

No. 26-237

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
U.S. Court of Appeals for the Ninth Circuit*

**BRIEF OF AMICI CURIAE
PARENTS INITIATIVE, JEWISH COALITION
FOR RELIGIOUS LIBERTY, ABRAHAM
KNOWLEDGE ACADEMY, AND COALITION OF
VIRTUE
IN SUPPORT OF PETITIONERS**

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Question Presented

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?

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Interests of the Amici Curiae¹

The PARENTS Initiative is a project of the Liberty Justice Center (LJC), a nonprofit, nonpartisan public-interest litigation firm that defends and advances individual liberties and limited, accountable government. This work includes pursuing strategic, precedent-setting litigation aimed at protecting educational freedom and parental choice. LJC frequently litigates and files amicus briefs in important cases in these areas. *See, e.g., Okla. Statewide Charter Sch. Bd. v. Drummond*, 605 U.S. 165 (2025); *Carson v. Makin*, 596 U.S. 767 (2022); *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 498 (2020) (Alito, J., concurring). In this case, LJC filed amicus briefs in support of Petitioners at both the panel stage at the U.S. Court of Appeals for the Ninth Circuit, and Petitioners' petition for rehearing en banc.

The Jewish Coalition for Religious Liberty is a non-denominational organization of Jewish communal and lay leaders, seeking to protect the ability of Americans to freely practice their faith. Since its founding, the Jewish Coalition for Religious Liberty has recruited a volunteer network of accomplished attorneys, submitted legal briefs, and written many op-eds in Jewish and general media outlets in defense of religious liberty.

¹ Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amici funded its preparation or submission. Counsel for both Petitioners and Respondents received notice more than ten days before its filing that Amici intended to file this brief.

The Abraham Knowledge Academy (“AKA”) is a non-profit association in the process of creating a charter school in the Minneapolis, Minnesota, metropolitan area. AKA sought to create the first Islamic charter school in Minnesota, committed to enhancing pupil learning and student achievement by integrating a knowledge-based curriculum with the teachings and values of Islam, with an emphasis on ethics and good citizenship. Because Minnesota prohibits religious schools from participating in the charter school program, AKA is focused on establishing a school offering academic excellence with religion taught from a purely academic standpoint.

The Coalition of Virtue is a domestic policy organization that advocates for the Muslim community’s traditional family values in furtherance of the common good. Coalition of Virtue promotes virtue in society, grounded in the Islamic tradition, in cooperation with those who share its moral vision. It envisions an America where families have a say in their children’s education and equal opportunities available to all, and advocates for policies that safeguard the rights of parents.

Introduction and Summary of Argument

The First Amendment does not permit the government to open an education benefit to everyone except families who want to practice their religious faith. Yet, that is exactly what the Ninth Circuit has allowed California to do when it excludes religious curriculum from its charter-supported homeschooling program.

The Woolard, Gonzales, and Dodson families enrolled their children in tuition-free charter schools which allowed them to educate their children at home. But the families were told their chosen curriculum had to be entirely secular. Reading materials and worksheets were rejected for funding or grading because of their religious features, content, wording, or even their publisher. Pet. for Cert. 10–11.

Their petition for a writ of certiorari should be granted for three primary reasons in addition to those the Petitioners offer:

First, because the Ninth Circuit’s decision creates a conflict of authority with this Court’s free exercise precedents. This Court has repeatedly held that when a state makes a public benefit generally available, it may not exclude otherwise eligible recipients simply because they would put the benefit to religious use. But the Ninth Circuit has permitted religious discrimination by mislabeling homeschooling as “public education,” and misapplying *Carson v. Makin* to transform basic regulation of private educational choices into a basis for excluding religious exercise. 596 U.S. 767 (2022).

Second, the Petitioners also present an important federal question with consequences extending well beyond the families in this case. Children across the country, who would otherwise benefit from educational programs tailored to their needs, risk being stripped of public benefits solely because of their faith if the Ninth Circuit’s decision below is left to stand.

Lastly, this case presents an ideal vehicle to resolve the question presented, not only substantively, but also procedurally. If this Court is interested in granting review of a case to ensure that the government cannot condition participation in parent-directed educational programs on the surrender of religious conviction, now is the time.

Argument

I. The Ninth Circuit’s decision conflicts with this Court’s free exercise precedents.

A. This Court has repeatedly held that States may not exclude religious options from generally available public benefits.

The free exercise principles at stake in this case are not controversial, but their erosion would have devastating consequences for families.

This Court has made clear that when a state offers a neutral, generally available public benefit allowing parents to choose nonpublic instruction, it may not exclude religious options based on their religious status or use. *Carson*, 596 U.S. at 786–88; *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 475–77 (2020); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 461–63 (2017). Neither the Ninth Circuit’s panel opinion nor the opinion accompanying the denial of rehearing en banc disputes that California’s charter-supported homeschool program is such a benefit.

Where the constitutional gears begin to grind is California’s decision to exclude qualified religious vendors and curricula based solely on their religious character. Both opinions classified California’s program as “public education,” permitting the State to regulate the content of individual families’ educational plans in a manner that would otherwise be impermissible. But labeling homeschooling as public education is absurd. As the dissent from denial of rehearing en banc argued, “[r]egardless of the superficial labels the panel tries to slap on homeschool programs, they are benefits to aid parents’ private choices.” *Woolard v. Thurmond*, No. 24-4291, 2026 LX 198502, at 21 (9th Cir. Mar. 23, 2026) (Bumatay, J., dissenting from denial of rehearing en banc).

According to the court below, homeschooled education occurring entirely inside private homes, often at the family dining table, is somehow converted to “public” education by virtue of the state’s regulatory involvement. But this Court’s precedents make it clear that “regulation, even if extensive and detailed” does not turn private actors’ actions into state actions. *Rendell-Baker v. Kohn*, 457 U.S. 830, 841 (1982) (internal quotation marks omitted). State standards regulate outcomes; they do not convert private homes into public classrooms. Allowing California to “recast a condition on funding’ in this manner would be to see ‘the First Amendment . . . reduced to a simple semantic exercise.’” *Carson*, 596 U.S. at 784 (quoting *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 215 (2013)).

As in *Carson* and *Espinoza*, California cannot disqualify some homeschooling materials “solely because

they are religious.” *Carson*, 596 U.S. at 785 (quoting *Espinoza*, 591 U.S. at 487). Yet that is exactly what the Ninth Circuit permitted. Parents who choose secular curriculum receive the program’s full support; parents who make the same educational choice on religious grounds are denied funding and may even be expelled from the program. As in *Trinity Lutheran*, California thus “single[s] out the religious for disfavored treatment.” 582 U.S. at 460.

The Ninth Circuit has forgotten to “pause to remember their own high duty to the Constitution and the rights it secures.” *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm’n*, 584 U.S. 617, 639 (2018). Affixing the label “public school program” to a benefit that pays for parent-chosen, home-taught curricula, the Ninth Circuit held that the state may do to religious families precisely what *Trinity Lutheran*, *Espinoza*, and *Carson* forbid. If a state can escape the Free Exercise Clause simply by labeling a funding program as “public,” the protections this Court announced in those cases become optional. The Court should settle this conflict of authority.

B. The conflict is especially egregious when it comes to *Carson v. Makin*.

Carson did not establish a test to determine what constitutes a public school. The discussion in *Carson* of what characterizes a typical public school was intended only to address the state’s claim that its funding benefit was limited to the “rough equivalent” of a public-school education. 596 U.S. at 782. The discussion was never intended to create a new test under the state action doctrine. Yet, that is exactly how the

Ninth Circuit applied *Carson* below. In doing so, it converted dicta into a binding rule which was not only unnecessary, but serves to deepen the existing split of authority.

Even if *Carson*'s discussion of public-school characteristics could serve as a comparative standard, the Ninth Circuit ignored the different regulatory baseline. In *Carson*, this Court compared Maine public schools to private schools receiving state funds to decide whether Maine's funding scheme for private school tuition in lieu of county public schools qualified as public education or tuition assistance. *Id.* at 782–84. The Court found the latter because the recipient schools lacked public-school features including free education, open enrollment, requirements to hire state certified teachers, and state-imposed curricular requirements. *Id.*

The Ninth Circuit has inverted that logic. Pointing to California's imposition of common core requirements, assessments, and certified-teacher oversight, the panel declared California's charter-supported homeschooling as public education. But for private education in California—unlike the recipient schools in Maine—the features the Ninth Circuit relied on are the regulatory baseline, not unique “public” attributes.

California requires all private and homeschooled students to be instructed “in the several branches of study required to be taught in the public schools of the state.” Cal. Educ. Code §§ 48222, 48224. Homeschooled children without curricular support and oversight from a charter or private school homeschool program must be taught by a “tutor or other person

hold[ing] a valid state credential for the grade taught.” Cal. Educ. Code § 48224. Homeschool parents must file a private school affidavit with the Superintendent of Public Instruction annually to ensure compliance. Cal. Educ. Code § 33190. Because California imposes these baseline curricular and instructional standards across the board, their presence cannot serve as the litmus test for what constitutes a public school.

If ordinary regulatory compliance converted private instruction into state action, every private school in the state would be considered a “public school,” and California would have carte blanche to discriminate against religious families in all spheres of education. That defies both common sense and ignores this Court’s directive in *Carson* to focus on the “substance of free exercise protections” and not “on the presence or absence of magic words.” *Carson*, 596 U.S. at 785.

II. The Ninth Circuit’s decision below raises an important federal question this Court should resolve.

The Ninth Circuit’s decision also raises an important federal question concerning the scope of the Free Exercise Clause: whether a state may avoid this Court’s prohibition on religious discrimination in generally available benefit programs by characterizing a privately directed educational benefit as “public education.”

This exclusionary policy denies the benefits of homeschooling and educational choice to children in diverse circumstances, from low-income students who would otherwise be stuck in failing inner-city or rural

schools, to those who need to escape hostile school environments, to those who may have access to quality public schools but have unique individualized needs, and even to military families choosing continuity of education for their children when military life offers only constant change. Families in all of these unique scenarios may validly seek to educate their children through a faith-based curriculum, but under the Ninth Circuit's holding below, be denied the ability to do so.

The consequences of the Ninth Circuit's decision fall particularly heavily on families of limited means. School choice programs level the playing field by giving low-income families access to the same educational opportunities long available to those with greater means. Without these programs, the costs of alternative options can be prohibitive. Homeschool programs like California's can help defray expenses for curricula, educational materials, and specialized services.

Under the Ninth Circuit's decision, families able to finance homeschooling themselves remain free to purchase religious curricula of their choosing. But families who depend on publicly funded programs like California's must now choose between receiving educational assistance and incorporating their faith into their children's education.

As this Court has acknowledged, school choice programs can serve as a lifeboat for children from low-income and minority families who lack the "means to send their children to any school other than an inner-city public school." *Zelman v. Simmons-Harris*, 536 U.S. 639, 644 (2002). Without that lifeboat, many stu-

dents are left in a public education system that struggles to prepare them for success. In California, for example, only 29% of fourth-graders and 28% of eighth-graders are proficient in reading, and only 35% of fourth-graders and 25% of eighth-graders are proficient in mathematics.² By contrast, research has consistently shown that homeschooled students outperform their public-school peers.³ Notably, this advantage holds regardless of variables like gender, family income, whether a parent had ever been a certified teacher, and the number of children in the home.⁴

Homeschooling also offers a safer alternative for many religious families, and states should not be permitted to deny opportunities to those families most in need of that refuge. The Ninth Circuit’s rule carries especially significant consequences for these families. That is particularly true for Muslim and Jewish students who experience disproportionately high rates of hate speech and bullying.⁵ For those families, California’s policy creates a paradox: religious convictions

² Nat’l Ctr. for Educ. Stats., *The Nation’s Report Card: California Overview* (2024), https://www.nationsreportcard.gov/profiles/stateprofile/overview/CA?chort=1&sub=MAT&sj=CA&sfj=NP&st=MN&year=2024R3&cti=PgTab_OT (last visited Oct. 10, 2025).

³ Lisa Treleaven, *Quantitative Insights into the Academic Outcomes of Homeschools from the Classic Learning Test*, 38 Home Sch. Researcher 1, 12 (2022), <https://www.nheri.org/wp-content/uploads/2022/12/HSR381-Treleaven-article-only.pdf>.

⁴ *Id.*

⁵ Nadia Ansary, Religious-Based Bullying: Insights on Research and Evidence-Based Best Practices from the National Interfaith Anti-Bullying Summit, 13 (2018), <https://www.ispu.org/wp-content/uploads/2018/09/ISPU-AMHP-Religious-Based-Bullying.pdf>.

may contribute to their need for an educational alternative while simultaneously rendering the educational materials they select ineligible for public support.

Through these diverse circumstances is a common thread: families who may desire to weave their religious practice into the education of their children. Allowing states to avoid this Court's prohibition on religious discrimination in this homeschool context would have a detrimental fall-out on religious liberty. As a result, this petition before the Court raises an important federal question: whether a state may avoid this Court's prohibition on religious discrimination in generally available benefit programs by characterizing a privately directed educational benefit as "public education." It may not.

Without this Court's intervention and oversight, the free exercise rights of millions of vulnerable families will be jeopardized.

III. This petition is an ideal vehicle to resolve the questions presented.

If this Court wants to ensure that the government cannot condition participation in parent-directed educational programs on the surrender of religious conviction, this case is an ideal vehicle to do so. The petition arrives on a dismissal at the pleadings stage, so the operative facts are undisputed, leaving the substantive constitutional question unobscured. There is no jurisdictional obstacle, no threshold standing or ripeness problem, and no alternative ground on which the judgment can be affirmed. With only the substantive protection of a fundamental right at issue, this petition

presents the question in its clearest and most suitable posture for this Court’s review.

The consequences of letting the Ninth Circuit’s decision stand extend far beyond the Woolard, Gonzales, and Dodson families. Not only do California’s home-school programs serve hundreds of thousands of students, more than half of homeschooling parents across the country choose homeschooling in part to provide religious instruction.⁶ By excluding religious curriculum from eligibility, California forces a substantial number of families to choose between the public benefit for which they qualify and the exercise of their faith, including the “[s]ystematic religious instruction and moral training according to the tenets [of their faith].” *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 532 (1925). That is the choice this Court has already held three times over that the Constitution does not tolerate.

By allowing states like California to condition access to this public benefit based on a surrender of their religious beliefs, the Ninth Circuit would require families to give up the very thing that drove them to seek access to homeschooling in the first place. This condition on the fundamental right of religious liberty is untenable, and this case presents the best means available for the Court to say so.

Conclusion

Constitutional protection for families’ private religious educational choices should not turn on the label

⁶ Isabelle Pula, *A look at homeschooling in the U.S.*, Pew Research Ctr. (Feb. 20, 2025), <https://www.pewresearch.org/short-reads/2025/02/20/a-look-at-homeschooling-in-the-us/>.

a state assigns to its educational-assistance program. As states increasingly provide families with resources to customize their children's education to fit individual needs, the conflict of authority the Ninth Circuit creates will impose growing burdens on religious families. The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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