No. 05-282

In the Supreme Court of the United States

AMERICAN JEWISH CONGRESS, PETITIONER

v.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

The AmeriCorps Education Awards program provides a $4725 scholarship to individuals who perform at least 1700 hours of secular public service in programs sponsored by a wide range of organizations. The program also gives sponsoring organizations $400 for each individual who performs public service with that organization to help defray the program's administrative costs. The questions presented are:

1. Whether affording individuals who perform the requisite hours of secular public service by teaching secular subjects in a religious school an equal opportunity to obtain an educational award violates the Establishment Clause because those individuals may make an independent choice to engage in religious instruction or activities on their own time.

2. Whether the Establishment Clause prohibits providing religiously-affiliated sponsoring organizations the same $400 payment provided to all sponsors to help defray the administrative costs of participation in the program, where the money is provided to the institution only as a result of the independent choice of private individuals to select that sponsoring organization and where the payment is significantly less than the actual administrative costs incurred.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 399 F.3d 351. The opinion and order of the district court (Pet. App. 13a-55a) are reported at 323 F. Supp. 2d 44.

JURISDICTION

The court of appeals entered its judgment on March 8, 2005. The court of appeals denied a petition for rehearing on June 1, 2005 (Pet. App. 59a-60a). The petition for a writ of certiorari was filed on August 30, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Congress enacted the National and Community Service Act of 1990 (Community Service Act), 42 U.S.C. 12501 *et seq.*, to "meet the unmet human, educational, environmental, and public safety needs of the United States" and to "expand educational opportunity by rewarding individuals who participate in national service with an increased ability to pursue higher education." 42 U.S.C. 12501(b)(1) and (3). In the Community Service Act, Congress created the Corporation for National and Community Service (Corporation), 42 U.S.C. 12651, to administer the Act and to oversee a variety of programs, operations, and grants designed to promote service to the public.

An important goal of the Community Service Act is the provision of financial rewards to individuals who participate in national service, which will permit those persons to pursue higher education or job training. 42 U.S.C. 12501(b)(3). One such program is the AmeriCorps Education Awards program. 61 Fed. Reg. 46,628 (1996). That program provides financial awards (currently, $4725) to individuals who have completed 1700 hours of national service over a nine- to twelve-month period in an approved service program. 42 U.S.C. 12593(b)(1), 12602(a)(1) and (b); Pet. App. 3a. Those awards may be used to pay the participant's student loans, college expenses, or job-training expenses.

Under the Education Awards program, the Corporation selects a wide range of sponsors who oversee or administer community service programs at host sites, the work of which will qualify an individual to receive an AmeriCorps education award. Such host sites must undertake public-service activities that address the social,

educational, environmental, or public safety needs of a community, see 42 U.S.C. 12501(a)(1), and "provide[] a direct and demonstrable benefit that is valued by the community," 45 C.F.R. 2522.100(a). Individuals may perform their public service through a wide range of programs, including working in "homeless shelters, health clinics, and schools." C.A. App. 747.

b. Sponsoring organizations must be willing to "engage Americans of all backgrounds as members in community-based service," C.A. App. 1489, and "shall not discriminate on the basis of religion" in selecting individuals to perform public service with them, 42 U.S.C. 12635(c)(1); 45 C.F.R. 2540.210(c). The sponsors are typically state and local governments, Indian tribes, and both secular and religious non-profit organizations.

In determining whether a sponsor is qualified to offer public service opportunities under the Education Awards program, the Corporation does not take into account "the secular or religious nature of the applicants or the proposed host sites." C.A. App. 758. Instead, the Corporation considers the design of the proposed public-service programs, including an assessment of community needs and program performance measures. *Id.* at 1555-1556. The Corporation also considers the organizational capacity of an applicant, including its track record and ability to provide oversight, and the budget and cost-effectiveness of its proposed programs. *Id.* at 1556. Of the 34 current sponsoring organizations, 28 are secular and six are religious entities. *Id.* at 1663. Of the 19,000 individuals who sought education awards during fiscal year 2001, only 2000 chose to perform service under the sponsorship of religious organizations, and only 565 chose to work as teachers in private schools. *Id.* at 1582.

c. Individuals seeking to obtain public-service credit for an education award may not perform certain prohibited activities "[w]hile charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or the Corporation." 45 C.F.R. 2520.30(a). The prohibited activities include "[e]ngaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, * * * or engaging in any form of religious proselytization." 45 C.F.R. 2520.30(a)(7). The individuals are, however, permitted to "participate in the [listed prohibited activities] on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so." 45 C.F.R. 2520.30(b).

Individuals seeking to earn an educational award must record their service hours on timesheets. Since 2001, the Corporation has required individuals who perform their service hours as teachers in religious schools to certify that none of their reported service hours "include[s] any religious instruction, worship, or proselytization." C.A. App. 754, 874. The Corporation also requires participants serving as teachers in religious schools to document on their timesheets the specific activities for which they are claiming service hours in fulfillment of their 1700-hour service commitment. *Id.* at 1203.

In addition, sponsors must document the hours of service performed by individuals that are credited to the AmeriCorps program and to enforce the rules against prohibited activities. C.A. App. 1505. Sponsors themselves must execute a set of "Assurances and Certifications" undertaking, among other things, to "ensure that

no assistance made available by the Corporation will be used to support" religious or other prohibited activities. *Id.* at 753, 866. Sponsors also must enter into "site agreements" with their host sites to ensure that all program requirements and grant provisions are followed. *Id.* at 754, 1493. And sponsors must enter into "member contracts" with the individuals working with them that preclude each individual from claiming service credit for prohibited activities. *Id.* at 753, 1493. Finally, sponsors must provide participants with a formal orientation that includes an explanation of prohibited activities. *Ibid.*

d. Because the sponsors are responsible for recruiting and training individuals to participate in their service programs and for supervising and documenting the service hours that render individuals eligible for an education award, the Corporation provides each sponsor a "fixed amount grant" of $400 for each individual that participates in the Education Awards program through that sponsor. C.A. App. 1562. In actuality, "the reasonable and necessary costs inherent in carrying out the program significantly exceed the amount of assistance provided by the Corporation." *Id.* at 748, 1562; Pet. App. 12a. The statute forbids the sponsor from using the $400 grant for sectarian purposes, *ibid.*; 42 U.S.C. 12634(a); 45 C.F.R. 2540.100(b), but does not otherwise require sponsors to document their use of the administrative payment.

e. To monitor compliance directly, the Corporation conducts both random and targeted site visits each year, including annual visits to between five and ten sponsors and to thirty or more host sites. C.A. App. 754-755. If the host site is a school, the Corporation interviews individual participants and supervisors to determine "the courses taught by each participant to accumulate Ameri-

Corps service hours." *Id.* at 755-756. The Corporation also assigns program officers to supervise each sponsor, requires each sponsor to submit annual progress reports, and reviews compliance and other program operation issues with each sponsor at least monthly. *Id.* at 757.

2. a. Asserting taxpayer standing, Pet. App. 4a, petitioner filed suit seeking to enjoin the Corporation from both crediting the secular public service hours performed by individuals with religiously affiliated sponsoring organizations and providing such sponsors the $400 grant to defray their administrative expenses, *id.* at 3a. The University of Notre Dame, one of six religiously-affiliated program sponsors, intervened in the case in defense of the program.

The district court granted summary judgment to petitioner. Pet. App. 13a-55a. The court held that the Education Awards program was not neutral, for Establishment Clause purposes, because (i) the criteria used to select sponsors involve an element of "discretion[]," *id.* at 43a; (ii) participating individuals generally must choose from among pre-approved sponsors, *id.* at 45a, and (iii) the program has an "impermissible content" when the participating individual engages in instruction in a religious school, *id.* at 47a. The district court also held that *Committee for Public Education & Religious Liberty* v. *Nyquist*, 413 U.S. 756 (1973), categorically prohibits any direct payment of money to any religiously affiliated organization absent extensive monitoring procedures and account segregation to ensure that the money is used for exclusively secular purposes. Pet. App. 51a-53a. The court then enjoined the Corporation from providing both educational awards to individuals who serve as teachers in private sectarian schools and

$400 grants for administrative costs to religiously affiliated sponsoring organizations.

b. The court of appeals reversed. Pet. App. 1a-12a. The court held that the Education Awards program does not violate the Establishment Clause by failing to prohibit participants from teaching religion on their own time, and that the $400 grant was a permissible partial reimbursement for the costs of administering the program. The court determined that this Court's line of precedents "upholding programs of true private choice * * * control this case." *Id.* at 6a-7a (citing, *inter alia*, *Zelman* v. *Simmons-Harris*, 536 U.S. 639 (2002)). The court concluded that the Education Awards program qualifies as a program of private choice, because the awards are available "to a broad class of citizens," chosen without regard to religion, "the AmeriCorps program creates no incentives for participants to teach religion," Pet. App. 7a, and participants who choose to teach at religious schools "do so only as a result of their own genuine and independent choice," *ibid.* (quotation marks omitted). The court further noted that individuals "may count only the time they spend engaged in non-religious activities toward their service hours requirement." *Ibid.*[1]

[1] The court acknowledged that petitioner had submitted evidence suggesting that, since 1999, four participants might have improperly counted time spent teaching religion toward their service hours requirement, and that the government disputed that evidence. Pet. App. 10a. The court concluded, however, that, "[e]ven if we credited [petitioner's] version, it proves nothing of significance." *Ibid.* In the court's view, such *de minimis* evidence of diversion failed to establish that the program as a whole "is giving participants Education Awards for hours they spend teaching religion." *Id.* at 11a.

The court rejected petitioner's argument that the program was not neutral because the Corporation uses "discretionary" criteria in selecting grantees. Pet. App. 8a-9a. Because the discretionary criteria pertain to the secular purposes of the program, have no religious content, are neutral with respect to religion, and have not been used to favor religious organizations, as petitioner conceded (*id.* at 9a), the court of appeals could discern no reason "[w]hy, as a matter of constitutional law," the mere existence of some measure of judgment in the program ought to render the program an impermissible establishment of religion. *Id.* at 8a (citing *Bowen* v. *Kendrick*, 487 U.S. 589 (1988)).

The court of appeals also rejected petitioner's contention that an individual's decision to teach at a religious school is not a genuine and independent private choice because the government selects qualifying programs in advance. Pet. App. 9a. The court noted that the program provides manifold teaching opportunities at secular private and public schools—"only 328 of the 1608 schools employing AmeriCorps participants as teachers in 2001 were religious schools." *Id.* at 10a. The court also found no evidence that any individual who wanted to teach at a secular school had ever been compelled, by dint of a sponsor shortage, to teach at a sectarian school. The court of appeals accordingly held that an individual's choice to perform service hours in a religious setting was both genuine and independent. *Ibid.*

Finally, the court of appeals rejected petitioner's contention that the government was prohibited from partially reimbursing sponsoring programs for expenses related to administering the Education Awards program. The court noted that, in *Committee for Public Education & Religious Liberty* v. *Regan*, 444 U.S. 646

(1980), this Court had upheld a program that similarly provided "direct cash reimbursement[s]" to religious and secular private schools for performing tests mandated by state law. Pet. App. 11a (quoting *Regan*, 444 U.S. at 657). The court recognized that the AmeriCorps program did not employ the same extensive audit procedures as in *Regan*, but reasoned that "here audits would be senseless," *id*. at 11a-12a, because the "evidence showed" that the $400 payment was "much less than the actual administrative costs grantees incur per participant," *id*. at 12a.

ARGUMENT

The unanimous decision of the court of appeals upholding the challenged provisions of the AmeriCorps Education Awards program against constitutional challenge is correct and does not conflict with any decision of this Court or of another court of appeals. Accordingly, further review by this Court is not warranted.

1. a. Petitioner contends (Pet. 13-17) that the court of appeals' decision conflicts with this Court's decision in *School District of City of Grand Rapids* v. *Ball*, 473 U.S. 373 (1985). In *Ball*, this Court struck down two programs under which public school employees taught secular subjects on the grounds of pervasively sectarian schools during the school day (the "Shared Time" program) and after school (the "Community Education" program). *Id.* at 375-377. This Court held that those programs had the effect of promoting religion and unduly entangling government with religion in three respects: (i) the pervasively sectarian environment might cause public employees to indoctrinate students in religious matters; (ii) the symbolic union of church and state might convey a message of state support for religion to

the students; and (iii) the programs had the effect of financially subsidizing the students' religious education. *Id.* at 386-397.

As the court of appeals recognized (Pet. App. 6a-7a), this Court overturned "[m]uch of the reasoning in *Ball*" in *Agostini* v. *Felton*, 521 U.S. 203 (1997), as "inconsistent with our current understanding of the Establishment Clause." *Id.* at 236. In particular, *Agostini* rejected "the presumption erected in * * * *Ball* that the placement of public employees on parochial school grounds * * * constitutes a symbolic union between government and religion." *Id.* at 223. *Agostini* also discarded *Ball*'s presumption "that public employees will inculcate religion simply because they happen to be in a sectarian environment," and "abandoned the assumption that properly instructed public employees will fail to discharge their duties faithfully." *Id.* at 234.

Accordingly, petitioner's argument (Pet. 15) that the Education Awards program symbolically fuses or "blur[s]" the "religious and non-religious" by financially rewarding an individual for teaching secular subjects in a religious school classroom and by failing to disqualify the teacher if she engages in religious instruction on her own time depends upon the very "symbolic union" rationale from *Ball* that this Court expressly rejected in *Agostini*, 521 U.S. at 223. Petitioner's concerns that sponsors or individuals will improperly rely upon time engaged in religious activities to qualify an individual for an educational award (Pet. 19-20; Pet. App. 10a-11a) or that sponsors will impermissibly divert administrative reimbursements to proscribed religious activities (Pet. 21-25), likewise rest upon *Ball*'s now-rejected view that a sectarian environment might somehow cause individu-

als to fail to "to discharge their duties faithfully," *Agostini*, 521 U.S. at 234.

b. Petitioner's argument (Pet. 13) that the Education Awards program violates *Ball* because it "subsidize[s] the salaries of sectarian school teachers who engage in religious indoctrination" fundamentally misunderstands the program at hand. Individuals who participate in the AmeriCorps Education Awards program are *not* employees of the AmeriCorps program or public employees in any other sense. They do not work for AmeriCorps, they have no contract with AmeriCorps, and they receive no subsidy, stipend, or salary from AmeriCorps. Nor are they placed in a religious school by any government official. As the court of appeals stressed, the participants place themselves in the programs "only as the result of their own genuine and independent private choice." Pet. App. 7a (internal quotation marks omitted).

Petitioner's foundational assumption (Pet. 13) that AmeriCorps is somehow financing "religious indoctrination" is thus wholly misplaced. AmeriCorps offers no financial reward for teaching religion or leading students in prayer. To the contrary, the program explicitly prohibits the provision of an award for "[e]ngaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, * * * or engaging in any form of religious proselytization." 45 C.F.R. 2520.30(a)(7).

All that the Education Awards program does is decline to disqualify individuals who have performed the requisite secular work from receiving an award, just because those same individuals also engaged in religious activities on their own initiative. Furthermore, the pro-

gram prohibits individuals from crediting any time spent engaged in religious activities towards qualifying for an AmeriCorps education award, which eliminates any potential programmatic incentive to engage in those activities. 45 C.F.R. 2520.30(a).

That recognition of secular service performed in a religious setting is in no sense a governmental endorsement or inculcation of a religious message. It is simply a programmatic recognition that the value of the individual's secular contribution is not diminished or erased by the religius setting or participants' additional religious activities. And offering individuals the same post hoc financial award that all those who perform qualifying community service in a secular setting receive—a payment that the individual uses to meet her own personal educational expenses—bears little resemblance to the salary subsidies about which petitioner is concerned. Indeed, to design the program otherwise would "reserve special hostility for those who take their religion seriously, [and] who think that their religion should affect the whole of their lives." *Mitchell* v. *Helms*, 530 U.S. 793, 827-828 (2000) (plurality opinion).

As the court of appeals recognized (Pet. App. 7a-10a), this Court has made clear in a line of cases that such true private choice programs do not violate the Establishment Clause. In *Zelman* v. *Simmons-Harris*, 536 U.S. 639 (2002), for example, this Court held that, when a government program is neutral toward religion and "provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice," the Establishment Clause is not violated. *Id.* at 652; see *id.* at 653 ("We have never found a program of true private choice to offend the Establish-

ment Clause."; recounting precedents). The Education Awards program, under which no public employee teaches any subject in a religious school and in which the federal educational award is for the sole use of the individual and never even indirectly, let alone directly, is paid over to the religious school, is a quintessential "true private choice program," *id.* at 653, and, if anything, has even less Establishment Clause implications than the tuition vouchers upheld in *Zelman*. See Pet. App. 7a, 9a-10a.

Petitioner further errs in arguing (Pet. 16-17) that a reasonable observer would perceive the Education Awards program as a governmental endorsement of the individual's religious activities. "[T]he reasonable observer in the endorsement inquiry must be deemed to be aware of the history and context underlying a challenged program." *Zelman*, 536 U.S. at 658 (internal quotation marks omitted). Here, because the individual teaches religious, as well as secular, subjects as an employee of the religious school, and not as an employee, contractor, or any other type of formal affiliate of the AmeriCorps program, there is no plausible basis for perceiving governmental endorsement of the religious message simply by virtue of the government's post hoc provision of a personal educational award for documented secular service to an individual who happens to have made a separate and independent choice to engage in religious instruction on her own time.

Indeed, the court of appeals' rejection of that same argument (Pet. App. 7a-8a) was a direct application of *Zelman*, in which this Court held that "no reasonable observer would think a neutral program of private choice, where state aid reaches religious schools solely as a result of the numerous independent decisions of

private individuals, carries with it the *imprimatur* of government endorsement." 536 U.S. at 655. While petitioner is correct (Pet. 16-17) that participants rather than students choose where their qualifying public service will be performed, that is no different than *Zelman*, where the direction of tuition aid likewise turned upon the decisions of adults rather than the students, see 536 U.S. at 646. That intervention of private choice, moreover, stands in sharp contrast to *Ball*, where governmental aid ran to the schools directly and exclusively as a result of the decisions of government officials. 473 U.S. at 377.

Finally, petitioner's contention (Pet. 18) that *Zelman* does not apply because a governmental program can qualify as a program of true private choice only if it utilizes "fixed, mechanical criteria" is without merit. This Court has already upheld as neutral programs of true private choice government aid programs with selection criteria necessitating a degree of subjective judgment. See, *e.g.*, *Zelman*, 536 U.S. at 645 (qualifying schools cannot "advocate or foster unlawful behavior or teach hatred of any person or group on the basis of race, ethnicity, national origin, or religion"); *Mitchell*, 530 U.S. at 846 (O'Connor, J., concurring) (providing funds to local educational agencies for "'innovative assistance programs' designed to improve student achievement"); *Witters* v. *Washington Dep't of Servs. for the Blind*, 474 U.S. 481, 483 n.2 (1986) (beneficiary must "reasonably be expected to benefit from vocational rehabilitation services in terms of employability").

Furthermore, nothing in the record establishes that the types of discretionary judgments permitted in identifying sponsors and programs are a facade for constitutionally proscribed discrimination. To the contrary, pe-

titioner "conceded at oral argument that there was no evidentiary support" for the proposition that "the Corporation had used its discretionary authority to favor religious organizations." Pet. App. 9a.[2]

2. Petitioner seeks (Pet. 17-18) this Court's review to resolve a purported "split of authority" between the decision below and the decisions of two other courts of appeals concerning whether a government program that employs discretionary selection criteria can qualify as a program of private choice for Establishment Clause purposes. There is no such conflict. In fact, the only other court of appeals' decision of which we are aware that directly addresses the issue has held—consistent with the court of appeals' decision here—that a true program

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[2] Petitioner complains (Pet. 19-20) that the court of appeals incorrectly placed the burden on it to show that the government was discriminating in favor of religion. But it is petitioner who, as the plaintiff, leveled a challenge to the constitutionality of federal law and to government officials' presumptively lawful administration of that law, *National Archives & Records Admin.* v. *Favish*, 541 U.S. 157, 174 (2004); *Mitchell*, 530 U.S. at 863-864 (2000) (O'Connor, J., concurring), and it is thus petitioner who bears the burden of demonstrating that the program, facially or as applied, violates the Establishment Clause. See *Schaffer* v. *Weast*, 126 S. Ct. 528, 534 (2005). Moreover, the Corporation introduced substantial evidence showing that the overwhelming majority of program sponsors are secular, as are the vast majority of service opportunities. See Pet. App. 10a. Nothing in law or logic required the government at that juncture to go further and disprove petitioner's unsubstantiated allegations that, in practice, its facially neutral selection criteria are employed to favor religion. Petitioner's observation (Pet. 21) that the six current, religiously affiliated sponsors represent Christian denominations is not enough, for not even petitioner suggests that the Education Awards program reflects some sort of impermissible denominational preference. Indeed, there is no evidence that any otherwise qualified non-Christian organization applied unsuccessfully to be a program sponsor.

of private choice may permissibly use discretionary criteria that are neutral toward religion. See *Freedom From Religion Found., Inc.* v. *McCallum*, 324 F.3d 880, 881-884 (7th Cir. 2003).

Petitioner's own description of *Eulitt* v. *Maine Department of Education*, 386 F.3d 344 (1st Cir. 2004), as simply raising in a footnote a "question[]" (Pet. 18) about the use of discretionary criteria confesses the absence of any genuine conflict posed by that decision. Indeed, *Eulitt* addressed only an Equal Protection Clause challenge to a state statute that authorized public funding of tuition for private secular schools, but not for private religious schools. 386 F.3d at 346. The First Circuit noted, in the course of its decision, that Maine's tuition voucher program differed from *Zelman*, in part because the Maine program required an "individualized assessment of educational benefit." *Id*. at 349 & n.1. But the court did not suggest, let alone hold, that the existence of such discretion was dispositive, or that the Establishment Clause otherwise forbids the use of any criteria that require non-mechanical application.

Petitioner's reliance (Pet. 17-18) on *Stark* v. *St. Cloud State University*, 802 F.2d 1046 (8th Cir. 1986), fares no better. In that case, the Eighth Circuit invalidated a program under which students at a state university earned school credit for teaching at any religious or secular school approved by the university. *Id*. at 1047. Relying on *Ball*, the Eighth Circuit held that, by permitting even indirect aid to religious schools, the program created a "symbolic link between the state and the church" and a "significant danger" that participants would, "intentionally or inadvertently, inject religious tenets into their teaching." *Id*. at 1051-1052.

This Court's decision in *Agostini* definitively rejected both of the grounds on which the 19-year-old *Stark* decision rests. See 521 U.S. at 223, 234. The Eighth Circuit has not applied *Stark*'s Establishment Clause analysis since *Agostini*, and this Court's intervening Establishment Clause precedents would foreclose doing so. See *Stark* v. *Independent Sch. Dist., No. 640*, 123 F.3d 1068 (8th Cir. 1997) (adhering to *Agostini*, and refusing to follow *Ball*, in case upholding the creation and operation of a public school that, while open to all students, also accommodated the needs of a particular religious group), cert. denied, 523 U.S. 1094 (1998).

3. Finally, petitioner seeks (Pet. 21-25) this Court's review of the court of appeals' ruling upholding the Corporation's practice of allowing religious sponsors to receive the identical $400-per-participant reimbursement for administrative expenses that the program affords to all other program sponsors. As the court of appeals recognized (Pet. App. 11a), in *Committee for Public Education & Religious Liberty* v. *Regan*, 444 U.S. 646 (1980), this Court held that the government may allow religious entities to receive "direct cash reimbursement[s]" on the same terms as secular institutions for administrative expenses that they incur as a result of a secular governmental program. *Id.* at 657. There is no dispute that the Education Awards program imposes administrative requirements on program sponsors, such as "train[ing] participants, provid[ing] them with adequate supervision by qualified supervisors, keep[ing] various records, and mak[ing] regular reports to [the Corporation]." Pet. App. 11a. Furthermore, the court of appeals concluded (*id.* at 12a) that the $400 reimbursement allotted by the Corporation "is much less than the actual administrative costs" that sponsors incur for each individual participat-

ing in the Education Awards program, and petitioner presented no evidence to the contrary.

Instead, petitioner's principal argument is that such payments must be accompanied by "extensive reporting and auditing requirements" (Pet. 24). The court of appeals properly rejected that argument as "senseless" (Pet. App. 12a), given that the administrative costs actually incurred consistently exhaust the reimbursement amount, leaving nothing to be diverted. Given the small amount of money at issue (especially relative to the size of the administrative expenses it reimburses), and that access to that money depends upon the intervening and unfettered decisions of private individuals, the monthly interactions between AmeriCorps monitors and sponsors, as supplemented by annual inspections, see C.A. App. 754-757, are more than sufficient to eliminate any constitutionally cognizable risk that the money will be misused.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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