On May 31, 2010, the Court issued a preliminary injunction prohibiting the Schools from holding their 2010 graduations at the Cathedral. *Id.* ¶ 249. On June 23, Enfield High's graduation was held on the school's back lawn. *Id.* ¶ 259. Everyone who wished to attend and have a seat was welcome to do so, provided they brought their own chair. *Id.* ¶ 260. On June 24, Enrico Fermi's graduation was held in the school's gym due to a threat of inclement weather. *Id.* ¶ 261. Seniors were given four to five tickets each for that graduation. *Id.* ¶ 262.

Secular facilities that can host the graduations

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. *Id.* ¶¶ 264-65. A number of these sites compare favorably to the Cathedral in terms of cost, size, and/or distance from the two high schools. *Id.* ¶¶ 266, 270, 274-351. Each of the other school districts that had been holding graduations at the Cathedral prior to 2010 held its 2010 graduation at a secular non-

school location. *See id.* ¶ 267.

As noted above, the Cathedral's total fees are approximately \$20,000 (for both graduations). *Id.* ¶ 147. The seating capacity of the Cathedral's sanctuary is approximately 3,000; typically, the Cathedral has been about eighty percent full for graduations. *Id.* ¶¶ 274-76. The Cathedral is approximately a 13-minute drive from Enfield High and approximately an 18-minute drive from Enrico Fermi. *Id.* ¶ 277.

The MassMutual Center, in Springfield, Massachusetts, 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. *Id.* ¶ 278. The MassMutual Center has a seating capacity of at least 6,650, and it is approximately a 12-minute drive from Enfield High and approximately a 17-minute drive from Enrico Fermi. *Id.* ¶¶ 279-80. Board member Peter Jonaitis, who gathered information about potential sites for the 2010 graduations, stated about the MassMutual Center, "everything is there," citing its many positive characteristics. *Id.* ¶ 282. And Enrico Fermi principal Paul Newton, based on his research for a report to the Board about potential graduation sites, preferred that graduations be held at the MassMutual Center. *Id.* ¶¶ 209-10, 284.

Symphony Hall, also in Springfield, 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. *Id.* ¶ 287. Symphony Hall has a seating capacity of approximately 2,600, which Schools officials believed would be sufficient. *Id.* ¶¶ 288-89. Symphony Hall is approximately a 12-minute drive from Enfield High and approximately a 16-minute drive from Enrico Fermi. *Id.* ¶ 290. At the March 23, 2010 Board meeting, Fermi principal Newton told the Board that the MassMutual Center and Symphony Hall "would serve

us well.” *Id.* ¶ 293; *see also id.* ¶ 292.

La Renaissance, in East Windsor, can host the graduations for approximately \$5,400 total (for both graduations) if the graduations are held on the same day or approximately \$8,900 total (for both graduations) if the graduations are held on two separate days. *Id.* ¶ 297. La Renaissance has a seating capacity of 1,500, and it is approximately a 6-minute drive from Enfield High and approximately an 11-minute drive from Enrico Fermi. *Id.* ¶¶ 298-99. La Renaissance was Board member Jonaitis’s “first pick” for a graduation site for 2010. *Id.* ¶ 300. Several other private, secular facilities also compare well to the Cathedral. *See id.* ¶¶ 294-96, 301-12.

The Town of Enfield prepared cost estimates for several options for holding the 2010 graduations in Enfield itself. *Id.* ¶ 313. The total estimated cost of holding both high schools’ graduations on separate days on a tent-covered field off school grounds is approximately \$21,170. *Id.* ¶ 315. A tent could be set up on the grounds of Asnuntuck Community College (where the college holds its graduations) or on the Enfield Town Green; both options were considered acceptable by the 2007 Enrico Fermi graduation committee. *Id.* ¶¶ 316-17, 319, 321.

The total cost of the Schools’ 2010 high-school graduations, which were held on school grounds, was \$29,880. *Id.* ¶ 322. Of that amount, \$12,927 (largely for diplomas, invitations, printing, and flowers) would have been incurred regardless of where the graduations were held, meaning that only \$16,953 was attributable to the use of school grounds. *Id.* ¶¶ 323-24.

Attendance for outdoor graduations at the schools is essentially unlimited, so long as attendees who want seats bring their own chairs. *See id.* ¶ 328. If weather prevents outdoor graduations, the high schools’ gyms can be used for approximately \$4,500 for each graduation, and can seat 1,350 (at Enfield High) or 1,451 (at Enrico Fermi) people for graduations. *Id.* ¶¶ 330-33. The graduations can also be held on the high schools’ newly renovated athletic fields (instead of on a

practice field, as was done for the 2010 Enfield High graduation) if a protective cover is purchased for the fields; the annual total cost of both graduations under that scenario would be approximately \$25,000 over the cover's lifetime. *Id.* ¶¶ 335-51.

The Plaintiffs

Plaintiff Doe 1 graduated from Enfield High in June 2010. *Id.* ¶ 356. Doe 1 is agnostic. *Id.* ¶ 357. Doe 1 attended the June 2009 Enfield High graduation at the Cathedral because Doe 1's close friend was in the graduating class. *Id.* ¶ 358. 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. *Id.* ¶ 359. Doe 1 felt uncomfortable and uneasy at the 2009 graduation, as if someone was preaching at Doe 1. *Id.* ¶¶ 362-63. All the religious items in the Cathedral made Doe 1 feel unwelcome, excluded, and like an outsider. *Id.* ¶¶ 364-65. 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, and that by holding graduations at the Cathedral the Schools were endorsing Christianity and being disrespectful to religious minorities such as Doe 1. *Id.* ¶¶ 366-67.

Doe 6 is a student at and will graduate from one of the Enfield Schools' two high schools. *Id.* ¶ 382. Doe 6 does not subscribe to the Christian faith. *Id.* ¶ 383. Doe 6 is opposed to the Schools holding Doe 6's high-school graduation at the Cathedral. *Id.* ¶ 384. Such an action would send Doe 6 the message that the Schools prefer the Christian faith and do not care about persons of minority religious beliefs. *Id.* ¶¶ 385-86. If Doe 6's high-school graduation were held at the Cathedral, Doe 6 would probably attend; however, the religious iconography and imagery in the Cathedral would make Doe 6 feel uncomfortable and unwelcome. *Id.* ¶¶ 387-88. If Doe 6's graduation is held at the Cathedral, Doe 6's celebration of Doe 6's accomplishments will be

tarnished, as Doe 6 will be made to feel excluded and like an outsider. *Id.* ¶¶ 385, 389. Doe 6 also has a sibling in the Enfield Schools system who will graduate from one of the Schools' two high schools; Doe 6 would like to attend the sibling's graduation and objects to it being held at the Cathedral for the same reasons that Doe 6 objects to Doe 6's own graduation being held there. *Id.* ¶¶ 390-93.

Doe 7 is a parent of Doe 6 and of Doe 6's sibling. *Id.* ¶¶ 394-95. Doe 7 does not subscribe to the Christian faith. *Id.* ¶ 396. Doe 7 is opposed to the Enfield Schools holding high-school graduations at First Cathedral. *Id.* ¶ 397. Doe 7 expects that if the Schools hold either of Doe 7's children's graduations at First Cathedral, the children would probably attend. *Id.* ¶ 400. As Doe 7 views a child's high-school graduation as a once-in-a-lifetime occasion, Doe 7 would also attend Doe 7's children's graduations if they are held at the Cathedral. *Id.* ¶ 401. Having to attend there, however, would ruin the occasion for Doe 7. *Id.* ¶ 402. Doe 7 would feel unwelcome, excluded and like an outsider, and that the graduations were being held under the offensive assumption that Doe 7 shares the Christian beliefs of the Cathedral. *Id.* ¶¶ 398-99, 403.

Doe 2 is a parent of Doe 1. *Id.* ¶ 368. Doe 4 is a parent, and Doe 5 a step-parent, of Doe 3, who was a plaintiff in this case before graduating from Enfield High in June 2010. *Id.* ¶¶ 373, 378. Doe 2, Doe 4, and Doe 5 — as well as Doe 7 — all pay real-estate and/or motor-vehicle taxes to the Town of Enfield. *Id.* ¶¶ 370, 375, 379, 404. They object to the use of their taxes to finance graduations at the Cathedral. *Id.* ¶¶ 372, 377, 381, 406.

STANDARD OF REVIEW

“[S]ummary judgment is appropriate where there exists no genuine issue of material fact and, based on the undisputed facts, the moving party is entitled to judgment as a matter of law.”

D'Amico v. City of New York, 132 F.3d 145, 149 (2d Cir. 1998). “The Court must draw all inferences in favor of the non-moving party.” *Id.*

ARGUMENT

I. The Plaintiffs Have Standing and This Case Is Justiciable.

The Plaintiffs have standing for two reasons. First, personal contact with religion at a governmental event or function is an injury sufficient to confer standing. *See Lee*, 505 U.S. at 584, 594 (high-school student had standing to challenge prayers at graduation ceremony); *Sch. Dist. v. Schempp*, 374 U.S. 203, 225 n.9 (1963) (public-school students and their parents had standing to challenge required reading of Bible in classroom); *Cooper v. U.S. Postal Serv.*, 577 F.3d 479, 491 (2d Cir. 2009) (plaintiff had standing to challenge religious displays in contract postal unit near his home), *cert. denied*, 130 S. Ct. 1688 (2010). In this context, feelings of “embarrassment,” “intrusion,” “affront,” “offense” and “coercive pressure[]” can form the basis for injury. *Lee*, 505 U.S. at 588, 594. Here, plaintiff Doe 1 attended the 2009 Enfield High graduation held at the Cathedral, and plaintiffs Doe 6 and Doe 7 are threatened with future graduations at the Cathedral. Pls.’ L.R. 56(a)(1) Statement of Facts (“SF”) ¶¶ 251-58, 263, 358, 382, 387, 391-92, 394-95, 400-01.

Second, municipal taxpayers have standing “to challenge allegedly unlawful municipal expenditures.” *Bd. of Educ. v. N.Y. State Teachers Ret. Sys.*, 60 F.3d 106, 110 (2d Cir. 1995); *accord United States v. City of New York*, 972 F.2d 464, 470-71 (2d Cir. 1992). Plaintiffs Doe 2, Doe 4, Doe 5, and Doe 7 are local taxpayers who object to the Schools’ use of their property-tax payments to support graduation ceremonies at the Cathedral. SF ¶¶ 370-72, 375-77, 379-81, 404-06.

Does 2, 4, 5, 6, and 7 thus seek (SAC ¶ 245) and are eligible for injunctive relief

prohibiting future use of the Cathedral for graduation ceremonies. As explained in detail in the Plaintiffs' Opposition to the Defendant's Motion to Dismiss (Doc. No. 183 at 2-6), any uncertainty in the Schools' future plans does not render such relief unavailable. Does 1, 2, 4, 5, and 7 also seek (SAC ¶ 248) and are eligible for nominal damages for the violations of Doe 1's constitutional rights at the 2009 graduation Doe 1 attended and for the unconstitutional past use of the tax payments of Does 2, 4, 5, and 7. Plaintiffs who prove that their constitutional rights were violated are entitled to nominal damages. *Robinson v. Cattaraugus County*, 147 F.3d 153, 162 (2d Cir. 1998); *accord Kerman v. City of New York*, 374 F.3d 93, 131 (2d Cir. 2004); *see also Pelphrey v. Cobb County*, 547 F.3d 1263, 1282 (11th Cir. 2008) (applying this rule to taxpayer plaintiffs in Establishment Clause case).

II. Holding Public-School Graduation Ceremonies 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 intrudes into the affairs of a religious organization or delegates public authority to it, the state violates the "entanglement" prohibition. *See Hernandez v. Comm'r*, 490 U.S. 680, 696-97 (1989). The Enfield Schools' practice of holding high-school

graduation ceremonies in the Cathedral violates the Establishment Clause in each of the foregoing ways: it coercively imposes religion on graduates and their families; it communicates a message of governmental endorsement of religion; it entangles government in the affairs of a religious organization; and it directs tax funds to support propagation of religion.

A. Graduation ceremonies in the Cathedral transgress 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 587. For “[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); *Schempp*, 374 U.S. at 224-26 (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 the government is prohibited from coercively subjecting students and parents not just to religious messages it delivers itself, but also to religious messages of private parties. *See Santa Fe*, 530 U.S. at 302, 310-12 (students delivered prayers); *Lee*, 505 U.S. at 587 (private rabbi delivered prayers).

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. For example, in *Santa Fe*, the Court found 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." 530 U.S. at 311. 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. "[A] student is not free to absent herself from the graduation exercise in any real sense of the term 'voluntary,' for absence would require forfeiture of those intangible benefits which have motivated the student through youth and all her high school years." *Id.*

Accordingly, the Supreme Court has held that conditioning attendance at public-school graduations on exposure to unwanted expressions of religion is prohibited. *See 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 seminal school event in a religious environment.

The Supreme Court has expressly stated that 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); accord *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (government “may not coerce anyone to attend church”); *Katcoff v. Marsh*, 755 F.2d 223, 231 (2d Cir. 1985). 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.).

Holding important public-school events in a sacred space forces students and parents to enter a religious environment. 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 — and so, 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, *BUILDING TYPE BASICS FOR PLACES OF WORSHIP 1* (2004).

For 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.” GUIDELINES OF THE 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>.² Some believers thus see entering a church as a religious act in itself. See Fr. Nicolas du Chaxel, *The Kingdom of the Beloved Son*, MASS OF AGES (Aug. 2007), available at <http://latinmas.s701.sureserver.com/2007/kingdom.html> (“To pass through the door of 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. A Medieval Jewish text, the *Shulkhan Arukh*, has been understood by multiple Jewish authorities over the last five centuries to forbid entry into Christian churches. See, e.g., Rabbi Yehuda Herzl Henkin, *Shut Benet Banim* 3:35 (1997) (“[S]ince [Protestants] accept Jesus upon themselves as a god it is forbidden to enter their churches.”); Rabbi Moshe Feinstein, *Iggrot Moshe*, Yoreh Deah 3:129:6 (1982) (“[I]t is forbidden to enter into Christian churches.”); Rabbi Yosef Ovadia, *Yechaveh Da’at* 4:45 (1977) (“The matter is clear that it is absolutely forbidden to enter into Christian churches.”).³ This prohibition applies even when the church is hosting a non-religious activity:

² See also LEONID OUSPENSKY & VLADIMIR LOSSKY, *THE MEANING OF ICONS* 60 (2d ed. 1982) (describing structural elements of Eastern Orthodox churches as objects of worship); Anthony Batchelor, *The Hindu Temple* ¶ 3 (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.”).

³ See also Rabbi Naftali Brawer, *Is it forbidden for Jews to enter a church?*, THE JEWISH CHRONICLE ONLINE, Aug. 21, 2008, <http://www.thejc.com/judaism/rabbi-i-have-a-problem/is-it-forbidden-jews-enter-a-church> (“The rabbinic consensus . . . is that it is forbidden [for Jews] to enter a church” because “[a] Christian house of worship . . . is a place where Christianity . . .

“A strictly Orthodox Jew will not enter a church for any reason whatsoever, lest such a visit violate the injunction ‘Do not inquire about their gods.’” W. GUNTHER PLAUT & DAVID E. STERN, *THE TORAH: A MODERN COMMENTARY* 1278 (2005).⁴ The Rabbinical Council of America, a national organization of Orthodox rabbis, recently highlighted this prohibition’s importance by reprimanding a rabbi who participated in the National Prayer Service following President Obama’s inauguration, explaining that “the service was held in the sanctuary of a church, which Orthodox Jews are prohibited from entering.” Jacob Berkman, *Orthodox group: Rabbi violated rules by joining National Prayer Service*, JEWISH TELEGRAPHIC AGENCY, Jan. 21, 2009, <http://jta.org/news/article/2009/01/21/1002407/orthodox-group-rabbi-violated-rules-by-joining-national-prayer-service>.

Some Muslims similarly believe that entering a church is either strongly disfavored or prohibited altogether. *See Ruling on a Muslim Entering a Church*, ISLAM QA, <http://islamqa.com/en/ref/111832> (last visited Jan. 20, 2011) (some Muslims believe that entering a church is “haraam” (forbidden) or “makrooh” (disfavored)).⁵ As with some Orthodox Jews, these concerns arise even with respect to non-religious events. *See Verified Compl.* ¶ 6,

pervades the very walls and space of the church,” and “by entering a church, one enters into a Christian religious experience”).

⁴ *See also* 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> (“It is forbidden to enter the sanctuary of a church, even when prayer is not conducted.”); 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> (“It 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”); Feinstein, *Iggrot Moshe*, *supra*, at Oreah Hayim 4:40:26 (for some Orthodox Jews, children are prohibited from playing games in hall connected to a church).

⁵ *See also* Moustafa Ayad, *Fatwas: Muslim religious edicts are rarely about violence, war*, PITT. POST-GAZETTE, May 22, 2006, available at <http://www.post-gazette.com/pg/06142/692113-51.stm> (the *Islam QA* website is “widely read and heavily translated”).

Shareef v. Newark Pub. Sch., No. L0019407 (N.J. Super. Ct. Law Div. Mar. 3, 2007), available at <http://www.aclu-nj.org/downloads/Shareefcomplaint.pdf> (Muslim plaintiffs objected to public school holding graduation in church because their religious beliefs prohibited them from “knowingly entering any building that contains a depiction of God or religious iconography (including a cross) either on the inside, outside, or atop the building”).

In the case of the First Cathedral, every aspect of the church’s architecture has religious significance. SF ¶¶ 101-23. The Cathedral is built in the shape of a dove to represent the baptism of Jesus. *Id.* ¶ 105. Inside, the seating levels of the Cathedral’s sanctuary have eschatological significance, with the upper level symbolizing heaven. *Id.* ¶¶ 112-15. The seats themselves are meant to remind attendees of their accountability to God. *Id.* ¶ 119. The arrangement of the pulpit, choir loft, and baptistery — the area where the principal graduation events take place — “depicts the events leading to salvation.” *Id.* ¶ 122. Indeed, the choir loft — where Enfield High graduates sit — is symbolic of “confession,” “when you bow down . . . proclaiming Jesus’ sovereignty.” *Id.* ¶ 123. 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 *Lee*, the Supreme Court held that simply having a prayer at graduation was coercive, even though students were not formally required to participate or even to attend at all. *See* 505 U.S. at 583, 593, 596. In *Santa Fe*, the Supreme Court found coercion where there was no indication that students had to do anything other than listen to a prayer at a football game. *See* 530 U.S. at 297-98, 312. In *Schempp*, 374 U.S. at 206-07, 210-212, 223-25, and *Engel*, 370 U.S. at 423 & n.2, 430, the Court held that there was improper

coercion in schools' presentation of Bible readings and prayers even though students were given the options of remaining silent or leaving the classrooms. 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 up to two hours within the Cathedral's religion-permeated environment during the graduation ceremonies, in addition to attending two-to-three-hour graduation rehearsals in the Cathedral and waiting outside the Cathedral's doors — in the shadow of the cross that frames the main entryway — before being allowed to enter for the ceremonies. SF ¶¶ 18-22, 28-30, 39-43.

In *Lemke v. Black*, 376 F. Supp. 87 (E.D. Wis. 1974), the court issued a preliminary injunction against the holding of a public-high-school graduation ceremony in a Catholic church. The court explained, “[i]t 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, “[e]ven 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. 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. The constitutional violation here is especially egregious because the graduates must continuously face a large cross, and must encounter other sectarian iconography.

Enfield High and Enrico Fermi students and parents have been coerced not only to enter a house of worship to attend graduation ceremonies, but also to view prominent religious iconography within it, including a cross that continually looms above the stage on which the ceremonies take place. SF ¶¶ 23-100. 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* 505 U.S. at 594. The difference between forced aural exposure to a religious message and forced visual exposure to such a message cannot be of constitutional significance, however, for “[I]aw reaches past formalism.” *Id.* at 595.

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). Indeed, 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]iment.” *Id.* (emphasis added).

What is more, the religious icon that is most prominently featured during graduations at the Cathedral is the cross, which has powerful symbolic force. The cross is “the preeminent symbol of the [Christian] religion.” *Libin v. Town of Greenwich*, 625 F. Supp. 393, 399 (D.

Conn. 1985); *accord Trunk v. City of San Diego*, ___ F.3d ___, Nos. 08-56415, 08-56436, 2011 WL 9636, at *1 (9th Cir. Jan. 4, 2011); *American Atheists v. Duncan*, 616 F.3d 1145, 1160 (10th Cir. 2010), *opinion amended on other grounds on denial of rehearing*, ___ F.3d ___, 2010 WL 5151630 (10th Cir. Dec. 20, 2010); *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).

Thus, for many believers, viewing the cross has great religious significance. A recent Episcopal sermon for the fourth day of Lent stated:

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*, at 4 (Mar. 22, 2009), *available at* http://www.gracechurchamherst.org/worship/sermons/09%20and%2010/09-03-22_mbj_4th%20Sunday%20in%20Lent.pdf.⁶ The United States Conference of Catholic Bishops 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

⁶ 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.

tangible our belief that our suffering when united with the passion and death of Christ leads to redemption.” GUIDELINES OF THE NATIONAL CONFERENCE OF CATHOLIC BISHOPS, BUILT OF LIVING STONES: ART, ARCHITECTURE, AND WORSHIP § 91 (Nov. 16, 2000), *available at* <http://www.usccb.org/liturgy/livingstones.shtml>.

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).

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.”).

Indeed, 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 many 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 ability of religious iconography such as the cross to have a coercive impact. In *Cooper*, 577 F.3d at 495, 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 Florida church would violate the Establishment Clause. The court stated, “[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.* 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.

Here, the Enfield Schools hold graduation ceremonies in a venue that is replete with crosses and other Christian iconography. As students and parents arrive for the graduations, they are greeted by a First Cathedral sign with a large dove logo — symbolizing the baptism of Jesus Christ — that reappears throughout the building itself. SF ¶¶ 105-10. A huge cross towers over the Cathedral’s roof, dominating the skyline and signaling that the space below is holy. *Id.* ¶¶ 24-27. To enter the Cathedral, attendees walk underneath the large cross suspended in the middle of the Cathedral’s façade. *Id.* ¶¶ 39-42. 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. *Id.* ¶¶ 47-51, 57-66. To enter the sanctuary where the graduation ceremonies take place, students and their family members walk under large banners with scriptural passages. *Id.* ¶¶ 52-56. Students then walk over a carpet with religious images to take their places in the sanctuary for the ceremonies. *Id.* ¶¶ 94-97. 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.” *Id.* ¶¶ 67, 81, 88. Next to the banners are jumbo screens that have flashed, “THIS IS GOD’S HOUSE WHERE **JESUS CHRIST IS LORD**,” as students and parents wait for the ceremonies to begin. *Id.* ¶¶ 89-90. During the graduation ceremonies, speakers deliver orations and students receive their diploma folders on a stage underneath the cross. *Id.* ¶¶ 83-85. 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.⁷

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 *favored or preferred*,” and the government must not promote or affiliate itself with any religious doctrine or organization. *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 590, 593 (1989) (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. 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)).

The Enfield Schools’ graduation ceremonies take place within a house of worship replete with religious iconography. SF ¶¶ 14-123. Yet the ceremonies are overseen and conducted by public-school officials. *Id.* ¶ 93. 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.” *Id.* ¶¶ 83-85. On that same stage, a school banner is displayed on a table that holds the diploma folders. *Id.* ¶ 86. And students and family members pre-order

⁷ The Schools’ planned modifications to the Cathedral for their 2010 high-school graduations would not have remedied these problems. Despite the long list of items to be covered or removed, the motion that the Board passed during the preliminary-injunction hearing made clear that none of the most prominent iconography could or would be modified: the large cross atop the Cathedral’s roof and the stained-glass images beneath it; the large cross in the Cathedral’s entryway and the stained-glass images contained therein; and the large cross hovering over the stage in the sanctuary on which graduations would occur. SF ¶ 234. Moreover, the Cathedral was never consulted about that motion, and the Cathedral may not have been willing or able to make some of the modifications. *Id.* ¶¶ 238-43.

DVDs of the ceremonies through an order form on the Cathedral bookstore's letterhead, which has an image of two hands touching each other by the fingertips with rays of light shining from the point where the hands meet. *Id.* ¶ 38.

Holding graduation ceremonies in the Cathedral thus creates the kind of “symbolic link between the state and the [church]” that the Second Circuit has found to be impermissible. *See Parents' Ass'n of P.S. 16 v. Quinones*, 803 F.2d 1235, 1241 (2d Cir. 1986). In *Quinones*, for example, the court ruled that a program dedicating a portion of a public-school building for use by students of a particular religious sect linked the school and the sect in a manner that communicated a message of governmental endorsement of the sect. *Id.* at 1241-42. And in *Kaplan v. City of Burlington*, 891 F.2d 1024, 1030 (2d Cir. 1989), the court held that a city's decision to allow the display of a menorah in a park next to city hall communicated an endorsement of religion “given that [p]ark's close association with the seat of city government.”

The symbolic message of endorsement is no less powerful in this case, where the Schools have brought the trappings and activities of government into a house of worship. “[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. Accordingly, 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.* 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. And in *Spacco*, 722 F. Supp. at 842-43, the court ruled that holding public-school classes in a church with uncovered religious

symbols impermissibly endorsed religion, sending a message that the church and the school were linked.

Moreover, 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*, 536 U.S. at 655 (quoting *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 119 (2001)). 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 observer will be presumed to know that (1) the Board chose the Cathedral despite the availability of numerous nonreligious venues that could host the graduations (SF ¶¶ 264-351); (2) the Board continued to vote for the Cathedral notwithstanding the receipt of complaints from religious objectors and the Cathedral’s refusal to cover the religious banners in its sanctuary or other religious items for graduations (*id.* ¶¶ 124-30, 163-64, 166, 169-75, 223, 225-27); (3) the Board originally voted to hold the Schools’ 2010 high-school graduations at the high schools, but reversed that decision and voted to return the graduations to the Cathedral only after intensive lobbying by a religious organization (*id.* ¶¶ 193-95, 203-08, 215-16, 220-24); and (4) the Chair of the Board — who played a prominent role in the Board’s decision to return the 2010 graduations to the Cathedral — is a pastor who has urged graduating students to “keep God in your life” and pray (*id.* ¶¶ 197-200, 205-07, 216, 223-24).

C. The church graduations excessively entangle the Schools with religion.

The Establishment Clause prohibits governmental intrusions in the affairs of religious organizations, such as inquiries into religious doctrine, for such intrusions excessively entangle the government with religion. *See Hernandez*, 490 U.S. at 696-97; *Lemon*, 403 U.S. at 618-22; *Commack Self-Serv. Kosher Meats v. Weiss*, 294 F.3d 415, 427-28 (2d Cir. 2002). The Schools

would violate this rule if they again attempt to sanitize the Cathedral of religion for graduation ceremonies, as they proposed to do for the 2010 graduations. The intrusion would not be a minor one: The Board passed a motion expressing its intent to cover, remove, or otherwise modify sixteen categories of items within the Cathedral for the 2010 graduations, including a catch-all category for anything that could be considered a “religious image or message.” SF ¶ 233. It was the Board’s intent that Schools officials or the Board itself would determine what items are “religious image[s] or message[s]” and therefore need to be covered or removed (*id.* ¶ 236) — exactly the kinds of judgments government officials must not make. *See Commack*, 294 F.3d at 427. The Cathedral was not consulted about the motion and may have been unwilling or unable to make some of the modifications, yet the Board intended that Cathedral staff would aid in implementing the modifications. SF ¶¶ 237-39. 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).

The constitutional problem will not be solved if the Schools abandon attempts to modify the Cathedral for future graduation ceremonies. Unconstitutional governmental entanglement with religion can result not only from governmental intrusions in the affairs of religious organizations, but also from “delegation of state power to a religious body.” *See Hernandez*, 490 U.S. at 696-97; *accord Larkin v. Grendel’s Den*, 459 U.S. 116, 125-26 (1982); *Skoros*, 437 F.3d at 37-38; *Commack*, 294 F.3d at 428-29. The Schools have already violated this rule with respect to the graduations held at the Cathedral from 2007 through 2009 by giving a religious institution

the authority to control the physical setting of public-school events. It was the Cathedral, not the Schools, that decided whether to cover or remove religious items in the Cathedral for graduation ceremonies. SF ¶¶ 125-28. 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.

A principal reason for the constitutional ban on delegation of public authority to religious institutions is that the institutions may employ such authority to promote religious goals. *See Larkin*, 459 U.S. at 125. Here, the Cathedral has done exactly that, using its control over the environment of the graduation ceremonies to expose thousands of graduation attendees per year — including numerous youths — to its religious message, and to thereby further its mission to attract new members and “win souls to Jesus Christ.” SF ¶¶ 131-41. For instance, the Cathedral previously 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 the Schools asked in 2007 that this be done. *Id.* ¶¶ 126-28. The Cathedral has also kept its bookstore, which contains a variety of religious books and items, open during graduations. *Id.* ¶¶ 33-36.

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, though divisiveness is not sufficient by itself to render the conduct invalid. *See, e.g., McCreary County v. ACLU of Kentucky*, 545 U.S. 844, 860-61, 863, 876 (2005); *Santa Fe*, 530 U.S. at 311, 316-17; *Lemon*, 403 U.S. at 622-23; *cf. Agostini v. Felton*, 521 U.S. 203, 233-34 (1997). “The potential for divisiveness is of particular relevance” in the public-school context, due to the “subtle coercive pressures” that exist there.

Lee, 505 U.S. at 588. Accordingly, 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. Here, the church graduations have resulted in many complaints from Enfield parents and students and have triggered a heated controversy in the school community. SF ¶¶ 163, 168, 170-71, 173-74, 178-80, 225-27; *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.

D. 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)⁸; *Bowen v. Kendrick*, 487 U.S. 589, 621-22 (1988); *DeStefano*, 247 F.3d at 418-19. 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.

Pursuant to this rule, a governmental body cannot pay public funds to a religious institution if what the funds specifically support or purchase is itself religious. *See, e.g., Mitchell*,

⁸ Justice O’Connor’s concurrence, and not the plurality opinion, represents the holdings of *Mitchell. DeStefano*, 247 F.3d at 418.

530 U.S. at 840-41, 857, 861 (O'Connor, J., concurring); *Bowen*, 487 U.S. at 621; *Roemer v. Bd. of Pub. Works*, 426 U.S. 736, 754-55 (1976); *Hunt v. McNair*, 413 U.S. 734, 743 (1973). Thus, although the government can contract with a religious institution for the performance of a secular service, it cannot fund a religious institution's provision of services that are infused with religion, even if those services are of some value to the government. *See, e.g., Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 773-74 (1973); *Sloan v. Lemon*, 413 U.S. 825, 829-30 (1973); *Lemon v. Kurtzman*, 403 U.S. at 613, 625; *Ams. United for Separation of Church & State v. Prison Fellowship Ministries*, 509 F.3d 406, 416-17, 424-25 (8th Cir. 2007). While a government body would not run afoul of the Constitution by purchasing secular textbooks from a religious institution for use in schools, for example, paying public funds for religious textbooks would violate the Establishment Clause. *See Bd. of Educ. v. Allen*, 392 U.S. 236, 245 (1968).

The Enfield 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 graduation ceremonies. SF ¶¶ 143-49. 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. 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).

Moreover, governmental aid to religious institutions is unconstitutional unless it is accompanied by “an effective means of guaranteeing that the state aid . . . will be used exclusively for secular, neutral, and nonideological purposes.” *Nyquist*, 413 U.S. at 780; *accord Freedom From Religion Found. v. Bugher*, 249 F.3d 606, 612-13 (7th Cir. 2001) (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). In this case, there are no restrictions that prohibit the Cathedral from using for religious purposes the payments it receives from the Schools, and those funds do in fact “go towards the furtherance of [the Cathedral’s] ministries.” SF ¶¶ 150-51.

E. Even if holding a public-school graduation in the Cathedral 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 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. When students and parents must go to the Cathedral in order to attend graduations, they are coercively associated with a church. And because the Enfield Schools use taxpayer funds to pay the Cathedral’s fees for graduations, Enfield taxpayers are compelled to support a church. Holding graduations at the Cathedral therefore violates the Connecticut Constitution.

III. Relief Requested.

For the foregoing reasons, the plaintiffs respectfully request that the Court grant summary judgment that the Enfield Schools' practice of holding graduation ceremonies at the Cathedral is unconstitutional, and enter final judgment awarding the plaintiffs the following relief:

1. A permanent injunction barring the Enfield Schools from conducting any future graduation ceremonies at the Cathedral. (In the alternative, if the Court declines to grant such an injunction, the plaintiffs seek a permanent injunction prohibiting the Enfield Schools from conducting any future graduation ceremonies at the Cathedral unless all religious symbols visible to attendees, both on the venue's exterior and within, are covered or removed.)

In deciding whether to issue a permanent injunction, courts consider a four-factor test whereby “[a] plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law . . . are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *See Salinger v. Colting*, 607 F.3d 68, 77-78 & n.7 (2d Cir. 2010) (quoting *eBay, Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)). Here, future graduation ceremonies at the Cathedral will inflict irreparable harm upon the plaintiffs — the violation of their First Amendment rights. *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, 693-94 (2d Cir. 1996); *Libin*, 625 F. Supp. at 395 (applying this principle in an Establishment Clause case). Money damages are insufficient to remedy such harm. *See Paulsen v. County of Nassau*, 925 F.2d 65, 68 (2d Cir. 1991); *JSG Trading Corp. v. Tray-Wrap, Inc.*, 917 F.2d 75, 79 (2d Cir. 1990); *Libin*, 625 F. Supp. at 395; *see also Joelner v. Vill. of Washington Park*, 378 F.3d 613,

620 (7th Cir. 2004). The balance of harms strongly favors the plaintiffs since the Schools have numerous secular options for their graduation ceremonies. SF ¶¶ 264-351. The public interest likewise supports injunctive relief, for the endorsement of religion, excessive entanglement with religion, and use of tax money to support religion that result from graduation ceremonies being held in the Cathedral harm the entire school and local communities. *See St. Charles*, 794 F.2d at 275.

2. A declaratory judgment (pursuant to 28 U.S.C. § 2201) that the Enfield Schools' practice of holding high-school graduation ceremonies at the Cathedral violates the U.S. Constitution and the Connecticut Constitution; that the Schools violated the constitutional rights of plaintiff Doe 1 by holding the 2009 Enfield High School graduation ceremony at the Cathedral; and that the Schools violated the constitutional rights of plaintiffs Doe 2, Doe 4, Doe 5, and Doe 7 by using their tax payments to support graduations at the Cathedral.

3. An award of nominal damages of one dollar each to plaintiffs Doe 1, Doe 2, Doe 4, Doe 5, and Doe 7, for violating Doe 1's constitutional rights by holding the 2009 Enfield High graduation at the Cathedral, and violating the constitutional rights of Does 2, 4, 5, and 7 by using their tax payments to support graduations at the Cathedral.

In the alternative, if the Court concludes that the plaintiffs are not entitled to summary judgment, the plaintiffs respectfully seek (1) partial summary judgment (pursuant to Federal Rule of Civil Procedure 56(a)) that each plaintiff has standing in this case, including that Does 2, 4, 5, 6, and 7 have standing to seek injunctive and declaratory relief, and that Does 1, 2, 4, 5, and 7 have standing to seek nominal damages; and (2) if the Court deems this an efficient way of reducing the issues that need to be tried, an order (pursuant to Rule 56(g)) specifying the facts that are not genuinely in dispute and are deemed established for purposes of trial.

Respectfully submitted,

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