No. 25-1240

IN THE

Supreme Court of the United States

AZADEH KHATIBI, *et al.*,

Petitioners,

v.

KRISTINA D. LAWSON, PRESIDENT OF THE MEDICAL BOARD OF CALIFORNIA, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* ASSOCIATION OF AMERICAN PHYSICIANS AND SURGEONS IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether California's mandate that every course accredited for continuing education for the practice of medicine contains certain political content is justified against First Amendment challenge by recharacterizing it as government speech.

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INTERESTS OF *AMICUS CURIAE*[1]

Amicus curiae Association of American Physicians and Surgeons ("AAPS") is a non-profit corporation founded in 1943. AAPS defends the practice of private and ethical medicine, and the U.S. Supreme Court has made use of *amicus* briefs submitted by AAPS in high-profile cases. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 704 (2008) (Breyer, J., dissenting). U.S. Courts of Appeals have favorably cited amicus briefs by AAPS. *See, e.g.*, *Springer v. Henry*, 435 F.3d 268, 271 (3d Cir. 2006).

An original plaintiff in this case, now-deceased Marilyn Singleton, M.D., J.D., was a past-president of AAPS and remarkably talented in both medicine and law. As an African American, Dr. Singleton strongly opposed the California mandate at issue here. Dr. Singleton's untimely passing during this litigation was mourned in both the medical and legal professions. She has left us with an inspiring record of achievement, and the continuing legacy of this important case.

AAPS itself provides CME-accredited conferences and seminars to physicians, and has done so in

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[1] *Amicus* Association of American Physicians and Surgeons provided the requisite ten days' prior written notice to counsel for all the parties. Pursuant to Rule 37.6, counsel for *amicus curiae* authored this brief in whole, no counsel for a party authored this brief in whole or in part, and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity – other than this *amicus curiae*, its members, and its counsel – contributed monetarily to the preparation or submission of this brief.

California. AAPS thereby has direct and vital interests in the issues presented here.

INTRODUCTION

California AB 241 was enacted in 2019 to mandate that "[o]n and after January 1, 2022, all continuing medical education [CME] courses shall contain curriculum that includes the understanding of implicit bias." Cal. Bus. & Prof. Code § 2190.1(d)(1). All CME in California courses must thereby include:

> "[e]xamples of how implicit bias affects perceptions and treatment decisions of physicians and surgeons, leading to disparities in health outcomes," and/or "[s]trategies to address how unintended biases in decisionmaking may contribute to health care disparities by shaping behavior and producing differences in medical treatment along lines of race, ethnicity, gender identity, sexual orientation, age, socioeconomic status, or other characteristics."

Id. § 2190.1(e)(1)&(2). This is not a case about requiring some instruction about issues relating to diversity, equity, and inclusion, as a few other states do, but instead is a challenge to the requirement that ***every*** CME course directed to the practice of medicine include this indoctrination.[2]

In rejecting this First Amendment challenge to this law, the Ninth Circuit held that "CMEs eligible for credit under California law constitute government speech. And because they constitute government

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[2] There are narrow exceptions, such as "educational activities that are not directed toward the practice of medicine." Cal. Bus. & Prof. Code § 2190.1(f).

speech, CMEs eligible for credit are therefore immune from the strictures of the Free Speech Clause." *Khatibi v. Hawkins*, 145 F.4th 1139, 1157 (9th Cir. 2025) (citation omitted). The Petition seeks review of this decision.

SUMMARY OF ARGUMENT

Academic freedom is at stake in the Petition. "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned." *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967). The ideals of academic freedom are a foundation of our Nation's intellectual and academic progress. Our future is imperiled once government can dictate the ideological content of higher education under the guise of "government speech." The Petition should be granted to clarify and confirm that the First Amendment stands firmly against imposing ideological controls on the spoken word in higher education, which includes CME coursework.

Professional-level educators should not be transformed into puppets to espouse a government viewpoint against their own consciences. Not even during the troubled period of the Cold War in the 1950s in California, when it imposed and enforced loyalty oaths against its state university professors, was anyone actually compelled to teach something with which he or she disagreed. Yet under the Ninth Circuit decision below, California can and does compel speech by university-level instructors about an ideological issue related to diversity, equity, and inclusion (DEI).

If the decision below stands without review by this Court, then the chasm between blue and red states

widens further. Texas and Florida might start requiring ideological instruction of their own on controversial topics ranging from illegal immigration to abortion to foreign policy. This could become a sequel to the recent redistricting wars, with freedom of speech the casualty this time. College-level instructors teaching to professionals, in this case physicians, should have First Amendment rights not to be forced to teach something ideological with which they disagree.

The misplaced rationale provided by the Ninth Circuit below further justifies granting the Petition. The Ninth Circuit upheld the mandatory indoctrination required of educators based on a governmental interest in combatting quackery in medicine, in reliance on a 122-year-old state court decision. But California remains free to deny accreditation of objectionable coursework, which would fully protect its legitimate interests.

ARGUMENT

I. Academic Freedom Is a Matter of National Importance, and the Ninth Circuit Decision Imperils It.

"[T]he First Amendment … does not tolerate laws that cast a pall of orthodoxy over the classroom," which "is peculiarly the marketplace of ideas." *Keyishian*, 385 U.S. at 603 (inner quotations omitted). "To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made." *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250 (1957). "Teachers and students must always

remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die." *Id.* *See also Baggett v. Bullitt*, 377 U.S. 360, 366 n.5 (1964) (holding that "the interests of the students at the University in academic freedom are fully protected by a judgment in favor of the teaching personnel").

But by labeling instruction of physicians (or attorneys) as "government speech," such that no First Amendment protections apply, the Ninth Circuit has opened the door to vast new indoctrination by government. California's mandate to teach "implicit bias" today could become a mandate to teach tomorrow against the U.S. Constitution, a document that compromised on slavery. Indeed, California could require instruction in any political topic under the guise of "government speech." The bleak future portrayed by the dystopian novel *1984* has arrived under the Ninth Circuit decision. *See* George Orwell, *1984* Part III, Chapter 6 (1949) (by the end, the protagonist Winston Smith loved Big Brother after succumbing to its indoctrination).

Universities are leaders in providing CME, and classrooms for CME credit are conceptually indistinguishable from classrooms for academic credit. The Stanford Center for Continuing Medical Education describes itself as "[a] global leader in the promotion of lifelong learning among professionals in healthcare."[3] Stanford represents that it has at least 134,991 physician learners in connection with its program. Likewise, there is a UCSF Office of

[3] https://med.stanford.edu/cme.html (viewed May 24, 2026).

Continuing Medical Education (CME) at the prestigious University of California at San Francisco medical school, which "offers educational opportunities for physicians, advanced practice professionals, pharmacists, dentists, and allied health care professionals to improve their practices through a comprehensive selection of continuing education activities."[4]

The scope of academic freedom cannot be sensibly limited merely to professors who are tenured at universities. "If the speech of a nontenured professor is compelled by a university administrator, then the professor is not without redress for this violation of her constitutional rights." *Parate v. Isibor*, 868 F.2d 821, 828 (6th Cir. 1989). Plaintiff-Appellant Azadeh Khatibi, M.D., is an ophthalmologist in Los Angeles having training and scholarly work comparable to that of university professors, and her teaching should be protected by academic freedom similar to the protection traditionally extended to them.

This is an issue of national importance to re-establish that the First Amendment prohibits government from becoming a puppeteer that can force citizens to repeat, teach, or be taught, an ideology or point-of-view. If government is allowed to compel politically motivated speech by educators – as the Ninth Circuit decision below allows – then this would severely erode First Amendment rights.

The Ninth Circuit decision is in conflict with a precedent of this Court on the related issue of impermissible government-compelled speech. An

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[4] https://meded.ucsf.edu/continuing-education (viewed May 24, 2026).

ostensibly reasonable requirement of a government program to combat HIV/AIDS included a condition that "no funds may be used by an organization 'that does not have a policy explicitly opposing prostitution and sex trafficking.'" *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 208 (2013) (quoting 22 U.S.C. § 7631(f)). Like the issue of California compelling the teaching of implicit bias in all CME courses, the federal government's requirement that recipient organizations explicitly oppose prostitution and sex trafficking seems uncontroversial and a salutary position to require.

Yet this Court struck down this requirement of orthodoxy under the First Amendment. As with the teaching of a CME course, "if a party objects to a condition on the receipt of federal funding, its recourse is to decline the funds. This remains true when the objection is that a condition may affect the recipient's exercise of its First Amendment rights." *Agency for Int'l Dev.*, 570 U.S. at 214. But that option does not salvage a condition on participation when there is a requirement "that funding recipients ***adopt—as their own***—the Government's view on an issue of public concern," such that the condition by its very nature affects 'protected conduct outside the scope of the federally funded program.'" *Id.* at 218 (quoting *Rust v. Sullivan*, 500 U.S. 173, 197 (1991), emphasis added).

Where, as here, the government "[r]equirement compels as a condition of federal funding the affirmation of a belief that by its nature cannot be confined within the scope of the Government program," then it violates the First Amendment. *Agency for Int'l Dev.*, 570 U.S. at 221. The government itself does not practice medicine, and therefore

California's mandate to teach "implicit bias" strays far outside any plausible realm of government speech.

The People's Republic of China requires teaching patriotism, which is similar to California's mandate on instructors:

> The law's focus on instilling patriotism by incorporating the Party's ideologies into the curriculum raises concerns about the independence of educational institutions and their ability to foster critical thinking. It's seen as part of a broader effort to assert control over the education system, limiting outside influences and shaping young minds to align with the Party's agenda.

"China's new patriotic education law: The law is being viewed as an attempt to solidify the Party's version of history and limit critical thinking" (Oct. 27, 2023).[5]

The Petition provides a superb vehicle to affirm the immortal statement by this Court against mandating orthodoxy:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943).

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[5] https://www.deccanherald.com/world/explained-chinas-new-patriotic-education-law-2743573 (viewed May 24, 2026).

II. The Ninth Circuit Decision Worsens the Circuit Split on Academic Freedom, and Further Balkanizes Higher Education to the Detriment of National Unity.

This Court held in *Garcetti v. Ceballos* that "[w]e need not, and for that reason do not, decide whether the analysis we conduct today [denying First Amendment protection] would apply in the same manner to a case involving speech related to scholarship or teaching." 547 U.S. 410, 425 (2006). The Fourth Circuit protects academic freedom by denying application of *Garcetti* to college professors. *See Adams v. Trs. of the Univ. of N.C.-Wilmington*, 640 F.3d 550, 564 (4th Cir. 2011) (finding that a professor's political statements are not "made pursuant to [his] official duties," and thus *Garcetti* does not apply). The Eleventh Circuit, in a decision predating *Garcetti*, sided with a university against a professor's freedom of speech. *See Bishop v. Aronov*, 926 F.2d 1066, 1076 (11th Cir. 1991) (ruling in favor of a university that "has simply said that [a professor] may not discuss his religious beliefs or opinions under the guise of University courses").

The Ninth Circuit decision on review here is not on the same page as these or other circuits, or even in their same ballpark, because the Ninth Circuit approved a legislative mandate ordering high-level instructors to say things they do not want to speak about. This Petition therefore presents a superb vehicle for clarifying that the category of government speech does not permit mandating what teachers in higher education must say. Freedom of speech includes, at a minimum, the right of a teacher in higher education not to repeat something that he does

not believe in. Government speech is not a legal concept that can be properly used to compel ideological speech by instructors at the professional level.

In the wake of the redistricting wars that just occurred between blue and red states, another divide among the states on indoctrination of physicians is hardly desirable. California's mandate, as upheld by the Ninth Circuit, makes the continuing education requirements of professionals the new frontier in trying to influence beliefs and values. If California can require the teaching of political content, against the beliefs and desires of the instructor, then so can Texas and Florida on the other side of this coin. This encourages a balkanization whereby there will be "Blue State doctors" who are different from "Red State doctors." The decision below paves the way to Blue state-accredited medical conferences which are markedly different from Red state-accredited medical conferences. This undermines national unity and the promise that "out of many, one" – *E Pluribus Unum*.

According to Gallup polling, there is a steep generational decline in percentages of those who are extremely or very proud to be Americans: only 41% of Gen Z (born after 1996) and merely 58% of millennials (born between 1980 and 1996) feel this patriotic. In sharp contrast, 71% of Generation X (born 1965–80), 75% of the Baby Boom generation (born 1946–64), and 83% of the Silent Generation (born 1925-45) are extremely or very proud to be Americans.[6] Allowing California to mandate speech by higher education

[6] Gallup, "American Pride Slips to New Low" (June 30, 2025), https://news.gallup.com/poll/692150/american-pride-slips-new-low.aspx (viewed May 25, 2026).

teachers, which is contrary to what at least half of our country believes in, further weakens national unity.

Granting the Petition would be additionally beneficial to end conflicts within the Ninth Circuit itself, where a different panel recently rejected an argument that what an instructor at a public university inserts into his course curriculum constitutes government speech rather than an exercise of his free speech rights. This new panel on the Ninth Circuit cogently rejected an assertion of control as government by examining:

> "the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression." *Shurtleff v. City of Bos.*, 596 U.S. 243, 252, 142 S. Ct. 1583, 212 L. Ed. 2d 621 (2022).
>
> Reges's statement does not constitute "government speech" under this standard. The record shows that Reges was speaking in his own capacity as a professor, and not on behalf of his employer.

Reges v. Cauce, No. 24-3518, 2025 U.S. App. LEXIS 35243, at *32 (9th Cir. May 14, 2026). Under the above test, California's CME mandate is not sustainable based on government speech, as California does not even employ the CME instructors whom it insists espouse political statements.

Meanwhile, the Sixth Circuit recently applied academic freedom to protect a professor's right to decline to use pronouns demanded by transgender students, at a state school. *See Meriwether v. Hartop*, 992 F.3d 492, 506-07 (6th Cir. 2021). The Ninth Circuit decision below is at odds with this decision too, thereby

reinforcing the need to grant the Petition.

III. The Misplaced Rationale Provided by the Ninth Circuit Further Justifies Granting the Petition.

The reasoning by the Ninth Circuit below is as harmful as its holding. It upheld the California mandate for CME courses by relying on a long-outdated statement in a 122-year-old state court decision in California:

> Plaintiffs cannot compel California to speak against its own in its official capacity as guardian against "quacks and pretenders and from the mistakes of incapable practitioners."

Khatibi, 145 F.4th at 1158 (quoting *Ex parte Gerino*, 143 Cal. 412, 415, 77 P. 166, 167 (1904)).

It is unlikely that the Ninth Circuit would refer to attorneys or any other professionals in such a disparaging manner, and of course California's CME mandate to teach "implicit bias" has nothing to do with regulating "quacks and pretenders." No other reported decision has relied in this statement in *Gerino*, which is offensive to the many good physicians today and has nothing to do with regulating coursework anyway. The *Gerino* decision concerned a challenge to the application of medical licensure to an unlicensed practitioner. 143 Cal. at 414, 77 P. at 167.

California has an easy remedy for stopping the teaching of anything unprofessional in a CME course: simply deny CME credits for that course or every course containing that content. Denying course accreditation, rather than mandating indoctrination, is the approach that would protect First Amendment rights, and would be as effective in advancing any

legitimate governmental goals.

CONCLUSION

For the above reasons, those in the Petition, and those in the amicus brief submitted by the Cato Institute, this Court should grant the requested Writ for Certiorari.

Respectfully submitted,

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