No. 25-802

In the Supreme Court of the United States

FOOTHILLS CHRISTIAN MINISTRIES, *et al.*,
Petitioners,

v.

KIM JOHNSON, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, *et al.*,
Respondents.

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

BRIEF IN OPPOSITION

ROB BONTA
Attorney General of California
SAMUEL T. HARBOURT
Solicitor General
CHERYL L. FEINER
Senior Assistant Attorney General

L. NICOLE ALLAN*
Deputy Solicitor General
TODD GRABARSKY
Supervising Deputy Attorney General
JOSHUA N. SONDHEIMER
EMMANUELLE S. SOICHET
Deputy Attorneys General

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
455 Golden Gate Avenue
Suite 11000
San Francisco, CA 94102
(415) 510-3575
Nicole.Allan@doj.ca.gov
**Counsel of Record*

April 6, 2026

QUESTIONS PRESENTED

California regulates the provision of childcare through its Child Day Care Facilities Act and related regulations. This statutory and regulatory scheme protects child health and safety by requiring that, among other things, all covered childcare facilities (1) obtain a license from the state (Licensure Requirement), (2) ensure that enrolled children retain various enumerated rights, including the right to opt out of religious services through their parent or guardian (Opt-Out Provision), and (3) provide parents notice of these enumerated rights (Notice Provision). Since the Opt-Out Provision was first promulgated several decades ago, the State has construed it to allow covered facilities to comply by providing notice to parents at the enrollment stage that they offer religious services to all children and do not allow children to opt out of those services once enrolled. The current version of the required notice reflects this longstanding interpretation.

The questions presented are, when applied to a church that wishes to operate a preschool:

1. Whether the Notice Provision violates the First Amendment merely because it directs facilities to provide notice of what state law requires.

2. Whether petitioners have standing to challenge the Opt-Out Provision on free exercise grounds, given it does not limit their ability to provide religious programming.

3. Whether the Licensure Requirement is generally applicable for free exercise purposes.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

REGULATIONS

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

STATEMENT

1. California has long regulated the provision of childcare. *N. Valley Baptist Church v. McMahon*, 696 F. Supp. 518, 520 (E.D. Cal. 1988), *aff'd*, 893 F.2d 1139 (9th Cir. 1990). In 1984, "[p]rompted by the recent dramatic growth in the industry," *id.*, the California Legislature decided "to provide a comprehensive, quality system for licensing child daycare facilities to ensure a quality childcare environment," Cal. Health & Safety Code § 1596.72(b). The primary purpose of the resulting Child Day Care Facilities Act (the Act) is to protect the health and safety of young children. *N. Valley Baptist Church*, 696 F. Supp. at 526; *see also* Cal. Health & Safety Code § 1597.05(a). The Act also aims to "[s]treamline" childcare licensing, "[e]ncourage the development of licensing staff with knowledge and understanding of children and childcare needs," and "[e]nhance consumer awareness of licensing requirements and the benefits of licensed childcare." Cal. Health & Safety Code §§ 1596.73(a)-(b), (d).

To achieve these goals, the Act imposes a licensing requirement on "child day care facilit[ies]," Cal. Health & Safety Code § 1596.80, defined as facilities that "provide[] nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis," *id.* § 1596.750. These facilities include infant centers, preschools, and home daycares, among other types of arrangements. *Id.* §§ 1596.750, 1596.76, 1596.78. Other States have enacted similar licensing requirements. *See, e.g.*, N.Y.

Soc. Serv. Law § 390; Tex. Hum. Res. Code § 42.041; Fla. Stat. § 402.301; 225 Ill. Comp. Stat. 10/4.

The Act exempts a limited number of programs that do not implicate the same health and safety concerns, such as care provided by relatives and programs that offer temporary, on-site care or operate for no more than four hours one day per week (for example, Sunday School programs). Cal. Health & Safety Code §§ 1596.792(e)-(f), (j)-(k). The Act also exempts programs where child health and safety are already sufficiently regulated by other statutory and regulatory provisions, such as in hospitals, foster homes, and public preschools. *See id.* §§ 1596.792(a)-(c), (o).

The Act is administered by the California Department of Social Services (DSS), which has authority to issue rules and regulations as necessary to carry out the Act. *See* Cal. Health & Safety Code § 1596.81. DSS issues licenses based on compliance with statutory requirements and regulations issued pursuant to the Act. *Id.* § 1596.97. These requirements cover a range of issues affecting health and safety, including smoking, prevention of sudden infant death syndrome, criminal background checks for staff, and carbon monoxide detectors. *See*, *e.g.*, *id.* §§ 1596.795, 1596.847, 1596.871, 1596.954.

License review is "limited to health and safety considerations and shall not include any reviews of the content of any educational or training program of the facility." Cal. Health & Safety Code § 1597.05(a). Licensees have sole discretion to "develop, implement and maintain an admission procedure," including admission criteria, that furthers their "individual program, policies and needs." Cal. Code Regs. tit. 22, § 101218.1(a). Licensees must inform parents pre-enrollment of these "admission policies and procedures,

activities, [and] services," among other details. *Id.* § 101218.1(a)(2)(B). Compliance with licensing requirements is enforced through regular reporting obligations, routine inspections, and investigation of complaints. Cal. Health & Safety Code §§ 1596.852-853, 1596.893a-893b, 1597.05, 1597.07, 1597.09; Cal. Code Regs. tit. 22, § 101212. DSS may issue citations, assess civil penalties, and ultimately revoke a license for violations of these requirements. Cal. Health & Safety Code §§ 1596.98, 1596.99, 1596.885, 1596.891.

2. At issue in this litigation is a regulation issued by DSS pursuant to the Act that requires licensees to "ensure that each child is accorded" certain "personal rights," including "dignity in his/her personal relationships with staff and other persons," freedom "from corporal or unusual punishment," the right not to be locked in a room or placed in a restraining device, and, as relevant here, the right to "be free to attend religious services or activities of his/her choice" (the Opt-Out Provision). Cal. Code Regs. tit. 22, § 101223(a). The Opt-Out Provision further states that "[a]ttendance at religious services in or outside of the center shall be voluntary," and that "[t]he child's authorized representative"—that is, their parent or guardian—"shall make decisions about the child's attendance at religious services." *Id.* § 101223(a)(5)(A).

Another provision relevant here—the Notice Provision—requires licensees to "inform each child's authorized representative" of the rights enumerated in Section 101223(a), including the Opt-Out Provision, by publicly posting and providing a copy of the LIC 613A form, which the authorized representative must sign and return to the licensee. Cal. Code Regs. tit. 22, § 101223(b). While the form mostly tracks the lan-

guage of Section 101223(a), it previously included language, not grounded in the Act or any related regulation, stating that children have the right to "have visits from the spiritual advisor of his/her choice" and that "decisions concerning . . . visits from spiritual advisors shall be made by the parent(s), or guardian(s) of the child." Pet. App. 140a. DSS removed this language from the form last year, seven months before this petition was filed. *See* C.A. Dkt. 31.1. DSS also recently added to the form language clarifying that, "[t]o the extent that the child's authorized representative has agreed to the child's compulsory attendance at religious services and activities as a condition of admission in the admission agreement, a Child Care Center may require a child's attendance at such religious services and activities."[1] This statement reflects the statutory and regulatory discretion licensees exercise over curricula and admissions policies. *See supra* pp. 2-3 (discussing Cal. Code Regs. tit. 22, § 101218.1(a) and Cal. Health & Safety Code § 1597.05(a)). It is also in keeping with how DSS has always interpreted the Opt-Out Provision, which has never been enforced against a childcare center that informs parents of religious practices pre-enrollment.

3. a. Petitioners are three churches in the San Diego region who wish to open preschools that operate "Monday through Friday." Pet. 10. Petitioners currently operate various children's programming that does not require a license under the Act, such as Sunday schools, afterschool Bible clubs, and winter and

---

[1] Cal. Dep't of Soc. Servs., *Personal Rights: Child Care Centers*, https://tinyurl.com/4cw4jabp (last visited Apr. 1, 2026); *see* Cal. Dep't of Soc. Servs., *On-line Forms and Publications I-L*, https://tinyurl.com/2p2hy7kp (last visited Apr. 1, 2026) (noting "[u]se as of December 18, 2025" next to LIC 613A).

summer camps. *Id.* at 10-11, 13, 14. Foothills Christian Ministries previously operated a licensed daycare center that served newborns to preschool-age children. 2-ER-178. In December 2021, DSS suspended Foothills' licenses for this daycare center based on evidence that it was evading state public-health restrictions. *See* 3-ER-309; 3-ER-314-348. Foothills has been eligible to reapply for a daycare center license since 2024, but it has not done so. Cal. Health & Safety Code § 1596.851(a)(1). The Grove Church and Journey Community Church have never been licensed to operate daycare centers, but they have stated a desire to open them. 2-ER-183, 185.

b. Petitioners sued respondents in June 2022, alleging that the Licensure Requirement and Opt-Out Provision violate the Free Exercise and Privileges or Immunities Clauses of the U.S. Constitution. 3-ER-482-485. The district court dismissed both claims with leave to amend. Pet. App. 121a. The court interpreted petitioners' free exercise claim as challenging the Opt-Out Provision rather than the Licensure Requirement and concluded that, when read "within the greater context of the Act and its surrounding DSS[] regulations pertaining to admissions," *id.* at 109a, it was clear that a religious preschool could employ an "admission policy of mandatory religious education . . . so long as its religious orientation and mandatory curriculum was disclosed prior to the child's enrollment," *id.* at 111a. Because the Opt-Out Provision did not in fact prohibit petitioners from requiring children to participate in religious programming, *id.* at 109a-112a, and because DSS had "for more than 30 years" taken the position "that mandatory religious curriculum is entirely consistent with the Act," *id.* at 115a, there was

no reason to believe that DSS would enforce the Provision against petitioners. They therefore lacked standing on the free exercise claim. *Id.* at 112a-115a.

Petitioners then amended their complaint, re-alleging their free exercise claim and adding Establishment Clause, free speech, and due process claims. 2-ER-196-206. The district court once again ordered dismissal, holding that petitioners lacked standing on their free exercise and free speech claims and that they had not stated establishment or due process claims. Pet. App. 49a, 53a, 61a-63a.

The court of appeals (Hurwitz, Miller, Sung) affirmed. Pet. App. 21a. The court emphasized that the State has "repeatedly represented both in this Court and below that operating a day care center with a mandatory religious curriculum, where made known to prospective parents in advance of enrollment, would not violate the" Opt-Out Provision. *Id.* at 7a (internal quotation marks omitted). And petitioners had "not identified a single instance" in the Provision's four-decade history where it had "been used to enjoin a facility's mandatory religious curriculum." *Id.* at 8a. Because any "threat of prosecution" was "too speculative," petitioners lacked standing to bring a free exercise challenge to the Provision. *Id.*

As to the Licensure Requirement, the court of appeals concluded that petitioners have standing. Pet. App. 9a-10a. But it held that the Requirement is neutral and generally applicable—and valid on free exercise grounds. *Id.* at 13a. As the court explained, the Requirement does not provide a mechanism for individualized exemptions, and does not "prohibit[] religious conduct while permitting secular conduct that undermines the government's asserted interests in a

similar way." *Id.* at 11a (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 534 (2021)). The court evaluated four statutory exemptions identified by petitioners and concluded that none is "'comparable' to regulated religious conduct" because they do not implicate the State's interest in protecting child health and safety to the same degree as a full-time preschool or daycare. *Id.* at 11a (quoting *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam)). Programs that operate no more than four hours, one day per week do "not present a threat to children's health and safety comparable to that of a facility [licensed to] operate up to 24 hours a day." *Id.* at 12a. And public recreation programs, public preschools, and correctional programs for mothers housed with their children are all "covered by separate regulatory schemes" that sufficiently mitigate "the risk to children's health and safety." *Id.* at 12a-13a.

The court also held that petitioners have standing to challenge the Notice Provision as speech compelled in violation of the First Amendment, but that this claim fails on the merits. Pet. App. 15a-16a. The court explained that the mandated notice merely requires regulated facilities to convey "purely factual and uncontroversial information" about the requirements of state law. *Id.* at 16a (quoting *Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626, 651 (1985)). "Such a 'minimal requirement does not interfere with,' nor 'threaten to drown out,' [petitioners'] other speech." *Id.* at 18a (quoting *CTIA—The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 849 (9th Cir. 2019)). Finally, the court rejected petitioners' establishment and due process claims, which are not at issue in this petition. *Id.* at 14a, 20a-21a.

ARGUMENT

Petitioners ask the Court to evaluate several specific features of California childcare regulations. But two of their claims are premised on inaccurate assumptions about state requirements. The first—a free speech challenge to certain notice requirements—fails to account for changes that the State made to the notice. Those changes eliminate the only sources of concern discussed in the petition. The second claim—a free exercise challenge to a regulation providing parents the right to opt their children out of religious services—assumes that parents have an ongoing right to refuse to have their children participate in religious programming while keeping them enrolled. But for decades, California has construed the regulation far more narrowly: to require only that facilities notify parents of mandatory religious programming before enrollment. And the third challenge—a free exercise claim concerning childcare-licensing requirements—misunderstands the scope and nature of several statutory exemptions. Properly understood, those exemptions do not trigger strict scrutiny under *Fulton*, 593 U.S. at 534, and similar cases. None of petitioners' claims, moreover, implicates any conflict in the lower courts. Certiorari should be denied.

1. Each of petitioners' three claims fails on the merits, and none presents an issue worthy of this Court's review.

a. First, the decision below correctly held that the Notice Provision does not compel speech in violation of the First Amendment. Petitioners' First Amendment claim focuses on "language on the signage and forms that the preschool must allow visits from outside spiritual advisors of the child's—and ostensibly the parent's—choice." Pet. 3-4; *see id.* at 26-27. But the

required notice has not included this language since May 30, 2025, almost three months before the court of appeals issued the decision below. *See* C.A. Dkt. 31.1 (informing panel of change to the notice). And, as of December 18, 2025, the notice explicitly states that "a Child Care Center may require a child's attendance at . . . religious services and activities" if "the child's authorized representative has agreed to the child's compulsory attendance at religious services and activities as a condition of admission."[2]

As modified, then, the notice does not include any of the language that petitioners view as objectionable. *See, e.g.*, Pet. 3-4, 26-27. It merely recites a handful of regulatory rights afforded to children enrolled in licensed childcare facilities—rights that petitioners do not challenge. In that respect, the form is no different from many other types of mandatory notice that regulated businesses and organizations must provide under state and federal law. Examples include breakroom posters notifying employees of their rights under federal and state law, *see*, *e.g.*, 29 C.F.R. § 1903.2; Cal. Lab. Code § 1183; HIPAA notification forms at doctor's offices, *see* 45 C.F.R. § 164.520; and bathroom signs informing employees that they must wash their hands, *see*, *e.g.*, Cal. Code Regs. tit. 17, § 13652(a).

Petitioners identify no cases from this Court—or any other—calling such routine signage requirements into question. These notices disclose "purely factual and uncontroversial" information about legal rights and responsibilities. *Zauderer*, 471 U.S. at 651. The disclosures required here are not materially different from the social-media disclosures treated as purely

---

[2] Cal. Dep't of Soc. Servs., *Personal Rights: Child Care Centers*, https://tinyurl.com/4cw4jabp (last visited Apr. 1, 2026).

factual and uncontroversial under *Zauderer* in *Moody v. NetChoice, LLC*, 603 U.S. 707, 725, 727 & n.3 (2024), or the types of "health and safety warnings" that this Court has "long considered permissible," *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755, 775 (2018) (*NIFLA*).

Contrary to the suggestion of petitioners and several of their amici, *see, e.g.*, Pet. 26-27, the notice here bears no material resemblance to the disclosures struck down in *NIFLA*. There, the Court invalidated a law that required crisis pregnancy centers to provide patients with not just "a government-drafted script about the availability of state-sponsored services" that the centers were "devoted to opposing," but also "contact information for how to obtain" these services. 585 U.S. at 766. Here, by contrast, the notice merely "inform[s] [parents] of their [children's] available rights . . . under a valid [regulation]"—rights that, it bears repeating, petitioners do not object to. *CompassCare v. Hochul*, 125 F.4th 49, 66 (2d Cir. 2025); *see* Pet. App. 17a (quoting *CTIA*, 928 F.3d at 845).

b. The court of appeals also correctly held that petitioners lack standing to challenge the Opt-Out Provision on free exercise grounds. Petitioners object to the Provision on the assumption that it requires church-run childcare facilities to "inform parents that they can pull in someone from outside the church to visit the child—in school—as a spiritual advisor." Pet. 37. Petitioners also assert that the Provision "requires that parochial preschools give parents an opt-out of their preschoolers from religious activities and services in the school." *Id.* at 3; *see id.* at 35-40.

But the Provision does not actually do either of those things. Its text has never included any require-

ments related to spiritual advisors. *Supra* p. 4. Although the notice form previously referred to spiritual advisors, that language was removed last year. *Id.* And for decades, the State has taken the position that the Opt-Out Provision imposes no restriction on offering religious programming as part of childcare. *Id.* Now, that position is explicitly incorporated into the notice form. *Id.* And "the State has explicitly disavowed enforcement" of the Opt-Out Provision against a religious childcare center's "mandatory religious curriculum." Pet. App. 8a.

In these circumstances, petitioners cannot show they face any threat of harm from the challenged provision, let alone any harm that is "certainly impending" for purposes of Article III standing requirements. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 402 (2013); *see* Pet. App. 5a-9a. For much the same reason, any free exercise challenge to the Opt-Out Provision would fail on the merits. The only requirement imposed by the Provision is that facilities make clear to parents at the enrollment stage that their children will be required to participate in religious services. *Supra* p. 4. Petitioners provide no sensible basis to view that modest requirement as unconstitutional.[3]

c. Finally, the decision below correctly held that the Licensure Requirement is neutral and generally applicable. Pet. App. 13a. It does not "prohibit[] religious conduct while permitting secular conduct that undermines the government's asserted interests in a

---

[3] Because the Opt-Out Provision provides parents control over their children's religious participation, the claims here do not implicate *Mahmoud v. Taylor*, 606 U.S. 522 (2025), which limits the ability of schools to "undermin[e] the religious beliefs and practices that parents wish to instill in their children," *id.* at 530. *Contra* Br. for Am. Ctr. for Law & Justice 11.

similar way." *Id.* at 11a (quoting *Fulton*, 593 U.S. at 534). In undertaking that inquiry, the court of appeals carefully examined several statutory exemptions that petitioners discussed in their briefing below. *Id.* at 10a-13a. Before this Court, petitioners barely address those specific exemptions, let alone explain why the court of appeals erred—or why it would be appropriate for this Court to grant plenary review to address a detailed statutory scheme specific to California.

The first two exemptions relevant to petitioners' challenge involve childcare programs that operate on a short-term basis and thus do not "present a threat to children's health and safety comparable to that of a facility that can operate up to 24 hours a day." Pet. App. 12a; *see Tandon*, 593 U.S. at 62 ("Comparability is concerned with the risks various activities pose[.]"). The first exception is for programs, such as Sunday schools, that "operate[] only one day per week for no more than four hours on that one day." Cal. Health & Safety Code § 1596.792(j). The second is for publicly run "recreation" programs, such as afterschool care and summer camps, which operate for a limited number of hours or only during a short part of the year when school is not in session. *Id.* § 1596.792(g). As the court of appeals recognized, moreover, "the State already exerts substantial control over these facilities, which are operated by a public entity or connected to a public entity and covered by separate regulatory schemes." Pet. App. 12a; *see*, *e.g.*, Cal. Educ. Code §§ 10900 *et seq.* (governing community recreation programs). Accordingly, "the risk to children's health and safety is diminished." Pet. App. 12a-13a.

The same is true of two other categories of publicly run programs governed by separate statutory and reg-

ulatory regimes: correctional programs housing children with their mothers, such as the Community Participant Mother Program, *see* Cal. Pen. Code §§ 3410 *et seq.*; Cal. Health & Safety Code § 1596.792(m); Cal. Code Regs. tit. 15, §§ 3078.7 *et seq.*, and "state preschool programs," which are "operated by a local educational agency under contract with the State Department of Education" and located "in a school building," Cal. Health & Safety Code § 1596.792(o); Cal. Educ. Code §§ 8200 *et seq.*; Cal. Code Regs. tit. 5, §§ 17775 *et seq.* The correctional programs are subject to oversight by the State Department of Corrections and Rehabilitation. *See*, *e.g.*, Cal. Penal Code § 3412 (ensuring access to pediatric care and public preschool); Cal. Code Regs. tit. 15, § 3078.7 (requiring "best possible care for the mother and child(ren)"). State preschools are covered by separate health and safety regulations promulgated by the State Department of Education, Cal. Health & Safety Code § 1596.7925; *see* Cal. Code Regs. tit. 5, §§ 17775 *et seq.*

Petitioners misunderstand the court of appeals' reliance on the "separate regulatory schemes" that govern these exempted public entities. Pet. App. 12a. The court did not categorically hold that these entities "may not serve as a comparator" because they "fall[] under different agency oversight and regulations." Pet. 30. Rather, the court held that the alternate regulatory schemes sufficiently mitigate "the risk to children's health and safety . . . compared to a private facility over which the State, without the licensing requirement, would have little control." Pet. App. 12a-13a. That reasoning is in no way contrary to the risk-based analysis in *Tandon*, 593 U.S. at 62, and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020) (per curiam). In those cases, the Court was un-

persuaded that existing regulatory regimes for businesses allowed to remain open during the pandemic (such as "liquor stores, accounting firms, hair salons, airports, and bus stations," Pet. 30) sufficiently diminished COVID-transmission risks. *See, e.g.*, *Roman Catholic Diocese*, 592 U.S. at 22 (Gorsuch, J., concurring). By contrast, the regulations at issue here—governing childcare in certain publicly run programs—directly advance the State's compelling and vital health and safety interests and make it unnecessary to subject those programs to a separate and additional licensing regime. Pet. App. 13a.[4]

2. Petitioners assert a conflict on just two of the questions presented. Neither asserted conflict exists or provides a basis for certiorari.

First, because the decision below did not categorically "exclude[] government entities or activities" from consideration when assessing whether the challenged law is generally applicable, Pet. 29, it did not create a conflict with either the Sixth Circuit or the Louisiana Supreme Court. Both of those courts assess whether a law exempts "comparable secular activities"—government-operated or otherwise—in determining whether a law is generally applicable for purposes of the Free Exercise Clause.[5] As explained above, *supra*

---

[4] Amici assert that the Licensure Requirement violates the church-autonomy doctrine. *See*, *e.g.*, Br. of Notre Dame Educ. L. Project 6-9. But petitioners do not present that question to the Court. With respect to the Licensure Requirement, the petition seeks review solely of the court of appeals' holding that the Requirement is generally applicable. *See* Pet. ii, 27-35.

[5] *Roberts v. Neace*, 958 F.3d 409, 413 (6th Cir. 2020) (per curiam); *see id.* at 414 (focusing on whether exempted secular activities "pose[d] comparable public health risks to worship services");

(continued…)

pp. 7, 13, that is exactly what the court of appeals assessed here: it evaluated whether the health and safety risks of certain publicly run childcare programs are comparable to the risks posed by private facilities in light of separate regulatory regimes governing the former but not the latter.

Second, petitioners fail to show that this case implicates any conflict over the scope or application of *Zauderer*. *See* Pet. 17-26. The Court denied a petition on this issue in 2019, in the same case invoked by the decision below for its *Zauderer* analysis here. *See CTIA—The Wireless Ass'n v. City of Berkeley*, No. 19-439 (U.S. Dec. 9, 2019); Pet. App. 16a-18a. There was no conflict then, and there is no conflict now. Every federal circuit and state court of last review that has addressed whether *Zauderer*'s approach is limited to the prevention of consumer deception has held—like the court below—that it is not.

State and federal appellate courts have applied *Zauderer* to a wide variety of regulations, from health and safety warnings to security disclosures to conflict-of-interest disclaimers. *See, e.g.*, *Am. Beverage Ass'n v. City and County of San Francisco*, 916 F.3d 749, 756 (9th Cir. 2019) (en banc) (health warnings for sweetened beverages); *Am. Meat Inst. v. U.S. Dep't of Agric.*, 760 F.3d 18, 22 (D.C. Cir. 2014) (en banc) (country-of-origin labels on meat products); *Pharm. Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294, 310 & n.8 (1st Cir. 2005) (conflict-of-interest and related self-dealing disclosures), *cert. denied*, 547 U.S. 1179 (2006); *Nat'l Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 114-115 (2d Cir.

State v. Spell, 339 So.3d 1125, 1137 (La. 2022) ("the risk of spreading the virus appears no less prevalent" at exempted secular activities "than at a comparable gathering in a church").

2000) (mercury warnings), *cert. denied*, 536 U.S. 905 (2002); *Md. Shall Issue, Inc. v. Anne Arundel County*, 91 F.4th 238, 247-249 (4th Cir. 2024) (suicide-prevention pamphlets), *cert. denied*, 145 S. Ct. 152 (2024); *R J Reynolds Tobacco Co. v. FDA*, 96 F.4th 863, 877 (5th Cir. 2024) (health warnings on cigarette packaging), *cert. denied*, 145 S. Ct. 592 (2024); *Discount Tobacco City & Lottery, Inc. v. United States*, 674 F.3d 509, 525-31 (6th Cir. 2012) (same), *cert. denied*, 569 U.S. 946 (2013); *Mountain States Tel. & Tel. Co. v. Dist. Ct.*, 778 P.2d 667, 674-675 (Colo. 1989) (requirement that company notify its customers of pending class action), *cert. denied*, 493 U.S. 983 (1989); *Bulldog Inv. Gen. P'ship v. Sec'y of the Commonwealth*, 460 Mass. 647, 705-06 (2011) (compelled disclosures under state securities law), *cert. denied*, 566 U.S. 987 (2012); *cf. Safelite Grp., Inc. v. Jepsen*, 764 F.3d 258, 264 (2d Cir. 2014) (agreeing that *Zauderer* applies to "disclosure requirements about a company's own products or services" but applying intermediate scrutiny to law "requiring advertisements for a competitor").

Petitioners assert that the D.C. Circuit has "corralled *Zauderer* to advertising." Pet. 22 (citing *Nat'l Ass'n of Mfrs. v. S.E.C.*, 800 F.3d 518, 522 (D.C. Cir. 2015)). But that court has since clarified that it "has not so limited the standard, applying it, for example, to court-mandated disclosures on websites." *Am. Hosp. Ass'n v. Azar*, 983 F.3d 528, 541 (D.C. Cir. 2020) (citing *United States v. Philip Morris*, 855 F.3d 321 (D.C. Cir. 2017)); *see id.* (distinguishing *Nat'l Ass'n of Mfrs.* as case about compelled "expressive" speech).

And no other state or federal case cited in the petition holds that *Zauderer* cannot apply outside the consumer-deception context. Several of petitioners' cited

cases involved regulations purporting to prevent consumer deception and thus did not raise the question whether *Zauderer* should be "expanded." Pet. 18; *see, e.g.*, *Dwyer v. Cappell*, 762 F.3d 275, 282 (3d Cir. 2014) (attorney-advertising disclosure); *1-800-411-Pain Referral Serv., LLC v. Otto*, 744 F.3d 1045, 1060-1063 (8th Cir. 2014) (disclosures for advertising that targets accident victims).[6] Others involved speech *prohibitions* rather than disclosure requirements, meaning *Zauderer* did not apply in the first place. *Ocheesee Creamery LLC v. Putnam*, 851 F.3d 1228, 1235-1236 (11th Cir. 2017); *Matter of Zang*, 154 Ariz. 134, 141-142 (1987); *Barry v. Arrow Pontiac, Inc.*, 100 N.J. 57, 62-63, 69, 74 (1985).[7] And other cases invoked by petitioners involved state constitutions, not the federal First Amendment. *Beeman v. Anthem Prescription Mgmt., LLC*, 58 Cal. 4th 329, 341 (2013); *Chong Yim v. City of Seattle*, 194 Wash. 2d 651, 656, 677 (2019).

---

[6] *See also United States v. Wenger*, 427 F.3d 840, 849-851 (10th Cir. 2005) (compensation-disclosure requirements for stock recommendations), *cert. denied*, 548 U.S. 913 (2006); *BellSouth Adv'g & Pub. Corp. v. Tenn. Regulatory Auth.*, 79 S.W.3d 506, 520 (Tenn. 2002) (requirement that company "disclose information which will prevent consumers from mistakenly believing that no alternative providers of telecommunications services are available"), *cert. denied*, 537 U.S. 1189 (2003); *cf. Commodity Trend Serv., Inc. v. Commodity Futures Trading Co.*, 233 F.3d 981, 994 (7th Cir. 2000) (declining to consider constitutionality of disclosure requirement for financial publications).

[7] For First Amendment purposes, "[t]here are material differences between 'outright prohibitions' on speech, . . . and 'disclosure requirements,' which seek only to require [individuals] to 'provide somewhat more information than they might otherwise be inclined to present.'" *Dwyer*, 762 F.3d at 280 (quoting *Zauderer*, 471 U.S. at 650) (internal footnote omitted).

Even if the Court perceived some tension within the lower federal courts and state courts of last resort as to *Zauderer*'s scope, this case would be an exceptionally poor vehicle for considering the issue. As discussed above, the mandatory notice in question was revised in material ways to eliminate the source of petitioners' objections. *Supra* pp. 4, 11. And any evaluation of *Zauderer*'s ambit here would threaten to call into question the validity of many similar requirements to post notice of legal rights and responsibilities. *Supra* p. 9. The stakes of this case for petitioners are also quite limited: as discussed above, *see, e.g.*, *supra* pp. 2-3, 4, 9, 11, nothing prevents petitioners from offering religious programming or requiring enrolled children to attend that programming. And there is nothing stopping petitioners from applying for and obtaining a license to open the preschools they wish to operate. *See, e.g.*, *supra* p. 5.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROB BONTA
Attorney General of California
SAMUEL T. HARBOURT
Solicitor General
CHERYL L. FEINER
Senior Assistant Attorney General
L. NICOLE ALLAN
Deputy Solicitor General
TODD GRABARSKY
Supervising Deputy Attorney General
JOSHUA N. SONDHEIMER
EMANUELLE S. SOICHET
Deputy Attorneys General

Counsel for the Attorney General

April 6, 2026