

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
United States Court of Appeals for the Ninth Circuit*

**BRIEF OF THE MANHATTAN INSTITUTE AND
NOTRE DAME EDUCATION LAW PROJECT
AS AMICI CURIAE
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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INTEREST OF *AMICI CURIAE*¹

The Manhattan Institute (MI) is a nonprofit policy research foundation that works to keep America and its great cities prosperous, safe, and free. MI develops and disseminates ideas that foster individual freedom and economic choice across multiple dimensions. To that end, it produces scholarship and files briefs supporting constitutionally protected liberty and educational opportunity, opposing government overreach.

The Notre Dame Education Law Project is a program within Notre Dame Law School, which is part of Notre Dame University. It seeks to enhance civil society, promote educational opportunity, and protect religious liberty by supporting educational pluralism through research, scholarship, and legal advocacy.

This case interests *amici* because it highlights an ongoing problem with state provisions which violate the First Amendment’s nondiscrimination mandate. This case also interests *amici* because they work to promote educational freedom, particularly in the context of the fundamental right to religious liberty.

SUMMARY OF ARGUMENT

As part of California’s diverse array of education options, homeschooling parents may choose to enroll their children in independent-study charter schools, which work with parents to develop custom curricula for their children’s unique educational needs. The petitioners did just that here and enrolled their children

¹ Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party’s counsel; no person or entity other than *amici* funded its preparation or submission.

in Blue Ridge Academy and Visions in Education, both independent-study charter schools.

Unfortunately, not all parents are able to avail themselves of this opportunity because California law bars otherwise publicly available funds from being used to purchase religious curricula. What's more, California allows supervising teachers at these charter schools to deny credit to, or even expel, students who include religious themes in their coursework. These prohibitions run afoul of the First Amendment.

Four years ago, the Supreme Court made clear that a state cannot bar access to an otherwise available educational program because a parent's independent choice would result in public funds being spent on religious instruction. *See Carson v. Makin*, 596 U.S. 767 (2022). That ruling directly applies here: California may not prevent religious parents who choose to cooperate with independent study charter schools from including religious content in their children's customized curricular programs. Nor can California avoid its First Amendment obligations by labeling these charter school programs as "public school programs," or "sufficiently public" as the opinion read before being amended. App. 18a. Those same arguments were made, and rejected, in *Carson*.

As in *Carson*, this is a program of private choice. As the Court explained in *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002)—we can't believe it's been nearly a quarter-century since that seminal decision—and repeated in *Carson*, government funding of religious instruction as the result of an "independent private choice does not offend the Establishment Clause" and indeed, limiting beneficiaries of public benefits to

“non-sectarian” choices violates the Free Exercise Clause. *Carson*, 596 U.S. at 775, 789.

These schools cannot reject student work simply because it contains religious material. Nor can they discipline students for including religious content in assignments. A long line of precedent, going back over half a century, holds that “the prohibition of expression of one particular opinion [within schools] . . . is not constitutionally permissible.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969).

Amici also submit this brief to highlight that religious discrimination is pervasive in California. Given that, as one justice recently opined, “[t]he Ninth Circuit . . . significantly misunderstood *Mahmoud v. Taylor*,” and a “general course correction” was needed, *Mirabelli v. Bonta*, 607 U.S. 492, 501 (2026) (Barrett, J., concurring), a similar correction is needed for the egregiously wrong decision below. In numerous programs, California law requires discrimination against religious entities, barring them from otherwise available public funds or requiring them to secularize as a condition of participation. This Court has made clear that these practices violate the First Amendment.

Review is warranted to reiterate to California—and to the Ninth Circuit—that the Constitution prohibits religious discrimination.

ARGUMENT

I. THE NINTH CIRCUIT ERRED BY LABELING AS “PUBLIC SCHOOL PROGRAMS” HOME-SCHOOLING PROGRAMS ADMINISTERED BY CHARTER SCHOOLS

The court below accepted the defendants’ argument that the independent study programs at Blue Ridge Academy and Visions in Education are “public school programs” and thus not bound by the First Amendment’s prohibition on religious discrimination. App. 18a. The panel began by noting that, as a matter of state law, “charter schools are part of California’s single, statewide public school system.” App. 57a. (quoting *Wilson v. State Bd. of Educ.*, 89 Cal. Rptr. 2d 745, 752 (Cal. Ct. App. 1999)). The petitioners argued that “the funding and materials California provides to parents for use in independent study programs are a generally available public benefit,” but the panel asserted that these programs share “critical features” with public schools that render them “sufficiently public to allow California to condition participation on parents’ use of secular curricula.” App. 59a, 62a. This language was later amended to categorize the home-education programs as “public school programs,” which is less vague than “sufficiently public” but arguably more unacceptable to this Court’s precedents. App. 18a.

The panel was unconvinced by the plaintiffs’ argument that the programs “provide parents great flexibility” over choice of curricula—with instruction in the home and parents serving as direct educators—explaining that these features come with “substantial legal constraints not applicable to private schools.” App. 62a. Now, in California and the Ninth Circuit, parents teaching chosen curricula to their children at home as

part of publicly funded independent study programs are a previously unseen type of “public school” teacher, a result that should be absurd on its face.

But whatever state law or the Ninth Circuit calls them (or they call themselves), Blue Ridge Academy and Visions in Education are not state actors that administer “public school programs” to be taught by parents at home. Unlike traditional public schools, charter schools are privately operated in order to foster educational innovation and pluralism. *See* About, Blue Ridge Academy, <https://perma.cc/9ZFS-VJYF> (noting that the school “takes great pride” in offering “students flexible personalized learning experiences through our many unique and dynamic programs”); *see* Vision, Mission & Values, Visions in Education, <https://perma.cc/V6YH-AK5L> (stating that the school provides an “education that addresses individual differences and learning styles,” and values innovation). Indeed, under identical circumstances, the Ninth Circuit previously concluded that Arizona charter schools are not state actors. *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 814–16 (9th Cir. 2010).

Relying on *Caviness*, two district judges have separately ruled that California charter schools are *not* state actors. Most recently, in *I.H. v. Oakland School for the Arts*, 234 F. Supp. 3d 987 (N.D. Cal. 2017), the court dismissed the student’s equal protection claim after finding that she failed to establish that the school was a state actor. The court explicitly rejected the argument that the charter school was a state actor because California law designated charter schools “public schools.” An earlier court had dismissed a teacher’s First Amendment claim against a California charter school, reasoning that the school’s decision to dismiss

the teacher was too attenuated from the state's decision to authorize the school to be classified as "state action." *Sufi v. Leadership High School*, No. C-13-01598(EDL), 2013 WL 3339441 (N.D. Cal. July 13, 2013). Similarly, if the schools here are not state actors, the Free Exercise Clause prohibits the state from ordering them to refrain from offering students the option of including religious content in their "personalized" curricular plans. *See Carson*, 596 U.S. at 785.

In *Carson*, the Court confronted a Maine program that presented the same substantive issue raised here: whether a state can bar access to an otherwise generally available educational program because a parent's independent choice would result in public funds being spent on religious instruction. The answer is clearly no. Maine tried the same argument before this Court that the panel below endorsed. It argued that its public education benefit was, properly viewed, not tuition assistance, but rather funding for the "rough equivalent of [a Maine] public school education, an education that cannot include sectarian instruction." *Id.* at 782. This Court rejected that as a game of semantics. *Id.* at 784. As the Court explained, the only thing meant by "rough equivalent" was that the private school must be secular, and "[s]aying that Maine offers a benefit limited to private secular education is just another way of saying that Maine does not extend tuition assistance payments to parents who choose to educate their children at religious schools." *Id.*

In other words, Maine was using semantics to disqualify religious schools from its scholarship program. The Court emphasized that it is in the business of protecting "the substance of free exercise" not evaluating "the presence or absence of magic words." *Id.* at 785.

The Court reiterated that the Free Exercise Clause stops a state from creating a public benefit (e.g., public funds for curricula) and then excluding otherwise eligible recipients based on their intent to use the benefit for religious instructions. *Id.* at 789; *see also Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 488 (2020) (discrimination against religious families in this manner is against the “*supreme* law of the land”) (emphasis original); *Trinity Lutheran Church of Columbia v. Comer*, 582 U.S. 499, 451, 467 (2017) (the refusal to allow a church to participate in a grant program is express discrimination and “odious to our Constitution”).

Because Maine’s “nonsectarian” requirement violated those prohibitions, it was subject to strict scrutiny. Given that “[a] law that targets religious conduct for distinctive treatment . . . will survive strict scrutiny only in rare cases,” Maine’s arguments unsurprisingly fell flat. *Carson*, 589 U.S. at 780–81. Of course, “[a] State need not subsidize private education” via home-schooling programs like California’s. *Espinoza*, 591 U.S. at 487. But states that decide to encourage such diverse and innovative education options “cannot disqualify some private schools solely because they are religious.” *Id.*; *Carson*, 596 U.S. at 785. The same reasoning applies to California’s program at issue here.

This Court has already made clear that a state cannot avoid constitutional scrutiny by labeling a school’s educational program “public.” Maine—like California here—created a program that provided families educational opportunities outside of traditional public schools. *Id.* at 773. Maine gave rural school districts without public high schools the option of paying, up to a specified rate, the tuition at an approved private school. *Id.* And—like California here—Maine barred

parents from receiving this public benefit if their child received a “sectarian” education. *Id.* at 774. It seems that the Court’s decision in *Carson* needs to be clarified or reiterated, at least to the Ninth Circuit.

II. CALIFORNIA SHOULD BE REMINDED THAT STATE HOSTILITY TO RELIGION IS UNCONSTITUTIONAL

California’s attempt to relabel the charter schools’ “independent study programs” as public school programs, and the Ninth Circuit’s endorsement of that argument—doesn’t change the fact that the programs here—like the one invalidated in *Carson*, unconstitutionally discriminates against religious instruction. California does not establish a religion when it permits parents to choose curricula for their children any more than Maine established a church when it let parents choose where their kids went to school. The lower court’s holding otherwise is merely an attempt to “recast a condition on funding” and reduce “the First Amendment . . . to a simple semantic exercise.” *Carson*, 596 U.S. at 784. As this Court has repeatedly said, it will “survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders.” *Walz v. Tax Comm’n of City of New York*, 397 U.S. 664, 696 (1970) (Harlan, J., concurring).

Additionally, as in *Carson*, this is a program of private choice. In *Carson*, eligible families could opt to have their public benefit apply towards a school of their choosing, so long as it was not a religious school. 596 U.S. at 774. The Court rejected that, reasoning, as it held in *Zelman* two decades earlier, that “independent private choice” does not offend the Establishment Clause.” *Id.* at 775 (quoting *Zelman*, 536 U.S. at 652).

Instead, *Carson* and many other cases make clear that, far from being required by the Establishment Clause, limiting beneficiaries of public benefits to “non-sectarian” choices violates the Free Exercise Clause. *Id.* at 789. The policies challenged here have the same constitutional flaw as those invalidated in *Carson*: California has opted to approve charter schools that provide curricular assistance for home-schooling families, but then to prevent those families who avail themselves of this public benefit from choosing to use it on any religious content.

Three years ago, the Ninth Circuit held *en banc* that a school district could not, on the basis of religion, refuse to recognize a student school club, including the club’s ability to meet on campus (a benefit extended to all other clubs). See *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664 (9th Cir. 2023) (*en banc*). Anytime a state denies “a generally available benefit solely on account of religious identity, [it] imposes a penalty on the free exercise of religion that can be justified only by a state interest of the highest order.” *Trinity Lutheran*, 582 U.S. at 489 (quotation omitted). Simply put, a state may not put individuals or institutions “to the choice between being [religious] and receiving a government benefit.” *Id.* at 465. Another clear consequence of this principle is that a state may not target religious conduct for special disfavor. See, e.g., *Fulton v. City of Phila.*, 593 U.S. 522, 533–34 (2021); *Tandon v. Newsom*, 593 U.S. 61, 62 (2021); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 535–38 (1993). But California’s law banning parents from including “sectarian”

content in their independent study programs singles out religious families' curricular choices for disfavor.²

The First Amendment's Free Exercise Clause requires governments to, at a minimum, place religious organizations or families on equal footing as non-religious ones when promulgating and enforcing their laws. *See, e.g., Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947); *Lukumi*, 508 U.S. at 531; *Trinity Lutheran*, 582 U.S. at 453; *Espinoza*, 591 U.S. at 485–86; *Tandon*, 593 U.S. at 62; *Fulton*, 593 U.S. at 533–34. California intentionally puts religious families on unequal footing. In both the Blue Ridge and Visions independent-study programs, parents have broad autonomy to choose curricula for their children—provided that the curricula are not religious. California is deliberately expanding the range of educational choices for families choosing a secular education, but not a religious one.

Finally, California cannot reject a student's work or punish a student—going so far in one case as expulsion—because it contains religious material. App. 24a. Even if these charter schools were state actors, this kind of blatant discrimination would be constitutionally impermissible in any public school, or by any other state actor, in the country. In *Good News Club*, a Christian organization was denied access to a public school due to their religious nature and message. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001). This Court held that this was unconstitutional viewpoint discrimination in violation of their right to free

² Moreover, the targeting of those called “sectarian” has a long, unfortunate history. *See Espinoza*, 591 U.S. at 499 (Alito, J., concurring) (detailing the racism, nativism, and anti-Catholic bigotry underlying the state targeting of sectarian institutions); App. 31a–48a (VanDyke, C.J., dissent).

speech. When public schools establish a “limited public forum,” religious speech “discussing otherwise permissible subjects cannot be excluded . . . on the ground that the subject is discussed from a religious viewpoint.” *Id.* at 112.

Many other cases from this Court illustrate the straightforward point that a public school cannot reject a student’s work because it contains religious themes. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022) (holding that the Free Exercise and Free Speech Clauses protect individuals engaging in private religious expression, and that the Constitution does not permit its suppression); *Shurtleff v. City of Boston*, 596 U.S. 243 (2022) (city’s refusal to allow organization to fly “Christian flag” was impermissible discrimination); *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995) (impermissible to open forum but ban discussion of subject from religious viewpoint); *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.* 508 U.S. 384 (1993) (same); *Widmar v. Vincent*, 454 U.S. 263 (1981) (exclusionary policy based on content of religious speech violated basic principle that state regulation of speech must be content-neutral).

Circuit courts agree. Despite its erroneous ruling here, the Ninth Circuit held *en banc* in *Fellowship of Christian Athletes* that the intentional targeting of religious activity “is not required for a governmental policy to violate the Free Exercise Clause,” and that instead the mere favoring of “comparable secular activity is sufficient.” 82 F.4th at 686; *see also Young Israel of Tampa, Inc. v. Hillsborough Area Reg’l Transit Auth.*, 89 F.4th 1337 (11th Cir. 2024) (transit authority ban on all religious advertising was unreasonable and violated the Free Speech Clause); *Ne. Pa.*

Freethought Soc’y v. County of Lackawanna Transit Sys., 938 F.3d 424 (3d Cir. 2019) (same); *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1297 (7th Cir. 1993) (“[N]o arm of government may discriminate against religious speech when speech on other subjects is permitted in the same place at the same time.”) By allowing Blue Ridge and Visions to reject “non-secular” work, California is enabling egregiously unconstitutional viewpoint discrimination.

III. CALIFORNIA ENGAGES IN PERVASIVE UNCONSTITUTIONAL DISCRIMINATION IN BOTH EDUCATION AND OTHER CONTEXTS

The nonsectarian requirement at issue here is not the only way in which California unconstitutionally discriminates against religious individuals and organizations. *Amici* have identified at least 35 instances of similar anti-religious discrimination in the California code and accompanying regulations. Below we discuss a few examples that highlight the need to make clear that the Constitution does not tolerate California’s religious discrimination.³

³ See, e.g., Cal. Educ. Code § 69954 (barring student participants in work-study program from seeking employment with sectarian organizations); *id.* at § 44415 (requiring schools applying for the Teacher Residency Grant Program to be “nonsectarian”); *id.* at § 94110 (excluding facilities used for “sectarian instruction or . . . religious worship” from generally available school bond program); Cal. Code Regs. tit. 5, § 30602 (2024) (excluding religious employers from a work-study program); *id.* at § 30603 (providing that the work performed by students “will not be related to the activities of any sectarian organization”); *id.* at § 80048.9.3 (excluding sectarian schools from credentialing program); *Bd. of Trs. v. Cory*, 145 Cal. Rptr. 136, 138 (Ct. App. 1978) (holding that statutes authorizing expenditure of public funds to support sectarian schools violated California’s Blaine amendment); *Feminist Women’s*

A. California Discriminates against Religious Schools and Educational Providers

As detailed above, this Court has made clear that, when the government chooses to establish a generally available public-benefit program, it may not, absent a compelling reason, exclude religious organizations or religious conduct. Any law that bars religious groups from receiving public benefits solely because of their religious character or content of their programming is subject to the “strictest scrutiny.” *Carson*, 596 U.S. at 780 (quoting *Espinoza*, 591 U.S. at 478). This Court has also made clear that a state’s interest in promoting a greater degree of church–state separation than the Constitution requires does not qualify as a compelling interest. *See id.* at 781 (“[S]eparating church and state more fiercely than the Federal Constitution . . . cannot qualify as compelling in the face of the infringement of free exercise.”) (cleaned up). California thus lacks a compelling state interest to justify its exclusion of religious individuals and organizations from otherwise generally available public programs. Unfortunately, the state persists in engaging in widespread religious discrimination across a range of public programs.

The California Constitution contains a “Blaine Amendment” similar to the Montana provision that this Court found unconstitutional as applied in *Espinoza*. *See* Cal. Const. art. IX, § 8; *Espinoza*, 591 U.S. at 489 (noting the “conflict between the Free Exercise Clause and the application of the no-aid provision” at issue). In his dissent below, Judge VanDyke highlighted the California Blaine Amendment’s long

Health Ctr., Inc. v. Philibosian, 203 Cal. Rptr. 918 (Ct. App. 1984) (holding that the California Constitution prohibited district attorney from burying 16,500 fetuses in religious cemetery).

history of being used for discrimination. App. 31a–48a. In *Cal. Teachers Ass’n v. Riles*, 632 P.2d 953, 963–64 (Cal. 1981), for example, the state supreme court invalidated statutes authorizing the superintendent of public instruction to loan public-school books to students attending religious schools, a practice this Court has permitted. See *Bd. of Ed. of Cent. Sch. Dist. No. 1 v. Allen*, 392 U.S. 236, 238 (1968).

California has codified its high court’s anti-religious interpretation of its state constitution in dozens of places across its Education Code and Code of Regulations. For example, Section 56441.8 of the California Education Code provides that if the state wishes to contract with a nonpublic school to provide pre-kindergarten schooling, it may only partner with “nonsectarian” schools. Cal. Educ. Code § 56441.8(d). Another provision of the Education Code empowers school districts to “exclude from schools and school libraries all books, publications, or papers of a sectarian, partisan, or denominational character.” *Id.* at § 18111. Yet another bars religious schools from participating in a grant program intended in part to increase teacher diversity.⁴ And another pronounces that “local educational agenc[ies] shall not contract with a sectarian hospital [to provide] instructional services” to patients with “exceptional needs.” *Id.* at § 56361.5.

California also excludes religious schools from contracting with the state to serve students with special needs. See, e.g., *Loffman v. Calif. Dept. of Educ.*, 119 F.4th 1147, 1153 (2024) (finding that parents “plausibly alleged” that the state’s nonsectarian requirement

⁴ See *id.* at § 56441; Teacher Residency Grant Program, Cal. Comm’n on Teacher Credentialing (last visited Sep. 18, 2026), <https://tinyurl.com/yc8yy447>.

for “nonpublic schools” serving disabled students violates the Free Exercise Clause). Section 56366 of the Education Code provides that only “nonsectarian school[s] or agenc[ies]” may partner with the state to provide alternative special education services. Cal. Educ. Code § 56366. Section 56836.20 similarly bars sectarian schools from contracting with state-run special education local plan areas. *See id.* at § 56836.20 (providing that the state may enter into special education “master contracts” with only “nonsectarian schools and agencies”). California further requires that all “[s]pecial education and related services” provided to students in private schools must be “secular, neutral, and nonideological.” *Id.* at § 56172. And Section 3051 of the California Code of Regulations provides that “[a]n individual providing [special education] services out of state [must] . . . [b]e employed by a nonpublic, nonsectarian school or agency certified by” the California Department of Education. Cal. Code Regs. tit. 5, § 3051(a)(5)(b) (2024).

B. California Discriminates against Religious Social Services Providers

California also discriminates against a range of religious social-service providers in ways that the U.S. Department of Justice recently concluded are unconstitutional. *See* Constitutionality of Religious Restrictions on the Use of Federal Funds, 50 Op. O.L.C. __ (Aug. 25, 2026). For example, the state authorizes loans to private childcare programs but requires providers to be nonsectarian. *See* Cal. Welfare & Insts. Code § 10475. Then there’s the Learning-Aligned Employment Program, which establishes public funding for a work-study program to help students defray educational costs “while gaining education-aligned,

career-related experience.” Cal. Educ. Code § 69951—but only nonsectarian organizations are eligible to participate. *Id.* at § 69954. California also discriminates in the provision of grants and contracts under the Workforce Innovation and Opportunity Act. The program excludes “[o]rganizations that are owned or operated as pervasively sectarian organizations” from receiving public funding. Cal. Unemp. Ins. Code § 14003. Another state partnership with private organizations to employ Californians has a similar restriction: the state only permits “grants to faith-based organizations that are not owned or operated as pervasively sectarian organizations.” *Id.* at § 9617.

California also violates the Free Exercise Clause by requiring religious social services providers to desist from religious activities to receive otherwise generally available public benefits. For example, the Juvenile and Gang Violence Prevention, Detention and Public Protection Act of 1998 and its precursor, the Youth Center and Youth Shelter Bond Act Program, empower the Director of the Department of Youth Authority to “make awards to public or private nonprofit agencies or joint ventures, or both, for the purpose of acquiring, renovating, constructing, and purchasing equipment for youth centers or youth shelters.” Cal. Welfare & Insts. Code §§ 990–993; *id.* at §§ 2010–2025. However, to qualify for funds, the facility “may not be used and may not be intended to be used for sectarian instruction or as a place for religious worship.” *Id.* at § 2014. This Court explained in *Carson* that such use-based restrictions are no “less offensive to the Free Exercise Clause” than restrictions based on status. *See Carson*, 596 U.S. at 787.

The California Code of Regulations also authorizes public funding for “[t]he acquisition or alteration/renovation of existing facilities, or the construction of new facilities” to serve as a multipurpose senior center. Cal. Code Regs. tit. 22, § 7550 (2024). Funds may only be disbursed to a facility that “will not be used and is not intended to be used for sectarian use or as a place of religious worship.” *Id.* This type of religious discrimination is similarly unconstitutional. *See Carson*, 596 U.S. at 787–88 (“[P]rohibition on status-based discrimination under the Free Exercise Clause is not a permission to engage in use-based discrimination.”).

Finally, many California cities also discriminate against religious organizations. Los Angeles offers “subsidies of development or construction related fees” to nonprofits whose projects “will promote a public purpose for the City.” L.A., Ca., Admin. Code § 5.65(a). This ordinance provides that “Development Fee subsidies shall not be granted to religious organizations other than for fees that apply to construction of facilities or improvements that will be utilized exclusively for secular purposes.” L.A., Ca., Admin. Code § 5.65(h)(i). The municipal codes of Alhambra, Bakersfield, Hayward, San Rafael, and Visalia all include provisions on the disbursement of economic-development bonds that contain the following restriction on this publicly available funding: a “facility [must] not include any facility, place or building used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.” Alhambra, Ca., Code of Ordinances § 8.01.030; Bakersfield, Ca., Municipal Code § 23.50.030; Hayward, Ca., Municipal Code § 8-11.110(e); San Rafael, Ca., Code of Ordinances § 3.30.030(e); Visalia, Ca., Municipal Code § 3.32.030. It is unconstitutional for cities to require

organizations to abstain from religious activities to qualify for public funding.

California evidently has not yet absorbed the message of *Carson*, *Espinoza*, and *Trinity Lutheran*: When a state opens a public-benefit program to private individuals or organizations, it cannot exclude some from participating merely because they are religious. Nor can it require these beneficiaries to engage in only secular activities as a condition of participation. *See Carson*, 596 U.S. at 784. This case presents an opportunity to make that clear to the state.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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