

No. _____

In the
Supreme Court of the United States

JOHN WOOLARD, *et al.*,
Petitioners,

v.

TONY THURMOND, *et al.*,
Respondents.

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

**APPLICATION TO JUSTICE ELENA KAGAN
FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI**

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May 15, 2026

**TO: THE HONORABLE ELENA KAGAN,
ASSOCIATE JUSTICE OF THE UNITED STATES AND
CIRCUIT JUSTICE FOR THE NINTH CIRCUIT**

Pursuant to Supreme Court Rule 13.5, Petitioners John Woolard, Breanna Woolard, Hector Gonzales, Diana Gonzales, and Carrie Dodson respectfully request a 60-day extension of the time to file a petition for a writ of certiorari up to and including August 20, 2026. The United States Court of Appeals for the Ninth Circuit issued its decision on September 11, 2025, *see* Attachment A, and denied rehearing *en banc* on March 23, 2026, *see* Attachment B. Absent an extension, a petition for certiorari would be due on June 22, 2026. This application is timely because it has been filed more than ten days before the date on which the petition is otherwise due. S. Ct. R. 13.5. This Court has jurisdiction under 28 U.S.C. § 1254(1).

1. As Judge Bumatay’s dissent from denial of rehearing *en banc* aptly summarizes: “Once again, the Ninth Circuit has greenlit state discrimination against religion.” *Woolard v. Thurmond*, 170 F.4th 701, 710 (9th Cir.), *as amended* (Mar. 23 2026). Petitioners are Christian families who seek to participate in California education-benefit programs that provide public funding and support for homeschooling. The programs enable parents to teach their own children a curriculum of their choice in their own homes, subject only to limited regulation and periodic oversight to ensure compliance with state educational standards. But relying on state law “nonsectarian” requirements, the programs banned Petitioners from using faith-based curricula solely because the curricula were faith-based and refused to credit students’ work samples if they reflected a religious worldview.

Petitioners brought claims for violation of their rights under the Free Exercise and Free Speech Clauses of the First Amendment.

2. The district court granted the Defendants' motions to dismiss Petitioners' complaint. *See Woolard v. Thurmond*, No. 2:23-cv-02305, 2024 WL 3010899 (E.D. Cal. June 10, 2024). On appeal, the Ninth Circuit affirmed the dismissal. The panel upheld the exclusion of the religious families on the ground that the homeschooling programs share "features of public education" and are therefore "sufficiently public to defeat [Petitioners'] free exercise claim." *Woolard v. Thurmond*, 152 F.4th 1050, 1056-57 (9th Cir. 2025). The panel also dismissed the free-speech claims on the ground that the parents' curriculum choices were "[g]overnment speech." *Id.* at 1057-58.

3. Petitioners then sought rehearing *en banc* in the Ninth Circuit. The panel issued an amended opinion changing some of its language but reaching the same conclusion on essentially the same basis. The panel held that because the homeschooling programs share "features of public education," they are "public school programs" that can exclude religion. *Woolard*, 170 F.4th at 709-10. The *en banc* Court also denied rehearing *en banc*, with five judges dissenting. *Id.* at 705, 710-24. Judge Bumatay authored a dissent, joined by Judges VanDyke, R. Nelson, Collins, and Tung, explaining how California's program violated the Free Exercise Clause under *Carson* by excluding faith-based educational choices. *Id.* at 710-16. Rejecting the majority's superficial application of the "public school" label, Judge Bumatay noted that "[a]dhering to modest state requirements simply doesn't transform

parents teaching their children around the kitchen table with textbooks they choose into agents of the State providing ‘public school’ education.” *Id.* at 715. Judge VanDyke authored a separate dissent, joined by Judges Bumatay and Tung, exploring the historical background of the term “sectarian” as used in California’s Blaine Amendment. *Id.* at 716-24. Judge VanDyke concluded, “It’s about time that we leave facially discriminatory Blaine Amendments like California’s on the ash heap of constitutional history.” *Id.* at 724.

4. Petitioners intend to file a petition for a writ of certiorari. This case presents an important question regarding whether the Free Exercise Clause permits a State to exclude religious options from a parent-directed education-benefit program simply because the program is subject to some degree of government regulation. The Ninth Circuit’s decision also deepens conflicts in the lower courts regarding the contours of the state action doctrine and the application of this Court’s decisions in *Carson ex rel. O.C. v. Makin*, 596 U.S. 767 (2022) and *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020) to education-choice programs.

5. Petitioners respectfully request an extension of 60 days, to and including August 20, 2026. Multiple counsel for Petitioners will be on medical leave for much of the month of June. In addition, there is also the press of business on numerous other matters. Substantial commitments of counsel of record during the relevant time period include:

- A reply brief in support of motion for substitution due May 15 in *Eurus Energy Holdings Corp. v. Kingdom of Spain*, No. 25-cv-01842 (D.D.C.)

- A reply brief in support of motion for preliminary injunction due May 19 in *Amgen Inc. v. Mizner*, No. 25-cv-3452 (D. Colo.)
 - A hearing on motion for preliminary injunction June 4 in *Amgen Inc. v. Mizner*, No. 25-cv-3452 (D. Colo.)
 - An opening brief on appeal due June 15 in *Vargas v. Quest Diagnostics Clinical Laboratories, Inc.*, No. 26-1011 (9th Cir.)
 - A motion to dismiss a class-action complaint due June 15 in *Ntech Consulting LLC v. Capital One, N.A.*, No. 26-cv-00308 (E.D. Va.)
 - Preparation for trial starting June 29 in *A.O.A. v. Rennert*, No. 01-cv-00044 (E.D. Mo.)
 - Preparation for trial starting July 13 in *YAF v. Stenger*, No. 20-cv-822 (N.D.N.Y.)
6. Counsel for Respondents do not oppose the requested extension.

CONCLUSION

Petitioners request that the time to file a petition for a writ of certiorari in the above-captioned matter be extended 60 days to and including August 20, 2026.

Respectfully submitted,

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