

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 FOR CATHOLICVOTE.ORG
EDUCATION FUND AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	iii
STATEMENT OF INTEREST	1
INTRODUCTION.....	1
ARGUMENT	3
I. THE COURT SHOULD TAKE THIS CASE TO CONFIRM THAT BLAINE AMENDMENTS ARE UNCONSTITUTIONAL NOT ONLY IN THEIR CONTEMPORARY APPLICATION BUT IN THEIR ORIGINS AS WELL	3
A. Blaine Amendments, Like The California Law At Issue Here, Are Unconstitutional In Their Application.....	3
B. Blaine Amendments Are Also Unconstitutional In Their Origins	4
1. <i>Statutes motivated by religious animus violate religious neutrality and are unenforceable under the First and Fourteenth Amendments</i>	5
2. <i>Blaine Amendments, including California's, originate in religious animus and are thus unconstitutional</i>	8
II. THE QUESTION PRESENTED IS OF PARAMOUNT IMPORTANCE TO RELIGIOUS HOMESCHOOLERS.....	21

TABLE OF CONTENTS—Continued

	<u>Page</u>
A. Public Schools Can Raise Serious Parental-Rights Concerns	21
B. Millions Of Americans Have Turned To Religious Homeschooling As An Effective Alternative To Public Education.....	22
C. Many Homeschooling Families Depend on Equal Access To Education Benefits Like California's	24
CONCLUSION	25

TABLE OF AUTHORITIES

	<u>Page(s)</u>
CASES:	
<i>Carson v. Makin</i> , 596 U.S. 767 (2022).....	3, 4
<i>Church of Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , 508 U.S. 520 (1993).....	4, 6
<i>Cummings v. Missouri</i> , 71 U.S. (4 Wall.) 277 (1867).....	4
<i>Espinoza v. Montana Dep’t of Revenue</i> , 591 U.S. 464 (2020).....	3, 4, 8, 10, 18, 21
<i>Fulton v. City of Philadelphia</i> , 593 U.S. 522 (2021).....	6
<i>Hunter v. Underwood</i> , 471 U.S. 222 (1985).....	7
<i>Kennedy v. Bremerton Sch. Dist.</i> , 597 U.S. 507 (2022).....	7
<i>Locke v. Davey</i> , 540 U.S. 712 (2004).....	4
<i>Mahmoud v. Taylor</i> , 606 U.S. 522 (2025).....	5, 7-9, 21, 23, 25
<i>Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n</i> , 584 U.S. 617 (2018).....	4-7
<i>Mitchell v. Helms</i> , 530 U.S. 793 (2000).....	4, 9
<i>Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle</i> , 429 U.S. 274 (1977).....	7

TABLE OF AUTHORITIES—Continued

	<u>Page(s)</u>
<i>Pierce v. Society of Sisters</i> , 268 U.S. 510 (1925).....	23
<i>Students for Fair Admissions, Inc. v.</i> <i>President & Fellows of Harvard Coll.</i> , 600 U.S. 181 (2023).....	4
<i>Trinity Lutheran Church of Columbia, Inc. v.</i> <i>Comer</i> , 582 U.S. 449 (2017).....	3
<i>Village of Arlington Heights v.</i> <i>Metropolitan Hous. Dev. Corp.</i> , 429 U.S. 252 (1977).....	7
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972).....	21
CONSTITUTIONAL PROVISION:	
Cal. Const. art. IX, § 8.....	3
LEGISLATIVE MATERIALS:	
4 Cong. Rec. 205 (1875).....	10
4 Cong. Rec. 5191 (1876).....	18
4 Cong. Rec. 5595 (1876).....	18
OTHER AUTHORITIES:	
T. Anbinder, <i>Nativism and Slavery: The</i> <i>Northern Know Nothings and the Politics of</i> <i>the 1850s</i> (1992)	8
David N. Bass, <i>NC charter waitlist extends to</i> <i>over 85,000 students</i> , <i>The Carolina</i> <i>Journal</i> (May 23, 2024), https://perma.cc/6758-3CCL	24

TABLE OF AUTHORITIES—Continued

	<u>Page(s)</u>
<i>Blaine Amendments in State Constitutions</i> , Ballotpedia, https://perma.cc/6XF6-8ZAZ	5, 18
Emma Brown, <i>D.C. charter school waitlists vary widely</i> , Washington Post (May 6, 2013), https://perma.cc/KL5Z-2FMP	24
Brian R. Callanan, <i>The Original Intent of California’s Blaine Provisions</i> (Rose Institute 2003).....	20
S. Carter, <i>Parents, Religion and Schools: Reflections on Pierce, 70 Years Later</i> , 27 Seton Hall L. Rev. 1194 (1997).....	8, 9
<i>Chicago Tribune</i> , Dec. 8, 1875	11
<i>The Debates and Proceedings of the California Constitutional Convention, 1878-1879</i> (Sacramento 1880)	20
Charles Leslie Glenn, Jr., <i>The Myth of the Common School</i> (1988)	8, 9
Steven K. Green, <i>The Bible, the School, and the Constitution: The Clash That Shaped Modern Church-State Doctrine</i> (2012).....	10, 11, 16-18
P. Hamburger, <i>Separation of Church and State</i> (2002)	8-10, 16
<i>Harper’s Weekly</i> , Jan. 1, 1876, as reprinted in <i>The Index</i> , Jan. 13, 1876	11

TABLE OF AUTHORITIES—Continued

	<u>Page(s)</u>
<i>Homeschooling: The Research</i> , National Homeschool Education Research Institute (May 27, 2026), https://perma.cc/HX8X-SYTT	22, 23
Rev. Mark J. Hurley, <i>Church-State Relationships in Education in California</i> (Catholic Univ. of America 1948)	19, 20
<i>The Index</i> , Sept. 7, 1876	17
Jeffries & Ryan, <i>A Political History of the Establishment Clause</i> , 100 Mich. L. Rev. 279 (2001)	8, 9
<i>The Nation</i> , as reprinted in <i>The Index</i> , Apr. 27, 1876	16
Nat'l Ctr. for Educ. Statistics, <i>Private elementary and secondary enrollment, number of schools, and average tuition, by school level, orientation, and tuition: Selected school years, 1999–2000 through 2020-2021</i> (2023), https://perma.cc/4JXP-FUQK	24
<i>New York Times</i> , Dec. 8, 1875	11
<i>New York Times</i> , June 16, 1876	17
<i>New York Times</i> , Aug. 5, 1876	17
<i>Our Public Schools</i> , <i>Placer Argus</i> (Oct. 30, 1875)	18
<i>The President's Message</i> , <i>Catholic World</i> , Feb. 1876	16

TABLE OF AUTHORITIES—Continued

	<u>Page(s)</u>
<i>The Public Schools, Daily Alta California</i> (Dec. 13, 1875).....	19
Isabelle Pula, <i>A look at homeschooling in the</i> <i>U.S.</i> , Pew Research Center (Feb. 20, 2025), https://perma.cc/JT7E-EU7M	23
Seventh Annual Message, <i>in Ulysses S. Grant,</i> <i>1822–1885</i> (Philip R. Moran ed., 1968)	11
Speech to the Society of the Army of the Tennessee, <i>as set forth in American</i> <i>State Papers Bearing on Sunday</i> <i>Legislation</i> (Nat’l Religious Liberty Ass’n 1891)	10
Kevin Starr, <i>Americans and the California</i> <i>Dream: 1850-1915</i> (1973).....	18, 19
Darren Svan, <i>Charter school demand</i> <i>continues to outpace charter growth</i> , Idaho Education News (Aug. 22, 2023), https://perma.cc/2SN5-5GXG	24
Angela R. Watson, <i>Homeschool Growth: 2024–</i> <i>2025</i> , Johns Hopkins School of Education (Nov. 2025), https://perma.cc/V8TS-J6AW	23

STATEMENT OF INTEREST

CatholicVote.org Education Fund (CVEF) submits this brief as *amicus curiae* in support of Petitioners.¹

CVEF is a community of patriotic Americans who believe the timeless truths of the Catholic faith are good for America. Its mission is to inspire all Catholics to live out their faith in public life.

To that end, CVEF has profound interest in ensuring Catholic homeschoolers are afforded equal access to generally available education benefits. CVEF submits this brief to urge the Court to vindicate the rights of all religious homeschoolers not to be discriminated against for incorporating religious teaching into their home-school curricula. CVEF also seeks final repudiation of the widely discredited Blaine Amendments. This Court has repeatedly recognized that Blaine Amendments like the California law at issue here were born of bigotry against the Catholic Church. The Court should grant certiorari to hold that Blaine Amendments are unconstitutional both in their origins and in their contemporary application.

INTRODUCTION

This Court's Free Exercise jurisprudence prohibits the exclusion of religious observers from generally available public benefits. Yet that is exactly what Blaine Amendments require. California's was used here to justify a home-school benefit program that

¹ No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amicus curiae* or its counsel made any monetary contribution intended to fund the preparation or submission of this brief. All parties were notified of *amicus curiae*'s intent to submit this brief at least ten days before it was due.

supports any home-school curriculum so long as it isn't religious. This case should therefore be a no-brainer. Yet the decision below circumvented bedrock Free Exercise doctrine by slapping a "public school" label on participating homeschoolers. That is reason enough to grant certiorari.

But there is another. Blaine Amendments are unconstitutional in their origins as well as their contemporary application. The historical record confirms this Court's repeated observation that Blaine Amendments were designed to curb the growing Catholic influence in the nineteenth century through a system of mandatory public schools teaching American protestant values. California's Blaine Amendment was no exception. This Court should take this case to finally hold that Blaine Amendments are unenforceable under the First and Fourteenth Amendments because they were motivated by religious animus.

Consigning Blaine Amendments to the dustbin of history is crucial because past is prologue. The nineteenth-century weaponization of mandatory public schooling to stamp out disfavored viewpoints is ongoing today. Equal access to homeschool benefits is critical to the millions of religious families who desire to educate their children in accordance with their own closely held religious beliefs, but who are among the vast majority of Americans who cannot afford private-school tuition and who depend on financial support to homeschool.

The petition should be granted.

ARGUMENT

I. THE COURT SHOULD TAKE THIS CASE TO CONFIRM THAT BLAINE AMENDMENTS ARE UNCONSTITUTIONAL NOT ONLY IN THEIR CONTEMPORARY APPLICATION BUT IN THEIR ORIGINS AS WELL.

A. Blaine Amendments, Like The California Law At Issue Here, Are Unconstitutional In Their Application.

This Court has “repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Carson v. Makin*, 596 U.S. 767, 778 (2022). Yet that is precisely what Blaine Amendments require. California’s provides: “No public money shall ever be appropriated for the support of any sectarian or denominational school.” Cal. Const. art. IX, § 8.

That broad language guarantees as a state-constitutional matter that *any* effort by California to provide otherwise generally available education benefits—including to homeschools exercising substantial curricular autonomy—must be withheld from religious educators. That result is irreconcilable with the Free Exercise Clause. California is entitled to offer a secular education and secular educational materials on equal terms to all. But, as the petition explains, permitting flexibility in the use of state funds for all but the religious conflicts with a host of this Court’s cases. See Pet. 15-19; *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017); *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464, 475-476 (2020); *Carson*, 596 U.S. at 778.

The petition is likewise correct—and the Court should grant review to confirm—that California cannot circumvent the First Amendment by deeming grant recipients public schools. *See* Pet. 19-25. “The Constitution deals with substance, not shadows,” and its prohibitions are “levelled at the thing, not the name.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023) (quoting *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325 (1867)). Petitioners’ homeschool programs are no more “public” than the private schools in *Espinoza* and *Carson*. *See* Pet. 19-25. And the Free Exercise Clause cannot be bypassed via “magic words” and the “reconceptualization of [a] public benefit.” *Carson*, 596 U.S. at 785.

B. Blaine Amendments Are Also Unconstitutional In Their Origins.

The blatant religious discrimination that gave rise to Blaine Amendments like California’s provides a separate and independent reason this Court should grant certiorari. It is an “open secret” that Blaine Amendments were “born of bigotry” and “arose at a time of pervasive hostility to the Catholic Church and to Catholics in general.” *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality opinion). “This history is well-known and has been recognized in opinions of this Court.” *Espinoza*, 591 U.S. at 499 (Alito, J., concurring) (citing *Locke v. Davey*, 540 U.S. 712, 723 n.7 (2004) and *Mitchell*, 530 U.S. at 828-829). Laws born of such animus are unconstitutional under the First and Fourteenth Amendments. *See, e.g., Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534, 547 (1993); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 584 U.S. 617, 638-639

(2018). Yet Blaine Amendments remain in force in thirty-seven States. See *Blaine Amendments in State Constitutions*, <https://perma.cc/6XF6-8ZAZ>. The Court should take this case to reduce that number to zero.

1. Statutes motivated by religious animus violate religious neutrality and are unenforceable under the First and Fourteenth Amendments.

“[T]his Court’s precedent forbids government action motivated by ‘hostility to a religion or religious viewpoint.’ ” *Mahmoud v. Taylor*, 606 U.S. 522, 603 n.5 (2025) (Sotomayor, J., dissenting) (citing *Masterpiece Cakeshop*, 584 U.S. at 638). A law enacted with “hostility” that is “inconsistent with the First Amendment’s guarantee” of neutrality toward religion “must be invalidated.” *Masterpiece Cakeshop*, 584 U.S. at 640.

In *Masterpiece Cakeshop*, a same-sex couple filed civil rights charges against Jack Phillips and his bakery for refusing to create a celebratory cake for the couple’s upcoming wedding. 584 U.S. at 621-622. Colorado’s state courts upheld the resulting sanctions, but this Court reversed. *Id.* at 630-631, 640. The Court noted that the case “present[ed] difficult questions” about “the proper reconciliation” of generally applicable public-accommodations laws and the Free Exercise rights of public accommodations’ proprietors. *Id.* at 623-625; see also *id.* at 631-634 (extrapolating on the difficulty). But the Court ultimately deferred “the delicate question of when the free exercise of * * * religion must yield to an otherwise valid exercise of state power” because when “the Colorado Civil Rights Commission considered th[e] case, it did not do

so with the religious neutrality that the Constitution requires.” *Id.* at 625.

The Commission’s sanctions were instead materially motivated by prejudice against Phillips’s religious convictions. Individual commissioners’ statements betrayed their view that Phillips’s “belief[s] cannot legitimately be carried into the public sphere or commercial domain” and that “religious beliefs and persons are less than fully welcome in Colorado’s business community.” *Id.* at 634. The Commission had, moreover, “on at least three other occasions” endorsed other bakers’ refusal to decorate cakes with themes *disapproving* same-sex marriage. *Id.* In doing so “the Commission had treated the other bakers’ conscience-based objections as legitimate, but treated [Phillips’s] as illegitimate—thus sitting in judgment of his religious beliefs.” *Id.* at 637. The Court concluded that regardless of whether the Commission’s sanctions could be constitutionally applied absent religious animus, Phillips’s case “was not considered with the neutrality that the Free Exercise Clause requires.” *Id.* at 639.

Masterpiece Cakeshop left open the question “whether statements made by lawmakers” outside the context of an adjudicatory body deciding a particular case “may properly be taken into account in determining whether a law intentionally discriminates on the basis of religion.” *Id.* at 636 (citing earlier disagreement on this question in *Lukumi*); see also *Fulton v. City of Philadelphia*, 593 U.S. 522, 605-609 (2021) (Alito, J., concurring in the judgment) (noting *Masterpiece Cakeshop*’s reliance on the subjective motivations of an adjudicatory body was “as far as this Court’s decisions ha[d] gone” to date).

The Court should take this case to answer that question in the affirmative. The subjective motivations of lawmakers have long mattered in the Equal Protection context. In *Hunter v. Underwood*, for example, the Court considered an Alabama state constitutional provision that applied to all persons convicted of certain petty criminal offenses, regardless of race. 471 U.S. 222, 227 (1985). But despite its facial neutrality, there was overwhelming historical evidence the provision was intended to disenfranchise African Americans. *Id.* at 227-229. The Court therefore held the provision could not be enforced consistent with the Fourteenth Amendment. *Id.* at 233; *see also Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 270 n.21 (1977) (explaining that discriminatory motive can render a law unconstitutional); *Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977) (same).

There is no reason for a different result for Free Exercise claims. Indeed, in *Kennedy v. Bremerton School District*, this Court stated without qualification that “[a] plaintiff may * * * prove a free exercise violation by showing that ‘official expressions of hostility’ to religion accompany laws or policies burdening religious exercise.” 597 U.S. 507, 525 n.1 (2022) (quoting *Masterpiece Cakeshop*, 584 U.S. at 639). Such laws must be “set aside * * * without further inquiry.” *Id.* (citation and quotation marks omitted). And the three dissenting Justices in *Mahmoud* agreed that this principle would apply even to a school board policy decision that looked nothing like the formal adjudication of a particular case. 606 U.S. at 603 n.5 (Sotomayor, J., dissenting) (Kagan, J., and Jackson, J., joining).

2. *Blaine Amendments, including California's, originate in religious animus and are thus unconstitutional.*

Blaine Amendments are fatally infected by the religious animus from which they emanated. As Justices Thomas and Alito have explained, Blaine Amendments were enacted in reaction to a wave of Catholic migration in the mid-nineteenth century. *Espinoza*, 591 U.S. at 499 (Alito, J., concurring). “Roman Catholicism [was] widely viewed as [a] threat[] to America, which was self-consciously a Protestant country.” *Mahmoud*, 606 U.S. at 586 (Thomas, J., concurring). Some nativists even argued that as “soldiers of the Church of Rome” the new Catholic population would “attempt to subvert representative government.” *Espinoza*, 591 U.S. at 499 (Alito, J., concurring) (first quoting T. Anbinder, *Nativism and Slavery: The Northern Know Nothings and the Politics of the 1850s* 6-8 (1992), then quoting P. Hamburger, *Separation of Church and State* 206 (2002)).

“Public schooling was perceived as a solution that could ‘Protestantize the immigrant children’ and thus diminish the threats these foreign beliefs posed.” *Id.* (quoting S. Carter, *Parents, Religion and Schools: Reflections on Pierce, 70 Years Later*, 27 Seton Hall L. Rev. 1194, 1199 (1997)). The so-called common-school movement institutionalized a mandatory curriculum of “least-common-denominator Protestantism” to reinforce nativist values and “‘Americanize’ the incoming Catholic immigrants.” *Id.* at 503 (quoting Jeffries & Ryan, *A Political History of the Establishment Clause*, 100 Mich. L. Rev. 279, 298 (2001)); see also Charles Leslie Glenn, Jr., *The Myth of the Common*

School 250 (1988) (explaining that “[t]he public schools were the favored instrument of assimilation”).

“Unsurprisingly, parents who adhered to the disfavored faiths sought alternative educational options.” *Mahmoud*, 606 U.S. at 587 (Thomas, J., concurring). “By the end of the nineteenth century, there were Catholic schools everywhere there were Catholics.” *Id.* (quoting Carter, *supra*, at 1200). As Catholics gained political strength over time they petitioned state legislatures for a share of the public funding enjoyed by protestant schools. Glenn, *supra*, at 251-256; Hamburger, *supra*, at 220. Also unsurprisingly, those requests were seen as a threat to the common-school project to inculcate ideological conformity. Blaine Amendments were enacted in an affirmative effort to “bar any aid” to Catholic and other “sectarian” schools. *Mitchell*, 530 U.S. at 828.

a. The federal Blaine Amendment was proposed by former Republican House Speaker James Blaine as the sixteenth amendment to the Constitution in 1875. The proposed text of the amendment read:

No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect, nor shall any money so raised or lands so devoted be divided between religious sects or denominations.

4 Cong. Rec. 205 (1875). The Blaine Amendment thus aimed to prevent the use of public funding for religious purposes.

There is no question James Blaine’s proposal was “prompted by virulent prejudice against immigrants, particularly Catholic immigrants.” *Espinoza*, 591 U.S. at 498 (Alito, J., concurring). President Ulysses S. Grant first agitated for the reform in an 1875 speech he hoped would galvanize anti-Catholic support for the upcoming election. See Hamburger, *supra*, at 322; Steven K. Green, *The Bible, the School, and the Constitution: The Clash That Shaped Modern Church-State Doctrine* 188 (2012). Grant warned of a coming conflict between “patriotism and intelligence on one side, and superstition, ambition, and ignorance on the other.” Speech to the Society of the Army of the Tennessee, as set forth in *American State Papers Bearing on Sunday Legislation* 203-204 (Nat’l Religious Liberty Ass’n 1891). Grant argued that the success of “patriotism and intelligence” over “superstition” would require “afford[ing] every child growing up in the land the opportunity of a good common school education, unmixed with sectarian, pagan, or atheistical tenets.” *Id.* “Sectarian” was a thinly veiled pejorative for groups, like Catholics, that did not conform to the American-protestant norm. Hamburger, *supra*, at 322.

Grant returned to the theme in his December 7, 1875, annual message to Congress, urging the adoption of “a constitutional amendment separating church from state—particularly, the Catholic Church from the American states.” Hamburger, *supra*, at 322. The proposed amendment would make it “the duty of each of the several States to establish and forever

maintain free public schools.” Seventh Annual Message, in *Ulysses S. Grant, 1822-1885* (Philip R. Moran ed., 1968). But Grant also insisted that the amendment “prevent states from giving public funds to any schools that taught ‘sectarian tenets,’ lest Americans ‘sink into acquiescence to the will of intelligence, whether directed by the demagogue or by priestcraft.’” *Id.*

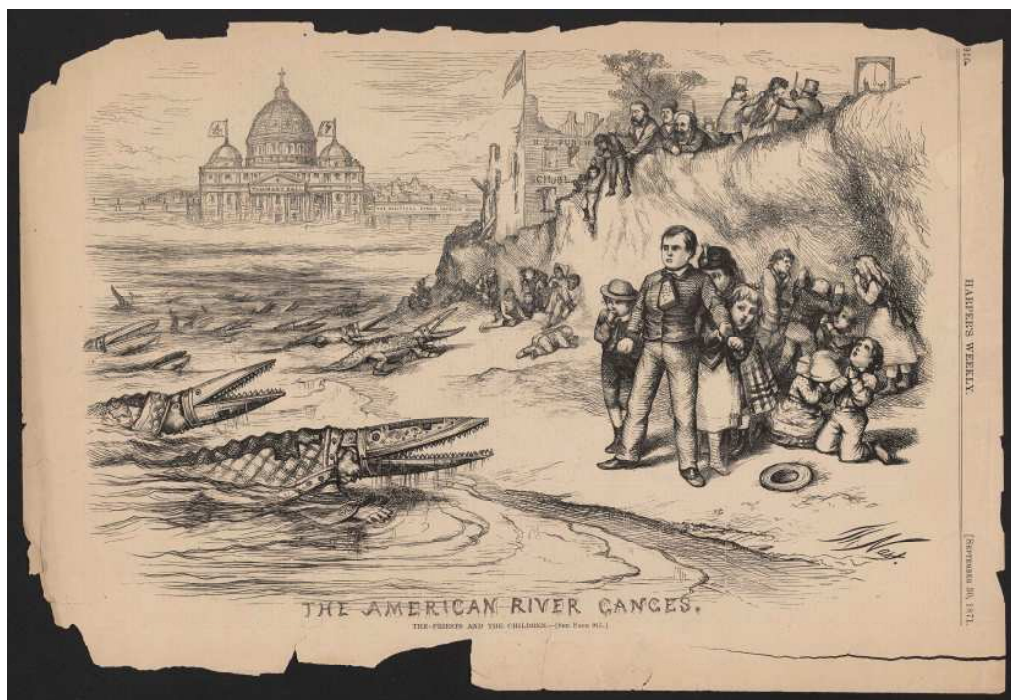
“Newspapers, politicians, and religious and education leaders overwhelmingly endorsed Grant’s proposal”—anti-Catholic dog whistling included. Green, *supra*, at 193. The *New York Times* praised Grant’s message as one that would be “read by the country with general satisfaction.” *New York Times*, Dec. 8, 1875, at 6. *Harper’s Weekly* observed that the speech showed a “clear perception of what the people wish.” *Harper’s Weekly*, Jan. 1, 1876, as reprinted in *The Index*, Jan. 13, 1876, at 15. And the *Chicago Tribune* stated that “[t]here seems to be nothing lacking in this suggestion, and it will be a boon to the country.” *Chicago Tribune*, Dec. 8, 1875, at 4.

The nativist sentiment from which Grant hoped to gain political mileage is perhaps best illustrated by the intricate political cartoons of *Harper's Weekly's* Thomas Nast. Catholic incursion on public schools was a favorite theme, as Nast sought to portray the existing common schools as a repository and training ground of American ideals, and Catholic encroachments as an existential threat. The following example depicts a Catholic priest attempting to lure a recently freed African-American family away from a public school. But he conceals behind him a pair of shackles inscribed with the words “priestly slavery.” The sub-text is anything but subtle: The Catholic Church offers a return to slavery, and the public school system the means of resistance.²



² A high-resolution image may be viewed at <https://perma.cc/RC86-BEG9>.

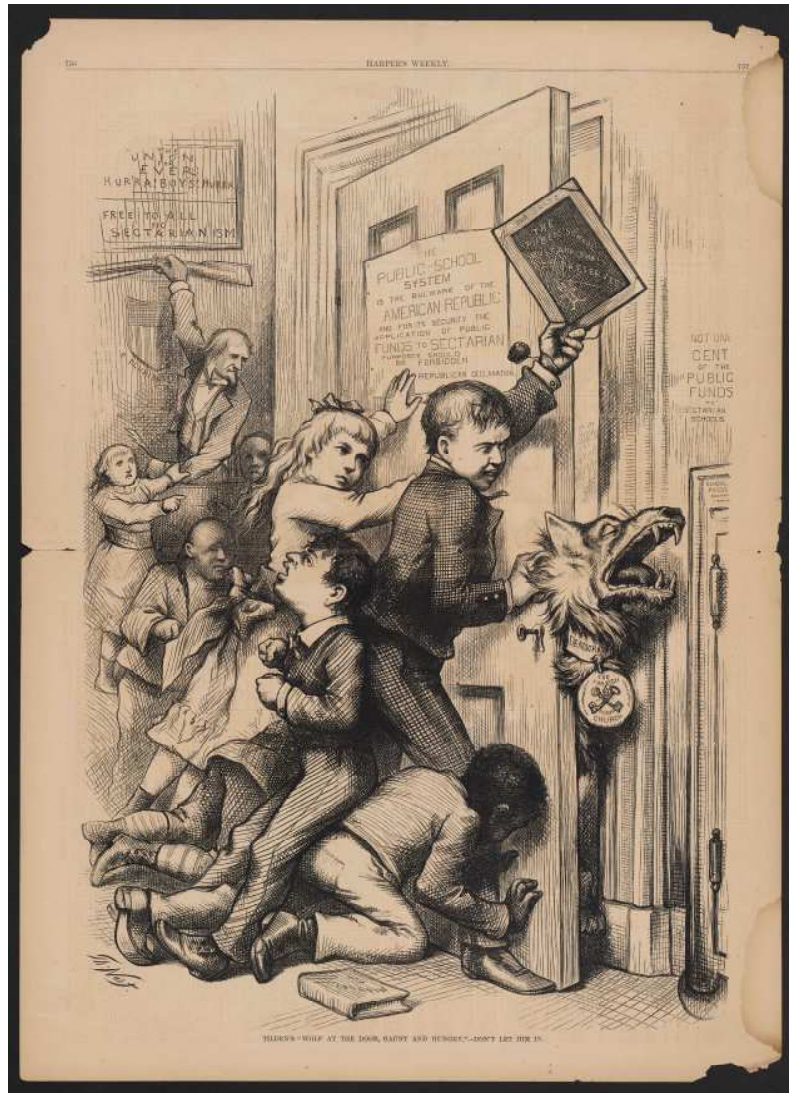
A particularly vitriolic cartoon caricatures Catholic bishops as crocodiles approaching America's shores to devour children. In the background a public school lies in ruins, already replaced by a "political roman catholic school," while Lady Liberty, the symbol of American ideals, is led to the scaffold.³



Two cartoons published shortly after Grant's annual address continue the theme. The first shows a gaggle of patriotic school children straining against the classroom door to prevent "the foreign roman church" in the guise of a hound from entering. Uncle Sam can be seen in the back of the room reaching for a weapon.

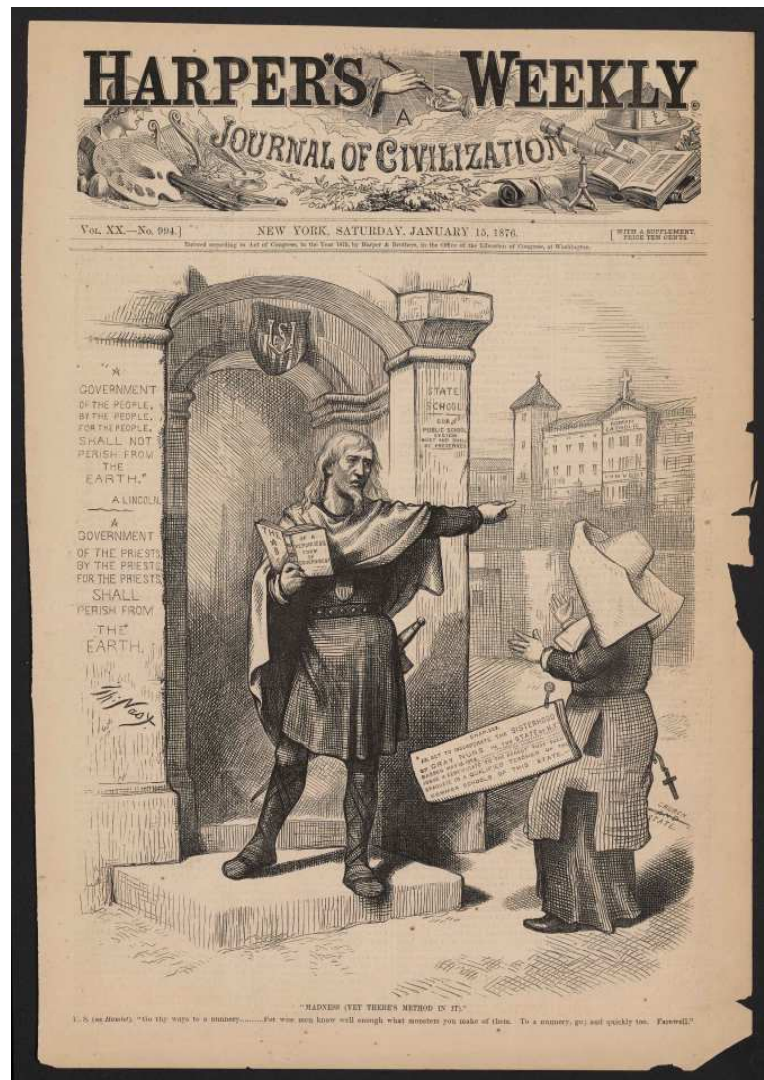
³ A high-resolution image may be viewed at <https://perma.cc/27KL-8J2D>.

Various inscriptions confirm the message: “Wolf at the door, gaunt and hungry—don’t let him in”; “Not one cent of the public funds to sectarian schools”; and “Free to all. No sectarianism.”⁴



⁴ A high resolution image may be viewed at <https://perma.cc/D83V-DUBT>.

Another dresses a public-school teacher in crusader garb as—quoting Hamlet—he banishes a Catholic nun offering her teaching services to the “nunnery.”⁵



⁵ A high-resolution image is available at <https://perma.cc/FV7Q-ZWJP>.

Blaine, who had his own presidential aspirations and was attuned to the popularity of Grant's message, introduced his constitutional amendment a week after Grant's annual address. Hamburger, *supra*, at 324; Green, *supra*, at 194. Secular and protestant commentators were as thrilled with the proposal as they were with Grant's original call for reform. Green, *supra*, at 194. The Catholic response was not so sanguine. It cast Grant and Blaine both as cynical politicians attempting to "ride into power by awakening the spirit of fanaticism and religious bigotry among us." *The President's Message*, *Catholic World*, Feb. 1876, 707.

Most observers—including many who supported the amendment—would have agreed that Grant and Blaine were attempting to capitalize on anti-Catholic sentiment. Green, *supra*, at 195, 197. *The Nation* went so far as to accuse Blaine of wholly feigning his support for the policy: "Mr. Blaine did, indeed, bring forward at the opening of Congress a Constitutional amendment directed against the Catholics, but the anti-Catholic excitement was, as everyone knows, a mere flurry; and all that Mr. Blaine needs to do or can do with his amendment is, not to pass it but to use it in the campaign to catch anti-Catholic votes." *The Nation*, as reprinted in *The Index*, Apr. 27, 1876, 193; see also Hamburger, *supra*, at 325 n.99 (arguing that "Blaine apparently had no desire that his amendment should be adopted"); but see Green, *supra*, at 195-196 (challenging this popular narrative and noting that "there is some evidence that Blaine genuinely desired to diffuse the religious divisiveness surrounding the school issue," but ultimately concluding that although "Blaine may have abhorred the way some Republicans

used his amendment to stoke anti-Catholic sentiment, * * * he did nothing to stop such associations”).

Grant ultimately decided against a reelection bid, and Blaine lost the Republican nomination to Rutherford B. Hayes, a “tee-totaling Ohio governor whose recent reelection campaign had been marred by anti-Catholic rhetoric.” *Green, supra*, at 209.

Although Grant and Blaine were out of the presidential race, the anti-Catholic push for the Blaine Amendment was far from over. The Republican nominating convention adopted a platform calling for preservation of the nation’s public-school system and prohibiting the use of public funds to benefit “any school or institution under sectarian control.” *Id.* at 210 (citation omitted). The *New York Times* reported that the convention erupted into “great cheering [that] continued for several minutes” when that plank of the platform was read. *New York Times*, June 16, 1876. And there was little doubt why. As the *Index* later glossed, “For ‘sectarian,’ read ‘Catholic,’ and you have the full meaning of that ambiguous seventh plank, which is so worded to catch, if possible, the Evangelical and the Liberal votes at the same time.” *The Index*, Sept. 7, 1876, at 426.

Congress returned its attention to the pending Blaine Amendment once the political conventions concluded. Governor Samuel J. Tilden, the Democratic party’s nominee, hoped to have the amendment dispensed with well ahead of the November election in order to put what the *New York Times* called “the Catholic question” behind him before voters headed to the polls. *New York Times*, Aug. 5, 1876, at 5. Throughout the ensuing debate and amendment process “[a]ll participants understood that the immediate

effect of the amendment would be to protect the economic position of public schools to the disadvantage of Catholic schools.” Green, *supra*, at 218.

Blaine’s proposal passed in the House of Representatives by a vote of 180 to 7, but it subsequently fell four votes short in the Senate and was never submitted to the States for ratification. 4 Cong. Rec. 5191, 5595. The Nation was thus spared from the enshrinement of a Free Exercise violation in the Constitution. The States, however, were not. Thirty-seven state constitutions feature Blaine Amendments. *See Blaine Amendments in State Constitutions*, Ballotpedia, <https://perma.cc/6XF6-8ZAZ>. As their informal name indicates, state Blaine Amendments were modeled after the failed federal amendment and stand for the same animus that underlay the original. *See Espinoza*, 591 U.S. at 499 (Alito, J., concurring).

b. California’s is no exception. *See* Pet. App. 34a-43a (VanDyke, J., dissenting from denial of rehearing en banc). California participated fully in the mid-nineteenth century flood of Catholic immigration and the follow-on protestant backlash. Irish immigration in particular swelled the Catholic population in California during the 1850s. Kevin Starr, *Americans and the California Dream: 1850-1915* 93 (1973). And so came Catholic grammar schools, orphanages, and hospitals. *Id.* The Jesuits even opened colleges in Santa Clara and San Francisco. *Id.*

Protestants in California responded much as protestants in New England had. California papers, “in tune with the larger [nativist] mood of the nation, accused Catholics of political plots” and “California’s Jesuits became an obsession.” *Id.*; *see e.g., Our Public Schools*, *Placer Argus* (Oct. 30, 1875) (California paper

warning that “[t]he same priestly hierarch which alarms the greatest minds of Europe is hostile to our common schools, and is steadily seeking to undermine them” and that “the Catholic church aims at the overthrow of the public school system as it now stands, and at the support of its own sectarian schools out of the public treasury”).

As part of the growing reprisal against “Irish political power,” “[p]rotestant agitation led to the repeal in 1855 of a law, passed in 1853, that granted state assistance to parochial schools”; even as “[a]gainst the wishes of Catholics, San Francisco’s * * * Board of Education enforced daily reading of the Bible in public schools and the teaching of a Protestant-flavored morality.” Starr, *supra*, at 94. The protestant curriculum was considered essential to “the harmonizing of our heterogeneous population into one people.” *Id.*

President Grant’s calls for a constitutional amendment to end funding of sectarian education thus had a ready audience in California protestants. Grant’s proposal was “reproduced widely in the California press.” Rev. Mark J. Hurley, *Church-State Relationships in Education in California* 60-61 (Catholic Univ. of America 1948). And the response among Californians generally was “an echo of the national picture.” *Id.* at 61; see e.g., *The Public Schools*, *Daily Alta California* (Dec. 13, 1875) (describing Grant’s proposal as “purely a Roman Catholic question, relating solely to that sect” to address “their system of parochial schools[, which] was intended to gradually undermine the present public school system”).

California’s Blaine amendment was adopted as part of its 1879 constitutional convention. “From the very first day of the convention, bill after bill was

introduced to prohibit any public money being appropriated for ‘sectarian schools.’” *Id.* at 71. There was a “striking sense of urgency to curb ‘sectarian influence’” and the “broad consensus of delegates supported denying public funds to sectarian schools.” Brian R. Callanan, *The Original Intent of California’s Blaine Provisions* 16 (Rose Institute 2003) (citing *The Debates and Proceedings of the California Constitutional Convention, 1878-1879* (Sacramento 1880), at 83, 92, 101, 110, 117, 134, 180, 693, 819). In fact, “[t]he proposal to forbid the division of the school fund was ‘concurred in without opposition.’” Hurley, *supra*, at 71 (quoting *Debates, supra*, at 1473).

The only substantial disagreement concerned the funding of religious orphanages. *Id.* at 71-72; *see also* Callanan, *supra*, at 20 (“With the passage of [the] ban on funds to sectarian schools a foregone conclusion, all the heat of that issue was concentrated on the orphanage debate”). The Committee on Education saw pro-rata funding of Catholic orphanages as posing the same threat as public funding of Catholic schools. Callanan, *supra*, at 20-21. Delegates drew the comparison overtly, stating that to oppose the defunding of religious orphanages was “an appropriation to sectarian schools in disguise.” *Debates, supra*, at 1265; *see also id.* at 1261 (accusing proponents of funding Catholic orphanages of attempting “to build up an opposition system of schools against the common schools of the State”).

Another delegate declared that orphans “ought to be educated in the common schools in order to make thorough American citizens out of them, who will know the rights and duties of American citizens, and if they are educated in the sectarian schools they will know

everything else but their duties as citizens.” *Id.* at 1265. To which a like-minded delegate responded that a ban on the funding of sectarian orphanages was imperative to “bring [orphans] out from under sectarian influences, and that is one of the great aims of government.” *Id.* The delegates saw Catholic orphanages and Catholic schools alike as antithetical to their goal of “stamp[ing] the spirit of American institutions upon the minds of its own children.” *Id.*

The California Blaine Amendment thus violates the First and Fourteenth Amendments because it was motivated by religious animus. This Court should hear this case to consign “facially discriminatory Blaine Amendments like California’s [to] the ash heap of constitutional history.” Pet. App. 48a (VanDyke, J., dissenting from the denial of rehearing en banc).

II. THE QUESTION PRESENTED IS OF PARAMOUNT IMPORTANCE TO RELIGIOUS HOMESCHOOLERS.

A. Public Schools Can Raise Serious Parental-Rights Concerns.

Public school curriculums have in some instances become “antithetical to what [parents] teach at home.” *Espinoza*, 591 U.S. at 508 (Alito, J. concurring). School boards have even adopted programs of ideological conformity reminiscent of the nineteenth-century common-school movement—and have not hesitated to “undermine parents’ religious beliefs.” *Mahmoud*, 606 U.S. at 590 (Thomas, J., concurring) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972)). Such programs “interfere[] with the parents’ right to ‘direct the religious upbringing of their children.’ ” *Id.*

This Court’s recent *Mahmoud* decision is representative. A Maryland school board introduced “LGBTQ-inclusive” lessons into the elementary school curriculum and refused to allow Muslim and Ethiopian Orthodox parents to opt out despite their religious objections. *Id.* at 537-539; *see also id.* at 540 (explaining that the plaintiff Muslim parents “believe ‘that mankind has been divinely created as male and female’ and ‘that gender cannot be unwoven from biological sex—to the extent the two are even distinct—without rejecting the dignity and direction God bestowed on humanity from the start.’”) (citation omitted). Muslim parents were forced to sue to protect their parental rights against a public education affirmatively designed to “undermine their efforts to raise their son in the Islamic faith” and encourage their children “to question their sexuality and gender and to dismiss parental and religious guidance on these issues.” *Id.* at 540 (quotation marks and alterations omitted).

B. Millions Of Americans Have Turned To Religious Homeschooling As An Effective Alternative To Public Education.

Homeschooling is one of the fastest-growing alternatives to public education in the United States. *Homeschooling: The Research*, National Homeschool Education Research Institute (May 27, 2026), <https://perma.cc/HX8X-SYTT>. Approximately 3.4 million children were homeschooled during the 2024-2025 school year. *Id.* And the homeschool population has risen 2% to 8% annually over the last few years. *Id.* Recent reporting shows that homeschooling has gone up at “nearly triple the pre-pandemic rate [with]

no signs of slowing down.” Angela R. Watson, *Home-school Growth: 2024-2025*, Johns Hopkins School of Education (Nov. 2025), <https://perma.cc/V8TS-J6AW>. Over a third of reporting states recorded their highest homeschooling numbers in 2025, exceeding pandemic peaks. *Id.*

Seventy-five percent of homeschooling families cite a desire to provide moral instruction as a reason for choosing to homeschool their children. Isabelle Pula, *A look at homeschooling in the U.S.*, Pew Research Center (Feb. 20, 2025), <https://perma.cc/JT7E-EU7M>. And a full fifty-three percent cite a desire to provide religious instruction specifically. *Id.* For many of these families, homeschooling is “not merely a preferred practice but rather a religious obligation.” *Mahmoud*, 606 U.S. at 547. It is a critical means of discharging the “high duty” parents have “to recognize and prepare [their children] for additional obligations.” *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925).

Research also consistently shows that homeschooling works. Homeschooled students “typically score 15 to 25 percentile points above public-school students” on standardized tests. *Homeschooling: The Research*, *supra*. That statistic holds true regardless of family income and parental education. *Id.* And the benefits are not limited to academic success: sixty-four percent of studies on social, emotional, and psychological development show that homeschooled students perform better than their peers. *Id.*

C. Many Homeschooling Families Depend on Equal Access To Education Benefits Like California's.

For families across the nation who worry about the impact of public schooling on their children's moral and religious development, religious homeschooling is often the only option. Private school is not a realistic alternative for the majority of families. During the 2020-2021 school year, the average private school tuition was \$12,790. Nat'l Ctr. for Educ. Statistics, *Private elementary and secondary enrollment, number of schools, and average tuition, by school level, orientation, and tuition: Selected school years, 1999-2000 through 2020-2021* (2023), <https://perma.cc/4JXP-FUQK>. That is well above what most families can afford in addition to the taxes they must pay to support the public schools they are trying to leave.

Charter schools fare no better as a practical alternative. Although these schools are tuition free, demand routinely exceeds supply. David N. Bass, *NC charter waitlist extends to over 85,000 students*, The Carolina Journal (May 23, 2024), <https://perma.cc/6758-3CCL>; Darren Svan, *Charter school demand continues to outpace charter growth*, Idaho Education News (Aug. 22, 2023), <https://perma.cc/2SN5-5GXG>; Emma Brown, *D.C. charter school waitlists vary widely*, Washington Post (May 6, 2013), <https://perma.cc/KL5Z-2FMP>. Thousands of children nationwide are on charter school waitlists.

Homeschooling, of course, carries its own significant costs—financial and otherwise. Homeschool parents must secure a curriculum, school supplies, and testing

services. They may also have to postpone a career and forgo income opportunities. *Mahmoud*, 606 U.S. at 562. Equal access to generally available education benefits like California's is a significant help many religious families depend on. Yet the decision below would permit a state to deny aid to homeschoolers who exercise their right to practice their religion in the way they educate their children. That is something the First Amendment does not tolerate. Neither should this Court.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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