Case No. 24-012

IN THE SUPREME COURT OF THE UNITED STATES

CHERYL FLYNN and LEONARD FLYNN, on their own behalf and on behalf of their minor child H.F.; BARBARA KLINE and MATTHEW KLINE, on their own behalf and on behalf of their minor child B.K.; THE JOSHUA ABRAHAM HIGH SCHOOL; and BETHLEHEM HEBREW ACADEMY,

Petitioners,

v.

TOURVANIA DEPARTMENT OF EDUCATION; and KAYLA PATTERSON, in her official capacity as Superintendent of Public Instruction,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighteenth Circuit

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BRIEF OF RESPONDENT

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QUESTIONS PRESENTED

I. Under the First Amendment's Free Exercise Clause, and the Fourteenth Amendment's Equal Protection Clause, does the nonwaivable nonsectarian requirement in Tourvania's Education Code violate the Petitioners' rights when the Petitioners chose to send their child to a religious school, there is appropriate alternative public schooling available, and have not even had their child evaluated to determine the appropriate amount of IDEA funds needed for their child?

II. Under the First Amendment of the United States Constitution, does the extension of IDEA funds to religious institutions violate the Establishment Clause when it promotes intermingling between church and state, as well as allows for the direct governmental funding of religious education?

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Petitioners, the Flynns and the Klines, filed suit against the Tourvania Department of Education alleging a violation of the Free Exercise Clause of the Fourteenth Amendment of the United States Constitution after choosing to send their child to private, religious schools and being denied special education funds through the Individuals with Disabilities Education Act ("IDEA"), under 20 U.S.C. § 1412(a)(10). Respondents moved for summary judgment on the basis that IDEA funding should not reach religious schools, like the school the Petitioners chose to send their child to, without infringing on the First Amendment's Establishment Clause. On October 1, 2023, Respondent's motion for a summary judgment was denied. (R. at 16).

The U.S. Court of Appeals for the Eighteenth Circuit vacated the lower court's decision finding and ordered the District Court to enter a summary judgment in favor of Respondents. (R. at 20). The Court found that the Educational Code is neutral and generally applicable. (R. at 19). Petitioners appealed the summary judgment granted in favor of Respondents. This Court granted certiorari on the issues of (1) whether § 502 of the Tourvania Education Code violates the Plaintiffs' rights under (a) the First Amendment's Free Exercise Clause, and/or (b) the Fourteenth Amendment's Equal Protection Clause and (2) whether the extension of IDEA funds to religious institutions violates the Establishment Clause of the First Amendment. (R. at 21).

B. STATEMENT OF FACTS

IDEA "offers states federal funds to assist in educating children with disabilities." (R. at 2). However, this aid is not boundless. Children with disabilities are entitled to "equitable services" that must be "secular, neutral, and non-ideological" even when provided in religious schools. (R. at 5). "No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school." Id. The Petitioners are requesting aid after choosing to enroll their child in a private school specifically for religious reasons. (R. at 8). Although Joshua Abraham High School and the Bethlehem Hebrew Academy are co-educational, teaching both religious and secular studies, the mission of both of these private schools is to "promote the values of the Jewish heritage, the Torah and develop a love for Israel". (R. at 9).

The petitioners previously enrolled their child in an Orthodox Jewish school and paid for those services out-of-pocket. Id. The Petitioners understand that their child could receive more services if she attended a public school, however, they have chosen private schooling. Id.

§ 502(a) of the Tourvania Education Code nonwaivable nonsectarian requirement states that private, nonsectarian schools shall be provided services for the appropriate special education for a child. (R. at 6). § 502(b) provides that nonsectarian means private schools that are not owned, operated, controlled by or affiliated with a religious group. Id. The code further provides that "the provisions of this code apply only when the LEA, not the child's parents, decides that the alternative placement in a private institution is appropriate." (R. at 7). The LEA must create an IEP and meet with the private school the parents have chosen in order to determine the appropriate amount of IDEA funding needed to adequately address the student's needs. (R. at 5). It is critical to note that the Flynn Petitioners have not had their child evaluated by the Tourvania Central

School District, a requirement in order to seek a FAPE under the law. (R. at 8). Thus, if their child is not determined to qualify for a FAPE, and does not have the coinciding individual education plan, no grounds for IDEA qualification or funding exist. As such, the Flynn Petitioners have not proven that they have the proper standing to bring the matter in front of this Court.

C. STANDARD OF REVIEW

Petitioners are appealing the entry of summary judgment granted in favor of Respondents. The standard of review for a grant of a summary judgment is de novo, requiring no reliance on the lower courts understanding. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). Furthermore, inferences drawn from the underlying facts must be viewed in a light most favorable to the non-moving party. Id. Under Federal Rule of Civil Procedure 56, a motion for summary judgment will be upheld if there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law. FED.R.CIV.P. 56. A factual dispute is 'genuine' only if a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1998). A motion for summary judgment "may not rest upon the mere allegations or denials of his pleading, but … must set forth specific facts shoeing there is a genuine issue for trial." Id.

SUMMARY OF THE ARGUMENT

This Court should affirm the district court's grant of summary judgment in favor of Respondents because there is no issue of material fact.

Both the Free Exercise Clause and Establishment Clause compel States to pursue a course of neutrality towards religion. First, the challenged provisions to Tourvania's Educational Code are neutral and generally applicable within the meaning of the Free Exercise Clause. It is not hostile towards religion. If not neutral, the Education Code will be analyzed under strict scrutiny. A Statute will be upheld if it serves a compelling government interest and is the least restrictive means of showing that interest. Tourvania has a compelling government interest in maintaining a religiously neutral public school system and not promoting religion. Lastly, Tourvania's nonwaivable nonsectarian requirement does not substantially burden the Petitioners' exercise of their religion. Petitioners are free to exercise their choice in religion and education.

Second, the extension of IDEA funds to religious institutions violates the Establishment Clause of the First Amendment. The Establishment Clause dictates that a state cannot establish, coerce, directly fund, endorse, or purposely advance religion. If IDEA funds were extended to religious institutions, an impermissible commingling would result between church and state. The alliance between religious institutions and government is forbidden by the Establishment Clause. Furthermore, the extension of IDEA funding would allow for federal funds to be used for religious educational purposes, and the services provided with IDEA funding will take place within a religious institution and will undoubtedly be influenced by non-sectarian values. History has illustrated the dangers of mingling church and state and the impact on the free exercise of religion is disastrous.

ARGUMENT

I. The Non-Sectarian Requirement in § 502 of the Tourvania Education Code is Neutral and Does Not Violate Petitioners' Rights Under the First Amendment's Free Exercise Clause.

This Court should affirm the district court's grant of summary judgment because Petitioner's First and Fourteenth Amendment rights were not violated. The First Amendment provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. Amend. I. This Free Exercise Clause applies to the states through the Fourteenth Amendment to "protect religious observers against unequal treatment" and against "laws that impose special disabilities on the basis of religious status." Trinity Lutheran Church of Columbia, Inc. v. Comer, 582 U. S. 449, 559 (2017); Espinoza v. Mont. Dep't of Revenue, 140 S. Ct. 2246, 2254 (2020). This Court has recognized that there is a 'play in the joints' between what the Establishment Clause allows and what the Free Exercise Clause compels. Trinity Lutheran, 582 U. S. at 458; Locke v. Davey, 40 U.S. 712, 718 (2004).

Both the Free Exercise Clause and Establishment Clause compel states to pursue neutrality towards religion. Bd. of Educ. of Kiryas Joel Village Sch. District v. Gument, 512 U.S. 687, 696 (1994). Neutrality is favoring neither one religion over others nor religious adherents collectively over non-adherents. Id.; See Bd. Of Educ. v. Allen, 392 U.S. 236, 242 (1968) ("the line between state neutrality to religion and state is not easy to locate"). The plaintiff carries the burden of proving a free exercise violation by showing that a government entity has burdened his sincere religious practice under a policy that is not "neutral" or "generally applicable." Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407, 2421-2422 (2022); Employment Div., Dept. of Human Resources of Ore. v. Smith, 494 U. S. 872, 879-881 (1990).

a. Tourvania's Educational Code is Neutral and Generally Applicable Within the Meaning of the Free Exercise Clause.

This Court should find that the challenged provisions to Tourvania's Educational Code are neutral and generally applicable within the meaning of the Free Exercise Clause. It does not favor one religion over another, nor promote or inhibit religious freedom.

The First Amendment requires the state to be neutral in its relations with groups of religious believers and non-believers. Everson v. Bd. of Educ. of Ewing, 330 U.S. 1, 18 (1947). In Everson v. Bd. of Educ. of Ewing, an education board authorized reimbursement to parents for money expended on bus transportation. 330 U.S. at 3. The Court held that the funding was neutral since the state contributed no money directly to the schools and it did not support them. Id. at 29. The Court reasoned that the legislation simply provided a general program to help parents get their children, regardless of their religion, safely to and from their accredited schools. Id. Therefore, it did not have an effect on one's free exercise of religion.

Unlike Everson, the funding sought by Petitioners will support the Jewish religion. It does not support a general program like school transportation. The funding Petitioners ask for is to support their child receiving a religious education. Although Joshua Abraham High School and the Bethlehem Hebrew Academy are co-educational, teaching both religious and secular studies, the mission of both of these private schools is to "promote the values of the Jewish heritage, the Torah and develop a love for Israel". (R. at 9). These goals are all secular in nature. So, the funds sought by the Petitioners would inadvertently support the Jewish religion. Further unlike Everson, where the funding was reimbursed to the parents, here the funding would go directly to the religious organization. Respondents must remain neutral towards religion and here, the funding would support the Jewish religion since it is going to the school and not to the parents. Therefore,

the nonsectarian provision of Tourvania's Educational Code maintains neutrality toward the free exercise of religion, without promoting it.

If a statute does not prevent attendance at a religious school, then there is no free exercise violation. Stout v. Albanese,178 F.3d 57, 65 (1999). In Strout v. Albanese, Maine enacted a statute which provided tuition grants directly to qualified private educational institutions, if the institutions were "non-sectarian" in nature. Id. at 59. The court held that the statute did not prevent attendance at a religious school; therefore, there was no free exercise violation. Id. at 65. There is a fundamental right of parents to direct their children's upbringing and education but the state is not required to pay for a sectarian education. Id. The Court reasoned that the state funding non-sectarian private educational institutions' grants did not demonstrate a hostility toward religion, nor discriminate on the basis of religion, religious beliefs, or association, nor prevent them from instructing their children in the areas of religion, morals, and ethics. Id. Further, none of the parents claimed that attendance at a religious school was a central practice of their faith. Id.

Similarly to Strout, the Petitioners who are seeking IDEA funding are entitled to "equitable services", that must be "secular, neutral and non-ideological" even when provided in religious schools. (R. at 5). Also, Tourvania's Educational Code does not prevent attendance at a private sectarian school, Petitioners are free to attend the schooling of their choosing. However similar to Strout, the state is not required to pay for such religious education. The purpose of the FAPE and IDEA is to level the playing field in public schools, not private schools. (R. at 2-3); See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley, 458 U.S. 176, 189, 192 (1982) (IDEA's intent is to "open the door of public education to handicapped children on appropriate terms"). However, the IDEA itself provides that, "[n]o parentally placed private school child with a disability has an individual right to receive some or all of the special education and

related services that the child would receive if enrolled in a public school." (R. at 5). It is explicit in that parents who prefer private schools for their disabled children and make that choice, comes with their willingness to accept equitable services and reimbursement rather than the full range of IDEA benefits, regardless of religious affiliation. (R. at 19). This is neutral towards religion. Lastly, if Petitioners' children did attend a public school, they are still entitled to hold their religious beliefs. This illustrates that Tourvania's Educational Code is not hostile towards, nor does it punish religious exercise. Therefore, this court should find that Tourvania's Educational Code is neutral and does not infringe on Petitioner's free exercise of religion.

b. Tourvania's Educational Code Passes Strict Scrutiny because it Serves a Compelling Government Interest and is the Least Restrictive Means.

Petitioners will argue that 502 denies them educational funding based on their religious status. A law that "denies a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion" and triggers strict scrutiny. Trinity Lutheran, 582 U.S. at 458. To succeed on a Free Exercise claim, a plaintiff must show that the state action "substantially burdens the exercise of religion." Burwell v. Hobby Lobby Stores Inc., 573 U.S. 682, 690 (2014). A Statute will be upheld if it serves a compelling government interest and is the least restrictive means of showing that interest. Id. at 691-92. The Government holds the burden of showing that the action is the least restrictive means of furthering the interest. Holt v. Hobbs, 574 U.S. 352, 356 (2015).

The Free Exercise Clause does not require the Government to support religion. See Locke v. Davey, 40 U.S. 712 (2004). In Locke v. Davey, a state's scholarship funds were prohibited from being used towards religious instruction. 40 U.S. at 715. The Court held that denying funds for a religious degree did not violate the Free Exercise Clause. Id. at 725. The Court reasoned that just because the scholarship program funded training for all secular professions, that did not mean the

state had to fund training for religious professions. Id. Further, the state's interest in not funding the pursuit of devotional degrees was substantial and historically founded. Id. Also, the exclusion of such funding placed a relatively minor burden on scholarship recipients, as they still have the right to hold their religious beliefs without penalty. Id. at 720. The court reasoned that the State merely chose not to fund a distinct category of instruction. Id. at 721.

Similarly to Locke, the funds the Petitioner requests are being used towards religious instruction, just under the guise of the disability act. First, Respondent has a compelling interest in maintaining a religiously neutral public school system and not promoting religion. Religiously neutral funding does not deny Petitioners a benefit based on their religion. Second, Tourvania's nonwaivable nonsectarian requirement does not substantially burden the Petitioners' exercise of their religion. Petitioners are free to choose an education that is sectarian, but that education is not available through governmental funding. Those seeking IDEA funding are entitled to "equitable services" that must be "secular, neutral and non-ideological" even when provided in religious schools. (R. at 5). So, similar to Locke, religious instruction is simply something not funded by IDEA. Therefore, the Petitioners are not substantially burdened by not receiving IDEA funds for religious education.

If a "non-sectarian" requirement is the only thing that bars a party from religious schooling, there is likely a violation of free exercise. See Carson v. Makin, 142 S. Ct. 1987 (2022). In Carson v. Makin, Maine offered its citizens tuition assistance payments for any family whose school district did not provide a public secondary school. 142 S. Ct. at 2002. Parents could direct the tuition assistance to the public or private schools of their choice. Id. at 1993. Private schools were eligible to receive the assistance, as long as they were "nonsectarian." Id. The parents could not afford to send both of their children to the private sectarian school that they preferred. Id. The court

held that the "nonsectarian" requirement for its otherwise generally available tuition assistance payments violates the Free Exercise Clause of the First Amendment. Id. The court reasoned that the tuition assistance program prevents attendance at the private sectarian school they chose, which is a burden on the free exercise of religion. Id. at 2002.

Unlike Carson v. Makin, the Petitioners have not claimed that they are constrained in their public schooling options. Also, Petitioners, specifically the Flynns, can afford to send their child to private school and bear the costs of disability services. In fact they have paid out of pocket for private schooling and behavioral, occupational, and speech therapy in the past. (R. at 8). Further, in Makin, there was not an eligibility requirement for participants, only for the school. Distinct from Makin, the Petitioners' children do need to qualify for IDEA funding before it is given. And Petitioners have not sought FAPE from Tourvania, nor has Tourvania evaluated the child. (R. at 8). Only after Petitioners have a local education agency create an individualized education plan for their child's needs, and meet with the private school, can they determine the appropriate amount of funds under IDEA. (R. at 5). So, the non-sectarian requirement of Tourvania's educational code is not the only reason the Petitioners are being denied IDEA funding. If anything has created a burden, it is the Petitioners themselves by not even having their child evaluated for the appropriate IDEA funding. Therefore, this Court should find that since the Petitioners have other schooling options available, can afford the private education, and have not taken the appropriate steps to receive IDEA funding, their right to religious freedom is not burdened by Tourvania's Educational Code requirements.

Overall, the Petitioners are free to hold their religious belief and engage in religious practices that are a part of their religious beliefs. Therefore, this Court should find that there has been no violation of the free exercise clause of the First Amendment.

II. The extension of IDEA funds to Religious Institutions Violates the Establishment Clause of the First Amendment as it would Result in Impermissible Intermingling Between Church and State.

Opting to erect a wall between church and state, the founders crafted the Establishment Clause of the First Amendment. The Establishment Clause, while a separate and equal component to the First Amendment, is often overshadowed by the Free Exercise Clause. This Court recognized the significance anti-establishment has in protecting religious freedom, noting that "religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise assist any or all religions." Everson, 330 U.S. at 11. Further, this Court has opined that while certain government action may not overtly establish a state religion, the mere act of 'respecting' a religious end is a step "that could lead to such establishment and hence offend the First Amendment." Lemon, 403 U.S. at 612. Limiting the comingling of government and religion is categorically imperative to the protection of religious freedom in the United States.

Applied to the States through the Fourteenth Amendment, the Establishment Clause prevents the government from enacting laws that have the "purpose" or "effect" of advancing or inhibiting religion. Zelman, 536 U.S. at 649; Agostini, 521 U.S. at 222-223. The Establishment clause was intended to afford protection against "three main evils … sponsorship, financial support, and active involvement of the sovereign in religious activity." Walz v. Tax Comm'n of City of New York, 397 U.S. 664, 668 (1970). The notion that the government cannot fund religious institutions as it impermissibly advances a non-secular cause has been reiterated by this Court on numerous occasions. See Everson, 330 U.S. at 16; Mitchell v. Helms, 530 U.S. 793, 840 (2000); Agostini, 521 U.S. at 222-223. Furthermore, this Court held in Mitchell that direct funding of religious activities, in comparison to a more attenuated financial relationship through the exercise of parental or student choice, is a violation of the Establishment Clause. Mitchell, 530 U.S. at 819-

820. By passing constitutional provisions that limit the ability to use public funds for religious endeavors, 38 individual states have further restricted the ability for the government to entangle with non-sectarian missions. See Trinity Lutheran, 582 U.S. at 488-489 (Sotomayor, S., dissenting).

a. The Nonwaivable Sectarian Requirement Ensures Religion Remains Free of Governmental Influences and Inhibitions in Accordance with the Establishment Clause.

Upholding a property tax exemption for nonprofit religious organizations, this Court articulated that the exemption does not produce excessive entanglement with religion, but rather restricts the monetary relationship between government and religion. Walz, 397 U.S. 664 at 674-675. In Mueller, which dissected a Minnesota law allowing taxpayers to deduct education expenses from their gross income, this Court applied the Lemon test to uphold the program. Mueller, U.S. 388. In determining that the law had a secular purpose in educating the population, the court determined that states have an interest in facilitating beneficial educational expenses. Id. at 400. The deduction was generally applicable in that it applied to all parents and because the financial benefit was not granted to schools directly, the program prevented direct entanglement. Id. at 398.

With the nature of a tax exemption, the government entanglement is limited. In comparison, grant programs or other direct governmental funding sources, often require significant intervention and communication with the government in order to comply with the number or requirements imposed. The court distinguished this relationship in Walz, stating that "a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards." Walz, 397 U.S. at 675. The IDEA program in particular requires constant and continuous oversight by the government, namely through the

creation of an Individualized Education Program (IEP) which must involve the Local Educational Agency (LEA). Rowley, 458 U.S. at 182. IEPs are the vehicle by which students with additional needs receive a free appropriate public education, or "FAPE." 20 U.S.C. § 1412(a)(1) An LEA is defined as a "*public* board of education or other *public* authority legally constituted within a state" who are authorized by state law and recognized as an administrative agency by the government. 34 C.F.R § 303.23 (2017) (emphasis added). A student's IEP is "tailored to the unique needs of each handicapped child" and must be continuously updated, at least annually. 20 U.S.C § 1414(d)(4)(A)(i).

Furthermore, Tourvania requires private schools participating in the IDEA program to be certified by the State by meeting several requirements by law. TEC §502. Regardless of a religious school's ability to conform to these requirements, there would be constant oversight and intermingling between the government and the non-sectarian school to ensure that the strict guidelines of the IDEA program are adhered to. This would amount to "active" involvement of the government in religion, not only in violation of the Establishment Clause, but also inviting the government to threaten the unfettered ability to practice one's religion without government influence.

b. The Nonwaivable Sectarian Requirement Ensures Federal Funds are not used Directly for Religious Purposes in Accordance with the Establishment Clause.

This court articulated a three-prong test for Establishment Clause compliance in Lemon: "first, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion." Lemon, 403 U.S. at 606. In further definition of the wall between church and state, the Lemon test was cultivated by considering the "cumulative

criteria developed by the Court over many years." Id. at 613. Nearly 21 years later, the Lemon Test was utilized to uphold a Cleveland Pilot Scholarship Program in Zelman. The court determined that providing financial assistance to low-income students is not a violation of the Establishment Clause, even if a large percentage of students attend religious institutions. The purpose of the scholarship program is secular, designed to elevate the education of low-income students. Id. at 646. In distributing the program based on financial need, the program's primary effect did not enhance or inhibit religion. While more children enrolled in non-secular education programs, these decisions were the result of parental choice, necessitated by the desire to positively impact academic outcomes. Id. Furthermore, schools participating in the program were not allowed to discriminate on the basis of race, religion, ethnic background, nor to foster any ill will against any person, group, religion, ethnicity, or national origin. Id. at 645.

Unlike the neutral government program, that provides "aid directly to a broad class of individuals, who, in turn, direct the aid to religious schools or intuitions of their choosing," Petitioners unjustifiably assert the school should be able to receive federal funds directly in furtherance of their non-secular educational goals. Allowing a non-secular school to receive funding for educational instruction impermissibly promotes religion as these services are provided within the walls of a religious institution. The programs offered through the IDEA legislation are not in addition to, or supplemental to the traditional religious education being received by these children, but rather inextricably intertwined by nature of the law's requirements. The programming provided with IDEA funding would aid the student in furthering their religious beliefs, as the school is deeply linked with the core values of Judaism.

In examining the Washington Promise Scholarship, a program largely funded by tax dollars and awarded based on financial need and academic ability, this court determined that the Free

Exercise Clause does not require a state to pay for religious education even though a secular education qualified for assistance under the program. Locke, 540 U.S. 712. Washington's State Constitution includes a provision that prohibits the government from funding religion, which this Court upheld as a compelling government interest that prevents infringement upon the Establishment Clause Id. at 725. Further, the court stated that "given the historic and substantial state interest at issue, we therefore cannot conclude that the denial of funding for vocational religious instruction alone is inherently constitutionally suspect." Id.

The IDEA program challenged here is not a tax-credit, nor an indirect grant of money involving parental choice in its administration, or further, a program in furtherance of a permissible secular purpose. Rather, Petitioner would like to take advantage of a government program that directly funds education for students with special needs while attaining a specialized education at a religious school. Allowing the IDEA program to infiltrate a non-sectarian school would directly bring the government into the classroom of religion.

CONCLUSION

The U.S. Court of Appeals for the Eighteenth Circuit correctly held that a summary judgment should be entered in favor of Respondents. There is no genuine issue of material fact. Petitioners are free to exercise their religion without the governmental interference of IDEA funding. It is impermissible for petitioners to receive both a religious education as well as government funding intended to level the playing field for children with disabilities in public education. While Jewish children impacted by special needs are no less deserving of additional funding, the undertones inherently underlying a religious education cannot be supported by the State. Furthermore, allowing this infringement on the Establishment Clause would be highly detrimental to religious freedom in the United States. The non-sectarian requirement of Tourvania's Educational Code is not the only reason the Petitioners are being denied IDEA funding; as the Petitioners have not had their child evaluated for the appropriate IDEA funding. Therefore, the Petitioners are not being burdened by the non-sectarian requirement of Tourvania's Educational Code.