

Nos. 26-193, 26-240

In the Supreme Court of the United States

BETHANY M. HALL,
Petitioner,

v.

A. SCOTT FLEMING,
Respondent.

CAMERON JOHNSON, ET AL.,
Petitioners,

v.

A. SCOTT FLEMING, ET AL.,
Respondents.

*ON PETITIONS FOR WRITS OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT*

**BRIEF FOR SAMARITAN'S PURSE AND THE
BILLY GRAHAM EVANGELISTIC
ASSOCIATION AS *AMICI CURIAE* IN
SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*

Samaritan's Purse is a nondenominational, evangelical Christian organization formed in 1970 to provide spiritual and physical aid to hurting people around the world. The organization seeks to follow the command of Jesus to "go and do likewise" in response to the story of the Samaritan who helped a hurting stranger. Samaritan's Purse operates in over 100 countries providing crisis relief, sharing the hope and love of Jesus Christ with those in the gutters and ditches of the world in their darkest hour of need. Samaritan's Purse's concern arises when concepts of Biblical and scientific reality are threatened by executive, legislative, or judicial action compelling ideologies that diminish common grace related to safety, fairness, privacy, speech, and religious free exercise.*

Reverend Billy Graham founded the Billy Graham Evangelistic Association ("BGEA") in 1950 and, continuing his lifelong work, BGEA exists today to support and extend the evangelistic calling and ministry of Franklin Graham by proclaiming the Gospel of the Lord Jesus Christ to all by every effective means available and by equipping the church and others to do the same. BGEA ministers to people around the world through a variety of activities, including God Loves You Tour events, evangelistic

* Under Rule 37.2, the parties' counsel of record received timely notice of the intent to file this brief. Under Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amici curiae*, their members, or their counsel made a monetary contribution to it.

festivals and celebrations, television and internet evangelism, the Billy Graham Rapid Response Team, the Billy Graham Training Center at the Cove, the Billy Graham Library, and the Billy Graham Archive & Research Center. Through its various ministries and in partnership with others, BGEA intends to represent Jesus Christ in the public square, to cultivate prayer, to proclaim the Gospel, and to equip others to do the same. BGEA believes its mission is furthered when people who share its beliefs are educated in programs equipping them for service in furthering the Christian faith, whether the course of study is specifically religious or not.

SUMMARY OF THE ARGUMENT

A State that opens a public benefit to all may not close it to people of faith. That principle governs this Court’s modern Free Exercise cases. *Locke v. Davey*, 540 U.S. 712 (2004), is the exception. It lets States discriminate against religious exercise in a way that cannot be squared with recent precedents. And the harm from its rule continues to spread, despite this Court’s efforts to narrow the decision’s reach.

This Court’s recent precedents reiterate “that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Carson v. Makin*, 596 U.S. 767, 778 (2022). *Locke* holds the opposite for students seeking degrees related to religion. The status-use distinction once offered to explain that result is gone; *Carson* observed that “any status-use distinction lacks a meaningful application not only in theory, but in practice as well.” *Id.* at 788. That leaves only one justification: a “historic and substantial state interest against using taxpayer funds to support church leaders.” *Ibid.* (citation modified). But a neutral scholarship program that funds every degree does not implicate any establishment hallmark—as *Locke* itself conceded by explaining that such a program would *not* violate the Establishment Clause. Thus, this interest cannot justify *Locke*’s continued discrimination against religious exercise.

Washington’s own arguments in *Locke* confirm how unsound the decision is. Washington focused on the distinction between failing to subsidize an act and prohibiting it. But this Court’s recent Free Exercise

precedents squarely reject that distinction as an excuse for religious discrimination.

Locke's rule lets States display hostility toward religion by excluding theology majors from scholarship programs and people of faith from other benefit programs. Despite this Court's narrowing of *Locke*'s rationale, the hostility keeps spreading. Governments still invoke *Locke*—especially on the losing side in this Court's recent Free Exercise cases. And lower courts still apply *Locke*—to bar religious worship from school facilities open to everyone else, to exclude religious curricula from a charter-school reimbursement program, and, here, to deny Virginia students aid because their education is religious or theological. Because lower courts believe they must keep applying this egregiously wrong decision, the Court should grant certiorari and overrule *Locke*.

REASONS FOR GRANTING THE WRIT

I. *Locke* should be overruled.

This Court's decisions are "governed by general principles, rather than ad hoc improvisations." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 25 (2004) (Rehnquist, C.J., concurring in judgment). But the Court's Free Exercise principles have left *Locke* behind, leaving it nothing more than an ad hoc "anomaly in [the Court's] First Amendment jurisprudence." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 925 (2018) (citation modified). The contradiction between *Locke* and more recent precedents can be seen in two ways: the principles of those precedents oppose *Locke*'s

result, and the arguments made in *Locke* itself would fail today.

A. *Locke*’s reasoning cannot be squared with recent precedents.

Recent precedents have reiterated the longstanding principle “that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Carson*, 596 U.S. at 778. After all, the Clause “protects against indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.” *Ibid.* (citation modified).

Locke, on the other hand, lets States exclude individuals seeking degrees related to religion from otherwise available public benefits. As Justice Kavanaugh put it, the “principle of religious equality applies to governmental benefits or grants programs in which religious organizations or people seek benefits or grants on the same terms as secular organizations or people—at least, our precedents say, so long as the government does not fund the training of clergy.” *Morris Cnty. Bd. of Chosen Freeholders v. Freedom From Religion Found.*, 586 U.S. 1213, 1215 (2019) (Kavanaugh, J., statement respecting the denial of certiorari) (citing *Locke*, 540 U.S. at 721).

The distinctions this Court has drawn with *Locke* in its more recent decisions do not validate *Locke*’s deviation from general principles. At first, this Court emphasized that *Locke* had drawn a status-use distinction: “Davey was not denied a scholarship because of who he *was*; he was denied a scholarship because of what he proposed to *do*—use the funds to

prepare for the ministry.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 464 (2017); see *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 479–80 (2020) (similar). But this Court has recently held that “the prohibition on status-based discrimination under the Free Exercise Clause is not a permission to engage in use-based discrimination.” *Carson*, 596 U.S. at 788.

Because this “Court has rejected or ignored every [other] premise of *Locke*,” *Hall v. Fleming*, 175 F.4th 510, 518 (4th Cir. 2026) (Richardson, J., concurring), that leaves only one justification for *Locke*’s deviation from general principles. In *Carson*, this Court said that “*Locke*’s reasoning expressly turned on what it identified as the ‘historic and substantial state interest’ against using ‘taxpayer funds to support church leaders.’” 596 U.S. at 788 (quoting *Locke*, 540 U.S. at 722, 725). “[T]he Court in *Locke* emphasized that the propriety of state-supported clergy was a central subject of founding-era debates, and that most state constitutions from that era prohibited the expenditure of tax dollars to support the clergy.” *Espinoza*, 591 U.S. at 480.

No doubt, one of the hallmarks of an establishment of religion at the founding was the government “provid[ing] financial support for the established church.” *Shurtleff v. City of Boston*, 596 U.S. 243, 286 (2022) (Gorsuch, J., concurring in judgment). But *Locke*’s theology-degree exclusion did not implicate that hallmark. Absent that exclusion, the scholarship program generally covered “any education-related expense.” *Locke*, 540 U.S. at 716. So if the State had not excluded theology degrees, it would have “neither

coerced students to study devotional theology nor conscripted taxpayers into supporting any form of orthodoxy.” *Espinoza*, 591 U.S. at 492 (Thomas, J., joined by Gorsuch, J., concurring). The program would have supported any theology degree, along with all other education expenses. It would have been “the student’s decision, not the state’s, for the education to be religious.” Thomas C. Berg & Douglas Laycock, *The Mistakes in Locke v. Davey and the Future of State Payments for Services Provided by Religious Institutions*, 40 Tulsa L. Rev. 227, 240 (2004).

Further, many students pursue theology degrees yet will not have a career in ministry. Only about a quarter of theology graduates work as clergy.¹ *Locke* did not meaningfully address this disconnect between the establishment hallmark it invoked and the degree program at issue—other than to concede that “there is no doubt that the State could, consistent with the [Establishment Clause], permit Promise Scholars to pursue a degree in devotional theology.” *Locke*, 540 U.S. at 719. As the Ninth Circuit correctly explained, a neutral scholarship program’s “application to religious instruction” would have been “remote at best.” *Davey v. Locke*, 299 F.3d 748, 760 (9th Cir. 2002), *rev’d*, 540 U.S. 712.

What’s more, if *Locke*’s extrapolation of that establishment hallmark were proper, *Espinoza*

¹ *Occupational Outlook Handbook, Field of Degree: Theology* (Aug. 28, 2025), <https://perma.cc/ZJF6-UJWB>; *accord* Data USA, *Theology*, <https://datausa.io/profile/cip/theology> (last visited Sept. 4, 2026); *cf. Locke*, 540 U.S. at 734–35 (Thomas, J., dissenting).

seemingly would have come out the other way. After stating that “[s]ince the founding of our country, there have been popular uprisings against procuring taxpayer funds to support church leaders,” *Locke* described “[p]erhaps the most famous example” of such “public backlash”—the defeat of a “Bill Establishing A Provision for Teachers of the Christian Religion,” introduced in the Virginia Legislature in 1784. 540 U.S. at 722 & n.6. And teachers at Christian schools, at least Bible class teachers, surely would have counted as “Teachers of the Christian Religion.” See *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 72–74 (1947) (reprinting the Virginia bill).

Yet *Espinoza* allowed States to let parents spend scholarship funds at religious schools—where the money helps pay Bible teachers and others properly classified as ministers. It went further: States *must* let parents do so if other families may use the funds at non-religious private schools. 591 U.S. at 474–75, 479, 484–87. Permission for funds for Bible classes would inevitably inure to the benefit of Bible class teachers and students, some of whom will inevitably go on to ministry roles. But none of this was an establishment problem, for it did not lead to “state-supported clergy.” *Id.* at 480.

Neither does scholarship funding of theology degrees on equal footing with all others. *Locke* “failed to appreciate that a very different First Amendment question arises when” a State offers educational funding to all students on equal terms, as opposed to direct government funding of an established church’s clergy. *Janus*, 585 U.S. at 918. *Locke*’s determination otherwise “has no logical stopping point short of the

absurd.” *Locke*, 540 U.S. at 728 n.1 (Scalia, J., dissenting). Its theory would presumably let States “exclude[] ministers”—and, by extension, those pursuing theology degrees, or even those merely attending religious schools (who are surely more likely to become ministers)—“from generally available disability or unemployment benefits” or from “using public roads” or any other government benefit. *Id.* at 728 & n.1.

More fundamentally, *Locke* itself conceded that the hallmark it invoked did not suggest that a neutral scholarship program would have violated the Establishment Clause—even “the State d[id] not contend otherwise.” 540 U.S. at 719. Given that concession, the State’s “antiestablishment interests” (*id.* at 722) could not justify discriminating against those who pursue theology degrees. As this Court has recently explained, “in no world may a government entity’s concerns about phantom constitutional violations justify actual violations of an individual’s First Amendment rights.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 (2022). And “[a] State’s interest in achieving greater separation of church and State than is already ensured under the Establishment Clause is limited by the Free Exercise Clause.” *Espinoza*, 591 U.S. at 485 (citation modified).

In sum, *Locke*’s foundations have been swept away by this Court’s recent precedents, and the decision is inconsistent with the Free Exercise Clause.

B. The arguments in *Locke* confirm that it conflicts with recent precedents.

The arguments advanced by Washington in *Locke* itself underscore how far that decision strays from proper First Amendment doctrine as set forth in *Kennedy*, *Carson*, *Espinoza*, and *Trinity Lutheran*.

Washington’s lead argument was that “the government’s decision not to fund the exercise of a fundamental right does not infringe that right.” Brief for the Petitioners 20, *Locke*, No. 02-1315, 2003 WL 21715040 (U.S. July 17, 2003) (“*Locke* Pet’rs Br.”) (citing, *inter alia*, *Regan v. Taxation With Representation*, 461 U.S. 540 (1983); *Rust v. Sullivan*, 500 U.S. 173 (1991)). But the Court in *Locke* did not accept this argument, which fails even more clearly in the face of recent precedents.

Of course, there is no free-floating right to receive government subsidies. *See Regan*, 461 U.S. at 549–50. But when the state makes funds available to a class of recipients, “it cannot disqualify some . . . solely because they are religious.” *Carson*, 596 U.S. at 780 (quoting *Espinoza*, 591 U.S. at 487). Such discrimination is “‘odious to our Constitution’ and [can] not stand.” *Id.* at 779 (quoting *Trinity Lutheran*, 582 U.S. at 467). Washington’s principal argument in *Locke* would undoubtedly fail today.

Washington also argued that the scholarship program did not violate the Free Exercise Clause. *See Locke* Pet’rs Br. 21. It argued (1) that there was no burden or prohibition on Davey’s exercise, *id.* at 36, and (2) that the law was neutral and nondiscrimi-

natory, *id.* at 39. Both fall short under current precedent.

First, Washington’s arguments mischaracterized what it means to burden free exercise. Much of its argument focused on “prohibiting” free exercise. *See id.* at 33 (“The crucial word in the constitutional text is ‘prohibit.’” (citation modified) (quoting *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 451 (1988))). This argument misunderstands *Lyng*. Washington characterized as permissible government programs that only impose “incidental effects . . . which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs.” *Locke Pet’rs Br.* 34 (quoting *Lyng*, 485 U.S. at 450–51). But *Lyng* itself recognized that the Court “has repeatedly held that indirect coercion or penalties on the free exercise of religion, not just outright prohibitions, are subject to scrutiny under the First Amendment.” 485 U.S. at 450. *Carson* reiterated this point. 596 U.S. at 778. And *Carson* explained that the Court has also “repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Ibid.* (citing *Sherbert v. Verner*, 374 U.S. 398, 404 (1963)).

Lyng involved a “neutral” law, which this Court has contrasted with laws “that single out the religious for disfavored treatment” by excluding them from government benefit programs. *Trinity Lutheran*, 582 U.S. at 460. What’s more, recent precedents have rejected attempts to rely on *Lyng* as Washington did

in *Locke*. See *Espinoza*, 591 U.S. at 540 (Sotomayor, J., dissenting).

Second, Washington’s claim that “the Promise Scholarship [did] not discriminate against religion when it [drew] the distinction between secular and religious instruction” fares no better. *Locke* Pet’rs Br. 36. Washington’s self-expressed “line” was “the difference between being religious and studying religion.” Tr. of Oral Arg. 9, *Locke*, No. 02-1315.

But recent precedents hold that similar rules “expressly discriminate[] against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character” or pursuit. *Trinity Lutheran*, 582 U.S. at 462; see also *Carson*, 596 U.S. at 788 (rejecting “any status-use distinction”). “The express discrimination against religious exercise here is not the denial of a grant, but rather the refusal to allow” students—solely because of their (potentially) religious pursuit—to receive funds on the same terms as students with “secular” pursuits. *Trinity Lutheran*, 582 U.S. at 463. “The State pays tuition for certain students”—“so long as the[ir] [pursuits] are not religious.” *Carson*, 596 U.S. at 781. Washington *conceded* that it “treat[ed] religion different from . . . secular studies.” Tr. of Oral Arg. 9, *Locke*, No. 02-1315. “That is discrimination against religion.” *Carson*, 596 U.S. at 781.

Of course, Washington’s arguments were wrong all along: “Th[e] rule against express religious discrimination is no ‘doctrinal innovation.’” *Espinoza*, 591 U.S. at 484; see *Locke*, 540 U.S. at 726–34 (Scalia, J., dissenting). But the point is that, given the stark contradiction between Washington’s arguments in

Locke itself and this Court's precedents, whatever efforts Virginia makes to resuscitate *Locke* will be new. This Court has repeatedly "taken a dim view of similar attempts to recast problematic First Amendment decisions." *Janus*, 585 U.S. at 906. *Locke* should be overruled.

II. *Locke*'s discrimination continues to harm students and religious people nationwide.

After twenty-two years, governments still reach first for *Locke* when they want to shut religious people out of public benefits. And lower courts believe they must keep applying it. The resulting harm takes two forms. Excluding theology students from benefits otherwise available to everyone is itself hostility toward religion. And *Locke* continues to spread that hostility well beyond theology degrees.

A. Excluding theology students shows impermissible hostility toward religion.

This Court has repeatedly declared that "the Constitution . . . forbids hostility toward any" religious exercise. *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984) (citing *Zorach v. Clauson*, 343 U.S. 306, 314–15 (1952); *McCullum v. Bd. of Educ.*, 333 U.S. 203, 211 (1948)); see also *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993).

In *Lynch*, the Court held that a city's inclusion of a nativity scene in its Christmas display did not violate the Establishment Clause. 465 U.S. at 687. The Court emphasized that interpreting the Establishment Clause to forbid the display would evince "hostility" which "would bring us into 'war with our national tradition as embodied in the First Amendment's

guaranty of the free exercise of religion.” *Id.* at 673 (quoting *McCullum*, 333 U.S. at 211–12).

Likewise, in *Zorach*, this Court concluded that interpreting the Establishment Clause to bar a New York time-release program in which public schools released students during the school day to attend “religious instruction or devotional exercises” would unacceptably “read into the Bill of Rights . . . a philosophy of hostility to religion.” 343 U.S. at 308, 315.

If interpreting the Establishment Clause to bar the practices at issue in *Lynch* and *Zorach* would show impermissible hostility to religion, then a state law barring those same practices shows the same hostility—whatever the legislature’s intent. As Chief Justice Burger put it, denying students who receive religious instruction the benefits otherwise available to them “exhibits nothing less than hostility toward religion.” *Aguilar v. Felton*, 473 U.S. 402, 420 (1985) (dissenting opinion), *majority opinion overruled by Agostini v. Felton*, 521 U.S. 203 (1997).

Locke insisted that the fact “[t]hat a State would deal differently with religious education” is “not evidence of hostility toward religion.” 540 U.S. at 721. But excluding students studying theology from otherwise neutral scholarship programs “necessarily communicates disfavor, and discriminates in distributing the subsidy in such a way as to suppress a religious point of view.” *Davey*, 299 F.3d at 756. That is hostility to religion. Even assuming “Washington’s [or Virginia’s] original purpose in excluding the clergy from public benefits was benign”—and there is reason to doubt it—that would not lessen the law’s hostility

toward religion. *Locke*, 540 U.S. at 733 (Scalia, J., dissenting).

“This Court’s endorsement in *Locke* of even a ‘mild kind’ of discrimination against religion remains troubling.” *Trinity Lutheran*, 582 U.S. at 468 (Thomas, J., concurring in part) (citation modified). The principle “of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse.” *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 114 (2001). As shown next, *Locke*’s departure from neutrality continues to harm religious students nationwide.

B. *Locke* has fostered continued hostility to religious students and others.

Locke continues to have destructive effects on decisions in the lower courts. As Justice Thomas has explained, “governments continue to rely on *Locke*’s improper understanding of ‘antiestablishment interests’ to defend against free exercise challenges”—and enact laws uniquely harming people of faith. *Espinoza*, 591 U.S. at 492 (Thomas, J., concurring). And courts continue to rely on *Locke* to uphold these laws.

For starters, consider the lower court opinions in recent Free Exercise precedents. The lower courts in *Trinity Lutheran* relied heavily on *Locke* in arriving at the wrong result, reasoning that Missouri’s exclusion of religious preschools was even more appropriate than the exclusion of religious degrees in *Locke* because “the grant at issue in this case would be paid

directly to a religious preschool and daycare.” *Trinity Lutheran Church of Columbia, Inc. v. Pauley*, 976 F. Supp. 2d 1137, 1148 (W.D. Mo. 2013); *see id.* at 1147–49; *see also Trinity Lutheran Church of Columbia, Inc. v. Pauley*, 788 F.3d 779, 785 (8th Cir. 2015).

Other recent decisions that were subsequently reversed by this Court also relied on *Locke*. *See, e.g., Carson v. Makin*, 979 F.3d 21, 45 (1st Cir. 2020); *Espinoza v. Mont. Dep’t of Revenue*, 435 P.3d 603, 608 (Mont. 2018); *Fulton v. City of Philadelphia*, 320 F. Supp. 3d 661, 682 (E.D. Pa. 2018).

Locke has also led to discrimination against religious exercise in many cases that never made it to this Court. The Second Circuit used it in upholding a New York policy that allowed school facilities to be used by outsiders after school hours—except for religious worship. *Bronx Household of Faith v. Bd. of Educ. of City of New York*, 750 F.3d 184, 190 (2d Cir. 2014). A district court in Idaho relied on it to uphold Idaho’s refusal to reimburse families who chose religious curricula for an online charter school. *Trakel v. Critchfield*, 2025 WL 2240422, at *5 (D. Idaho Aug. 6, 2025). And, of course, the Fourth Circuit applied it here to uphold Virginia’s exclusion from a generally available financial assistance program of students receiving “religious training or theological education.” *Hall*, 175 F.4th at 512, 514–16; *see also Johnson v. Fleming*, 2026 WL 915533, at *5 (E.D. Va. Mar. 31, 2026).

These decisions discourage religious exercise. They deter students from pursuing religious degrees—which reduces the ability of religious organizations like *amici* to hire like-minded people of faith. They

impart a message that religious exercise *should* be discouraged and discriminated against. And they limit the ability of religious people to receive the same benefits given by the government to others.

As then-Judge McConnell put it, “[t]he precise bounds of the *Locke* holding . . . are far from clear.” *Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1254 (10th Cir. 2008). That ambiguity lets hostile governments wield *Locke* to exclude religious people from government programs wholesale. *Locke* is “[t]he most noteworthy twenty-first-century Supreme Court case to permit such blatant discrimination against religion.” *Woolard v. Thurmond*, 170 F.4th 701, 717 (9th Cir. 2026) (VanDyke, J., dissenting from the denial of rehearing en banc). And no matter how much this Court signals a retreat from *Locke*’s approach, lower courts view it as “still good law.” *Mendham Methodist Church v. Morris Cnty.*, 2024 WL 4903677, at *7 (D.N.J. Nov. 27, 2024); see *Hall*, 175 F.4th at 520 (Richardson, J., concurring) (“[W]e lower-court judges must keep applying it.”). It is time for the Court to overrule the aberration in *Locke*.

CONCLUSION

The Court should grant certiorari.

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