

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

**Brief for *Amici Curiae* State of Utah and 17
Other States in Support of Petitioners**

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Introduction and Statement of Interest¹

“[E]ducation is perhaps the most important function of state and local governments,” wrote a unanimous Supreme Court in *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954). “It is the very foundation of good citizenship” and “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.” *Id.* Indeed, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” *Id.* With so much at stake, no State may play favorites in dispensing educational opportunities. Rather, where the State “has undertaken to provide it, [education] is a right which must be *made available to all on equal terms.*” *Id.* (emphasis added).

Education’s importance has only grown in the 70 years since *Brown*. Americans with higher levels of education enjoy greater median earnings, rates of employment, and even health, while relying less on government benefits and committing less crime. Nat’l Ctr. for Educ. Stat., *Trends in High School Dropout and Completion Rates in the United States*, <https://nces.ed.gov/programs/dropout/intro.asp>. Many States, seeking more of these benefits, have recognized the limits of a one-size-fits-all education system and chosen to implement alternatives to better serve their residents. Utah, for example, has created “a multitude of schooling opportunities, both public and private, as well as in the home,” that “diversify

¹ Counsel of record received timely notice of the State of Utah’s intent to file this *amicus* brief under Supreme Court Rule 37.2.

[its] economy” and “enhance[] the vibrancy of [its] community.” Governor Spencer J. Cox, *Utah School Choice Week Declaration* (Jan. 2026), <https://governor.utah.gov/declarations/>. States enjoy freedom to create and customize these alternative options. But they too must be offered “on equal terms”—including without unlawful religious discrimination. As this Court has explicitly held, 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.” *Carson v. Makin*, 596 U.S. 767, 785 (2022) (quoting *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464, 487 (2020)).

California did so anyway. It created a program allowing parents to homeschool their children through independent study programs. It authorized these parents to create customized curricula for their children. And it made funds and resources available to these parents—with one exception. It will not “permit the use of sectarian curricular materials for instruction,” App. 10a, even where those “materials meet California’s educational standards,” App. 24a (Bumatay, J., dissenting from denial of rehearing en banc).

California’s religious discrimination violates the Free Exercise Clause. The Ninth Circuit tried to sidestep that straightforward conclusion by (mis)labeling homeschooling as a “public school progra[m].” App. 18a. But “mere labels” can’t evade First Amendment principles and protections. *Bigelow v. Virginia*, 421 U.S. 809, 826 (1975) (quoting *NAACP v. Button*, 371 U.S. 415, 429 (1963)). The panel’s

erroneous decision creates a split with other circuits that have not allowed discrimination like California's, and with this Court's recent First Amendment jurisprudence. This Court should grant certiorari to correct the decision below and restore uniformity.

The States of Utah, Alabama, Alaska, Arkansas, Florida, Georgia, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, and West Virginia submit this brief in support of Petitioners. Many of these States directly or indirectly provide benefits that can be used for private and homeschooling options for their residents, enabling families to choose educational options that best fit their circumstances, values, and preferences. All these States share an interest in ensuring that generally available educational opportunities are not given preferential (or inferior) status simply due to their religious status. Discrimination against homeschooling programs that use religious educational materials infringes on the rights of families—parents and students—who choose those programs. *Amici* States oppose such discrimination as harmful to their interests in offering diverse educational programs to meet a wide variety of needs, ensuring that children and families remain free to pursue the benefits of education, and safeguarding their citizens' First Amendment rights.

Summary of the Argument

1. States can choose whether to provide public benefits to their citizens. But the Free Exercise Clause does not permit a State to limit a publicly available

benefit to secular entities. That’s the emphatic message from a trilogy of the Court’s recent decisions: *Trinity Lutheran Church of Columbia, Inc. v. Comer* (2017) , *Espinoza v. Montana Department of Revenue* (2020) , and *Carson v. Makin* (2022). In each case, the Court invalidated state action that sought to apply a law forbidding the grant of a benefit to a “sectarian” (that is, religious) organization. And in each case, the Court reaffirmed its straightforward reading of the Free Exercise Clause as “unremarkable.”

The trilogy makes clear that the First Amendment protects against religious discrimination. Generally available public benefits must be offered on equal terms to both secular and “sectarian” recipients. That holds true whether the benefit is a grant for resurfacing playgrounds (*Trinity Lutheran*) a scholarship (*Espinoza*), or a tuition-assistance payment (*Carson*). It also holds true here, where California offers a benefit in the form of homeschooling resources. California’s refusal to subsidize resources that contain religious content flouts this Court’s holdings in all three of the public-benefits Free Exercise cases.

2. The Ninth Circuit’s failure to follow this Court’s precedents hinges on its misapplication of the facts. The panel opinion construed California’s homeschooling program as “public school programs” and concluded that it therefore fell outside the First Amendment’s protection. That was error. California’s homeschool programs are designed, implemented, and administered exclusively by parents, with minimal oversight by State authorities. They offer no opportunities for the State to instruct students and

are completely optional. In every way that matters, they are unlike California’s public schools—which is why California has chosen to offer them as an alternative in the first place. The Ninth Circuit’s treatment of homeschooling programs as “public schools” permits California to violate the First Amendment rights of parents that choose to homeschool and threatens to allow similar abuses against homeschooling families. The Court should therefore grant review.

Argument

I. The Constitution Forbids States from Denying Generally Available Educational Funding Based on Religion.

This case arises out of California’s attempt to enforce a law barring its independent study homeschooling programs from receiving generally available state educational funds because their curriculum materials—which meets California’s educational standards—are “sectarian” in character. California’s law likely inspires a sense of déjà vu for this Court; after all, it has held three times over the past decade that States cannot enforce similar laws barring “sectarian” organizations from receiving generally available public benefits. California’s conduct is simply the latest in a long line of attempts to elevate State constitutional prohibitions “born in bigotry” above the First Amendment. *Espinoza*, 591 U.S. at 482 (internal quotation marks omitted). The Free Exercise Clause forbids California—like those

other States—from engaging in that type of discrimination.

California’s constitution states that “[n]o public money shall ever be appropriated for the support of any sectarian or denominational school . . . nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.” Cal. Const., art. IX, § 8. The California Legislature has enacted a law further requiring that “a charter school shall be nonsectarian in its programs.” Cal. Educ. Code § 47605(e)(1). California defines “nonsectarian” to mean “nonreligious,” an interpretation the district court accepted for the purposes of this lawsuit. App. 69a (“One requirement for all of California’s public schools, including charter schools, is that they remain nonsectarian (non-religious) in all their programs and operations.”); *but see* App. 34a–43a (VanDyke, J., dissenting from denial of rehearing en banc) (showing via historical textbooks that Article IX of the California Constitution was “meant to ban only *some* religious content”).

The upshot: homeschool programs may seek funding through charter schools as provided by California law, but the State will refuse to fund otherwise-qualifying programs if “parents select curricula based on their religious beliefs.” App. 21a (Bumatay, J., dissenting from denial of rehearing en banc).

The Free Exercise Clause demands more. Specifically, it requires California to offer generally available educational funding to “sectarian” programs on an equal footing with secular ones. Three recent

Free Exercise decisions by this Court illustrate this principle.

***Trinity Lutheran* (2017).** In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, a preschool and daycare center associated with the Trinity Lutheran Church sought a grant from Missouri to resurface its playground using recycled tires. 582 U.S. 449, 454–55 (2017). Although the center was deemed one of the top applicants for the grant, Missouri refused to grant it due to a constitutional provision stating that “no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion.” *Id.* at 455–56 (quoting Mo. Const., art. I, § 7). When the center sued, both the district court and the Eight Circuit reasoned that Missouri’s actions were constitutionally sound.

This Court disagreed and held Missouri’s refusal to be a constitutional violation. The Court explained that Missouri’s “policy expressly discriminate[d] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character.” *Id.* at 462. And that discriminatory policy was “odious to our Constitution.” *Id.* at 467. The Court held that Trinity Lutheran’s daycare center was entitled to funds on equal footing with nonreligious organizations, despite Missouri’s discriminatory constitutional provision.

***Espinoza* (2020).** Three years later, the Court applied *Trinity Lutheran*’s holding directly to educational benefits in *Espinoza v. Montana Department of Revenue*. 591 U.S. 464. Like Missouri, Montana’s constitution prohibited aid to “sectarian schools.” Mont. Const., art. X, § 6. Under its terms, the

State could “not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property *for any sectarian purpose* or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.” *Id.* § 6(a) (emphasis added).

Relying on this “no-aid provision” (or “Blaine Amendment,” named for the Congressman who championed a similar amendment in Congress designed to marginalize Catholics), the Montana Department of Revenue promulgated an administrative rule that prohibited families from using generally available state-sponsored scholarships at religious schools. *Espinoza*, 591 U.S. at 468–70; *see id.* at 498–99 (Alito, J., concurring) (origin of Blaine Amendments). The Montana Attorney General warned the Department that its discriminatory rule “very likely” violated the First Amendment, but the Department persisted. *Id.* at 470. The Montana Supreme Court struck down the rule on administrative law grounds. But rather than curing the constitutional error, that court compounded it by invalidating the entire scholarship program. Without the discriminatory rule, the court reasoned, there was “no mechanism” for preventing aid from flowing to religious schools—and under Montana’s Blaine Amendment that could not stand. *Id.* at 471–72.

Once again, this Court reversed. It explained that the First Amendment “is not offended when religious observers and organizations benefit from neutral government programs.” *Id.* at 474. But the same is not

true when a State “bars religious schools from public benefits solely because of the religious character of the schools.” *Id.* at 476. Rejecting the Department’s assertion that “some lesser degree of scrutiny applies to discrimination against religious uses of government aid,” the Court noted that Montana’s no-aid provision “discriminated based on religious status,” applied strict scrutiny, and reversed the decision below. *Id.* at 478, 489. “A State need not subsidize private education,” the Court explained. “But once a State decides to do so, it cannot disqualify some private schools solely because they are religious.” *Id.* at 487.

Carson (2022). *Espinoza* had scarcely been printed in court reporters before the next State prohibition on public benefits to sectarian schools was ripe for review. *Carson v. Makin*, 596 U.S. 767. Once again, a State (this time Maine) had attempted to exclude religious schools from a generally available tuition assistance program. Maine had no Blaine Amendment—ironically enough, since Representative Blaine was himself a Mainer. But in 1981 its legislature enacted a requirement that “any school receiving tuition assistance payments must be ‘a nonsectarian school,’” apparently believing that the Establishment Clause imposed that requirement. *Id.* at 774.

Twenty years after Maine adopted that law, this Court made clear that the Establishment Clause is not violated when “a government aid program is neutral with respect to religion, and provides assistance directly to a broad class of citizens who, in turn, direct government aid to religious schools wholly as a result of their own genuine and independent private choice.”

Zelman v. Simmons-Harris, 536 U.S. 639, 652 (2002). But Maine’s law remained on the books, and even after *Espinoza*, Maine enforced it by denying tuition assistance to any school “associated with a particular faith or belief system and which, in addition to teaching academic subjects, promotes the faith or belief system with which it is associated and/or presents the material taught through the lens of this faith.” *Carson*, 596 U.S. at 775 (internal quotation marks omitted).

For the third time, this Court explained that the Free Exercise Clause forbids State preferences for “nonsectarian” institutions. *Id.* at 789. The Court compared Maine’s conduct to other recent “state efforts to withhold otherwise available public benefits from religious organizations”—those in *Trinity Lutheran* and *Espinoza*. *Id.* at 778. And it found Maine’s law, which “specifically carved out private religious schools from those eligible to receive” a publicly available benefit, to violate the Free Exercise Clause just as Missouri’s and Montana’s laws had done. *Id.* at 780–81. Because Maine chose to “offer tuition assistance that parents may direct to the public or private schools of their choice,” the Court explained, that assistance had to be offered equally to religious and nonreligious schools. *Id.* at 785 (emphasis omitted).

Trinity Lutheran, *Espinoza*, and *Carson* articulate a consistent rule: a State’s “nonsectarian” requirement for . . . otherwise generally available tuition assistance payments violates the Free Exercise Clause of the First Amendment,” because such requirements “identify and exclude otherwise eligible

schools on the basis of their religious exercise.” *Id.* at 789. The First Amendment protects Americans against such antireligious discrimination.

II. California’s Homeschooling Programs and Their Enrollees Enjoy First Amendment Protection.

Given the “wall of Supreme Court authority” prohibiting discrimination like California’s, the Ninth Circuit’s approval of that discrimination is remarkable. App. 21a (Bumatay, J., dissenting from denial of rehearing en banc). In fact, the Ninth Circuit’s panel decision was only possible because that court engaged in a semantic sleight of hand. By labeling California’s homeschool “independent study programs” as “public school programs,” App. 18a, the panel found a way to allow for “strictly secular education” even at the cost of engaging in discrimination against faith-based programs, App. 11a.² That error not only misrepresents the facts of this case; it opens the door to future constitutional violations against homeschooling families. Parents

² The Ninth Circuit also erred in concluding that “a state’s decision to provide a ‘strictly secular’ public education” can never “fall afoul of the Free Exercise Clause.” App. 15a (quoting *Carson*, 596 U.S. at 785). Even if some aspect of California’s homeschooling program could be construed as “public,” the Ninth Circuit was wrong to end the analysis with that blanket statement. “Public education is a public benefit, and the government cannot ‘condition’ its ‘availability’ on parents’ willingness to accept a burden on their religious exercise.” *Mahmoud v. Taylor*, 606 U.S. 522, 561 (2025) (quoting *Trinity Lutheran*, 582 U.S. at 462).

and students engaging in California homeschooling are entitled to First Amendment protection.

California’s decision to offer a homeschooling option to its citizens is no surprise. As of 2022, more than 3 million K–12 students were reported to be homeschooled—“more children than in all the nation’s Catholic schools and nearly as many as in all the public charter schools.” Brian D. Ray, Braden Hoelzle & Douglas Pietersma, *A Systematic Review of the Empirical Research on Selected Aspects of Homeschooling: Updated 2017–2026*, 101 *Peabody J. of Educ.* 132, 132 (2026), <https://www.tandfonline.com/doi/epdf/10.1080/0161956X.2025.2605900> (internal citations omitted). Homeschooling makes education possible for families with limited access to traditional public schooling and allows for more effective teaching when traditional methods encounter problems (such as during the COVID-19 pandemic). Researchers have documented several benefits to homeschooling, including higher academic achievement, better emotional development, less illegal drug usage, and lower levels of depression. *Id.* at 136–40. And by enabling homeschooling, States more fully honor “parents’ rights to direct the upbringing and education of their children.” *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026). For these and other reasons, every State—including *Amici* States—has chosen to allow or support homeschooling in some form. Angela R. Watson & Genevieve Smith, *Homeschool Hub: National Summary*, Johns Hopkins Univ. (Dec. 2023), <https://education.jhu.edu/edpolicy/policy-research-initiatives/homeschool-hub/national-summary/>; see also, e.g., Utah Code § 53G-6-204.

To the extent California seeks similar benefits for its own citizens, its homeschooling program is a worthy endeavor. But the State’s refusal to support homeschoolers using qualifying educational material solely because that material contains faith-related content directly undermines those benefits. According to a recent government study, over 58% of homeschooling parents report that they have “a desire to provide religious instruction”—and 13% list that as their “most important reason” for homeschooling. Nat’l Ctr. for Educ. Stat., *Homeschooled Children and Reasons for Homeschooling*, (May 2022), <https://nces.ed.gov/programs/coe/indicator/tgk/homeschooled-children>. Under California’s current law, that desire cannot be realized.

This tension need not exist, because California’s homeschooling system is a private (not public) education program—as is clear from the program’s structure. In California, homeschooling is a form of “independent study” authorized by statute. App. 9a; Cal. Educ. Code § 51747.5. Although each pupil’s study is conducted “under the general supervision of an employee of the local educational agency,” Cal. Educ. Code § 51747.5(a), that supervision is light. For instance, the agency must assess “the time value of pupil work products,” *id.* § 51747.5(b), (e); collect “evidence of pupil engagement” such as “a grade book or summary document,” *id.* § 51747.5(d); and maintain a “written agreement” outlining the general terms of the independent study and what “specific resources” will be “made available to the pupil,” *id.* § 51747(g). The agency also establishes in its written policy the “manner, time, frequency, and place” for “communicating with a pupil’s parent or guardian

regarding a pupil's academic progress." *Id.* § 51747(g)(1).

That last point is crucial because it illustrates who is doing the actual teaching: parents. Nowhere in the statute is the local educational agency empowered to directly teach an independent-study pupil or to select a particular course of study. To the contrary, parents enjoy "great flexibility to choose which pre-existing curricula to use to educate their children, or to create their own." App. 18a. The State provides "services and resources" to make independent study possible, including by paying for "materials." Cal. Educ. Code §§ 51746, 51747(g)(3). But it neither chooses those materials nor educates students with them. That is the exclusive role of "parent[s] or guardian[s]" under California's system. *Id.* § 51747(g)(1). By any measure, California's "independent study" program is thus a homeschooling program: it enables one "to teach school subjects to one's children at home." *Homeschool*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/homeschool>.

The Ninth Circuit ignored these realities. Though compelled to admit that "students in the independent study programs receive instruction in their homes, and the direct educators are their parents," it instead emphasized that this teaching takes place "under the supervision of state employees" and that such supervision is administered through "charter schools." App. 18a. That characterization, though superficially accurate, blinks reality. Here as in other contexts, "labels do not control [this Court's] analysis." *Evans v. Michigan*, 568 U.S. 313, 322 (2013). Rather, "in

passing upon constitutional questions the court has regard to substance and not to mere matters of form, and . . . the state must be tested by its operation and effect.” *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 708 (1931).

Here, the substance makes clear that California homeschooling programs are not “public schools” in any meaningful sense of the term. While California nominally provides for “supervision” of its homeschooling, that supervision is far removed from the actual education of pupils. It fails to ensure consistency in what is taught or learned in different homes. It provides no opportunity for the State to directly observe or intervene in actual lessons. And it does not enable homeschooling to provide the “constitutionally recognized purpose[]” of a California public education to “serve[] as a unifying social force among our varied population.” *Hartzell v. Connell*, 679 P.2d 35, 41 (Cal. 1984) (internal quotation marks omitted); *see also id.* (“The public schools bring together members of different racial and cultural groups and, hopefully, help them to live together in harmony and mutual respect.” (internal quotation marks omitted)); *Ambach v. Norwick*, 441 U.S. 68, 77 (1979) (“Other authorities have perceived public schools as an ‘assimilative force’ by which diverse and conflicting elements in our society are brought together on a broad but common ground.”).

Homeschooling is also optional in California, in stark contrast to public schooling. The California compulsory education statute provides that “[e]ach person subject to compulsory full-time education . . . shall attend the public full-time day school.” Cal.

Educ. Code § 48200. Independent study, on the other hand, is “an optional educational alternative in which no pupil may be required to participate.” *Id.* § 51747(g)(8). The State neither exerts the same control over nor requires the same participation in homeschooling as compared to public schools. In that sense, California homeschooling cannot even be said to be the “rough equivalent of [a California] public school education.” *Carson*, 596 U.S. at 782.

Ultimately, “[p]arents decide whether to send their children to public schools,” “send their children to private schools[,] or homeschool them.” *Morse v. Frederick*, 551 U.S. 393, 419 (2007) (Thomas, J., concurring). The Ninth Circuit’s erroneous labeling of homeschooling as a “public school program” allows California to outsource the burdens of providing an education onto parents while limiting those same parents’ First Amendment rights. But when a State offers (and parents choose) homeschooling, that State cannot condition its support on a particular religious status or conduct. “The ‘unremarkable’ principles applied in *Trinity Lutheran* and *Espinoza*” and *Carson* thus call for correction of the Ninth Circuit’s errors below—and “suffice to resolve this case.” *Carson*, 596 U.S. at 780.

Conclusion

This Court should grant the petition for certiorari.

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