

Nos. 26-193, 26-240

In the Supreme Court of the United States

BETHANY M. HALL,
Petitioner,

v.

A. SCOTT FLEMING, DIRECTOR, VIRGINIA
STATE COUNSEL OF HIGHER EDUCATION,
Respondent.

CAMERON JOHNSON, *et al.*,
Petitioners,

v.

A. SCOTT FLEMING, DIRECTOR, VIRGINIA
STATE COUNSEL OF HIGHER EDUCATION, *et al.*,
Respondents.

*On Petitions for Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit*

**BRIEF OF AMICI CURIAE ASSOCIATION FOR
BIBLICAL HIGHER EDUCATION,
INTERNATIONAL ALLIANCE FOR CHRISTIAN
EDUCATION, INTERNATIONAL ASSOCIATION
OF BAPTIST COLLEGES AND UNIVERSITIES,
AND THE CARDINAL NEWMAN SOCIETY
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

The Association for Biblical Higher Education (ABHE) is an association of more than 170 institutions of biblical higher education, which enroll more than 90,000 students. ABHE institutions offer undergraduate and graduate educational opportunities through traditional residential, extension, and distance learning models. Its member schools have diverse histories and affiliations, but they are all centered on promoting a Christian education and biblical worldview in their students.

The mission of the International Alliance for Christian Education (IACE) is to unify, synergize, and strengthen collective conviction around biblical orthodoxy and orthopraxy, cultural witness, scholarship, professional excellence, and resourcing of Christian education at all levels. Functioning as a network and umbrella organization, IACE seeks to provide enablement, connections, and collaborative opportunities for the various aspects of Christian education.

The mission of the International Association of Baptist Colleges and Universities is to provide and maintain an organization through which educational institutions currently or historically cooperating with Baptists may work together in promoting the interests of Christian higher education.

The Cardinal Newman Society, through The Newman Guide, promotes and defends faithful Catholic education by recognizing schools, colleges,

¹ Pursuant to Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and no person other than the *amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

and graduate programs that meet high standards of fidelity to Catholic teaching and formation of students in the light of the Catholic faith, without compromise to Catholic beliefs or morals. The Society's Newman Guide Network brings together leaders of recognized institutions and programs for collaboration and defense of their religious freedom.

INTRODUCTION

The need to overrule precedent becomes far more apparent when that precedent's "foundations . . . have sustained serious erosion from [the Court's] recent decisions." *Lawrence v. Texas*, 539 U.S. 558, 576 (2003). This Court has repeated that "[s]tare decisis is not an inexorable command." *E.g. Payne v. Tennessee*, 501 U.S. 808, 828 (1991). It "may yield where a prior decision's underpinnings have been eroded by subsequent decisions of this Court." *Agostini v. Felton*, 521 U.S. 203, 236 (1997) (citation modified). Indeed, just this past term, the Court explained that "hollowed-out precedents" can become "so undermined by subsequent developments that they are no longer good law and retain no vitality." *Nat'l Republican Senatorial Comm. v. FEC*, __ U.S. __, 146 S. Ct. 2404, 2424 (2026) (citation modified). Such a precedent is at issue here.

The foundations for *Locke v. Davey*, 540 U.S. 712 (2004), have been quadruple eroded. First, its reliance on a purported "tension" prompting "play in the joints" between the Religion Clauses has since been disavowed by this Court. Second, its teaching that a state's distinct "antiestablishment interests" can constitute a sufficient interest that overrides Free Exercise concerns is no longer true. Third, its view that some government-approved religious discrimination can be cast off as "mild" has lost

purchase before the Court. And fourth, the shadow of *Lemon v. Kurtzman*, which undeniably affected the outcome in *Locke*, has since been removed by *Lemon*'s modern overturning.

Unsurprisingly then, in modern practice, *Locke* has been viewed as having a very narrow application—applying only to the specific context of the bona fide training of clergy. But even this narrow role retains *Locke*'s problems, as shown by these Certiorari Petitions. What is to be done—as raised by the *Johnson* petitioners—when students are not bona fide trainees for ministry roles but instead pursue ministry-related degrees simply as their chosen path to possible secular professional growth. Does *Locke* apply then? Certainly “the study of theology does not necessarily implicate religious devotion or faith.” *Locke*, 540 U.S. at 734 (Thomas, J., dissenting). So it would be anomalous indeed to hold that Constitutional restraints on state educational funding turns on the level of commitment a student has to a life spent in ministry.

Locke has long stood on shaky foundations, foundations which one-by-one have been removed. Given the current state of the law, the Court now should bring an end to *Locke*'s lingering effect. The Court should grant these Petitions, overrule *Locke*, and apply its ordinary religious equality precedents instead.

ARGUMENT

I. LOCKE’S FOUNDATIONS HAVE BEEN QUADRUPLE ERODED.

a. *Locke* was predicated on four key foundations.

Significant to the Court’s decision in *Locke v. Davey* were four key qualities. In reaching its decision, the Court focused on a belief that (1) there is “tension” between the Religion Clauses, (2) a state’s own antiestablishment interests can justify restrictions on Free Exercise, and (3) the perceived “mild[ness]” of a religious burden can diminish the requisite constitutional protection. 540 U.S. at 718, 720, 722. And *Locke* was decided at a time when (4) the Establishment Clause was viewed as significantly restrictive under the test prescribed in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), a reality that meaningfully affected *Locke*’s outcome. However, each of these four foundations for *Locke* have since been jettisoned by the Court.

For background, *Locke*, 540 U.S. 712, tested a Washington state scholarship program that broadly benefited many students, but excluded those who pursued a theology degree. *Id.* at 716–17. The Court upheld this program as not violating the Free Exercise Clause. However, the context was key. The scholarship applicant who was denied this benefit because he sought a degree in pastoral ministries, had “planned for many years to attend a Bible college and to prepare [himself] through that college training for a lifetime of ministry, specifically as a church pastor.” *Id.* at 717. Indeed, his “religious beliefs [were] the only reason for [him] to seek a college degree.” *Id.* at 721. As best as the Court was aware, his state-funded

scholarship would directly pay for his entry into religious ministry.

Said simply, *Locke* was all about a bona fide ministry trainee. It was this context that primarily animated the holding in *Locke*, leading it to rest on its key foundations discussed above—Religion Clause “tension,” separate state antiestablishment interests, mere “mild” religious burdens, and *Lemon*-type reasoning.

The Court explained, “[t]raining someone to lead a congregation is an essentially religious endeavor,” and few areas more readily raise a state’s own “antiestablishment interests.” *Id.* at 721–22. “Historically,” it continued, society has balked against “procuring taxpayer funds to support church leaders, which was one of the hallmarks of an ‘established’ religion.” *Id.* at 722.

In that context, the Court recited that “there is room for play in the joints” between the Free Exercise and Establishment Clauses, which are “frequently in tension.” *Id.* at 719. Under this doctrinal teaching, “there are some state actions permitted by the Establishment Clause but not required by the Free Exercise Clause.” *Id.* The Court held, “[t]his case involves that ‘play in the joints.’”

Locke presented no true Establishment Clause problem. The Court expressly determined this, explaining that the link between government funds and religious training, would be “broken by the independent and private choice of [scholarship] recipients.” *Id.* at 719. “As such,” it held, “there is no doubt that the State could, consistent with the Federal Constitution, permit [scholarship recipients] to pursue a degree in devotional theology.” *Id.* Rather, the issue before the Court was whether a state’s own

antiestablishment interest sufficed to allow it to create a generally-available benefit while excluding genuine ministry students from that program. *Id.*

The Court’s prior holding in *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993), would seem to answer this question in the negative. A state preventing its generally-available benefit from aiding ministry students would be impermissible religious discrimination. *Lukumi* held that, “[a]t a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Id.* Put simply, laws which are not neutral to religion are presumptively unconstitutional.

But in *Locke*, the Court avoided *Lukumi*. While acknowledging that the scholarship program at issue there was not entirely neutral toward religion—stating that the religious-studies exception could be referred to as “disfavor of religion,” *id.* at 720—the Court waved off this detail as being disfavor “of a far milder kind,” *id.*, and thus meriting a special exception to the ordinary principles espoused in *Lukumi*.

Anomalous? Yes. But *Locke* was decided at a time when *Lemon v. Kurtzman*, 403 U.S. 602 (1971), held dominant sway, terminating numerous religious freedom claims.

Lemon was contextually similar to the factual background of *Locke* and these cases too. *Lemon* considered whether two states’ programs that provided state aid to church-related schools violated the First Amendment. *Id.* at 606–07. In its groundbreaking decision, *Lemon* held that the Establishment Clause required government programs to satisfy a three-pronged test—(1) secular purpose,

(2) non-advancement nor inhibition of religion, and (3) in-excessive entanglement between government and religion. *Id.* at 612–13. Finding that the states’ programs that it evaluated failed this test, *Lemon* held that the Establishment Clause invalidated them. *Id.* at 606.

Since its issuance, *Lemon* comprehensively dominated its space. It was followed in no less than a staggering seventeen subsequent decisions from the Supreme Court leading up to *Locke*, if not more.²

Lemon did more than just affect the environment in which Religion Clause matters like *Locke* were evaluated. More directly, its concepts are reflected in *Locke*. *Lemon* taught against laws that “advance . . . religion” or cause “excessive government entanglement with religion.” *Lemon*, 403 U.S. at 612–13. These teachings are notably similar to *Locke*’s teaching about “tension” and “play in the joints” between the Religion Clauses, *Locke*, 540 U.S. at 718–

² *Lemon* was followed in these seventeen Supreme Court cases leading up to *Locke*: *Comm. for Public Educ. and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973); *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979); *Widmar v. Vincent*, 454 U.S. 263 (1981); *Larson v. Valente*, 456 U.S. 228 (1982); *Larkin v. Grendel’s Den, Inc.*, 459 U.S. 116 (1982); *Mueller v. Allen*, 463 U.S. 388 (1983); *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985); *School District of the City of Grand Rapids v. Ball*, 473 U.S. 373 (1985); *Witters v. Washington Dep’t of Services for the Blind*, 474 U.S. 481 (1986); *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327 (1987); *Edwards v. Aguillard*, 482 U.S. 578 (1987); *Bowen v. Kendrick*, 487 U.S. 589 (1988); *Hernandez v. Commissioner*, 490 U.S. 680 (1989); *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989); *Board of Educ. of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990); *Jimmy Swaggart Ministries v. California Board of Equalization*, 493 U.S. 378 (1990); and *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000).

19, and its idea that even without concern of violating the Establishment Clause, states can have “antiestablishment interests” that justify discrimination against religion, *id.* at 722.

Locke certainly was anomalous. It departed from ordinary teachings that non-neutrality toward religion prompted strict scrutiny. However, because it was moored into the four key foundations discussed above, its holding initially was given significant weight. That since has changed.

b. *Locke*’s four key foundations have been eroded.

Two decades after *Locke*’s issuance, its four key foundations now have all been abandoned. First, the idea of their being “tension” between the Religion Clauses requiring “play in the joints” no longer applies. This is the result of the Court’s decision in *Kennedy v. Bremerton School District*, 597 U.S. 507 (2022), a case with relevant similarities to *Locke*.

In *Kennedy*, during downtime after public school football games, school coaches were permitted to enjoy free time before returning to specific coaching duties. During those moments, the plaintiff Coach Kennedy—a public school employee—would pray on the football field, and some players would join him. The School District believed that these prayers created religious establishment concerns, and eventually it terminated the Coach’s employment, prompting religious liberty litigation that reached this Court. *Id.*

Under that backdrop, the Court could have taken an approach like that illustrated in *Locke*. It could have declared that, while the Establishment Clause did not foreclose the Coach’s prayers, the Free Exercise Clause did not compel tolerance of them

either, and because the school district sought to vindicate “antiestablishment interests” this sufficed to overcome the Coach’s free exercise concerns.

An outcome like this was contemplated, as hinted at in Justice Sotomayor’s *Kennedy* dissent. There, she cited *Locke* to illustrate a perceived tension between the Free Exercise and Establishment Clauses that needed balancing and that should have been balanced against the Coach’s Free Exercise claim. *See id.* at 568 (Sotomayor, J., dissenting) (“The Court, however, has long recognized that these two [Religion] Clauses, while expressing complementary values, often exert conflicting pressures.”) (cleaned up).

The majority did not adopt that position, however. Instead, determining that there was no pure Establishment Clause violation, the majority decision penned these doctrinally significant words:

In the end, the [School] District’s case hinges on the need to generate conflict between an individual’s rights under the Free Exercise [Clause] . . . and its own Establishment Clause duties—and then develop some explanation why one of these Clauses in the First Amendment should trump the other two [the Free Exercise and Free Speech Clauses]. But the project falters badly. Not only does the [School] District fail to offer a sound reason to prefer one constitutional guarantee over another. It cannot even show that they are at odds. In truth, **there is no conflict between the constitutional commands before us.** There is only the “mere shadow” of a conflict, a false choice premised on a misconstruction of the Establishment Clause. And **in no world may a government entity’s concerns about**

phantom constitutional violations justify actual violations of an individual’s First Amendment rights.

Id. at 542–43 (emphasis added) (internal citations omitted).

This holding in *Kennedy* abandoned the ideas of “play in the joints” or “tension” between the Free Exercise and the Establishment Clauses. Thus, upon recognizing the absence of a pure Establishment Clause violation, the Court simply followed ordinary Free Exercise jurisprudence which prohibited religious censorship. Religion Clause tension, no more.³

Second, just two years earlier, this Court had ended the teaching set out in *Locke*, 540 U.S. 722, that a state’s own “antiestablishment interests”—distinct from what the U.S. Constitution requires—could justify a softened approach toward addressing potential Free Exercise violations. In *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020),

³ This point is made in Judge Richardson’s concurrence in *Hall v. Fleming*, 175 F.4th 510, 518 n.3 (4th Cir. 2026) (Richardson, J., concurring):

[T]he Supreme Court has rejected the notion of “play in the joints” between the Free Exercise and Establishment Clauses—a notion on which the *Locke* majority heavily relied. *See, e.g., Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 533 [] (2022) (“A natural reading [of the First Amendment] would seem to suggest the [religion] Clauses have ‘complementary’ purposes, not warring ones.”); *Espinoza*, 591 U.S. at 484–85 (“[A state’s] interest in separating church and State ‘more fiercely’ than the Federal Constitution . . . ‘cannot qualify as compelling’ in the face of the infringement of free exercise.” (quoting *Trinity Lutheran*, 582 U.S. at 466) (cleaned up)).

the Supreme Court explained that “[a state’s] interest in separating church and State ‘more fiercely’ than the Federal Constitution . . . ‘cannot qualify as compelling’ in the face of the infringement of free exercise.” *Id.* at 485.

Third, the Supreme Court clearly no longer retains the anomalous idea that perceptions of mere “mild” religious discrimination receive watered-down protection under the Free Exercise Clause. *Locke* suggested this watering-down, saying that the religious disfavor at issue in the scholarship program it evaluated was “of a far milder kind,” not meriting general Free Exercise protection. *Locke*, 540 U.S. at 720.

This Court now, however, consistently acknowledges the significance of any First Amendment violation, severe or mild. For example, when evaluating the appropriateness of issuing a preliminary injunction—relief that is consistently characterized as “extraordinary,” *see, e.g., Nken v. Holder*, 556 U. S. 418, 428 (2009)—this Court recently reaffirmed that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020); *see also Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (same). Indeed, the Court has now pronounced, “[t]he Free Exercise Clause bars even ‘subtle departures from neutrality’ on matters of religion.” *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 584 U.S. 617, 638 (2018).

Today, the mildness of a religious-freedom deprivation that was relied upon in *Locke* has lost its salience to the Court. The Court’s pronouncements against “subtle departures from neutrality” on matters

of religion and the “unquestionable” irreparable injury that occurs from even minimal periods of First Amendment deprivations make this plain.

Fourth and finally, the *Lemon*-type reasoning in *Locke* now has lost its force. Particularly, *Lemon* taught against laws that “advance . . . religion” or cause “excessive government entanglement with religion.” *Lemon*, 403 U.S. at 612–13. This matched similarly to *Locke*’s teaching about “tension” and “play in the joints” between the Religion Clauses, *Locke*, 540 U.S. at 718–19, and its idea that even without concern of violating the Establishment Clause, states can have “antiestablishment interests” that justify discrimination against religion, *id.* at 722.

However, despite its temporary dominance, *Lemon* eventually fell out of favor. In 2022, *Lemon*’s demise was sure. The Court declared in *Kennedy*, that *Lemon* indeed was “abandoned” by the Court. *Id.* at 523; *id.* at 535 (citation modified) (“In place of *Lemon* . . . , this Court has instructed that the Establishment Clause must be interpreted by reference to historical practices and understandings.”).

Locke was anomalous. And today, as has been set out above, each of the four foundations key to its decision no longer apply.

**II. THIS COURT HAS TIGHTLY NARROWED
LOCKE’S APPLICATION. YET THESE
CERTIORARI PETITIONS SHOW THAT
LOCKE REMAINS PROBLEMATIC.**

This Court has repeatedly shown that *Locke*’s application is narrow. It showed this in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017) and *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020), and stated this explicitly in *Carson v. Makin*, 596 U.S. 767 (2022). Other authorities and scholars recognize this too. Even so, the problems it creates remain.

**a. *Trinity Lutheran*, *Espinoza*, and
Carson narrowed *Locke*.**

After its issuance, *Locke* was never again viewed as broadly applicable by this Court. *Locke* was first meaningfully evaluated for salience in *Trinity Lutheran*, 582 U.S. 449 (2017). But it was not favorably applied.

In *Trinity Lutheran*, generally-available, government-funded rubber surfaces for playgrounds were denied to a church-operated preschool. That school functioned as “a ministry of Trinity Lutheran church” and had as part of its mission allowing children “to grow spiritually.” *Id.* at 455. After this denial, the school brought a Free Exercise challenge. The district court assessed that challenge under *Locke*, which it found barred the school’s claim. *Id.* at 456. However, the Supreme Court reversed that decision. Looking carefully at *Locke*’s specific facts, the Court observed that the plaintiff in *Locke* was denied a scholarship because he proposed to “use the funds to prepare for the ministry,” *id.* at 465, which the Court held was different from excluding someone simply

because they are religious, *id.* The latter was to be scrutinized more rigorously.

Ruling in this fashion, *Trinity Lutheran* read *Locke* narrowly. It could have declared that the state’s “antiestablishment interests” were implicated because the state’s provision of government-funded playground surfaces inevitably advanced the ability of a religious ministry to continue its work. If it ruled in this fashion, *Locke* would seem to apply. But it instead demonstrated this was the wrong approach. *Locke* did not reach that far.

That *Trinity Lutheran* had read *Locke* narrowly was clear to the Court when it issued its decision. Justices Thomas and Gorsuch, concurring in *Trinity Lutheran*, observed this narrowing. They stated that they joined the majority opinion “because the Court today appropriately construes *Locke* **narrowly**, . . . and because no party has asked us to reconsider it.” *Trinity Lutheran*, 582 U.S. at 468 (Thomas and Gorsuch, J., concurring) (emphasis added). Justice Sotomayor similarly observed that *Trinity Lutheran* reshaped the prescribed view of *Locke*, dissenting and saying that the Court had “**recast**[] *Locke* as a case about a restriction that prohibited the would-be minister from ‘us[ing] the funds to prepare for the ministry.’” *Id.* at 492 (emphasis added). After *Trinity Lutheran*, *Locke* was newly focused on those specifically who were entering into ministry.

Next, *Espinoza*, 591 U.S. 464, took this same narrowing tack. Montana’s school tuition scholarship program which generally benefited private school students, denied benefits for plaintiff students who intended to attend a Christian school. *Id.* at 470. Overtly religious, this private institution instructed its

students in Christian values, the same as would be taught at home. *Id.* at 472–71.

With this backdrop, the Court could have applied *Locke* and held that providing scholarships where children are instructed in Christian values would conflict with the state’s antiestablishment interest. But again, it stepped around *Locke*. It explained that *Locke* was about “the ‘essentially religious endeavor’ of training a minister ‘to lead a congregation’”—receiving “funds to prepare for the ministry.” *Id.* at 479–80. But because overt state-supported clergy concerns were not so clearly implicated in Montana’s school tuition program, the Free Exercise Clause prevented Montana’s religious school exception. *Id.* at 483.

Justice Breyer’s dissent detected *Espinoza*’s narrowing of *Locke*. After referencing *Locke*, the dissent exclaimed:

The majority barely acknowledges the play-in-the-joints doctrine here. It holds that the Free Exercise Clause forbids a State to draw any distinction between secular and religious uses of government aid to private schools that is not required by the Establishment Clause.

Id. at 520 (Breyer, J., dissenting). Justice Breyer thought this was incorrect. He wrote:

The majority finds that the school-playground case, *Trinity Lutheran*, and not the religious-studies case, *Locke*, controls here. I disagree. In my view, the program at issue here is strikingly similar to the program upheld in *Locke* and importantly different from the program we found unconstitutional in *Trinity Lutheran*.

Id. at 524 (Breyer, J., dissenting). Yet, this similarity between *Espinoza* and *Locke* did not control the final outcome. It was clear, once again, that the scope of *Locke* had been narrowed.

But what the majorities in *Trinity Lutheran* and *Espinoza* did simply through their analysis, *Carson*, 596 U.S. 767, did explicitly. The context for *Carson* was that the state of Maine excluded religious schools from a tuition assistance program, which the Supreme Court held violated the Free Exercise Clause. *Id.* The Court repeated that *Locke* did not apply because it pertained to the use of scholarship funds for the “‘essentially religious endeavor’ of pursuing a degree designed to ‘train[] a minister to lead a congregation.’” *Id.* at 788. *Locke*, it repeated, pertained to funds “intended to be used ‘to prepare for the ministry.’” *Id.* This was, it said, *Locke*’s “narrow focus.” *Id.* at 789. Once again, anomalous *Locke* could not be used to justify restrictions on religious free exercise.

The principal dissent in *Carson* stressed the teachings espoused in *Locke* and expressed disappointment that *Locke* was not being applied. *Id.* at 790, 792, 801–802. Yet, those teachings did not win the day. *Locke* had been profoundly narrowed. Going forward, its application pertained only to the bona fide training of clergy. *Id.* at 788.

Unsurprisingly, many scholars likewise have observed *Locke*’s modern narrowness. *See, e.g.*, Steven D. Smith, *Jurisdictional Diversity, Tradition, and the Religion Clauses*, 100 Chi.-Kent L. Rev. 729, 749 (2025) (“[T]he more recent decisions, while not explicitly overruling *Locke*, have distinguished and severely limited it.”); Peter J. Smith, *Establishment Clause Mythology*, 75 Case W. Res. 573, 632 (2024)

(“The Court also effectively confined *Locke* to its facts.”).

Indeed, *Locke*’s modern narrowness is apparent from its subsequent disuse. After its issuance in 2004, *Locke* has never since been cited by a majority of the Supreme Court to foreclose a Free Exercise Clause claim. The Court could have applied *Locke* in *Kennedy*, *Trinity Lutheran*, *Espinoza*, or *Carson*. But it did not.

b. These Certiorari Petitions Show That *Locke*’s Problems Remain.

Despite *Locke*’s modern narrowness, these two Certiorari Petitions, viewed together, well illustrate *Locke*’s enduring problems. The facts in the *Hall* case are analogous to those in *Locke*, while the facts in the Petitioners in the *Johnson* case fall outside of the reach of *Locke*, when construed narrowly as the Court previously has. This creates a particularly untenable oddity—constitutional protection that turns on the degree of committed interest that a religious individual has in entering a bona fide religious ministry.

The facts in *Hall*, 175 F.4th 510, were directly analogous to those in *Locke*. In *Hall*, a plaintiff challenged Virginia’s Tuition Assistance Grant program after she was denied from pursuing a religious degree using those funds specifically to prepare her for religious ministry. *Id.* at 512. She said she “heard God’s call to ministry” and because of that calling, she “changed her major to ‘Youth Ministries.’” *Id.* There could be no doubt regarding her intended direction. She had become a bona fide ministry trainee. Faced with this similarity, the plaintiff in *Hall* conceded that “her situation aligns with the one faced by the undergraduate student pursuing a religious vocation major in *Locke*.” *Id.*

However, the three plaintiffs in *Johnson* simply sought collegiate education in their chosen degree program. Their study programs were religious in nature—pastoral leadership (plaintiff Johnson), music and worship (plaintiff Thomas), and religion, general track (plaintiff Stevens)—but they were not studying for the purpose of assuming the role of clergy. *Johnson v. Fleming*, No. 3:25cv407, 2026 U.S. Dist. LEXIS 71085, at *7–*8, *11–*12 (E.D. Va. Mar. 31, 2026). Neither knew whether he would pursue a vocational or secular career. *Id.* Johnson was unsure if he was going to enter a “vocational calling” or a “secular career or workplace.” *Id.* at *7. Thomas did not know if he would enter “the ministry field” or careers other than those strictly in vocational ministry.” *Id.* at *7. And Stevens was unsettled as to whether his occupation would be “in ministry,” “the Army,” or “other career interests.” *Id.* at *12. Put simply, the plaintiffs in *Johnson* are not bona fide ministry trainees.

Does *Locke* foreclose the *Hall* Petitioner’s claims while allowing the *Johnson* Petitioners’ claims to proceed? Is the only detail that dooms *Hall*’s claim her clarity regarding her forthcoming employment in ministry? Such an outcome would only compound *Locke*’s anomalous holding and would permit a striking disparity in treatment.

The Court should bring an end to *Locke*’s confounding of constitutional law. Ordinary Free Exercise principles should apply instead.

III. *Locke* Should be Overruled and the Court's Religious Equality Precedents Should Control Instead.

This Court has repeatedly explained its prioritization of adopting a correct interpretation of the Constitution over adherence to an incorrect past holding. *Payne v. Tennessee*, 501 U.S. 808 (1991), well illustrates the circumstances that make overruling a prior decision appropriate.

In *Payne*, the Supreme Court reversed its prior Eighth Amendment holdings preventing prosecutors from presenting victim impact evidence during the sentencing phase of a capital trial. Holding that those prior decisions were incorrect, the Supreme Court explained that “when governing decisions are unworkable or are badly reasoned, this Court has never felt constrained to follow precedent.” *Id.* at 827. Contributing considerations arise when the challenged precedent was “decided by the narrowest of margins, over spirited dissents challenging the basic underpinnings” of that decision and when that decision has been “questioned by Members of the Court in later decisions.” *Id.* at 828–29.

Again, *Agostini v. Felton*, 521 U.S. 203 (1997), sheds light on when the Court will overrule a precedent interpreting the Constitution. There this Court overruled its precedents restraining state employees from providing nonsectarian, supplemental education services in a religious school. It did so because those decisions were “inconsistent with [the Court’s] more recent decisions.” *Id.* at 235. In making this judgment, the Court emphasized that its policy of dutifully following its prior decisions without question “is at its weakest” when it interprets the Constitution. *Id.* at 235. This is so because: “[O]ur interpretation

can be altered only by constitutional amendment or by overruling our prior decisions.” *Id.* The Court then provided a long string cite of cases supporting the historicity of that approach. *Id.*

The Court should take the same approach here. *Locke*’s key foundations have been undermined. *See* Part I above. And the Court has tightly narrowed *Locke*’s lingering application, yet its problems continue. *See* Part II above. *Locke* was decided over the dissent of some of the Court’s Members. *Id.* at 726 (saying the majority opinion in *Locke* was “irreconcilable with” the Court’s religious equality precedents) (Scalia and Thomas, J., dissenting); *id.* at 734 (Thomas, J., dissenting), and it continues to face criticism by sitting members of this Court. *Trinity Lutheran*, 582 U.S. at 468 (“This Court’s endorsement in *Locke* of even a “mil[d] kind” [] of discrimination against religion remains troubling.”) (Thomas and Gorsuch, J., concurring); *Espinoza*, 591 U.S. at 492 (“*Locke* incorrectly interpreted the Establishment Clause and should not impact free exercise challenges.”) (Thomas and Gorsuch, J., concurring);

In his dissent in *Locke*, Justice Scalia aptly observed that the Court’s religious equality precedents provide the correct rule of decision rather than the anomalous decision issued by the *Locke* majority. *Id.* at 726.

Employment Division v. Smith, 494 U.S. 872, 879 (1990), set out the view that “the right of free exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of general applicability.’” However, as this rule states, this space of regulatory freedom evaporates in the absence of religious neutrality.

Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 532 (1993), made this clear. It explained, “[a]t a minimum, the protections of the Free Exercise pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.” *Id.* It plainly expressed that a law is not neutral if its object “is to infringe upon or restrict practices because of their religious motivation.” In that case, the law is “invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest.” *Id.* at 534.

Masterpiece Cakeshop, 584 U.S. 617, 638 (2018), stated this principle even more plainly: “The Free Exercise Clause bars even ‘subtle departures from neutrality’ on matters of religion.” *Id.* *Trinity Lutheran* made this same point: “The Free Exercise Clause protects religious observers against unequal treatment and subjects to the strictest scrutiny laws that target the religious for special disabilities based on their religious status.” 582 U.S. at 458.

It is these principles that should govern these cases.

CONCLUSION

Locke failed to apply the correct standard for government educational funding programs that discriminate against religious students. Subsequently, *Locke*’s foundations were removed and this Court has sharply narrowed its application. The time has come for *Locke*’s overruling. The Court grant the Petitions for Certiorari, overrule *Locke*, and apply its religious equality precedents instead.

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