IN THE SUPREME COURT
STATE OF GEORGIA

RAYMOND GADDY, BARRY HUBBARD, LYNN WALKER HUNTLEY and DANIEL REINES,

Appellants,

vs.

GEORGIA DEPARTMENT OF REVENUE, and LYNNETTE T. RILEY, in her official capacity as STATE REVENUE COMMISSIONER OF THE GEORGIA DEPARTMENT OF REVENUE,

Appellees,

and

RUTH GARCIA, ROBIN LAMP, TERESA QUINONES, and ANTHONY SENEKER,

Intervenor-Appellees.

Case No. S17A0177

BRIEF OF AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE; AMERICAN CIVIL LIBERTIES UNION; AMERICAN CIVIL LIBERTIES UNION OF GEORGIA; ANTI-DEFAMATION LEAGUE; CENTRAL CONFERENCE OF AMERICAN RABBIS; DISCIPLES JUSTICE ACTION NETWORK; EQUAL PARTNERS IN FAITH; HADASSAH, THE WOMEN'S ZIONIST ORGANIZATION OF AMERICA; JEWISH SOCIAL POLICY ACTION NETWORK; PEOPLE FOR THE AMERICAN WAY FOUNDATION; UNION FOR REFORM JUDAISM; AND WOMEN OF REFORM JUDAISM AS *AMICI CURIAE* SUPPORTING APPELLANTS

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Ga. Const. of 1976 art. VII, § I, ¶ IV.....18

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OTHER AUTHORITIES

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JOHN LOCKE, A LETTER CONCERNING TOLERATION (James H. Tully ed., Hackett Pub. Co. 1983) (1689). 9

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Merrill D. Peterson, *Jefferson and Religious Freedom*, ATL. MONTHLY (Dec. 1994), *available at* http://www.theatlantic.com/past/docs/issues/96oct/obrien/peterson.htm 10

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Noah Feldman, *Non-sectarianism Reconsidered*, 18 J.L. & POL. 65 (2002) 13, 14

Office of the Gov., *Deal issues 2016 veto statements*, https://perma.cc/94W7-BZVT 29

Pew Forum on Religion & Public Life, *U.S. Religious Landscape Survey: Religious Affiliation* (Feb. 2008) 21

Pew Research Ctr., *Religious Landscape Study* (2014), http://www.pewforum.org/religious-landscape-study/ 20

Pew Research Ctr., *U.S. Public Becoming Less Religious* (2015), https://perma.cc/W43V-WUU7 20

RICHARD P. MCBRIEN, CAESAR'S COIN: RELIGION AND POLITICS IN AMERICA (1987).....8

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THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA (1787), *available at* http://avalon.law.yale.edu/18th_century/jeffvir.asp 12

Thomas Jefferson, *The Virginia Statute for Religious Freedom* (Jan. 16, 1786), *reprinted in* FOUNDING THE REPUBLIC: A DOCUMENTARY HISTORY 94 (John J. Patrick ed., 1995) 11

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U.S. Census Bureau, *Statistical Abstract of the United States* (1962) 20

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WILLIAM J. REESE, AMERICA'S PUBLIC SCHOOLS: FROM THE COMMON SCHOOL TO "NO CHILD LEFT BEHIND" (2011) 13

INTEREST OF THE *AMICI CURIAE*

Amici are nonprofit organizations, both religious and secular, that are united in their firm commitment to the principle that religious education of children is a matter best left to families and their houses of worship. *Amici* and their members have learned through long experience that the use of tax dollars to fund religious institutions and religious education impedes rather than advances the cause of religious freedom. This same understanding was what motivated Georgians to adopt Article I, Section II, ¶ VII of the Georgia Constitution—which we refer to as the "No-Aid Clause."

Amici write to explain that a program like Georgia's Qualified Education Tax Credit Program not only violates the language of the No-Aid Clause but is inconsistent with its spirit as well. Such programs encroach on religious liberty by making religion dependent on government, by encouraging sectarian division and strife, and by interfering with free, individual choice in matters of conscience. In addition, *amici* point out that sovereign immunity does not and should not apply to suits seeking injunctive or declaratory relief on the basis of constitutional claims. Sovereign immunity does not abrogate the essential judicial power to enforce constitutional constraints on legislative power.

Because several *amici* have joined this brief, more detailed descriptions of each appear in the Appendix. The *amici* are:

- Americans United for Separation of Church and State.
- American Civil Liberties Union.
- American Civil Liberties Union of Georgia.
- Anti-Defamation League.
- Central Conference of American Rabbis.
- Disciples Justice Action Network.
- Equal Partners In Faith.
- Hadassah, The Women's Zionist Organization of America.
- Jewish Social Policy Action Network.
- Union for Reform Judaism.
- Women of Reform Judaism.

INTRODUCTION AND SUMMARY OF ARGUMENT

I.

From the founding of the Nation, Americans have recognized that reserving questions of conscience to individuals, families, and their places of worship will protect religion against corruption and prevent government from coercing belief or distorting theological doctrine and practice—even by the ostensibly benevolent means of offering financial support. The framers of Georgia's No-Aid Clause (GA. CONST. art. I, § II, ¶ VII) and of other States' similar constitutional prohibitions against state aid to religious institutions, including private religious schools, considered such restrictions to be a central component of the system for ensuring religious liberty and helping to maintain strong systems of free, common, public schools in which students of all religious beliefs would be equally welcome and no faith would be favored or disfavored.

Programs like the Tax Credit Program, which divert tax dollars from the public schools to private religious schools, are precisely what the No-Aid Clause, with its careful inclusion of a prohibition on indirect as well as direct aid, was meant to forbid. By funding religious instruction and making religious institutions beholden to the State, such programs threaten the social compact that protects the vibrant diversity of religious beliefs and the freedom of conscience that Georgians currently enjoy. In holding that the challenged program comports with the No-Aid

Clause, therefore, the trial court's decision not only misapplies the law, but also undermines the religious independence that the Clause was intended to protect. The decision should not stand.

II.

Equally troubling is the trial court's holding that, under this Court's decision in *Georgia Department of Natural Resources v. Center for a Sustainable Coast, Inc.*, 294 Ga. 593 (2014), Appellants' suit to enjoin the program is barred by sovereign immunity. *Amici* agree with Appellants' arguments as to why the trial court's decision on this point is legally erroneous. But there are additional, substantial grounds for rejecting the finding of sovereign immunity. First, *Sustainable Coast* dealt only with the application of sovereign immunity to statutory, not constitutional, claims, and therefore has no application here. This case is governed by earlier cases holding that sovereign immunity is no bar to suits to enforce express constitutional provisions because the Constitution itself authorizes the actions—cases that *Sustainable Coast* had no occasion to disturb. Second, to the extent that the Court may nevertheless consider the question open, the constitutional structure of the State's governing institutions, with the allocation of the power of constitutional interpretation and enforcement to the judicial branch, compels the conclusion that this Court possesses the power to restrain the political branches when they transgress

constitutional limitations on their power. Were it otherwise, sovereign immunity would render much of the Constitution meaningless.

ARGUMENT

The Tax Credit Program gives taxpayers dollar-for-dollar tax credits for donations made to student scholarship organizations. SSOs, as the trial court noted, "are tasked by the State with facilitating the transfer of the donations * * * to eligible students attending private schools, many of which condition enrollment on specific religions." R. 1173. In short, the Program diverts to private schools (with religiously oriented curricula and restrictive, explicitly sectarian admissions criteria) money that would otherwise be paid to the State, thereby depleting the funds available to maintain the public schools in Georgia, which are meant to provide for all on equal terms, regardless of faith or belief.

The Program cannot be reconciled with the No-Aid Clause. That Clause's framers understood that public funding of religious instruction unwisely diverts resources from public schools and public education in order to redirect them to private schools that selectively serve only a few. However, the Program makes religious institutions beholden to government, which thereby creates incentives for those institutions to distort their teachings and practices in order to reap the benefits of governmental largess, and it risks fomenting religious strife by placing different

denominations in competition with each other for scarce public dollars. The No-Aid Clause was the framers' means of safeguarding against these harms.

Because the Tax Credit Program is inconsistent with the No-Aid Clause's plain language and central purpose, it should be struck down. The Court should also hold that Appellants' suit to vindicate the important principles embodied in the No-Aid Clause is not barred by sovereign immunity.

I. THE TAX CREDIT PROGRAM VIOLATES THE LETTER AND SPIRIT OF THE NO-AID CLAUSE.

A. Our Nation Is Built On The Philosophical, Theological, And Political Understanding That Governmental Involvement With Religion Is A Grave Threat To Religious Liberty.

The principle that religion flourishes best when government is least involved has deep roots in philosophy, theology, and political thought stretching back well before the founding of Georgia and the United States. Grounded in the understanding that freedom of conscience is an essential component of faith, and born out of the experience of a long, sad history of religious oppression, the separation principle recognizes that governmental support for and funding of religion corrodes true belief, makes religious denominations and houses of worship beholden to the State, and places subtle—and often not so subtle—coercive pressure on individuals and groups to conform.

Theology.

The notion of freedom of conscience as a moral virtue traces back to the thirteenth-century teachings of Thomas Aquinas, who wrote that conscience must be an important moral guide and that acting against one's conscience constitutes sin. Noah Feldman, *The Intellectual Origins of the Establishment Clause*, 77 N.Y.U. L. REV. 346, 356-57 (2002). Martin Luther and the other early architects of Protestantism built on this idea, preaching that the Church does not have the authority to bind believers' consciences on spiritual questions: "the individual himself c[an] determine the content of his conscience based on scripture and reason." *Id.* at 358-59. John Calvin went further, arguing that this robust notion of individual conscience absolutely deprives civil government of the authority to dictate in matters of faith. *See id.* at 359-61.

That conception of the theological relationship between government and religion found expression in the New World in the teachings of Roger Williams, the Baptist theologian and founder of Rhode Island. Williams preached that, for religious belief to be genuine, people must come to it of their own free will. Coerced belief and punishment of dissent are anathema to true faith; religious practices are sinful unless performed "with[] faith and true persuasion that they are the true institutions of God." ROGER WILLIAMS, *The Bloudy Tennant, Of Persecution for Cause of Conscience* (1644), *reprinted in* 3 COMPLETE WRITINGS OF ROGER

WILLIAMS 12 (Samuel L. Caldwell ed., 1963); *see also id.* at 202 ("[T]he Church of Christ doth not use the Arm of secular power to compel men to the true profession of the truth, for this is to be done with Spiritual weapons."). When government involves itself in matters of religion, Williams warned, the coercive authority of the State impedes the exercise of free will, while also causing bloody civil strife. Thus, Williams taught, keeping church and State separate is crucial both to protect individual religious dissenters against persecution and to safeguard religion and the church against impurity and dilution. *See* WILLIAMS, *The Bloudy Tennant*, *supra*; EDWIN S. GAUSTAD, ROGER WILLIAMS 13, 59, 70 (2005); RICHARD P. MCBRIEN, CAESAR'S COIN: RELIGION AND POLITICS IN AMERICA 248, at note 37 (1987) ("'[T]he Jews of the Old Testament and the Christians of the New Testament 'opened a gap in the hedge or wall of separation between the garden of the church and the wilderness of the world' . . . [I]f He will ever please to restore His garden and paradise again, it must of necessity be walled in peculiarly unto Himself from the world.'") (quoting Williams).

Political philosophy.

Not only did the theological doctrine of separation have overriding importance for the development of religion in this country, but it also became the foundation for the political thought on which our Nation was built. Notably, for example, John Locke incorporated it into his argument for religious toleration:

> Whatsoever may be doubtful in Religion, yet this at least is certain, that no Religion, which I believe not to be true, can be either true, or profitable unto me. In vain therefore do Princes compel their Subjects to come into their Church-communion, under pretence of saving their Souls. . . . [W]hen all is done, they must be left to their own Consciences.

JOHN LOCKE, A LETTER CONCERNING TOLERATION 38 (James H. Tully ed., Hackett Pub. Co. 1983) (1689). Based on this understanding of conscience—and the concern he shared with Williams that bloodshed follows when government intrudes into matters of faith—Locke reasoned that "civil government" should confine itself to the secular sphere and should not "interfere with matters of religion except to the extent necessary to preserve civil interests." Feldman, *Intellectual Origins*, 77 N.Y.U. L. REV. at 368.

This Nation's founders took to heart both Williams' theology and Locke's political thought on the proper relationship between religion and government. In the Virginia legislature's debate in 1784 over Patrick Henry's "Bill Establishing a Provision for Teachers of the Christian Religion," for example, these ideas motivated the opposition to Henry's proposal to fund religious education with a property-tax levy (which Henry had proposed as an antidote to a perceived decline in social mores). *See* Vincent Blasi, Essay, *School Vouchers and Religious Liberty: Seven Questions from Madison's* Memorial and Remonstrance, 87 CORNELL L. REV. 783, 783-84 & n.3 (2002). James Madison strenuously objected that Henry's bill was an offense against individual conscience, a threat to the health of civil

government, and a gross intrusion into church governance and the free development of church doctrine. *See, e.g.*, JAMES MADISON, *A Memorial and Remonstrance Against Religious Assessments* (June 20, 1785), *reprinted in* SELECTED WRITINGS OF JAMES MADISON 21, 26 (Ralph Ketcham ed., 2006) (arguing that Henry's bill would be "adverse to the diffusion of the light of Christianity," "tend to enervate the laws in general, . . . slacken the bands of Society," and infringe on "the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience").

Drawing on Locke's views on toleration (*see* Blasi, *School Vouchers*, 87 CORNELL L. REV. at 789-90 & n.28), Madison argued that religion "must be left to the conviction and conscience of every man." MADISON, *supra*, at 22. Governmental support for religion and religious instruction would only "weaken in those who profess [the benefited] [r]eligion a pious confidence in its innate excellence" while "foster[ing] in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits." *Id.* at 24.

Madison's arguments not only led to the defeat of Henry's bill but also spurred the passage, in its place, of Thomas Jefferson's Bill for Establishing Religious Freedom. *See* Merrill D. Peterson, *Jefferson and Religious Freedom*, ATL. MONTHLY (Dec. 1994), *available at* http://www.theatlantic.com/past/docs/issues/96oct/obrien/peterson.htm. Jefferson's Bill forthrightly declared that "to compel a man to furnish

contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." Thomas Jefferson, *The Virginia Statute for Religious Freedom* (Jan. 16, 1786), *reprinted in* FOUNDING THE REPUBLIC: A DOCUMENTARY HISTORY 94, 95 (John J. Patrick ed., 1995). In Jefferson's view, religious liberty suffers even when the State asks citizens to support teachers of their own faith, because the individual should be absolutely free to contribute to "the particular minister, whose morals he would make his pattern." *Id.* And, Jefferson explained, religion itself neither requires nor benefits from the support of the State: "truth is great and will prevail if left to herself." *Id.* Thus, the Virginia Bill mandated "[t]hat no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever." *Id.*

Jefferson and Madison's vision sowed the seeds for a deeper political, social, and cultural understanding of the relationship between religion and government that would permeate and define the new Nation. *See, e.g.*, ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 284 (Harvey C. Mansfield & Delba Withrop eds. & trans. 2000) (1835) (observing American understanding that "[r]eligion . . . cannot share the material force of those who govern without being burdened with a part of the hatreds to which they give rise"); *id.* at 285 ("Insofar as a nation takes on a democratic social state, and societies are seen to incline toward republics, it becomes more and more dangerous for religion to unite with authority.").

Educational policy.

This distinctly American political and cultural context also gave rise to another critical development in nineteenth-century America—the birth and growth of free, universal public schooling, which came to be recognized as essential to the functioning of representative government in an increasingly diverse and pluralistic society. As the U.S. Supreme Court would later explain in *Brown v. Board of Education*, Americans came to understand that public schools were critical because they enabled students of every background to learn to live and work together, and therefore also to acquire the skills and virtues necessary to participate in governance as equal citizens. *See* 347 U.S. 483, 493 (1954) (stating that education is "required in the performance of our most basic public responsibilities" and is "the very foundation of good citizenship").

The effort to provide free public education for these civic purposes dates back to the early days of the Republic. In 1787, for example, Thomas Jefferson proposed a system of free public schooling for Virginia (*see* THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA (1787), *available at* http://avalon.law.yale.edu/18th_century/jeffvir.asp), and the Free School Society of New York opened its first school in 1806 (*see* DIANE RAVITCH, THE GREAT SCHOOL WARS: A HISTORY OF THE NEW YORK CITY PUBLIC SCHOOLS 11 (3d ed. 2000)). As the Free School Society's trustees explained when they began seeking public funding for their "charity"

schools (i.e., privately funded free schools for the poor), the drive toward public education was a political one rooted in the American notion of participatory citizenship. Because the people themselves possessed the true political power, it was vitally important that education be provided to all, in order to "enable them to exercise [that power] with wisdom." *Id.* at 24 (internal quotation marks omitted). As Tocqueville observed, "[o]ne cannot doubt that in the United States the instruction of the people serves powerfully to maintain a democratic republic." TOCQUEVILLE, DEMOCRACY IN AMERICA, *supra*, at 291.

With those concerns as the driving force, the common-school movement dominated educational reform in nineteenth-century America, with free, universal public schooling increasingly replacing charity schools for the poor. WILLIAM J. REESE, AMERICA'S PUBLIC SCHOOLS: FROM THE COMMON SCHOOL TO "NO CHILD LEFT BEHIND" 26 (2011). A central mission of the movement was to prepare students for participatory citizenship. *See* Noah Feldman, *Non-sectarianism Reconsidered*, 18 J.L. & POL. 65, 72 (2002).

It was thus crucial for the new common schools to eschew teaching religious doctrine that was particular to one denomination. As Horace Mann and his fellow educational reformers of the mid-nineteenth century recognized, our Nation was becoming ever more religiously diverse, and nonsectarianism in our schools would therefore be essential to instructing students in civic morality while respecting

"religious heterogeneity." *Id.* at 112. Mann and his contemporaries explained that by avoiding doctrinal disputes and other controversial matters of belief that might be particular to one or another denomination, public schools could pursue their mission to teach the moral lessons needed for citizenship while adhering to the American principle of freedom of conscience and avoiding strife between religious communities over whose religion would be instilled in the young. *Id.* at 74.

Thus, for example, a critical early development in the common-school movement was the effort to replace religious instruction in the curriculum with "unmediated" Bible reading. The idea was that the public schools should "emphasize universal religious *values*," not particular and possibly controversial religious *doctrine*. STEVEN K. GREEN, THE BIBLE, THE SCHOOL, AND THE CONSTITUTION: THE CLASH THAT SHAPED MODERN CHURCH-STATE DOCTRINE 21 (2012) (emphasis added). The Bible was to be read as a "source-book for . . . universal religious truths," unembellished by explanation or interpretation that would alienate some groups. *Id.* As Mann, a Unitarian, saw it, this system of instruction "would appeal to all well-meaning Christians, including Catholics." *Id.* at 23; *see also* Feldman, *Non-sectarianism Reconsidered*, 18 J.L. & POL. at 80-81. In a nation the great majority of whose citizens at the time were Christian but comprised many different, competing denominations, this approach—though inadequate to encompass the pluralism that defines our twenty-first century society (or even at the time)—was

nonetheless a clear "break from the status quo" and an important first step toward religious inclusivity in the public schools. GREEN, THE BIBLE, *supra*, at 18, 23.

B. Georgia Adopted The No-Aid Clause To Promote Religious Liberty And Preserve Strong, Inclusive Public Schools.

Georgia's adoption of the No-Aid Clause was an expression of both the philosophical and political traditions of freedom of conscience and the developing national consensus that secular public schools are essential for ensuring civic virtue, civic participation, and freedom of conscience in an increasingly pluralistic society. Indeed, in States that adopted no-aid provisions like Georgia's, such provisions were "one of the most salient features" of this consensus. *See, e.g.*, Tom I. Romero II, *"Of Greater Value than the Gold in Our Mountains": The Right to Education in Colorado's Nineteenth-Century Constitution*, 83 U. COLO. L. REV. 781, 800 (2012). No-aid provisions helped to preserve, protect, and foster the growth of the common schools—and the civic virtues that they promoted—by ensuring that whatever public money was available for education would go to public institutions open equally to all regardless of their religion, rather than to private schools that primarily or exclusively served families of one particular faith and sought to inculcate the teachings of that faith.

By the latter half of the nineteenth century, no-aid clauses had become a "common feature" of State constitutions across the country. *See id.* at 800-01 & n.82.

Thus, some 39 States, including Georgia, adopted them and retain them in their constitutions today. *See* Br. of Baptist Joint Comm. for Religious Liberty & Gen. Synod of United Church of Christ as *Amici Curiae* at 27 & n.18, *Trinity Lutheran Church of Columbia, Inc. v. Pauley*, No. 15-577 (U.S. July 5, 2016). Although the specific language—and therefore the precise reach—of the clauses may vary, most "draw[] a more stringent line than that drawn by the United States Constitution" in order to protect "antiestablishment interests." *Locke v. Davey*, 540 U.S. 712, 722 (2004); *see also, e.g.*, *Witters v. State Comm'n for the Blind*, 771 P.2d 1119, 1121-22 (Wash. 1989) (Washington Constitution); *Americans United v. Rogers*, 538 S.W.2d 711, 720 (Mo. 1976) (Missouri Constitution); *McDonald v. Sch. Bd. of Yankton Indep. Sch. Dist. No. 1*, 246 N.W.2d 93, 98 (S.D. 1976) (South Dakota Constitution).

That is particularly true of Georgia's No-Aid Clause, which unambiguously declares that:

> No money shall ever be taken from the public treasury, directly *or indirectly*, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.

GA. CONST. art. I, § II, ¶ VII (emphasis added). This language is broad and unequivocal, and there is no reading under which the Tax Credit Program can be squared with it. On its face, the clause bars diverting public money to any "sectarian institution." Yet that is just what the program here does.

Contrary to Defendants' claims, it makes no difference that the Tax Credit Program involves the State's granting tax credits to individuals who make donations to SSOs rather than the State's making direct payments to religious schools or providing parents with vouchers to pay tuition at religious schools. As the U.S. Supreme Court has repeatedly explained, "Both tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant." *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 544 (1983); *see also, e.g.*, *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 589–90 & n. 22 (1997) (explaining that the defendant's attempt "to elide the federal constitutional distinction between tax exemptions and subsidies is unavailing. We recognized long ago that a tax exemption can be viewed as a form of government spending."); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 859 (1995) (Thomas, J., concurring) (noting that tax credits are "economically and functionally indistinguishable from a direct monetary subsidy"); *Comm. for Pub. Ed. & Religious Liberty v. Nyquist*, 413 U.S. 756, 790–91 (1973) (noting that whether a parent "receives an actual cash payment * * * [or] is allowed to reduce by an arbitrary amount the sum he would otherwise be obliged to pay over to the State," "[i]n both instances the money involved represents a charge made upon the state for the purpose of religious education") (internal quotation marks omitted).

Thus, despite its being structured as a tax credit, there is no denying that the Program "take[s]" money that would go to the State treasury and diverts it to religious schools. That is a clear violation of the No-Aid Clause, which expressly prohibits "indirect[]" as well as direct payments to sectarian institutions, rendering the Tax Credit Program unlawful.[1]

The trial court read *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011), to hold that a tax expenditure (accomplished through a tax credit) is not equivalent to a direct expenditure by the State. R. 1189. But that reading of *Winn* is misguided. On the contrary, *Winn* acknowledged that "tax credits and [direct] governmental expenditures can have similar economic consequences." *Winn*, 563 U.S. at 141. *Winn* held merely that when the government spends money through tax credits, a taxpayer does not suffer an injury in fact for purposes of Article

[1] This general constitutional principle is not undermined by the fact that Georgia law exempts places of religious worship (along with other kinds of property) from property taxes. *See* Ga. Code § 48-5-41(a)(2.1)(A). Property-tax exemptions for places of religious worship, along with colleges and universities and "all institutions of purely public charity," were expressly authorized by the very same Georgia Constitution of 1877 that adopted the No-Aid Clause. *See* Ga. Const. of 1877 art. VII, § II, ¶ II. This specific authorization overrides the general No-Aid Clause with respect to property taxes. The authorization for property-tax exemptions was preserved in the Constitutions of 1945 (*see* Ga. Const. of 1945 art. VII, § II, ¶ IV), 1976 (*see* Ga. Const. art. VII, § I, ¶ IV), and 1983 (*see* Ga. Const. art. VII, § II, ¶ IV (preserving existing property-tax exemptions as statutory law).

III of the federal Constitution, and thus lacks Article III standing.[2] That holding is irrelevant to the question whether the Tax Credit Program violates the No-Aid Clause by diverting funds otherwise payable to the State treasury—which it clearly does.

C. Georgia's No-Aid Clause Is An Important Protection For Religious Freedom.

Upholding the strict requirements of the No-Aid Clause implies no disrespect for religion. It is not now, nor has it ever been, antireligious to say that decisions about the religious education and spiritual life of children should be left to their families and houses of worship, without either governmental support or interference. *See, e.g.*, *Engel v. Vitale*, 370 U.S. 421, 435 (1962). Quite the contrary: maintaining that principle is critical to ensuring religious liberty for all. As Roger Williams, John Locke, Thomas Jefferson, James Madison, and the U.S. Supreme Court all recognized, "a union of government and religion tends to destroy government and to degrade religion." *Id.* at 431; *see also, e.g.*, *Ill. ex rel. McCollum v. Bd. of Ed. of Sch. Dist. No. 71*, 333 U.S. 203, 212 (1948) ("both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective

[2] For the reasons stated in Appellants' brief (at 13-15), *Winn*'s holding on Article III standing is inapplicable here because Georgia law authorizes plaintiffs to sue to vindicate public rights even when they lack direct injury.

sphere"). The principle is one that the framers of the Georgia Constitution took to heart.

It is also one that has done no harm to religion in Georgia or in the rest of the Nation. In 1963, the U.S. Supreme Court observed that it "can be truly said . . . that today, as in the beginning, our national life reflects a religious people." *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 213 (1963).[3] The *Schempp* Court cited census data showing that 64 percent of Americans were members of a church. *See id.* (citing U.S. Census Bureau, *Statistical Abstract of the United States* (1962)). Today, religious identification has increased even further, to more than 76.5 percent. *See* Pew Research Ctr., *Religious Landscape Study* (2014), http://www.pewforum.org/religious-landscape-study/. And the intensity of belief among religious adherents, as measured by regular prayer and attendance at worship services, has been holding steady over time. *See* Pew Research Ctr., *U.S. Public Becoming Less Religious* (2015), https://perma.cc/W43V-WUU7 ("Among the roughly three-quarters of U.S. adults who *do* claim a religion, there has been no discernible drop in most measures of religious commitment. Indeed, by some

[3] That observation is all the more powerful when viewed in light of Madison's reflections on the effects of the Virginia Bill for Establishing Religious Freedom after witnessing the first few decades of its operation: "Religion prevails with more zeal, and a more exemplary priesthood than it ever did when established and patronised by Public authority." Letter from James Madison to Edward Livingston (July 10, 1822), *reprinted in* SELECTED WRITINGS OF JAMES MADISON 307 (Ralph Ketcham ed., 2006).

conventional measures, religiously affiliated Americans are, on average, even more devout than they were a few years ago.").

Religious pluralism has likewise flourished. In 1875, both this State and the Nation were overwhelmingly Christian and Protestant. Today the U.S. population "can be usefully grouped into more than a dozen major religious traditions that, in turn, can be divided into hundreds of distinct religious groups." Pew Forum on Religion & Public Life, *U.S. Religious Landscape Survey: Religious Affiliation* 10 (Feb. 2008).

It is no stretch to say that the success of religion in the United States is attributable to our steadfast adherence to the principle that individual congregations and worshippers are free to define for themselves the terms of belief and religious practice, without dependence on, or interference from, civil authority. *See, e.g.*, *McCreary Cnty., Ky. v. ACLU of Ky.*, 545 U.S. 844, 882-83 (2005) (O'Connor, J., concurring) (Americans' commitment to keep religion "a matter for the individual conscience" has "allow[ed] private religious exercise to flourish."); *Lee v. Weisman*, 505 U.S. 577, 609 (1992) (Blackmun, J., concurring) (cautioning "that religious freedom cannot thrive in the absence of a vibrant religious community and that such a community cannot prosper when it is bound to the secular").

Maintaining this commitment is all the more important today. In our highly pluralistic society, making denominations, houses of worship, or religious schools

distort their practices in order to qualify for public money, or forcing them to compete for scarce public resources, is the surest recipe for the sectarian strife and distortion and degradation of religion that Williams, Madison, Jefferson and the people of this State worked so hard to prevent. *Cf. Van Orden v. Perry*, 545 U.S. 677, 698 (2005) (Breyer, J., concurring) (warning that "divisiveness based upon religion . . . promotes social conflict, sapping the strength of government and religion alike"); *McCollum*, 333 U.S. at 217 (Frankfurter, J., joined by Jackson, Rutledge, and Burton, JJ., concurring) ("The preservation of the community from divisive conflicts, of Government from irreconcilable pressures by religious groups, of religion from censorship and coercion however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual's church and home, indoctrination in the faith of his choice.").

The tax-credit program here threatens to bring about these very distortions. It makes religious schools compete with each other, and with secular private schools, for the funding that flows from enrolling students whose attendance is financed by SSOs supported through tax credits. And it bleeds the State's coffers to support private schools that discriminate on the basis of religion and employ religiously oriented curricula rather than being religiously neutral in their teaching and open equally to all students regardless of their faith. The continued religious liberty of Georgians will be best secured by steadfast adherence to the No-Aid Clause and the

principles of freedom of conscience and civic virtue that it embodies. The tax-credit program here is as irreconcilable with those principles as it is with the plain language of the Clause. It should not be allowed to stand.

II. SOVEREIGN IMMUNITY CANNOT BAR JUDICIAL ENFORCEMENT OF CONSTITUTIONAL LIMITATIONS ON LEGISLATIVE POWER.

A. Sovereign Immunity Does Not Apply To Suits Enforcing Provisions Of The Constitution.

Amici agree with Appellants that sovereign immunity is no bar to this suit but wish to call to the Court's attention additional reasons why the trial court erred in applying sovereign immunity.

First, we submit that the Georgia Constitution itself supplies the necessary waiver. Georgia courts have held on numerous occasions that sovereign immunity is no bar to suits to enforce express constitutional provisions, because the Constitution itself authorizes the action. *E.g.*, *State Bd. of Educ. v. Drury*, 263 Ga. 429, 430 (1993) ("Since the recovery of just and adequate compensation for private property which is taken for public purposes is itself an express constitutional right, sovereign immunity is not a viable bar to an action to enforce that right."); *C.F.I. Constr. Co. v. Bd. of Regents of Univ. Sys. of Georgia*, 145 Ga. App. 471, 475 (1978) (noting that sovereign immunity "is not a bar to an action involving a constitutional right"). *Sustainable Coast* involved only a statutory claim, so it is not at all

inconsistent with this principle; *Sustainable Coast* was erroneously invoked as authority for the decision below.

B. The Exception To Sovereign Immunity For Constitutional Claims Governs This Case.

Drury and *C.F.I.* involved takings claims, but the principle they recognized applies to the claim here as well. Compelling considerations of constitutional policy counsel against conferring sovereign immunity from declaratory or injunctive actions to enforce constitutional restraints on State action, just as they counsel against applying sovereign immunity to just-compensation claims. If suits like this one were barred by sovereign immunity, Georgians' ability to vindicate their constitutional rights would be greatly impaired, to their detriment—and to the detriment of the rule of law.

It is fundamental to our system of government that the judiciary possess the power to enforce the provisions of the Constitution and to restrain the political branches when they exceed their constitutional powers or impose unconstitutional restraints on the citizenry. As Chief Justice Marshall put it most famously, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). He explained that if the judiciary were held to lack authority to invalidate laws as unconstitutional, that "doctrine would subvert the very foundation of all written constitutions. * * * It

would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure." *Id.* at 178.

The Georgia Constitution itself underscores the importance of judicial review: It straightforwardly declares that "[l]egislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them." GA. CONST. art. I, § II, ¶ V. As this Court has explained, the courts thus have both "the power and duty to declare void legislative acts in violation of the Constitution of this State." *Lamons v. Yarbrough*, 206 Ga. 50, 50 (1949). Without this authority, the judiciary could not fulfill its responsibility "to check and balance the acts of the Legislature, to bring them within the Constitution, and hold the scales evenly in the administration of the laws enacted." *Gormley v. Taylor*, 44 Ga. 76, 98 (1871).

The same concerns that make judicial review an essential aspect of our constitutional framework apply in the context of sovereign immunity, counseling against overexpansion of the doctrine. Because the Constitution operates primarily as a constraint on actions of the government, any failure to severely limit the application of sovereign immunity in constitutional cases vitiates the essential role of the judiciary in preventing unconstitutional actions. In short, if the courts are disqualified from enforcing constitutional rights in suits against the State unless the

legislature has deigned to waive sovereign immunity, the system of constitutionalism on which Georgia's government is based would be turned upside-down. Interpreting sovereign immunity that broadly would give the legislature untrammeled authority to violate the Georgia Constitution, secure in the knowledge that its actions could never be challenged in court.

The United States Supreme Court was mindful of this danger when it decided *Ex parte Young*, 209 U.S. 123 (1908), which held that state sovereign immunity, secured in federal court by the Eleventh Amendment, does not bar suits against individual State officers for prospective injunctive relief. As the Court later explained, the *Ex parte Young* doctrine is "necessary to permit the federal courts to vindicate federal rights." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984). Without the safety valve provided by *Ex parte Young*, the strictures of the Constitution would be much more difficult to enforce, and would thereby be sapped of much of their effectiveness. A similar safety valve is essential with respect to the Georgia Constitution: if no suit can be brought against the State or its officers to enforce the Constitution, the Constitution's provisions are effectively consigned to the unreviewable, politically driven discretion of the State's legislators.[4] That is no way to treat a Constitution.

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[4] The State assures the Court that "[t]he separation of powers is alive and well in the State of Georgia" after *Sustainable Coast* and that this Court retains the "power * * * to police the boundaries of the federal and state constitutions in cases

This case itself amply proves the point. Appellants have demonstrated that through the Tax Credit Program, the State diverts tens of millions of dollars in potential tax revenue each year to private schools—most of them religious—notwithstanding the No-Aid Clause's unequivocal prohibition against using State funds to subsidize religious institutions, directly *or indirectly*. Appellants' Br. 3. That claim, as we have shown, implicates concerns about the separation of Church and State that the framers of this State's Constitution ranked as fundamental. If the principles of the Constitution are to be preserved, the claim must be resolved on the merits.

The same would be true, moreover, of a claim by a religious group that a State law unconstitutionally restricted its freedom of religion (*see* Ga. Const. art. I, § I, ¶ IV). Indeed, to hold that the courts cannot hear *any* case against the State or its officers or agencies unless the legislature permits them to do so would be effectively to nullify not just the religion clauses but many other constitutional provisions as well—and to give the State free rein to disregard them. This Court should reject that

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properly before the courts." Appellees' Br. 23. But under the State's own reading of *Sustainable Coast*, no cases challenging the State's authority under the Constitution will ever be "properly before the courts" because sovereign immunity will bar such suits unless they have legislative consent. The State's assurances are therefore meaningless.

course and affirm that sovereign immunity does not bar the claims of plaintiffs seeking to vindicate constitutional principles.

C. At A Minimum, This Court Should Hold That The Legislature Can Be Presumed To Have Waived Sovereign Immunity For Constitutional Claims.

If the Court (i) is disinclined at this time to apply its precedent in *Drury* to this case and (ii) disagrees with appellants that O.C.G.A. § 9-6-24 waives sovereign immunity in cases implicating express constitutional provisions, there is an available middle course. The Court could accommodate the constitutional concerns expressed above, while at the same time avoiding in this case the ultimate constitutional question of the availability of sovereign immunity in constitutional cases, by adopting a presumption that the legislature has waived sovereign immunity for constitutional claims, at least where (as here) the statute enacting the Tax Credit Program contains no assertion of immunity.

Such a presumption would not itself infringe on the legislature's control, recognized in *Sustainable Coast*, over whether and when the State waives sovereign immunity.[5] It would also honor the familiar principle that courts should "assume

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[5] The General Assembly has shown that it strongly disapproves of *Sustainable Coast*'s view of sovereign immunity under which immunity is presumed unless it has been expressly disclaimed in the challenged statute. In March 2016, HB 59—a bill that would have expressly waived the State's sovereign immunity for suits for declaratory or injunctive relief—passed the Assembly by a vote of 155-2 in the House and 52-0 in the Senate. *See* HB 59, https://perma.cc/G5CJ-DC2A. The Governor vetoed the bill, citing concerns about its scope (*see* Office of the Gov.,

[that the legislature] legislates in the light of constitutional limitations," *Rust v. Sullivan*, 500 U.S. 173, 191 (1991), by not attributing to the legislature the intent to insulate a law from review of its constitutionality unless the legislature expresses that intent explicitly.

That is not to say that a legislative assertion of immunity would be constitutional. For the reasons stated in the foregoing argument, there are substantial grounds for concluding otherwise. But adoption of the proposed presumption of waiver of sovereign immunity absent affirmative assertion—at least with respect to suits not seeking a money judgment against the State—allows the Court to defer decision of that constitutional question until a case arises (if one ever does) in which the challenged law contains an express assertion of sovereign immunity.

CONCLUSION

The decision of the Court of Appeals should be reversed.

Respectfully submitted,

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Deal issues 2016 veto statements, https://perma.cc/94W7-BZVT), but it is clear that the default presumption of waiver is more consistent with the General Assembly's preference than the presumption of immunity adopted in *Sustainable Coast*.

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APPENDIX

APPENDIX OF *AMICI CURIAE*

American Civil Liberties Union and ACLU of Georgia

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with approximately 800,000 members dedicated to defending the principles embodied in the U.S. Constitution and our nation's civil rights laws. The ACLU of Georgia is a state affiliate of the national ACLU and has more than 6,000 members. As an organization that, for nearly a century, has been dedicated to preserving religious liberty, including the right to be free from compelled support for religious institutions and activities, the ACLU has a strong interest in the proper resolution of this case.

Americans United for Separation of Church and State

Americans United for Separation of Church and State is a national, nonsectarian public-interest organization. Founded in 1947 by religious leaders who wanted to ensure that public and publicly funded education is truly open to all students regardless of faith, Americans United now has more than 120,000 members and supporters nationwide. Americans United's mission is to advance the rights of individuals and religious communities to worship as they see fit, and to preserve the separation of church and state as a vital component of democratic government. To that end, Americans United has long opposed school vouchers and tuition-tax-credit programs, which violate constitutional protections provided by more than three

dozen states, including this one. Americans United has been counsel to the successful plaintiffs in a number of challenges to state funding of private, religious schooling. *See, e.g.*, *Schwartz v. Lopez*, 382 P.3d 886 (Nev. 2016) (enjoining Nevada's statewide school-voucher program); *Taxpayers for Pub. Educ. v. Douglas Cnty. Sch. Dist.*, 351 P.3d 461 (Colo. 2015) (enjoining school-voucher program established by a Colorado county), *petition for cert. filed*, 84 U.S.L.W. 3261, (U.S. Oct. 28, 2015) (No. 15-557); *Bush v. Holmes*, 919 So.2d 392 (2006) (enjoining Florida's statewide voucher program). Like those programs, Georgia's tuition-tax-credit program threatens religious freedom both by compelling taxpayers to support religious institutions and instruction contrary to the dictates of their conscience and by providing state support for religiously based discrimination.

Anti-Defamation League

The Anti-Defamation League was organized in 1913 to stop the defamation of the Jewish people and to secure justice and fair treatment to all. It seeks to advance goodwill and mutual understanding among Americans of all creeds and races, and to combat racial, ethnic, and religious prejudice in the United States. Today, ADL is one of the world's leading organizations fighting hatred, bigotry, discrimination, and anti-Semitism. Among ADL's core beliefs is strict adherence to the separation of church and State, a principle directly at issue in this litigation. ADL emphatically rejects the notion that the separation principle is inimical to religion, and holds, to

the contrary, that a high wall of separation is essential to the continued flourishing of religious practice and belief in America and to the protection of minority religions and their adherents. ADL has previously opposed school-voucher programs, such as the program at issue here, on the grounds that directing government money to private religious institutions subverts the separation of church and State.

Disciples Justice Action Network

Disciples Justice Action Network is a multi-racial, multi-ethnic, multi-generational, and multi-issue network of congregations and individuals within the Christian Church (Disciples of Christ), all working together to promote greater justice, peace, and the celebration of diversity in our church, our society, and our world. DJAN strongly supports the separation of church and state as the best way to guarantee equal freedom to all our churches, as well as the houses of worship of other communities of faith. This strong support, combined with our equally strong commitment to public education, leads us to oppose all efforts to drain our public schools of necessary funds and give that public money to private schools, including religious schools.

Equal Partners In Faith

Equal Partners in Faith is a multi-faith network committed to ending racism, sexism, homophobia, and religious intolerance. As part of its commitment to religious diversity, EPF opposes all efforts to diminish religious liberty, including

government proposals that force all people of faith to support, through their tax dollars, the promotion of the doctrines and religious rituals of any one particular religion. For this reason, EPF is opposed to vouchers for private religious schools.

Hadassah, The Women's Zionist Organization of America

Hadassah, the Women's Zionist Organization of America, Inc., founded in 1912, is the largest Jewish and women's membership organization in the United States, with over 330,000 Members, Associates, and supporters nationwide. While traditionally known for its role in developing and supporting health care and other initiatives in Israel, Hadassah is a strong supporter of the free exercise of religion and the strict separation of church and state as critical in preserving the religious liberty of all Americans, and especially of religious minorities.

Jewish Social Policy Action Network

The Jewish Social Policy Action Network is an organization of American Jews who seek to protect the constitutional liberties and civil rights of all Americans. JSPAN's efforts frequently focus on the religion clauses of the federal and state constitutions because these are the bedrock of American freedom, without which neither religious freedom nor other basic freedoms can endure. JSPAN opposes the Tax Credit Program not only because public funding for sectarian religious education inevitably affects the amount of funding available for public schools, but

also because it diminishes private religious schools in two different ways. First, it makes them dependent on continued governmental largess, which places them in conflict with other groups in the insatiable demand for a larger share of taxpayer resources that should be devoted to the general welfare of all. Second, because regulation inevitably follows from governmental support, private religious schools are subject to pressures that threaten their institutional autonomy. The No-Aid Clause contained in Article I, § II, ¶ VII of the Georgia Constitution serves as a bulwark to protect against such encroachment.

People for the American Way Foundation

People For the American Way Foundation (PFAWF) is a nonpartisan civic organization established to promote and protect civil and constitutional rights and values, including religious liberty and public education. Founded in 1981 by a group of civic, educational, and religious leaders, PFAWF now has hundreds of thousands of members nationwide, including in Georgia. Over its history, PFAWF has conducted extensive education, outreach, litigation, and other activities to promote these values and, along with its advocacy affiliate People For the American Way, to oppose school vouchers and tuition tax credits PFAWF strongly supports the principle that provisions like Georgia's No-Aid Clause work to truly protect religious liberty for all, and that the right to be free from compelled financial support

for religious institutions and activities is a fundamental part of religious liberty. PFAWF is also concerned that the Georgia Qualified Education Tax Credit and similar programs serve to harm public education by diverting tax dollars from public schools.

Union for Reform Judaism / Central Conference of American Rabbis / Women of Reform Judaism

The Union for Reform Judaism, whose 900 congregations across North America includes 1.5 million Reform Jews, the Central Conference of American Rabbis (CCAR), whose membership includes more than 2000 Reform rabbis, and the Women of Reform Judaism that represents more than 65,000 women in nearly 500 women's groups in North America and around the world, come to this issue out of our longstanding commitment to the principle of separation of church and state, believing that the First Amendment to the Constitution is the bulwark of religious freedom and interfaith amity. The concept of separation of church and state has lifted up American Jewry, as well as other religious minorities, providing more protections, rights and opportunities than have been known anywhere else throughout history.