Colorado Supreme Court Two East 14th Avenue Denver, CO 80203	DATE FILED: October 25, 2017 5:53 PM FILING ID: 50507F4EB0F1D CASE NUMBER: 2013SC233
Colorado Court of Appeals Case Nos. 11CA1856 & 11CA1857 City and County of Denver District Court Case Nos. 11CV4424 & 11CV4427; Hon. Michael A. Martinez, Judge	▲ COURT USE ONLY ▲
Petitioners: TAXPAYERS FOR PUBLIC EDUCATION, *et al.* **v.** **Respondents:** DOUGLAS COUNTY SCHOOL DISTRICT, *et al.* and **Intervenor-Respondents:** FLORENCE and DERRICK DOYLE, *et al.*	Case No: 2013SC233
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BRIEF OF *AMICUS CURIAE* FREEDOM FROM RELIGION FOUNDATION IN SUPPORT OF PETITIONERS

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28, C.A.R. 29, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The Amicus brief complies with the applicable word limit set forth in C.A.R. 29(d).

It contains 4,457 words (does not exceed 4,750 words).

The Amicus brief complies with the content and form requirements set forth in C.A.R. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

/s/ Matthew A. Schultz

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INTEREST OF THE *AMICUS CURIAE*

Amicus curiae, the Freedom From Religion Foundation ("FFRF"), is a national nonprofit organization based in Madison, Wisconsin, and is currently the largest national association of freethinkers, representing atheists, agnostics, and others who form their opinion about religion based on reason, rather than faith, tradition, or authority. FFRF has members in every state in the United States and in the District of Columbia and Puerto Rico, including 700 members in Colorado. FFRF's two purposes are to educate the public about nontheism, and to defend the

constitutional principle of separation between state and church. FFRF works to achieve these purposes by representing the views of its membership in Establishment Clause cases.

FFRF's interest in this case arises from both of its purposes, to defend the separation of church and state and to educate the public on the history of the No Aid Clause, as well as, to explain why the taxing power of the government should not be used to support religion.[1]

ARGUMENT

"To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical," wrote Thomas Jefferson in the Virginia Statute on Religious Freedom.[2] As legal challenges bounce up and down the courts, simple yet core points can get subsumed. In this case, the purpose of the constitutional provision at issue——Article 9, Section 7 of the Colorado Constitution——has been overshadowed. The purpose of this No Aid

[1] FFRF's Director of Strategic Response, Andrew L. Seidel, is a constitutional expert with extensive knowledge of the No Aid Clause and the primary author of this brief.

[2] *2* THOMAS JEFFERSON, A BILL FOR ESTABLISHING RELIGIOUS FREEDOM, *reprinted in* THE PAPERS OF THOMAS JEFFERSON, 545 (Julian P. Boyd. ed., 1950), *available at* http://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0082.

Clause, the purpose cited by Thomas Jefferson when he authored the prototypical version, remains: to protect and foster the religious freedom of all citizens.

The purpose of this amicus brief is not to dispute the finer points of the law or the ins and outs of the funding scheme Douglas County has created. Instead, we seek to highlight and explain the history of, and legal theory behind, the no-funding principle[3]—which is enshrined in the Colorado No Aid provision (Article 9, Section 7).

The principle is simple: The taxing power of the government should not be used to support religion. As states faced the challenges of a growing pluralistic society, including the challenge of providing a public education to all, they strengthened, invigorated, and implemented the concept with legislation and constitutional amendments, including the so-called Blaine Amendments, from 1776 through the 1950s.

This history makes it clear that the true purpose behind these clauses is to protect religious freedom. Abandoning this clause and the principle that underlies it will erode religious liberty.

[3] Steven Green, *Blaming Blaine: Understanding the Blaine Amendment and the No-Funding Principle*, 2 FIRST AMEND. L. REV. 107 (2004).

This brief will also touch on a common and alarmingly popular argument against these crucial clauses, that they are anti-Catholic. This accusation is misguided[4] and inevitably fails to counter a point that is critical to any Blaine Amendment discussion: **advocating for the separation of state and church, including No Aid Clauses, is not anti-religious bigotry**. Ensuring that our constitutionally mandated secular government does not support religion is neither hateful nor intolerant, even when doing so denies religion a financial benefit to which it feels entitled.

1. The purpose of No Aid Clauses is to protect religious freedom.

The purpose of No Aid Clauses is to ensure religious freedom. James Madison, the Father of the Constitution, explained it well: "Religion then of every man must be left to the conviction and conscience of every man," not the taxing power of the state.[5]

The principle in every No Aid Clause, including Colorado's, is that the government should not tax citizens to benefit a religion. Religious education, propagation, and worship should be the result of free and voluntary support given

[4] *See also* Noah Feldman, *Non-Sectarianism Reconsidered*, 18 J. L. & POL. 65 (2002).

[5] JAMES MADISON, MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS para. 1 (1785).

by the faithful. The coercive taxing power of the government should not be wielded to oblige Muslims to bankroll temples and yeshivas, or to compel Jews to subsidize Christian churches and Catholic schools, or to force Christians to fund mosques and madrassas.

Religious duty, including financial support, is a personal obligation over which our secular governments can have no jurisdiction. "It is the duty of every man to render to the Creator such homage and such only as he believes to be acceptable to him," as James Madison put it in his paean against a three penny tax to support Christian teachers.[6]

This principle is vital to ensure true religious freedom. Daniel Carroll, a Catholic representative to the Constitutional Convention from Maryland, put it best during the congressional debates on the First Amendment when he said that "the rights of conscience are, in their nature, of peculiar delicacy, will little bear the gentlest touch of the governmental hand."[7] No citizen can have religious freedom when the government can force him or her to financially support and propagate an alternative religious ideology, especially when many religions condemn

[6] *Id*.

[7] 1 ANNALS OF CONG. 729 (1789) (Gales and Seaton, 1834).

nonadherents to an eternity of torture. The compulsory support of a religion or god that is not your own is anathema to American principles.

Ben Franklin went so far as to say that religions that need state support are probably "bad," a quip that might get him labeled an anti-religious bigot today, were it more widely known: "When a Religion is good, I conceive that it will support itself; and, when it cannot support itself, and God does not take care to support, so that its Professors are oblig'd to call for the help of the Civil Power, it is a sign, I apprehend, of its being a bad one."[8]

A. The principle underlying No Aid Clauses dates to America's founding and was uniformly accepted after years of experience.

The early history of state-church separation in our federal government is clear to the Supreme Court, "for the men who wrote the Religion Clauses of the First Amendment the 'establishment' of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity." *Walz v. Tax Comm'n of City of N.Y.,* 397 U.S. 664, 668 (1970).

The history of the states is more varied, each adopting disestablishment principles at different times and to varying degrees. New Jersey, Pennsylvania, Maryland, North Carolina, and Virginia began this process in the year of American

[8] Letter from Benjamin Franklin to Richard Price (Oct. 9, 1780).

independence, 1776. Other states took longer to realize the severe problems with sponsoring or financially supporting religion, disestablishing up through the 1830s.[9] But tellingly, at some point all the states embraced the no funding principle.

In his Virginia bill for establishing religious freedom, Thomas Jefferson explained that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is **sinful and tyrannical**; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty . . . ."[10] Madison shepherded this bill through the Virginia legislature and, as president, invoked the principle to veto a bill that gave a D.C. Episcopal church government funds to educate and care for orphans.[11]

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[9] For a fairly comprehensive summary of this history, with citations, see *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2032-36 (2017) (Sotomayor, J., dissenting).

[10] *2* THOMAS JEFFERSON, A BILL FOR ESTABLISHING RELIGIOUS FREEDOM, *reprinted in* THE PAPERS OF THOMAS JEFFERSON, 545 (Julian P. Boyd. ed., 1950), *Available at* http://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0082.

[11] *See*, 22 ANNALS OF CONG. 982 (1811), *available at* https://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=022/llac022.db&recNum=488; Memorandum from James Madison to the House of Representatives (Feb. 21, 1811), *available at* http://www.presidency.ucsb.edu/ws/?pid=65921.

These states experienced religious establishments and made a careful decision after lengthy debates to stop taxing citizens to support religion because doing so violated the civil rights of those citizens. This was a hard-learned lesson over decades of living in a pluralistic America, which has only become more diverse since the time of its founding.

This history seems distant today, but was the result of centuries—millennia—of oppression from religion blended with government. Thanks to the separation of state and church, we do not have that oppressive experience. As a result, many today fail to understand that No Aid Clauses *protect* religious freedom. The ignorance of this history is a testament to the Clauses' effectiveness, not a reason to overturn their protections.

B. The early implementation of the no-funding principle shows that, in an effort to create inclusive schools for all citizens, various states banned funds for "sectarian" schools of *all* denominations, not only Catholic schools.

Though modern opponents of the no-funding principle claim it has anti-Catholic origins, its historical role in the development of the country's first public schools tells a different story. The no-funding principle and another hallowed American constitutional principle, equality, were both central to the effort to create a fair and universal public school system. Both principles also needed constitutional amendments and supporting statutes to mature and realize their full

potential. Without those amendments and statutes, all of which were heavily criticized, the principles were simply aspirational.

As the leading expert in this history, Professor Steven Green has explained, the "impulse toward nonsectarian public education was based on noble, republican ideals. The fact that nativist groups hijacked the no-funding principle for their bigoted aims does not invalidate the concept or mean that all advocates of the no-funding principle supported nativist goals."[12]

New York City first attempted to create nonsectarian or "common" schools in 1805. The nonsectarian schools, run by the Free School Society, would not be considered sufficiently nonsectarian by today's more evolved standards. But the important point is that those nonsectarian schools were favored, on religious liberty grounds, over "sectarian" schools—***including sectarian schools that were Protestant***. This history refutes modern claims of anti-Catholic bigotry in the no-funding principle.

Significantly, Protestant schools were found to violate the no-funding principle before Catholic schools and Catholic immigration surged in New York City. After a sectarian school run by the Bethel Baptist Church (a Protestant sect) applied for public funds in the early 1820s, the various legislative bodies

[12] Green, *supra* note 3, at 113.

controlling funds for New York City schools decided that such a grant would violate "a fundamental principle . . . to allow the funds of the State, raised by a tax on the citizens, designed for civil purposes, to be subject to the control of any religious organization."[13]

Six years later, the Roman Catholic Orphan Asylum was *granted* funding, on the understanding that it would be used to support orphans, not to advance Catholic doctrine, while at the same time the Methodist Charity School was denied funding because it was sectarian—even though it was Protestant. The Methodists were denied because "to raise a fund by taxation, for the support of a particular sect, or every sect of Christians . . . would unhesitatingly be declared an infringement of the Constitution, and a violation of our chartered rights."[14]

This history gives lie to the idea that refusing to fund religion and religious schools is anti-Catholic. Of course, by the time the no-funding principle was firmly established (the early 1840s), Catholic schools, like Protestant schools, were denied funds as well. Importantly, both the no-funding principle and the idea of universal public education predate significant Catholic immigration and subsequent demands for taxpayer funds.

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[13] Green, *supra* note 3, at 121.

[14] *Id.* at 122-24.

New York is not an outlier. The history of No Aid Clauses in the Midwest—Ohio, Wisconsin, Indiana, and Michigan—shows that they were motivated by religious freedom and a desire to educate all citizens, not by anti-Catholic bigotry. Each of these states adopted No Aid Clauses in their constitutions decades before Blaine's federal amendment was proposed[15] and when there were no "significant conflicts over parochial schools."[16] For instance, Catholic schools were not established in Wisconsin when the provision was adopted and critics have failed to document any anti-Catholic bigotry in Wisconsin's establishment of common schools.[17]

Professor Green summarized his rejection of the anti-Catholic interpretation of No Aid Clauses like this: "there is little evidence that anti-Catholicism or disdain for Catholic schooling played a significant role in the development of the no-funding principle or in the enactment of many no-funding provisions prior to the Civil War."[18]

The same is true of Colorado. Even the majority seemed to agree with the dissenting judge in the appellate case who conceded that "it is not clear that such

[15] Michigan (1835); Wisconsin (1848); Indiana (1851); Minnesota (1857).

[16] Green, *supra* note 3, at 127.

[17] LLOYD JORGENSON, THE FOUNDING OF PUBLIC EDUCATION IN WISCONSIN 68-93 (1956).

[18] Green, *supra* note 3, at 128.

bias was the sole motivation, or even the primary driving force, behind the drafting and ratifying of section 7 [the No Aid Clause]." *Taxpayers for Pub. Educ. v. Douglas Cty. Sch. Dist.*, 356 P.3d 833, 865 ¶¶ 179–80, 869 ¶¶ 209–19 (2013) (J. Bernard, dissenting), *rev'd*, 351 P.3d 461, *cert. granted, judgment vacated sub nom. Doyle v. Taxpayers for Pub. Educ.*, 137 S. Ct. 2324 (2017), and *cert. granted, judgment vacated sub nom. Colo. State Bd. of Educ. v. Taxpayers for Pub. Educ.*, 137 S. Ct. 2325 (2017), and *cert. granted, judgment vacated*, 137 S. Ct. 2327 (2017).

More importantly, the Colorado No Aid Clause has never been used to discriminate against Catholics. It has been used to maintain a secular government and thereby protect the religious freedom of Colorado citizens. If it truly were intended to discriminate, designed to discriminate, and passed to discriminate, it is curious that the clause was never used to that end. Like the Colorado Constitution, the history of the federal and state constitutions show a concern for religious freedom in state-church clauses, not a desire to discriminate.

The history is clear: The no-funding principle and the No Aid Clauses which embody it are meant to foster religious freedom. To abandon them is to curtail religious freedom.

2. Laws and amendments strengthening the no-funding principle, even if they remove a religious privilege, are not anti-religious.

A. The No Aid Clauses of the 1870s were partially a response to the Catholic Church pushing for public funds for its parochial schools.

Many American Catholics during the 1870s actually *wanted* the funding prohibitions that the No Aid Clauses provided.[19] However, the Catholic Church itself did seek public funds for its parochial schools. In some states, it even sought its own constitutional amendments to obtain those funds.[20] Indeed, the Church's principal "anti-Catholic" allegations during Colorado's No Aid Clause debate may have been "motivated by financial considerations." *Douglas Cty.*, 356 P.3d at 867 ¶¶ 191–92 (Bernard, J., dissenting).

The Church's campaign for public funds for parochial schools was sometimes successful, even in jurisdictions with No Aid Clauses (again belying the anti-Catholic claims).[21] The campaign is also understandable. In many districts, Protestants had the unwarranted and unconstitutional privilege of using the public

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[19] 4 CONG. REC. 5455 (1876) (Remarks of Senator Theodore Fitz Randolph).

[20] 2 ANSON STOKES, CHURCH AND STATE IN THE UNITED STATES 71 (1950).

[21] In 1871, the Catholic diocese of New York City received more than $700,000—about $193,000,000 today according to MeasuringWorth.com—in taxpayer money for parochial education. Even though such grants were banned under the state's No Aid Clause. Steven Green, *The Blaine Amendment Reconsidered*, 36 AM. J. OF LEGAL HISTORY 38, 43 (1992).

schools and taxpayer funds to promote their religion; Catholics wanted the same privilege.

Catholic challenges to this Protestant privilege may have inspired some No Aid Clauses because the push itself highlighted the problems with religion in public schools and the need for a solution.[22] Rather than expand unwarranted privileges that trample citizens' rights not to fund religion, "We the People" removed those baseless entitlements from all.

That decision presents the central question going to the heart of the anti-Catholic claim: Was invoking the no-funding principle—a principle central to America's founding and to religious freedom—a legitimate response to these requests? There is no discrimination in providing the same baseline benefit, such as education, to all citizens. That much is clear. But what if the government allows one religion an edge, an unwarranted privilege? Can the government, when challenged, remove that benefit or must the government extend the benefit to all? Refusing to expand an unconscionable entitlement is only discrimination if that entitlement is still given to the original group. Removing the benefit, and relying on the no funding principle to do so, is permissible because the ultimate end is equality, not favoritism.

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[22] *Id.*

Parity is not oppression. The erosion of unwarranted privilege is not persecution. Laws and amendments strengthening the no-funding principle, even if they remove a religious privilege, are not anti-religious.

Often we cannot see how the rights of minorities are violated until there is a clash, until equality is demanded. The conflict sparks societal friction which in turn produces light. As Catholics began seeking what they viewed as equal funding for parochial schools, many Protestants began to realize for the first time that funding religious education is a serious violation of religious freedom. It was not until the majority walked in minority shoes that it began to understand the problem. The Catholic challenge bred empathy, not antipathy.

B. No Aid Clauses treat all religions alike, as they were intended to.

Rather than challenging the underlying principle of the No Aid Clauses—that banning government funding to all religions effectively avoids religious favoritism—opponents instead often argue that historically that is not what the No Aid Clauses did. There may be nothing wrong with removing funding from all religions, but, the argument goes, No Aid Clauses funded Protestant schools while excluding Catholic Schools. The implication is that in effect No Aid Clauses were

discriminatory and that therefore the underlying principle should be rejected and all religious schools should be funded. Even if the premise of this objection were empirically correct, the argument fails for a number of important reasons.

First, the argument points to an abuse of constitutional principles to support its point. The argument assumes that promoting Protestantism in public schools was permissible, rather than violating the rights of students. It may be true that Protestants used some public schools to promote their religion, but that does not make it right, legal, or constitutional. And allowing another religious sect to do the same would not cure the constitutional violation; it would exacerbate it.

Second, as the argument applies to Colorado, this Court has definitively interpreted the state's No Aid Clause. The debate over whether "sectarian" is code for "anti-Catholic" is resolved in Colorado. While the No Aid Clause "uses the term 'sectarian' rather than 'religious,' the two words are synonymous." *Taxpayers for Pub. Educ. v. Douglas Cty. Sch. Dist.,* 351 P.3d 461, 470, 2015 CO 50, ¶ 27, *cert. granted, judgment vacated sub nom. Doyle v. Taxpayers for Pub. Educ.*, 137 S. Ct. 2324 (2017), and *cert. granted, judgment vacated sub nom. Colo. State Bd. of Educ. v. Taxpayers for Pub. Educ.*, 137 S. Ct. 2325 (2017), and *cert. granted, judgment vacated,* 137 S. Ct. 2327 (2017).[23] Even more broadly, the

[23] The vacatur ought not to change the Court's interpretation on this point.

"plain language" of the clause applies to all religions equally. *Id*. at ¶¶ 31–33. Put simply, the Colorado No Aid Clause is decidedly neutral between religious sects.

Beyond these deficiencies, the underlying premise that No Aid Clauses did not equally prohibit Protestant proselytization in public schools is belied by history. In a rather famous 1890 case—it was cited by Justice Brennan in his *Schempp* opinion (*Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 292, 275 n.51 (1963) (Brennan, J., concurring))—the Wisconsin Supreme Court ruled that the Wisconsin No Aid Clause prohibited "the practice of reading the King James version of the Bible, commonly and only received as inspired and true by the Protestant religious sects" in the public schools. *See State ex rel. Weiss v. Dist. Bd. of Sch. Dist. No. 8 of City of Edgerton*, 76 Wis. 177, 44 N.W. 967 (1890).[24]

The *Weiss* court analyzed various parts of the clause, and Justice Cassoday noted explicitly that the fourth part, that no money shall "be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries," what is often dubbed the Blaine Amendment, was also violated by the bible reading: "The thing that is prohibited is the drawing of any money from the

[24] Justice Orton pulled no punches in his opinion: "There is no such source and cause of strife, quarrel, fights, malignant opposition, persecution, and war, and all evil in the state, as religion. Let it once enter into our civil affairs, our government would soon be destroyed. Let it once enter into our common schools, they would be destroyed." *Id.* at 981 (Orton, J., concurring).

state treasury for the benefit of any religious school. If the stated reading of the Bible in the school as a text–book is not only, in a limited sense, worship, but also instruction, as it manifestly is, then there is no escape from the conclusion that it is religious instruction; and hence the money so drawn from the state treasury was for the benefit of a religious school, within the meaning of this clause of the constitution." *Id.* at 980 (Cassoday, J., concurring).

The *Weiss* case was brought by Catholic families. Catholic families who successfully kept the public schools secular using this supposedly anti-Catholic/pro-Protestant provision.

The fact that the Protestant majority historically abused its majoritarian status does not mean that these No Aid Clauses are all tainted with an anti-Catholic bias. The solution today is what it was in 1890, to keep all government-endorsed religion out of the public schools, keep them secular, and keep taxpayer funds for our secular schools, not religious schools.

C. Even now, some use the machinery of the government to impose their religion on others and if legislatures passed explicit laws seeking to stop these violations, those laws would not be anti-religious.

Governments in this nation regularly violate the Establishment Clause. The Freedom From Religion Foundation exists because people in government positions disregard clear constitutional rules all the time. We get about 5,000 state-church

complaints every year from all over the country. In the past five years, FFRF has received more than 300 complaints from Colorado, addressing nearly 100 different violations.

FFRF regularly deals with hundreds of issues that courts have ruled on and ruled unconstitutional. Creationism is still regularly taught in public schools and FFRF has worked to stop this in nearly 40 school districts over the last five years. In the last three school years, we have dealt with more than 350 instances of school district staff imposing prayer on their students. FFRF even had to sue a school district in Georgia for refusing to stop its teachers from organizing daily prayer with their first and second grade classes.[25]

There are long-standing prohibitions on government-imposed prayer and the teaching of Creationism in public schools, over which there is no legal ambiguity. The courts have been clear. And yet, the law is disregarded. But if legislatures were to take up this clear problem and pass an explicit amendment against teachers imposing prayer on other people's children, those amendments would not be anti-Christian. If Catholics sought to have their prayers included in the illegal

[25] *See FFRF court victory: Ga. School stops school prayer* (Oct. 5, 2015) (discussing settlement of lawsuit between FFRF and the Emanuel County School District), https://ffrf.org/news/news-releases/item/24220-ffrf-court-victory-ga-school-stops-school-prayer.

classroom prayers and that prompted such an amendment, it would not be an anti-Catholic amendment.

D. The no funding principle originates in the American founding and should not be abandoned because an anti-Catholic movement would later agree with the idea.

Prior to the adoption of No Aid Clauses, Protestants had been using the machinery of the state to propagate their religion. When Catholics sought to do the same, the Protestant abuse became clear and a constitutional solution at the federal level was sought. But not all the motivations for No Aid Clauses were the high-minded protection of religious liberty. Blaine, who would eventually propose the amendment, thought it might propel him to a presidential nomination. It didn't. Sister Marie Carolyn Klinkhamer, who was writing in *The Catholic Historical Review* as an associate professor at the Catholic University of America, concluded that the federal Blaine amendment was "suggested for purely political reasons," and though it failed, it "inflamed the anti-Catholic, anti-foreign, anti-Negro passions of many persons in the United States."[26] In other words, the proposed federal No Aid Clause was not motivated by animosity or bigotry, but bigots supported the cause.

[26] Sister Marie Carolyn Klinkhamer, *The Blaine Amendment of 1875: Private Motives for Political Action*, 42 CATHOLIC HIST. REV. 15 (1956).

While some anti-Catholic groups came to agree with the no-funding principle a century after its inception, that does not detract from the value of the idea. To argue against the principle, or even a constitutional provision implementing the principle, on that basis is like arguing that laws protecting free speech and free assembly are anti-Semitic because the principles underlying those laws equally protect the rights of bigots along with everyone else.[27] To try and paint the entire concept as anti-Catholic is to oppose every principle, even those enshrined in the Constitution, because a few bigots also fight for those principles.

The Court should reject the invitation to embrace a logical fallacy to paint state-church separation as an instrument of oppression rather than as armor for our rights of conscience. This logical fallacy has a name, the "genetic fallacy," which attacks not the merits of an idea, but its origin. Here, the true origin of the idea is the American founding, but by alleging origins that are anti-Catholic, opponents seek to taint a principle that was sacred to our country long before Blaine was a glint in his Roman Catholic mother's eye. That undeniable fact cannot be avoided, so instead it is stigmatized.

CONCLUSION

[27] *See, e.g.*, *Nat'l Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43 (1977) (pairing the ACLU with Nazis to fight for free speech and free assembly rights).

Abandoning No Aid Clauses and the no-funding principle will inhibit religious freedom. The purpose of Colorado's no-funding principle is to promote religious freedom. There can be no freedom of religion without a government that is free from religion. This Court should protect that vital principle and the clause that implements it.

Dated this 25th day of October, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that on the 25th day of October, 2017, a copy of the foregoing **BRIEF OF *AMICUS CURIAE* FREEDOM FROM RELIGION FOUNDATION IN SUPPORT OF PETITIONERS** was served to the following:

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