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

REPLY BRIEF FOR PETITIONERS

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RULE 29.6 STATEMENT

The disclosure statement included in the petition remains accurate.

TABLE OF CONTENTS

Page

Rule 29.6 Statement.....i

Table of Contents ii

Table of Authorities..... iii

I. The Decision Below Conflicts With This Court's Precedent.....3

II. The Decision Below Conflicts With Other Circuits' Decisions.....8

III. This Case Presents An Ideal Vehicle To Resolve The Exceedingly Important Question Presented.....10

Conclusion 13

TABLE OF AUTHORITIES

Page(s)

Cases

A.H. ex rel. Hester v. *French*,
985 F.3d 165 (2d Cir. 2021) 8

Carson v. *Makin*,
596 U.S. 767 (2022).....1, 2, 3, 4, 5, 6, 7, 9, 10

Colorado Christian University v. *Weaver*,
534 F.3d 1245 (10th Cir. 2008).....9

Espinoza v. *Montana Department of Revenue*,
591 U.S. 464 (2020).....2, 3, 6, 7

Fulton v. *City of Philadelphia*,
593 U.S. 522 (2021).....7

Hartmann v. *Stone*,
68 F.3d 973 (6th Cir. 1995).....9

Mahmoud v. *Taylor*,
606 U.S. 522 (2025).....11

Mirabelli v. *Bonta*,
607 U.S. 492 (2026).....2, 10

Trinity Lutheran Church of Columbia, Inc. v. *Comer*,
582 U.S. 449 (2017).....2, 3, 4, 6, 7, 8

Statutes

Cal. Educ. Code § 46300.....6

Cal. Educ. Code § 51747.....4

Cal. Educ. Code § 51747.5.....6

Regulations

Cal. Code Regs. tit. 5, § 11700 .....4, 6

Cal. Code Regs. tit. 5, § 11702 4

REPLY BRIEF FOR PETITIONERS

In opposing review, respondents double down on the Ninth Circuit's ruling that because the instruction petitioners provide their own children in their own homes is subject to minimum state standards, it's "public school," so religious discrimination is just fine—required even. That decision is wrong. It conflicts with decisions of this Court and other circuits. And it poses a profound threat to religious liberty, both for families forced to choose between exercising their religion and educating their children and for others whose faith can be undermined through creative labeling.

Respondents don't dispute that California supports programs in which parents teach their preferred curriculum to their children at home—while expressly requiring that those programs be "nonsectarian." And they don't dispute that California applied that rule to deny petitioners otherwise generally available support solely because they wanted to use materials with a "religious aspect" or "religious wording." Pet. 3, 10-12. The question, then, is cleanly presented—is minimal state oversight enough to make homeschool "public school" and therefore a religion-free zone? Under this Court's precedents, the answer is "easy"—no. App. 31a (Bumatay, J., dissenting from denial of rehearing en banc).

Respondents' insistence that negligible state oversight makes the parents' instruction the state's own is the same move this Court rejected in *Carson*. To be sure, the arrangements differ—Maine paid tuition to private schools, while California funds instruction that parents provide at home—but Maine, too, called its benefit the "rough equivalent" of a public education

to justify excluding religious educational offerings chosen by parents. This Court rejected the notion that limiting publicly supported parental choice to only non-religious choices is permissible, so long as the state considers it "public school." *Carson* v. *Makin*, 596 U.S. 767, 782, 784 (2022). The Ninth Circuit's adherence to a framework this Court has already rejected only confirms the need for this Court's intervention. See *Mirabelli* v. *Bonta*, 607 U.S. 492, 501 (2026) (Barrett, J., concurring).

The schools accuse petitioners of advancing a "false premise that this case involves conventional private homeschooling" (at 2; see *id.* at 21, 29) and dispute the level of parental involvement in selecting curricula and teaching their children. But it's the schools' premise that's false. Of course this case isn't about "conventional private homeschooling." It's about California's decision to support a model of parent-led education when parents choose "secular" content and materials but *not* when parents choose "religious" content and materials.

It's no more an answer to tell religious parents that they can just engage in "conventional private homeschooling" than it was in *Carson* to tell religious parents just to pay for "conventional private schools." The schools' condescending rhetoric can't obscure that in the programs here, parents choose and teach, while teachers approve and oversee. Under *Carson*, *Espinoza*, and *Trinity Lutheran*, a state that funds and credits the instruction parents choose and deliver can't make religion a ground for disqualification.

Respondents identify no obstacle to review. Their efforts to distinguish the conflicting circuit cases reduce to the same "public school" label. And their attempts to minimize the threat to religious liberty are

belied by the diverse coalition of *amici* who recognize that the Ninth Circuit's decision offers a playbook for evading free-exercise protections. The Ninth Circuit's "made-up labels" shouldn't be permitted to "escape the free exercise guarantee." App. 30a (Bumatay, J., dissenting from denial of rehearing en banc). The petition should be granted.

I. The Decision Below Conflicts With This Court's Precedent.

Applying the *Trinity Lutheran* trilogy should have been straightforward here. California need not support parent-driven educational choices beyond the confines of its traditional public schools. But once it "decides to do so," it can't disqualify religious curricular materials "solely because they are religious." *Espinoza* v. *Montana Department of Revenue*, 591 U.S. 464, 487 (2020); see *Carson*, 596 U.S. at 785; *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 462 (2017); Pet. 15-19. California has chosen to support educational programs in which parents teach their preferred curriculum at home. And respondents don't dispute that the state denied that support to petitioners solely because they wanted to use materials that had a "religious aspect" or "religious wording." Pet. 3, 10-12.

Yet respondents insist that nothing in the *Trinity Lutheran* trilogy is offended by the Ninth Circuit labeling these "public school" programs, thereby licensing them to discriminate against religion. Unsurprisingly, respondents' attempts to defend that conclusion don't hold up.

a. The schools' primary tack is to fight the premise of the Ninth Circuit's decision—that the programs at issue give parents substantial choice and agency

when educating their children at home. The schools accuse (at 2, 20, 24) petitioners of describing a "strawman" program, "where parents choose and teach any curriculum they want."

The strawman is theirs, not petitioners'. The Ninth Circuit "t[ook] as true" that "parents provide home-based direct instruction approved by the school" and have "great flexibility to choose" curricula, while school employees approve purchases and review work. App. 9a-10a, 18a. The five-judge dissent from denial of rehearing en banc similarly described "parents teaching their own children in their home with curricula they choose." App. 29a (opinion of Bumatay, J.). Tellingly, the state doesn't dispute this characterization, agreeing (at 17-19) that parents make "requests" and officials exercise "discretion" to approve or deny them. Those accepted facts—a publicly funded benefit that flows through parents' choices—bring this case squarely within the *Trinity Lutheran* trilogy. See *Carson*, 596 U.S. at 781, 785.

Regardless, the schools' attempt to spin the facts fails on its own terms. The schools primarily contest (at 16-17) whether parents can choose curricula, noting that a California regulation tasks "the supervising teacher" with "select[ing]" "methods of study" (i.e., "activities"). Cal. Code Regs. tit. 5, § 11700(f). But both "curriculum" and "materials" are listed separately and are *not* committed to the teacher's choice. *Id.* § 11702(b); Cal. Educ. Code § 51747(g)(2)-(3). The Ninth Circuit, citing the same regulation, accepted that parents choose curricula. App. 17a-18a.

Even the schools' own documents contradict their narrative. Visions' materials state that parents "provid[e] direct instruction for their students." 3 C.A.

E.R. 370. Blue Ridge acknowledges that the "parent/guardian" "works with the student on day-to-day instruction"; teachers "[h]elp[] families choose curriculum"; and "[t]he ability for parents to choose curriculum" is "essential for student growth." 2 C.A. E.R. 87, 217; 3 C.A. E.R. 309. Parents choose, teachers advise and approve—exactly how petitioners described it. Pet. i, 7-9, 23; accord Hive Br. 5-9.

b. Teachers' limited involvement doesn't alter the fundamental nature of these programs—a homeschool option in which parents teach and teachers supervise. By the schools' own account (at 10, 18, 20), teachers' roles are limited to approving purchases, reviewing work samples, and meeting with families monthly. The most the schools can say (at 19) is that teachers "can, and do," offer some instruction. But in Ms. Dodson's program at Visions, for example, the "parent/guardian" is the "[p]rimary educator"—and the teacher's role is only "instructional support." 3 C.A. E.R. 374.

Respondents fare no better in playing up their oversight authority. That curricula must be "aligned" with state academic standards, Schools Opp. 18-19; State Opp. 17-18, is beside the point. No one disputes that petitioners' curricula met those standards. Still, Blue Ridge rejected works by William Penn and Jonathan Edwards for a unit on colonial America because of their "religious content," and it decided that another curriculum's "[a]cademics" were "fine" but its "religious aspect" disqualified it. Pet. 11; App. 23a-24a (Bumatay, J., dissenting from denial of rehearing en banc). Maine's participating private schools, too, had to satisfy state criteria—yet this Court in *Carson* recognized they weren't public schools. 596 U.S. at 772-74, 784-85; see Pet. 23-24.

Supervision similarly doesn't change who chooses or teaches the curriculum. California places independent study under a teacher's "general supervision"—as distinct from the "immediate supervision and control" that teachers exercise in their own classrooms. Cal. Educ. Code §§ 46300(a), 51747.5(a). "General[ly]" supervising work through "oversight" of the educational plan, Cal. Code Regs. tit. 5, § 11700(b), isn't teaching the child.

"In short," nothing about these programs "is equivalent—roughly or otherwise—to [the education] available in the [California] public schools." *Carson*, 596 U.S. at 784. To the contrary, they involve precisely the sort of "private education" that a state "cannot disqualify" from generally available benefits merely "because [it's] religious." *Espinoza*, 591 U.S. at 487.

c. Respondents strain for consistency with the *Trinity Lutheran* trilogy, but it eludes them. They lean on *Carson*'s allowance for a state to "expand the reach of its public school system" through "tutoring, remote learning, and partial attendance." 596 U.S. at 785; see Schools Opp. 27-30; State Opp. 27-28. But those are all ways for a state to provide its own education—not to fund and credit instruction that parents choose and provide. A public-school teacher "lead[ing] a virtual classroom" is still a public-school teacher, Schools Opp. 30, but that doesn't mean a parent teaching at a kitchen table is one too.

Carson itself drew the relevant line. Once Maine decided to "offer tuition assistance that parents may direct," its "administration of that benefit" was "subject to the free exercise principles governing any such public benefit program." 596 U.S. at 785. Once Cali-

fornia opted to approve and fund parent-directed instruction, it made the same choice and must respect the same free-exercise principles by not discriminating against religion.

The state argues (at 18-19) that because officials retain "discretion" to approve materials, refusing religious curricula is just "a public school official's decision." But this Court "ha[s] never suggested that the government may discriminate against religion when acting in its managerial role." *Fulton* v. *City of Philadelphia*, 593 U.S. 522, 536 (2021). Petitioners simply claim the right "to participate in a government benefit program without having to disavow [their] religious character." *Trinity Lutheran*, 582 U.S. at 463. Officials may reject materials for academic quality or administrative burden—but that limited "approv[al]" role doesn't entitle them to reject parents' "independent choices" because of religion. *Carson*, 596 U.S. at 773-74, 781.

The schools say (at 22) no families are excluded "because of their faith" because religious families may enroll so long as their instruction is secular. That argument "is reminiscent of Anatole France's sardonic remark that '[t]he law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.'" *Espinoza*, 591 U.S. at 508 (Alito, J., concurring). And it's premised on the same distinction between "religious status" and "'religious us[e]'" this Court rejected in *Carson*. 596 U.S. at 786-89. The schools fret (at 11 & n.8) about teaching "religion . . . as truth," but none of petitioners' proposed materials would require "evaluat[ing] and scor[ing]" religious doctrine (at 32). A teacher can assess the grammar of "God sends the rain to help plants grow" without venturing into theology, Pet. 3—

not to mention that Visions rejected a math worksheet with no religious content just because it came from a religious publisher, *id.* at 11.

Respondents' refrain that families remain free to homeschool "private[ly]"—or to supplement a secular program with religious teaching on their own time—misses the whole point. Schools Opp. 22-23; State Opp. 21-22. The Free Exercise Clause forbids conditioning "even a gratuitous benefit" on the surrender of religious exercise—precisely what California has done here in conflict with this Court's cases. *E.g.*, *Trinity Lutheran*, 582 U.S. at 463.

II. The Decision Below Conflicts With Other Circuits' Decisions.

In conflict with the Ninth Circuit, the Second, Sixth, and Tenth Circuits each applied Free Exercise scrutiny to a religion-based exclusion from a publicly funded, government-regulated benefit that flowed through private choice—and none treated the program's public character as a reason to exempt it from the First Amendment's strictures. Pet. 25-27. Respondents try to wave away the split, insisting that those decisions didn't "involve an independent study program operated by a public school." Schools Opp. 1-2; State Opp. 30-32. But that's just the label game again.

In *A.H. ex rel. Hester* v. *French*, 985 F.3d 165 (2d Cir. 2021), the Second Circuit described Vermont's Dual Enrollment Program—which funded college courses for students from public and private schools alike—as "principally a public school program." *Id.* at 171-72. In the Ninth Circuit, that label would've ended the inquiry. Yet the court went on to hold that excluding a student because her school was religious

imposed a penalty on free exercise. *Id.* at 182-84. The schools note (at 22) that Vermont discriminated based on schools' religious status and not on any religious courses, but that distinction no longer matters after *Carson*. *Supra* p. 7.

Hartmann v. *Stone*, 68 F.3d 973 (6th Cir. 1995), draws an even sharper contrast with the Ninth Circuit's reasoning. When the Army barred in-home childcare providers on its bases from religious practice while caring for children, the court considered whether the Army's "regulatory oversight" made the providers "the Army's alter egos." *Id.* at 975-77, 981. The court said no, because the program operated "on the voluntary action of parents" and the providers remained independent. *Id.* at 978-83; Pet. 26. Respondents answer that childcare isn't school and the providers were private contractors paid by parents. Schools Opp. 22-23; State Opp. 32. That's immaterial. The point is that regulatory oversight—the only link the Army had—didn't make private care the government's own. The Ninth Circuit held the opposite—that oversight by public schoolteachers makes parents' instruction the state's own.

Colorado Christian University v. *Weaver*, 534 F.3d 1245 (10th Cir. 2008), is similar. It held that Colorado couldn't exclude "pervasively sectarian" colleges from scholarship programs open to public and private institutions, because the exclusion discriminated among religions and required intrusive scrutiny of religion. *Id.* at 1250, 1261. The schools don't and can't dispute that, unlike the decision below, the Tenth Circuit never asked whether the participating private colleges had become "public." Pet. 26-27.

The Ninth Circuit's departure from its sister circuits further underscores the need for this Court's review by showing how far the Ninth Circuit has strayed when it comes to religious liberty. See *Mirabelli*, 607 U.S. at 501 (Barrett, J., concurring).

III. This Case Presents An Ideal Vehicle To Resolve The Exceedingly Important Question Presented.

The decision below undermines the religious liberty of families seeking to educate their children consistent with their faith—and empowers states to launder their discrimination against religion using "superficial labels." Pet. 27-31; App. 22a (Bumatay, J., dissenting from denial of rehearing en banc). The question whether that labeling excuses a program from all First Amendment scrutiny is squarely presented and was fully ventilated. Respondents' efforts to downplay the need for review ring hollow—particularly in the face of fourteen briefs from a diverse coalition of *amici* united in supporting petitioners.

The state (at 19-21) downplays the decision as "narrow" and "California-specific." Eighteen states beg to differ. Many fund their own "private and homeschooling options," and all "oppose such discrimination as harmful to their interests in offering diverse educational programs"—which is why they warn that the panel's "semantic sleight of hand" "threatens to allow similar abuses against homeschooling families." States Br. 3, 5, 11. Colorado and Maine, for instance, are already testing *Carson*'s limits in their state-funded educational programs. EdChoice Br. 18-21. And if "educating one's children in the privacy of one's own home according to one's private choices constitutes 'public school' activity, then pretty much anything can qualify as a governmental program exempt

from First Amendment scrutiny." App. 30a (Bumatay, J., dissenting from denial of rehearing en banc); accord Religious Freedom Institute Br. 8-10.

Citing nothing, the schools claim (at 2, 33) that "only a tiny fraction" of the families participating in these programs seek religious materials. Requests made under a categorical ban hardly measure how many families would participate without one. And a constitutional right doesn't depend on how many people exercise it. Besides, there are 3.4 million children homeschooled across the Nation, and 53 percent of those families want to provide religious instruction. CatholicVote Br. 22-23. Given the costs associated with homeschooling, programs like California's that promise generally available assistance are often the only realistic path for parents to provide an education consistent with their faith. *E.g.*, Ass'n of Christian Schools Int'l Br. 19-23; Coalition for Jewish Values Br. 9-11; Parents Initiative Br. 8-11.

It's no answer that California permits families to privately homeschool their children with no state oversight—and no state funding. Schools Opp. 33; State Opp. 21-22. Telling parents who "already contribute to financing the public schools" that they must "abstain" from all publicly funded education "in order to raise their children in their religious faiths" is "both insulting and legally unsound." *Mahmoud* v. *Taylor*, 606 U.S. 522, 562 (2025). And it ignores the families who can't afford to walk away. Parents Initiative Br. 8-10.

Respondents' assertions of vehicle problems are meritless. The schools' lead objection (at 24)—a supposed "mismatch" between the petition and the programs—just reprises their wrong-headed "false

premise" argument. *Supra* pp. 3-5. Their waiver objections (at 24-26) go nowhere, as they acknowledge (at 2, 25) that the question presented doesn't turn on whether charter schools are state actors. As for petitioners' free-speech claim, respondents stress that the petition doesn't present it. Schools Opp. 12 n.9; State Opp. 29. But its separate disposition is no obstacle to review: the government-speech holding rests on the same premise challenged here, Pet. 24, and supplies no independent ground for rejecting the Free Exercise claim.

* * *

Parents who choose their children's curriculum and teach it to their children at home don't become public-school teachers simply because officials approve purchases and review student work. California chose to support that instructional model. It can't exclude curricula solely because they're religious. This Court should intervene lest the Ninth Circuit's contrary conclusion give the government "carte blanche to discriminate against the religious." App. 30a (Bumatay, J., dissenting from denial of rehearing en banc).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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