

No. 26-237

IN THE
Supreme Court of the United States

JOHN WOOLARD, *et al.*,

Petitioners,

v.

TONY THURMOND, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF *AMICUS CURIAE*
PACIFIC JUSTICE INSTITUTE
IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iii
STATEMENT OF INTEREST OF AMICUS CURIAE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	3
I. National History of Blaine Amendments is Steeped in Religious Bigotry.....	3
II. The California Blaine Amendment is Facially Unconstitutional.....	4
III. California’s Blaine Amendment Violates the Free Exercise Clause on its Face.....	7
A. This Court’s Precedent in <i>Trinity</i> , <i>Espinoza</i> , and <i>Carson</i> Reflect the Necessity for Blaine Amendments to Yield to the Free Exercise Clause	8
a. Neutral mechanisms and incidental governmental involvement do not automatically constitute an appropriation supporting a sectarian institution.....	11

Table of Contents

	<i>Page</i>
b. Non-neutral involvement by the Government with Religious Activities Is Not a per-se violation of the California Constitution	12
IV. CONCLUSION	12

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Am. Atheists, Inc. v.</i> <i>City of Detroit Downtown Dev. Auth.,</i> 567 F.3d 278 (6th Cir. 2009)	3
<i>Bowker v. Baker,</i> 73 Cal. App. 2d 653, 167 P.2d 256 (1946)	11
<i>California Educational Facilities Authority v.</i> <i>Priest,</i> 12 Cal. 3d 593 (1974).	11
<i>Carson v. Makin,</i> 596 U.S. 767 (2022).	8, 10, 11
<i>Church of Lukumi Babalu Aye, Inc. v.</i> <i>City of Hialeah,</i> 508 U.S. 520 (1993).	7, 8
<i>Espinoza v. Mont. Dep’t of Revenue,</i> 591 U.S. 464 (2020).	2, 3, 5, 8, 9, 10, 11
<i>Espinoza v. Montana Dep’t of Revenue,</i> 140 S. Ct. 2246 (2020).	3
<i>Evans v. Selma Union High Sch. Dist.,</i> 193 Cal. 54 (1924)	6, 7
<i>Gordon v. Bd. of Educ.,</i> 78 Cal. App. 2d 464 (1947).	5, 12

Cited Authorities

	<i>Page</i>
<i>Lyng v. Nw. Indian Cemetery Protective Ass'n</i> , 485 U.S. 439 (1988)	7
<i>Mitchell v. Helms</i> , 530 U.S. 793 (2000)	1, 3, 4, 6
<i>People ex rel. Cochran v. Bd. of Educ.</i> , 54 Cal. 375 (1880)	6
<i>Trinity Lutheran Church v. Comer</i> , 582 U.S. 449 (2017)	8, 9, 10, 11
<i>Woolard v. Thurmond</i> , 170 F.4th 701 (9th Cir. 2026)	1, 2, 7, 8, 10
Constitutional Provisions	
Cal. Const. art. IX, §8	2, 4, 12
U.S. Const. amend. I	1, 9, 13
Statutes and Other Authorities	
Brian R. Callahan, <i>The Original Intent of California's Blaine Provisions</i> at 15 (May 1, 2003), https://roseinstitute.org/white-papers-2/	5
Cal. State Archives, Inventory of the Working Paper of the 1878-1879 Constitutional Convention, app. A, at 55 (1993)	5

Cited Authorities

	<i>Page</i>
<i>The Pacific Coast First Reader</i> , (Bancroft & Company, rev. ed. 1874), https://babel.hathitrust.org/cgi/pt?id=uc1.b3146391&seq=7 . Accessed Sept 14, 2026	6
Webster, <i>American Dictionary of the English Language</i> (New Haven, 1828), https://webstersdictionary1828.com . Accessed Sept 14, 2026	6

**STATEMENT OF INTEREST OF
AMICUS CURIAE¹**

Pacific Justice Institute (PJI) is a nonprofit legal organization established under Section 501(c)(3) of the Internal Revenue Code. Since its founding in 1997, PJI has advised and represented in court and administrative proceedings thousands of individuals, businesses, and religious institutions in the realm of the First Amendment. Therefore, PJI has an interest in the proper application of the First Amendment’s protections for religious persons and entities.

**INTRODUCTION AND
SUMMARY OF ARGUMENT**

California allows public charter schools to offer an independent study program. In these programs, parents are provided “great flexibility” to choose a curriculum that aligns with educational standards “or to create their own”. *Woolard v. Thurmond*, 170 F.4th 701, 710 (9th Cir. 2026). The flexibility extends to politically leaning or ideologically supporting curriculum yet abruptly rejects any religiously influenced curriculum. The rejection is supported by the misinterpreted “doctrine, born of bigotry” known as the Blaine Amendment. *Mitchell v. Helms*, 530 U.S. 793, 829, 120 S. Ct. 2530, 2552 (2000). The California Blaine Amendment specifically prohibits

1. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief. All parties received timely notice of the filing of this Brief.

“sectarian or denominational doctrine” from being taught or included “directly or indirectly, in any of the common schools of [California].” Cal. Const. art. IX, §8.

The Ninth Circuit emphasized the charter school’s status as a public school in order to create the presumption that any religious entanglement is per se prohibited. While California maintains authority to determine what is taught in public schools, the unique aspect of the independent-study program is that the student is not being taught *within* the public school. The program is exclusively structured around individualized instruction. “[S]tudents in the independent study programs receive instruction in their homes, and the direct educators are their parents.” *Woolard*, at 710.

While California maintains secular public-school instruction, it may not exclude eligible families from an otherwise available educational benefit solely because the educational materials they select express religious viewpoints, where the State otherwise permits parents comparable discretion over curriculum. Here, the parents are forced between “forgoing state aid or pursuing some aspect of their faith.” *Espinoza*, 591 U.S. at 513 (Gorsuch, J., concurring). In this manner, California is not putting “a gun to the head, only a thumb on the scale”. *Id.* This viewpoint-based discrimination violates the Free Exercise clause and “must meet the demands of strict scrutiny.” *Id.*

ARGUMENT

I. National History of Blaine Amendments is Steeped in Religious Bigotry.

Government programs that allocate benefits based on distinctions among religious, non-religious, and areligious recipients are generally doomed from the start. *Am. Atheists, Inc. v. City of Detroit Downtown Dev. Auth.*, 567 F.3d 278, 289 (6th Cir. 2009). But in the 19th Century, a concerted effort led numerous states to adopt an amendment intended to restrict a specific religious sect from involvement with public education.

Introduced by House Speaker James Blaine, the so-called Blaine Amendment was “prompted by virulent prejudice against immigrants, particularly Catholic immigrants” and proposed to amend the U.S. Constitution to bar government funding for religious education. *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 498 (2020) (Alito, J., concurring). Anti-immigrant and anti-Catholic bigotry² in the United States was at an all-time

2. *Espinoza v. Montana Dep’t of Revenue*, 140 S. Ct. 2246, 2259 (2020) discusses the troubling history of bigotry tied to Blaine Amendments, noting that “it was an open secret that ‘sectarian’ was code for ‘Catholic’”; that the Blaine Amendment was “born of bigotry” and “arose at a time of pervasive hostility to the Catholic Church and to Catholics in general”; and that many state counterparts have a similarly “shameful pedigree.” (citing *Mitchell v. Helms*, 530 U.S. 793, 828-29 (2000)). Justice Alito’s concurrence goes on to outline the wave of German and Irish immigrants to the U.S. which increased the country’s Catholic population in the mid-19th century. “Catholics were considered . . . not as citizens of the United States, but as “soldiers of the Church of Rome,” who “would attempt to subvert representative government.” Indeed, an entire

high in the late 1800s as waves of immigration from predominantly Catholic countries, such as Ireland, Italy, and Germany fueled fears among Protestant majorities determined to maintain the cultural and religious homogeneity of American society.

After Congressman Blaine’s federal amendment failed, numerous states constitutions incorporated similar language from the federal amendment, often as a precondition of statehood imposed by Congress. These so-called Blaine Amendments were not neutral; they were explicitly designed to target Catholic schools while allowing Protestant-influenced public schools to thrive. In essence, these provisions institutionalized religious discrimination under the guise of protecting public education. As this Supreme Court has recognized, laws like these have a “shameful pedigree” rooted in “pervasive hostility to the Catholic Church and to Catholics in general.” *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality).

II. The California Blaine Amendment is Facially Unconstitutional

The California Blaine Amendment³—unchanged since implementation in 1879—includes the same “no-

political party (called the “Know Nothings”—a loose precursor to the Ku Klux Klan) was formed “to decrease the political influence of immigrants and Catholics.”

3. The California Blaine Amendment reads in its entirety: “No 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.

aid provisions” in “bigoted code language” as many other states Blaine Amendments. *Espinoza*, 591 U.S. 464 (2020) (Alito, J., concurring). California specifically targeted Catholic immigrants from Mexico who failed to “assimilate,” and tried to prevent “sectarian schools” from teaching “wrong opinions.”⁴ The framers did not consider a future where a California education was not based on a foundational Protestant worldview. Yet they laid the foundation for a State which would become “a jejune, godless state”. *Gordon v. Bd. of Educ.*, 78 Cal. App. 2d 464, 472-73 (1947).

They erroneously assumed that the “great pillars of our national strength,” that being our “general acceptance of religion by our people,” would be sustained in perpetuity. *Id.* As such, they sought to curb any dilution or fractious ideas in the teaching of basic foundational religious truths.

The purpose was to bar [. . .] publications of factional religion, those whose character is “sectarian, partisan or denominational.” As a book on almost any subject may adopt a partisan tone, so a book on religion, instead of confining itself to broad principles and simple fundamentals, may emphasize particular points—those upon which differences of opinion have arisen. In a word, a book on any subject may be strongly partisan in tone and treatment. A religious book treating its subject in this

4. See, Brian R. Callahan, *The Original Intent of California’s Blaine Provisions* at 15, 24-25 (May 1, 2003). <https://roseinstitute.org/white-papers-2/>; Cal. State Archives, Inventory of the Working Paper of the 1878-1879 Constitutional Convention, app. A, at 55, 1103 (1993).

manner would be sectarian. But not all books of religion would be thus excluded.

Evans v. Selma Union High Sch. Dist., 193 Cal. 54, 57 (1924).

They excluded from the foundational, religious education, any support for “sectarian or denominational” schools. At the time, “sectarian” was open code for “Catholic” reflecting the bigoted purpose of restricting neutral government benefits from American Catholics. *Mitchell v. Helms*, 530 U.S. 793, 828 (2000). California did not regard “sectarian”⁵ as proxy for “religious”. The contemporaneous curriculum contained religious references absent any partisan, “sectarian or denominational” concepts.

In 1879, religion was an integral part of California public school curriculum. The 1879 edition of the McGuffey Reader—containing overt references to God and Christian concepts—was used throughout California. *People ex rel. Cochran v. Bd. of Educ.*, 54 Cal. 375, 376 (1880). The Pacific Coast Reader⁶ published and used in California public

5. An 1828 publication of Websters Dictionary defined sectarian as “one of a party in religion which has separated itself from the established church, or which holds tenets different from those of the prevailing denomination in a kingdom or state.” Webster, *American Dictionary of the English Language* (New Haven, 1828). <https://webstersdictionary1828.com>. Accessed Sept 14, 2026.

6. *The Pacific Coast First Reader*, (Bancroft & Company, rev. ed. 1874). <https://babel.hathitrust.org/cgi/pt?id=uc1.b3146391&seq=7> (“He taught them to love and fear God, who made all things”). Accessed Sept 14, 2026.

schools employed references to God to teach language arts without violating the enacted Blaine Amendment. In striking contrast to *Woolard*, the Pacific Coast Reader’s inclusion of “He taught them to love and fear God, who made all things” was acceptable under the California Blaine Amendment whereas now in the case at hand, “God created me and all things” is considered sectarian. *Woolard*, 170 F.4th 701, 706 (9th Cir. 2026). A constitutional provision does not attain constitutional legitimacy merely because later generations have forgotten the religious discrimination that produced it.

In 1924, the California Supreme Court considered whether purchasing King James Version bibles for a public-school library was a sectarian decision. Using the definition of “sect” as “a body of persons distinguished by peculiarities of faith and practice from other bodies adhering to the same general system” they permitted the KJV Bible. *Evans v. Selma Union High Sch. Dist.*, 193 Cal. 54, 57 (1924). Such examples amplify California original understanding of “sectarian” as distinct from—and incapable of—being a proxy for “religious”.

III. California’s Blaine Amendment Violates the Free Exercise Clause on its Face

The Free Exercise clause protects against “penalize[ing] religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens; under such circumstances” *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 441 (1988). Established as one of this country’s first freedoms, the Free Exercise clause exists to prohibit government from targeting religion for disfavored treatment. *Church*

of the *Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). California’s actions in denying reimbursement for religious curriculum penalizes the religious activity of parents and demonstrates the Blaine Amendment’s intent in “targeting religion for disfavored treatment.” *Id.*

California has not shown that denying religious curriculum for independent use is narrowly tailored to advance an interest of the highest order. See, *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993) (ruling that a law that targets religious conduct for distinctive treatment will survive strict scrutiny only in rare cases). It is critical to note that the California charter school is not rejecting curriculum based on pedagogical weight but rather on the religious presentation of the materials. California’s interest should end with the core educational principles being taught; they do not have the right to determine the partisan view incorporated into the presentation of those educational principles when they are taught in the private home. The curriculum was acceptable to California educational standards yet failed because of worldview presentation. *Woolard* at 712 (Bumatay, J., dissenting). Educational facts remain facts even when presented in a religious context. The goal of homogenizing students into a purely secular framework is not a legitimate educational goal, even in the presence of California’s Blaine Amendment.

A. This Court’s Precedent in *Trinity, Espinoza*, and *Carson* Reflect the Necessity for Blaine Amendments to Yield to the Free Exercise Clause.

This Court has repeatedly struck down applications of Blaine Amendments as unconstitutional discrimination

against religion. In *Trinity Lutheran Church v. Comer*, the Court held that Missouri could not deny a church-run preschool access to a public grant for playground resurfacing solely because of its religious affiliation.⁷ 582 U.S. 449 (2017).

In *Espinoza v. Montana Department of Revenue*, Montana’s exclusion of religious schools from a tax-credit scholarship program based on its Blaine Amendment was invalidated.⁸ Specifically, the Court found that a “State

7. In this case which directly challenged a state’s Blaine Amendment, the Supreme Court held that a church may not be denied an otherwise generally available public benefit (such as a government grant) because of its religious status under the First Amendment. The Missouri Department of Natural Resources (the “Department”) offered state grants to assist public and private schools, nonprofit daycare centers, and other nonprofit entities in purchasing rubber playground surfaces made from recycled tires. The Department, however, had a policy of denying these grants to any applicant owned or controlled by a church, sect, or other religious group. Trinity Lutheran Church, which ran a preschool and daycare center, applied for a grant but was denied on the sole reason that Trinity Lutheran was a church. In a 7-2 opinion, the Court struck down Missouri’s policy finding that the refusal to extend a neutrally applicable, secular benefit (having safer playgrounds) was unconstitutional. Specifically, the Supreme Court found that allowing Missouri to “discriminate [. . .] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character” would be a violation of the Free Exercise Clause.

8. This landmark educational reform case is centered around an educational choice program enacted by the Montana state legislature in 2015. In 2015, the Montana Legislature passed a program that provided tax break to residents if they contributed to charitable organizations that provide scholarships for children. The program allowed families to use those scholarships at any

need not subsidize private education[,] . . . [b]ut once a State decides to do so, it cannot disqualify some private schools solely because they are religious.” *Espinoza*, 591 U.S. 464, 487 (2020).

In *Carson v. Makin*, 596 U.S. 767 (2022), the Court struck down Maine’s “nonsectarian” requirement for tuition assistance, holding that it violated free exercise by penalizing religious education. Specifically, the tuition assistance program required eligible schools to *only* offer “nonsectarian instruction.” Applying *Trinity Lutheran* and *Espinoza*, the Court held (6-3) that Maine could not choose to subsidize some private schools but not others based on religious character. Rather, school choice programs must be neutral regarding religion—with the government *neither favoring nor discriminating* against parents who choose religious schools.

Here, California’s denial of providing curriculum for parents echo the actions of Maine and Montana in *Carson* and *Espinoza*. California has made available a benefit for parents to choose the curriculum in the independent study program. *Woolard*, at 710. These parents did not request the curriculum to be held out as the California standard for all students. They only requested to use an otherwise available educational benefit provided in the independent

private school in Montana—religious or nonreligious. But in implementing the new law, the Montana Department of Revenue interpreted the state constitution’s Blaine Amendment to forbid the participation of religious schools. Three mothers who were barred from using the scholarships for their children’s tuition at a religious school sued alleging the Department of Revenue’s rule discriminated on the basis of their religious views and the religious school they had chosen.

study-system. The state’s refusing that benefit based on the religious beliefs expressed in the curriculum is the type of discrimination *Trinity Lutheran*, *Espinoza*, and *Carson* place under heightened constitutional scrutiny. California may choose not to create curricular options, but once they have created this neutral benefit available to private participants, California cannot exclude the religious participants. See *Espinoza*, 591 U.S. 464, 487 (2020).

a. Neutral mechanisms and incidental governmental involvement do not automatically constitute an appropriation supporting a sectarian institution.

Even before *Carson*, California held that “indirect and incidental” benefits did not violate the state constitution. In 1946, the Court considered an allegation of support for a nonsectarian school providing transportation for parochial students on public school buses. The Court recognized that “many expenditures of public money give indirect and incidental benefit to denominational schools and institutions of higher learning. Sidewalks, streets, roads, highways, sewers are furnished [through public funds] for the use of all citizens regardless of religious belief. . . .” *Bowker v. Baker*, 73 Cal. App. 2d 653, 666, 167 P.2d 256, 262-63 (1946). See also *California Educational Facilities Authority v. Priest*, 12 Cal. 3d 593, 603 (1974) (holding that the improvement of facilities for higher education is in the public interest and resulting benefits are granted to sectarian and nonsectarian colleges on an equal basis.)

b. Non-neutral involvement by the Government with Religious Activities Is Not a per-se violation of the California Constitution.

Even incidental expenditure of government time in administering a neutral program does not necessarily violate article IX, section 8. In *Gordon v. Board of Education*, a “release-time” religious education program was held to not violate the California Constitution art. IX § 8 despite seeming substantial involvement by the school. In the release-time program, “[t]he expense of preparation, printing or mimeographing, and mailing of the literature and cards was paid by the school system. Teachers and superintendents of schools were directed to keep attendance records and to oversee the working of the plan.” *Gordon v. Bd. of Educ.*, 78 Cal. App. 2d 464, 465, 178 P.2d 488, 489 (1947). Despite the obvious use of school funds and administrative efforts, the Court found that “there is no appropriation of public money in support of any sect or denomination and no teaching of sectarianism in the school system of Los Angeles County in violation of section 8 of article IX of the California Constitution.” *Gordon v. Bd. of Educ.*, 78 Cal. App. 2d 464, 475-76, 178 P.2d 488, 495 (1947). The “release time” program was impartial regarding specific religions or sects. It was undoubtedly religious, but not sectarian. As such, it did not violate the intent of California’s constitutional provision.

IV. CONCLUSION

Article IX, § 8 cannot be treated as authorizing otherwise unconstitutional discrimination against religious viewpoints. Whatever the provision’s original

purposes, “sectarian” cannot simply be rewritten to mean “religious.” Ignoring the history in which Blaine Amendments were established has created a weapon of targeted discrimination. The California Blaine Amendment is aimed at sectarian presentations in curriculum. And if California’s present enforcement excludes otherwise eligible parents from a generally available educational benefit because their chosen materials contain religious viewpoints, the First Amendment—not California’s Blaine Amendment—controls.

This Court should grant the Petition.

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