

Nos. 1130987, 1131020, 1131021

IN THE SUPREME COURT OF ALABAMA

JULIE P. MAGEE and THOMAS L. WHITE, JR.,
Appellants,
v.
DR. DANIEL BOYD, et al.,
Appellees.

RACHELL PRINCE, et al.,
Appellants,
v.
DR. DANIEL BOYD, et al.,
Appellees.

TEQUILA ROGERS, et al.,
Appellants,
v.
DR. DANIEL BOYD, et al.,
Appellees.

Appeal from the Montgomery Circuit Court, No. CV-13-901470,

**Brief of Amicus Curiae Pacific Legal Foundation
in Support of Defendants and Intervenor-Defendants**

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IDENTITY OF AMICUS CURIAE

Pacific Legal Foundation (PLF) submits this brief amicus curiae in support of reversal. PLF is a nonprofit, tax-exempt foundation incorporated under the laws of the State of California, organized for the purpose of litigating important matters of the public interest. Founded in 1973, PLF provides a voice in the courts for Americans who believe in limited government, private property rights, individual freedom, and free enterprise. PLF has participated in the United States Supreme Court in many cases involving K-12 education reform, including *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436 (2011); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); and *Mitchell v. Helms*, 530 U.S. 793 (2000). Additionally, PLF has filed amicus briefs on this issue in numerous state courts, including *Duncan v. New Hampshire*, No. 2013-0455 (N.H. 2013); *Atlanta Indep. Sch. Sys. v. Atlanta Neighborhood Charter Sch., Inc.*, 748 S.E.2d 884 (Ga. 2013); *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013); *Cain v. Horne*, 202 P.3d 1178 (Ariz. 2009); *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006); *Wells v. One2One Learning Found.*, 141 P.3d 225 (Cal. 2006); *Wilson v. State Bd. of Educ.*, 89 Cal. Rptr. 2d 745 (Cal. Ct. App. 1999).

STATEMENT REGARDING ORAL ARGUMENT

PLF does not request leave to participate in oral argument in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Alabama Accountability Act, H.B. 84, does not "appropriate" funds to private charitable or educational institutions, as that term is used in Alabama Constitution article IV, Section 73. Nor does it create a new debt. See Ala. Const. art XI, § 213. It enables parents to improve the educational lot of their children by allowing a tax credit for the costs of transferring a student from a failing public school to a better public or private school. Ala. Code § 16-6D-8(a). The law also offers a credit for those who donate their money to a scholarship fund. Ala. Code § 16-6D-9. Under the Act, money only makes its way to a private school if a parent voluntarily chooses to educate her child there and if donors voluntarily give their money to support that choice.

Public money that reimburses parents for tuition and transfer costs is not an appropriation to the private school. Rather, it reimburses parents (and donors to scholarship funds) for their contributions to the provision of a public service—the education of a child. See Ala. Const. art XIV, § 256. This Court has never construed Section 73 of the

Alabama Constitution to forbid programs that have indirect and incidental benefits to charitable or education institutions. This Court should find persuasive the decisions of the Pennsylvania and Nebraska Supreme Courts construing very similar constitutional provisions to apply only to direct appropriations of funds to institutions for their own use. *See, e.g., Lenstrom v. Thone*, 311 N.W.2d 884 (Neb. 1981) (school choice tax credit not an "appropriation to" a charitable or education institution because it is given to parents to reimburse for the costs of obtaining a public service). Tax credits to compensate parents and scholarship donors for the costs of acquiring a public service, educating a student, are not an appropriation to a private entity, even if it incidentally benefits from the program. *See, e.g., Springfield Sch. Dist., Delaware County v. Dep't of Educ.*, 397 A.2d 1154 (Pa. 1979) (requiring public schools to bus children to private schools is not an appropriation to a charitable or educational institution because the money is used to acquire a service with a public benefit rather than given to the institution for its own use).

School choice, including scholarship and tax-credit programs, benefits parents, students, and taxpayers. If a parent chooses a private institution over a failing public

school, the loss in revenue from the tax credit will be mitigated by the state's reduction in the cost of educating the student in a public school. Also, school choice tax credit programs across the country have resulted in substantial savings because increased competition among public and private schools generates greater efficiencies in both, and private schools generally cost less than public schools. Both of these factors undermine the assumption that the Accountability Act will create an impermissible debt.

I

THE ACCOUNTABILITY ACT'S TAX CREDITS ARE NOT APPROPRIATIONS

The Alabama Constitution forbids any "appropriation" to a private charitable or educational institution unless approved by a super-majority of the Legislature. Ala. Const. art. IV, § 73. This Court has consistently applied this language only to a direct transfer of funds from the state to a private charitable or educational institution for its own use. See *Richards v. Izzi*, 819 So. 2d 25, 32 (Ala. 2001) (directly transferring the proceeds of an occupational tax to nearly a hundred non-state institutions is an appropriation); *Opinion of the Justices*, 756 So. 2d 23, 25 (Ala. 1999) (transfer of money from the general fund to The Sentencing Institute, a private charity, is an appropriation); *Opinion of*

the Justices, 512 So. 2d 72, 77-78 (Ala. 1987) (direct transfer to private educational institution is an appropriation); *Eagerton v. Gulas Wrestling Enters.*, 406 So. 2d 366, 370 (Ala. 1981) (giving half of the proceeds from a tax on wrestling and boxing to the American Legion was an appropriation to a charitable institution). This Court has never held that "appropriation" includes any program that will incidentally benefit such an institution. See *Alabama Ed. Ass'n v. James*, 373 So. 2d 1076, 1081 (Ala. 1979) (a grant program to private schools for the assistance of students was not an appropriation, in part, because "the grants it provides for are not for the support of the individual schools but are for the benefit of individual students and the state educational system").

A. Parents Exercise a Meaningful and Independent Choice Under the Accountability Act

Plaintiffs and the court below discount the importance of parental choice under the Accountability Act by viewing parents as mere conduits by which the state indirectly gives money to private schools. Contrary to this assumption, parents have many options for educating their children in Alabama schools. Parents may choose to leave their children in a neighborhood public school, regardless of the school's success or failure. The Accountability Act offers two

additional options: Parents may take advantage of the tax credit by transferring their children to a non-failing public school or they may enroll them at a participating private school. See Ala. Code § 16-6D-8(a)(1).

When a Legislature appropriates money directly to a private charitable or educational institution it controls whether money goes to such an institution, which institutions receive money, and how much. See, e.g., *Eagerton*, 406 So. 2d at 370-71 (distribution of half the proceeds of a special tax to the American Legion was an impermissible appropriation). Under the Accountability Act, the Legislature does not control any of those decisions. If parents decide that a public school education is better for their children, whether their neighborhood school or a higher-performing public school elsewhere, no private institution will receive any funds. If they decide to enroll their children in a private school, the parents determine which private school receives money and how much money they receive. See Ala. Code § 16-6D-9(b)(1)(i) (requiring scholarships to be portable).

Furthermore, the Legislature is not attempting to do indirectly what it is forbidden from doing directly. See *Ex parte State ex rel. Patterson*, 108 So. 2d 448, 453 (Ala. 1958). The central policy at issue here is defined in the

Alabama Constitution: “[T]o foster and promote the education of its citizens in a manner and extent consistent with its available resources, and the willingness and ability of the individual student....” Ala. Const. art XIV, § 256. The only thing being provided indirectly is an education to students, which the Legislature already does directly by providing public schools, although it is under no constitutional obligation to do so. *See Mobile, Alabama-Pensacola, Florida Bldg. & Const. Trades Council v. Williams*, 331 So. 2d 647, 649 (Ala. 1976) (constitutional amendment “eliminate[d] any implication that there is a constitutional right to public education in Alabama”). In fact, schools and school boards may obtain funding from any number of sources. *Cf. Weaver v. Madison City Bd. of Educ.*, 947 F. Supp. 2d 1308, 1323 (N.D. Ala. 2013) (“The fact that this Court has declared all public-school funds to be State funds does not address the question where the Board *derives* its funds. Nothing properly before us indicates the source of the Board’s funds....”). Because parents choose where to educate their children under the Accountability Act, the Legislature is not indirectly attempting to support private institutions. Rather, its clear purpose is to support parents and ensure that students receive the best education possible.

Increased parental choice has a host of benefits for parents and students, consistent with the policies declared in Section 256. When parents decide where their children go to school, they are more likely to become involved in the child's education. A study of Milwaukee's voucher program found that parents who received vouchers read to and worked on homework with their children more often. Philip Vassallo, *More Than Grades: How Choice Boosts Parental Involvement and Benefits Children*, Cato Policy Analysis No. 383, Oct. 26, 2000, at 3.¹ In San Antonio, parents whose children received scholarships worked with their students on homework 22% more often, and even worked on voluntary math and reading lessons 15% more often. *Id.* at 3-4. Ultimately, this parent involvement redounds to the benefit of students. See Mich. Dep't of Educ., *What Research Says About Parent Involvement in Children's Education, in Relation to Academic Achievement*, at 1 (2001) (reporting higher grades, test scores, graduation rates, attendance, increased motivation, and better self-esteem for students);² see also William H. Jeynes, *Parental Involvement and Student Achievement: A Meta-Analysis* (Dec.

¹ Available at <http://www.cato.org/pubs/pas/pa383.pdf> (last visited July 17, 2014).

² Available at http://www.michigan.gov/documents/Final_Parent_Involvement_Fact_Sheet_14732_7.pdf (last visited July 17, 2014).

2005) (finding similar effects across multiple studies).³ The increased engagement of parents empowered by school choice demonstrates that they take this new opportunity seriously. This Court should not assume that parents are merely being used by the state to indirectly give money to private schools.

B. Other States Recognize That Incidental Benefits to a Private Institution Cannot Convert a Program That Provides Money To Perform a Public Service Into an Appropriation

Holding that a tax credit to reimburse parents for the costs of performing a public service is an appropriation to a charitable or educational institution would radically expand the scope of Section 73. Perhaps that is the reason this Court has never interpreted the constitutional prohibition to be so sweeping. See *Alabama Ed. Ass'n*, 373 So. 2d at 1081. The constitutions of Pennsylvania and Nebraska also forbid appropriations to private charitable or educational institutions. This Court should follow their lead by interpreting "appropriation" to apply only where the government gives money directly to an institution for its own

³ Available at <http://www.hfrp.org/publications-resources/publications-series/family-involvement-research-digests/parental-involvement-and-student-achievement-a-meta-analysis> (last visited July 17, 2014).

use, as opposed to compensation for providing a public service.

1. Pennsylvania Allows Reimbursement for the Costs of Providing a Public Service Without Running Afoul of Its Limit on Appropriations to Private Institutions

In language nearly identical to Section 73, Pennsylvania's Constitution provides that "[n]o appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth ... except by a vote of two-thirds of all the members elected to each House." See Penn. Const. art III, § 30. The Pennsylvania courts have construed this provision to apply only where money is given directly to a charitable or educational institution to be used for its own purposes. See, e.g., *Common Cause of Penn. v. Commw.*, 668 A.2d 190, 204 (Pa. Commw. Ct. 1995), *summarily aff'd* 677 A.2d 1206 (Pa. 1996) (money given to charitable institutions to pursue open-ended charitable goals like "community economic recovery" or "community conservation and employment" are appropriations to those charitable institutions).

But where public money is spent to obtain provision of a public service from a private vendor, Pennsylvania recognizes that *the public service* is the dispositive factor and the private vendor's benefit is incidental. In *Springfield Sch.*

Dist., Delaware County v. Dep't of Educ., the Pennsylvania Supreme Court held that a diversion of funds from a public school to provide bus services to students attending private school was not an appropriation notwithstanding the incidental benefit to private schools. 397 A.2d at 1171.⁴ In rejecting a challenge from a public school, the Supreme Court held that the public service being provided was the right of all children "to be transported safely to their schools;" it "does not support any sectarian school[.]" *Id.*

An expenditure also does not violate Pennsylvania's appropriations clause where the state directly pays a charitable or educational institution to provide a public service. In *Pennsylvania Ass'n of State Mental Hosp. Physicians v. Commw.*, the state's intermediate appellate court upheld a program privatizing a state-owned psychiatric hospital. 437 A.2d 1297, 1298-99 (Pa. Commw. Ct. 1981). The union that represented the formerly state-employed doctors challenged, as an illegal appropriation, compensation to the private institution that took over psychiatric research for the state. See *id.* at 1298. The court rejected that challenge on the grounds that the contract with the private

⁴ *Springfield* was decided under the former, substantively identical version of Pennsylvania's appropriations clause. 397 A.2d 1154.

institution had as its primary purpose the payment for otherwise unreimbursed public services. See *id.* at 1300; see also *Schade v. Allegheny County Inst. Dist.*, 126 A.2d 911, 914 (Pa. 1956) (state reimbursement to religious institutions for providing housing and support for neglected and dependent children was not an illegal appropriation). An institution "might derive some benefits from its contractual relationship with [the state agency, but that] does not transform payments made pursuant to the agreement into 'appropriations.'" *Penn. Ass'n of State Mental Hosp. Physicians*, 437 A.2d at 1300.

Pennsylvania enacted a tax credit program to encourage school choice, like that established in the Accountability Act, over a decade ago. See Educational Improvement Tax Credit, 72 P.S. § 8705-F. Although that credit has never been challenged as inconsistent with the State's prohibition against appropriations to private educational institutions, the similarities between the tax credit program and the privatization of the public health program in *Pennsylvania Association of State Mental Hospital Physicians* indicate that the tax credits' incidental benefit to private schools would not violate the appropriations clause. See 437 A.2d at 1300.

2. Nebraska's Appropriations Clause Similarly Permits Public Expenditures To Support Programs That Incidentally Benefit Private Institutions Providing a Public Service

Nebraska, too, generally forbids appropriations to nonpublic schools. Neb. Const. art. VII, § 11. But it construes "appropriation" to include only direct transfers for the private institution's own use. In *State ex rel. Creighton University v. Smith*, the Nebraska Supreme Court considered whether a state contract with a private university to provide cancer research violated the prohibition. 353 N.W.2d 267, 272 (Neb. 1984). As is the case here, the plaintiffs argued that the contract was an attempt by the state to incidentally benefit the private school by "doing indirectly what it cannot do directly." *Id.* On that later point, the Nebraska Supreme Court said:

That overworked expression about circumvention by indirectness, if subjected to the test of ultimate application, would necessitate that a fire in a nonpublic school be extinguished by a nonpublic bucket brigade, not by a publicly funded fire department. Common sense and the Constitution abhor such an impractical conclusion.

Id.

To avoid this unreasonable expansion in the Nebraska Constitution's prohibition, the court construed the provision to apply only when the state sets aside public money for a private school's special use and vests in the private school

a right to receive state funds. See *id.*; see also *Cunningham v. Lutjeharms*, 437 N.W.2d 806, 809-10 (Neb. 1989) (loan of textbooks to private school students is not an appropriation to a private school, notwithstanding any incidental benefit to the school). It distinguished impermissible direct transfers from payments for the provision of a public service. *Creighton*, 353 N.W.2d at 272.; see also *Father Flanagan's Boys Home v. Dep't of Social Services of Neb.*, 583 N.W.2d 774, 777-78 (Neb. 1998) (reimbursement to private school for the cost of educating state wards not an appropriation because " 'the only action prohibited ... is a direct appropriation from the legislature to a nonpublic school' " and this was a reimbursement for the private schools provision of a public service (citation omitted)). The Court also rejected the argument that a public spending program that indirectly benefits a private school runs afoul of the state's constitution. *Creighton*, 353 N.W.2d at 272; see also *State ex rel. Bouc v. Sch. Dist. of City of Lincoln*, 320 N.W.2d 472, 475-76 (Neb. 1982) (public funding of busing to private schools is not an appropriation because it was not a direct appropriation and any benefits to private schools were "merely incidental").

The Nebraska Supreme Court has also considered the question directly at issue in this case: whether a scholarship program that students and parents *may* use to obtain educational services from a private school is an impermissible appropriation. See *Lenstrom v. Thone*, 311 N.W.2d 884 (Neb. 1981). The court held that it is not because no money is directly given by the state to any private school. *Id.* at 889. Rather, as is the case with the Accountability Act, the state gave money to parents which they could use to enroll their kids at the public or private school of their choice. *Id.* Parents' exercise of this autonomous choice meant this scholarship program could not be an *appropriation* to private schools. *Id.* at 888-89.

The Accountability Act's tax credits reimburse parents and donors who contribute to the provision of a public service—the education of a child. Because some of these services are provided by private charitable and educational institutions, those institutions will incidentally benefit from the program. But this Court should follow the reasoning of Pennsylvania and Nebraska by recognizing that incidental benefits do not render the tax credit an appropriation to private schools.

II

RATHER THAN CREATING A NEW DEBT, SCHOOL CHOICE REDUCES THE STRAIN ON TAXPAYERS IN MANY WAYS

Although the most important benefit of school choice is the improvement in educational outcomes for children, taxpayers also stand to benefit. See Andrew A. Samwick, *Donating the Voucher: An Alternative Tax Treatment of Private School Enrollment*, CATO Research Briefs in Economic Policy No. 1, May 6, 2014⁵ (explaining that private school enrollment creates a positive externality by relieving taxpayers of the obligation to pay for a public school education); David Salisbury, *Saving Money and Improving Education: How School Choice Can Help States Reduce Education Costs*, Cato Policy Analysis No. 551, Oct. 4, 2005⁶ (evidence from Arizona, Milwaukee, Cleveland, Florida, Pennsylvania, Maine, and Vermont shows that school choice programs save taxpayer money). Pennsylvania, for instance, has had a tax credit program for more than a decade that, like the Accountability Act, foregoes approximately \$40 million annually in revenue. See *id.* at 11. But in exchange, the state saves more than

⁵ Available at <http://www.cato.org/publications/research-briefs-economic-policy/donating-voucher-alternative-tax-treatment-private> (last visited July 17, 2014).

⁶ Available at <http://object.cato.org/sites/cato.org/files/pubs/pdf/pa551.pdf> (last visited July 17, 2014).

\$100 million, and perhaps as much as \$230 million, because it does not have to pay for a public school education for the children who transferred to private schools. See *id.* at 12.

Yet plaintiffs and the court below assume that the Accountability Act creates a new debt and benefits private schools at taxpayer expense. This is mere speculation and an improper basis to declare a statute unconstitutional. *Davis v. Alabama Educ. Ass'n*, 92 So. 3d 737, 748 (Ala. 2012) (judicial speculation conflicts with the general principle that legislative acts are presumed constitutional). The state may undertake an analysis of whether the Accountability Act's tax credits will increase the state's financial obligations, with a sound methodology that accounts for the substantial savings that result from increased competition between public and private schools as well as the avoided cost of educating transferring students at their old failing public school.

**A. The Constitution's Prohibition Against
New Debts Only Applies to Bills That
Increase the State's Financial Obligations**

Section 213 of the Alabama Constitution provides that "no new debt shall be created against, or incurred by the state, or its authority" except under limited circumstances. Ala. Const. art. XI, § 213. "Debt" is defined as that which "the

state is bound to pay beyond its current revenues and as an obligation secured by the general faith and credit of the state." *State v. Inman*, 239 Ala. 348, 356 (1940). Therefore, the section forbids the Legislature from enacting laws that would deplete funds available and necessary to meet the state's existing obligations. *Opinion of the Justices*, 692 So. 2d 825, 826-27 (Ala. 1997). Where a law leaves the state's financial obligations unchanged or reduces them, Section 213 is not implicated.

Rather than apply the "new debt" plain language of Section 231 to the Accountability Act, plaintiffs and the court below rely on language in *Edmonson v. State Indus. Dev. Auth.* that, taken out of context, might suggest any law providing any expenditure is subject to the provision, even if it replaces an existing expenditure. See 184 So. 2d 115, 117 (Ala. 1966). *Edmonson* concerned the validity of a public corporation created to conduct surveys and give grants to local governments to promote industrial development. See *id.* at 116-17. The act at issue in that case allowed the corporation to issue bonds that were partly guaranteed and financed by the state. See *id.* at 116-17, 119. In describing the bond provisions in that act, *Edmonson* noted that "[n]o part of the taxes presently paid into the general fund of the

State will or can be used to service the bonds." *Id.* at 117. However, this description was dicta and did not figure into the Court's holding. *See id.* at 119-20. The Court held that the bonds at issue did not create a new debt because they were not guaranteed by the general faith and credit of the state but were instead financed with the revenues from a special tax on industry. *See id.*; *see also Opinion of the Justices*, 116 So. 2d 588, 589-90 (Ala. 1959) (guaranty of bonds issued by public corporation to fund school construction did not create a new debt because bonds were to be paid with the surplus in the Special Education Trust Fund). Nothing in *Edmonson's* legal discussion of Section 213 supports the notion that any expenditure is necessarily new debt. *See Opinion of the Justices*, 892 So. 2d 375, 378 (Ala. 2004) (contingent payments are not included in Section 213's definition of "new debt").

B. Evidence from School Choice Programs Elsewhere Demonstrates Benefits to Taxpayers

The Alabama Legislature had compelling reasons to think that increasing school choice will reduce the financial burden that education imposes on the state fisc. Across the country, school choice has been providing students with quality education at only a fraction of the cost of traditional public schools. From 1990 to 2006, school choice programs saved local school districts \$422 million and removed \$22 million

from already strained state budgets. Susan L. Aud, Friedman Found. for Educational Choice, *Education by the Numbers: The Fiscal Effect of School Choice Programs, 1990-2006*, 37 (Apr. 2007).⁷ This is in part because private and charter schools generally cost only 80% as much money per pupil compared to public schools. Chester E. Finn, et al., Thomas B. Fordham Institute, Fordham Foundation, *Charter School Funding: Inequity's Next Frontier* (Aug. 2005);⁸ see David F. Salisbury, *What Does a Voucher Buy? A Closer Look at the Cost of Private Schools*, Cato Policy Analysis No. 486, Aug. 28, 2003⁹ (finding that most states could realize substantial savings by instituting a voucher program because the average private school tuition is less than average per pupil spending for public schools). As an example, Washington, D.C., alone could save as much as \$3 million by making its voucher program universal. See Susan L. Aud & Leon

⁷ Available at <http://eric.ed.gov/PDFS/ED508498.pdf> (last visited July 18, 2014).

⁸ Available at <http://www.defendcharterschools.org/CharterSchoolFunding.pdf> (last visited July 18, 2014).

⁹ Available at <http://object.cato.org/sites/cato.org/files/pubs/pdf/pa486.pdf> (last visited July 18, 2014).

Michos, Spreading Freedom and Saving Money: The Fiscal Impact of the D.C. Voucher Program, Cato White Paper, Jan. 31, 2006.¹⁰

A Goldwater Institute study found that Arizona students attending private schools relieved public schools of \$260 million in costs. Vicki Murray & Ross Groen, *Survey of Arizona Private Schools: Tuition, Testing, and Curricula*, Goldwater Institute Policy Report No. 199, Jan. 5, 2005, at 16.¹¹ The study also found that, for every child who attended a private school for K-12 education, state and local governments saved nearly \$100,000. *Id.* In 1997, Arizona adopted a tax credit for donations to organizations awarding tuition scholarships. Initially, the program was revenue neutral—the forgone tax revenue was equal to the costs of providing a public school education. See Carrie Lips & Jennifer Jacoby, *The Arizona Scholarship Tax Credit: Giving Parents Choices, Saving Taxpayers Money*, Cato Policy Analysis No. 414, Sept. 17, 2001.¹² However, more recent studies of the program estimate that the tax credit program saves the state

¹⁰ Available at <http://object.cato.org/sites/cato.org/files/pubs/pdf/dcvouchersrm3-cvr.pdf> (last visited July 18, 2014).

¹¹ Available at http://www.goldwaterinstitute.org/sites/default/files/Survey%20of%20Arizona%20Private%20Schools_0.pdf (last visited July 18, 2014).

¹² Available at <http://cato.org/sites/cato.org/files/pubs/pdf/pa414.pdf> (last visited July 18, 2014).

\$240 million annually by avoiding the cost of educating scholarship students in a public school. Charles M. North, *Estimating the Savings to Arizona Taxpayers of the Private School Tuition Credit*, Report to Arizona House of Representatives Ad Hoc Committee on Private School Tuition Tax Credit Review (Nov. 16, 2009).¹³

Maine has reimbursed parents for tuition at private schools since 1873. See Frank Heller, *Lessons from Maine: Education Vouchers for Students since 1873*, Cato Briefing Paper No. 66, Sept. 10, 2001;¹⁴ see also Libby Sternberg, *Lessons from Vermont: 132-Year-Old Voucher Program Rebuts Critics*, Cato Briefing Paper No. 67, Sept. 10, 2001¹⁵ (describing Vermont's similarly longstanding program). At the turn of the millennium, 35% of all students were receiving tuition aid from the state to enroll in private schools. See Heller, *supra*, at 1. By utilizing the private market to provide this public service, the state realized a substantial savings. This tuition reimbursement cost the state

¹³ Available at http://www.acsto.org/_media/uploaded/e/0e1832055_estimating-the-savings.pdf (last visited July 18, 2014).

¹⁴ Available at <http://cato.org/publications/briefing-paper-lessons-maine-education-vouchers-students-1873> (last visited July 18, 2014).

¹⁵ Available at <http://cato.org/pubs/briefs/bp-067es.html> (last visited July 18, 2014).

approximately \$6,000 less per pupil than educating the student at a public school. *See id.* As of 1999, 5,614 students took advantage of the program by attending private schools, saving the state approximately \$33 million in that year alone. *See id.*

These examples are not outliers, but represent impacts that have been repeated across the country. Six empirical studies have analyzed the fiscal impact of school choice on taxpayers. *See* Greg Forster, *A Win-Win Solution: The Empirical Evidence on School Choice* (3d ed. 2013).¹⁶ All have found that school choice saves money for taxpayers. *See id.* The reason school choice can benefit taxpayers so significantly is that public education is preposterously expensive. A recent study attempted to quantify the total costs of public education per pupil. *See* Adam B. Schaeffer, *They Spend WHAT?: The Real Cost of Public Schools*, Cato Policy Analysis No. 662, Mar. 10, 2010.¹⁷ It found that average, per-pupil spending in the five largest metro areas and D.C. was 44% higher than officially reported, and 93% higher than

¹⁶ Available at <http://www.edchoice.org/CMSModules/EdChoice/FileLibrary/994/A-Win-Win-Solution--The-Empirical-Evidence-on-School-Choice.pdf> (last visited July 18, 2014).

¹⁷ Available at <http://cato.org/publications/policy-analysis/they-spend-what-real-cost-public-schools> (last visited July 18, 2014).

spending in the median private school. See *id.* Alabama legislators could rationally decide that it would replicate these beneficial effects of school choice. See Andrew J. Coulson, *The Fiscal Impact of a Large-Scale Education Tax Credit Program*, Cato Policy Analysis No. 618, July 1, 2008¹⁸ (estimating that the budgetary impact of a model tax credit program on five states would vary from \$1.1 billion in some states to \$15.9 billion in others over a ten-year period).

CONCLUSION

For the foregoing reasons, the decision below should be reversed.

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¹⁸ Available at <http://cato.org/sites/cato.org/files/pubs/pdf/pa-618.pdf> (last visited July 18, 2014).

CERTIFICATE OF SERVICE

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