

No. 24-4291

**In the United States Court of Appeals
FOR THE NINTH CIRCUIT**

JOHN AND BREANNA WOOLARD, *on their own behalf and
on behalf of their minor children A.W., E.W., and O.W.*, et al.,
PLAINTIFFS-APPELLANTS,

v.

TONY THURMOND, *in his official capacity as
Superintendent of Public Instruction*, et al.,
DEFENDANTS-APPELLEES

On petition for a rehearing en banc from the United States Court of
Appeals for the Ninth Circuit, Case No. 24-4291

**Amicus Brief of Liberty Justice Center, Abraham Knowledge
Academy, Coalition of Virtue, and the Jewish Coalition for
Religious Liberty, Supporting Appellants' Petition for
Rehearing**

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INTEREST OF AMICI CURIAE

Liberty Justice Center (“LJC”) is a national, nonpartisan public-interest law firm committed to protecting constitutional rights and enforcing constitutional limits on government power.

LJC frequently litigates and files amicus briefs in important cases affecting educational freedom and parental choice. *See, e.g., Kelly v. North Carolina*, 878 S.E.2d 841 (N.C. Ct. App. 2022) (successfully defending a legal challenge to the state’s Opportunity Scholarship Program); *Metro. Gov’t of Nashville and Davidson Cnty. v. Tenn. Dep’t of Educ.*, 645 S.W.3d 141 (Tenn. 2022) (successfully defending the Tennessee Education Savings Account program); *Okla. Statewide Charter Sch. Bd. V. Drummond*, 605 U.S. 165 (2025) (filed amicus briefs at the certiorari and merits stages); *Carson v. Makin*, 596 U.S. 767 (2022) (same); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 498 (2020) (Alito, J., concurring); *Drummond v. Okla. Statewide Virtual Charter Sch. Bd.*, 558 P.3d 1 (Okla. 2024); *Eidson v. S.C. Dep’t of Educ.*, 906 S.E.2d 345 (S.C. 2024); *Underwood v. Vos*, 2024 WI 5 (Wis. 2023). In this case, LJC filed an amicus brief on behalf of Petitioners below. Brief for Liberty Just. Ctr. As Amicus Curiae Supporting Petitioners, *Woolard v. Thurmond*, 2025 U.S. App. LEXIS 23475 (No. 24-4291).

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 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.

The Jewish Coalition for Religious Liberty is a non-denominational organization of Jewish communal and lay leaders, seeking to protect the

ability of American 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.

SUMMARY OF ARGUMENT

Many more California parents are choosing to homeschool their children.¹ To support the uniquely tailored educational options that homeschooling offers, the state created a system whereby homeschool families receive money towards home instruction materials of their choosing, under the supervision of a state-licensed teacher tasked with ensuring that they comply with the core curriculum requirements. To access this money, families must enroll with a state charter school's independent study program.

¹ Peter Jamison et al., *Home School Nation: Home Schooling's Rise from Fringe to Fastest-Growing Form of Education*, Wash. Post (Oct. 31, 2023, 7:00 AM) (noting a 70 percent increase in homeschooling in California between 2017 and 2023), <https://www.washingtonpost.com/education/interactive/2023/homeschooling-growth-data-by-district/>

In California, charter schools complement the public system. *See* Cal. Educ. Code § 47601(g). That means that to access the funds, families are prohibited from purchasing any materials that reflect a religious worldview or come from a vendor who sells faith-based curricula. To shield this blatant discrimination, the state argues that this program—in which individual families choose their own curricula and teach their children at home—is public education.

The panel misapplied the Supreme Court’s decision in *Carson v. Makin*, 596 U.S. 767 (2022), to affirm the state’s label of “public education.” As a result, children who would otherwise benefit from educational programs tailored to their needs—like the personal stories highlighted *infra*—are deprived of a public benefit on the basis of unconstitutional religious discrimination.

ARGUMENT

I. California’s charter-supported homeschool program is a neutral, generally available public benefit. Excluding religious curricula violates the Free Exercise Clause.

When a state offers a neutral, generally available public benefit allowing parents to opt for nonpublic instruction, it may not disqualify religious options based on 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). California’s charter-supported homeschool program is a neutral, generally available public benefit but exclude religious vendors and curricula that otherwise comply with Common Core requirements. This violates the Free Exercise Clause.

A. The charter-supported homeschool program is generally available and neutral.

Charter-supported homeschool programs serve tens of thousands of students in California. Combined, Blue Ridge Academy and Visions in Education—the two programs at issue—serve more than 15,000 students across nearly a dozen counties.² These programs were designed to provide individualized education opportunities like: (1) course content that extends beyond regular courses; (2) opportunity to study areas of interest not available in the regular curriculum;

² Blue Ridge Acad., *Local Control and Accountability Plan: Plan Summary 2025–26*, at 2, <https://resources.finalsite.net/images/v1755030733/theblueridgeacademycom/ixsgijqbjqzdqv2j11bl/2025-26LCAP.pdf> (noting that Blue Ridge Academy enrolled nearly 7,400 students in the 2024–25 academic year); Visions in Educ., *About Visions*, <https://www.viedu.org/about-visions/> (last visited Oct. 29, 2025) (“We now serve over 7,700+ students across our nine-county service area”).

(3) study during travel; and (4) volunteer and community service activities. Cal. Educ. Code § 51745.

Charter schools in California are required to admit all applicants up to capacity. Cal. Educ. Code § 47605(e)(2). These charter-supported homeschool programs give families money directly for curricula and materials. Visions in Education’s website offers families the opportunity to “educate from home with our support,” including a \$3,000 grant “to spend on your learning.”³ These programs are easily scalable; children are instructed in the home, with supervision by a certified teacher employed by the charter school. This is precisely the kind of neutral, generally available public benefit that triggers the Free Exercise guardrails the Court articulated in *Trinity Lutheran*, *Espinoza*, and *Carson*. See *Carson*, 596 U.S. at 785; see also *Loffman v. Cal. Dep’t of Educ.*, 119 F.4th 1147, 1169 (9th Cir. 2024) (finding that California’s special education placements in nonpublic schools are a generally available public benefit).

³ Visions in Educ., *Home School (TK-8): Educate From Home With Our Support*, <https://www.viedu.org/home-school/> (last visited Oct. 29, 2025).

B. The panel’s “public education” label rests on an inapt analogy to *Carson v. Makin*.

The Court in *Carson* 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 was public education or tuition assistance. *Carson*, 596 U.S. at 782–84. The Court found the latter because the recipient schools lacked many public-school features like free education, whether enrollment was open to all students, whether the schools were required to hire state certified teachers, and whether there were curricular requirements imposed by the state. *Id.*

The panel below flipped the inference by pointing to California’s imposition of common core requirements, assessments, and certified-teacher oversight to deem charter-supported homeschooling “sufficiently public to allow California to condition participation on parents’ use of secular curricula.” *Woolard v. Thurmond*, No. 24-4291, slip op. at 11 (9th Cir. Sept. 11, 2025). But for private education in California—unlike the recipient schools in Maine—the features the panel relied on are the regulatory baseline, not unique “public” attributes. California requires all private and homeschooled students 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.

Given the differences between the regulatory scheme of Maine’s tuition assistance program and California’s homeschools, the same factors cannot be used to differentiate public and private schools in both contexts. If California imposes public-school-like standards and benchmarks on private and home instruction across the board, those requirements cannot be the test for what counts as public school. Otherwise, all private schools in the state would be considered “public schools.”

And labeling homeschooling “public education” is absurd. The learning location is selected by the parents, not district administrators. Instruction is in private homes, not classrooms in taxpayer funded

neighborhood schools. Parents choose the curricula within the guardrails of the common core requirements. Parents have total say over the day-to-day educational activity, subject only to oversight by licensed teachers to ensure that students hit state educational benchmarks. 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)).

II. Homeschooling programs provide educational options to a diverse array of students with unique educational needs.

More than half of homeschooling parents choose homeschooling in part to provide religious instruction.⁴ By excluding religious curriculum from eligibility, California discriminates against a substantial number of families who want to raise their children with “[s]ystematic religious instruction and moral training according to the tenets of [of their

⁴ 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/>.

faith].” *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 532 (1925). 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 may have access to quality public schools but have unique individualized needs.

A. Charter-supported homeschooling increases access for low-income students.

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.

Consider Valerie Bolieu, a mother who began homeschooling when her eldest entered kindergarten. She describes the practical benefits of homeschooling within her church community: shared guidance, collective trips to the homeschool store, and advice from experienced parents. But she also underscores the financial reality: “It can cost a lot,

thousands of dollars a year if you choose to use a certain program.”⁵ In response, Valerie now advocates for new homeschooling parents to make the model more affordable and accessible to working families.

The Supreme Court has acknowledged that 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). As Justice Clarence Thomas observed:

wide-ranging educational reform that allows voluntary participation of private and religious schools in educating poor urban children otherwise condemned to failing public schools. The program does not force any individual to submit to religious indoctrination or education. It simply gives parents a greater choice as to where and in what manner to educate their children. This is a choice that those with greater means have routinely exercised.

Id. at 680 (Thomas, J. concurring) (footnote omitted).

As California’s public education system has struggled to prepare students for success, many families need such a lifeboat. While California school performance has been improving, the 2024 National

⁵ Valerie Bolieu, *Voices for Choice: Texas Parent Valerie Bolieu*, Am. Fed’n for Children, <https://www.federationforchildren.org/voices-for-choice/valerie-bolieu/> (last visited Oct. 10, 2025).

Assessment of Educational Progress showed that Californian students still perform below the national average in every age group and subject tested, with only 29% of fourth-graders and 28% of eighth-graders proficient in reading, and 35% of fourth-graders and 25% of eighth-graders proficient in mathematics.⁶

By contrast, research has consistently shown that homeschooled students outperform their public-school peers.⁷ Notably this advantage over the public-school average regardless of several variables including gender, family income, whether a parent had ever been a certified teacher, and the number of children in the home.⁸

Detroit student Victoria Bradley had a transformative educational experience when she homeschooled during her senior year of high school. For eleven years, Victoria struggled in traditional classrooms

⁶ Nat'l Ctr. For Educ. Stats., *The Nation's Report Card: California Overview (2024)*, https://www.nationsreportcard.gov/profiles/stateprofile/overview/CA?chart=1&sub=MAT&sj=CA&sfj=NP&st=MN&year=2024R3&cti=PgTab_OT (last visited Oct. 10, 2025).

⁷ 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>.

⁸ *Id.*

and never received support she needed despite being tested for IEP eligibility. “Homeschooling changed my life and I do not know where I would be if it wasn’t for that opportunity,” Victoria reflects.⁹

Homeschooling boosted her academic performance and self-esteem, leading to her college acceptance with a full-ride scholarship and an award for academic improvement. Now an advocate for educational freedom, Victoria emphasizes the importance of educational choice for all students, regardless of ZIP code or family income: “Under no circumstances should students be denied access to all forms of education[.]”¹⁰

B. Homeschooling offers refuge for bullying victims.

In 2023, California “earned the dubious honor of having the worst bullying problem in the U.S.”¹¹ Lisa Disbrow, a teacher and mother from San Francisco, details her personal experience with the California

⁹ Victoria Bradley, *Voices for Choice: Michigan Student Victoria Bradley*, Am. Fed’n for Children, <https://www.federationforchildren.org/voices-for-choice/victoria-bradley/> (last visited Oct. 10, 2025).

¹⁰ *Id.*

¹¹ Tony Kurzweil, *California’s bullying problem worst in the nation, study finds*, KTLA5 News (Oct. 11, 2023), <https://ktla.com/news/california/california-tops-states-with-worst-bullying-problems-study-says/>.

public school system: “School safety was horrible. Students were fighting in class and during recess, instruction was minimal, and my son and daughter witnessed terrible situations day after day.”¹² In response, Lisa made the difficult decision of selling her home and relocating to a higher-performing school district—which brought significant financial hardship. She now advocates for a more equitable allocation of educational resources: “Parents should be free to escape destructive schools using the tax dollars available for them. . . . School choice will put the proper focus on serving the students and their parents versus serving the existing system.”¹³

The need for safe options is even more pronounced for religious families, particularly Muslim and Jewish students who experience disproportionately high rates of hate speech and bullying.¹⁴ Recent incidents in California have included, “graffiti saying ‘Kill Jews’ at

¹² Lisa Dibrow, *Voices for Choice: California, Lisa Disbrow*, Am. Fed’n for Children, <https://www.federationforchildren.org/voices-for-choice/lisa-disbrow/> (last visited Oct. 10, 2025).

¹³ *Id.*

¹⁴ 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>.

Berkeley High School, ‘Kill all Zionists’ written at a bus stop used by Berkely High School students, and a ninth grader bullied after his parent reported anti-Semitic incidents.”¹⁵ Homeschooling offers a safer alternative for many religious families, and California should not be permitted to deny opportunities to those families most in need of that refuge.

C. School choice lets parents holistically address students with special needs.

Neurodivergent students particularly benefit from receiving an education that meets their unique needs. Consider the experience of Jessica Escalante in California. Her son, diagnosed with ADHD and autism, struggled at traditional schools. “Not only was the school and district intentionally neglecting his needs by not providing him with support, but they would complaint to me that he needed extra support.”¹⁶ In an alternative setting, Jessica’s son went “from not

¹⁵ Carlos Castañeda, *U.S. Department of Education probes antisemitism complaint against Berkely Unified School District*, CBS News (May 8, 2024, 10:42 AM), <https://www.cbsnews.com/sanfrancisco/news/u-s-department-of-education-probes-antisemitism-complaint-against-berkeley-unified-school-district/>.

¹⁶ Jessica Escalante, *Voices for Choice: California Parent Jessica Escalante*, Am. Fed’n for Children, <https://www.federationforchildren.org/voices-for-choice/jessica-escalante/> (last visited Oct. 13, 2025).

knowing a single letter or number to being able to add, know placements, spell, recite bible verses, and do the scientific method along with fun experiments.”¹⁷

But the financial burden of this choice weighs heavily on Jessica, who struggles with significant debt. As Jessica puts it: “I can assure you that if I didn’t bankrupt myself into a massive hole of debt for my oldest son’s school this year, I truly don’t know if he would have survived this year because he was suffering mentally and physically. Families like mine should have access to their education dollars, so this doesn’t have to happen.”¹⁸

Keith Zukowski similarly began homeschooling because the public school system did not support his son’s special needs. “Every kid learns differently,” he notes, “and special needs kids learn completely differently than typical kids.” He therefore believes “that homeschooling is an option that should always be available to parents.”¹⁹

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Keith Zukoski, *Voices for Choice: Florida Parent Keith and Nick Zukoski*, Am. Fed’n for Children, <https://www.federationforchildren.org/voices-for-choice/kieth-and-nick-zukoski/> (last visted Oct. 13, 2025).

Arizona parent Megan Gall also struggled to find the right educational fit for her daughter Kylie, who was diagnosed with autism. “[H]omeschooling is a real challenge unless you’re independently wealthy, especially if there are other needs involved like speech therapy or occupational therapy.”²⁰ Fortunately, Arizona’s Empowerment Scholarship Account program (“ESA”) offered a solution, providing Megan with the resources she need to customize her daughter’s education. The ESA program opened new opportunities for Kylie: “We’re doing a lot of really wonderful things like jiu jitsu, which is something I never imagined Kylie doing but she’s doing really well with it. It’s addressing motor skills and different things that she needs extra help with.”²¹

D. Homeschooling offers structure to military families.

California has the largest concentration of military personnel in the United States, with nearly 160,000 active-duty service members.²² This

²⁰ Megan Gall, *Voices for Choice: Arizona Parent Megan and Kylie Gall*, Am. Fed’n for Children, <https://www.federationforchildren.org/voices-for-choice/megan-kylie-gall/> (last visited Oct. 13, 2025).

²¹ *Id.*

²² Abigail Tierney, *Geographic stationing of active duty United States Armed Forces personnel in 2023, by U.S. state*, Statista (Jan. 24, 2025),

population experiences unique educational challenges due to frequent relocations and instability. On average, military children change school districts every six to nine months from kindergarten through high school graduation.²³ In response, military families have increasingly turned to alternative education options. In fact, 13% of military families opt for homeschooling, a rate two-to-four times higher than the general U.S. population for children aged five to seventeen.²⁴

The experience of Julia McNeil, an Air Force spouse, reflects this trend. After watching her four children struggle because they attended three different schools in three years, she decided to homeschool. “To always be the new kid is hard. To provide the stability and consistency of homeschooling within your family is wonderful for military families

<https://www.statista.com/statistics/232722/geographic-stationing-of-active-duty-us-defense-force-personnel-by-state/>.

²³ Press Release, U.S. Dep’t. of War, *Month of the Military Child 2023 – Taking Care of Our Military Children* (Apr. 3, 2023), <https://www.war.gov/News/Releases/Release/Article/3349616/month-of-the-military-child-2023-taking-care-of-our-military-children/>.

²⁴ Blue Star Fams., 2021 Military Family Lifestyle Survey Comprehensive Report, 46 (2022), https://bluestarfam.org/wp-content/uploads/2022/03/BSF_MFLS_Results2021_ComprehensiveReport_3_22.pdf (last visited Oct. 13, 2025).

and I think that's one of the reasons it's becoming more and more popular.”²⁵

CONCLUSION

School choice programs, like California's charter-supported homeschool programs, serve as tools to provide high quality, tailored education to meet the unique needs, abilities, and circumstances of the state's children. These programs should be inclusive for all families—including religious ones—to open doors that would otherwise remain closed to students, to offer safe havens for students in failing and unsafe schools, to craft personalized approaches for neurodivergent learners, and to provide stability for military families.

Excluding families who wish to incorporate their faith infringes upon the education of countless students and families across California. By reconsidering the panel's decision en banc, this Court can ensure that all children, regardless of their socioeconomic status or religious beliefs, have access to education that helps them reach their full potential.

²⁵ Alese Underwood, *More military families explore homeschooling*, Spectrum News 1 (Apr. 29, 2024, 11:00 AM), <https://spectrumnews1.com/oh/columbus/news/2024/04/19/month-of-the-military-child--a-homeschool-focus>.

Respectfully Submitted,

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CERTIFICATIONS

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), I certify the following:

I secured permission from counsel for all parties to file this brief. *See* Fed. R. App. P. 29(a)(2). Therefore, no motion for leave to file accompanies this brief. *See* Cir. Rule 29-2(a).

No counsel for any party authored any part of this brief, and no person or entity other than counsel for Amicus funded its preparation or submission. *See* Fed. R. App. P. 29(a)(4)(E).

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because this brief contains 3,345 words.

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6), because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

Dated: November 3, 2025

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