

No. 26-237

IN THE  
**Supreme Court of the United States**

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JOHN WOOLARD, *et al.*,  
*Petitioners,*

v.

TONY THURMOND, *et al.*,  
*Respondents.*

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

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**BRIEF OF THE HIVE METHOD FOUNDATION  
AND AWAKEN CHURCH DBA AWAKEN  
ACADEMY AS *AMICI CURIAE* IN SUPPORT OF  
PETITIONERS**

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Christopher Schweickert  
*Counsel of Record*  
SETO WOOD & SCHWEICKERT LLP  
2300 Contra Costa Boulevard, Suite 310  
Pleasant Hill, CA 94523  
(925) 938-6100  
cjs@wcjuris.com  
*Counsel for Amici Curiae*

## **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*

*Amici* are two California religious nonprofit organizations that serve the families who participate in the charter school programs at issue in this case. These parents do publicly funded, parent-directed homeschooling. They are the primary educators for their children and devote considerable time and effort to train their children for success at home, church, and work, alleviating some of the burdens on California's public schools. But the State excludes them from equal access to public benefits simply and only because they seek to use religious materials. *Amici* submit this brief in support of the petition for rehearing by Petitioners John Woolard, Breanna Woolard, Hector Gonzales, Diana Gonzales, and Carrie Dodson, and their minor children (the "Families").<sup>1</sup>

The Hive Method Foundation, Inc., a California religious nonprofit corporation (formerly The Hive Method, LLC) is a resource for homeschool families. It brings families and educators together to form homeschool pods, and it offers courses and coaching that equip parents and educators to run those pods themselves. Hive presently serves approximately 830 families and has served about 1,300 since its founding. Approximately 95% of its families use charter school program funds. Hive itself receives no charter funds.

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel made a monetary contribution intended to fund its preparation or submission. Counsel of record for all parties received timely notice of amici's intention to file this brief at least 10 days before the due date.

Awaken Academy is an educational ministry of Awaken Church, a California religious nonprofit corporation. It serves approximately 180 homeschooled students through two-day and four-day ministry programs, in which it develops and teaches its own curriculum integrating religious instruction. Awaken Church also has many other congregants in charter schools. Awaken commonly receives inquiries from parents seeking to use charter school funding to participate in the opportunities at Awaken that the parents cannot afford on their own. But Awaken has not sought approval as a charter school vendor, because Awaken will not compromise its religious character to satisfy California's categorical ban on religious content.

Approximately 68% of Awaken Academy's families are enrolled in charter school programs. But none of either amicus's families' program funds pays for anything religious — not Awaken's program fees, not the curriculum tied to its classes, and not the religious curriculum Hive's families would use at home. Families spend their program funds on programs and materials that can pass the State's religious screen, and pay for anything religious out of their own pockets, or go without.

*Amici* offer this brief to explain how California's approach impacts both the providers who offer curriculum with religious content and the thousands of religious families who want to use such curricula. Petitioners can describe the denials their own families received. Respondents can describe the Education Code. *Amici* see something different: how these programs are administered day to day, across many families and many charter schools, and from both

sides of the experience: the parents who request funding and the providers who are paid — or refused payment by a State that categorically bans religious content. The decision below rests entirely on a label applied to the programs. The panel described the Education Code. *Amici* describe what the program itself actually is.

### SUMMARY OF ARGUMENT

California’s charter school policy forces religious families to choose between funding and faith. Facing this collision, the panel wrestled with whether the money and materials California provides through charter school programs are “a generally available subsidy for private homeschooling” or “part of California’s public education system.” *Woolard v. Thurmond*, 152 F.4th 1050 (9th Cir. 2025), *amended and reh’g en banc denied*, 170 F.4th 701 (9th Cir. Mar. 23, 2026), Pet. App. 15a. It chose the second answer, “public” education, by matching the Education Code against the features of public schooling described in *Carson v. Makin*, 596 U.S. 767, 782–85 (2022). Everything else in its decision followed from that label. Pet. App. 15a–19a.

But as the five dissenters below observed, the “public school program” label cannot do the constitutional work the panel assigned it. As administered, the programs are home education with a purchasing department attached. Parents choose, propose, and teach the curriculum at home, while the charter school approves or denies requests to spend program funds on books, classes, and tutors. This is a benefit program, governed by *Trinity Lutheran*, *Espinoza*, and *Carson*.

The supervision the panel relied on to call these programs “public” is, in practice, the unlawful screen of exclusion. During review of what parents buy and what children submit, religious content is categorically screened out even when the material otherwise satisfies the program’s academic requirements. The panel thus treated the means of enforcing the exclusion as evidence that the exclusion needs no justification — a circular definitional maneuver that *Carson* forbids.

This mislabeling forces an unconstitutionally blunt choice between funding and faith. Families keep their faith out of their children’s schoolwork or pay for religious materials themselves. Those who cannot afford to pay go without — the pressure *Thomas*, *Sherbert*, and *Mahmoud* describe. Religious providers, meanwhile, are shut out of a market that pays their secular counterparts — the use-based exclusion *Carson* forbids.

Additionally, the decision below cannot be reconciled with *Loffman v. California Department of Education*, in which California lost this argument, against these officials, over the same statutory word. The panel avoided *Loffman* only by re-describing the benefit. That rule lets any court sidestep *Trinity Lutheran*, *Espinoza*, and *Carson* by relabeling a benefit, on a question that recurs statewide, in a circuit that three Members of this Court recently said needs correction. The petition should be granted.

## ARGUMENT

### **I. As administered, the programs are home education with a purchasing department attached.**

The panel described the Education Code. *Amici* describe the program. Below, *Amici* test the panel's characterization against the way these programs actually run across the families and schools they serve.

#### **A. Parents choose and propose the curriculum; teachers sign off.**

“[T]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 535 (1925). Nearly fifty years later, this Court confirmed that “[t]his primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). The charter school programs are built on that tradition, not in tension with it.

With this case at the pleading stage, the panel accepted that the charter schools give parents “great flexibility to choose which pre-existing curricula to use to educate their children, or to create their own,” and that “the direct educators are their parents.” Pet. App. 18a. *Amici*’s experience confirms these allegations and fills them in. In the families Hive serves, children typically spend two days a week in a small homeschool “pod” that families and educators organize

themselves. The rest of the week, which is most of it, they learn at home from curriculum their parents have chosen. In these programs, curricular decisions that a public school would make at the district level — what text to use, in what order, at what pace, with what supplementary material — are made by parents.

The panel noted that California’s regulations call for the methods of study to be “selected by the supervising teacher.” Pet. App. 17a (quoting Cal. Code Regs. tit. 5, § 11700(f)). But in the families Hive serves, selection runs the other way. The parent identifies the curriculum and proposes it; the supervising teacher signs off. Signing off on a parent’s choice is approval, not selection. The regulation’s word describes the paperwork, but it does not describe who chooses.

And in Hive’s experience, one kind of proposal is denied every time: anything religious.

**B. The transaction is a purchase approval, not instruction.**

Under California law, the charter school “is then required to provide appropriate materials and services necessary to achieve the agreement’s objectives.” Pet. App. 10a (citing Cal. Educ. Code §§ 51746, 51747(g)(3); Cal. Code Regs. tit. 5, § 11700(i)). In practice that obligation is discharged through a purchasing process. A parent identifies an item or a class, submits a funding request, and the request is approved or denied. *See also* Pet. App. 20a (Bumatay, J., dissenting from denial of rehearing en banc) (describing a supervising teacher who “approves expenditures of state funds, and reviews work samples”). In *Amici’s* experience, requests are

approved by the family’s assigned homeschool teacher and by the charter school’s ordering department. Parents remain free to spend their own money on anything they choose; only public funds pass through the review.

This process is a public benefit program, not classroom instruction. It closely resembles the programs this Court has repeatedly held may not be closed to religious participants: a grant application in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), a scholarship in *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020), and tuition assistance in *Carson*. What varies across those cases is the mechanism to disburse the benefit. What does not vary is the principle: once a State “decides to” extend a benefit, “it cannot disqualify” recipients “solely because they are religious.” *Carson*, 596 U.S. at 785. In operation, a central question in California’s program is not who teaches, but which parent-selected materials and providers the program will pay for. (Only those sanitize of religious perspective.)

**C. In practice, supervision is periodic oversight, not delivery of instruction.**

California requires that independent study be “under the general supervision” of certificated teachers, who provide “continuing oversight of the study design, implementation plan, allocation of resources, and evaluation[s].” Pet. App. 17a (quoting Cal. Educ. Code § 51747.5(a); Cal. Code Regs. tit. 5, § 11700(b)). The panel read that language and pictured a public school classroom. *Amici* can describe what it looks like from inside a family’s home. It varies

considerably from charter to charter and from teacher to teacher. The family may meet with its assigned homeschool teacher roughly every 20 days, about once a month, in person or virtually. At the elementary level the meeting is typically friendly and general: the teacher asks what the child has been learning in history, or who the child's favorite character was in a book the child read. The teacher reviews work samples, and parent and teacher check which state standards the work satisfies. The charter school keeps the attendance record, but the parent fills it out. In short, supervision in these programs consists largely of checking work the parent has selected and approving purchases the parent has proposed.

Supervision of that character is oversight of a privately conducted activity, not delivery of a public one. This Court has long recognized the distinction. Acts of private contractors do not become acts of the government by reason of their significant or even total engagement in performing public contracts, and regulation, even if extensive and detailed, does not convert private conduct into state action. *Rendell-Baker v. Kohn*, 457 U.S. 830, 841 (1982). A parent teaching her own child at her own table, from a book she selected, does not become a state employee because a credentialed reviewer signs off on the purchase order and reads the work product afterward.

**D. The State pays private tutors to teach children in private homes.**

Charter funds do not buy only books. They buy instruction from private parties too. Parents in these programs use program funds to engage tutors and to enroll their children in classes offered by outside

vendors. Each charter school maintains its own list of approved vendors; families may ask that a provider be added, and the approval process varies from school to school. Hive's pods show how this works. The educator who leads a pod signs up with a charter school as a vendor, and the pod's families direct their program funds to pay her; the families buy the pod's supplies and materials themselves.

If a funded course includes religious instruction, the charter school will not pay for that instruction. The tutor who teaches a child algebra in the family's living room, paid with program funds at the parent's direction, is not a public school teacher by any ordinary understanding. Yet on the reasoning below, because the funds flow through an entity labeled a public school, the State may refuse to fund the tutor's otherwise eligible instruction when religious material is used. In Hive's pods, that is what happens.

What the statutes describe as public schooling is, in this respect, a state-funded market in private educational services, allocated entirely by parental choice — “a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients.” *Carson*, 596 U.S. at 781.

**II. The supervision the panel relied on to make the programs “public” is the instrument of discrimination.**

**A. Academic standards do not drive the challenged exclusions; religious content does.**

The panel emphasized that charter study must be “aligned to all relevant local and state content standards” and that students sit for state assessments. Pet. App. 16a. Standards may require a student to master particular subjects or skills; however, they do not ordinarily dictate which book a parent must use to do so. And nothing in this record suggests the materials at issue failed to meet them. As five judges of the Ninth Circuit observed in dissent from the denial of rehearing, the objection to the materials these families selected was never pedagogical: one family was told the academics were “fine” but the “religious aspect” was prohibited. Another was refused funding for a sentence-structure exercise using the sentence “God sends the rain to help plants grow.” The family was told the program “can’t accept any work sample with any religious wording on it.” Another rejected a course because it could not approve any “faith-based curriculum.” Pet. App. 24a (Bumatay, J., dissenting from denial of rehearing en banc).

*Amici* commonly see rejection of any work with religious content. Awaken’s American literature class for ninth graders was designed to satisfy a charter school’s course requirements. Students completed its academically compliant assignments. But then they also had to produce separate, secularized work

samples acceptable to the charter school because book lists and papers drew objections: biography subjects who were people of faith, religious poems in a poetry unit, a religious perspective in the analysis of historical speeches. Students who, as good persuasive-writing instruction encourages, brought their own convictions to their papers could not submit them as work samples. One Awaken senior's paper on the Book of Job — a literary, non-theological argument written for an ancient literature course that also covered the *Iliad*, the *Odyssey*, *The Canterbury Tales*, and *Beowulf* — was rejected as a work sample. Hive's families report the same pattern. Curriculum requests with religious content are always denied — among others, The Good and the Beautiful, and Christian Light's math, science, and history materials. Work that mentions God, or Adam and Eve, cannot be turned in; families who submit religious content by mistake receive a note that the work cannot be accepted for religious reasons. And the line is sometimes drawn inconsistently. Families are routinely approved to purchase C.S. Lewis's *Chronicles of Narnia*, but not his *The Great Divorce*.

Standards compliance, in other words, is not what separates a funded request from a denied one here. Religious content is.

**B. The existence of a religious screen does nothing to show that a religious screen is permissible.**

The panel identified supervision by certificated teachers as one of the features that makes charter programs public rather than private. Pet. App. 17a–18a. But the supervision that actually operates in

these programs is, in substantial part, *content review* of what parents buy and what children submit — the very review that denies religious families what secular families receive. As Part I.A shows, even the “selection” of study methods that the regulations assign to teachers is, in practice, approval of a parent’s proposal — and the approval step is precisely where religious content is screened out. The panel’s reasoning runs in a circle. The supervision it treated as evidence that the programs are public includes the very content-review mechanism through which the challenged exclusion is enforced. The mechanism that enforces a condition cannot itself become a reason the condition escapes free exercise scrutiny.

**C. “Public school program” is the kind of magic word Carson forbids.**

*Carson* rejected what happened below. Maine argued that its program funded only “the rough equivalent of a Maine public school education,” which by definition was secular. This Court answered that “the definition of a particular program can always be manipulated to subsume the challenged condition,” and that allowing a State to “recast a condition on funding” in that way would reduce the First Amendment “to a simple semantic exercise.” 596 U.S. at 784. The Court instructed that the inquiry turns on “the substance of free exercise protections,” not “the presence or absence of magic words.” *Id.* at 785. “Public school program” is a “magic word” when it is used to describe parents teaching their own children with materials the parents choose, subject to a reviewer who categorically screens out religious content even when the material otherwise satisfies the program’s academic requirements.

Nor does the panel’s conclusion follow from the premise that a State “may provide a strictly secular education in its public schools.” *Id.* at 785. The question here is different: whether a State may agree to pay for an education that parents design and deliver at home — and then withhold payment from the parents whose design is religious. *Carson* and *Espinoza* answer that question whatever the label. California penalizes the decisions of these families “by cutting families off from otherwise available benefits if they choose a religious” curriculum “rather than a secular one, and for no other reason.” 591 U.S. at 486. “A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious.” *Id.* at 487.

The State’s antiestablishment rationale does not save the exclusion, and the panel did not hold otherwise. “A State’s antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise.” *Carson*, 596 U.S. at 781. Where a parent chooses religious material for her own child in her own home, no one is coerced, and the coercion that is “the *sine qua non* of an establishment of religion” is absent. *American Legion v. American Humanist Ass’n*, 588 U.S. 29, 75 (2019) (Thomas, J., concurring in the judgment); *see* Pet. App. 23a (Bumatay, J., dissenting). If anything, it is the exclusion that has the “tendency to coerce” parents “into acting contrary to their religious beliefs.” *Lyng v. Northwest Indian Cemetery Protective Ass’n*, 485 U.S. 439, 450 (1988).

### **III. California forces religious families to choose between funding and faith.**

Because the supervision is the screen, families encounter the exclusion not once but continually — every time they request a book or turn in an assignment. The record shows where that can end: after a charter school rejected one family's course because it could not approve any "faith-based curriculum," that family's child was later expelled for submitting work samples with religious content. Pet. App. 24a (Bumatay, J., dissenting from denial of rehearing en banc). *Amici* see the quieter version of the same pressure constantly. Most families, once enrolled in a charter program, keep their faith out of what they submit. They turn in only work samples with no religious content. Some parents coach their children not to mention their beliefs in meetings with the supervising teacher. Most no longer contest denials at all; they understand that if they want state funding, they cannot do anything religious. Families of younger children can sometimes work around the rules. By late junior high and high school, when students are expected to write persuasively and bring their own convictions to their analysis, it becomes nearly impossible — and students learn instead to treat their beliefs as something to be kept out of their education.

The State may respond that no one is excluded from what the State is offering: families remain enrolled, still draw program funds, get any curricula that meets the State's approval, and may buy religious materials with their own money. But none of this Court's indirect coercion decisions requires a total barrier to a public benefit before a burden on free

exercise exists. The question is rather whether the State puts the believer to a choice between the benefit and the faith. Adell Sherbert could have accepted Saturday work. Eddie Thomas could have stayed in a job producing armaments. Catholic Social Services could have kept its city contract by certifying same-sex couples as foster parents, contrary to its beliefs. Each could have kept the benefit by giving up the practice. And in each case, the choice itself was the burden. A person “may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program.” *Thomas v. Review Board*, 450 U.S. 707, 716 (1981) (citing *Everson v. Board of Education*, 330 U.S. 1, 16 (1947)). “Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.” *Id.* at 717–18. “Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine” imposed for the worship itself. *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); see *Fulton v. City of Philadelphia*, 593 U.S. 522, 532 (2021) (city burdened agency’s religious exercise “by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs”). A parent who deletes a reference to God from her child’s work sample so the family can keep its funding — which is where many of *Amici*’s parents are left — is being forced to make exactly that choice.

*Amici's* own families show the choice in its plainest form. Approximately 95% of Hive's families and 68% of Awaken's are enrolled in charter programs, and they spend their program funds on programs and materials that pass the State's religious screen. For religious curriculum, and for Awaken's program, they pay out of pocket. And paying privately does not end the matter: religious curriculum a family buys with its own money still cannot be used for the work the family submits to the charter school. A family that wants its children in a religious program must forgo the public funding it would receive for a secular one. And a family that cannot afford to pay twice does not enroll at all. In high school, when compliance becomes hardest, many families give up one or the other: they stop using the charter program, or they leave Awaken. That is the choice between funding and faith.

The pressure is heaviest on families who cannot leave. Families who choose programs that will not dilute their religious character shoulder the full cost themselves. Families who cannot afford to do so take the funding and leave their faith out of their children's schoolwork. This Court addressed that predicament directly in *Mahmoud v. Taylor*: it is "both insulting and legally unsound" to tell parents they must abstain from public education to raise their children in their faith "when alternatives can be prohibitively expensive." 606 U.S. 522, 562 (2025). But this is what California tells *Amici's* parents. And their practice burdened here is at the core of what the Free Exercise Clause protects — "[t]he practice of educating one's children in one's religious beliefs," including "in the

confines of one's own home." *Id.* at 547 (quoting *Yoder*, 406 U.S. at 213–214).

#### **IV. Religious providers are excluded from a market that pays their secular counterparts.**

In addition to relating the predicament of their parents, *Amici* can present a perspective no party can: the provider side of the experience. California pays independent study funds to a wide range of private providers and tutors, and the market that results is being sorted by religion. Homeschool programs that have excised faith-based language from their program descriptions receive charter funds, and they are growing as a result. At least two other programs, together serving more than 1,000 students, qualify only by making every instructor a separately approved vendor, each responsible for keeping his or her own materials free of religious content. Programs like Awaken cannot adopt that workaround without compromising their religious purposes or risking misclassification of employees under California law. Programs that secularize are paid. Programs that will not are put to the choice between funding and faith.

Awaken's ministry offers two-day and four-day programs in which its own teachers lead classes in subjects such as history, literature, and government. It has never been told no, because it has never asked, and it has no reason to. California's exclusion is categorical and announced in advance, and no provider in Awaken's position submits a faith-based curriculum to a reviewer whose instructions are to reject it. That is how the exclusion operates on providers: not through a record of denials, but through a market religious providers never enter. The denials

in this record are only the visible part of the exclusion. Hive is differently situated, but it too has not sought charter funds for itself. The providers excluded in its community are the educators it trains and connects with families, whose instruction is paid with program funds only when they includes no religious content.

The exclusion reaches religious publishers as well. Apologia, a widely used science curriculum written from a Biblical worldview, is not an approved resource. And in at least one instance known to *Amici*, a writing curriculum whose content is not religious — *The Lost Tools of Writing*, a program in persuasive writing and thesis development — has been refused because its publisher is faith-based. Classical education, which has for centuries woven philosophy and religion into the study of literature, history, and rhetoric, is disadvantaged as a method, because much of the curriculum that serves it integrates religious content and so cannot be purchased.

This is use-based discrimination, and *Carson* holds it is no more permissible than discrimination based on status. Maine, too, excluded schools for what they taught rather than for what they were, and this Court held that “the prohibition on status-based discrimination under the Free Exercise Clause is not a permission to engage in use-based discrimination.” 596 U.S. at 788. *Carson* also warned that enforcing such a line by “scrutinizing whether and how a religious school pursues its educational mission” would “raise serious concerns about state entanglement with religion and denominational favoritism.” *Id.* at 787. California’s review of individual books and work samples is that scrutiny, conducted one purchase request at a time. And that

scrutiny, compared to favorable treatment of secular content providers, is in turn what leads to strict scrutiny. Regulations that “treat *any* comparable secular activity more favorably than religious exercise” trigger strict scrutiny. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). A State may not condition participation in a public benefit on a willingness to disavow religious character. *Trinity Lutheran*, 582 U.S. at 463. This is the condition programs meet when they remove religious language to qualify.

**V. After the decision below, a court can avoid *Trinity Lutheran*, *Espinoza*, and *Carson* by relabeling the benefit.**

**A. California already lost this argument two years ago in *Loffman*.**

Two years ago the Ninth Circuit considered California’s requirement that schools serving students with disabilities under the Individuals with Disabilities Education Act be “nonsectarian.” See Cal. Educ. Code § 56365(a). The defendants were the California Department of Education and Superintendent Thurmond, respondent here. The court held that the requirement “on its face burdens the free exercise rights of parents because it prohibits parents from advocating for a sectarian placement,” that it is “not neutral to religion” and so subject to strict scrutiny, and that the State failed to satisfy that standard. *Loffman v. California Dep’t of Educ.*, 119 F.4th 1147, 1153, 1165-71 (9th Cir. 2024). As the dissenters below put it, *Loffman* establishes that “a statutory scheme that requires a family to forgo a sectarian education . . . in order to receive special

education benefits otherwise available . . . imposes a burden on their free exercise rights.” Pet. App. 21a (Bumatay, J., dissenting) (quoting *Loffman*, 119 F.4th at 1168 (simplified)).

The decision below cannot be reconciled with *Loffman* on any principle; it avoids *Loffman* by re-describing the benefit. After it, a State can immunize a religious exclusion from scrutiny simply by defining the benefit to carry the exclusion.

**B. The question recurs across a large publicly funded population.**

Roughly 222,000 students participate in non-classroom based charter schools in California. Cal. Legis. Analyst’s Off., *Review of the Funding Determination Process for Nonclassroom-Based Charter Schools* (Feb. 29, 2024), <https://lao.ca.gov/Publications/Report/4870>. And this does not include the considerable but less documented communities outside the funded market. Hive serves approximately 830 families and has served about 1,300. Awaken serves approximately 180 homeschooled students. Classical Conversations, a national classical homeschool program, serves thousands more students in California. This is not a dispute about three families. It is the operating rule for every charter program in the State.

And the decision below is part of a pattern this Court has already noticed. Five judges dissented from the denial of rehearing en banc. Pet. App. 20a. Months earlier, three Members of this Court observed that the Ninth Circuit had “significantly misunderstood *Mahmoud v. Taylor*” and that “general course correction” was in order. *Mirabelli v. Bonta*, 607 U.S.

492, 501 (2026) (Barrett, J., concurring). The panel’s response to the petition for rehearing here was to amend two passages of its opinion, replacing the phrase “sufficiently public” with the conclusion that the programs are “public school programs,” and to deny rehearing. Pet. App. 8a–9a. The label changed; the reasoning did not.

## CONCLUSION

The constitutional status of the way tens of thousands of California families educate their children should not turn on the word a court of appeals chooses to describe it. The panel described the Education Code. *Amici* have described the program itself: home education with a purchasing department attached, in which religious material is screened out categorically, however well it meets the program’s academic requirements. For the hundreds of families *Amici* serve, that label has meant a choice between funding and faith. The First Amendment does not permit the State to force that choice upon religious parents. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher Schweickert

*Counsel of Record*

SETO WOOD & SCHWEICKERT LLP

2300 Contra Costa Blvd., Suite 310

Pleasant Hill, CA 94523

(925) 938-6100

cjs@wcjuris.com

*Counsel for Amici Curiae*

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