

In the Supreme Court of the United States

JOHN WOOLARD, ET AL.,
Petitioners,

v.

TONY THURMOND, ET AL.

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

**BRIEF IN OPPOSITION OF STATE SUPERINTENDENT
AND SCHOOL DISTRICT OFFICIALS**

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OCTOBER MMXXVI

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QUESTION PRESENTED

California charter schools are part of California’s public school system. All of California’s public schools, including its charter schools, may permit students enrolled in the school to engage in “independent study” if the responsible school officials determine that such study is appropriate for the student’s progression through a school-adopted curriculum. That curriculum must be substantially equivalent to public school classroom instruction and must meet all state and local public education content standards. The question presented here is whether such “independent study” is part of California’s public education system, which this Court held in *Carson v. Makin*, 596 U. S. 767, 785 (2022), may provide a strictly secular education.

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STATEMENT OF THE CASE

I. Legal Background

The “independent study” at issue here exists within California’s public school system for public school officials (in both charter schools and other public schools) to approve and oversee an enrolled student’s pursuit of a California public education on a flexible schedule outside of a classroom, if those officials determine it is and continues to be appropriate for the student’s progression through a school-adopted curriculum that is substantially equivalent to classroom instruction and meets all public education content standards.

There is one public school system in California, which encompasses all public schools and the public agencies and officials that run them. Cal. Const., Art. IX, §5; *Mendoza v. State of California*, 149 Cal. App. 4th 1034, 1041–1042 (2007); *Wilson v. State Bd. of Educ.*, 75 Cal. App. 4th 1125, 1136–1137 (1999). California’s Constitution provides that no public money shall be appropriated for “any school not under the exclusive control” of that system’s public officials (Cal. Const., Art. IX, §8), and that no school or “any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System” (Cal. Const., Art. IX, §6).

“[C]harter schools are part of California’s single, statewide public school system.” *Wilson*, 75 Cal. App. 4th, at 1137. They “are *strictly* creatures of statute.” *Id.*, at 1135. “From how charter schools

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come into being, to who attends and who can teach, to how they are governed and structured, to funding, accountability and evaluation—the Legislature has plotted all aspects of their existence.” *Ibid.*

In enacting the Charter Schools Act, Cal. Educ. Code §§47600 *et seq.* (CSA), California’s Legislature declared that charter schools “are part of the Public School System,” “under the jurisdiction” and “exclusive control of the officers of the public schools,” and that the CSA is to be “liberally construed to effectuate” those purposes. Cal. Educ. Code §47615. Charter schools “shall meet all statewide standards and conduct the pupil assessments required pursuant to [California Education Code] Section 60605 [entitled ‘Statewide Academically Rigorous Content Standards’] and any other statewide standards authorized in statute or pupil assessments applicable to pupils in non-charter public schools.” *Id.*, §47605(d)(1). Charter schools receive state funding comparable to other public schools. *Id.*, §§47612, 47615(a)(3), 47630 *et seq.* They must be free, open to all students, and nondiscriminatory based on race, religion, gender, and other specified traits. *Id.*, §47605(e)(1)–(2), and §220. They are required to offer the same number of instructional minutes as school districts, maintain records of pupil attendance, and certify that pupils have participated in state testing. *Id.*, §47612.5(a). And teachers in charter schools must hold the same credentials as teachers in other public schools. *Id.*, §47605(l).

A chartering authority (*i. e.*, a school district or county office of education) only grants a petition to establish a charter school upon review and approval of its charter, which must meet state requirements. *Id.*,

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§§ 47605, 47605.6. It may deny a petition to establish a charter school if it makes one of several findings, including that the petition does not contain a reasonably comprehensive description of how the school will achieve the State’s priorities for public education listed in California Education Code section 52060(d), which include, *inter alia*, “implementation of the academic content and performance standards adopted by the [State Board of Education]” and ensuring that every pupil has “instructional materials” that are “aligned” to the content standards and curriculum frameworks adopted by the State Board of Education. *Id.*, §§ 47605(c)(1), (c)(5)(A)(ii), 52060(d)(1)–(2), 60119. Chartering authorities must visit and monitor the fiscal condition of each charter school “under its authority” (*id.*, § 47604.32) and can “inspect or observe any part of the charter school at any time” (*id.*, § 47607(a)(5)). A chartering authority may revoke a charter for, *inter alia*, a material violation of the charter, the failure to pursue any of the pupil outcomes identified in the charter, and the charter school’s violation of any applicable law. *Id.*, § 47607(f).

As a leading California decision correctly puts it:

“charter school officials are officers of public schools to the same extent as members of other boards of education of public school districts. So long as they administer charter schools according to law and their charters, as they are presumed to do, they stand on the same constitutional footing as noncharter school board members.” *Wilson*, 75 Cal. App. 4th, at 1141.

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California constitutional and statutory provisions reflect the State’s decision that its public education will be secular. Cal. Const. Art. IX, §8; Cal. Educ. Code §51511 (originally enacted in 1976, amended in 2001). And among the laws applicable to charter schools is the requirement that each must be secular “in its programs . . . and all other operations.” Cal. Educ. Code §47605(e)(1).

More than thirty years ago—before the CSA’s enactment and creation of California charter schools—the Legislature authorized the State’s public “local educational agencies” to offer “independent study” in accordance with various requirements. Cal. Educ. Code §51745(a). For purposes of such independent study, “local educational agency” (or LEA) “means a school district, county office of education, *or charter school.*” *Id.*, §51745.5 (emphasis added).

“Independent study” is “an alternative to classroom instruction *consistent with the district’s [or charter school’s] course of study.*” (Emphasis added.) Cal. Code Regs., Tit. 5 (5 CCR) §§11700(c), 11700.1(c) (including “charter school” within meaning of “district” or “school district” for purposes of the independent study statutes and regulations).

LEAs are not required to offer independent study, and LEAs that do offer independent study are not required to allow a pupil to engage in it “if school officials given responsibility for the decision determine that independent study is not an appropriate alternative for the pupil.” *Id.*, §11700(d)(1).

Each pupil’s independent study “shall be coordinated, evaluated” and “under the general supervision” of a designated LEA employee with a valid public

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teaching credential. Cal. Educ. Code §51747.5. “General supervision” requires “continuing oversight of the study design, implementation plan, allocation of resources, and evaluation of student progress” by the “supervising teacher,” who is the “certificated teacher” “assigned” by the LEA. 5 CCR §11700(b), (j).

Independent study must “be substantially equivalent in quality and in quantity” to “classroom instruction” so that the pupil “will be enabled to complete” the LEA’s “adopted course of study within the customary time frame.” *Id.*, §11701.5(a); see also *id.*, §11700.1(b) (defining “classroom instruction” for a charter school as classroom instruction “provided either by the charter school or by another public school that the pupil is eligible to attend”).

A pupil’s independent study involves a written agreement signed by the pupil, the pupil’s parent or guardian, and the LEA’s certificated employee “designated as having responsibility for the general supervision” of the pupil’s study. Cal. Educ. Code §51747(g)(9). The written agreement may not exceed one year. *Id.*, §51747(g)(6). The agreement must specify “[t]he objectives and methods of study for the pupil’s work, and the methods used to evaluate that work.” *Id.*, §51747(g)(2). “Methods of study” is defined to mean the pupil’s activities “*selected by the supervising teacher* as the means to reach the educational objectives set forth in the written agreement.” 5 CCR §11700(f) (emphasis added). “Method used to evaluate” means a “specified procedure through which a certificated teacher personally assesses the extent to which achievement of the pupil . . . meets the objectives of an assignment.” *Id.*, §11700(e). And “[t]he

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curriculum and methods of study” specified in an independent study agreement “shall be consistent” with the LEA’s “policies and procedures for curriculum and instruction as adopted by the [LEA’s] governing board.” *Id.*, §11702(b). In addition, the written agreement must address how the pupil’s assignments will be submitted, how academic progress will be communicated, the number of missed assignments allowed before “an evaluation of whether or not the pupil should be allowed to continue in independent study” and “the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the agreement, to be earned by the pupil upon completion.” Cal. Educ. Code §51747(g)(1), (4), (6).

LEAs offering independent study “must adopt and implement written policies” that address, among other things, “[t]he provision of *content aligned to grade level standards* that is *substantially equivalent to in-person instruction*.” *Id.*, §51747(c) (emphasis added). The policy must also set forth the “level of satisfactory educational progress and the number of missed assignments that will be allowed before an evaluation is conducted to determine whether it is in the best interests of the pupil to remain in independent study.” *Id.*, §51747(b)(1). The “level of satisfactory education progress” must be determined based on several factors, including “[l]earning *required concepts, as determined by the supervising teacher*” and “[p]rogressing toward successful completion of the course of study or individual course, *as determined by the supervising teacher*.” *Id.*, §51747(b) (emphasis added).

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All charter schools must comply with California’s independent study statutes and regulations. Cal. Educ. Code §§47612.5(a), 51747.3(a); *Wilson*, 75 Cal.App.4th, at 1133; *Anderson Union High School Dist. v. Shasta Secondary Home School*, 4 Cal.App.5th 262, 272–273 (2016).

While the “independent study” at issue in this case exists within California’s public education system, California allows parents to provide their children with their preferred private education, including a religious education, through homeschooling (or through selecting another form of private schooling). In the leading state case *Jonathan L. v. Superior Court*, 165 Cal.App.4th 1074 (2008), the court surveyed 100 years of state legislative action regarding private home schooling and concluded that California permits such home schooling as a type of “private school” education exempt from the State’s compulsory public education law under California Education Code section 48222. 165 Cal.App.4th, at 1088–1101; see also *Gray v. Superior Court*, 112 Cal.App.5th 935, 947 (2025) (citing *Jonathan L.* and recently concluding seventeen years later that it is “well settled” that a private home school “may be considered a private school for purposes of the compulsory public education law exemption, even where the school is operated by parents teaching only their own children”).

But California specifically distinguishes such “private” homeschooling from “independent study” through a public school, because such independent study “is permissible only when offered by the public school system and supervised by a certificated teacher” in accordance with legal requirements discussed

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above and the public school’s state-standards-aligned curricula. *Jonathan L.*, 165 Cal. App. 4th, at 1091, n. 19.

Unlike other States, California has “few express limitations on [private] home schooling” and “has provided no enforcement mechanism.” *Id.*, at 1105–1106 (contrasting California with other States). Parents must file a statement with basic information (*e. g.*, address, number of students, that records are kept regarding attendance, etc.) with the California Department of Education, but there is no established monitoring system and the filing of such a statement “shall not be interpreted to mean” “that the State of California [or its educational agencies] has made any evaluation, recognition, approval or endorsement of the school.” Cal. Educ. Code §§33190, 48222. For private homeschooling, parents (or others teaching) need not hold any educational degree or state credential; they only need to be “capable of teaching.” *Id.*, §48222. Rather than having to align instruction with all state public education content standards (as public schools must), private homeschools need only provide instruction “in the English language” and “offer instruction in” the broad “branches of study” that are covered in public school. *Ibid.* And while statutory fingerprinting requirements apply to other forms of private schools, they do not apply in the case of “a parent or legal guardian working exclusively with their children.” *Id.*, §44237(b)(4).

II. Factual and Procedural Background

Petitioners are the parents or grandparents of children who enrolled in public charter schools under the

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jurisdiction of public school districts in California. App. to Pet. for Cert. 10a–11a, 65a–66a, 71a. The public charter schools (Schools) are Blue Ridge Academy (Blue Ridge) and Visions in Education (Visions), and their charters were authorized by the Schools’ respective chartering authorities, Maricopa Unified School District (MUSD) and San Juan Unified School District (SJUSD). App. to Pet. for Cert. 10a–11a.

Pursuant to statutes and regulations discussed above, the Schools allow for “independent study,” by which LEA officials may approve study of an LEA-adopted public school curriculum on a flexible schedule outside of a classroom, but only if various legal requirements are met. App. to Pet. for Cert. 9a–10a, 16a–17a, 69a–70a; see pp. 4–7, *supra*.

In accordance with California law, the Schools’ respective charters require duly authorized school officials to retain and exercise authority over curriculum decisions and ensure that any approved curriculum meets all state and local public education content standards. For example, the Blue Ridge charter specifies that its state-credentialed teachers “select and approve curriculum” and “consider students’ learning styles and interests when determining each student’s instructional learning plan.” 2 C. A. E. R. 80; see also 2 C. A. E. R. 87 (providing that each student is assigned to a credentialed teacher “who manages the student’s [learning plan], monitors progress, and focuses on each student’s individual areas of need”). The charter describes conferences “between the student, parent and assigned teacher” and ongoing review by the assigned teacher of assignments and assessments, resulting in data upon which the

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school's "teachers build an individualized learning plan for the student" and "target specific learning objectives and standards." 2 C. A. E. R. 84. The charter expressly provides that "all requests" for educational items and services "must" be approved by the assigned credentialed teacher and by Blue Ridge's Executive Director who "can deny any request for educational items or services in his or her sole discretion for any reason." 2 C. A. E. R. 242. It also provides that the school "shall ensure" that approved items and services are "aligned with State standards." 2 C. A. E. R. 243.

Similarly, the Visions charter explains that it "builds its instructional approach" upon the "one-to-one relationship" between each student and a Visions "California credentialed teacher," who works to develop a personalized learning plan for the student. 3 C. A. E. R. 367. It recognizes that "[t]he California State Standards serve as the foundation for the development of courses, selection of curriculum and the development of supporting resources, assessments and grades." 3 C. A. E. R. 405. Visions teachers "ensure that curriculum meets California State Standards." 3 C. A. E. R. 371. The school's teachers also "monitor student assignments for compliance with California State Standards while validating attendance, assessing assignments, and issuing final grades." *Ibid.* While the charter recognizes that students have varied and sometimes changing needs and that Visions' credentialed teachers "may adjust the personalized learning plan to meet these needs," the charter provides that "all adjustments must maintain strict adherence to a well-defined set of content standards and

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graduation requirements to ensure student success is achieved through a balance between structure and flexibility in their learning process.” 3 C. A. E. R. 405; see also 3 C. A. E. R. 407 (advising that Visions will consider “alignment with Visions standards and graduation requirements” “when developing the [personalized learning plan] for each student”).

After enrolling in the Schools, petitioners requested that the Schools purchase and approve their child’s study and use of nonsecular materials for school credit. App. to Pet. for Cert. 10a–11a. The Schools denied the requests, relying on state law and school policy reflecting California’s decision that its public school curricula will be secular. *Ibid.*

Petitioners filed their complaint in October 2023. 3 C. A. E. R. 472. Petitioners acknowledged that the Schools require that any independent study for school credit must comply with all applicable state laws, be aligned with all state public education content standards, and be reviewed and approved by the school’s duly authorized public school officials.¹ However, petitioners alleged that because the Schools welcome parent input and respond to parent requests for the school’s review and approval of curriculum materials, the Schools’ refusal to adopt religious curricula for

¹ See, e.g., 3 C. A. E. R. 474 (Complaint, ¶3, conceding necessity of meeting “statewide educational standards”); 3 C. A. E. R. 479 (¶36, conceding that Blue Ridge teachers “ensure that students are meeting basic statewide educational standards”); 3 C. A. E. R. 480 (¶40, admitting that Blue Ridge “must approve all requests”); 3 C. A. E. R. 481 (¶¶42, 44, admitting that Visions’ “credentialed teachers” “ensure that California State Standards are being met” and must “review and approve all expenditures”).

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credit in the public school violated their free exercise and free speech rights under the First Amendment to the U. S. Constitution. App. to Pet. for Cert. 10a. The complaint asked the District Court to enjoin state constitutional and statutory provisions codifying California’s decision that its public school curricula will be secular. 3 C. A. E. R. 501–502. It named as defendants: (1) the Schools and their respective officials in their official capacity; (2) officials, in their official capacity, of the Schools’ respective chartering authorities, MUSD and SJUSD; and (3) California’s Superintendent of Public Instruction, Tony Thurmond, in his official capacity. App. to Pet. for Cert. 11a.

All defendants moved to dismiss, see App. to Pet. for Cert. 67a, and the District Court granted their motions, see App. to Pet. for Cert. 65a–78a. Petitioners appealed, and the Court of Appeals, in an opinion authored by Judge Hurwitz and joined by Judges Miller and Sung, unanimously affirmed the District Court’s judgment. App. to Pet. for Cert. 2a, 9a–19a. The panel recognized free exercise limitations on excluding religious education when a State has chosen to subsidize private education. App. to Pet. for Cert. 14a–15a (citing, *inter alia*, *Espinoza v. Montana Dept. of Revenue*, 591 U. S. 464, 488–489 (2020)). It also recognized that this Court has confirmed that the Free Exercise Clause does not prohibit a State from providing “a strictly secular education in its public schools.” App. to Pet. for Cert. 13a (citing *Carson v. Makin*, 596 U. S. 767, 785 (2022)).

To analyze the independent study at issue, the panel began with “an overview of the legal structure of the California charter school system” (App. to Pet.

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for Cert. 13a), concluding that charter schools “are part of California’s single, statewide public school system,” which “must provide instruction meeting the same statewide standards as other California public schools.” App. to Pet. for Cert. 13a–14a. It then analyzed a multitude of California statutes and regulations governing the independent study at issue, as well as California’s starkly contrasting requirements for families that wish to engage in private homeschooling instead of enrolling in California public schools. App. to Pet. for Cert. 15a–18a; *id.*, at 17a–18a (“California private schools—including private homeschooling programs—are subject to none of those requirements. Instead, they only need to file regular registration affidavits, keep attendance, and provide English-language instruction in broadly framed ‘areas of study.’”). Based on that analysis, the panel rejected petitioners’ suggestion that California had decided to subsidize private education, concluding instead that independent study was a method for public school officials to allow enrollees’ study of a government-adopted curriculum that, among other things, needed to be “substantially equivalent to classroom-based instruction” and “aligned to all relevant local and state content standards.” App. to Pet. for Cert. 16a–18a.

Petitioners petitioned for rehearing en banc. App. to Pet. for Cert. 8a. On March 23, 2026, the panel issued an order amending its opinion. *Ibid.* The order further noted that Judges Miller and Sung voted to deny the petition for rehearing en banc, and Judge Hurwitz so recommended. App. to Pet. for Cert. 9a. The full Ninth Circuit Court of Appeals was

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advised of the petition for rehearing en banc but the matter failed to receive a majority of votes of the non-recused active judges. *Ibid.* Five judges dissented, and Judges Bumatay (joined by four judges) and VanDyke (joined by two) wrote opinions explaining why they would have granted the petition. App. to Pet. for Cert. 20a–31a (Bumatay, J.); App. to Pet. for Cert. 31a–48a (VanDyke, J.).

ARGUMENT

Petitioners do not dispute that a State “may provide a strictly secular education in its public schools” (*Carson v. Makin*, 596 U. S. 767, 785 (2022)) and “need not subsidize private education” (*Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464, 487 (2020)). Their case is premised on the notion that the “independent study” at issue here exists outside California’s public school system as a state program to grant all families the legal right to their own chosen “private” education. The case presents a very narrow question, highly dependent on California-specific statutes and regulations, that does not carry the kind of broad implications or significance warranting this Court’s review. In any event, the courts below correctly concluded that under California law, petitioners’ core premise is wrong. That conclusion does not conflict with this Court’s precedents or the decisions of other Courts of Appeals. The petition should be denied.

**I. This Case Cannot Answer the Question
That Petitioners Suggest Is Presented**

The petition seeks an answer as to whether a State that gives all families a right to their own chosen

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state-subsidized private homeschool education can exclude religious education. But this case cannot answer that question. The “independent study” at issue exists only within the public school system. It allows public school officials to approve and oversee an enrolled student’s schoolwork on a flexible schedule outside of a classroom, if the responsible school officials determine it is and continues to be appropriate for the student’s progression through a school-adopted curriculum. And that curriculum must be substantially equivalent to public school classroom instruction and meet all state and local public education content standards and policies.

Any suggestion that the Schools’ official policy was to relinquish authority and control over providing a public education and to grant families the legal right to their own privately chosen, state-subsidized private education conflicts with state law. California’s Constitution requires that public schools be exclusively controlled by public education officials and prohibits the transfer (even the “indirect” transfer) of authority from such officials to anyone else. See p. 1, *supra*. Charter schools and the officials that operate them are full-fledged members of California’s public education system, and it is a fundamental part of charter schools’ statutory creation that they will adhere to the State’s public education standards, be secular in all operations, and comply with the State’s independent study rules. See pp. 1–4, 7, *supra*. The State’s independent study rules require, *inter alia*, that what is approved by public school officials for study be **(1)** consistent with the LEA’s *governing board-adopted* course of study and curriculum policies and

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procedures [5 CCR §§ 11702(b), 11700(c), 11700.1(c)]; **(2)** selected, coordinated, evaluated *and* overseen by the LEA's assigned state-certificated teacher [Cal. Educ. Code §§ 51747, 51747.5; 5 CCR § 11700(b), (e)–(f), (j)]; and **(3)** of “content aligned to grade level standards” that is “substantially equivalent in quality and in quantity” to public school “classroom instruction” [Cal. Educ. Code § 51747(c); 5 CCR § 11701.5(a)], which in the case of a charter school, is defined to mean “classroom instruction” “provided either by the charter school or by another public school that the pupil is eligible to attend” [5 CCR § 11700.1(b)]. See pp. 4–7, *supra*. Moreover, there is no “right” to independent study at all; even when it is an option for students that have enrolled in a public school, school officials have the power and responsibility to determine whether it is, and continues to be, appropriate. 5 CCR § 11700(d)(1); Cal. Educ. Code § 51747(b)(1).

In accordance with the same independent study requirements that apply to traditional public schools, the Schools' charter petitions likewise contradict the Families' premise. One would expect that if the Schools purported to relinquish control over curriculum and granted parents the right to their own private education, that policy would appear in the Schools' governing charters. It does not. In the proceedings below petitioners themselves asserted that those charters “do not specify the degree of leeway parents are afforded in choosing homeschool curricula.” Petitioners' CA9 Opening Brief 44. But as discussed (pp. 9–11, *supra*), in accordance with state law, both Blue Ridge and Visions expressly retain and exercise authority over curriculum decisions and

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ensure that any approved curriculum meets all applicable state and local public education policies and content standards.

Petitioners' premise of a legal right to state-subsidized "private" education collapses under the weight of two admitted caveats: (1) no curriculum is approved for use unless public school officials determine that it meets all state public education standards; and (2) parents can make requests, but the Schools retain authority and discretion to approve or deny them. Petitioners have admitted these things,² but they treat them as insignificant details unworthy of discussion. But logic and common sense dictate that these caveats render the Families' conclusory description of their legal rights erroneous and implausible. Simply put, a family's hope that officials in the public school that the family has chosen to enroll in will exercise discretion to approve curriculum materials for use for credit in that public school, but only after determining that the materials meet all applicable public education standards and policies, is not a legal right to state-subsidized "private" education.

Significantly, contrary to petitioners' vague and unsupported suggestion, California's public education content standards are not just a handful of broad subjects that must be addressed in some respect. Rather, they are comprehensive, rigorous, and specific, and

² See p. 11, n. 1, *supra*; see also Petitioners' CA9 Opening Brief 43 ("To be sure, personnel at the schools must ultimately 'approve' requests"), 46 (recognizing that California law requires independent study programs to be of the same educational quality as classroom-based instruction and "aligned to all relevant local and state content standards").

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within each academic subject, concepts and knowledge are reinforced and expanded upon year after year. For example, California’s Next Generation Science Standards (available at NGSS for California Public Schools, K–12—Professional Learning (CA Dept. of Education)) span more than 200 pages (not including Appendices A–M) and are founded on various crosscutting concepts and practices that are continuously used and built upon as part of a coherent K–12 progression to master increasingly complex material. See also App. to Pet. for Cert. 16a (Ninth Circuit opinion referencing state standards for mathematics “laid out in a 151-page document that gives detailed descriptions of the skills and content that students should master”).

California LEAs not only determine that potential instructional materials are aligned with such content standards, but also that the LEA should adopt the materials for use for credit in and progression through the LEA, ultimately leading to graduation from the LEA. That is where other state and local policies, and official discretion and judgment, come into play. All LEAs enforce California’s laws reflecting its decision that its public education will be secular, but petitioners do not dispute that the Schools had discretion to decline approval of proposed curriculum materials for *any* reason, including relative academic quality, administrative burden, or concerns about bias, violence, misogyny, animal cruelty or any number of other concerns unrelated to religious content.³ This

³ While state law grants duly authorized LEA officials some discretion in adopting instructional materials for local use, it

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approval authority not only places discretion in the hands of duly authorized officials of California’s public education system, but it also creates some flexibility for the LEA to consider new potential standards-aligned materials for use for school credit, rather than needlessly limiting itself to a closed set of materials approved in the past. The fact that public school officials are willing to listen to what parents of enrolled students think (a permissible and worthwhile government practice) before exercising their discretion to approve a curriculum for public school credit, which must meet all applicable state and local public education standards and policies, does not convert a public school official’s decision into a private one, or a public education into a private one.

**II. The Decision Below Is Narrow and
Dependent on California-Specific Statutes
and Regulations and Public Charter
School-Specific Charter Provisions**

The petition suggests that the decision below “has ‘disturbing’ implications” and “extends well beyond California’s independent-study program” because it would allow “pretty much anything” to be labeled as a “public” program “exempt from First Amendment scrutiny.” Pet. for Cert. 27, 30. That suggestion is unfounded. The decision below does not hold, or even suggest, that every “public” or “governmental”

precludes an LEA from adopting instructional materials that, *inter alia*, “contain any matter reflecting adversely upon” persons based on protected characteristics or that “promotes a discriminatory bias” based on such characteristics. Cal. Educ. Code §§51500, 51501.

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“program” is exempt from First Amendment scrutiny. The decision is narrowly focused on petitioners’ legal rights as enrollees of California public schools operating statutorily defined and constrained independent study programs within California’s public school system. And to assess those rights, the panel did not look for a public “label.” Rather, it considered the legal structure of California’s public school system and Charter Schools Act (App. to Pet. for Cert. 13a), analyzed the many California statutes and regulations governing the independent study at issue (*id.*, at 15a–18a) and contrasted them with California’s minimal requirements for private homeschooling (*id.*, at 17a). It was only after such analysis that the court rejected petitioners’ suggestion that California had decided to subsidize private education.

Given its narrow focus and analysis, there can be no legitimate fear that the decision below extends beyond the statutorily bound “independent study” offered by California public schools within California’s public school system. And there is no basis for suggesting that the Ninth Circuit’s opinion might create new exceptions to other constitutional rights like the Fourth Amendment. See Pet. for Cert. 29 (relying on a Texas police officer’s *unsuccessful* argument for qualified immunity to a Fourth Amendment claim based on the warrantless seizure of a child from a private home in part because the child attended virtual classes from home). A court considering a claim about any other program (inside or outside of California) or a claim about an “independent study”-like program in another State with different structure and

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requirements would need to do its own case-specific analysis to decide that case.

Because of its narrow focus and dependence on California-specific statutes, regulations and charter petitions (all of which can be amended), granting certiorari would not necessarily lead to an opinion with widespread or lasting application. And if California were led to believe that the mere act of its public schools *listening* to what their enrollees' parents think before exercising their own discretion to adopt a curriculum that meets *all* public education content standards may be viewed as a decision to "subsidize *private* education," then it is anything but clear that the ultimate result will be a similar level of parent input and access to publicly funded religious curricula. For example, "independent study" can and does exist where the only option is a closed set of materials previously reviewed and approved by the LEA (but the rulings below correctly reflect that public schools can be open to reviewing other appropriate standards-aligned materials that offer hope of tailored success, and listen to a parent's input on that, without forfeiting all control over what will be purchased by and studied for credit in that public school).

Furthermore, the Ninth Circuit's narrow decision about independent study in California public schools has no bearing on families' ability to privately home-school their children instead of enrolling in public school. As discussed (pp. 7–8, *supra*), California allows families to engage in private homeschooling (or other forms of private schooling), including religious homeschooling, as an alternative to public school

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attendance with very few requirements and essentially no oversight system.

Nor does the Ninth Circuit’s decision affirm any restrictions on a parent’s ability to privately teach or speak to their children, even if the family *does* enroll in a public school that offers independent study. The complaint did not allege, and petitioners do not contend, that the Schools prohibited enrolled families from engaging in their own private instruction or speech (*i. e.*, beyond the specific instructional materials adopted, purchased and provided by the Schools and the assignments made by the Schools for school credit). That is, there was no claim that the Schools regulated what is not part of the approved curriculum for school credit, such as by restricting what a parent may choose to say or teach to their child, at any time or place, for their own sake.

**III. The Decision Below Does Not Conflict with
This Court’s Precedent**

The petition asserts that the decision below conflicts with this Court’s decisions in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464 (2020), and *Carson v. Makin*, 596 U.S. 767 (2022). Pet. for Cert. 15. It does not. Petitioners’ argument hinges on their premise that California has chosen to subsidize private education except for religious private education. As discussed above, that premise is wrong. Both the underlying District Court decision and the Ninth Circuit’s unanimous panel decision cited each of those cases and correctly

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concluded that they were distinguishable. App. to Pet. for Cert. 9a–18a, 68a–77a.

Trinity Lutheran held that express *religious entity disqualification* from a playground resurfacing grant program *open to both public and private schools and other nonprofit entities* constituted a penalty on the free exercise of religion. 582 U.S., at 454–455, 462–463. The Court described its holding as “unremarkable” in light of its earlier decisions (*id.*, at 462), including its decision in *Everson v. Board of Ed. of Ewing*, 330 U.S. 1 (1947). *Trinity Lutheran*, 582 U.S., at 458–459.

Everson explained that the Free Exercise Clause restricted a State from excluding individuals from “public welfare legislation” based solely upon their faith, such as would occur if a state program provided free transportation to *both public and private* schools, but not *religious* private schools. 330 U.S., at 16–17. Notably, however, in the very next breath, *Everson* stated that it did “**not** mean to intimate that a state could not provide transportation *only* to children attending *public* schools.” *Id.*, at 16 (emphasis added).

Espinoza involved a Montana “scholarship program for students attending **private** schools,” which “provide[d] tuition assistance to parents *who send their children to private school*.” 591 U.S., at 467–468 (emphasis added). Under the program, a family whose child was awarded a scholarship had the legal right to direct funds *to virtually any private school in the State, of the family’s own private choice*. *Id.*, at 469. Once “the family designate[d] its school of choice,” the funds were directed to that private school to go toward the child’s tuition at that private school,

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with no ability for anyone else to reject that choice. *Ibid.* (“[v]irtually every private school in [the state] qualifies” and “[n]either the scholarship organization nor its donors can restrict awards to particular types of schools”). A free exercise challenge was brought against a subsequent administrative rule that prohibited recipient families from selecting a religious private school. *Id.*, at 470–471. The Court applied the “unremarkable” principle, distilled from cases like *Everson* and *Trinity Lutheran*, that “disqualifying otherwise eligible recipients from a public benefit ‘solely because of their religious character’” operates as a coercive penalty on the disqualified recipients’ exercise of religion. *Id.*, at 475. Because the Montana law gave eligible families a public right to subsidized tuition at the private school of their choice but disqualified otherwise eligible religious private schools solely because they were religious, the law violated free exercise rights. *Id.*, at 476, 478. Significantly, however, *Espinoza* recognized that the Free Exercise Clause does *not* require a State to “subsidize private education.” 591 U. S., at 487.

Similarly, *Carson* involved a Maine “program of tuition assistance for parents” whose local school district did not operate a public secondary school or contract with a private entity for such schooling. 596 U. S., at 771–773. The state program directed funds to pay tuition at the *private or* public school of *the parents’ choice*. *Id.*, at 773–774. “Under the program, parents designate the secondary school they would like their child to attend—public or private—and the school district transmits payments to that school to help defray the costs of tuition.” *Id.*, at 772. As in

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Espinoza, there were very “basic” criteria “under Maine’s compulsory education law” that made most private schools eligible to receive payments, such as the requirement to instruct in English and include a course on Maine history. *Id.*, at 773–774 (observing that “Most private schools are eligible to receive the payments, so long as they are ‘nonsectarian’”). But if a family selected a private school that met those basic criteria, the public funds *had* to be sent to the family’s chosen school. *Ibid.* (observing that the family’s local public school administrative unit “‘shall pay the tuition’ at the chosen school”). Originally, families were able to direct public funds to religious private schools; however, the State later added a provision that disqualified otherwise eligible private schools solely because those private schools were religious. *Id.*, at 774. As in *Espinoza*, because Maine’s law extended public benefits to private schools, but disqualified otherwise eligible private school-recipients solely because of their religious character, the Court held that the law penalized the free exercise of religion. *Id.*, at 780. However, the Court reiterated that a State “may provide a strictly secular education in its public schools.” *Id.*, at 785.

The decision below does not conflict with *Espinoza* and *Carson*. This case does not involve private schools or private education, and it does not involve the disqualification of people or entities from a generally available benefit based solely on their religious status or beliefs. The concept of “independent study,” which exists only within California’s public education system, is a mechanism that public LEAs within that system (*i. e.*, school districts, county offices of

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education, charter schools) may decide to utilize to facilitate progression, by those who choose to enroll in the public LEA, through a government-adopted, government-coordinated and government-supervised curriculum that is fully aligned with all state public education content standards, including that the curriculum is secular. No family—regardless of their beliefs—has the right to dictate that the public Schools adopt any preferred curriculum for their child. And the public Schools are prohibited from adopting any curriculum for any child unless, among other things, it is fully aligned with all state and local standards for public education. See pp. 4–7, *supra*. *Espinoza* and *Carson* support the decision below. *Espinoza*, 591 U. S., at 487 (“A State need not subsidize private education”); *Carson*, 596 U. S., at 785 (“[A State] may provide a strictly secular education in its public schools”).

Even though this case involves California public schools retaining and exercising discretion to choose public education curricula for families that have chosen to enroll in the public school, the petition suggests that California has actually chosen to subsidize private education and that the decisions below engaged in “creative labeling” of the sort forbidden by *Carson* to reach a contrary result. Pet. for Cert. 21. Petitioners greatly overreach and miss *Carson*’s point. It is true that, in *Carson*, Maine advanced the lower courts’ attempt to distinguish this Court’s “precedent by recharacterizing the nature of Maine’s tuition assistance program” as “the ‘rough equivalent of [a Maine] public school education,’” and that this Court rejected that argument. *Carson*, 596 U. S., at 782. However, it simply was not true as a legal or logical

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matter in *that* case that the program’s purpose and effect was to provide the State’s “free public education.” *Id.*, at 783–784. After noting that “the curriculum taught at participating private schools need not even resemble that taught in the Maine public schools” and that those private schools “need not administer state assessments” and “need not hire state-certified teachers,” the Court characterized Maine’s program as a public benefit program where “[t]he benefit is tuition at a public or private school, selected by the parent, with no suggestion that the ‘private school’ must somehow provide a ‘public’ education.” *Id.*, at 782–784. In *this* case, however, independent study curricula are adopted by the *public* school that the family has enrolled their child in, and those curricula *must* meet *all* public education standards, *must* be of the same quality as classroom-based public instruction, and *must* be approved and overseen by public school officials for credit in *public* schools that *must* administer state assessments and hire state-certified teachers. See pp. 1–7, *supra*. Petitioners are attempting to do in this case what Maine was attempting to do in *Carson*—ignore what the applicable law says to advance a preferred litigation position.

Petitioners suggest that *Carson*’s acknowledgment that a State may provide a strictly secular public education in its public schools is limited to “conventional” schools (Pet. for Cert. 21) where learning takes place “inside government-school walls” (*id.*, at 23). But nothing in *Carson* supports that proposition. On the contrary, *Carson* recognized that public school systems have “options,” including “expand[ing] the reach” of the system through things like “remote learning.”

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Carson, 596 U.S., at 785. And this Court has repeatedly recognized state and local control over public education and cautioned against judicial interposition that might circumscribe local educational experimentation and innovation. See, e.g., *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 43 (1973) (advising the judiciary “to refrain from imposing on the States inflexible constitutional restraints that could circumscribe or handicap the continued research and experimentation so vital to finding even partial solutions to educational problems and to keeping abreast of ever-changing conditions”); *id.*, at 50 (recognizing benefit in our system’s freedom for States to serve as a laboratory and to try novel ideas, and that no area of social concern stands to benefit more from different approaches than public education); *Goss v. Lopez*, 419 U.S. 565, 578 (1975) (recognizing that public education is generally committed to the control of state and local authorities).

Petitioners also reference this Court’s decision in *Mahmoud v. Taylor*, 606 U.S. 522 (2025). But *Mahmoud* dealt with potential “opt-out” from exposure to a particular aspect of a public school’s curriculum in certain circumstances, not the ability to dictate or substantively control a public school’s curriculum. 606 U.S., at 568 (emphasizing that the plaintiffs were not seeking the “right to micromanage the public school curriculum” but only the opportunity to “opt out of a particular” aspect of the school’s curriculum and that “[p]roviding such an opportunity would give the parents no substantive control over the curriculum itself”).

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Relying on their mischaracterization of independent study pursuant to California law as state-subsidized private education, petitioners further suggest that the decision below conflicts with free speech jurisprudence. Pet. for Cert. 24. But their question presented does not ask this Court to review that claim, which the Court of Appeals correctly rejected. App. to Pet. for Cert. 18a–19a. And this Court has recognized that public school curriculum is government speech not subject to viewpoint discrimination constraints, and that it retains its government speech character even when the government enlists private entities to help convey it. See, e.g., *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 833 (1995) (“When the University determines the content of the education it provides, it is the University speaking, and we have permitted the government to regulate the content of what is or is not expressed when it is the speaker or when it enlists private entities to convey its own message”); see also *Arkansas Educational Television Comm’n v. Forbes*, 523 U.S. 666, 674 (1998) (invoking example of a “public school prescribing its curriculum” as an example of government speech activity that may express some viewpoints and not others); cf. *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 206–208, 215–217 (2015) (holding that Texas’s approvals/disapprovals of proposed specialty car license plates [which private vehicle owners could then choose among for a fee] constituted “government speech” even though Texas law specifically provided that private third parties could create their own proposed designs and apply to a government board for approval); *Pleasant Grove City v.*

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Summum, 555 U.S. 460, 464–468, 472–473 (2009) (holding that a city’s acceptance/rejection among different privately created and privately donated monuments for placement in a public park was government speech, noting that the government can speak even “when it receives assistance from private sources for the purpose of delivering a government-controlled message” and noting that “the City ha[d] ‘effectively controlled’ the messages sent by the monuments in the Park by exercising ‘final approval authority’ over their selection”).

IV. There Is No Circuit Split or Conflict

Finally, petitioners assert that the decision below conflicts with decisions from other Courts of Appeals, citing two related 2021 decisions from the Second Circuit, a 2008 decision from the Tenth Circuit, and a 30-plus-year-old decision from the Sixth Circuit—all decided before *Carson*. Pet. for Cert. 25–26. However, each of those cases is clearly distinguishable from this one. Indeed, neither petitioners nor any of the *amici* supporting them cited any of the decisions at any stage in the proceedings below.

The related Second Circuit cases involved related Vermont programs that provided tuition benefits to families that *enrolled in the public or private school of their choice* but which denied the tuition benefits to the families that chose to enroll in *religious private schools*. *A. H. by and through Hester v. French*, 985 F.3d 165, 170–174, 179–180 (CA2 2021); *id.*, at 171 (explaining that parents in districts that do not maintain a public high school, *i. e.*, “sending districts,” may use public funds to attend a public *or private school*

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“to be selected by the parents or guardians of the student”); *id.*, at 180 (“In Sending Districts, all high school juniors and seniors attending public schools *and secular private schools* meet the statutory requirements to be eligible for the [Dual Enrollment Program]. . . . But, as this case demonstrates, that is not true for students in Sending Districts who chose to attend religious schools”); (emphasis added); *In re A. H.*, 999 F. 3d 98, 100–103 (CA2 2021) (involving one of the same programs discussed in *A. H. by and through Hester*, where parents in sending districts could direct tuition payments to the public or private school of their choice, but not to religious private schools).

These Second Circuit cases are clearly inapposite. They involved programs extending benefits to families enrolling in the public or private school of their choice. They did not involve families that have chosen to enroll in public schools (instead of private school or engaging in private homeschooling), where public school officials must, and do, adopt curricula that are equivalent to public classroom instruction and that meet all state and local public education standards and policies for credit in, and progression through the public school.

Similarly, the Tenth Circuit decision in *Colorado Christian University v. Weaver*, 534 F. 3d 1245 (CA10 2008), involved Colorado scholarship programs available to eligible students who “attend *any* accredited college in the state—*public or private*, secular or religious—other than those that the state deems ‘pervasively sectarian.’” 534 F. 3d, at 1250 (emphasis added). The case did not involve public school

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officials adopting public school curricula for families enrolled in the public school.

The Sixth Circuit’s decision in *Hartmann v. Stone*, 68 F. 3d 973 (CA6 1995), involved “private, independent contractor[]” childcare providers providing in-home childcare services on Army bases. 68 F. 3d, at 981. Other parents, at their own private “choice and expense,” *id.*, at 975, could reach independent, private agreements with such independent providers to care for the parents’ child in the provider’s home, potentially along with the provider’s own children, *id.*, at 980–981. Although Army documentation acknowledged that those private arrangements were “a personal matter between” the independent provider and the family and that those private actors “set the terms of care” “including the price of the service [borne privately by the parents] and the duration of care,” *id.*, at 980–981, Army regulations prohibited the “dissemination of religious information (e. g., grace) or materials” as well as “activities that teach or promote religious doctrine” whenever childcare services were being provided, *id.*, at 977. *Hartmann* did not come remotely close to deciding the issues in this case.

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CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 2026