

No.

IN THE
Supreme Court of the United States

JOHN WOOLARD, ET AL.,

Petitioners,

v.

TONY THURMOND, ET AL.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

KELLY J. SHACKELFORD
JEFFREY C. MATEER
HIRAM S. SASSER, III
DAVID J. HACKER
KAYLA A. TONEY
FIRST LIBERTY INSTITUTE
2001 West Plano Parkway
Suite 1600
Plano, Texas 75075

NICOLE BRONNIMANN
KING & SPALDING LLP
1100 Louisiana, Suite 4100
Houston, Texas 77002

SETH I. EUSTER
KING & SPALDING LLP
1180 Peachtree Street, NE
Suite 1600
Atlanta, Georgia 30309

ALLYSON N. HO
Counsel of Record
JED GREENBERG
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201

JUDSON O. LITTLETON
BRANDON C. WOLF
LAVI M. BEN DOR
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036

BLAKE J. HIRST
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071

Counsel for Petitioners

QUESTION PRESENTED

California funds independent-study programs in which parents teach their children in their homes using curricula and materials the parents select. Charter-school employees simply approve parent-directed purchases and periodically review student work for adherence to state academic standards.

The charter schools here denied parents funding and academic credit for curricula and materials even though they satisfied the State's academic standards, solely because officials deemed them "religious."

The Ninth Circuit approved this discrimination by holding that parents teaching their children in their own homes using curricula and materials they selected are conducting a "public school program" to which the First Amendment's prohibition against religious discrimination doesn't apply.

The question presented is:

Whether a State that chooses to recognize and fund homeschooling using parents' chosen curricula may deny recognition and funding to parents who desire to use faith-based curricula or materials to teach their children at home, solely because the State deems those materials religious?

**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

1. Petitioners John Woolard, Breanna Woolard, Hector Gonzales, Diana Gonzales, and Carrie Dodson were Plaintiffs-Appellants below.

Respondents Tony Thurmond, Michael Coleman, Kristin Blanco, Barry Lindaman, Breann Morse, Ted Destrampe, Rene Adamo, Melissa Bassanelli, Zima Creason, Pam Costa, Saul Hernandez, Ben Avey, Paula Villescaz, Tanya Kravchuk, Blue Ridge Academy, Samantha Haynes, Jessie Maron, Visions in Education Charter School, Brian Albright, Steve Olmos, Jennifer Morrison, Micah Studer, Mark Holman, and Lisa Sophos were Defendants-Appellees below.

2. Petitioners are individuals.

STATEMENT OF RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are directly related to this case:

- *Woolard v. Thurmond*, No. 24-4291 (9th Cir.) (judgment entered September 11, 2025; rehearing en banc denied March 23, 2026; amended judgment entered March 23, 2026);
- *Woolard v. Thurmond*, No. 2:23-cv-02305 (E.D. Cal.) (judgment entered June 10, 2024).

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PETITION FOR A WRIT OF CERTIORARI

John Woolard, Breanna Woolard, Hector Gonzales, Diana Gonzales, and Carrie Dodson, on their own behalf and on behalf of their minor children, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The amended opinion of the court of appeals and the order from the court denying rehearing en banc are reported at 170 F.4th 701 and reproduced at App. 1a-48a. The district court's opinion is available at 2024 WL 3010899 and reproduced at App. 65a-78a.

JURISDICTION

The court of appeals entered judgment on September 11, 2025, and entered an amended judgment and order denying a timely petition for rehearing en banc on March 23, 2026. On May 20, 2026, Justice Kagan extended the time to file this petition through August 20, 2026. No. 25A1287. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT

One might think it would go without saying that parents teaching their children around the kitchen table aren't running "public school programs." But that is precisely what the Ninth Circuit concluded in the decision below. It held that the State of California is free to exclude families who wish to provide faith-based homeschooling to their children from benefits the State offers other families without offending the First Amendment because the homeschool programs are actually "public schools." As five judges explained in dissenting from denial of rehearing en banc, that incoherent conclusion doesn't just defy common sense—it flouts this Court's repeated admonitions that the Free Exercise Clause doesn't allow government to exclude religious families from benefits offered to the rest of the public. App. 21a-22a, 28a-31a (Bumatay, J., dissenting from denial of rehearing en banc).

California law allows parents to enroll their children in independent-study programs, which can be run through privately operated charter schools that operate under the auspices of the public school system. In these programs, parents select the curricula, books, supplies, and services for educating their children at home—and California provides the funds. School employees also provide periodic oversight to ensure students meet state academic standards. But the parents choose the curriculum. The parents teach it. And the parents tailor it to the needs of their children.

California welcomes those parents' private choices—unless the choice involves anything the State

deems “religion.” The charter schools overseeing petitioners’ independent-study programs rejected the use of works by William Penn and Jonathan Edwards because of their “religious content.” 3 C.A. E.R. 483. They rejected a grammar exercise using the sentence “God sends the rain to help plants grow” because the school “can’t accept any work sample with any religious wording on it.” *Id.* at 485-86, 516. And despite acknowledging that one mother’s chosen curriculum “sounds amazing,” a school nonetheless refused to award credit for any work originating from that curriculum solely because the State deemed the publisher religious—and ultimately expelled her son. *Id.* at 487-89.

This Court’s precedents should have made this an easy case. While a State isn’t obligated to fund education outside its public schools, once it chooses to do so, it can’t exclude religious education from that benefit. *Carson v. Makin*, 596 U.S. 767, 780-81, 785 (2022); *Espinoza v. Montana Department of Revenue*, 591 U.S. 464, 475-76 (2020); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017). What’s more, this Court has recently reaffirmed that “[t]he practice of educating one’s children in one’s religious beliefs * * * receives a generous measure of protection from our Constitution.” *Mahmoud v. Taylor*, 606 U.S. 522, 547 (2025). California’s policy singles out parents who wish to give their children a faith-based education and excludes them from homeschooling benefits and support extended to other California families. That’s an open-and-shut Free Exercise violation.

Yet the Ninth Circuit upheld the policy. It avoided the glaring First Amendment problems (and defied

common sense) by holding that, in fact, a homeschool is actually a public school. The district court deemed it a “public homeschool.” App. 75a. Apparently unwilling to embrace that oxymoron, the Ninth Circuit initially went with “sufficiently public.” App. 59a, 62a. Then, after petitioners sought rehearing, the panel walked *that* back and just called the programs “public school programs.” App. 18a. The label kept changing, but the underlying constitutional violation did not.

That’s the same move this Court rebuffed in *Carson* when Maine attempted to justify excluding religion by redefining tuition assistance as the “rough equivalent” of public education. 596 U.S. at 782, 784–85. California likewise can’t redefine a parent’s home instruction as a public school and thereby dodge the Free Exercise Clause. As Judge Bumatay’s dissent from denial of rehearing en banc explained, the mere fact that the State imposes some requirements and limited oversight on independent-study programs “doesn’t transform parents teaching their children around the kitchen table with textbooks they choose into agents of the State providing ‘public school’ education.” App. 29a (Bumatay, J., dissenting from denial of rehearing en banc).

But the Ninth Circuit didn’t just disregard *Carson*. It turned that decision on its head by invoking *Carson* in *support* of its holding that homeschool is public school and thus in its view a permissible religion-free zone. But nothing in *Carson*’s discussion of the differences between public and private schools in *rejecting* Maine’s relabeling argument purported to adopt a test for courts to determine whether private schools—much less *homeschools*—are actually public

schools. Here again, as Judge Bumatay explained, the Ninth Circuit “fundamentally misunderstands *Carson’s* point,” and could muster only “the flimsiest grounds” to support a conclusion that “California’s homeschool programs” are in fact “public school programs.” App. 28a-29a (Bumatay, J., dissenting from denial of rehearing en banc). Even if the court were right to view homeschool as “public school,” that still wouldn’t justify forgoing all free-exercise scrutiny. This Court has made clear that the First Amendment “follow[s] * * * children into the public school classroom.” *Mahmoud*, 606 U.S. at 547.

The Ninth Circuit’s gross misunderstanding of this Court’s precedents warrants review. The severity of the decision’s departure from First Amendment principles is reason enough to grant review. But the decision also conflicts with decisions of other courts of appeals that have rightly refused to give short shrift to the Free Exercise Clause. In the wake of *Espinoza*, the Second Circuit held that the Free Exercise Clause shielded a student from being excluded from an education program solely because she attended a religious school. *A.H. ex rel. Hester v. French*, 985 F.3d 165, 182-84 (2d Cir. 2021). Even before *Espinoza*, the Sixth and Tenth Circuits rejected similar attempts to exclude the religious from generally available benefits. Those decisions cannot be reconciled with the Ninth Circuit’s below. If anything, Free Exercise Clause protections should apply even more strongly when parents teach their children in their own homes.

The issue is exceptionally important. The two programs here alone serve more than 15,000 students. California’s state-sanctioned discrimination falls

hardest on families most in need of educational alternatives—families of limited means, those who have children with disabilities, those with children escaping bullying, those who belong to minority faiths, and military families moving from place to place. The decision below creates a dangerous playbook for denying public benefits to religious people—find a way to spin the benefit as “public” and avoid First Amendment scrutiny altogether.

As three Members of this Court recently warned, the Ninth Circuit has “significantly misunderstood” this Court’s Free Exercise precedents and needs a “general course correction.” *Mirabelli v. Bonta*, 607 U.S. 492, 501 (2026) (Barrett, J., concurring). The decision below provides a much-needed opportunity to do just that and ensure that parents who most need educational alternatives for their children aren’t impermissibly denied those opportunities in violation of the Constitution’s religious liberty guarantees.

1. For more than three decades, California has allowed parents to secure education for their children outside of “the existing school district structure.” Cal. Educ. Code § 47601. Promoting alternative approaches, the State recognized, can help “[i]ncrease learning opportunities for all pupils,” “[e]ncourage the use of different and innovative teaching methods,” “stimulate continual improvements in all public schools,” and “[p]rovide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.” *Ibid.* In keeping with these purposes, the State has authorized the establishment of charter schools that are publicly funded but run by private individuals

or entities. See *Wells v. One2One Learning Foundation*, 39 Cal. 4th 1164, 1178 (2006).

For even longer, California has authorized independent study as an “alternative to classroom instruction” for students enrolled in either traditional public schools or charter schools “to meet the[ir] educational needs.” Cal. Educ. Code § 51745(a); Cal. Code Regs. tit. 5, § 11700(c); see *Anderson Union High School District v. Shasta Secondary Home School*, 4 Cal. App. 5th 262, 271 (2016). In these independent-study programs, students “receive instruction in their homes, and the direct educators are their parents.” App. 18a. Parents who want to enroll their children in independent study enter into an agreement with the charter school that specifies “[t]he objectives and methods of study” for their child’s work and “the methods used to evaluate that work.” Cal. Educ. Code § 51747(g)(2); see also Cal. Code Regs. tit. 5, § 11702.

The independent-study route affords parents “great flexibility” to select among “pre-existing curricula” or “create their own.” App. 18a. Schools “assist parents by paying for educational materials and services the parents select,” consistent with California’s goal of providing “services and resources to enable pupils to complete their independent study successfully.” App. 20a (Bumatay, J., dissenting from denial of rehearing en banc); Cal. Educ. Code §§ 51746, 51747(g)(3); see Cal. Code Regs. tit. 5, §§ 11700(i), 11701.5. The State’s role is limited to ensuring that the independent-study programs comply with state educational standards. Credentialed teachers meet with parents “to provide guidance, approv[e] expenditures of state funds, and revie[w] work samples for

quality, completion, and mastery of California educational standards.” App. 20a (Bumatay, J., dissenting from denial of rehearing en banc) (citing Cal. Educ. Code §§ 51746, 51747(g)(3), 51747.5(a); Cal. Code Regs. tit. 5, § 11700(i)). But they play no role in selecting the curriculum or teaching it. That, by design, is the parents’ role.

This case involves independent-study programs administered by Blue Ridge Academy and Visions in Education, two tuition-free charter schools serving families across nearly a dozen California counties. App. 10a-11a. The programs are built on parental choice. Visions describes its Home School Academy as offering “curriculum and instructional support to parent educators who choose to homeschool their children.” 3 C.A. E.R. 370. Parents select the curriculum and educate their children in their own homes. App. 71a-72a. Visions gives each family an instructional budget that parents direct to curriculum, materials, and services of their choice. *Ibid.* It identifies the parent or guardian as the student’s “[p]rimary educator.” 3 C.A. E.R. 374.

Blue Ridge takes a similar approach. Its “home-school model” is designed to provide “flexibility” and can be “tailor[ed] to ‘each student’s individualized learning style.’” App. 20a (Bumatay, J., dissenting from denial of rehearing en banc). Parents direct state funds to books, supplies, technology, field trips, and other learning resources they select. App. 72a-73a; 3 C.A. E.R. 479, 511-12. Parents teach their children at home using materials they’ve chosen. 3 C.A. E.R. 479-80.

Charter-school employees provide oversight of the independent-study programs and offer support to parents. Blue Ridge families meet with a credentialed “Homeschool Teacher” about every 20 school days. 3 C.A. E.R. 479-80, 509. The employee reviews attendance records and work samples and answers questions. *Ibid.* Visions employees likewise review proposed expenditures and samples of student work for completion and mastery of state standards. *Id.* at 481.

2. Petitioners are three devout Christian families who participate—or participated—in those programs. App. 10a-11a. John and Breanna Woolard homeschool their daughter through Blue Ridge. *Ibid.* Their two school-aged sons previously participated in homeschooling through Blue Ridge. See 3 C.A. E.R. 474, 476, 482. Diana Gonzales and her husband Hector are guardians of two school-aged grandchildren who are enrolled at Blue Ridge. App. 11a; 3 C.A. E.R. 476, 482. Carrie Dodson, a widowed mother, enrolled her son in Visions. App. 11a; 3 C.A. E.R. 477.

These families are all called by their Christian faith to ensure that their children are educated consistent with that faith and brought up in the family’s religious worldview. 3 C.A. E.R. 474, 482, 486. They share that religious commitment to faith-based education with “many Christians, Jews, Muslims, and others,” for whom “the religious education of children is not merely a preferred practice but rather a religious obligation.” *Mahmoud*, 606 U.S. at 547. Indeed, “[f]or many people of faith” like petitioners, “there are few religious acts more important than the religious education of their children.” *Ibid.* Petitioners believed that the independent-study programs at Blue Ridge

and Visions gave them a way to meet their children’s individual academic needs while adhering to the tenets of their faiths.

But California has refused to honor petitioners’ desire to instill their faith in their children as part of their independent-study programs. The California Constitution provides that “sectarian or denominational doctrine” may not “be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.” Cal. Const. art. IX, § 8. The California Education Code also requires charter-school programs to be “nonsectarian.” Cal. Educ. Code § 47605(e)(1). Those laws have a “shameful pedigree”—many states enacted these no-aid provisions (called Blaine Amendments) in their state constitutions in the 19th century as part of a movement “born of bigotry” against Catholics. *Espinoza*, 591 U.S. at 482 (citation omitted).

Blue Ridge and Visions invoked those provisions as requiring categorical bans on any materials deemed “religious” in the independent-study programs. Blue Ridge’s handbook says that “[a]ll orders” by parents of state-funded educational materials and services “must be secular.” 3 C.A. E.R. 512. Citing that policy, school officials told the Woolard and Gonzales families that they couldn’t use the funding to purchase—or include in their approved curriculum—“any curriculum products, classes, etc.” that “contain religious content,” are “faith-based,” or are “non-secular in nature.” *Id.* at 483-85. Visions likewise told Ms. Dodson that it couldn’t “approve or consider work from a faith-based curriculum,” and couldn’t approve the use of any “religious materials to complete independent study

assignments,” even when Ms. Dodson selected and paid out of pocket for the curriculum. *Id.* at 487-88.

The bans don’t turn on academic quality. The schools never claimed that any of petitioners’ “chosen academic materials [didn’t meet] California’s educational standards.” App. 23a-24a (Bumatay, J., dissenting from denial of rehearing en banc). The Woolards sought to use materials by William Penn and Jonathan Edwards for a unit on colonial America. Blue Ridge rejected them solely because of their “religious content.” 3 C.A. E.R. 483. Later the Woolards were told that while the “[a]cademics” of another proposed curriculum were “fine,” its “religious aspect” meant it couldn’t be used. *Id.* at 483-84.

The Gonzales family submitted a grammar exercise containing the sentence “God sends the rain to help plants grow.” 3 C.A. E.R. 516. Blue Ridge refused to give credit for the work because the program “can’t accept any work sample with any religious wording on it.” *Id.* at 485-86. The school also refused to allow the Gonzales family to use an economics textbook that discussed St. Thomas Aquinas alongside John Stuart Mill and Karl Marx on the basis that it “contains a Biblical worldview.” *Ibid.*

Ms. Dodson purchased a faith-based curriculum with her own money. 3 C.A. E.R. 487, 491-92. A school employee told her that the curriculum “sounds amazing,” but Visions wouldn’t approve or credit work from any faith-based curriculum. *Id.* at 487. Visions rejected a math worksheet—even though it contained no religious language—because it came from a religious publisher. *Id.* at 488, 518. The school went on to deny

credit for nearly all her son’s submitted work based on those materials—and although school administrators identified no academic deficiency in his work, they ultimately expelled him. *Id.* at 488-89.

These programs impose no comparable restrictions on secular viewpoints. Blue Ridge’s categorical rule is simply that school materials “must be secular.” 3 C.A. E.R. 512. So parents have broad flexibility to choose among secular materials and approaches. *Id.* at 481, 506, 508, 512. But a religious viewpoint—or even just religious content or a publisher deemed religious—disqualifies an otherwise acceptable book, assignment, or course. *Id.* at 483, 485-89, 516, 518. At bottom, “parents maintain wide latitude to decide what’s best for their children’s education—unless they choose a faith-based education.” App. 21a (Bumatay, J., dissenting from denial of rehearing en banc).

3. Petitioners brought this § 1983 suit against Blue Ridge, Visions, and various state and local school officials. They alleged that California’s categorical exclusion of faith-based curricula violates the Free Exercise and Free Speech Clauses and sought declaratory and injunctive relief and nominal damages. App. 66a.

The district court dismissed the suit. The court held that although the charter schools singled out “non-secular (religious) materials” and assignments for unfavorable treatment, that wasn’t a Free Exercise violation because the programs were “public home-school[s]” and could impose nonsectarian requirements without “burden[ing] [petitioners’] practice of religion.” App. 66a, 75a-77a. The court similarly rejected the Free Speech claim, describing the teaching

that petitioners provided to their children at home as “government speech.” App. 76a.

4. A Ninth Circuit panel affirmed. The panel acknowledged that, as part of the independent-study programs, parents teach their children at home and have “great flexibility” to select or create curricula. App. 62a. But it held that the programs were “sufficiently public to allow California to condition participation on parents’ use of secular curricula.” App. 59a-60a. Because the First Amendment allows States “to provide a ‘strictly secular’ public education,” the panel reasoned, the independent-study programs triggered no free-exercise scrutiny. *Ibid.* (quoting *Carson*, 596 U.S. at 785). As support for its determination that the programs were “sufficiently public,” the panel noted that they were free, open to all students subject to capacity, regulated by state standards, and supervised by credentialed teachers. App. 60a-62a. The panel rejected the Free Speech claim based on similar logic, holding that the parent-driven curricula were “an ‘expression of [the charter schools’] policy’” and thus government speech unprotected by the First Amendment. App. 63a-64a.

5. After petitioners sought rehearing en banc, the panel amended its opinion. The amended opinion deleted the phrase “sufficiently public” and instead held that the independent-study programs have the “critical features” of “public schools,” which “defeat[s] [the] free exercise claim.” App. 8a, 15a-18a. The government-speech holding remained unchanged. App. 18a-19a.

The full court denied rehearing en banc over the dissenting votes of five judges. App. 20a-31a. Judge Bumatay, joined by Judges R. Nelson, Collins, VanDyke, and Tung, wrote that the “profoundly wrong” panel decision had “condone[d] th[e] unequal treatment of religious families” in contravention of “a wall of Supreme Court authority.” App. 21a-22a. Under those precedents, Judge Bumatay explained, “once [California] decides to offer parents financial assistance for education that the parents conduct,” it can’t “disqualif[y]” parents “solely because they are religious.” App. 25a-26a (quoting *Espinoza*, 591 U.S. at 487).

Judge Bumatay went on to reject the panel’s attempt to use “made-up labels to escape the free exercise guarantee.” App. 30a. Calling the independent-study programs “public” based on the limited role played by charter-school employees “doesn’t transform parents teaching their children around the kitchen table with textbooks they choose into agents of the State providing ‘public school’ education.” App. 22a, 29a-30a. Judge Bumatay warned that the panel’s decision would have a “disturbing impact” “[g]oing forward,” giving “carte blanche” to state officials to exclude religious people from “pretty much anything” by labeling it “public.” App. 30a-31a.

Judge VanDyke, joined by Judges Bumatay and Tung, also filed a dissent from denial of rehearing en banc. App. 31a-48a. In Judge VanDyke’s view, California’s prohibition on “sectarian” education unconstitutionally “discriminate[s] *between* competing religious beliefs” by “allow[ing] the teaching of nonsectarian, generic Christian doctrine in public schools, but not the

teaching of any sectarian doctrine” unique to specific Christian denominations or to non-Christian faiths. App. 33a-34a. Judge VanDyke concluded that “facially discriminatory Blaine Amendments like California’s” violate the First Amendment several times over and should be left “on the ash heap of constitutional history.” App. 48a.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Conflicts With This Court’s Precedent.

Under a proper application of this Court’s precedent, “[t]his should have been an easy case.” App. 31a (Bumatay, J., dissenting from denial of rehearing en banc). California authorizes and offers parents financial support to teach their children at home, but denies that authorization and funding solely for curricula, materials, and anything else the State deems religious, faith-based, or sectarian. Under *Trinity Lutheran*, *Espinoza*, and *Carson*, that discrimination against religion is an open-and-shut Free Exercise Clause violation.

To avoid that straightforward conclusion, the Ninth Circuit claimed that under *Carson*, these home-school programs are public schools to which the Free Exercise Clause doesn’t apply. That conclusion defies this Court’s precedent and common sense.

A. A State Can’t Exclude Religious Parents From A Benefit They Would Otherwise Receive But For Their Religion.

California “condition[s] participation in the home-school program on disavowing a faith-based

curriculum”—it provides funds for and authorizes the use of curricular materials for independent-study programs, but only if they’re “secular.” App. 25a (Bumattay, J., dissenting from denial of rehearing en banc). That “discrimination against religion” violates the First Amendment. *Carson*, 596 U.S. at 781.

This Court has “repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Carson*, 596 U.S. at 778. The Court made that “unremarkable” principle crystal clear in a trio of cases in the past decade. *Trinity Lutheran*, 582 U.S. at 462.

First, in *Trinity Lutheran*, the Court held unconstitutional a Missouri program that offered grants to nonprofits for upgrading playgrounds but denied those grants to religious entities. 582 U.S. at 454-55. To “disqualif[y]” otherwise eligible funding recipients “from a public benefit solely because of their religious character,” the Court explained, is to “impose[] a penalty on the free exercise of religion that triggers the most exacting scrutiny.” *Id.* at 462.

Second, in *Espinoza*, the Court applied that rule to a Montana program that provided tax credits to donors who sponsored private-school scholarships. 591 U.S. at 468-69. The Montana Supreme Court invalidated the program based on its determination that the state constitution’s nonsectarian requirement barred extending that benefit to religious schools. *Id.* at 469-72. This Court again reversed. It held that Montana couldn’t refuse to provide a public benefit (the tax credits) for use at certain schools “solely because of

the[ir] religious character” without overcoming strict scrutiny. *Id.* at 476-79.

Third, the Court held in *Carson* that Maine couldn’t simultaneously offer tuition-assistance payments to parents sending their children to public or private secondary schools but then deny that assistance to parents who wanted to use the payments for private religious schools. 596 U.S. at 771-73. The Court clarified that a State runs afoul of the Free Exercise Clause whether it discriminates based on the “religious status” of the aid recipients or “religious uses of government aid.” *Id.* at 786-89. The Court rejected Maine’s attempt to immunize its discriminatory program by claiming that it was only seeking to provide the “rough equivalent of” public school. *Id.* at 782.

These three cases establish one simple rule. Once a State subsidizes education outside the walls of its public schools, it can’t disqualify an otherwise-eligible choice because the State deems it religious. *Carson*, 596 U.S. at 785. “Yet this discrimination is exactly what happens with California’s homeschool program.” App. 25a (Bumatay, J., dissenting from denial of rehearing en banc). California authorizes and pays for secular curricula but not curricula that have religious content or are published by a religious publisher. It accepts secular work samples but rejects religious ones. It allows an otherwise-acceptable course unless the course is faith-based. In the schools’ own words, all orders “must be secular,” and no “faith-based curriculum” will be considered for instruction or attendance. 3 C.A. E.R. 487, 512. That is patent “discrimination against religion.” *Carson*, 596 U.S. at 781.

What’s more, this Court recently removed any doubt that the Free Exercise Clause’s protection against religious discrimination is at its zenith when it comes to parents’ choices about their children’s education. In *Mahmoud*, the Court reaffirmed a century of decisions holding that “the right of parents ‘to direct the religious upbringing of their’ children” enjoys “a generous measure of protection from our Constitution”—protection that extends “into the public school classroom.” 606 U.S. at 547; accord, *e.g.*, *Wisconsin v. Yoder*, 406 U.S. 205, 213-14 (1972); *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 535 (1925). That right isn’t abridged only by “policies that *compel* children to depart from the religious practices of their parents,” but also by “policies that impose more subtle forms of interference with the religious upbringing of children.” *Mahmoud*, 606 U.S. at 548.

That is this case. California’s ban on faith-based independent study denies authorization, funding, and credit when parents “teach religion in the confines of [their] own home[s]”—the most obvious place where parents exercise their right to direct their children’s religious upbringing. *Mahmoud*, 606 U.S. at 547. The policy therefore carries “‘a very real threat of undermining’ the religious beliefs that the parents wish to instill in their children.” *Id.* at 553 (quoting *Yoder*, 406 U.S. at 218). Policies like these that prevent parents from “teach[ing] their religious beliefs and practices to their children at home” pose a high risk of violating the Free Exercise Clause. *Id.* at 606 n.6 (Sotomayor, J., dissenting).

California has identified no compelling interest that could justify the discrimination here. There’s no claim that the religious materials—such as works by Jonathan Edwards and William Penn—wouldn’t meet academic standards. And because “a neutral benefit program” that directs public funds to religious organizations via recipients’ “independent choices” doesn’t “offend the Establishment Clause,” California can’t rely on antiestablishment concerns to justify its treatment of petitioners. *Carson*, 596 U.S. at 781. If anything, the State’s attempt to distinguish between “sectarian” and “nonsectarian” education *heightens* Establishment Clause concerns. App. 43a-44a (VanDyke, J., dissenting from denial of rehearing en banc) (citing *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238, 254 (2025)).

California’s “nonsectarian” requirement for homeschooling runs directly contrary to this Court’s public-benefit cases and *Mahmoud*. The Ninth Circuit badly erred in failing to recognize that the policy “is odious to our Constitution * * * and cannot stand.” *Trinity Lutheran*, 582 U.S. at 466-67.

B. Free Exercise Protections Can’t Be Evaded By Labeling Homeschooling “Public School.”

The Ninth Circuit sought to evade this Court’s precedents by labeling homeschooling “public school” free from the First Amendment’s protections against discrimination. App. 15a-18a. That label also did separate work on petitioners’ Free Speech claim, leading the court to treat the parents’ curriculum choices as

the charter schools’ own speech rather than the parents’ speech. App. 18a-19a. Both holdings rested on the same flawed premise: that parents teaching their own children at home using materials they select are carrying out the State’s own educational program. That premise “defies common sense as well as established law.” App. 28a-29a (Bumatay, J., dissenting from denial of rehearing en banc).

Remarkably, the Ninth Circuit asserted that this Court’s decision in *Carson* supports its conclusion. The court began with *Carson*’s recognition that a State “may provide a strictly secular education in its public schools.” 596 U.S. at 785. But that says nothing about whether a State may discriminate against religion when it comes to educational benefits the State has chosen to extend—benefits directed by parents who select curricula and materials for teaching their children inside their own homes.

The Ninth Circuit decided to examine “whether the independent study programs have the critical features” this Court “found characteristic of public schools in *Carson*.” App. 15a. Based on the panel’s weighing of those “features,” it concluded that “[t]he extensive legal requirements applicable to” the independent-study programs “make them public school programs.” App. 16a-18a. Which meant, according to the panel, that the Free Exercise Clause doesn’t apply inside petitioners’ homes and the State was free to discriminate against religion.

All of this “fundamentally misunderstands *Carson*’s point.” App. 28a (Bumatay, J., dissenting from denial of rehearing en banc). *Carson*’s statement that

a State “may provide a strictly secular education in its public schools,” 596 U.S. at 785, referred to conventional government-owned and operated schools; it didn’t hold that an educational program becomes a public school merely because it shares some features of public schooling. *Carson* discussed some of the differences between public schools and private schools in the context of *rejecting* Maine’s argument that its tuition assistance program merely sought to deliver the “rough equivalent” of a secular public education. *Id.* at 782-83. Nothing in that analysis purported to announce a subjective, multi-factor test for shielding discrimination in providing public benefits from constitutional scrutiny.

Far from it. When Maine argued that its tuition-assistance program could discriminate against religion because it simply delivered the “rough equivalent” of public education, the Court rejected that argument in no uncertain terms because the program operated through parental choice. 596 U.S. at 782. Maine had “decided not to operate schools of its own, but instead to offer tuition assistance that parents may direct to the public or private schools of their choice.” *Id.* at 785. Once Maine made that choice, the program became subject to the rule against denying benefits based on religion. *Ibid.*

The Court also rejected the notion that discrimination against religion can be insulated from the Free Exercise Clause by creative labeling—explaining that “the definition of a particular program can always be manipulated to subsume the challenged condition.” 596 U.S. at 784 (quoting *Agency for International Development v. Alliance for Open Society International*,

Inc., 570 U.S. 205, 215 (2013)). Allowing that maneuver would impermissibly reduce constitutional scrutiny to “a simple semantic exercise.” *Ibid.* (quoting *Agency for International Development*, 570 U.S. at 215). Constitutional protection turns on substance, “not on the presence or absence of magic words.” *Id.* at 785.

The Ninth Circuit did exactly what *Carson* forbids when it accepted respondents’ argument that home-schools are public schools. Although the Ninth Circuit pulled back from the district court’s self-contradictory “public homeschool” label, it did the same thing in practice by first deeming the programs “sufficiently public” to be exempt from free-exercise scrutiny. App. 59a-60a. After petitioners sought rehearing, the panel amended its opinion to call them “public school programs.” App. 18a. But “mere labels” can’t provide an “escape” hatch from the First Amendment. *Bigelow v. Virginia*, 421 U.S. 809, 826 (1975). The labels may have changed, but the substance—who chooses the curriculum, who teaches it, where the teaching occurs—did not.

And that’s what matters. The through line from *Espinoza* to *Carson* to this case is parental choice. In the program here, parents choose the books and courses, teach and grade their own children, and do so in their own homes. See App. 28a-30a (Bumatay, J., dissenting from denial of rehearing en banc). California designed this program to leave the choice of which instructional materials to use to parents as a means of fulfilling the program’s stated goal of improving access to educational options for all families. See *supra* pp. 6-9. The curricula must satisfy “general performance

metrics,” but it’s still the parents—not the schools—who choose what curriculum to use, and their choice doesn’t have to “resemble that taught in the [California] public schools.” App. 28a-30a (Bumatay, J., dissenting from denial of rehearing en banc) (quoting *Carson*, 596 U.S. at 783).

To be sure, charter-school employees approve expenditures and periodically review work samples for compliance with state standards. App. 28a-30a (Bumatay, J., dissenting from denial of rehearing en banc). But that limited oversight doesn’t turn “parents teaching their children around the kitchen table” into “agents of the State.” App. 29a (Bumatay, J., dissenting from denial of rehearing en banc). There’s a “world of difference” between government employees using government-selected curriculum inside government-school walls and parents using parent-selected curricula to teach their own children inside their own homes. *Ibid.* No amount of relabeling can “reconceptualiz[e]” that reality. *Carson*, 596 U.S. at 785.

Even taken on its own terms, the Ninth Circuit’s reading of *Carson* falls apart. The court deemed the programs public because they are tuition-free, admit students subject to capacity, apply state standards and assessments, and operate under credentialed supervision. App. 15a-18a. But the Maine private schools in *Carson* could be fully state-funded and bore state curricular mandates; those drawing 60% or more of their students from the program also had to meet Maine’s statewide academic standards and give its annual tests. 596 U.S. at 772-73, 784. The Court still recognized they weren’t public schools. *Id.* at 785. So the

conflict between *Carson* and the decision below cannot be avoided.

The bottom line is that the Ninth Circuit’s effort to “redefin[e]” homeschool as public school threatens to “rende[r]” *Trinity Lutheran* and the cases that followed it “essentially meaningless.” *Carson*, 596 U.S. at 784-85. On top of that, the assumption that deeming homeschooling “public” obviates any need for constitutional scrutiny altogether puts the Ninth Circuit directly at odds with *Mahmoud*’s emphasis that religious-liberty protections still have force “in a public school setting.” 606 U.S. at 547.

The Ninth Circuit’s relabeling also drove the court’s equally erroneous free-speech holding, which treated parent-chosen curricula as the charter schools’ own. App. 18a-19a. That conclusion defies this Court’s repeated admonitions that “the First Amendment doubly protects religious speech,” *Kennedy v. Bremerton School District*, 597 U.S. 507, 523 (2022), and that excluding speech because it is “religious in nature” amounts to “impermissible viewpoint discrimination,” *Good News Club v. Milford Central School*, 533 U.S. 98, 110-12 (2001); accord *Lamb’s Chapel v. Center Moriches Union Free School District*, 508 U.S. 384, 393 (1993).

The Ninth Circuit managed to “greenli[ght] state discrimination against religion” several times over. App. 20a (Bumatay, J., dissenting from denial of rehearing en banc). Its misguided approach to the First

Amendment conflicts with this Court’s precedent and warrants this Court’s review.¹

II. The Decision Below Conflicts With Decisions From Other Circuits.

The Ninth Circuit’s departure from this Court’s precedent is reason enough to grant review. But the decision also makes the Ninth Circuit an outlier among the courts of appeals. Other circuits applying this Court’s precedent correctly ask a straightforward question—has government excluded an otherwise-eligible private choice on the basis of religion. The Ninth Circuit alone applies an amorphous, multi-factor test to discern whether a public benefit is sufficiently “public” to evade constitutional scrutiny altogether. That conflict is an additional reason to grant review.

Most prominently, the Second Circuit in *A.H. ex rel. Hester v. French* held unconstitutional Vermont’s Dual Enrollment Program, which paid for eligible high-school students to take college courses at schools where tuition was “publicly funded” but excluded religious schools. 985 F.3d 165, 171-72 (2d Cir. 2021). The Second Circuit held that the “public funding” requirement affected “religious school students and no others”

¹ This case presents a distinct question from *St. Mary Catholic Parish in Littleton v. Roy*, 154 F.4th 752 (10th Cir. 2025), *cert. granted*, No. 25-581 (U.S. Apr. 20, 2026). That case concerns how *Carson* applies when the government imposes a facially neutral condition on participation in a private-choice benefit program. This case, by contrast, presents the distinct question whether the government may *expressly* discriminate against religious exercise by calling parent-directed homeschooling a “public school program” free from First Amendment scrutiny altogether.

and likely violated the Free Exercise Clause for that reason. *Id.* at 183-84; see also *In re A.H.*, 999 F.3d 98, 105-06 (2d Cir. 2021) (in challenge to related Vermont program, ordering school districts to disburse funds to students attending religious schools). At no point did the court question whether the private religious schools being funded were somehow “public.”

Other courts have taken a similar approach even before this Court’s most recent cases striking down religious discrimination in public-benefit programs. In *Hartmann v. Stone*, the Sixth Circuit held that the U.S. Army couldn’t constitutionally operate an on-base daycare program that placed soldiers’ children with care providers but barred the providers from engaging in any religious practices while caring for the children. 68 F.3d 973, 975-77 (6th Cir. 1995). The Sixth Circuit held that despite the Army’s significant “regulatory oversight” of the program, the system ultimately operated “on the voluntary action of parents,” and the providers were independent actors who couldn’t be cast as “the Army’s alter egos.” *Id.* at 978-83. By interfering with the “private acts of religious conscience and practice” by the “willing famil[ies] taking care of children willingly entrusted to them,” the Sixth Circuit reasoned, the Army had violated the First Amendment. *Id.* at 984-86.

Similarly, the Tenth Circuit in *Colorado Christian University v. Weaver* held that Colorado’s exclusion of “pervasively sectarian” institutions from state scholarship programs violated the Free Exercise Clause. 534 F.3d 1245, 1250, 1261 (10th Cir. 2008). Colorado required state officials administering a scholarship program to scrutinize religious institutions’ governance,

faculty and student composition, and teaching to determine whether they were “pervasively sectarian.” *Id.* at 1250-54. The program offered scholarships to both public and private colleges, but the Tenth Circuit never asked whether the private colleges were somehow “public” institutions not subject to the First Amendment. See *id.* at 1250.

In conflict with the Ninth Circuit—which has essentially revived a zombie *Lemon* test to stalk the Free Exercise Clause—the Second, Sixth, and Tenth Circuits faithfully apply this Court’s straightforward rule that government cannot discriminate against the religious when it comes to extending public benefits that flow through private choices. Especially given the Ninth Circuit’s status as the largest and most populous circuit, this Court’s intervention is needed to restore uniformity on this important, consequential question of religious liberty.

III. The Question Presented Is Exceedingly Important And This Case Is The Ideal Vehicle For Resolving It.

The decision below has “disturbing” implications that call out for this Court’s intervention. App. 30a-31a (Bumatay, J., dissenting from denial of rehearing en banc). “If educating one’s children in the privacy of one’s own home according to one’s private choices constitutes ‘public school’ activity, then pretty much anything can qualify as a governmental program exempt from First Amendment scrutiny.” App. 30a. That will not only stifle religious liberty but also erode First Amendment freedoms across the board. The Ninth Circuit has repeatedly erred in approving state

restrictions on Free Exercise rights, and a “course correction” is warranted. App. 22a (citation omitted).

A. The practical stakes of the decision for families like petitioners are substantial. Blue Ridge and Visions alone serve more than 15,000 students across nearly a dozen counties. Brief of Liberty Justice Center et al. as Amici Curiae 5-6, *Woolard v. Thurmond*, No. 24-4291 (9th Cir. Nov. 3, 2025) (LJC Amicus Br.). More than one-third of families who homeschool their children do so to provide religious education. Brief of National Council of Young Israel as Amicus Curiae 6, *Woolard*, No. 24-4291 (9th Cir. Nov. 3, 2025) (Young Israel Amicus Br.). If permitted to stand, the decision below will force many families to choose between exercising their religion and educating their children. That’s a choice no parent should have to make—and forcing parents to make it anyway renders “the right of parents ‘to direct the religious upbringing of their’ children” nothing more than “an empty promise.” *Mahmoud*, 606 U.S. at 547.

These harms will fall most heavily on the families least able to bear them. Homeschooling can make educational alternatives accessible to low-income parents who can’t afford private-school tuition, provide safety for children escaping bullying, offer flexibility for children with disabilities, and ensure continuity for military families. LJC Amicus Br. 16-25. Excluding religion narrows the academic options available to the families least able to replace the lost benefit themselves—particularly because options like homeschooling and private school often “com[e] with a hefty price.” *Mahmoud*, 606 U.S. at 562.

For many observant families, traditional public schools can't provide the religious formation their faith requires. As Young Israel explained below, for example, public schools can't accommodate core Orthodox Jewish needs, and some Jewish communities are too small to support a Jewish school. Young Israel Amicus Br. 5-7. For these families, homeschooling may be the only practical option. *Id.* at 6-7. The same concern spans a wide range of faiths, as religious education is an obligation for Hindu, Jewish, Christian, and Muslim parents alike. Brief of Coalition for Jewish Values as Amicus Curiae 1-3, 11-13, *Woolard*, No. 24-4291 (9th Cir. Nov. 3, 2025); LJC Amicus Br. 1-4; Young Israel Amicus Br. 1-3; Brief of Association of Christian Schools International as Amicus Curiae 1-4, *Woolard*, No. 24-4291 (9th Cir. Nov. 3, 2025).

The Ninth Circuit's decision also opens the door to myriad other intrusions on individual liberty. "It seems obvious that parents don't forfeit their constitutional rights just because they choose to educate their children at home, rather than at a public school." *McMurry v. Weaver*, 142 F.4th 292, 301 (5th Cir. 2025) (Ho, J., concurring). Yet in a recent Fifth Circuit case, the government argued that "parents who choose to homeschool convert their private homes into public schools for Fourth Amendment purposes." *Ibid.* By the government's logic, "police officers can take children away from their home, and prevent their parents from communicating with them, if they're homeschooled." *Ibid.* The Fifth Circuit rejected that argument, but if courts like the Ninth Circuit manage to "justify intrusions on [such] bedrock libert[ies] based on the educational choices parents make for their

children,” the potential ripple effects are limitless. *Id.* at 303.

B. The impact of the decision below extends well beyond California’s independent-study program. The Ninth Circuit’s decision creates perverse incentives for government to “labe[l] an activity as ‘public’” and then “receiv[e] carte blanche to discriminate against the religious,” thus “flout[ing]” *Trinity Lutheran* and the cases relying on it “and resurrect[ing] the divisive purpose of the Blaine Amendment and its state-level analogues with a fury.” App. 30a-31a (Bumatay, J., dissenting from denial of rehearing en banc). If parents teaching a curriculum they choose to their children in their home can be converted into a “public school program,” then anything can be. *Ibid.* The escape hatch opened by the decision below has no apparent bottom.

The Ninth Circuit is no stranger to such “cramped reading[s]” of the Free Exercise Clause. App. 30a-31a (Bumatay, J., dissenting from denial of rehearing en banc). This Court was forced to “summarily reject” the Ninth Circuit’s analysis of California’s COVID restrictions on religious exercise” five times. *Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (per curiam). By the fifth go-around, it was “unsurprising” that relief was warranted. *Ibid.* A year later, in *Kennedy*, the Court reversed the Ninth Circuit for “failing to heed th[e Court’s] guidance” when it adopted an overly broad understanding of the Establishment Clause—and a correspondingly narrow view of the Free Exercise Clause—that was out of touch with history and tradition. 597 U.S. at 532-36.

Most recently, in *Mirabelli*, the Court vacated a Ninth Circuit stay that blocked relief for parents asserting Free Exercise rights in California schools. 607 U.S. at 496-99. Justice Barrett, joined by the Chief Justice and Justice Kavanaugh, explained that the Ninth Circuit had “significantly misunderstood” *Mahmoud* and that a “general course correction” was needed. *Id.* at 501 (Barrett, J., concurring). This case is an ideal vehicle for providing that much-needed course correction and restoring First Amendment protection against religious discrimination in programs that empower private choices.

The Free Exercise Clause doesn’t permit California to make families choose between funding and faith. The Court should grant review, reverse the decision below, and restore uniformity on this exceedingly important question of religious liberty.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

KELLY J. SHACKELFORD
JEFFREY C. MATEER
HIRAM S. SASSER, III
DAVID J. HACKER
KAYLA A. TONEY
FIRST LIBERTY INSTITUTE
2001 West Plano Parkway
Suite 1600
Plano, Texas 75075

NICOLE BRONNIMANN
KING & SPALDING LLP
1100 Louisiana, Suite 4100
Houston, Texas 77002

SETH I. EUSTER
KING & SPALDING LLP
1180 Peachtree Street, NE
Suite 1600
Atlanta, Georgia 30309

ALLYSON N. HO
Counsel of Record
JED GREENBERG
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201

JUDSON O. LITTLETON
BRANDON C. WOLF
LAVI M. BEN DOR
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036

BLAKE J. HIRST
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071

Counsel for Petitioners

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